

**ASSEMBLY, No. 529**

---

**STATE OF NEW JERSEY**

**208th LEGISLATURE**

---

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

**Sponsored by:**

**Assemblyman JOHN E. ROONEY**

**District 39 (Bergen)**

**SYNOPSIS**

Reorganizes public utility and energy regulation.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the regulation of public utilities and energy,  
2 making transfers to certain departments, and supplementing and  
3 amending various Titles of the Revised Statutes.

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

7  
8 1. (New section) a. The Board of Regulatory Commissioners,  
9 established and named as such and transferred to the Department of  
10 Environmental Protection pursuant to Reorganization Plan No.  
11 002-1991, is renamed the Board of Public Utility Commissioners and,  
12 together with all its functions, powers and duties, is transferred to and  
13 constituted as the Board of Public Utility Commissioners in but not of  
14 the Department of the Treasury. Notwithstanding this allocation, the  
15 board shall be independent of any supervision or control by the  
16 Department of the Treasury or by any officer thereof.

17 b. The positions of the chairperson and commissioners of the  
18 Board of Regulatory Commissioners shall be continued as the  
19 president and commissioners of the Board of Public Utility  
20 Commissioners. The president and commissioners of the Board of  
21 Public Utility Commissioners shall be appointed in the manner, and  
22 shall receive such salaries as shall be provided by law.

23 c. All responsibility for the budget, fiscal and personnel matters of  
24 the Board of Public Utility Commissioners, including the adoption of  
25 a Code of Ethics as required by P.L.1971, c.12 (C.52:13D-12 et seq.),  
26 that was transferred to the Department of Environmental Protection  
27 pursuant to Reorganization Plan No. 002-1991, is transferred to the  
28 Board of Public Utility Commissioners in the Department of the  
29 Treasury. The board shall make annual budget recommendations to  
30 the Director of the Division of Budget and Accounting, in that  
31 department, for review and recommendation to the Governor for  
32 approval in the same manner as proposed departmental budgets. The  
33 Department of Personnel shall not reclassify any title or position  
34 transferred from the Board of Regulatory Commissioners pursuant to  
35 P.L. , c. (C. ) (pending in the Legislature as this bill) without  
36 the approval of the board.

37 d. Whenever in any law, rule, regulation, order, contract,  
38 document, judicial or administrative proceeding or otherwise,  
39 reference is made to the Board of Regulatory Commissioners in the  
40 Department of Environmental Protection and Energy, or any of its  
41 predecessors, the same shall mean and refer to the Board of Public  
42 Utility Commissioners in but not of the Department of the Treasury.

43 e. The board shall not be subject to the provisions of the

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

**Matter underlined thus is new matter.**

1 "Executive Reorganization Act of 1969," P.L.1969, c.203  
2 (C.52:14C-1 et seq.).

3  
4 2. (New section) a. There is established in the Board of Public  
5 Utility Commissioners the Division of Energy Planning and  
6 Conservation, and all of the functions, powers and duties of the  
7 Division of Energy Planning and Conservation set forth in section 9 of  
8 P.L.1977, c.146 (C.52:27F-11) and transferred to the Department of  
9 Environmental Protection pursuant to Reorganization Plan No.  
10 002-1991 are transferred to and vested in the Division of Energy  
11 Planning and Conservation in the Board of Public Utility  
12 Commissioners. The Office of Energy Planning in the Department of  
13 Environmental Protection, created pursuant to Reorganization Plan  
14 No. 002-1991, is continued and shall perform such functions as the  
15 Commissioner of Environmental Protection shall prescribe.

16 b. The Division of Energy Planning and Conservation shall be  
17 under the immediate supervision of a director who shall administer the  
18 work of the division under the direction of the Board of Public Utility  
19 Commissioners.

20 c. Whenever in any law, rule, regulation, order, contract,  
21 document, judicial or administrative proceeding or otherwise,  
22 reference is made to the Division of Energy Planning and Conservation  
23 in the Department of Energy, the Department of Commerce, Energy  
24 and Economic Development, or in the Board of Public Utilities, or the  
25 Office of Energy Planning in the Department of Environmental  
26 Protection and Energy, the same shall mean and refer to the Division  
27 of Energy Planning and Conservation in the Board of Public Utility  
28 Commissioners.

29  
30 3. (New section) a. The Advisory Council on Energy Planning and  
31 Conservation, transferred to the Department of Environmental  
32 Protection pursuant to Reorganization Plan No. 002-1991, together  
33 with all of its functions, powers and duties as set forth in section 11 of  
34 P.L.1977, c.146 (C.52:27F-13), is continued and transferred to and  
35 constituted as the Advisory Council on Energy Planning and  
36 Conservation in the Division of Energy Planning and Conservation in  
37 the Board of Public Utility Commissioners.

38 b. Whenever in any law, rule, regulation, order, contract,  
39 document, judicial or administrative proceeding or otherwise,  
40 reference is made to the Advisory Council on Energy Planning and  
41 Conservation in the Department of Energy, the Department of  
42 Commerce, Energy and Economic Development, the Board of Public  
43 Utilities, or the Department of Environmental Protection and Energy,  
44 the same shall mean and refer to the Advisory Council on Energy  
45 Planning and Conservation in the Division of Energy Planning and  
46 Conservation in the Board of Public Utility Commissioners.

1       4. (New section) a. The Department of Environmental Protection  
2 and Energy, denominated as such pursuant to Reorganization Plan No.  
3 002-1991, is renamed the Department of Environmental Protection.

4       b. Whenever in any law, rule, regulation, order, contract,  
5 document, judicial or administrative proceeding or otherwise,  
6 reference is made to the Department of Environmental Protection and  
7 Energy or the Commissioner thereof, the same shall mean and refer to  
8 the Department of Environmental Protection and the Commissioner  
9 thereof, except that whenever in any law, rule, regulation, order,  
10 contract, document, judicial or administrative proceeding reference is  
11 made to the energy planning or energy conservation functions, powers  
12 or duties of the Department of Environmental Protection and Energy  
13 or the Commissioner thereof, the same shall mean and refer to the  
14 Division of Energy Planning and Conservation in the Board of Public  
15 Utility Commissioners.

16  
17       5. (New section) All transfers directed by this act shall be made in  
18 accordance with the "State Agency Transfer Act," P.L.1971, c.375  
19 (C.52:14D-1 et seq.).

20  
21       6. (New section) All provisions of Reorganization Plan 002-1991  
22 inconsistent with the provisions of P.L.     , c.     (C.     ) (pending  
23 before the Legislature as this bill) are hereby null and void.

24  
25       7. R.S.48:2-1 is amended to read as follows:

26       48:2-1. a. There is hereby established in **the Executive Branch of**  
27 the State Government a principal department which shall be known as  
28 the Department of Public Utilities. The Board of Public Utility  
29 Commissioners, hereinafter in this chapter designated as the "board,"  
30 created and established by the act entitled "An act concerning public  
31 utilities; to create a board of public utility commissioners and to  
32 prescribe its duties and powers," approved April 21, 1911 (L.1911,  
33 c.195, p.374), as amended and supplemented, is continued and is  
34 designated the head of such principal department **but not of the**  
35 Department of the Treasury the Board of Public Utility  
36 Commissioners.

37       b. The board shall consist of **three citizens of this State** three  
38 commissioners, who shall devote their entire time to the duties of the  
39 board and shall not engage in any occupation, profession or other  
40 gainful employment. Members of the board shall be appointed by the  
41 Governor with the advice and consent of the Senate, for terms of **[6]**  
42 six years. The terms of office of the members of the board shall  
43 continue until their successors are appointed and qualified. No person  
44 shall act as a member of the board until his appointment has been  
45 confirmed by the Senate. Not more than two of the members of the  
46 board shall be members of the same political party. All vacancies,

1 except through the expiration of term, shall be filled for the unexpired  
2 term only.

3  
4 8. Section 2 of P.L.1948, c.90 (C.48:2-1.1) is amended to read as  
5 follows:

6 2. The Governor shall designate one of the members of the board  
7 of public utility commissioners as president of such board. Any  
8 member of the board so designated shall serve as such president at the  
9 pleasure of the Governor designating him and until his successor has  
10 been designated. The president of the board shall be its presiding  
11 officer and the chief administrative officer of the **【Department of**  
12 **Public Utilities】** Board of Public Utility Commissioners. The other  
13 members of the board shall be eligible to appointment to fill a vacancy  
14 in the office of president of the board.

15 (cf: P.L.1948, c.90, s.2)

16  
17 9. R.S.48:2-2 is amended to read as follows:

18 48:2-2. a. The board shall have a common seal. It shall appoint a  
19 secretary, assistant secretaries, **【counsel】** and such other employees  
20 as it may deem necessary and fix their duties and terms of service.

21 **【It】**

22 b. Notwithstanding the provisions of P.L.1944, c.20 (C.52:17A-1  
23 et seq.) or any other law or order to the contrary, the board shall  
24 appoint counsel for the performance of administrative functions  
25 entailing the hearing of issues and determining facts in order that the  
26 board may perform its regulatory functions as required by law.

27 c. The board shall fix the compensation of all officers and  
28 employees, subject to the provisions of Title 11, Civil Service, except  
29 where otherwise provided by statute.

30 (cf: P.L.1962, c.198, s.1)

31  
32 10. R.S.48:2-3 is amended to read as follows:

33 48:2-3. The board shall have a principal office in Newark and such  
34 other offices in such place and places as the **【Governor】** board in  
35 writing may designate, and shall be provided with all necessary  
36 furniture, stationery, maps, supplies and office appliances. The board  
37 shall appoint a director of office management to serve such office and  
38 offices and fix his duties and terms of service. It shall fix the  
39 compensation of the director of office management at not less than  
40 range code A-32 under the State of New Jersey Compensation Plan,  
41 effective June 23, 1973. The board shall meet at such times and places  
42 within this State as it may provide.

43 (cf: P.L.1974, c.82, s.1)

44  
45 11. Section 2 of P.L.1951, c.326 (C.48:2-3.1) is amended to read  
46 as follows:

1       2. Upon the designation by the **【Governor】** board of the principal  
2 office of the Board of Public Utility Commissioners pursuant to  
3 section 48:2-3 of the Revised Statutes, the board shall file in the office  
4 of the Secretary of State a copy of such designation, and thereafter,  
5 wherever reference is made in any law to the office of the board **【in**  
6 **Trenton】** it shall be given effect as though it specifically referred to  
7 said principal office so designated.

8 (cf: P.L.1951, c.326, s.2)

9  
10       12. Section 1 of P.L.1983, c.78 (C.48:2-13.1) is amended to read  
11 as follows:

12       1. Notwithstanding the provisions of any other law, rule or  
13 regulation to the contrary, with respect to a rural, electric cooperative  
14 which is exclusively owned and controlled by the consumers it serves,  
15 the Board of Public **【Utilities】** Utility Commissioners shall not  
16 exercise any jurisdiction or control over the rates, charges or operation  
17 of the cooperative nor shall the approval of the board be required to  
18 authorize or validate any mortgage or encumbrance of real property of  
19 or the issuance or execution of any evidence of indebtedness by the  
20 cooperative, except that the board shall retain its jurisdiction to  
21 determine disputes concerning the territory served or to be served by  
22 an electric cooperative.

23 (cf: P.L.1983, c.78, s.1)

24  
25       13. Section 1 of P.L.1982, c.222 (C.48:2-16.4) is amended to read  
26 as follows:

27       1. The Board of Public **【Utilities】** Utility Commissioners shall  
28 establish procedures to provide for management audits to be  
29 performed on a regular or irregular schedule on all or any portion of  
30 the operating procedures and any other internal workings of every gas  
31 or electric utility subject to its jurisdiction. In any case where the  
32 board determines that an audit is necessary or desirable, it may order  
33 the audit to be performed by members of its staff, or it may require  
34 that the audit be performed under the supervision of designated  
35 members of the board's staff by an independent management consulting  
36 firm selected by the utility from a list provided by the board for the  
37 audit, which list shall include the names of at least five qualified firms,  
38 at least two of which shall be of nationally recognized stature. An  
39 audit shall be conducted at least once every 3 years, except where the  
40 board finds that an audit is unnecessary. In no event, however, shall  
41 an audit be conducted less than once every 6 years. All expenses of  
42 the audits shall be borne by the affected utilities. The results of each  
43 audit shall be filed with the board and shall be open to public  
44 inspection. Upon completion and review of an audit, if the person or  
45 firm performing or supervising the audit determines that any of the  
46 operating procedures or any other internal workings of the affected

1 utility are inefficient, improvident, unreasonable, negligent or an abuse  
2 of discretion, the board may, after notice and opportunity for a  
3 hearing, order the affected public utility to adopt such new or altered  
4 practices and procedures as the board shall find to be necessary to  
5 promote efficient and adequate service to meet the public convenience  
6 and necessity. All reasonable and proper costs and expenses, as  
7 determined by the board, of complying with any order of the board  
8 pursuant to this act shall be recognized by the board for all purposes  
9 as proper business expenses of the affected utility. Nothing in this act  
10 shall be deemed to interfere or conflict with any powers of the board  
11 or its staff to conduct an audit, investigation or review of the books,  
12 records and accounts of any gas or electric utility under its  
13 jurisdiction.

14 (cf: P.L.1982, c.222, s.1)

15

16 14. Section 2 of P.L.1983, c.94 (C.48:2-21.5) is amended to read  
17 as follows:

18 2. The Legislature finds and declares that the Board of Public  
19 **【Utilities】** Utility Commissioners has the statutory responsibility to fix  
20 just and reasonable electric utility rates; that the board, in carrying out  
21 this responsibility, must balance the interests of the public utilities,  
22 their stockholders, and the consuming public; that an accident at an  
23 electric generating or transmission facility, as recent experience  
24 indicates, may, by reason of the extraordinary costs involved in the  
25 cleanup and repair of the facility, in purchasing replacement power,  
26 and in paying any damages, seriously affect the financial condition of  
27 any utility that has a full or part interest in any such disabled facility;  
28 and that to insure maximum protection for, and an equitable sharing  
29 of costs among, the utility, its ratepayers, and its stockholders, it is  
30 necessary to establish a special hearing procedure to determine the  
31 party or parties at fault, if any, and to develop guidelines concerning  
32 the establishment of remedies and the apportionment of financial  
33 responsibility.

34 (cf: P.L.1983, c.94, s.2)

35

36 15. Section 28 of P.L.1983, c.315 (C.48:2-21.10) is amended to  
37 read as follows:

38 28. The Board of Public **【Utilities】** Utility Commissioners shall  
39 consider all expenses incurred by a public utility in complying with the  
40 provisions of **【P.L.【1983】**, c. **【315】** (C.**【34:5A-1 et seq.】**) (now  
41 pending before the Legislature as Senate Committee Substitute for  
42 Senate Bill No. 1670 of 1982)**】P.L.1983, c.315 (C.34:5A-1 et al)** as  
43 a current expense of providing utility service, which shall be charged  
44 to all ratepayers of the utility in the same manner as other current  
45 operating expenses of providing utility service.

46 (cf: P.L.1983, c.315, s.28)

1       16. Section 1 of P.L.1983, c.461 (C.48:2-21.11) is amended to  
2 read as follows:

3       1. In determining just and reasonable rates for any electric utility  
4 pursuant to R.S.48:2-21, R.S.48:2-21.1, or section 31 of P.L.1962,  
5 c.198 (C.48:2-21.2), the Board of Public **【Utilities】** Utility  
6 Commissioners shall provide that any moneys received by the utility as  
7 reimbursement for costs incurred, including those for replacement  
8 energy, from any insurance carrier, or as a result of any legal action or  
9 settlement shall be accounted for as moneys available to the utility.  
10 (cf: P.L.1983, c.461, s.1)

11

12       17. Section 19 of P.L.1989, c.3 (C.48:2-21.15) is amended to read  
13 as follows:

14       19. Any telecommunications carrier other than a telephone  
15 company, that is no longer subject to taxation on personal property  
16 pursuant to R.S.54:4-1 et seq., or to taxation upon its gross receipts  
17 pursuant to P.L.1940, c.4 (C.54:30A-16 et seq.) as a result of the  
18 amendments to sections 2 and 3 of P.L.1940, c.4 (C.54:30A-17 and  
19 54:30A-18) and to R.S.54:4-1 made in sections 2, 3 and 4 of  
20 P.L.1989, c.2 shall, within 90 days of the operative date of **【this act】**  
21 P.L.1989, c.3 (C.52:17C-1 et al.), petition the Board of Public  
22 **【Utilities】** Utility Commissioners for a reduction in its rates. The  
23 board shall institute a hearing on the petition, and at the conclusion of  
24 the hearing shall determine the amount of the reduction in the rate base  
25 of the telecommunications carrier which reflects the elimination of the  
26 tax liability of such carrier under those amendments. The rate  
27 reduction shall not take effect prior to January 1 next following  
28 enactment of **【this act】** P.L.1989, c.3.  
29 (cf: P.L.1989, c.3, s.19)

30

31       18. Section 2 of P.L.1991, c.428 (C.48:2-21.17) is amended to  
32 read as follows:

33       2. As used in this act:

34       "Alternative form of regulation" means a form of regulation of  
35 telecommunications services other than traditional rate base, rate of  
36 return regulation to be determined by the board and may include, but  
37 not be limited to, the use of an index, formula, price caps, or zone of  
38 rate freedom.

39       "Assess" means, in relation to the Director of the Division of Rate  
40 Counsel, the making of any assessment or statement of the  
41 compensation and expense of counsel, experts and assistants employed  
42 by rate counsel and billed by the Director of the Division of Rate  
43 Counsel as a final agency order or determination to a local exchange  
44 telecommunications company or an interexchange telecommunications  
45 carrier filing a petition with the Board of **【Regulatory】** Public Utility  
46 Commissioners pursuant to the provisions of this act.



1 "Board" means the Board of **【Regulatory】** Public Utility  
2 Commissioners or its predecessor agency.

3 "Competitive service" means any telecommunications service  
4 determined by the board to be competitive prior to the effective date  
5 of this act or determined to be competitive pursuant to sections 4 or  
6 5 of this act, or any telecommunications service not regulated by the  
7 board.

8 "Interexchange telecommunications carrier" means a carrier, other  
9 than a local exchange telecommunications company, authorized by the  
10 board to provide long-distance telecommunications services.

11 "LATA" means Local Access Transport Area as defined by the  
12 board in conformance with applicable federal law.

13 "Local exchange telecommunications company" means a carrier  
14 authorized by the board to provide local telecommunications services.

15 "Protected telephone services" means any of the following  
16 telecommunications services provided by a local exchange  
17 telecommunications company, unless the board determines, after  
18 notice and hearing, that any of these services is competitive or should  
19 no longer be a protected telephone service: telecommunications  
20 services provided to business or residential customers for the purpose  
21 of completing local calls; touch-tone service or similar service; access  
22 services other than those services that the board has previously found  
23 to be competitive; toll service provided by a local exchange  
24 telecommunications company; and the ordering, installation and  
25 restoration of these services.

26 "Rate counsel" means the Division of Rate Counsel in the  
27 Department of the Public Advocate acting pursuant to section 19 of  
28 P.L.1974, c.27 (C.52:27E-18).

29 "Telecommunications service" means any telecommunications  
30 service which is subject to regulation by the board pursuant to Title 48  
31 of the Revised Statutes.

32 (cf: P.L.1991, c.428, s.2)

33

34 19. Section 4 of P.L.1988, c.163 (C.48:2-23.1) is amended to read  
35 as follows:

36 4. a. The Board of Public **【Utilities】** Utility Commissioners, in  
37 reviewing a request by a public utility to convey land utilized for the  
38 purpose of the protection of a public water supply to a corporation or  
39 other entity which is not subject to the jurisdiction of the board, shall  
40 request the Department of Environmental Protection to review and  
41 make recommendations on an assessment, prepared and submitted by  
42 the utility, of the impact that the conveyance, and the prospective use  
43 or uses of the land conveyed, would have on the water quality of the  
44 affected public water supply, and shall require the department to assess  
45 the impact of the conveyance on the State's open space, conservation,  
46 and recreation requirements. The department, upon receipt of a

1 request by the board for an assessment and a review pursuant to this  
2 subsection, shall prepare and submit to the board the assessment and  
3 review within 12 months of the request therefor.

4 b. Any public utility requesting the board to approve a conveyance  
5 of land utilized for the purpose of the protection of a public water  
6 supply to a corporation or other entity which is not subject to the  
7 jurisdiction of the board shall submit to the board a document setting  
8 forth a detailed explanation of the prospective use or uses of the land  
9 to be conveyed. The board, upon receipt of this document, may  
10 require the public utility to submit any additional information which  
11 the board deems appropriate.

12 (cf: P.L.1988, c.163, s.4)

13  
14 20. Section 2 of P.L.1983, c.95 (C.48:2-29.37) is amended to read  
15 as follows:

16 2. The Board of Public **【Utilities】** Utility Commissioners is hereby  
17 empowered to and shall direct every electric utility to allow any  
18 ratepayer who is also a cogenerator and who sells cogenerated  
19 electricity to the utility and repurchases electricity from the utility a  
20 credit against that ratepayer's electricity charges. The credit shall be  
21 in an amount equal to the gross receipts and franchise taxes imposed  
22 by P.L.1940, c.5 (C.54:30A-49 et seq.) which, except for the  
23 provisions of section 2 of P.L.1940, c.5 (C.54:30A-50), would have  
24 been paid by the utility on receipts received by the utility from the  
25 cogenerating ratepayer in payment for cogenerated electrical energy  
26 resold by the utility to the producing cogenerator where produced.  
27 The credit provided by this act shall be computed during each regular  
28 billing period. The credit for any given billing period may be utilized  
29 by the cogenerating ratepayer against any electricity purchases up to  
30 six months after said billing period.

31 (cf: P.L.1983, c.95, s.2)

32  
33 21. Section 4 of P.L.1985, c.203 (C.48:2-32.2b) is amended to  
34 read as follows:

35 4. This amendatory and supplementary act shall not be construed  
36 as limiting notice requirements, per se, to the hearings and  
37 investigations set forth in section 3 hereof but, rather, shall be  
38 construed as complementing any other public utility notice  
39 requirements, and other notice requirements, pertaining to the Board  
40 of Public **【Utilities】** Utility Commissioners, which are provided by  
41 law.

42 (cf: P.L.1985, c.203, s.4)

43  
44 22. Section 1 of P.L.1980, c.179 (C.48:2-32.4) is amended to read  
45 as follows:

46 1. Prior to granting a public utility a proposed adjustment which

1 would result in an increase in individual rates, joint rates, tolls, charges  
2 or schedules thereof, the Board of Public **【Utilities】** Utility  
3 Commissioners or the Office of Administrative Law shall hold at least  
4 one public hearing in the municipality affected by the proposed  
5 adjustment. If more than one municipality is located in the service  
6 area affected by the proposed adjustment, the public hearing shall be  
7 held in a centrally located municipality in the affected service area.  
8 Notice of any such hearing shall be furnished in the manner provided  
9 for notices generally pursuant to subsections c. and d. of section 34 of  
10 P.L.1962, c.198 (C.48:2-32.2). In the case of a hearing held by the  
11 Office of Administrative Law, proof of service of notice by a public  
12 utility shall be furnished to that office.  
13 (cf: P.L.1985, c.203, s.2)

14  
15 23. Section 1 of P.L.1983, c.454 (C.48:2-32.5) is amended to read  
16 as follows:

17 1. For purposes of this act:

18 a. "Geographic region" means one of the following regions of the  
19 State: the southern region encompassing the counties of Atlantic,  
20 Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and  
21 Salem; the central region encompassing the counties of Hunterdon,  
22 Mercer, Middlesex, Monmouth and Somerset; and the northern region  
23 encompassing those counties remaining in the State.

24 b. "Intervenor" means any person permitted to intervene by the  
25 Board of Public **【Utilities】** Utility Commissioners or its presiding  
26 officer in any proceeding.

27 c. "Objector" means any person who objects on the grounds of  
28 public or private interest to the approval, determination, consent,  
29 certification or authorization of any petition pending before the board.

30 d. "Petitioner" means any person who files a petition, or on whose  
31 behalf a petition is made, for approval, determination, consent,  
32 certification or authorization of the board.

33 e. "Respondent" means any person subject to the jurisdiction of the  
34 board to whom the board issues notice instituting a proceeding or  
35 investigation of the board or ordered before any pending proceeding  
36 of the board or against whom a petition is filed.

37 f. "Service area" means the entire geographic area over which a gas  
38 or electric light, heat or power company has a privilege or franchise  
39 granted by the State or by any political subdivision of the State, in  
40 accordance with the provisions of R.S.48:2-13 and R.S.48:2-14.

41 g. "Significant increase" means an increase other than one resulting  
42 from a leveled energy adjustment clause or raw materials adjustment  
43 clause.

44 (cf: P.L.1983, c.454, s.1)

45

46 24. Section 1 of P.L.1984, c.2 (C.48:2-51.1) is amended to read as

1 follows:

2 1. No person shall acquire or seek to acquire control of a public  
3 utility directly or indirectly through the medium of an affiliated or  
4 parent corporation or organization, or through the purchase of shares,  
5 the election of a board of directors, the acquisition of proxies to vote  
6 for the election of directors, or through any other manner, without  
7 requesting and receiving the written approval of the Board of Public  
8 **【Utilities】 Utility Commissioners**. Any agreement reached, or any  
9 other action taken, in violation of this act shall be void. In considering  
10 a request for approval of an acquisition of control, the board shall  
11 evaluate the impact of the acquisition on competition, on the rates of  
12 ratepayers affected by the acquisition of control, on the employees of  
13 the affected public utility or utilities, and on the provision of safe and  
14 adequate utility service at just and reasonable rates. The board shall  
15 accompany its decision on a request for approval of an acquisition of  
16 control with a written report detailing the basis for its decision,  
17 including findings of fact and conclusions of law.  
18 (cf: P.L.1984, c.2, s.1)

19

20 25. Section 1 of P.L.1968, c.173 (C.48:2-59) is amended to read  
21 as follows:

22 1. To enable the Board of Public Utility Commissioners **【in the**  
23 **Department of Public Utilities】** to better perform its lawful duties  
24 relating to service, classifications to be used, rates and charges to be  
25 made and collected, rules and regulations to be prescribed, and  
26 supervision over all public utilities **【and public movers】** under its  
27 jurisdiction, the Board of Public Utility Commissioners shall annually  
28 make an assessment against each public utility **【and public mover】**.  
29 (cf: P.L.1972, c.36, s.1)

30

31 26. Section 2 of P.L.1968, c.173 (C.48:2-60) is amended to read  
32 as follows:

33 2. The assessment shall be equal to a percentage of the gross  
34 operating revenue of the public utilities under the jurisdiction of the  
35 board derived from intrastate operations during the preceding calendar  
36 year at a rate to be determined annually by the board on or before June  
37 30 in the following manner:

38 The total amount appropriated to the Board of Public **【Utilities】**  
39 **Utility Commissioners** by law for its general purposes for its next fiscal  
40 year shall be divided by the total amount of the gross operating  
41 revenues of all public utilities under the jurisdiction of the board  
42 derived from intrastate operations during the preceding calendar year.  
43 The quotient resulting shall constitute the percentage rate of the  
44 assessment for the calendar year in which such computation is made.  
45 The total amount so assessed to any particular public utility shall not  
46 exceed 1/4 of 1% of the gross operating revenue subject to assessment

1 hereunder of that utility derived from its intrastate operation during  
2 the preceding calendar year, except that the minimum assessment for  
3 any public utility shall be \$500[.00].

4 (cf: P.L.1989, c.281, s.1)

5  
6 27. (New section) a. All of the functions, powers and duties  
7 heretofore exercised by the Board of Public Utilities for the regulation  
8 of rates and public utility aspects of solid waste collection and solid  
9 waste disposal operations and facilities pursuant to P.L.1968, c.173  
10 (C.48:2-59 et seq.), P.L.1970, c.40 (C.48:13A-1 et seq.), Title 48 of  
11 the Revised Statutes, or any other law, and the responsibility and  
12 authority to review and approve proposed contracts pursuant to the  
13 provisions of P.L.1985, c.38 (C.13:1E-136 et seq.), are hereby  
14 continued and transferred to and vested in the Department of  
15 Environmental Protection and the Commissioner thereof.

16 b. Whenever in any law, rule, regulation, order, contract, tariff,  
17 document, judicial or administrative proceeding or otherwise relating  
18 to recycling, solid waste collection or solid waste disposal, reference  
19 is made to the Board of Public Utilities, the same shall mean and refer  
20 to the Department of Environmental Protection and the Commissioner  
21 thereof.

22 c. After April 14, 1996, the provisions of P.L.1968, c.173  
23 (C.48:2-59 et seq.) relating to the annual assessment made by the  
24 Department of Environmental Protection shall not apply to any person  
25 engaging in the business of solid waste collection pursuant to  
26 P.L.1970, c.40 (C.48:13A-1 et seq.) or P.L.1991, c.381  
27 (C.48:13A-7.1 et seq.).

28  
29 28. (New section) a. After August 19, 1991, the Board of Public  
30 Utility Commissioners shall not make an assessment against any person  
31 engaging in the business of solid waste collection or solid waste  
32 disposal pursuant to P.L.1970, c.40 (C.48:13A-1 et seq.).

33 b. The provisions of subsection a. of this section shall not affect  
34 any obligation to pay an assessment made by the board prior to August  
35 19, 1991, nor shall these provisions affect the legal authority of the  
36 board under sections 1 and 2 of P.L.1968, c.173 (C.48:2-59 and  
37 48:2-60) to make an assessment against any person engaging in the  
38 business of solid waste collection or solid waste disposal prior to that  
39 date.

40 c. The provisions of subsection a. of this section shall not affect the  
41 legal authority of the State Treasurer under section 12 of P.L.1968,  
42 c.173 (C.48:2-70) to collect the amount stated to be due, including  
43 any interest which may accrue by virtue of the neglect or refusal of the  
44 public utility to pay an assessment made by the board prior to August  
45 19, 1991, nor shall these provisions invalidate or affect any proceeding  
46 for the enforcement thereof.

1       29. Section 1 of P.L.1987, c.211 (C.48:3-2.1) is amended to read  
2 as follows:

3       1. A public utility shall pay or credit interest at a rate prescribed by  
4 the Board of Public **Utilities** Utility Commissioners on any  
5 overpayment made by a residential customer due to a billing error,  
6 unless the overpayment is fully refunded or credited to the customer's  
7 account within two billing cycles after written notification by the  
8 customer to the utility of the alleged error. For the purposes of this  
9 act, "billing error" means a charge to a residential customer in excess  
10 of that approved by the board for the type of service supplied to that  
11 customer, or in excess of the charge due for the service supplied to  
12 that customer as measured or recorded by meter or other device,  
13 except that neither the amount of an estimated bill in and of itself, nor  
14 the amount due on a budget account installment, shall constitute a  
15 billing error. The board shall set and from time to time revise the  
16 interest rate in accordance with appropriate prevailing marketplace  
17 interest rates.

18 (cf: P.L.1987, c.211, s.1)

19  
20       30. R.S.48:3-3 is amended to read as follows:

21       48:3-3. a. No public utility shall provide or maintain any service  
22 that is unsafe, improper or inadequate, or withhold or refuse any  
23 service which reasonably can be demanded or furnished when ordered  
24 by the board.

25       b. (1) No solid waste collector as defined in section 3 of P.L.1970,  
26 c.40 (C.48:13A-3) shall provide any solid waste collection services  
27 that are unsafe, improper or inadequate, or withhold or refuse any  
28 solid waste collection services which reasonably can be demanded or  
29 furnished when ordered by the Department of Environmental  
30 Protection.

31       (2) The [board] Department of Environmental Protection, upon  
32 receipt of a notification of refusal to provide solid waste collection  
33 services within a municipality pursuant to section 2 of P.L.1991, c.170  
34 (C.40:66-5.2), may order the solid waste collector to provide these  
35 services in accordance with the provisions of R.S.48:2-23.

36 (cf: P.L.1991, c.170, s.5)

37  
38       31. R.S.48:3-7 is amended to read as follows:

39       48:3-7. a. No public utility shall, without the approval of the  
40 board, sell, lease, mortgage or otherwise dispose of or encumber its  
41 property, franchises, privileges or rights, or any part thereof; or merge  
42 or consolidate its property, franchises, privileges or rights, or any part  
43 thereof, with that of any other public utility.

44       Where, by the proposed sale, lease or other disposition of all or a  
45 substantial portion of its property, any franchise or franchises,  
46 privileges or rights, or any part thereof or merger or consolidation

1 thereof as set forth herein, it appears that the public utility or a wholly  
2 owned subsidiary thereof may be unable to fulfill its obligation to any  
3 employees thereof with respect to pension benefits previously enjoyed,  
4 whether vested or contingent, the board shall not grant its approval  
5 unless the public utility seeking the board's approval for such sale,  
6 lease or other disposition assumes such responsibility as will be  
7 sufficient to provide that all such obligations to employees will be  
8 satisfied as they become due.

9 Every sale, mortgage, lease, disposition, encumbrance, merger or  
10 consolidation made in violation of this section shall be void.

11 Nothing herein shall prevent the sale, lease or other disposition by  
12 any public utility of any of its property in the ordinary course of  
13 business, nor require the approval of the board to any grant,  
14 conveyance or release of any property or interest therein heretofore  
15 made or hereafter to be made by any public utility to the United States,  
16 State or any county or municipality or any agency, authority or  
17 subdivision thereof, for public use.

18 The approval of the board shall not be required to validate the title  
19 of the United States, State or any county or municipality or any  
20 agency, authority or subdivision thereof, to any lands or interest  
21 therein heretofore condemned or hereafter to be condemned by the  
22 United States, State or any county or municipality or any agency,  
23 authority or subdivision thereof for public use.

24 b. Notwithstanding any law, rule, regulation or order to the  
25 contrary, an autobus public utility regulated by and subject to the  
26 provisions of Title 48 of the Revised Statutes may, without the  
27 approval of the Department of Transportation, sell, lease, mortgage  
28 or otherwise dispose of or encumber its property, or any part thereof,  
29 except that approval of the Department of Transportation shall be  
30 required for the following:

31 (1) the sale of 60% or more of its property within a 12-month  
32 period;

33 (2) a merger or consolidation of its property, franchises, privileges  
34 or rights; or

35 (3) the sale of any of its franchises, privileges or rights.

36 Notice of the sale, purchase or lease of any autobus or other vehicle  
37 subject to regulation under Title 48 of the Revised Statutes shall be  
38 provided to the Department of Transportation as the department shall  
39 require.

40 c. Except as otherwise provided in subsection e. of this section, no  
41 solid waste collector as defined in section 3 of P.L.1970, c.40  
42 (C.48:13A-3) shall, without the approval of the **board** Department  
43 of Environmental Protection:

44 (1) sell, lease, mortgage or otherwise dispose of or encumber its  
45 property, including customer lists; or

46 (2) merge or consolidate its property, including customer lists, with

1 that of any other person or business concern, whether or not that  
2 person or business concern is engaged in the business of solid waste  
3 collection or solid waste disposal pursuant to the provisions of  
4 P.L.1970 c.39 (C.13:1E-1 et seq.), P.L.1970, c.40 (C.48:13A-1 et  
5 seq.), P.L.1991, c.381 (C.48:13A-7.1 et al.) or any other act.

6 d. Any solid waste collector seeking approval for any transaction  
7 enumerated in subsection c. of this section shall file with the **[board]**  
8 department, on forms and in a manner prescribed by the **[board]**  
9 department, a notice of intent at least 30 days prior to the completion  
10 of the transaction.

11 (1) The **[board]** department shall promptly review all notices filed  
12 pursuant to this subsection. The **[board]** department may, within 30  
13 days of receipt of a notice of intent, request that the solid waste  
14 collector submit additional information to assist in its review if it  
15 deems that such information is necessary. If no such request is made,  
16 the transaction shall be deemed to have been approved. In the event  
17 that additional information is requested, the **[board]** department shall  
18 outline, in writing, why it deems such information necessary to make  
19 an informed decision on the impact of the transaction on effective  
20 competition.

21 (2) The **[board]** department shall approve or deny a transaction  
22 within 60 days of receipt of all requested information. In the event that  
23 the **[board]** department fails to take action on a transaction within the  
24 60-day period specified herein, then the transaction shall be deemed to  
25 have been approved.

26 (3) The **[board]** department shall approve a transaction unless it  
27 makes a determination pursuant to the provisions of section 19 of  
28 P.L.1991, c.381 (C.48:13A-7.19) that the proposed sale, lease,  
29 mortgage, disposition, encumbrance, merger or consolidation would  
30 result in a lack of effective competition.

31 The **[Board of Public Utilities]** department shall prescribe and  
32 provide upon request all necessary forms for the implementation of the  
33 notification requirements of this subsection.

34 e. (1) Any solid waste collector may, without the approval of the  
35 **[board]** department, purchase, finance or lease any equipment,  
36 including collection or haulage vehicles.

37 (2) Any solid waste collector may, without the approval of the  
38 **[board]** department, sell or otherwise dispose of its collection or  
39 haulage vehicles; except that no solid waste collector shall, without the  
40 approval of the **[board]** department in the manner provided in  
41 subsection d. of this section, sell or dispose of 33% or more of its  
42 collection or haulage vehicles within a 12-month period.

43 As used in this section, "business concern" means any corporation,  
44 association, firm, partnership, sole proprietorship, trust or other form



1 of commercial organization.

2 (cf: P.L.1991, c.381, s.35)

3

4 32. Section 3 of P.L.1983, c.115 (C.48:7-18) is amended to read  
5 as follows:

6 3. As used in this act:

7 **【a. "Commissioner" means the Commissioner of the Department**  
8 **of Energy;**

9 **b. 】 "Board" means the Board of Public Utility Commissioners;**

10 "Construction" means on-site work to install any permanent  
11 equipment or structure for any facility, but does not include  
12 installation of environmental monitoring equipment or any work  
13 related thereto;

14 **【c. "Department" means the Department of Energy;**

15 **d. 】"Director" means the director of the Division of Energy**  
16 **Planning and Conservation in the Board of Public Utility**  
17 **Commissioners;**

18 **"Division" means the Division of Energy Planning and Conservation**  
19 **in the Board of Public Utility Commissioners;**

20 "Electric facility" means:

21 (1) Any electric power generating unit or combination of units at  
22 a single site with a combined production of 100 megawatts or more  
23 and any facilities appurtenant thereto; or

24 (2) Any electric generating units added to an existing electric  
25 generating facility which will increase its installed capacity by 25% or  
26 by more than 100 megawatts, whichever is smaller.

27 (cf: P.L.1983, c.115, s.3)

28

29 33. Section 4 of P.L.1983, c.115 (C.48:7-19) is amended to read  
30 as follows:

31 4. No public utility shall commence construction of any electric  
32 facility without having obtained from the **【department】 division** a  
33 certificate of need therefor as hereinafter provided. No agency of the  
34 State, or any county or municipal government, shall issue any license  
35 or permit required for any such construction or substantial expansion  
36 prior to the issuance of a certificate of need therefor by the  
37 **【department】 division**.

38 (cf: P.L.1983, c.115, s.4)

39

40 34. Section 5 of P.L.1983, c.115 (C.48:7-20) is amended to read  
41 as follows:

42 5. Any utility planning to construct an electric facility shall, at least  
43 1 year prior to the formal application for a certificate of need therefor,  
44 submit to the **【department】 division** a notice of intent on forms and in  
45 a manner specified by the **【department】 division**. Receipt by the

1   **【department】** division of the notice of intent shall initiate the early  
2   assessment stage of the certificate of need process. During the early  
3   assessment stage, the **【department】** division shall hold public hearings,  
4   in the franchise area served by that utility, to solicit the views of  
5   concerned individuals and groups on the proposed facility; provide  
6   advice to the utility on the proposed facility and on relevant alternative  
7   ways of meeting projected electricity demand which will minimize rate  
8   increases, reduce any adverse environmental impact of the proposed  
9   facility, and address other objections to the proposed facility; and  
10   develop a comprehensive view of how the proposed facility and any  
11   suggested alternatives thereto will affect the long-range energy plans  
12   and economic development of the State and otherwise promote the  
13   public interest. Notice of each public hearing shall be published in a  
14   newspaper of general circulation in the region where the hearing is to  
15   be held, and in any other newspapers of general circulation which the  
16   **【commissioner】** director determines appropriate to reach the greatest  
17   possible number of affected citizens.

18       During the early assessment stage, the **【department】** division shall  
19   publish, in a manner designed to reach the maximum number of  
20   affected people, interim reports on the progress of its analysis of the  
21   proposed facility. No later than 9 months after receipt of a notice of  
22   intent, the **【department】** division shall publish a comprehensive report  
23   presenting its preliminary assessment concerning the proposed facility.  
24   The report shall address the major concerns expressed during the early  
25   assessment stage, and compare the proposed facility with feasible  
26   alternatives thereto.

27   (cf: P.L.1983, c.115, s.5)

28

29       35. Section 6 of P.L.1983, c.115 (C.48:7-21) is amended to read  
30   as follows:

31       6. A certificate of need shall be issued only if the **【commissioner】**  
32   director determines that the proposed facility is necessary to meet the  
33   projected need for electricity in the area to be served, and that no  
34   more efficient, economical, or environmentally sound alternative is  
35   available. The **【commissioner】** director shall make these  
36   determinations only if he finds that:

37       a. The probable result of denial of a certificate of need would  
38   adversely affect the future adequacy, reliability, or efficiency of the  
39   electric energy supply to the public utility's customers, or to the people  
40   of New Jersey, taking into account:

41       (1) The accuracy of the public utility's demand forecast for the  
42   level of electric energy that would be supplied by the proposed facility;

43       (2) The probable effects of existing or prospective State and  
44   federal conservation programs;

45       (3) The effect of promotional practices of the public utility which  
46   may have given rise to the demand for this facility;

1 (4) The ability of current and planned facilities not requiring  
2 certificates of need, and to which the public utility has access, to meet  
3 the future demand; and

4 (5) The effect of the proposed facility in making efficient use of  
5 resources.

6 b. The consequences of issuing the certificate of need outweigh the  
7 consequences of denying the certificate, taking into account:

8 (1) The relationship of the proposed facility to overall State energy  
9 needs as determined by the State Energy Master Plan adopted  
10 pursuant to the "Department of Energy Act," P.L.1977, c.146  
11 (C.52:27F-1 et seq.);

12 (2) The role of the proposed facility in inducing future  
13 development; and

14 (3) The socially beneficial uses of the output of the proposed  
15 facility, including its uses to protect or enhance environmental quality.

16 c. There is not a more reasonable and prudent alternative to the  
17 proposed facility, taking into account:

18 (1) The appropriateness of the size, type, and timing of the  
19 proposed facility compared to those of reasonable alternatives;

20 (2) The cost of the proposed facility and the cost of electric energy  
21 to be supplied by the proposed facility compared to the costs of  
22 reasonable alternatives and the cost of electric energy that would be  
23 supplied by reasonable alternatives;

24 (3) The impact of the proposed facility upon the social, economic,  
25 and health environments compared to the impact of reasonable  
26 alternatives; and

27 (4) The expected reliability of the proposed facility compared to  
28 the expected reliability of reasonable alternatives.

29 d. The design, construction, and operation of the proposed facility  
30 would comply with all relevant State and federal laws, rules,  
31 regulations and policies.

32 (cf: P.L.1983, c.115, s.6)

33  
34 36. Section 7 of P.L.1983, c.115 (C.48:7-22) is amended to read  
35 as follows:

36 7. a. Application for a certificate of need shall be made to the  
37 **【department】** division, and shall be in such form and contain such  
38 information as the **【department】** division may prescribe. The  
39 **【department】** division may charge and collect a non-returnable fee of  
40 not more than \$250,000~~【.00】~~ for the filing, processing, and review of  
41 an application for a certificate of need. This fee shall cover the costs  
42 of the **【department's】** division's review of applications for a renewal  
43 of a certificate of need.

44 b. Upon receipt of a completed application, the **【department】**  
45 division shall forward copies thereof to the board and to other  
46 appropriate State departments, agencies and instrumentalities for their

1 review. These departments, agencies, and instrumentalities shall  
2 provide adequate mechanisms for full consideration of these  
3 applications, and for developing recommendations thereon. These  
4 recommendations shall be forwarded to the [commissioner] director  
5 and to the applicant within 120 days of the date of referral.  
6 Recommendations concerning certificates of need shall be governed  
7 and based upon the principles and criteria set forth in section 6 of [this  
8 act] P.L.1983, c.115 (C.48:7-21).  
9 (cf: P.L.1983, c.115, s.7)

10  
11 37. Section 8 of P.L.1983, c.115 (C.48:7-23) is amended to read  
12 as follows:

13 8. a. Upon receipt of a completed application for a certificate of  
14 need, the [department] division shall transmit the application and all  
15 supporting documents, including the [department's] division's early  
16 assessment report, to the Office of Administrative Law, which shall  
17 conduct a hearing on the application pursuant to the provisions of  
18 P.L.1978, c.67 (C.52:14F-1 et seq.). This hearing shall be an  
19 adjudicatory proceeding, and shall be conducted as a contested case  
20 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
21 (C.52:14B-1 et seq.). The Division of Rate Counsel in the Department  
22 of the Public Advocate shall be deemed to be a party of interest in this  
23 proceeding and the Division of Rate Counsel shall be entitled to assess  
24 the applicant utility in the manner set forth in section 20 of P.L.1974,  
25 c.27 (C.52:27E-19). Intervention in this hearing by any other person  
26 shall be as provided in the "Administrative Procedure Act."

27 b. The provisions of the "Administrative Procedure Act" to the  
28 contrary notwithstanding, within 6 months of receipt of the decision  
29 of the presiding administrative law judge, the [department] division  
30 shall approve, conditionally approve, or deny the application. The  
31 [department] division shall base its decision on the criteria set forth  
32 in section 6 of [this act] P.L.1983, c.115 (C.48:7-21), and shall  
33 support its decision with a written report. The report shall address the  
34 issues raised and arguments advanced in the materials and information  
35 compiled during the early assessment stage, in the [department's]  
36 division's preliminary assessment report, in the materials and  
37 information developed by State agencies, departments, and  
38 instrumentalities, in the analyses of outside consultants retained by the  
39 department, in the record of the adjudicatory proceeding conducted by  
40 the administrative law judge, and in the written decision of the  
41 presiding administrative law judge.

42 c. In the case of a conditional approval of an application, the  
43 [department] division shall provide the applicant utility with a clear  
44 statement of the conditions to be met, including any modifications in  
45 the proposed electric facility.

1 d. The provisions of any law, rule or regulation to the contrary  
2 notwithstanding, the **【department's】** division's action on an application  
3 shall be considered the final agency action thereon for the purposes of  
4 the "Administrative Procedure Act," and shall be subject only to  
5 judicial review as provided in the Rules of Court.

6 (cf: P.L.1983, c.115, s.8)

7  
8 38. Section 9 of P.L.1983, c.115 (C.48:7-24) is amended to read  
9 as follows:

10 9. A certificate of need shall be valid for 3 years, and shall be  
11 renewable subject to review by the **【commissioner】** director; provided,  
12 however, that no renewal shall be denied without the approval of the  
13 board. In the event that the **【commissioner】** director and the board  
14 cannot agree on any renewal decision, a designee of the Governor shall  
15 arbitrate the matter, and his decision shall be binding. If any renewal  
16 is denied, the holder of the certificate shall have the option of  
17 continuing the project, or to terminate or alter the project under terms  
18 and conditions, established by the division, which equitably balance the  
19 interests of the stockholders, the ratepayers, and the public utility.

20 (cf: P.L.1983, c.115, s.9)

21  
22 39. Section 10 of P.L.1983, c.115 (C.48:7-25) is amended to read  
23 as follows:

24 10. The **【department shall, within 90 days of the effective date of**  
25 **this act and】** division shall adopt, pursuant to the "Administrative  
26 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and  
27 regulations necessary to carry out the provisions of sections 1 through  
28 9 of **【this act】** P.L.1983, c.115 (C.48:7-21).

29 (cf: P.L.1983, c.115, s.10)

30  
31 40. Section 6 of P.L.1970, c.40 (C.48:13A-5) is amended to read  
32 as follows:

33 6. a. The **【Board of Public Utilities】** Department of Environmental  
34 Protection may, by order in writing, when it finds that the public  
35 interest requires, award a franchise to any person or persons engaged  
36 in solid waste disposal at rates and charges published in tariffs or  
37 contracts accepted or to be accepted for filing by the **【board】**  
38 department; provided, however, that the proposed franchise for solid  
39 waste disposal conforms to the district solid waste management plan  
40 of the district or districts in which such service is to be located, as  
41 such plan shall have been approved by the Department of  
42 Environmental Protection.

43 b. Franchises awarded pursuant to this section shall be of sufficient  
44 area and duration to support the estimated technical and economic  
45 needs of the disposal facility which is to serve the district or districts.

46 c. For the purposes of this section, "franchise" shall mean the

1 exclusive right to control and provide for the disposal of solid waste,  
2 except for recyclable material whenever markets for those materials  
3 are available, within a district or districts as awarded by the **【Board of**  
4 **Public Utilities】** Department of Environmental Protection.

5 d. In no event shall the **【board】** department award a franchise to  
6 any person required to be listed in the disclosure statement, or  
7 otherwise shown to have a beneficial interest in the business of the  
8 applicant, permittee or the licensee as defined in section 2 of P.L.1983,  
9 c.392 (C.13:1E-127), if the **【board】** department determines that there  
10 is a reasonable suspicion to believe that the person does not possess  
11 a reputation for good character, honesty and integrity, and that person  
12 or the applicant, permittee or licensee fails, by clear and convincing  
13 evidence, to establish his reputation for good character, honesty and  
14 integrity.

15 e. Nothing in section 11 of P.L.1970, c.40 (C.48:13A-10) shall be  
16 interpreted to prevent the implementation of this section by the **【Board**  
17 **of Public Utilities】** Department of Environmental Protection.  
18 (cf: P.L.1991, c.269, s.11)

19  
20 41. Section 2 of P.L.1990, c.113, (C.48:13A-6.2) is amended to  
21 read as follows:

22 2. a. The provisions of P.L.1957, c.183 (C.40:14B-1 et seq.),  
23 P.L.1985, c.38 (C.13:1E-136 et al.) or any other law, or any rules and  
24 regulations adopted pursuant thereto to the contrary notwithstanding,  
25 any transfer station constructed or operated in this State shall be  
26 deemed a public utility and shall be subject to the rate regulation and  
27 continuing jurisdiction of the **【Board of Public Utilities】** Department  
28 of Environmental Protection. No transfer station shall commence or  
29 continue solid waste transfer operations and no person may own or  
30 operate a transfer station in this State unless the person has:

31 (1) filed a registration statement and engineering design application  
32 and obtained approval thereof from the Department of Environmental  
33 Protection as required by section 5 of P.L.1970, c.39 (C.13:1E-5);

34 (2) obtained a certificate of public convenience and necessity from  
35 the **【Board of Public Utilities】** Department of Environmental  
36 Protection as required by section 7 of P.L.1970, c.40 (C.48:13A-6);  
37 and

38 (3) filed an initial tariff or lawfully negotiated contract for solid  
39 waste transfer operations and obtained approval thereof from the  
40 **【Board of Public Utilities】** Department of Environmental Protection,  
41 which tariff or contract shall include the formulas to be used to  
42 determine the charges, rates, or fees to be charged for the utilization  
43 of the transfer station, and the methodology or methodologies used to  
44 develop these formulas.

45 b. It shall remain the continuing responsibility of the owner or

1 operator of every transfer station to file a revised tariff, or any  
2 proposed revisions to a lawfully negotiated contract for solid waste  
3 transfer operations, and obtain approval thereof from the **【Board of**  
4 **Public Utilities】** Department of Environmental Protection, whenever  
5 the owner or operator of a transfer station seeks to adjust the charges,  
6 rates, or fees charged for the utilization of the transfer station.

7 c. No adjustment to the charges, rates, or fees charged for the  
8 utilization of any transfer station operated in this State shall take effect  
9 prior to the approval thereof by the **【Board of Public Utilities】**  
10 Department of Environmental Protection.

11 (cf: P.L.1990, c.113, s.2)

12  
13 42. Section 1 of P.L.1991, c.35, (C.48:13A-6.3) is amended to  
14 read as follows:

15 1. a. The **【Board of Public Utilities】** Department of Environmental  
16 Protection may, in accordance with the provisions of P.L.1970, c.40  
17 (C.48:13A-1 et seq.) and upon receipt of a petition therefor, issue an  
18 appropriate order increasing current tariffs established pursuant to law  
19 for the solid waste disposal operations of a publicly owned or operated  
20 solid waste facility subject to its jurisdiction as may be necessary to  
21 recover the costs associated with implementing a district solid waste  
22 management plan required pursuant to the provisions of the "Solid  
23 Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) or a  
24 district recycling plan required pursuant to section 3 of P.L.1987,  
25 c.102 (C.13:1E-99.13). These costs shall include, but need not be  
26 limited to:

27 (1) Capital expenditures reasonably incurred for the construction  
28 of a recycling center as defined in section 2 of P.L.1987, c.102  
29 (C.13:1E-99.12);

30 (2) Expenditures for the collection, processing, disposition or  
31 marketing of recyclable materials as defined in section 2 of P.L.1987,  
32 c.102 (C.13:1E-99.12); or

33 (3) Expenditures for the disposal of nonrecyclable household  
34 hazardous waste recovered from the municipal solid waste stream.

35 b. **【For the purposes of this section, all municipal, county, and**  
36 **State contracts for solid waste collection or disposal shall be**  
37 **considered tariffs for solid waste collection, and shall be subject to any**  
38 **adjustment of tariffs resulting from the provisions of subsection a. of**  
39 **this section.**

40 c. In issuing any order pursuant to this section, the Board of Public  
41 Utilities shall be exempt from the provisions of R.S.48:2-21.】

42 For the purposes of this section, "household hazardous waste"  
43 means any solid or other waste determined by the Department of  
44 Environmental Protection to be hazardous pursuant to section 6 of  
45 P.L.1970, c.39 (C.13:1E-6) or any other law, containing reactive,  
46 combustible, corrosive or toxic substances, including pesticides and

1 herbicides, which waste is generated by residential units; and  
2 "municipal solid waste stream" means all residential, commercial and  
3 institutional solid waste generated within the boundaries of any  
4 municipality.

5 (cf: P.L.1991, c.35, s.1)

6  
7 43. Section 10 of P.L.1970, c.40 (C.48:13A-9) is amended to read  
8 as follows:

9 10. The **board**, on its own initiative or upon complaint by the  
10 Department of Environmental Protection shall revoke or suspend the  
11 certificate of public convenience and necessity issued to any person  
12 engaged in the solid waste collection business or the solid waste  
13 disposal business upon the finding that such person:

14 a. Has violated any provision of P.L.1970, c.40 (C.48:13A-1 et  
15 seq.) or P.L.1991, c.381 (C. ), or any rule, regulation or  
16 administrative order adopted or issued pursuant thereto; or

17 b. Has violated any provision of any laws related to pollution of the  
18 air, water or lands of this State; or

19 c. Has refused or failed to comply with any lawful order of the  
20 **board** department; or

21 d. Has had its registration revoked by the **Department of**  
22 **Environmental Protection** department; or

23 e. Has been denied approval of a license under the provisions of  
24 P.L.1983, c.392 (C.13:1E-126 et seq.), or has had its license revoked  
25 by the **Department of Environmental Protection** department, as the  
26 case may be.

27 (cf: P.L.1991, c.381, s.31)

28  
29 44. Section 12 of P.L.1970, c.40 (C.48:13A-11) is amended to  
30 read as follows:

31 12. a. The **board** department may compel the attendance of  
32 witnesses and the production of tariffs, contracts, papers, books,  
33 accounts and all the documents necessary to enable the **board**  
34 department to administer its duties as prescribed by law and this act.

35 b. The **board** department may compel any person engaged in the  
36 business of solid waste collection or solid waste disposal or otherwise  
37 providing solid waste collection or transfer, transportation or disposal  
38 services in this State to furnish and file with the **board** department  
39 any annual reports, federal or State tax returns, contracts, papers,  
40 books, accounts, customer lists, financial or operational information,  
41 or contracts, books, accounts and records of affiliated business  
42 concerns, including any affiliated or parent corporation or  
43 organization, or any wholly or partially owned subsidiary thereof,  
44 directly or indirectly involved therewith, or having a direct or indirect  
45 financial interest in the solid waste disposal services provided by that



1 person, and all financial transactions between these parties related to  
2 the solid waste disposal services provided by that person, or other  
3 documents as may be necessary to enable the **【board】 department** to  
4 administer its duties as prescribed by law and this act.

5 c. Should any person engaged in the business of solid waste  
6 collection or solid waste disposal or otherwise providing solid waste  
7 collection or transfer, transportation or disposal services fail or refuse  
8 to comply with any provision of this section, or any applicable  
9 provision of Title 48 of the Revised Statutes, the **【board】 department**  
10 may revoke or suspend the certificate of public convenience and  
11 necessity issued to that person.

12 (cf: P.L.1991, c.381, s.33)

13  
14 45. Section 12 of P.L.1970, c.33 (C.13:1D-9) is amended to read  
15 as follows:

16 12. The department shall formulate comprehensive policies for the  
17 conservation of the natural resources of the State, the promotion of  
18 environmental protection and the prevention of pollution of the  
19 environment of the State. The department shall in addition to the  
20 powers and duties vested in it by this act or by any other law have the  
21 power to:

22 a. Conduct and supervise research programs for the purpose of  
23 determining the causes, effects and hazards to the environment and its  
24 ecology;

25 b. Conduct and supervise Statewide programs of education,  
26 including the preparation and distribution of information relating to  
27 conservation, environmental protection and ecology;

28 c. Require the registration of persons engaged in operations which  
29 may result in pollution of the environment and the filing of reports by  
30 them containing such information as the department may prescribe to  
31 be filed relative to pollution of the environment, all in accordance with  
32 applicable codes, rules or regulations established by the department;

33 d. Enter and inspect any building or place for the purpose of  
34 investigating an actual or suspected source of pollution of the  
35 environment and ascertaining compliance or noncompliance with any  
36 codes, rules and regulations of the department. Any information  
37 relating to secret processes concerning methods of manufacture or  
38 production, obtained in the course of such inspection, investigation or  
39 determination, shall be kept confidential, except this information shall  
40 be available to the department for use, when relevant, in any  
41 administrative or judicial proceedings undertaken to administer,  
42 implement, and enforce State environmental law, but shall remain  
43 subject only to those confidentiality protections otherwise afforded by  
44 federal law and by the specific State environmental laws and  
45 regulations that the department is administering, implementing and  
46 enforcing in that particular case or instance. In addition, this

1 information shall be available upon request to the United States  
2 Government for use in administering, implementing, and enforcing  
3 federal environmental law, but shall remain subject to the  
4 confidentiality protection afforded by federal law. If samples are taken  
5 for analysis, a duplicate of the analytical report shall be furnished  
6 promptly to the person suspected of causing pollution of the  
7 environment;

8 e. Receive or initiate complaints of pollution of the environment,  
9 including thermal pollution, hold hearings in connection therewith and  
10 institute legal proceedings for the prevention of pollution of the  
11 environment and abatement of nuisances in connection therewith and  
12 shall have the authority to seek and obtain injunctive relief and the  
13 recovery of fines and penalties in summary proceedings in the Superior  
14 Court;

15 f. Prepare, administer and supervise Statewide, regional and local  
16 programs of conservation and environmental protection, giving due  
17 regard for the ecology of the varied areas of the State and the  
18 relationship thereof to the environment, and in connection therewith  
19 prepare and make available to appropriate agencies in the State  
20 technical information concerning conservation and environmental  
21 protection, cooperate with the Commissioner of Health in the  
22 preparation and distribution of environmental protection and health  
23 bulletins for the purpose of educating the public, and cooperate with  
24 the Commissioner of Health in the preparation of a program of  
25 environmental protection;

26 g. Encourage, direct and aid in coordinating State, regional and  
27 local plans and programs concerning conservation and environmental  
28 protection in accordance with a unified Statewide plan which shall be  
29 formulated, approved and supervised by the department. In reviewing  
30 such plans and programs and in determining conditions under which  
31 such plans may be approved, the department shall give due  
32 consideration to the development of a comprehensive ecological and  
33 environmental plan in order to be assured insofar as is practicable that  
34 all proposed plans and programs shall conform to reasonably  
35 contemplated conservation and environmental protection plans for the  
36 State and the varied areas thereof;

37 h. Administer or supervise programs of conservation and  
38 environmental protection, prescribe the minimum qualifications of all  
39 persons engaged in official environmental protection work, and  
40 encourage and aid in coordinating local environmental protection  
41 services;

42 i. Establish and maintain adequate bacteriological, radiological and  
43 chemical laboratories with such expert assistance and such facilities as  
44 are necessary for routine examinations and analyses, and for original  
45 investigations and research in matters affecting the environment and  
46 ecology;

- 1       j. Administer or supervise a program of industrial planning for  
2 environmental protection; encourage industrial plants in the State to  
3 undertake environmental and ecological engineering programs; and  
4 cooperate with the State Departments of Health, Labor, and  
5 Commerce and Economic Development in formulating rules and  
6 regulations concerning industrial sanitary conditions;
- 7       k. Supervise sanitary engineering facilities and projects within the  
8 State, authority for which is now or may hereafter be vested by law in  
9 the department, and shall, in the exercise of such supervision, make  
10 and enforce rules and regulations concerning plans and specifications,  
11 or either, for the construction, improvement, alteration or operation  
12 of all public water supplies, all public bathing places, landfill  
13 operations and of sewerage systems and disposal plants for treatment  
14 of sewage, wastes and other deleterious matter, liquid, solid or  
15 gaseous, require all such plans or specifications, or either, to be first  
16 approved by it before any work thereunder shall be commenced,  
17 inspect all such projects during the progress thereof and enforce  
18 compliance with such approved plans and specifications;
- 19       l. Undertake programs of research and development for the  
20 purpose of determining the most efficient, sanitary and economical  
21 ways of collecting, disposing, utilizing or **utilizing** recycling of solid  
22 waste;
- 23       m. **Construct and operate, on an experimental basis, incinerators**  
24 **or other facilities for the disposal of solid waste, provide the various**  
25 **municipalities and counties of this State, the Board of Public Utilities,**  
26 **and the Division of Local Government Services in the Department of**  
27 **Community Affairs with statistical data on costs and methods of solid**  
28 **waste collection, disposal and utilization;】** Provide the various  
29 municipalities and counties of this State and the Division of Local  
30 Government Services in the Department of Community Affairs with  
31 statistical data on costs and methods of solid waste collection,  
32 disposal, utilization and recycling;
- 33       n. Enforce the State air pollution, water pollution, conservation,  
34 environmental protection, solid and hazardous waste **and refuse**  
35 **disposal】** management laws, rules and regulations, including the  
36 making and signing of a complaint and summons for their violation by  
37 serving the summons upon the violator and thereafter filing the  
38 complaint promptly with a court having jurisdiction;
- 39       o. **Acquire by purchase, grant, contract or condemnation, title to**  
40 **real property, for the purpose of demonstrating new methods and**  
41 **techniques for the collection or disposal of solid waste;】** (deleted by  
42 amendment, P.L. \_\_, c. \_\_)
- 43       p. Purchase, operate and maintain, pursuant to the provisions of  
44 this act, any facility, site, laboratory, equipment or machinery  
45 necessary to the performance of its duties pursuant to this act;
- 46       q. Contract with any other public agency or corporation

1 incorporated under the laws of this or any other state for the  
2 performance of any function under this act;

3 r. With the approval of the Governor, cooperate with, apply for,  
4 receive and expend funds from, the federal government, the State  
5 Government, or any county or municipal government or from any  
6 public or private sources for any of the objects of this act;

7 s. Make annual and such other reports as it may deem proper to the  
8 Governor and the Legislature, evaluating the demonstrations  
9 conducted during each calendar year;

10 t. Keep complete and accurate minutes of all hearings held before  
11 the commissioner or any member of the department pursuant to the  
12 provisions of this act. All such minutes shall be retained in a permanent  
13 record, and shall be available for public inspection at all times during  
14 the office hours of the department;

15 u. Require any person subject to a lawful order of the department,  
16 which provides for a period of time during which such person subject  
17 to the order is permitted to correct a violation, to post a performance  
18 bond or other security with the department in such form and amount  
19 as shall be determined by the department. Such bond need not be for  
20 the full amount of the estimated cost to correct the violation but may  
21 be in such amount as will tend to insure good faith compliance with  
22 said order. The department shall not require such a bond or security  
23 from any public body, agency or authority. In the event of a failure to  
24 meet the schedule prescribed by the department, the sum named in the  
25 bond or other security shall be forfeited unless the department shall  
26 find that the failure is excusable in whole or in part for good cause  
27 shown, in which case the department shall determine what amount of  
28 said bond or security, if any, is a reasonable forfeiture under the  
29 circumstances. Any amount so forfeited shall be utilized by the  
30 department for the correction of the violation or violations, or for any  
31 other action required to insure compliance with the order.

32 (cf: P.L.1984, c.5, s.1)

33

34 46. Section 1 of P.L.1984, c.221 (C.13:1E-5.3) is amended to read  
35 as follows:

36 1. a. Notwithstanding the provisions of any law, rule or regulation  
37 to the contrary, the Commissioner of the Department of Environmental  
38 Protection shall not approve a registration statement and engineering  
39 design which authorizes a sanitary landfill facility located on the  
40 property of any State college whose charter was filed prior to 1920 to  
41 receive municipal waste, as defined by the Department of  
42 Environmental Protection pursuant to rule or regulation. For the  
43 purposes of this act, "sanitary landfill facility" means a solid waste  
44 facility at which solid waste is deposited on or in the land as fill for the  
45 purpose of permanent disposal or storage for a period exceeding six  
46 months, but shall not include a facility engaged in composting

1 vegetative waste.

2 b. Any existing contract right or regulatory approval to operate a  
3 sanitary landfill facility on the property of a State college not  
4 otherwise terminated in accordance with law shall, upon the effective  
5 date of this act, be void and the State Treasurer, after review of all  
6 records and documents in the possession of the current holder of the  
7 approved registration statement and engineering design which the  
8 treasurer deems necessary for making his determination, and upon the  
9 advice and consent of the Department of Environmental Protection  
10 [and the Board of Public Utilities] shall, within 60 days of the  
11 effective date of this act, determine an amount which would fairly and  
12 properly reimburse the current holder of the certificate of approved  
13 registration statement and engineering design for all verifiable and  
14 reasonable expenses directly related to the maintenance of the  
15 certificate of approved registration statement and engineering design  
16 and its rescission, plus interest on the amount of these expenses. The  
17 interest shall be calculated from the date upon which payment of these  
18 expenses was made. The rate of interest shall be at the rates provided  
19 by the Rules Governing the Courts of the State of New Jersey for the  
20 applicable period of time.

21 c. The amount determined fair and properly payable by the  
22 treasurer shall be paid to the current holder of the certificate of  
23 approved registration statement and engineering design upon an  
24 appropriation in that amount and for that purpose being made by the  
25 Legislature to the State college on whose property the sanitary landfill  
26 is located. However, by this action the State college and the State  
27 shall in no way incur liability for third party obligations which are or  
28 shall become the responsibility of the current holder of the certificate  
29 of approved registration statement and engineering design.

30 d. If the current holder of the certificate of approved registration  
31 statement and engineering design does not agree that the amount  
32 determined by the treasurer constitutes full reimbursement for all these  
33 expenses and files with the treasurer a letter containing the reasons  
34 therefor within 10 days of the treasurer's determination, the treasurer,  
35 within five days of the receipt of that letter, shall submit all records  
36 and documents relevant to the matter to the Office of Administrative  
37 Law which, within 30 days of receiving these records and documents,  
38 shall commence a hearing to be conducted as a contested case  
39 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
40 (C.52:14B-1 et seq.), and P.L.1978, c.67 (C.52:14F-1 et seq.).

41 e. Notwithstanding the provisions of section 10 of P.L.1968, c.410  
42 (C.52:14B-10) to the contrary, within 15 days of the receipt of the  
43 recommendations of the administrative law judge, the treasurer shall  
44 adopt, reject, or modify the recommendations. The final decision of  
45 the treasurer is considered the final agency action thereon for the  
46 purposes of the "Administrative Procedure Act" and is subject only to

1 judicial review as provided in the Rules of Court.  
2 (cf: P.L.1984, c.221, s.1)

3  
4 47. Section 6 of P.L.1970, c.39 (C.13:1E-6) is amended to read as  
5 follows:

6 6. a. The department shall[, in addition to such other powers as  
7 it may possess by law]:

8 (1) Undertake a program of research and development for the  
9 purpose of determining the most efficient, sanitary,  
10 environmentally-sound and economical way of collecting, disposing  
11 [and], utilizing ,composting or recycling solid waste.

12 (2) Formulate and [promulgate] adopt, amend and repeal codes,  
13 rules and regulations concerning solid waste collection and solid waste  
14 disposal activities. [Such] These codes, rules and regulations shall  
15 establish the procedures relating to the preparation and submission of  
16 environmental impact statements prior to the construction, acquisition,  
17 or operation of any solid waste facility, and shall establish standards  
18 for the construction and operation of solid waste facilities, which  
19 standards shall include, but need not be limited to, provisions  
20 requiring: the maintenance of ground water quality monitoring wells  
21 to check water pollution; periodic monitoring of water quality by  
22 chemical analysis; measures to monitor methane gas production at  
23 sanitary landfills; plans for erosion control; revegetation procedures  
24 and plans for the maintenance, upkeep, and reuse of any sanitary  
25 landfill facility site; adequate cover material; safety measures; rodent,  
26 insect, bird, dust, fire and odor control programs; and such other  
27 measures as shall be deemed necessary to protect the public health and  
28 safety and the natural environment.

29 All codes, rules and regulations heretofore adopted by the Public  
30 Health Council relating to refuse disposal shall continue in full force  
31 and effect and be enforceable by the department, subject to its power  
32 as herein provided to amend or repeal the same.

33 (3) Develop, formulate, [promulgate] adopt and review for the  
34 purpose of revising or updating not less than once every 2 years, a  
35 Statewide solid waste management plan which shall [encourage the  
36 maximum practicable use of resource recovery procedures] encourage  
37 the maximum practicable use of source reduction, composting, source  
38 separation and recycling techniques, resource recovery procedures or  
39 landfilling technologies, and which shall provide the objectives, criteria  
40 and standards for the evaluation of district solid waste management  
41 plans prepared pursuant to the provisions of [this amendatory and  
42 supplementary act] P.L.1970, c.39 (C.13:1E-1 et seq.) for solid waste  
43 management districts in this State; and to the extent practicable,  
44 encourage and assist in the development and formulation of [such]  
45 district solid waste management plans and guidelines to implement

1 such plans. [Such objectives, criteria and standards shall be  
2 promulgated within 180 days of the effective date of this act; provided,  
3 however, that general guidelines sufficient to initiate the solid waste  
4 management planning process by solid waste management districts in  
5 this State shall be promulgated within 30 days of the effective date of  
6 this act.] In the development and formulation of the Statewide solid  
7 waste management plan the department shall consult with relevant  
8 agencies and instrumentalities of the Federal Government, and the  
9 aforesaid objectives, criteria and standards provided by said Statewide  
10 solid waste management plan shall conform, to the extent practicable,  
11 or as may be required, to the provisions of any Federal law concerning  
12 such objectives, criteria and standards.

13 (4) Make an annual report to the Governor and the Legislature  
14 evaluating the operation of [this amendatory and supplementary act]  
15 P.L.1970, c.39 (C.13:1E-1 et seq.), including any recommendations  
16 deemed necessary by the department to better effectuate the purposes  
17 hereof.

18 b. The department may, in addition:

19 (1) Order any district, pursuant to the Statewide solid waste  
20 management plan, the objectives, criteria and standards contained  
21 therein, the environmental and economic studies conducted by the  
22 department therefor and in a manner designed to enhance the  
23 environment within the concerned districts[.];

24 (a) to plan for the construction of resource recovery facilities[.];

25 (b) to specify what processes should be utilized therein[.];

26 (c) to develop a joint program with one or more [adjacent]  
27 districts for providing resource recovery facilities[, and]; or

28 (d) for those districts affected by the guarantee provided in section  
29 9.1 of P.L.1968, c.404[, s.9.1] (C.13:17-10), to cooperate on a  
30 continuing basis with the department and with the other districts so  
31 affected in the development of a combined approach to solid waste  
32 management in northeastern New Jersey and make the final  
33 determination in the event of any overlap or conflict between the  
34 Hackensack Commission and any board of chosen freeholders pursuant  
35 to their respective responsibilities under [this amendatory and  
36 supplementary act] P.L.1970, c.39 (C.13:1E-1 et seq.) or pursuant to  
37 the Hackensack Commission's responsibilities under P.L.1968, c.404  
38 (C.13:17-1 et seq.)[.];

39 (2) Acquire, by purchase, grant, contract or condemnation, title to  
40 real property, for the purpose of demonstrating new methods and  
41 techniques for the collection, disposal [and] ,utilization ,composting  
42 or recycling of solid waste;

43 (3) Purchase, operate and maintain, pursuant to the provisions of  
44 this act, any facility, site, laboratory equipment or machinery necessary  
45 to the performance of its duties pursuant to this act;

1 (4) Apply for, receive and expend funds from any public or private  
2 source; or

3 (5) Contract with any other public agency, including a local board  
4 of health or county **【and municipal boards of】** health department, or  
5 corporation incorporated under the laws of this or any other state for  
6 the performance of any function under this act. Any such contract with  
7 a local board of health or county **【or municipal board of】** health  
8 department may provide for the inspection and monitoring of solid  
9 waste facilities; the enforcement of the department's standards  
10 therefor; and the training of county or **【municipal】** local health officers  
11 engaged in such inspection, monitoring or enforcement**【;**

12 (6) Make grants to assist in experimenting with new methods of  
13 solid waste collection, disposal, or utilization, pursuant to the  
14 provisions of sections 21 through 25 of this amendatory and  
15 supplementary act;

16 (7) Construct and operate, on an experimental basis, incinerators  
17 or other facilities for the disposal or utilization of solid waste, to  
18 provide the various municipalities and counties of this State, the Board  
19 of Public Utility Commissioners, the Hackensack Commission, and the  
20 Division of Local Government Services in the Department of  
21 Community Affairs with statistical data on costs and methods of solid  
22 waste collection and disposal;

23 (8) Make annual and such other reports as it may deem proper to  
24 the Governor and the Legislature evaluating the demonstrations and  
25 experiments conducted during each calendar year**】**.

26 (cf: P.L.1975, c.326, s.7)

27  
28 48. Section 7 of P.L.1970, c.39 (C.13:1E-7) is amended to read as  
29 follows:

30 7. a. There is hereby created in the department an Advisory  
31 Council on Solid Waste Management which shall consist of **【14】** 13  
32 members, **【four】** three of whom shall be **【the President of the Board**  
33 **of Public Utilities,】**the Commissioner of Community Affairs, the  
34 Secretary of Agriculture and the Commissioner of Health, or their  
35 designees, who shall serve ex officio, and ten citizens of the State, four  
36 of whom shall be actively engaged in the solid waste collection,  
37 recycling or solid waste disposal industries, of whom one shall be a  
38 representative of the Institute for Scrap Recycling Industries who shall  
39 represent the scrap recycling or processing industry in the State, two  
40 health professionals of whom one shall be a representative of the New  
41 Jersey Hospital Association and the other a licensed practitioner  
42 selected from the medical or dental communities in the State who shall  
43 represent the regulated medical waste generators in the State, and four  
44 of whom shall be representing the general public to be appointed by  
45 the Governor, with the advice and consent of the Senate. The  
46 Governor shall designate a chairman and vice chairman of the council



1 from the public members who shall serve at the will of the Governor.

2 b. All public members shall be appointed for terms of 4 years. All  
3 appointed members shall serve after the expiration of their terms until  
4 their respective successors are appointed and shall qualify, and any  
5 vacancy occurring in the appointed membership of the council by  
6 expiration of term or otherwise, shall be filled in the same manner as  
7 the original appointment for the unexpired term only, notwithstanding  
8 that the previous incumbent may have held over and continued in  
9 office as aforesaid.

10 c. Members of the council shall serve without compensation but  
11 shall be reimbursed for expenses actually incurred in attending  
12 meetings of the council and in performance of their duties as members  
13 thereof.

14 (cf: P.L.1991, c.292, s.1)

15

16 49. Section 2 of P.L.1989, c.118 (C.13:1E-9.3) is amended to read  
17 as follows:

18 2. a. No person shall, regardless of intent, engage, or be permitted  
19 to engage, in the collection or disposal of solid waste in excess of  
20 0.148 cubic yards of solids or 30 United States gallons of liquids,  
21 whether for profit or otherwise, except at a disposal site or any other  
22 place which has authorization from the Department of Environmental  
23 Protection **【or the Board of Public Utilities】** to accept solid waste.

24 b. No person shall, regardless of intent, transport or cause or  
25 permit to be transported any solid waste in excess of 0.148 cubic yards  
26 of solids or 30 United States gallons of liquids, whether for profit or  
27 otherwise, to a disposal site or any other place which does not have  
28 authorization from the Department of Environmental Protection **【or**  
29 **the Board of Public Utilities】** to accept solid waste.

30 c. The provisions of this section shall be enforced by the  
31 Department of Environmental Protection **【or the Board of Public**  
32 **Utilities】** and by every municipality, local board of health, or county  
33 health department, as the case may be.

34 (cf: P.L.1989, c.118, s.2)

35

36 50. Section 15 of P.L.1975, c.326 (C.13:1E-24) is amended to  
37 read as follows:

38 15. a. Upon receipt by the commissioner of a district solid waste  
39 management plan adopted in its entirety, and a copy of the transcript  
40 of every public hearing held thereon, as required pursuant to section  
41 14 of **【this amendatory and supplementary act】** P.L.1975, c.326  
42 (C.13:1E-23), **【he】** the commissioner shall:

43 (1) Study and review the district solid waste management plan  
44 according to the objectives, criteria and standards developed in the  
45 Statewide solid waste management plan developed and formulated by  
46 the department pursuant to the provisions of section 6 of **【the act to**

1 which this act is amendatory and supplementary] P.L.1970, c.39  
2 (C.13:1E-6); and

3 (2) Submit a copy of said plan for review and recommendations to  
4 the Advisory Council on Solid Waste Management in the department,  
5 and to the agencies, bureaus and divisions within the department  
6 concerned with, or responsible for, environmental quality, including,  
7 but not limited to, the [Bureau] Division of Solid Waste Management,  
8 Bureau of Air Pollution Control, Bureau of Geology, and the Bureau  
9 of Water Pollution Control, or their successors[; and

10 (3) Submit a copy of said plan to the Board of Public Utility  
11 Commissioners for review and recommendations on the economic  
12 aspect of the plan].

13 b. After completing [his] the study and review of the district solid  
14 waste management plan, and upon receipt of the recommendations  
15 thereon provided for in subsection a. (2) of this section, if any, but in  
16 no event later than 150 days after [his] the receipt of said plan, the  
17 commissioner shall determine whether to approve, modify, or reject  
18 [any such] the district solid waste management plan, and shall certify  
19 such determination to the board of chosen freeholders or to the  
20 Hackensack Commission, as the case may be, which submitted [such]  
21 the plan.

22 c. If the commissioner determines to approve [any] a district solid  
23 waste management plan, or if the commissioner has made no  
24 determination within 150 days after [his] the receipt of [any such] the  
25 plan, the board of chosen freeholders or the Hackensack Commission,  
26 as the case may be, shall proceed, pursuant to the requirements of  
27 [this amendatory and supplementary act] P.L.1970, c.39 (C.13:1E-1  
28 et seq.), to implement [such] the district solid waste management plan  
29 in the relevant solid waste management district.

30 d. If the commissioner determines to modify or reject any district  
31 solid waste management plan, or any part thereof, the certification  
32 required of [him herein] the commissioner shall be accompanied by a  
33 detailed statement prepared by the commissioner indicating the reasons  
34 for any modification or rejection, and outlining the action to be taken  
35 thereon. In outlining such action the commissioner shall direct the  
36 board of chosen freeholders or the Hackensack Commission, as the  
37 case may be, to make any modification in, or replace any rejected part  
38 of, a district solid waste management plan, either with or without  
39 holding another public hearing in the solid waste management district.  
40 Such direction shall be based upon the commissioner's determination,  
41 in his discretion, that such modification, or the part rejected, is or is  
42 not minor, and that such modification or replacement may or may not  
43 be made without substantially modifying or altering other aspects of  
44 the district solid waste management plan; provided, however, that a  
45 public hearing shall be required upon a rejection by the commissioner

1 of any district solid waste management plan in its entirety.

2 e. (1) If the commissioner directs the holding of another public  
3 hearing in the solid waste management district, such hearing shall be  
4 held within 45 days after such direction and shall be conducted  
5 pursuant to the procedures contained in section 14 of **[this**  
6 **amendatory and supplementary act]** P.L.1975, c.326 (C.13:1E-23) for  
7 the conduct of public hearings held prior to the adoption of district  
8 solid waste management plans. Following any such public hearing on  
9 any modification to, or replacement of, any district solid waste  
10 management plan, or any part thereof, the board of chosen freeholders  
11 or the Hackensack Commission, as the case may be, holding same shall  
12 formally adopt a modification to, or replacement of, the district solid  
13 waste management plan, or any part thereof, and shall submit same to  
14 the commissioner within the time limit set by the commissioner in the  
15 public hearing order.

16 (2) If the commissioner directs that the modification or  
17 replacement may be made without the holding of another public  
18 hearing, the board of chosen freeholders or the Hackensack  
19 Commission, as the case may be, shall have 45 days after such  
20 direction within which to adopt any such modification or replacement,  
21 and to submit same to the commissioner.

22 f. The commissioner shall have 30 days from the date of receipt of  
23 any submission under subsection e. herein to approve such  
24 modification or replacement or to reject same, and **[he]** the  
25 commissioner shall certify such approval or rejection to the board of  
26 chosen freeholders or the Hackensack Commission, as the case may  
27 be, which submitted same. If the commissioner approves such  
28 modification or replacement, or if the commissioner has made no such  
29 certification within 30 days after **[his]** the receipt thereof, the board  
30 of chosen freeholders or the Hackensack Commission, as the case may  
31 be, shall proceed, pursuant to the requirements of **[this amendatory**  
32 **and supplementary act]** P.L.1970, c.39 (C.13:1E-1 et seq.), to  
33 implement the district solid waste management plan in the relevant  
34 solid waste management district. Upon a rejection of any modification  
35 or replacement submitted to **[him]** the commissioner pursuant to this  
36 section, or upon the failure of a board of chosen freeholders or the  
37 Hackensack Commission, as the case may be, to submit any  
38 modification or replacement as required herein, the commissioner shall  
39 have the power to adopt and promulgate any modification or  
40 replacement **[he]** the commissioner deems necessary with respect to  
41 the district solid waste management plan, and upon the certification of  
42 the commissioner, the board of chosen freeholders or the Hackensack  
43 Commission, as the case may be, shall proceed, pursuant to the  
44 requirements of **[this amendatory and supplementary act]** P.L.1970,  
45 c.39 (C.13:1E-1 et seq.), to implement the district solid waste

1 management plan in the relevant solid waste management district with  
2 the modifications or replacements adopted by the commissioner.

3 g. The commissioner shall maintain on file in the department a copy  
4 of **the Statewide** every district solid waste management plan  
5 developed pursuant to **this amendatory and supplementary**  
6 **act** P.L.1970, c.39 (C.13:1E-1 et seq.), and a copy of the Statewide  
7 solid waste management plan developed and formulated by the  
8 department pursuant to section 6 of P.L.1970, c.39 (C.13:1E-6).  
9 **Such** These plans are hereby declared to be public records and shall  
10 be subject to all the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.)  
11 concerning such public records.

12 (cf: P.L.1975, c.326, s.15)

13  
14 51. Section 18 of P.L.1975, c.326 (C.13:1E-27) is amended to  
15 read as follows:

16 18. Any solid waste facility constructed, acquired or operated  
17 pursuant to the provisions of the "Solid Waste Management Act,"  
18 P.L.1970, c.39 (C.13:1E-1 et seq.) shall be deemed a public utility and  
19 shall be subject to such rules and regulations as may be adopted by the  
20 **Board of Public Utilities** department in accordance with the  
21 provisions of the "Solid Waste Utility Control Act," P.L.1970, c.40  
22 (C.48:13A-1 et seq.) and P.L.1991, c.381 (C.48:13A-7.1 et al.).  
23 (cf: P.L.1991, c.381, s.38)

24  
25 52. Section 19 of P.L.1975, c.326 (C.13:1E-28) is amended to  
26 read as follows:

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

33 The owner or operator of the sanitary landfill facility shall annually  
34 pay to the relevant municipality the full amount due under this  
35 subsection and each relevant municipality is empowered to anticipate  
36 this amount for the purposes of preparing its annual budget. For the  
37 purposes of calculating the payments, the owner or operator of the  
38 sanitary landfill facility may, subject to the prior agreement of the  
39 relevant municipality and the approval of the **Board of Public**  
40 **Utilities** department, provide the municipality with any of the  
41 following benefits in consideration for the use of land within its  
42 municipal boundaries as the location of a sanitary landfill facility:

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

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

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

2 (4) Any combination thereof.

3 b. Every owner or operator of a sanitary landfill facility required  
4 to make annual payments to a municipality pursuant to subsection a.  
5 of this section may petition the **【Board of Public Utilities】** department  
6 for an increase in its tariff which reflects these payments. The **【board】**  
7 department, within 60 days of the receipt of the petition, shall issue an  
8 appropriate order that these payments shall be passed along to the  
9 users of the sanitary landfill facility as an automatic surcharge on any  
10 tariff filed with, and recorded by, the **【board】** department for the solid  
11 waste disposal operations of the facility.

12 c. **【** In issuing any order required by this section, the Board of  
13 Public Utilities shall be exempt from the provisions of  
14 R.S.48:2-21. ~~】(deleted by amendment, P.L. , c. )~~  
15 (cf: P.L.1991, c.381, s.39)

16

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

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

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

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

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

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

43 (4) Any combination thereof.

44 b. Every owner or operator of a transfer station required to make  
45 payments not less frequently than quarterly to a municipality pursuant

1 to subsection a. of this section may petition the [Board of Public  
2 Utilities] department for an increase in its tariff which reflects these  
3 payments. The [board] department, within 60 days of the receipt of  
4 the petition, shall issue an order that these payments shall be passed  
5 along to the users of the transfer station as an automatic surcharge on  
6 any tariff filed with, and recorded by, the [board] department for the  
7 solid waste disposal operations of the transfer station.

8 c. [ In issuing any order required by this section, the Board of  
9 Public Utilities shall be exempt from the provisions of  
10 R.S.48:2-21.]deleted by amendment, P.L. , c. )  
11 (cf: P.L.1991, c.381, s.40)

12  
13 54. Section 21 of P.L.1975, c.326 (C.13:1E-30) is amended to  
14 read as follows:

15 21. a. The commissioner may make, or contract to make, a State  
16 grant to any person engaged in solid waste collection, disposal or  
17 utilization activities, to assist said person in experimenting with new  
18 methods of solid waste collection, disposal or utilization, including but  
19 not limited to, material recycling and energy recovery demonstration  
20 projects, intermunicipal waste collection and disposal systems projects,  
21 and coordinated multiusage of terminated sanitary landfill disposal  
22 sites projects. Any person engaged in solid waste collection, disposal  
23 or utilization activities may apply to the commissioner for a State  
24 grant; provided, however, that the application has been approved by  
25 the board of chosen freeholders, or the Hackensack Commission, as  
26 the case may be, as in conformity with the adopted and approved  
27 district solid waste management plan of the solid waste management  
28 district within which the experimental project is to be undertaken. The  
29 applicant shall submit a copy of the plan for any solid waste collection,  
30 disposal or utilization experimental project for which a State grant is  
31 sought and such other detailed information concerning the project,  
32 including maps, data, plans, estimated costs, and method of financing,  
33 as the commissioner may require by rules and regulations  
34 [promulgated hereunder] adopted pursuant to P.L.1970, c.39  
35 (C.13:1E-1 et seq.). [At the request of the] The commissioner[, the  
36 Board of Public Utility Commissioners] may exempt any  
37 demonstration project from the provisions of P.L.1970,  
38 c.40[(C.4:13A-1 et seq.)](C.48:13A-1 et seq.).

39 b. The commissioner shall review and evaluate all applications  
40 submitted [to him] pursuant to subsection a. of this section, and shall  
41 establish such priorities for making grants pursuant to this  
42 [amendatory and supplementary act] section as shall give due regard  
43 to the degree to which the experimental project for which a State grant  
44 is sought will have a beneficial and long term effect on solid waste

1 collection, disposal and utilization methods in this State.  
2 (cf: P.L.1975, c.326, s.21)

3  
4 55. Section 1 of P.L.1976, c.99 (C.13:1E-38) is amended to read  
5 as follows:

6 1. As used in this act[, the following words and phrases shall have  
7 the following meanings, unless the context clearly requires another  
8 meaning]:

9 a. "Bulk liquids" means liquid or semiliquid waste, including  
10 petroleum products, which is contained within, or is discharged from,  
11 any one vessel, tank or other container which has a capacity of 20 or  
12 more gallons;

13 b. "Chemical waste" means a material normally generated by or  
14 used in chemical, petrochemical, plastic, pharmaceutical, biochemical  
15 or microbiological manufacturing processes or petroleum refining  
16 processes, which has been selected for waste disposal and which is  
17 known to hydrolize, ionize or decompose, which is soluble, burns or  
18 oxidizes, or which may react with any of the waste materials which are  
19 introduced into the landfill, or which is buoyant on water, or which has  
20 a viscosity less than that of water or which produces a foul odor.  
21 Chemical waste may be either hazardous or nonhazardous.

22 c. "Hazardous waste" means any waste or any combination of  
23 waste which poses a present or potential threat to human health, living  
24 organisms or the environment. "Hazardous waste" shall include, but  
25 not be limited to, waste material that is toxic, corrosive, irritating,  
26 sensitizing, radioactive, biologically infectious, explosive or  
27 flammable;

28 d. "Leachate" is a liquid that has been in contact with solid waste  
29 and contains dissolved or suspended materials from that solid waste.

30 e. "Pesticide" means and includes any substance or mixture of  
31 substances labeled, designed, intended for or capable of use in  
32 preventing, destroying, repelling, sterilizing or mitigating any insects,  
33 rodents, nematodes, predatory animals, fungi, weeds and other forms  
34 of plant or animal life or viruses, except viruses on or in living man or  
35 other animals. "Pesticide" shall also include any substance or mixture  
36 of substances labeled, designed or intended for use as a defoliant,  
37 desiccant or plant regulator.

38 f. "Commercial solid waste facility" means any solid waste facility  
39 operated for profit which accepts any solid waste generated from any  
40 other source and is subject to the [jurisdiction of the Board of Public  
41 Utilities pursuant to the] provisions of P.L.1970, c.40 (C.48:13A-1 et  
42 seq.).

43 (cf: P.L.1979, c.395, s.2)

44  
45 56. Section 3 of P.L.1989, c.34 (C.13:1E-48.3) is amended to read  
46 as follows:

1       3. As used in sections 1 through 25 of **[this act]** P.L.1989, c.34  
2 (C.13:1E-48.1 through 13:1E-48.25):

3       **["Board" means the Board of Public Utilities.]**

4       "Collection" means the activity related to pick-up and  
5 transportation of regulated medical waste from a generator, or from  
6 an intermediate location, to a facility, or to a site outside the State, for  
7 disposal.

8       "Commissioners" means the Commissioner of Environmental  
9 Protection and the Commissioner of Health.

10       "Departments" means the Department of Environmental Protection  
11 and the Department of Health.

12       "Dispose" or "disposal" means the storage, treatment, utilization,  
13 processing, resource recovery of, or the discharge, deposit, injection,  
14 dumping, spilling, leaking, or placing of any regulated medical waste  
15 into or on any land or water so that the regulated medical waste or any  
16 constituent thereof may enter the environment or be emitted into the  
17 air or discharged into any waters, including groundwaters.

18       "Facility" means a solid waste facility as defined in section 3 of  
19 P.L.1970, c.39 (C.13:1E-3); or any other incinerator or commercial or  
20 noncommercial regulated medical waste disposal facility in this State  
21 that accepts regulated medical waste for disposal.

22       "Federal Act" means the "Medical Waste Tracking Act of 1988" (42  
23 U.S.C. 6903 et seq.), or any rule or regulation adopted pursuant  
24 thereto.

25       "Generator" means an ambulatory surgical or care facility,  
26 community health center, medical doctor's office, dentist's office,  
27 podiatrists offices, home health care agencies, health care facility,  
28 hospital, medical clinic, morgue, nursing home, urgent care center,  
29 veterinary office or clinic, animal, biological, clinical, medical,  
30 microbiological, or pathological diagnostic or research laboratory, any  
31 of which generates regulated medical waste, or any other facility  
32 identified by the departments that generates regulated medical waste.  
33 "Generator" shall not include individual households utilizing home  
34 self-care.

35       "Regulated medical waste" means blood vials; cultures and stocks  
36 of infectious agents and associated biologicals, including cultures from  
37 medical and pathological laboratories, cultures and stocks of infectious  
38 agents from research and industrial laboratories, wastes from the  
39 production of biologicals, discarded live and attenuated vaccines, and  
40 culture dishes and devices used to transfer, inoculate, and mix  
41 cultures; pathological wastes, including tissues, organs, and body parts  
42 that are removed during surgery or autopsy; waste human blood and  
43 products of blood, including serum, plasma, and other blood  
44 components; sharps that have been used in patient care or in medical,  
45 research, or industrial laboratories engaged in medical research,  
46 testing, or analysis of diseases affecting the human body, including



1 hypodermic needles, syringes, pasteur pipettes, broken glass, and  
2 scalpel blades; contaminated animal carcasses, body parts, and bedding  
3 of animals that were exposed to infectious agents during research,  
4 production of biologicals, or testing of pharmaceuticals; any other  
5 substance or material related to the transmission of disease as may be  
6 deemed appropriate by the departments; and any other substance or  
7 material as may be required to be regulated by, or permitted to be  
8 exempted from, the Federal Act. The departments may adopt, by rule  
9 or regulation and pursuant to the "Administrative Procedure Act,"  
10 P.L.1968, c.410 (C.52:14B-1 et seq.), a more specific definition of  
11 regulated medical waste upon the expiration of the demonstration  
12 program established under the Federal Act.

13 "Noncommercial facility" means a facility or on-site generator, as  
14 the case may be, which accepts regulated medical waste from other  
15 generators for on-site disposal for a cost-based fee not in excess of the  
16 costs actually incurred by the facility or on-site generator for the  
17 treatment or disposal of the regulated medical waste.

18 "Transporter" means a person engaged in the collection or  
19 transportation of regulated medical waste.

20 (cf: P.L.1989, c.34, s.3)

21

22 57. Section 8 of P.L.1989, c.34 (C.13:1E-48.8) is amended to read  
23 as follows:

24 8. a. No person may transport regulated medical waste unless the  
25 person has:

26 (1) satisfied all requirements prescribed by the Department of  
27 Environmental Protection, and filed a registration statement and  
28 obtained approval thereof from the department on a form provided,  
29 and containing all information requested by the department;

30 (2) paid an annual registration fee in an amount set by the  
31 Department of Environmental Protection pursuant to a rule or  
32 regulation adopted in accordance with the "Administrative Procedure  
33 Act;"

34 (3) received written instruction from the departments on the proper  
35 and safe tracking, identification, packaging, storage, control,  
36 monitoring, handling, collection, and disposal of regulated medical  
37 waste;

38 (4) obtained a registration statement required by section 5 of  
39 P.L.1970, c.39 (C.13:1E-5);

40 (5) obtained a certificate of public convenience and necessity  
41 required by section 7 of P.L.1970, c.40 (C.48:13A-6);

42 (6) complied with the requirements of P.L.1983, c.392  
43 (C.13:1E-126 et seq.); and

44 (7) paid an annual fee to, and in an amount set by, the **Board of**  
45 **Public Utilities** Department of Environmental Protection pursuant to  
46 section 9 of **this act** P.L.1989, c.34 (C.13:1E-48.9).

1       b. The provisions of subsection a. of this section shall not apply to  
2 a generator who generates less than three cubic feet of regulated  
3 medical waste per month and who transports that regulated medical  
4 waste to another generator for storage or disposal.

5 (cf: P.L.1989, c.34, s.8)

6  
7       58. Section 9 of P.L.1989, c.34 (C.13:1E-48.9) is amended to read  
8 as follows:

9       9. Every transporter shall submit an application for a certificate of  
10 public convenience and necessity to the **【Board of Public Utilities】**  
11 Department of Environmental Protection on a form prescribed by the  
12 **【board】 department**, and pay an initial and annual renewal fee in an  
13 amount set by the **【board】 department** as may be necessary to cover  
14 the costs of reviewing the qualifications of applicants, including  
15 background investigations, and the costs of compliance monitoring and  
16 administration.

17 (cf: P.L.1989, c.34 s.9)

18  
19       59. Section 12 of P.L.1989, c.34 (C.13:1E-48.12) is amended to  
20 read as follows:

21       12. a. The Department of Environmental Protection**【, in**  
22 **conjunction with the Board of Public Utilities,】**shall adopt appropriate  
23 rules or regulations or issue administrative orders providing for the  
24 interdistrict or intradistrict flow of regulated medical waste. The rules,  
25 regulations, or administrative orders shall establish the manner in  
26 which the department **【and the board jointly】** will direct the flow of  
27 regulated medical waste in this State pursuant to P.L.1970, c.39  
28 (C.13:1E-1 et seq.), P.L.1970, c.40 (C.48:13A-1 et seq.) and the  
29 provisions of this act, and determine where regulated medical waste  
30 may be disposed.

31       b. The **【Board of Public Utilities】 department** shall have  
32 jurisdiction over rates or charges for the disposal of regulated medical  
33 waste received by any commercial incinerator or commercial facility  
34 in this State that accepts regulated medical waste for disposal. The  
35 department**【, in conjunction with the board,】**may require any solid  
36 waste facility to accept for disposal regulated medical waste prepared  
37 for that purpose in accordance with the provisions of this act, and any  
38 rule or regulation adopted pursuant thereto, on the same terms and  
39 under the same conditions as ordinary solid waste.

40       c. The **【Board of Public Utilities】 department** shall not have  
41 jurisdiction over rates or charges for the disposal of regulated medical  
42 waste imposed by any noncommercial facility in this State that accepts  
43 regulated medical waste for disposal, without regard to whether the  
44 regulated medical waste was generated onsite or otherwise.

45       d. (1) The Commissioner of Health shall recommend to the

1 Hospital Rate Setting Commission adjustments to the reimbursement  
2 rates for affected generators for activities that are required under this  
3 act, but that are not currently reimbursed under the rate setting system  
4 established by section 5 of P.L.1978, c.83 (C.26:2H-4.1). The Division  
5 of Medical Assistance and Health Services shall recommend to the  
6 Commissioner of Human Services adjustments to the reimbursement  
7 rates under Medicaid for affected generators for activities that are  
8 required under this act, but that are not currently reimbursed under the  
9 Medicaid rate setting system.

10 (2) The Commissioner of Health shall develop and implement a  
11 generic appeal process, under which any hospital may petition the  
12 Hospital Rate Setting Commission under the appropriate appeal option  
13 for the expeditious reimbursement of the costs incurred in complying  
14 with the provisions of this act, including the amount of the annual  
15 registration fee paid to the department by generators of regulated  
16 medical waste pursuant to section 7 of P.L.1989, c.34 (C.13:1E-48.7),  
17 to the extent that these costs and the annual fee is not currently  
18 reimbursed under the rate setting system established by P.L.1971,  
19 c.136 (C.26:2H-1 et seq.) or section 5 of P.L.1978, c.83  
20 (C.26:2H-4.1), as the case may be.  
21 (cf: P.L.1989, c.240, s.2)

22

23 60. Section 13 of P.L.1989, c.34 (C.13:1E-48.13) is amended to  
24 read as follows:

25 13. a. The departments shall study the issue of regulated medical  
26 waste in the State and prepare a comprehensive State regulated  
27 medical waste management plan addressing the immediate, interim,  
28 and long-term needs of the State with respect to the disposal of  
29 regulated medical waste in a manner that will protect the public health  
30 and the environment. The departments, **【within one year of the**  
31 **effective date of this act】** no later than March 6, 1990, shall transmit  
32 to the Governor and the Legislature the comprehensive State regulated  
33 medical waste management plan.

34 b. The comprehensive State regulated medical waste management  
35 plan shall include:

36 (1) an inventory of the number and types of generators of regulated  
37 medical waste within the State, and of the composition and quantities  
38 of regulated medical waste generated thereby, together with a  
39 recommendation with respect to the advisability, practicability and  
40 feasibility of exempting certain small quantity generators from the  
41 manifest requirements imposed by this act;

42 (2) a projection of the number and types of generators of regulated  
43 medical waste within the State for the next 30 years following  
44 enactment of this act, and the composition and quantities of regulated  
45 medical waste to be generated thereby;

46 (3) an evaluation of the impact of out-of-state generators upon the

1 present and future regulated medical waste disposal capacity within the  
2 State;

3 (4) an evaluation[, to be undertaken in conjunction with the Board  
4 of Public Utilities,]of the status of the regulated medical waste  
5 collection and disposal industries, and whether they are of sufficient  
6 size and competitiveness to meet the needs of the State, and, if not,  
7 recommendations of ways to increase the size and competitiveness  
8 thereof;

9 (5) an inventory and appraisal, including the identity, location, and  
10 life expectancy, of all existing and approved incineration or  
11 non-incineration disposal capacity which is anticipated to be available  
12 to each county in this State for its regulated medical waste disposal  
13 needs, including all commercial and noncommercial regulated medical  
14 waste disposal facilities, and solid waste facilities within the State and  
15 in nearby states permitted to accept regulated medical waste for  
16 disposal;

17 (6) an updated projection of the anticipated regulated medical  
18 waste disposal capacity shortfall in each county in this State in the next  
19 5 years from the date of enactment of this act;

20 (7) a recommendation of the regulated medical waste disposal  
21 strategy to be applied in the State, which strategy shall include the  
22 maximum practicable use of existing and approved incineration  
23 capacity for regulated medical waste, particularly pathology  
24 specimens, resource recovery procedures, recycling, and consideration  
25 of the establishment of regional regulated medical waste disposal  
26 facilities;

27 (8) recommendations of any statutory and regulatory changes  
28 deemed necessary to implement the comprehensive State regulated  
29 medical waste management plan and assure utilization of the most  
30 sanitary, efficient, and economical methods for the tracking,  
31 identification, packaging, storage, control, monitoring, handling,  
32 collection, and disposal of regulated medical waste; and

33 (9) an evaluation of the environmental and public health impacts of  
34 all reasonably available regulated medical waste treatment and disposal  
35 technologies, and a recommendation concerning the extent to which  
36 non-incineration technologies may be utilized as an alternative to  
37 incineration technologies.

38 (cf: P.L.1989, c.34, s.13)

39

40 61. Section 15 of P.L.1989, c.34 (C.13:1E-48.15) is amended to  
41 read as follows:

42 15. a. Upon the submission to the Governor and the Legislature  
43 of the comprehensive State regulated medical waste management plan  
44 prepared by the departments pursuant to section 13 of [this act]  
45 P.L.1989, c.34 (C.13:1E-48.13), the Department of Environmental  
46 Protection shall:

1 (1) transmit, by certified mail, a written determination of need to  
2 the governing body of each county in this State in which the  
3 department has determined that there exists or impends an anticipated  
4 regulated medical waste disposal capacity shortfall; and

5 (2) issue[, in conjunction with the Board of Public  
6 Utilities,]appropriate administrative orders providing for the  
7 interdistrict or intradistrict flow of regulated medical waste. The  
8 administrative orders shall direct the flow of regulated medical waste  
9 generated within each county in this State to designated commercial  
10 regulated medical waste disposal facilities and, subject to the prior  
11 approval of the owner or operator thereof, to designated  
12 noncommercial facilities for disposal.

13 b. In the event that appropriate rules and regulations to implement  
14 the Federal Act have not been adopted by the United States  
15 Environmental Protection Agency prior to the submission to the  
16 Governor and the Legislature of the comprehensive State regulated  
17 medical waste management plan, the departments may adopt, by rule  
18 or regulation, regulated medical waste management requirements to  
19 provide for the proper and safe segregation, identification, packaging,  
20 storage, labeling, control, monitoring, handling, collection, and  
21 disposal of regulated medical waste consistent with those set forth in  
22 this act.

23 (cf: P.L.1989, c.34, s.15)

24  
25 62. Section 18 of P.L.1989, c.34 (C.13:1E-48.18) is amended to  
26 read as follows:

27 18. a. Any county within which a solid waste facility is located  
28 pursuant to an adopted and approved district solid waste management  
29 plan, which facility is a designated recipient of regulated medical waste  
30 pursuant to an interdistrict or intradistrict waste flow order issued by  
31 the [Board of Public Utilities, in conjunction with the] Department of  
32 Environmental Protection, may be entitled to an annual economic  
33 benefit in an amount established by agreement with the owner or  
34 operator of the solid waste facility. The governing body of the relevant  
35 county may negotiate with the owner or operator of the solid waste  
36 facility for the payment of an annual economic benefit.

37 b. If the parties reach an agreement on the amount of an annual  
38 economic benefit, the owner or operator of the solid waste facility  
39 shall petition the [board] department for an adjustment in its disposal  
40 tariff. The petition shall be accompanied by a copy of the agreement  
41 which reflects the proposed annual payments and shall be filed with the  
42 [board] department prior to its implementation. The [board]  
43 department, within 60 days of the receipt of the petition, shall issue an  
44 appropriate order that these payments shall be paid by the users of the  
45 facility as an automatic surcharge on any tariff filed with, and recorded  
46 by, the [board] department for the regulated medical waste disposal

1 operations of the facility. The surcharge shall be calculated and  
2 itemized in all appropriate tariffs on a per ton basis. In the event that  
3 any regulated medical waste is measured, upon acceptance for  
4 disposal, by other than tons, the surcharge shall be calculated and  
5 itemized by using the equivalents thereof as shall be determined by the  
6 **[board]** department.

7 c. **[In issuing any order required by this section, the Board of**  
8 **Public Utilities shall be exempt from the provisions of**  
9 **R.S.48:2-21.](deleted by amendment, P.L. , c. )**  
10 (cf: P.L.1989, c.34, s.18)

11

12 63. Section 20 of P.L.1989, c.34 (C.13:1E-48.20) is amended to  
13 read as follows:

14 20. a. This act, and any rule or regulation adopted pursuant  
15 thereto, shall be enforced by the departments and by every local board  
16 of health, or county health department, as the case may be.

17 The departments and the local board of health, or the county health  
18 department, as the case may be, shall have the right to enter the  
19 premises of a generator, transporter, or facility at any time in order to  
20 determine compliance with this act.

21 The municipal attorney or an attorney retained by a municipality in  
22 which a violation of this act is alleged to have occurred shall act as  
23 counsel to a local board of health.

24 The county counsel or an attorney retained by a county in which a  
25 violation of this act is alleged to have occurred shall act as counsel to  
26 the county health department.

27 All enforcement activities undertaken by county health departments  
28 pursuant to this subsection shall conform to all applicable performance  
29 and administrative standards adopted pursuant to section 10 of the  
30 "County Environmental Health Act," P.L.1977, c.443 (C.26:3A2-28).

31 b. Whenever the Commissioner of Environmental Protection or the  
32 Commissioner of Health finds that a person has violated this act, or  
33 any rule or regulation adopted pursuant thereto, that commissioner  
34 shall:

35 (1) issue an order requiring the person found to be in violation to  
36 comply in accordance with subsection c. of this section;

37 (2) bring a civil action in accordance with subsection d. of this  
38 section;

39 (3) levy a civil administrative penalty in accordance with subsection  
40 e. of this section;

41 (4) bring an action for a civil penalty in accordance with subsection  
42 f. of this section; or

43 (5) petition the Attorney General to bring a criminal action in  
44 accordance with subsections g. through l. of this section.

45 Pursuit of any of the remedies specified under this section shall not  
46 preclude the seeking of any other remedy specified.

1 c. Whenever the Commissioner of Environmental Protection or the  
2 Commissioner of Health finds that a person has violated this act, or  
3 any rule or regulation adopted pursuant thereto, that commissioner  
4 may issue an order specifying the provision or provisions of this act,  
5 or the rule or regulation adopted pursuant thereto, of which the person  
6 is in violation, citing the action that constituted the violation, ordering  
7 abatement of the violation, and giving notice to the person of the  
8 person's right to a hearing on the matters contained in the order. The  
9 ordered party shall have 20 days from receipt of the order within  
10 which to deliver to the commissioner a written request for a hearing.  
11 After the hearing and upon finding that a violation has occurred, the  
12 commissioner may issue a final order. If no hearing is requested, the  
13 order shall become final after the expiration of the 20-day period. A  
14 request for hearing shall not automatically stay the effect of the order.

15 d. The Commissioner of Environmental Protection, the  
16 Commissioner of Health, a local board of health, or a county health  
17 department may institute an action or proceeding in the Superior Court  
18 for injunctive and other relief, including the appointment of a receiver  
19 for any violation of this act, or of any rule or regulation adopted  
20 pursuant thereto, and the court may proceed in the action in a  
21 summary manner. In any such proceeding the court may grant  
22 temporary or interlocutory relief.

23 Such relief may include, singly or in combination:

- 24 (1) a temporary or permanent injunction;  
25 (2) assessment of the violator for the costs of any investigation,  
26 inspection, or monitoring survey that led to the establishment of the  
27 violation, and for the reasonable costs of preparing and litigating the  
28 case under this subsection;  
29 (3) assessment of the violator for any cost incurred by the State in  
30 removing, correcting, or terminating the adverse effects upon  
31 environmental quality or public health resulting from any violation of  
32 this act, or any rule or regulation adopted pursuant thereto, for which  
33 the action under this subsection may have been brought;  
34 (4) assessment against the violator of compensatory damages for  
35 any loss or destruction of wildlife, fish or aquatic life, and for any  
36 other actual damages caused by any violation of this act, or any rule  
37 or regulation adopted pursuant thereto, for which the action under this  
38 subsection may have been brought.

39 Assessments under this subsection shall be paid to the State  
40 Treasurer, or to the local board of health, or to the county health  
41 department, as the case may be, except that compensatory damages  
42 may be paid by specific order of the court to any persons who have  
43 been aggrieved by the violation.

44 If a proceeding is instituted by a local board of health or county  
45 health department, notice thereof shall be served upon the  
46 commissioners in the same manner as if the commissioners were named

1 parties to the action or proceeding. Either of the departments may  
2 intervene as a matter of right in any proceeding brought by a local  
3 board of health or county health department.

4 e. Either of the commissioners, as the case may be, may assess a  
5 civil administrative penalty of not more than \$50,000 for each  
6 violation. Each day that a violation continues shall constitute an  
7 additional, separate, and distinct offense. A commissioner may not  
8 assess a civil administrative penalty in excess of \$25,000 for a single  
9 violation, or in excess of \$2,500 for each day during which a violation  
10 continues, until the departments have respectively adopted, pursuant  
11 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
12 et seq.), regulations requiring the appropriate commissioner, in  
13 assessing a civil administrative penalty, to consider the operational  
14 history of the violator, the severity of the violation, the measures taken  
15 to mitigate or prevent further violations, and whether the penalty will  
16 maintain an appropriate deterrent. No assessment may be levied  
17 pursuant to this section until after the violator has been notified by  
18 certified mail or personal service. The notice shall include a reference  
19 to the section of the statute, rule, regulation, or order violated, a  
20 concise statement of the facts alleged to constitute a violation, a  
21 statement of the amount of the civil administrative penalties to be  
22 imposed, and a statement of the party's right to a hearing. The ordered  
23 party shall have 20 calendar days from receipt of the notice within  
24 which to deliver to the appropriate commissioner a written request for  
25 a hearing. After the hearing and upon finding that a violation has  
26 occurred, that commissioner may issue a final order after assessing the  
27 amount of the fine specified in the notice. If no hearing is requested,  
28 the notice shall become a final order after the expiration of the 20-day  
29 period. Payment of the assessment is due when a final order is issued  
30 or the notice becomes a final order. The authority to levy a civil  
31 administrative penalty is in addition to all other enforcement  
32 provisions in this act, and the payment of any assessment shall not be  
33 deemed to affect the availability of any other enforcement provisions  
34 in connection with the violation for which the assessment is levied.  
35 Each department may compromise any civil administrative penalty  
36 assessed under this section in an amount the department determines  
37 appropriate.

38 f. A person who violates this act, or any rule or regulation adopted  
39 pursuant thereto, shall be liable for a penalty of not more than \$50,000  
40 per day, to be collected in a civil action commenced by the  
41 Commissioner of Environmental Protection, the Commissioner of  
42 Health, a local board of health, or a county health department.

43 A person who violates an administrative order issued pursuant to  
44 subsection c. of this section, or a court order issued pursuant to  
45 subsection d. of this section, or who fails to pay an administrative  
46 assessment in full pursuant to subsection e. of this section is subject



1 upon order of a court to a civil penalty not to exceed \$100,000 per  
2 day of each violation.

3 Of the penalty imposed pursuant to this subsection, 10% or \$250,  
4 whichever is greater, shall be paid to the appropriate department from  
5 the General Fund if the Attorney General determines that a person is  
6 entitled to a reward pursuant to section 24 of **[this act]** P.L.1989,  
7 c.34 (C.13:1E-48.24).

8 Any penalty imposed pursuant to this subsection may be collected,  
9 with costs, in a summary proceeding pursuant to "the penalty  
10 enforcement law" (N.J.S.2A:58-1 et seq.). The Superior Court and the  
11 municipal court shall have jurisdiction to enforce the provisions of "the  
12 penalty enforcement law" in connection with this act.

13 g. A person who purposely or knowingly:

14 (1) disposes or stores regulated medical waste without  
15 authorization from either the Department of Environmental Protection  
16 or the Department of Health, as appropriate, or in violation of this act,  
17 or any rule or regulation adopted pursuant thereto;

18 (2) makes any false or misleading statement to any person who  
19 prepares any regulated medical waste application, registration, form,  
20 label, certification, manifest, record, report, or other document  
21 required by this act, or any rule or regulation adopted pursuant  
22 thereto;

23 (3) makes any false or misleading statement on any regulated  
24 medical waste application, registration, form, label, certification,  
25 manifest, record, report, or other document required by this act, or any  
26 rule or regulation adopted pursuant thereto; or

27 (4) fails to properly treat certain types of regulated medical waste  
28 designated by the Department of Health in a prescribed manner; shall,  
29 upon conviction, be guilty of a crime of the third degree and,  
30 notwithstanding the provisions of N.J.S.2C:43-3, shall be subject to a  
31 fine of not more than \$50,000 for the first offense, and not more than  
32 \$100,000 for each subsequent offense, and restitution, in addition to  
33 any other appropriate disposition authorized by subsection b. of  
34 N.J.S.2C:43-2.

35 h. A person who recklessly or negligently:

36 (1) disposes or stores regulated medical waste without  
37 authorization from either the Department of Environmental Protection  
38 or the Department of Health, as appropriate, or in violation of this act,  
39 or any rule or regulation adopted pursuant thereto;

40 (2) makes any false or misleading statement to any person who  
41 prepares any regulated medical waste application, registration, form,  
42 label, certification, manifest, record, report, or other document  
43 required by this act, or any rule or regulation adopted pursuant  
44 thereto;

45 (3) makes any false or misleading statement on any regulated  
46 medical waste application, registration, form, label, certification,

1 manifest, record, report, or other document required by this act, or any  
2 rule or regulation adopted pursuant thereto; or

3 (4) fails to properly treat certain types of regulated medical waste  
4 designated by the Department of Health in a manner prescribed  
5 thereby;

6 shall, upon conviction, be guilty of a crime of the fourth degree.

7 i. A person who, regardless of intent:

8 (1) transports any regulated medical waste to a facility or any other  
9 place in the State that does not have authorization from the  
10 Department of Environmental Protection [and the Board of Public  
11 Utilities] to accept such waste, or in violation of this act, or any rule  
12 or regulation adopted pursuant thereto; or

13 (2) transports, or receives transported, regulated medical waste  
14 without completing and submitting a manifest in accordance with this  
15 act, or any rule or regulation adopted pursuant thereto;

16 shall, upon conviction, be guilty of a crime of the fourth degree.

17 j. A person who purposely, knowingly, or recklessly:

18 (1) generates and causes or permits to be transported any regulated  
19 medical waste to a facility or any other place in the State that does not  
20 have authorization from the Department of Environmental Protection  
21 [and the Board of Public Utilities] to accept such waste, or in  
22 violation of this act, or any rule or regulation adopted pursuant  
23 thereto; or

24 (2) violates any other provision of this act, or any rule or  
25 regulation adopted pursuant thereto, for which no other criminal  
26 penalty has been specifically provided for; shall, upon conviction, be  
27 guilty of a crime of the fourth degree.

28 k. All conveyances used or intended for use in the willful  
29 discharge, in violation of this act, or any rule or regulation adopted  
30 pursuant thereto, of regulated medical waste are subject to forfeiture  
31 to the State pursuant to P.L.1981, c.387 (C.13:1K-1 et seq.).

32 l. The provisions of N.J.S.2C:1-6 to the contrary notwithstanding,  
33 a prosecution for violation of subsection g., subsection h., subsection  
34 i., or subsection j. of this section shall be commenced within five years  
35 of the date of discovery of the violation.

36 m. No prosecution for a violation under this act shall be deemed to  
37 preclude a prosecution for the violation of any other applicable statute.  
38 (cf: P.L.1989, c.34, s.20)

39

40 64. Section 13 of P.L.1987, c.102 (C.13:1E-99.21) is amended to  
41 read as follows:

42 13. a. After April 20, 1989, all leaves collected by a municipality  
43 pursuant to the provisions of section 14 of P.L.1987, c.102  
44 (C.13:1E-99.22) shall be transported to a leaf composting facility,  
45 vegetative waste composting facility or recycling center authorized or  
46 approved by the department. Each district recycling plan shall identify

1 the leaf composting facility, vegetative waste composting facility or  
2 recycling center to be utilized by each municipality within the county.  
3 Any two or more counties may negotiate an interdistrict agreement for  
4 the development or use of a regional leaf composting facility,  
5 vegetative waste composting facility or recycling center.  
6 Notwithstanding the provisions of section 18 of P.L.1975, c.326  
7 (C.13:1E-27) or any other law, rule or regulation to the contrary, the  
8 **【Board of Public Utilities】** department shall not have jurisdiction over,  
9 or otherwise regulate the tariffs or return of, a leaf composting facility,  
10 vegetative waste composting facility or recycling center authorized or  
11 approved by the department.

12 b. No solid waste facility in this State, other than a leaf composting  
13 facility, vegetative waste composting facility or recycling center, shall  
14 accept for final disposal truckloads or roll-off containers of solid waste  
15 containing leaves at any time, except that leaves source separated from  
16 solid waste may be accepted by a sanitary landfill facility in those  
17 instances where the facility has provided and maintains for that  
18 purpose separate leaf composting facilities, and the composted leaves  
19 are utilized as part of the final vegetative cover for the landfill, or for  
20 other uses as a soil conditioning material.

21 c. No person shall transport leaves to an out-of-state facility except  
22 in those instances where the out-of-state facility is designed and  
23 operated for the purpose of accepting leaves for recycling and the  
24 facility is designated in the district recycling plan required pursuant to  
25 section 3 of P.L.1987, c.102 (C.13:1E-99.13).  
26 (cf: P.L.1989, c.151, s.2)  
27

28 65. Section 11 of P.L.1989, c.151 (C.13:1E-99.21e) is amended to  
29 read as follows:

30 11. Notwithstanding the provisions of P.L.1970, c.40 (C.48:13A-1  
31 et seq.) or any other law, rule or regulation to the contrary, the  
32 **【Board of Public Utilities】** Department of Environmental Protection  
33 shall not have jurisdiction over charges or rates for services provided  
34 by persons engaging in the transportation of leaves to a leaf  
35 composting facility, vegetative waste composting facility, recycling  
36 center or lands owned or operated by a recognized academic  
37 institution authorized or approved by the Department of  
38 Environmental Protection pursuant to P.L.1989, c.151**【(C. )】**. The  
39 revenues generated by persons engaging in the transportation of leaves  
40 shall not be included within the computation of current or adjusted  
41 tariffs established pursuant to law for solid waste collection.  
42 (cf: P.L.1989, c.151, s.11)  
43

44 66. Section 23 of P.L.1987, c.102 (C.13:1E-99.31) is amended to  
45 read as follows:

46 23. a. The provisions of section 6 of P.L.1970, c.40 (C.48:13A-5)

1 to the contrary notwithstanding, on or after July 1, 1987 the **【Board**  
2 of Public Utilities】 Department of Environmental Protection shall not  
3 award a franchise to any person or party proposing to construct, own  
4 or operate a resource recovery facility unless the person or party  
5 proposing to construct, own or operate the facility submits written  
6 documentation and any other evidence the **【board】** department may  
7 require demonstrating to the satisfaction of the **【board】** department  
8 that the goals of the relevant district recycling plan required by section  
9 3 of **【this amendatory and supplementary act】** P.L.1987, c.102  
10 (C.13:1E-99.13) have been incorporated into the plans for the  
11 proposed resource recovery facility.

12 b. The **【board】** department may adopt, pursuant to the provisions  
13 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
14 et seq.), any rules and regulations necessary to implement the  
15 provisions of this section.

16 (cf: P.L.1987, c.102, s.23)

17

18 67. Section 40 of P.L.1987, c.102 (C.13:1E-99.33) is amended to  
19 read as follows:

20 40. a. Any person engaged in the business of solid waste collection  
21 or solid waste disposal in accordance with the provisions of P.L.1970,  
22 c.39 (C.13:1E-1 et seq.), P.L.1970, c.40 (C.48:13A-1 et seq.),  
23 P.L.1991, c.381 (C.48:13A-7.1 et al.) or any other act may engage in  
24 recycling or otherwise provide recycling services in this State.

25 b. The **【Board of Public Utilities】** department shall not have  
26 jurisdiction over charges or rates for recycling or services provided by  
27 persons engaging in the business of recycling or otherwise providing  
28 recycling services in this State.

29 (cf: P.L.1991, c.381, s.42)

30

31 68. Section 3 of P.L.1981, c.306 (C.13:1E-102) is amended to  
32 read as follows:

33 3. As used in this act:

34 a. "Closing costs" or "closure" means all activities and costs  
35 associated with the design, purchase, construction or maintenance of  
36 all measures required by the department, pursuant to law, in order to  
37 prevent, minimize or monitor pollution or health hazards resulting  
38 from sanitary landfill facilities subsequent to the termination of  
39 operations at any portion thereof, including, but not necessarily limited  
40 to, the costs of the placement of earthen or vegetative cover, the  
41 installation of methane gas vents or monitors and leachate monitoring  
42 wells or collection systems at the site of any sanitary landfill facility,  
43 and the cost of general liability insurance, including environmental  
44 impairment liability insurance, or an amount sufficient to create a  
45 self-insurance fund as may be determined by the **【Board of Public**

1 Utilities] Department of Environmental Protection pursuant to section  
2 10 of P.L.1981, c.306 (C.13:1E-109), to fund potential claims against  
3 the owner or operator of the sanitary landfill facility during the closure  
4 and post-closure period.

5 b. "Owner or operator" means and includes, in addition to the usual  
6 meanings thereof, every owner of record of any interest in land  
7 whereon a sanitary landfill facility is or has been located, and any  
8 person or corporation which owns a majority interest in any other  
9 corporation which is the owner or operator of any sanitary landfill  
10 facility.

11 c. "Division" means the Division of Taxation in the Department of  
12 the Treasury.

13 d. "Director" means the Director of the Division of Taxation in the  
14 Department of the Treasury.

15 e. "Tax period" means every calendar month, or any other period  
16 as may be prescribed by rule and regulation adopted by the director,  
17 on the basis of which the owner or operator of a sanitary landfill  
18 facility is required to report to the director pursuant to this act.

19 f. "Taxpayer" means the owner or operator of a sanitary landfill  
20 facility subject to the tax provisions of this act.

21 (cf: P.L.1987, c.347, s.1)

22  
23 69. Section 10 of P.L.1981, c.306 (C.13:1E-109) is amended to  
24 read as follows:

25 10. a. The owner or operator of every sanitary landfill facility shall  
26 deposit, on a monthly basis in an interest-bearing account with an  
27 accredited financial institution, an amount equal to \$1.00 per ton of all  
28 solid waste accepted for disposal during the preceding month at the  
29 sanitary landfill facility. In the event that any solid waste is measured,  
30 upon acceptance for disposal, by other than tons, the amount to be  
31 deposited shall be calculated by using the equivalents thereof as shall  
32 be determined by the division.

33 The account established pursuant to this subsection shall constitute  
34 an escrow account for the closure of the particular sanitary landfill  
35 facility, and no withdrawals therefrom may be made without written  
36 approval of the department, except as otherwise authorized by the  
37 department.

38 b. Any owner or operator of a sanitary landfill facility who shall fail  
39 to deposit funds into an escrow account, as provided herein, or uses  
40 those funds for any purpose other than closing costs, as approved by  
41 the department, shall be guilty of a crime of the third degree.

42 c. The **[Board of Public Utilities]** department may, in accordance  
43 with the provisions of P.L.1970, c.40 (C.48:13A-1 et seq.), issue an  
44 appropriate order increasing current tariffs established pursuant to law  
45 for the solid waste disposal operations of a sanitary landfill facility as  
46 may be necessary to purchase general liability insurance, including

1 environmental impairment liability insurance, or to create a  
2 self-insurance fund sufficient to meet anticipated present and future  
3 obligations for the closure and post-closure period. Any additional  
4 revenues specifically collected for this insurance or fund shall be  
5 deposited in the escrow account established pursuant to subsection a.  
6 of this section for the closure of the facility and shall be withdrawn  
7 only for the purchase of insurance or the payment of claims or claims  
8 costs made against the owner or operator of the sanitary landfill  
9 facility, as authorized by the department. No withdrawals from an  
10 escrow account shall be made for insurance costs, claims or claims  
11 costs unless and until the **【board】** department issues an appropriate  
12 order increasing the relevant tariff to provide specifically for these  
13 costs.

14 (cf: P.L.1987, c.347, s.2)

15

16 70. Section 13 of P.L.1981, c.306 (C.13:1E-112) is amended to  
17 read as follows:

18 13. a. The provisions of any law to the contrary notwithstanding,  
19 the owner or operator of any sanitary landfill facility may collect the  
20 tax imposed pursuant to section 5 of P.L.1981, c.306 (C.13:1E-104),  
21 and the escrow account payments required by section 10 of P.L.1981,  
22 c.306 (C.13:1E-109), as a surcharge on any tariff established pursuant  
23 to law for the solid waste disposal operations of the facility.

24 b. The **【Board of Public Utilities】** department may direct the  
25 owner or operator of a sanitary landfill facility to reduce the rate of  
26 payments to an escrow account required by section 10 of P.L.1981,  
27 c.306 (C.13:1E-109), but only to the extent that:

28 (1) The current tariff established pursuant to law for the solid  
29 waste disposal operations of the facility specifically allocates a portion  
30 thereof for closing costs; and

31 (2) The amount collected for closing costs pursuant to this tariff  
32 are deposited, on a monthly basis, in the escrow account for the  
33 facility.

34 c. (deleted by amendment, P.L.1991, c.381)

35 (cf: P.L.1991, c.381, s.43)

36

37 71. Section 2 of P.L.1983, c.93 (C.13:1E-118) is amended to read  
38 as follows:

39 2. a. The **【Board of Public Utilities】** department shall, in  
40 accordance with the provisions of the "Solid Waste Utility Control Act  
41 **【of 1970】**" (P.L.1970, c.40; C.48:13A-1 et seq.), establish an  
42 equitable rate schedule based upon weight for the solid waste disposed  
43 of at all solid waste facilities required to install scales pursuant to **【this**  
44 **act】** P.L.1983, c.93 (C.13:1E-117 et seq.).

45 b. In instances where solid waste to be disposed is of substantially  
46 higher or lower density than normal, the solid waste facility shall

1 weigh the waste, but the **[board]** department, at its discretion, or upon  
2 petition, may require the amendment of any tariff to provide for rates  
3 based on factors in addition to weight.

4 (cf: P.L.1983, c.93, s.2)

5  
6 72. Section 3 of P.L.1983, c.93 (C.13:1E-119) is amended to read  
7 as follows:

8 3. Any solid waste facility required to install scales pursuant to  
9 **[this act]** P.L.1983, c.93 (C.13:1E-117 et seq.) may petition the  
10 **[Board of Public Utilities]** department for an increase in its tariff  
11 which reflects the costs reasonably incurred by the facility in  
12 complying with this act. The **[board]** department, within 60 days of  
13 the receipt of such a petition, shall determine the extent to which these  
14 costs shall be passed along to the users of the solid waste facility as an  
15 automatic surcharge on any tariff filed with, and recorded by, the  
16 **[board]** department for the operation of the solid waste facility.

17 (cf: P.L.1991, c.381, s.44)

18  
19 73. Section 2 of P.L.1985, c.38 (C.13:1E-137) is amended to read  
20 as follows:

21 2. As used in this **[amendatory and supplementary]** act:

22 **[a.]**"Contract file" means a file established and maintained by a  
23 contracting unit, in which the contracting unit shall maintain a copy of  
24 its request for qualifications issued pursuant to section 19 of **[this**  
25 **amendatory and supplementary act]** P.L.1985, c.38 (C.13:1E-154), a  
26 list of vendors responding to its request for qualifications, a copy of  
27 its request for proposals issued pursuant to section 20 of **[this**  
28 **amendatory and supplementary act]** P.L.1985, c.38 (C.13:1E-155), a  
29 list of qualified vendors submitting proposals, and a document  
30 outlining the general criteria used by the contracting unit in selecting  
31 a proposal;

32 **[b.]**"Contracting unit" means any county; any municipality; any  
33 bistate authority; or any **[board, commission, committee, authority or**  
34 **agency, which is not a State board, commission, committee, authority**  
35 **or agency, and which has administrative jurisdiction over any district**  
36 **other than a school district, project, or facility, included or operating**  
37 **in whole or in part, within the territorial boundaries of any county or**  
38 **municipality, which exercises functions which are appropriate for the**  
39 **exercise by one or more units of local government, and]** public  
40 authority which has statutory power to **[make purchases and]** enter  
41 into contracts or agreements **[for the performance of any work or the**  
42 **furnishing or hiring of any materials or supplies usually required]** for  
43 the design, financing, construction, operation, or maintenance, or any  
44 combination thereof, of a resource recovery facility;

45 **[c.]**"County" means any county of this State of whatever class;

1     **[d.]**"Department" means the Department of Environmental  
2 Protection;

3     **[e.]**"Director" means the Director of the Division of Taxation in  
4 the Department of Treasury;

5     **[f.]**"District" means a solid waste management district as  
6 designated by section 10 of P.L.1975, c.326 (C.13:1E-19), except  
7 that, as used in the provisions of **[this amendatory and supplementary**  
8 **act]** sections 3 through 17 of P.L.1985, c.38 (C.13:1E-138 through  
9 13:1E-152), "district" shall not include the Hackensack Meadowlands  
10 District;

11     **[g.]**"District investment tax fund" means a District Resource  
12 Recovery Investment Tax Fund established pursuant to subsection a.  
13 of section 15 of **[this amendatory and supplementary act]** P.L.1985,  
14 c.38 (C.13:1E-150);

15     **[h.]**"Division" means the Division of Taxation in the Department  
16 of Treasury;

17     **[i.]**"Division of Local Government Services" means the Division of  
18 Local Government Services in the Department of Community Affairs;

19     **[j.]**"Division of Rate Counsel" means the Division of Rate Counsel  
20 in the Department of the Public Advocate;

21     **[k.]**"Franchise" means the exclusive right to control and provide  
22 for the disposal of solid waste, except for designated recyclable  
23 materials as defined in section 2 of P.L.1987, c.102 (C.13:1E-99.12)  
24 or any other recyclable material whenever markets for those other  
25 materials are available, within a district or districts as awarded by the  
26 **[Board of Public Utilities]** department;

27     **[l.]**"Independent public accountant" means a certified public  
28 accountant, a licensed public accountant or a registered municipal  
29 accountant;

30     **[m.]**"Investment tax" means the resource recovery investment tax  
31 imposed pursuant to subsection b. of section 3 of **[this amendatory**  
32 **and supplementary act]** P.L.1985, c.38 (C.13:1E-138);

33     **[n.]**"Investment tax fund" means the Resource Recovery  
34 Investment Tax Fund containing sub-accounts for each county  
35 established pursuant to the provisions of section 14 of **[this**  
36 **amendatory and supplementary act]** P.L.1985, c.38 (C.13:1E-149);

37     **[o.]**"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     **[p.]**"Person or party" means any individual, public or private  
41 corporation, company, partnership, firm, association, political  
42 subdivision of this State, or any State, bistate, or interstate agency or  
43 public authority;

44     **[q.]**"Proposed contract" means a contract negotiated by a  
45 contracting unit pursuant to the provisions of **[this amendatory and**



1 supplementary act] P.L.1985, c.38 (C.13:1E-136 et al.), or a  
2 substantial renegotiation of a contract previously approved pursuant  
3 to the provisions of [this amendatory and supplementary act] section  
4 28 of P.L.1985, c.38 (C.13:1E-163) if the renegotiation is determined  
5 to be substantial by the department[, the Board of Public Utilities,]or  
6 the Division of Local Government Services;

7 "Public authority" means any solid waste management authority  
8 created pursuant to the "solid waste management authorities law,"  
9 P.L.1968, c.249 (C.40:66A-32 et seq.); municipal or county utilities  
10 authority created pursuant to the "municipal and county utilities  
11 authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.); incinerator  
12 authority created pursuant to the "incinerator authorities law,"  
13 P.L.1948, c.348 (C.40:66A-1 et seq.); county improvement authority  
14 created pursuant to the "county improvement authorities law,"  
15 P.L.1960, c.183 (C.40:37A-44 et seq.); pollution control financing  
16 authority created pursuant to the "New Jersey Pollution Control  
17 Financing Law," P.L.1973, c.376 (C.40:37C-1 et seq.), or any other  
18 public body corporate and politic created for solid waste management  
19 purposes in any county or municipality, pursuant to the provisions of  
20 any law;

21 [r.] "Qualified vendor" means any person or party financially  
22 qualified for, and technically and administratively capable of,  
23 undertaking the design, financing, construction, operation, or  
24 maintenance, or any combination thereof, of a resource recovery  
25 facility or of providing resource recovery services, as provided in  
26 section 19 of [this amendatory and supplementary act] P.L.1985, c.38  
27 (C.13:1E-154);

28 [s.] "Recyclable material" means those materials which would  
29 otherwise become solid waste, which may be collected, separated or  
30 processed and returned to the economic mainstream in the form of raw  
31 materials or products;

32 [t.] "Recycling" means any process by which materials which  
33 would otherwise become solid waste are collected, separated or  
34 processed and returned to the economic mainstream in the form of raw  
35 materials or products;

36 [u. "Recycling facility" means a facility at which materials which  
37 would otherwise become solid waste are collected, separated or  
38 processed and returned to the economic mainstream in the form of raw  
39 materials or products;]

40 "Residual ash" means the bottom ash, fly ash, or any combination  
41 thereof, resulting from the combustion of solid waste at a resource  
42 recovery facility.

43 [v.] "Resource recovery facility" means a solid waste facility  
44 constructed and operated for the incineration of solid waste for energy  
45 production and the recovery of metals and other materials for reuse;

1 or a mechanized composting facility, or any other solid waste facility  
2 constructed or operated for the collection, separation, recycling, and  
3 recovery of metals, glass, paper, and other materials for reuse or for  
4 energy production;

5 **【w.】**"Sanitary landfill facility" means a solid waste facility at which  
6 solid waste is deposited on or in the land as fill for the purpose of  
7 permanent disposal or storage for a period exceeding six months,  
8 except that it shall not include any waste facility approved for disposal  
9 of hazardous waste;

10 **【x.】** "Services tax" means the solid waste services tax imposed  
11 pursuant to subsection a. of section 3 of **【this amendatory and**  
12 **supplementary act】** P.L.1985, c.38 (C.13:1E-138);

13 **【y.】**"Services tax fund" means the Solid Waste Services Tax Fund  
14 established pursuant to section 12 of **【this amendatory and**  
15 **supplementary act】** P.L.1985, c.38 (C.13:1E-147);

16 **【z.】** "Vendor" means any person or party proposing to undertake  
17 the design, financing, construction, operation, or maintenance, or any  
18 combination thereof, of a resource recovery facility or of providing  
19 resource recovery services;

20 **【aa.】** "Waste importation tax" means the solid waste importation  
21 tax imposed pursuant to subsection c. of section 3 of **【this amendatory**  
22 **and supplementary act】** P.L.1985, c.38 (C.13:1E-138).

23 (cf: P.L.1985, c.38, s.2)

24  
25 74. Section 11 of P.L.1985, c.38 (C.13:1E-146) is amended to  
26 read as follows:

27 11. a. Each county, in consultation with the department, may  
28 conduct a study to determine the investment tax rate estimated to be  
29 necessary to be paid into the district investment tax fund so as to  
30 lower the cost of resource recovery facility services to a level which  
31 is competitive with the cost of disposal in a sanitary landfill facility  
32 utilized by the county, or to finance the closing costs for the proper  
33 closure of any terminated sanitary landfill facility located within the  
34 county, except that only the additional tax revenues generated by an  
35 investment tax rate adjustment may be expended for closing costs.

36 b. After completion of the study, the county, by resolution of its  
37 governing body, and after review of the study by the Local Finance  
38 Board in the Division of Local Government Services in the  
39 Department of Community Affairs, may adjust the investment tax rate  
40 set forth in subsection b. of section 3 of **【this amendatory and**  
41 **supplementary act】** P.L.1985, c.38 (C.13:1E-138) to a rate, not to  
42 exceed \$10.00 per ton of solids and \$0.04 per gallon of liquids, or the  
43 equivalent thereof, which is consistent with the conclusions of the  
44 study and with the plan developed pursuant to subsection c. of section  
45 15 of **【this amendatory and supplementary act】** P.L.1985, c.38

1 (C.13:1E-150). The county, by resolution of its governing body, and  
2 after review of the study and any additional information received  
3 during the previous year by the Local Finance Board in the Division of  
4 Local Government Services in the Department of Community Affairs,  
5 may adjust the investment tax rate, up to the maximum rate, on an  
6 annual basis. Any adjustment in the investment tax rate made pursuant  
7 to this subsection shall take effect on the first day of the first calendar  
8 year following the adjustment, provided that notice of the adjustment  
9 shall be made to the director no later than 90 days prior to the first day  
10 of a calendar year.

11 c. Upon approval by the department, two or more counties may  
12 conduct a joint study and establish a single investment tax rate for the  
13 districts in the manner provided in subsection b. of this section.

14 d. **【**The department, upon an investment tax rate adjustment by a  
15 county made in the manner provided in subsection b. of this section,  
16 shall notify the Board of Public Utilities of the investment tax rate  
17 adjustment in that county.**】**~~(deleted by amendment, P.L. , c. )~~  
18 (cf: P.L.1985, c.38, s.11)  
19

20 75. Section 18 of P.L.1985, c.38 (C.13:1E-153) is amended to  
21 read as follows:

22 18. The provisions of any other law, rule or regulation to the  
23 contrary notwithstanding, and as an alternative to any other procedure  
24 provided for by law **【**or by order of the Board of Public Utilities**】**, a  
25 contracting unit may enter into a contract with a vendor for the design,  
26 financing, construction, operation or maintenance, or any combination  
27 thereof, of a resource recovery facility, or for the provision of  
28 resource recovery services, pursuant to the provisions of **【**this  
29 amendatory and supplementary act**】** P.L.1985, c.38 (C.13:1E-136 et  
30 al.). Any contracting unit intending to enter into a contract with a  
31 vendor pursuant to the provisions of **【**this amendatory and  
32 supplementary act**】** P.L.1985, c.38 shall establish a contract file, which  
33 shall be open to members of the public for inspection at the offices of  
34 the contracting unit. Any contract entered into pursuant to the  
35 provisions of **【**this amendatory and supplementary act**】** P.L.1985, c.38  
36 may be awarded for a period not to exceed 40 years.  
37 (cf: P.L.1985, c.38, s.18)  
38

39 76. Section 23 of P.L.1985, c.38 (C.13:1E-158) is amended to  
40 read as follows:

41 23. **【**a.**】**A contracting unit shall submit any proposed contract  
42 negotiated with a qualified vendor pursuant to the provisions of **【**this  
43 act**】** P.L.1985, c.38 (C.13:1E-136 et al.) to the Division of Rate  
44 Counsel for review, and to the department**【**, the Board of Public  
45 Utilities,**】**and the Division of Local Government Services for review

1 and approval pursuant to the provisions of section **[24]** 25 through  
2 section 28 of **[this amendatory and supplementary act]** P.L.1985, c.38  
3 (C.13:1E-160 through 13:1E-163).  
4 (cf: P.L.1985, c.38, s.23)

5  
6 77. Section 24 of P.L.1985, c.38 (C.13:1E-159) is amended to read  
7 as follows:

8 24. Any contracting unit intending to submit a proposed contract  
9 to the department**[, the Board of Public Utilities,]**and the Division of  
10 Local Government Services for review and approval pursuant to the  
11 provisions of **[this amendatory and supplementary act]** section 25  
12 through section 28 of P.L.1985, c.38 (C.13:1E-160 through  
13 13:1E-163) shall notify the department, **[the Board of Public**  
14 **Utilities,]**the Division of Local Government Services, and the Division  
15 of Rate Counsel of its intention to submit its proposed contract for  
16 review and approval at least 10 days prior to the submission.  
17 (cf: P.L.1985, c.38, s.24)

18  
19 78. Section 25 of P.L.1985, c.38 (C.13:1E-160) is amended to  
20 read as follows:

21 25. The department, **[the Board of Public Utilities,]**the Division of  
22 Local Government Services, and the Division of Rate Counsel shall  
23 have 15 days from the date of receipt of a proposed contract submitted  
24 by a contracting unit for review and approval pursuant to the  
25 provisions of **[this amendatory and supplementary act]** P.L.1985, c.38  
26 (C.13:1E-136 et al.) to request the contracting unit to supply  
27 additional information or documentation concerning the proposed  
28 contract. The contracting unit shall provide written responses to these  
29 requests within 10 days of receipt of the request. Any supplemental  
30 requests for information shall be made within five days of receipt of  
31 the written responses to the initial requests. The contracting unit shall  
32 provide written responses to any supplemental requests within 10 days  
33 of receipt of the supplemental requests. The schedule may be modified  
34 by the mutual consent of the contracting unit and the department, the  
35 Division of Local Government Services, **[the Board of Public**  
36 **Utilities,]**or the Division of Rate Counsel, as the case may be.  
37 (cf: P.L.1985, c.38, s.25)

38  
39 79. Section 26 of P.L.1985, c.38 (C.13:1E-161) is amended to  
40 read as follows:

41 26. a. A contracting unit shall hold a public hearing on a proposed  
42 contract submitted to the department**[, the Board of Public Utilities]**  
43 and the Division of Local Government Services for review and  
44 approval pursuant to the provisions of **[this amendatory and**  
45 **supplementary act]** P.L.1985, c.38 (C.13:1E-136 et al.) no sooner

1 than 30 days nor later than 45 days following submission of the  
2 proposed contract for review and approval. This public hearing shall  
3 be held in the area to be served under the terms of the proposed  
4 contract.

5 b. The contracting unit shall provide at least 20 days' advance  
6 written notice of a public hearing to be held on a proposed contract  
7 pursuant to the provisions of this section to the department, [the  
8 Board of Public Utilities,]the Division of Local Government Services,  
9 the Division of Rate Counsel, the clerk of each municipality within the  
10 area to be served under the terms of the proposed contract, and to the  
11 county clerk of each county in whole or in part within the area to be  
12 served under the terms of the proposed contract.

13 c. A contracting unit shall provide advance notice to the public of  
14 a public hearing to be held on a proposed contract pursuant to the  
15 provisions of this section. This notice shall be published once a week  
16 for two consecutive weeks in at least one newspaper of general  
17 circulation in the area to be served under the terms of the proposed  
18 contract. The second notice shall be published at least 10 days prior to  
19 the date of the public hearing. These notices shall include the date,  
20 time and location of the public hearing, a general description of the  
21 proposed contract, and shall inform the public of the availability of  
22 copies of the proposed contract for inspection by any interested party  
23 at the offices of the contracting unit. Upon request, the contracting  
24 unit shall provide any interested party with a copy of the proposed  
25 contract at a cost not to exceed the actual cost of reproducing the  
26 proposed contract and any supporting documentation.

27 (cf: P.L.1985, c.38, s.26)

28  
29 80. Section 27 of P.L.1985, c.38 (C.13:1E-162) is amended to  
30 read as follows:

31 27. a. At the public hearing on the proposed contract held by the  
32 contracting unit pursuant to the provisions of section 26 of [this  
33 amendatory and supplementary act] P.L.1985, c.38 (C.13:1E-161) any  
34 interested party may present statements or questions concerning the  
35 terms and conditions of the proposed contract. Prior to the conclusion  
36 of the public hearing, the contracting unit shall respond to questions  
37 concerning the proposed contract raised by any interested party. The  
38 contracting unit shall provide that a verbatim record be kept of the  
39 public hearing. The record of the public hearing shall be kept open for  
40 a period of 15 days following the conclusion of the hearing, during  
41 which interested parties may submit written statements to be included  
42 in the hearing record. The contracting unit shall provide that a hearing  
43 report be printed, which shall include the verbatim record of the public  
44 hearing, written statements submitted by interested parties, and a  
45 statement prepared by the contracting unit summarizing the major  
46 issues raised at the public hearing and the contracting unit's specific

1 response to these issues. The contracting unit shall make copies of the  
2 transcript of the hearing report available to interested parties upon  
3 request at a cost not to exceed the actual cost of printing.

4 b. Within 45 days of the close of a public hearing on a proposed  
5 contract held pursuant to this section, the contracting unit shall submit  
6 a copy of the hearing report to the department, [the Board of Public  
7 Utilities,] the Division of Local Government Services, and the Division  
8 of Rate Counsel.

9 (cf: P.L.1985, c.38, s.27)

10  
11 81. Section 28 of P.L.1985, c.38 (C.13:1E-163) is amended to  
12 read as follows:

13 28. a. (1) Within 30 days of receipt of the hearing report  
14 submitted by a contracting unit pursuant to the provisions of  
15 subsection b. of section 27 of [this amendatory and supplementary  
16 act] P.L.1985, c.38 (C.13:1E-162), the department shall approve or  
17 conditionally approve the proposed contract submitted for review by  
18 the contracting unit pursuant to the provisions of [this amendatory and  
19 supplementary act] P.L.1985, c.38 (C.13:1E-136 et al.). The  
20 department shall approve the proposed contract if it finds that the  
21 terms of the proposed contract are consistent with the district solid  
22 waste management plan adopted pursuant to the provisions of the  
23 "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.)  
24 by the [solid waste] district or districts to be served under the terms  
25 of the proposed contract. If the department conditionally approves the  
26 proposed contract, it shall state in writing the revisions which must be  
27 made to the proposed contract to receive approval, and the contracting  
28 unit may prepare and submit to the department a revised proposed  
29 contract. If the department determines that the revisions are  
30 substantial, the contracting unit shall hold a public hearing on the  
31 revisions pursuant to the provisions of section 26 and section 27 of  
32 [this amendatory and supplementary act] P.L.1985, c.38  
33 (C.13:1E-161 and 13:1E-162). In the alternative, the district solid  
34 waste management plan or plans may be amended pursuant to law so  
35 as to be consistent with the terms of the proposed contract.

36 (2) In reviewing and approving the contract, the department shall  
37 not determine a rate base for, or otherwise regulate the tariffs or  
38 return of, the proposed resource recovery facility.

39 (3) Notwithstanding the provisions of paragraph (2) of this  
40 subsection, all parties to any contract may request the department to  
41 determine a rate base for the proposed resource recovery facility, in  
42 which case the department may make that determination and the terms  
43 of any contract so approved shall remain subject to the continuing  
44 jurisdiction of the department.

45 b. Within 30 days of receipt of the hearing report submitted by a  
46 contracting unit pursuant to the provisions of subsection b. of section

1 27 of **【this amendatory and supplementary act】** P.L.1985, c.38  
2 (C.13:1E-162), the Division of Local Government Services shall  
3 approve or conditionally approve the proposed contract submitted by  
4 the contracting unit pursuant to the provisions of **【this amendatory and**  
5 **supplementary act】** P.L.1985, c.38 (C.13:1E-136 et al.). The division  
6 shall approve the proposed contract if it finds in writing that the terms  
7 of the proposed contract are in compliance with the provisions of  
8 section 29 of **【this amendatory and supplementary act】** P.L.1985, c.38  
9 (C.13:1E-164), **【and】** that the terms of the proposed contract will  
10 result in the provision of services or facilities necessary for the health,  
11 safety, welfare, convenience or betterment of the recipients or users of  
12 these services or facilities, that the terms and provisions of the  
13 proposed contract are not unreasonable, exorbitant or impracticable,  
14 would not impose an undue and unnecessary financial burden on the  
15 citizens residing in or served by the contracting unit, and will not  
16 materially impair the ability of the contracting unit to punctually pay  
17 the principal and interest on its outstanding indebtedness and to supply  
18 other essential public improvements and services, except that the  
19 division, in its review of the proposed contract, shall be bound by any  
20 applicable findings or determinations of the Local Finance Board made  
21 pursuant to the provisions of subsection d. of N.J.S.40A:2-7 or section  
22 7 of P.L.1983, c.313 (C.40A:5A-7). If the division conditionally  
23 approves the proposed contract, it shall state in writing the revisions  
24 which must be made to the proposed contract to receive approval, and  
25 the contracting unit may prepare and submit to the division a revised  
26 proposed contract. If the division determines that revisions are  
27 substantial, the contracting unit shall hold a public hearing on the  
28 revisions pursuant to the provisions of section 26 and section 27 of  
29 **【this amendatory and supplementary act】** P.L.1985, c.38  
30 (C.13:1E-161 and 13:1E-162).

31 c. **【Within 30 days of receipt of the hearing report submitted by a**  
32 **contracting unit pursuant to the provisions of subsection b. of section**  
33 **27 of this amendatory and supplementary act, the Board of Public**  
34 **Utilities shall approve or conditionally approve the proposed contract**  
35 **submitted by the contracting unit pursuant to the provisions of this**  
36 **amendatory and supplementary act. The board shall approve the**  
37 **proposed contract if it finds in writing that the terms of the proposed**  
38 **contract are in the public interest. If the board conditionally approves**  
39 **the proposed contract it shall state in writing the revisions which must**  
40 **be made to the proposed contract to receive approval, and the**  
41 **contracting unit may prepare and submit to the board a revised**  
42 **proposed contract. If the board determines that the revisions are**  
43 **substantial, the contracting unit shall hold a public hearing on the**  
44 **revisions pursuant to the provisions of section 26 and section 27 of**  
45 **this amendatory and supplementary act. In reviewing and approving**  
46 **the contract, the Board of Public Utilities shall not determine a rate**

1 base for, or otherwise regulate the tariffs or return of, the proposed  
2 resource recovery facility. The board shall not, thereafter, conduct any  
3 further review of the contract. ~~](deleted by amendment, P.L. , c. )~~

4 d. **【**Notwithstanding the provisions of subsection c. of this section,  
5 all parties to any contract may request the board to determine a rate  
6 base for the proposed resource recovery facility, in which case the  
7 board may make that determination and the terms of any contract so  
8 approved shall remain subject to the continuing jurisdiction of the  
9 board. ~~](deleted by amendment, P.L. , c. )~~

10 (cf: P.L.1985, c.38, s.28)

11  
12 82. Section 30 of P.L.1985, c.38 (C.13:1E-165) is amended to  
13 read as follows:

14 30. Whenever the Division of Rate Counsel represents the public  
15 interest in a proceeding held pursuant to the provisions of **【**this  
16 amendatory and supplementary act**】** P.L.1985, c.38 (C.13:1E-136 et  
17 al.) to consider a proposed contract, the Director of the Division of  
18 Rate Counsel may assess the vendor pursuant to the provisions of this  
19 section. Whenever a contracting unit shall first submit a proposed  
20 contract to the department**【**, the Board of Public Utilities,**】**and the  
21 Division of Local Government Services for review and approval  
22 pursuant to the provisions of **【**this amendatory and supplementary act**】**  
23 P.L.1985, c.38 (C.13:1E-136 et al.), the vendor shall be assessed an  
24 amount equal to one-tenth of 1% of the estimated gross revenues of  
25 the resource recovery facility in the first year of its operation.  
26 Thereafter, the vendor shall be assessed in the manner provided for in  
27 section 20 of P.L.1974, c.27 (C.52:27E-19).

28 (cf: P.L.1985, c.38, s.30)

29  
30 83. Section 31 of P.L.1985, c.38 (C.13:1E-166) is amended to read  
31 as follows:

32 31. a. Any contracting unit which has issued a request for  
33 qualifications, a request for proposals, or both, as the case may be, or  
34 has initiated formal negotiations with a qualified vendor or two or  
35 more qualified vendors, within 30 days after **【**the effective date of this  
36 amendatory and supplementary act**】** February 4, 1985, may petition  
37 the department for an exemption from the provisions of section 19,  
38 section 20, and section 21 of **【**this amendatory and supplementary act**】**  
39 P.L.1985, c.38 (C.13:1E-154, 13:1E-155 and 13:1E-156). Upon  
40 receiving an exemption authorized pursuant to this subsection, a  
41 contracting unit may negotiate a proposed contract with a vendor  
42 pursuant to the provisions of section 22 of **【**this amendatory and  
43 supplementary act**】** P.L.1985, c.38 (C.13:1E-157, and shall submit the  
44 proposed contract for review and approval pursuant to the provisions  
45 of section 23 through section 28 of **【**this amendatory and



1 supplementary act] P.L.1985, c.38 (C.13:1E-158 through 13:1E-163).  
2 b. Any contracting unit which has negotiated a contract for  
3 resource recovery facilities or services with a vendor prior to [the  
4 effective date of this amendatory and supplementary act] February 4,  
5 1985, and has held a public hearing on the contract, may petition the  
6 department for an exemption from the provisions of section 19  
7 through section 27 of [this amendatory and supplementary act]  
8 P.L.1985, c.38 (C.13:1E-154 through 13:1E-162). Upon receiving an  
9 exemption authorized pursuant to this subsection, the contracting unit  
10 shall submit the contract to the department[, ]and the Division of  
11 Local Government Services[, and the Board of Public Utilities] for  
12 the review and approvals required pursuant to section 28 of [this  
13 amendatory and supplementary act] P.L.1985, c.38 (C.13:1E-163).  
14 The provisions of section 28 of [this amendatory and supplementary  
15 act] P.L.1985, c.38 (C.13:1E-163) to the contrary notwithstanding,  
16 the department[, ] and the Division of Local Government Services[,  
17 and the Board of Public Utilities] shall approve or conditionally  
18 approve a contract submitted for review pursuant to the provisions of  
19 this subsection within 60 days of the receipt of the contract. If the  
20 department[, ]or the Division of Local Government Services[, or the  
21 Board of Public Utilities] conditionally approves the proposed  
22 contract, the department[, ]or the Division of Local Government  
23 Services, [or the Board of Public Utilities,]as the case may be, shall  
24 state in writing the revisions which must be made to the proposed  
25 contract to receive approval, and the contracting unit may prepare and  
26 submit a revised proposed contract. If the department[, ]or the  
27 Division of Local Government Services, [or the Board of Public  
28 Utilities,]as the case may be, determines that the necessary revisions  
29 are substantial, the contracting unit shall hold a public hearing on the  
30 revisions.  
31 (cf: P.L.1985, c.38, s.31)  
32

33 84. Section 33 of P.L.1985, c.38 (C.13:1E-168) is amended to  
34 read as follows:

35 33. a. (1) The department may adopt, pursuant to the provisions  
36 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
37 et seq.), any rules and regulations necessary to implement the  
38 provisions of [this amendatory and supplementary act] P.L.1985, c.38  
39 (C.13:1E-136 et al.).

40 (2) The department shall adopt rules and regulations for the  
41 engineering design of resource recovery facilities, to include a  
42 requirement that state-of-the-art air emission technology be installed  
43 to control the emission of hydrocarbons, particulates, dioxins, nitrogen  
44 oxides, carbon monoxide, heavy metals, hydrochloric acid, sulfur  
45 oxides and other acid gases and pollutants from each resource

1 recovery facility which is expected to emit these pollutants.

2 b. **【The Board of Public Utilities may adopt, pursuant to the**  
3 provisions of the "Administrative Procedure Act," P.L.1968, c.410  
4 (C.52:14B-1 et seq.), any rules and regulations necessary to implement  
5 the provisions of this amendatory and supplementary act.】~~(deleted by~~  
6 ~~amendment, P.L. , c. )~~

7 c. The Division of Local Government Services may adopt, pursuant  
8 to the provisions of the "Administrative Procedure Act," P.L.1968,  
9 c.410 (C.52:14B-1 et seq.), any rules and regulations necessary to  
10 implement the provisions of **【this amendatory and supplementary act】**  
11 P.L.1985, c.38 (C.13:1E-136 et al.).  
12 (cf: P.L.1985, c.38, s.33)  
13

14 85. Section 5 of P.L.1985, c.368 (C.13:1E-173) is amended to  
15 read as follows:

16 5. a. The commissioner shall apply the criteria set forth in this  
17 section in determining the eligibility of owners and operators of  
18 sanitary landfill facilities for grants or loans to pay the closure costs of  
19 landfill closure projects. No owner or operator of a sanitary landfill  
20 facility shall be eligible for a grant or loan under **【this act】** P.L.1985,  
21 c.368 (C.13:1E-169 et seq.) prior to the submission for approval to  
22 the department of a financial plan for closure as required by section 8  
23 of **【this act】** P.L.1985, c.368 (C.13:1E-176).

24 b. Where **【the Board of Public Utilities has issued an order**  
25 **increasing】** the rates and charges for solid waste disposal on the  
26 relevant tariff **【filed with and approved by the board】** established  
27 pursuant to law for the solid waste disposal operations of a sanitary  
28 landfill facility have increased, and where this increase, or a portion  
29 thereof, is allocated specifically in the tariff for the closure costs of the  
30 sanitary landfill facility, and where the facility has accepted for final  
31 disposal out-of-State solid waste prior to October 1, 1984, any local  
32 government unit which is required to pay a portion of the closure costs  
33 through payment of rates or charges for disposal of solid waste at the  
34 facility shall be eligible to apply for a grant for the payment of a  
35 portion of the closure costs, to the extent that the closure costs would  
36 have been borne by the out-of-State solid waste generators who had  
37 previously, but no longer, utilized the facility.

38 c. Where the **【Board of Public Utilities has issued an order**  
39 **increasing】** the rates and charges for solid waste disposal on the  
40 relevant tariff **【filed with and approved by the board】** established  
41 pursuant to law for the solid waste disposal operations of a sanitary  
42 landfill facility have increased, and where this increase, or a portion  
43 thereof, is specifically allocated in the tariff for the closure costs of the  
44 facility, any local government unit which is required to pay any portion  
45 of the closure costs through the payment of rates or charges for

1 disposal of solid waste at the facility shall be eligible to apply for a  
2 loan for the payment of a portion of the closure costs.

3 d. Upon the final approval by the **【Board of Public Utilities】**  
4 department of increases in the solid waste disposal tariff with respect  
5 to a sanitary landfill facility, as set forth in this section, the **【board】**  
6 department shall file **【with】** and maintain in the department a copy of  
7 the order increasing the solid waste tariff, including the projected  
8 amounts thereof specifically allocated for closure costs to be generated  
9 from local government units required to pay a portion of the closure  
10 costs through the payment of rates or charges for the disposal of solid  
11 waste at the sanitary landfill facility and the proportionate amounts  
12 thereof specifically allocated for closure costs which would have been  
13 generated from the out-of-State solid waste generators who had  
14 previously, but no longer, utilized the facility.

15 e. Where **【the Board of Public Utilities has not issued】** an order  
16 increasing the rates or charges for solid waste disposal on the relevant  
17 tariff with respect to solid waste disposal operations of a sanitary  
18 landfill facility has not been issued, or, where the **【Board of Public**  
19 **Utilities】** department does not exercise rate setting jurisdiction or has  
20 denied a request for an order increasing the rates or charges for solid  
21 waste disposal on the relevant tariff with respect to solid waste  
22 disposal operations of a sanitary landfill facility, any owner or operator  
23 thereof shall be eligible to apply for a loan to pay closure costs of the  
24 sanitary landfill facility, if the commissioner determines that funds  
25 currently available in the escrow account established for the facility  
26 pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.), or otherwise  
27 legally available from the owner or operator thereof, are inadequate to  
28 cover the required closure costs for the sanitary landfill facility.  
29 (cf: P.L.1985, c.368, s.5)

30

31 86. Section 8 of P.L.1985, c.368 (C.13:1E-176) is amended to  
32 read as follows:

33 8. **【It】** The provisions of any other law, or of any rule or  
34 regulation adopted pursuant thereto, to the contrary notwithstanding,  
35 it shall remain the continuing responsibility of the owner or operator  
36 of every sanitary landfill facility to insure that the rates or charges  
37 received at the facility**【**, whether or not these rates or charges are  
38 subject to the jurisdiction of the Board of Public Utilities pursuant to  
39 P.L.1970, c.40 (C.48:13A-1 et seq.),**】** will provide sufficient revenues  
40 for all costs, including closure costs, likely to be incurred by the  
41 facility. In order to insure the integrity of financial planning for  
42 closure, the owner or operator of every sanitary landfill facility**【**,  
43 whether or not the rates or charges received by the facility are subject  
44 to the jurisdiction of the Board of Public Utilities,**】**shall submit for  
45 approval to the department **【and, where relevant, the board,】** a

1 financial plan addressing all aspects of closure. The owner or operator  
2 of every existing sanitary landfill facility for which a registration  
3 statement and engineering design have been filed with, and approved  
4 by, the department prior to June 1, 1985 shall submit a financial plan  
5 for closure **[within 180 days of the effective date of this act]** by May  
6 12, 1986, except that the department**[, or the board, as the case may**  
7 **be,]** may grant an extension **[of up to 180 days]** until November 12,  
8 1986, if sufficient reason exists to grant the extension. The owner or  
9 operator of every new sanitary landfill facility for which a registration  
10 statement and engineering statement have been filed with the  
11 department subsequent to June 1, 1985 shall submit for approval to the  
12 department **[and, where relevant, the board,]** a financial plan for  
13 closure prior to commencement of operations, except that the  
14 department**[, or the board, as the case may be,]** may grant an  
15 extension **[of up to 180 days]** until May 12, 1986, if sufficient reason  
16 exists to grant the extension.  
17 (cf: P.L.1985, c.368, s.8)

18

19 87. Section 3 of P.L.1989, c.236 (C.27:2-9) is amended to read as  
20 follows:

21 3. Any person awarded a contract by the Commissioner of  
22 Transportation for the construction, reconstruction or resurfacing of  
23 any State, county or municipal road, street or highway, or portion  
24 thereof, which contract requires the contractor to provide for the  
25 disposal of solid waste, shall have the right to renegotiate the contract  
26 to reflect any increase in solid waste disposal costs whenever:

27 a. the increase occurred as a result of compliance with an order  
28 issued by the Department of Environmental Protection**[, in**  
29 **conjunction with the Board of Public Utilities,]** directing the solid  
30 waste be disposed at a solid waste facility other than the facility  
31 previously utilized by the person to whom the contract has been  
32 awarded; or

33 b. the increase in solid waste disposal costs occurred as a result of  
34 lawful increases in the rates, fees or charges imposed on the disposal  
35 of solid waste at the solid waste facility utilized by the person to whom  
36 the contract has been awarded.

37 (cf: P.L.1989, c.236, s.3)

38

39 88. Section 6 of P.L.1973, c.330 (C.40:37A-103) is amended to  
40 read as follows:

41 6. Any solid waste facilities owned or operated by a county  
42 improvement authority pursuant to the provisions of this amendatory  
43 and supplementary act, shall be deemed a public utility and shall be  
44 subject to such rules and regulations as may be adopted by the **[Board**  
45 **of Public Utilities]** Department of Environmental Protection in

1 accordance with the provisions of the "Solid Waste Utility Control  
2 Act" (P.L.1970, c.40, C.48:13A-1 et seq.). The improvement  
3 authority's application to operate any solid waste facility shall be  
4 considered at a public hearing by the **【Board of Public Utilities】**  
5 Department of Environmental Protection.  
6 (cf: P.L.1991, c.381, s.46)

7  
8 89. Section 2 of P.L.1991, c.170 (C.40:66-5.2) is amended to read  
9 as follows:

10 2. a. The provisions of any other law, rule or regulation to the  
11 contrary notwithstanding, the governing body of any municipality may  
12 request that every solid waste collector engaging in private solid waste  
13 collection services within the municipality who is registered pursuant  
14 to sections 4 and 5 of P.L.1970, c.39 (C.13:1E-4 and 13:1E-5) and  
15 holds a certificate of public convenience and necessity pursuant to  
16 sections 7 and 10 of P.L.1970, c.40 (C.48:13A-6 and 48:13A-9)  
17 provide all responsible solid waste generators with the opportunity to  
18 contract for, on an individual basis, regular solid waste collection  
19 services, if the responsible solid waste generator is required to do so  
20 by a proof of service ordinance adopted pursuant to section 1 of  
21 P.L.1991, c.170 (C.40:66-5.1).

22 b. The governing body of any municipality may request any solid  
23 waste collector engaging in private solid waste collection services  
24 within the municipality to assist the municipality in identifying those  
25 responsible solid waste generators who fail to comply with the  
26 provisions of section 1 of P.L.1991, c.170 (C.40:66-5.1).

27 c. Whenever the governing body adopts a proof of service  
28 ordinance pursuant to section 1 of P.L.1991, c.170 (C.40:66-5.1), or  
29 requests a solid waste collector to provide all responsible solid waste  
30 generators with the opportunity to contract for regular solid waste  
31 collection services pursuant to subsection a. of this section, the  
32 governing body shall notify the **【Board of Public Utilities】** Department  
33 of Environmental Protection of these actions by certified mail.

34 d. In the event that a solid waste collector refuses any request to  
35 provide responsible solid waste generators with the opportunity to  
36 contract for regular solid waste collection services pursuant to  
37 subsection a. of this section, the governing body shall notify the  
38 **【Board of Public Utilities】** Department of Environmental Protection  
39 of this refusal by certified mail.

40 e. Whenever the governing body of a municipality adopts a proof  
41 of service ordinance pursuant to section 1 of P.L.1991, c.170  
42 (C.40:66-5.1), the governing body shall notify the owner or operator  
43 of every solid waste facility utilized by the municipality of this action  
44 by certified mail.

45 (cf: P.L.1991, c.170, s.2)

- 1       90. N.J.S.40A:2-22 is amended to read as follows:
- 2       40A:2-22. The governing body of the local unit shall determine the
- 3       period of usefulness of any purpose according to its reasonable life
- 4       computed from the date of the bonds, which period shall not be
- 5       greater than the following:
- 6       a. Buildings and structures.
- 7       1. Bridges, including retaining walls and approaches, or permanent
- 8       structures of brick, stone, concrete or metal, or similar durable
- 9       construction, 30 years.
- 10      2. Buildings, including the original furnishings and equipment
- 11      therefor:
- 12      Class A: A building, of which all walls, floors, partitions, stairs and
- 13      roof are wholly of incombustible material, except the window frames,
- 14      doors, top flooring and wooden handrails on the stairs, 40 years;
- 15      Class B: A building, the outer walls of which are wholly of
- 16      incombustible material, except the window frames and doors, 30 years;
- 17      Class C: A building which does not meet the requirements of Class
- 18      A or Class B, 20 years.
- 19      3. Buildings or structures acquired substantially reconstructed or
- 20      additions thereto, one-half the period fixed in this subsection for such
- 21      buildings or structures.
- 22      4. Additional furnishings, five years.
- 23      b. Marine improvements.
- 24      1. Harbor improvements, docks or marine terminals, 40 years.
- 25      2. Dikes, bulkheads, jetties or similar devices of stone, concrete or
- 26      metal, 15 years; of wood or partly of wood, 10 years.
- 27      c. Additional equipment and machinery.
- 28      1. Additional or replacement equipment and machinery, 15 years.
- 29      2. Voting machines, 15 years.
- 30      d. Real property.
- 31      1. Acquisition for any public purpose of lands or riparian rights, or
- 32      both, and the original dredging, grading, draining or planting thereof,
- 33      40 years.
- 34      2. Improvement of airport, cemetery, golf course, park,
- 35      playground, 15 years.
- 36      3. Stadia of concrete or other incombustible materials, 20 years.
- 37      e. Streets or thoroughfares.
- 38      1. Elimination of grade crossings, 35 years.
- 39      2. Streets or roads:
- 40      Class A: Rigid pavement. A pavement of not less than eight inches
- 41      of cement concrete or a six-inch cement concrete base with not less
- 42      than three-inch bituminous concrete surface course, or equivalent
- 43      wearing surface, 20 years.
- 44      Flexible pavement. A pavement not less than 10 inches in depth
- 45      consisting of five-inch macadam base, three-inch modified penetration
- 46      macadam and three-inch bituminous concrete surface course or other

1 pavements of equivalent strength, in accordance with the findings of  
2 the American Association of State Highway Officials (AASHO) Road  
3 Test, 20 years.

4 Class B: Mixed surface-treated road. An eight-inch surface of  
5 gravel, stone or other selected material under partial control mixed  
6 with cement or lime and fly ash, six inches in compacted thickness with  
7 bituminous surface treatment and cover, 10 years.

8 Bituminous penetration road. A five-inch gravel or stone base  
9 course and a three-inch course bound with a bituminous or equivalent  
10 binder, 10 years. Class C: Mixed bituminous road. An eight-inch  
11 surface of gravel, stone, or other selected material under partial  
12 control mixed with bituminous material one inch or more in compacted  
13 thickness, five years.

14 Penetration macadam road. A road of sand, gravel or water-bound  
15 macadam, or surfacing with penetration macadam, five years.

16 3. Sidewalks, curbs and gutters of stone, concrete or brick, 10  
17 years.

18 The period of usefulness in this subsection shall apply to  
19 construction and reconstruction of streets and thoroughfares.

20 f. Utilities and municipal systems.

21 1. Sewerage system, whether sanitary or storm water, water supply  
22 or distribution system, 40 years.

23 2. Electric light, power or gas systems, garbage, refuse or ashes  
24 incinerator or disposal plant, 25 years.

25 3. Communication and signal systems, 10 years.

26 4. House connections to publicly-owned gas, water or sewerage  
27 systems from the service main in the street to the curb or property  
28 lines where not part of original installation, five years.

29 g. Vehicles and apparatus.

30 1. Fire engines, apparatus and equipment, when purchased new,  
31 but not fire equipment purchased separately, 10 years.

32 2. Automotive vehicles, including original apparatus and equipment  
33 (other than passenger cars and stationwagons), when purchased new,  
34 five years.

35 3. Major repairs, reconditioning or overhaul of fire engines and  
36 apparatus, which may reasonably be expected to extend for at least  
37 five years the period of usefulness thereof, five years.

38 h. The closure of a sanitary landfill facility utilized, owned or  
39 operated by a county or municipality, 15 years; provided that the  
40 closure has been approved by the [Board of Public Utilities and the]  
41 Department of Environmental Protection. For the purposes of this  
42 subsection "closure" means all activities associated with the design,  
43 purchase or construction of all measures required by the Department  
44 of Environmental Protection, pursuant to law, in order to prevent,  
45 minimize or monitor pollution or health hazards resulting from sanitary  
46 landfill facilities subsequent to the termination of operations at any

1 portion thereof, including, but not necessarily limited to, the costs of  
2 the placement of earthen or vegetative cover, and the installation of  
3 methane gas vents or monitors and leachate monitoring wells or  
4 collection systems at the site of any sanitary landfill facility.

5 i. Any purpose, except vehicles, not included in the foregoing, for  
6 which obligations may be issued, 15 years.

7 (cf: P.L.1985, c.153, s.2)

8  
9 91. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to  
10 read as follows:

11 15. Duration of certain contracts. All purchases, contracts or  
12 agreements for the performing of work or the furnishing of materials,  
13 supplies or services shall be made for a period not to exceed 12  
14 consecutive months, except that contracts or agreements may be  
15 entered into for longer periods of time as follows:

16 (1) Supplying of:

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

19 (b) Fuel or oil for use of airplanes, automobiles, motor vehicles or  
20 equipment for any term not exceeding in the aggregate, two years;

21 (c) Thermal energy produced by a cogeneration facility, for use for  
22 heating or air conditioning or both, for any term not exceeding 40  
23 years, when the contract is approved by the **Board of Public Utilities]**  
24 Division of Energy Planning and Conservation in the Public Utility  
25 Commission. For the purposes of this paragraph, "cogeneration"  
26 means the simultaneous production in one facility of electric power  
27 and other forms of useful energy such as heating or process steam;

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

29 (3) The collection **[and]** , recycling, or disposal of municipal solid  
30 waste, or the disposal of sewage sludge, for any term not exceeding in  
31 the aggregate, five years;

32 (4) The collection and recycling of methane gas from a sanitary  
33 landfill facility, for any term not exceeding 25 years, when such  
34 contract is in conformance with a district solid waste management plan  
35 approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the  
36 approval of the Division of Local Government Services and the  
37 Department of Environmental Protection. The contracting unit shall  
38 award the contract to the highest responsible bidder, notwithstanding  
39 that the contract price may be in excess of the amount of any  
40 necessarily related administrative expenses; except that if the contract  
41 requires the contracting unit to expend funds only, the contracting unit  
42 shall award the contract to the lowest responsible bidder. The  
43 approval by the Division of Local Government Services of public  
44 bidding requirements shall not be required for those contracts  
45 exempted therefrom pursuant to section 5 of P.L.1971, c.198  
46 (C.40A:11-5);



- 1 (5) Data processing service, for any term of not more than three  
2 years;
- 3 (6) Insurance, for any term of not more than three years;
- 4 (7) Leasing or servicing of automobiles, motor vehicles, machinery  
5 and equipment of every nature and kind, for a period not to exceed  
6 three years; provided, however, such contracts shall be entered into  
7 only subject to and in accordance with the rules and regulations  
8 promulgated by the Director of the Division of Local Government  
9 Services of the Department of Community Affairs;
- 10 (8) The supplying of any product or the rendering of any service  
11 by a telephone company which is subject to the jurisdiction of the  
12 Board of Public ~~Utilities~~ Utility Commissioners for a term not  
13 exceeding five years;
- 14 (9) Any single project for the construction, reconstruction or  
15 rehabilitation of any public building, structure or facility, or any public  
16 works project, including the retention of the services of any architect  
17 or engineer in connection therewith, for the length of time authorized  
18 and necessary for the completion of the actual construction;
- 19 (10) The providing of food services for any term not exceeding  
20 three years;
- 21 (11) On-site inspections undertaken by private agencies pursuant  
22 to the "State Uniform Construction Code Act" (P.L.1975, c.217;  
23 C.52:27D-119 et seq.) for any term of not more than three years;
- 24 (12) The performance of work or services or the furnishing of  
25 materials or supplies for the purpose of conserving energy in buildings  
26 owned by, or operations conducted by, the contracting unit, the entire  
27 price of which to be established as a percentage of the resultant  
28 savings in energy costs, for a term not to exceed 10 years; provided,  
29 however, that such contracts shall be entered into only subject to and  
30 in accordance with rules and regulations ~~promulgated~~ adopted by  
31 the ~~Department of Energy~~ Division of Energy Planning and  
32 Conservation in the Public Utility Commission, establishing a  
33 methodology for computing energy cost savings;
- 34 (13) The performance of work or services or the furnishing of  
35 materials or supplies for the purpose of elevator maintenance for any  
36 term not exceeding three years;
- 37 (14) Leasing or servicing of electronic communications equipment  
38 for a period not to exceed five years; provided, however, such contract  
39 shall be entered into only subject to and in accordance with the rules  
40 and regulations promulgated by the Director of the Division of Local  
41 Government Services of the Department of Community Affairs;
- 42 (15) Leasing of motor vehicles, machinery and other equipment  
43 primarily used to fight fires, for a term not to exceed seven years,  
44 when the contract includes an option to purchase, subject to and in  
45 accordance with rules and regulations promulgated by the Director of  
46 the Division of Local Government Services of the Department of

1 Community Affairs;

2 (16) The provision of water supply services or the designing,  
3 financing, construction, operation, or maintenance, or any combination  
4 thereof, of a water supply facility, or any component part or parts  
5 thereof, including a water filtration system, for a period not to exceed  
6 40 years, when the contract for these services is approved by the  
7 Division of Local Government Services in the Department of  
8 Community Affairs, the Board of Public **【Utilities】** Utility  
9 Commissioners, and the Department of Environmental Protection  
10 pursuant to P.L.1985, c.37 (C.58:26-1 et seq.). For the purposes of  
11 this subsection, "water supply services" means any service provided by  
12 a water supply facility; "water filtration system" means any equipment,  
13 plants, structures, machinery, apparatus, or land, or any combination  
14 thereof, acquired, used, constructed, rehabilitated, or operated for the  
15 collection, impoundment, storage, improvement, filtration, or other  
16 treatment of drinking water for the purposes of purifying and  
17 enhancing water quality and insuring its potability prior to the  
18 distribution of the drinking water to the general public for human  
19 consumption, including plants and works, and other personal property  
20 and appurtenances necessary for their use or operation; and "water  
21 supply facility" means and refers to the real property and the plants,  
22 structures, interconnections between existing water supply facilities,  
23 machinery and equipment and other property, real, personal and  
24 mixed, acquired, constructed or operated, or to be acquired,  
25 constructed or operated, in whole or in part by or on behalf of a  
26 political subdivision of the State or any agency thereof, for the  
27 purpose of augmenting the natural water resources of the State and  
28 making available an increased supply of water for all uses, or of  
29 conserving existing water resources, and any and all appurtenances  
30 necessary, useful or convenient for the collecting, impounding, storing,  
31 improving, treating, filtering, conserving or transmitting of water and  
32 for the preservation and protection of these resources and facilities and  
33 providing for the conservation and development of future water supply  
34 resources;

35 (17) The provision of solid waste disposal services by a resource  
36 recovery facility, the furnishing of products of a resource recovery  
37 facility, the disposal of the solid waste delivered for disposal which  
38 cannot be processed by a resource recovery facility or the waste  
39 products resulting from the operation of a resource recovery facility,  
40 including hazardous waste and recovered metals and other materials  
41 for reuse, or the design, financing, construction, operation or  
42 maintenance of a resource recovery facility for a period not to exceed  
43 40 years when the contract is approved by the Division of Local  
44 Government Services in the Department of Community Affairs**【**, the  
45 Board of Public Utilities,**】**and the Department of Environmental  
46 Protection; and when the resource recovery facility is in conformance

1 with a district solid waste management plan approved pursuant to  
2 P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of this  
3 subsection, "resource recovery facility" means a solid waste facility  
4 constructed and operated for the incineration of solid waste for energy  
5 production and the recovery of metals and other materials for reuse;  
6 or a mechanized composting facility, or any other solid waste facility  
7 constructed or operated for the collection, separation, recycling, and  
8 recovery of metals, glass, paper, and other materials for reuse or for  
9 energy production;

10 (18) The sale of electricity or thermal energy, or both, produced by  
11 a resource recovery facility for a period not to exceed 40 years when  
12 the contract is approved by the Board of Public **【Utilities】** Utility  
13 Commissioners, and when the resource recovery facility is in  
14 conformance with a district solid waste management plan approved  
15 pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of  
16 this subsection, "resource recovery facility" means a solid waste  
17 facility constructed and operated for the incineration of solid waste for  
18 energy production and the recovery of metals and other materials for  
19 reuse; or a mechanized composting facility, or any other solid waste  
20 facility constructed or operated for the collection, separation,  
21 recycling, and recovery of metals, glass, paper, and other materials for  
22 reuse or for energy production;

23 (19) The provision of wastewater treatment services or the  
24 designing, financing, construction, operation, or maintenance, or any  
25 combination thereof, of a wastewater treatment system, or any  
26 component part or parts thereof, for a period not to exceed 40 years,  
27 when the contract for these services is approved by the Division of  
28 Local Government Services in the Department of Community Affairs  
29 and the Department of Environmental Protection pursuant to  
30 P.L.1985, c.72 (C.58:27-1 et seq.). For the purposes of this  
31 subsection, "wastewater treatment services" means any service  
32 provided by a wastewater treatment system, and "wastewater  
33 treatment system" means equipment, plants, structures, machinery,  
34 apparatus, or land, or any combination thereof, acquired, used,  
35 constructed, or operated for the storage, collection, reduction,  
36 recycling, reclamation, disposal, separation, or other treatment of  
37 wastewater or sewage sludge, or for the final disposal of residues  
38 resulting from the treatment of wastewater, including, but not limited  
39 to, pumping and ventilating stations, facilities, plants and works,  
40 connections, outfall sewers, interceptors, trunk lines, and other  
41 personal property and appurtenances necessary for their operation;

42 (20) The supplying of materials or services for the purpose of  
43 lighting public streets, for a term not to exceed five years, provided  
44 that the rates, fares, tariffs or charges for the supplying of electricity  
45 for that purpose are approved by the Board of Public **【Utilities】** Utility  
46 Commissioners;

1 (21) In the case of a contracting unit which is a county or  
2 municipality, the provision of emergency medical services by a hospital  
3 to residents of a municipality or county as appropriate for a term not  
4 to exceed five years;

5 (22) Towing and storage contracts, awarded pursuant to paragraph  
6 u. of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) for  
7 any term not exceeding three years;

8 (23) Fuel for the purpose of generating electricity for a term not to  
9 exceed eight years;

10 (24) The purchase of electricity or administrative or dispatching  
11 services related to the transmission of such electricity, from a public  
12 utility company subject to the jurisdiction of the Board of Public  
13 **【Utilities】** Utility Commissioners, a similar regulatory body of another  
14 state, or a federal regulatory agency, or from a qualifying small power  
15 producing facility or qualifying cogeneration facility, as defined by 16  
16 U.S.C. §796, by a contracting unit engaged in the generation of  
17 electricity for retail sale, as of the date of this amendatory act, for a  
18 term not to exceed 40 years;

19 (25) Basic life support services, for a period not to exceed five  
20 years. For the purposes of this subsection, "basic life support" means  
21 a basic level of prehospital care, which includes but need not be limited  
22 to patient stabilization, airway clearance, cardiopulmonary  
23 resuscitation, hemorrhage control, initial wound care and fracture  
24 stabilization;

25 (26) Claims administration services, for any term not to exceed  
26 three years;

27 (27) The provision of transportation services to elderly, disabled  
28 or indigent persons for any term of not more than three years. For the  
29 purposes of this subsection, "elderly persons" means persons who are  
30 60 years of age or older. "Disabled persons" means persons of any age  
31 who, by reason of illness, injury, age, congenital malfunction, or other  
32 permanent or temporary incapacity or disability, are unable, without  
33 special facilities or special planning or design to utilize mass  
34 transportation facilities and services as effectively as persons who are  
35 not so affected. "Indigent persons" means persons of any age whose  
36 income does not exceed 100 percent of the poverty level, adjusted for  
37 family size, established and adjusted under section 673(2) of subtitle  
38 B, the "Community Services Block Grant Act," Pub.L.97-35 (42  
39 U.S.C. §9902 (2));

40 (28) The supplying of liquid oxygen or other chemicals, for a term  
41 not to exceed five years, when the contract includes the installation of  
42 tanks or other storage facilities by the supplier, on or near the  
43 premises of the contracting unit.

44 All multi-year leases and contracts entered into pursuant to this  
45 section, except contracts for the leasing or servicing of equipment  
46 supplied by a telephone company which is subject to the jurisdiction

1 of the Board of Public **【Utilities】** Utility Commissioners, contracts  
2 involving the supplying of electricity for the purpose of lighting public  
3 streets and contracts for thermal energy authorized pursuant to  
4 subsection (1) above, construction contracts authorized pursuant to  
5 subsection (9) above, contracts and agreements for the provision of  
6 work or the supplying of equipment to promote energy conservation  
7 authorized pursuant to subsection (12) above, contracts for water  
8 supply services or for a water supply facility, or any component part  
9 or parts thereof authorized pursuant to subsection (16) above,  
10 contracts for resource recovery services or a resource recovery facility  
11 authorized pursuant to subsection (17) above, contracts for the sale of  
12 energy produced by a resource recovery facility authorized pursuant  
13 to subsection (18) above, contracts for wastewater treatment services  
14 or for a wastewater treatment system or any component part or parts  
15 thereof authorized pursuant to subsection (19) above, contracts for the  
16 purchase of electricity or administrative or dispatching services related  
17 to the transmission of such electricity authorized pursuant to  
18 subsection (24) above, shall contain a clause making them subject to  
19 the availability and appropriation annually of sufficient funds as may  
20 be required to meet the extended obligation, or contain an annual  
21 cancellation clause.

22 The Division of Local Government Services shall adopt and  
23 promulgate rules and regulations concerning the methods of  
24 accounting for all contracts that do not coincide with the fiscal year.  
25 (cf: P.L.1991, c.451, s.1)

26

27 92. Section 1 of P.L.1989, c.236 (C.40A:11-16.5) is amended to  
28 read as follows:

29 1. Any person entering into a contract with a contracting unit  
30 pursuant to the provisions of P.L.1971, c.198 (C.40A:11-1 et seq.),  
31 which contract requires the contractor to provide for the disposal of  
32 solid waste, shall have the right to renegotiate the contract to reflect  
33 any increase in solid waste disposal costs whenever:

34 a. the increase occurred as a result of compliance with an order  
35 issued by the Department of Environmental Protection~~],~~ in  
36 conjunction with the Board of Public Utilities,~~]~~ directing the solid  
37 waste be disposed at a solid waste facility other than the facility  
38 previously utilized by the person to whom the contract has been  
39 awarded; or

40 b. the increase in solid waste disposal costs occurred as a result of  
41 lawful increases in the rates, fees or charges imposed on the disposal  
42 of solid waste at the solid waste facility utilized by the person to whom  
43 the contract has been awarded.

44 (cf: P.L.1989, c.236, s.1)

45

46 93. Section 2 of P.L.1989, c.236, (C.52:34-13.1) is amended to

1 read as follows:

2 2. Any person entering into a contract with the State pursuant to  
3 the provisions of P.L.1954, c.48 (C.52:34-6 et seq.), or with an  
4 independent State authority, which contract requires the contractor to  
5 provide for the disposal of solid waste, shall have the right to  
6 renegotiate the contract to reflect any increase in solid waste disposal  
7 costs whenever:

8 a. the increase occurred as a result of compliance with an order  
9 issued by the Department of Environmental Protection[, in  
10 conjunction with the Board of Public Utilities,] directing the solid  
11 waste be disposed at a solid waste facility other than the facility  
12 previously utilized by the person to whom the contract has been  
13 awarded; or

14 b. the increase in solid waste disposal costs occurred as a result of  
15 lawful increases in the rates, fees or charges imposed on the disposal  
16 of solid waste at the solid waste facility utilized by the person to whom  
17 the contract has been awarded.

18 For the purposes of this section, "independent State authority"  
19 means an authority, board, bureau, office, commission, committee,  
20 council, instrumentality or agency of the State, which is a public body  
21 corporate and politic established pursuant to law, having the power to  
22 sue and be sued and to issue bonds, but shall not include the New  
23 Jersey Transit Corporation established pursuant to P.L.1979, c.150  
24 (C.27:25-1 et seq.).  
25 (cf: P.L.1989, c.236, s.2)

26

27 94. Section 3 of P.L.1977, c.146 (C.52:27F-3) is amended to read  
28 as follows:

29 3. As used in this act:

30 [a. "Commissioner" means the Commissioner of the Department  
31 of Energy;

32 b. "Department" means the Department of Energy established by  
33 this act;

34 c.] "Administrator" means the administrator and chief executive  
35 officer of the Public Utility Commission;

36 "Director" means the director of the Division of Energy Planning  
37 and Conservation in the Public Utility Commission;

38 "Distributor" means and includes each person, wherever resident or  
39 located, who imports into this State fuels for use, distribution, storage,  
40 or sale in this State after the same shall reach this State; and also each  
41 person who produces, refines, manufactures, blends, or compounds  
42 fuels and sells, uses, stores, or distributes the same within this State.  
43 In no case, however, shall a retail dealer be construed to be a  
44 distributor;

45 [d.] "Division" means the Division of Energy Planning and  
46 Conservation in the Public Utility Commission;

1 "Energy" means all power derived from, or generated by, any  
2 natural or man-made agent, including, but not limited to, petroleum  
3 products, gases, solar radiation, atomic fission or fusion, mineral  
4 formations, thermal gradients, wind, or water.

5 **[e.]**"Energy facility" means any plant or operation which produces,  
6 converts, distributes or stores energy or converts one form of energy  
7 to another; in no case, however, shall an operation conducted by a  
8 person acting only as a retail dealer be construed as an energy facility;

9 **[f.]**"Energy information" means any statistic, datum, fact, or item  
10 of knowledge and all combinations thereof relating to energy;

11 **[g.]** "Energy information system" means the composite of energy  
12 information collected by the office;

13 **[h.]** "Energy industry" means any person, company, corporation,  
14 business, institution, establishment or other organization of any nature  
15 engaged in the exploration, extraction, transportation, transmission,  
16 refining, processing, generation, distribution, sale or storage of energy;

17 **[i.]**"Fuel" means coal, petroleum products, gases and nuclear fuel,  
18 including enriched uranium, U235 and U238, and plutonium, U239;

19 **[j.]** "Gases" means natural gas, methane, liquefied natural gas,  
20 synthetic natural gas, coal gas and other manufactured gases;

21 **[k.]** "Person" means natural persons, partnerships, firms,  
22 associations, joint stock companies, syndicates and corporations, and  
23 any receiver, trustee, conservator or other officer appointed pursuant  
24 to law or by any court, State or Federal; "person" also means the State  
25 of New Jersey, counties, municipalities, authorities, other political  
26 subdivisions, and all departments and agencies within the  
27 aforementioned governmental entities;

28 **[l.]** "Petroleum products" means and includes motor gasoline,  
29 middle distillate oils, residual fuel oils, aviation fuel, propane, butane,  
30 natural gasoline, naphtha, gas oils, lubricating oils and any other  
31 similar or dissimilar liquid hydrocarbons;

32 **[m.]** "Public building" means any building, structure, facility or  
33 complex used by the general public, including, but not limited to,  
34 theaters, concert halls, auditoriums, museums, schools, libraries,  
35 recreation facilities, public transportation terminals and stations,  
36 factories, office buildings, business establishments, passenger vehicle  
37 service stations, shopping centers, hotels or motels and public eating  
38 places, owned by any State, county or municipal government agency  
39 or instrumentality or any private individual, partnership, association or  
40 corporation;

41 **[n.]** "Purchase" means and includes, in addition to its ordinary  
42 meaning, any acquisition of ownership or possession, including, but  
43 not limited to, condemnation by eminent domain proceedings;

44 **[o.]**"Retail dealer" means any person who engages in the business  
45 of selling fuels from a fixed location such as a service station, filling

1 station, store, or garage directly to the ultimate users of said fuel;

2 **【p.】**"Sale" means and includes, in addition to its ordinary meaning,  
3 any exchange, gift, theft, or other disposition. In such case where  
4 fuels are exchanged, given, stolen, or otherwise disposed of, they shall  
5 be deemed to have been sold;

6 **【q.】** "Supplier of fuel" means any refiner, importer, marketer,  
7 jobber, distributor, terminal operator, firm, corporation, wholesaler,  
8 broker, cooperative or other person who supplies, sells, consigns,  
9 transfers, or otherwise furnishes fuel. In no case, however, shall a  
10 retail dealer be construed to be a supplier of fuel;

11 **【r.】**"Trade secret" means the whole or any portion or phase of any  
12 scientific, technical or otherwise proprietary information, design,  
13 process, procedure, formula or improvement which is used in one's  
14 business and is secret and of value; and a trade secret shall be  
15 presumed to be secret when the owner takes measures to prevent it  
16 from becoming available to persons other than those selected by the  
17 owner to have access thereto for limited purposes;

18 **【s.】** "Wholesale dealer" means any person who engages in the  
19 business of selling fuels to other persons who resell the said fuel. In no  
20 case shall a retail dealer be considered as a wholesale dealer.

21 **【t.】** "Cogeneration" means the simultaneous production in one  
22 facility of electric power and other useful forms of energy such as  
23 heating or process steam.

24 (cf: P.L.1978, c.80, s.1)

25

26 95. Section 9 of P.L.1977, c.146 (C.52:27F-11) is amended to read  
27 as follows:

28 9. The **【commissioner】** director shall**【, on behalf of the department**  
29 **through the Division of Energy Planning and Conservation】**:

30 a. Manage the **【department】** division as the central repository  
31 within the State Government for the collection of energy information;

32 b. Collect and analyze data relating to present and future demands  
33 and resources for all forms of energy;

34 c. Have authority to require all persons, firms, corporations or  
35 other entities engaged in the production, processing, distribution,  
36 transmission or storage of energy in any form or in the use of steam in  
37 quantities greater than 50,000 pounds per hour to submit reports  
38 setting forth such information as shall be required to carry out the  
39 provisions of this act;

40 d. Have authority to require any person to submit information  
41 necessary for determining the impact of any construction or  
42 development project on the energy and fuel resources of this State;

43 e. **【Charge】** Cooperate with other State Government departments  
44 and agencies involved in energy-related activities, including the Board  
45 of Public **【Utilities, with specific information gathering goals and**



1 require that said goals be fulfilled] Utility Commissioners, in gathering  
2 energy information;

3 f. Establish an energy information system which will provide all  
4 data necessary to insure a fair and equitable distribution of available  
5 energy, to permit a more efficient and effective use of available energy,  
6 and to provide the basis for long-term planning related to energy  
7 needs;

8 g. Design, implement, and enforce a program for the conservation  
9 of energy in commercial, industrial, and residential facilities, which  
10 program shall provide for the evaluation of energy systems as they  
11 relate to lighting, heating, refrigeration, air-conditioning, building  
12 design and operation, elective cogeneration and process steam  
13 production associated with cogeneration facilities, and appliance  
14 manufacturing and operation; and may include, but shall not be limited  
15 to, the requiring of an annual inspection and adjustment, if necessary,  
16 of oil-fired heating systems in residential, commercial and industrial  
17 buildings so as to bring such systems into conformity with efficiency  
18 standards therefor prescribed by the department; the setting of lighting  
19 efficiency standards for public buildings; the establishment of  
20 mandatory thermostat settings and the use of seven-day, day-night  
21 thermostats in public buildings; the development of standards for  
22 efficient boiler operation; consider the establishment of cogeneration  
23 facilities to simultaneously produce electricity and steam to conserve  
24 fuel; and, the preparation of a plan to insure the phased retrofitting of  
25 existing gas furnaces with electric ignition systems and to require that  
26 new gas ranges and dryers be equipped with electric ignition systems,  
27 and new gas furnaces with electric ignition systems and automatic  
28 vent-dampers;

29 h. Conduct and supervise a State-wide program of education  
30 including the preparation and distribution of information relating to  
31 energy conservation;

32 i. Monitor prices charged for energy within the State, evaluate  
33 policies governing the establishment of rates and prices for energy, and  
34 make recommendations for necessary changes in such policies to other  
35 concerned Federal and State agencies, including the Board of Public  
36 **[Utilities]** Utility Commissioners, and to the Legislature;

37 j. Have authority to conduct and supervise research projects and  
38 programs for the purpose of increasing the efficiency of energy use,  
39 developing new sources of energy, evaluating energy conservation  
40 measures, and meeting other goals consistent with the intent of this  
41 act;

42 k. Have authority to distribute and expend funds made available for  
43 the purpose of research projects and programs;

44 l. Have authority to enter into interstate compacts in order to carry  
45 out energy research and planning with other states or the Federal  
46 Government where appropriate;

- 1       m. Have authority to apply for, accept, and expand grants-in-aid  
2       and assistance from private and public sources for energy programs;  
3       notwithstanding any other law to the contrary, the **【commissioner】**  
4       director is designated as the State official to apply for, receive, and  
5       expend Federal and other funding made available to the State for the  
6       purposes of this act;
- 7       n. Require the annual submission of energy utilization reports and  
8       conservation plans by State Government departments and agencies,  
9       including the Board of Public **【Utilities】** Utility Commissioners,  
10      evaluate said plans and the progress of the departments and agencies  
11      in meeting these plans, and order changes in the plans or improvement  
12      in meeting the goals of the plans;
- 13      o. Carry out all duties given **【him】** the director under other  
14      sections of this act or any other acts;
- 15      p. Have authority to conduct hearings and investigations in order  
16      to carry out the purposes of this act and to issue subpoenas in  
17      furtherance of such power. Said power to conduct investigations shall  
18      include, but not be limited to, the authority to enter without delay and  
19      at reasonable times the premises of any energy industry in order to  
20      obtain or verify any information necessary for carrying out the  
21      purposes of this act;
- 22      q. Have authority to adopt, amend or repeal, pursuant to the  
23      "Administrative Procedure Act" (C.52:14B-1 et seq.) such rules and  
24      regulations necessary and proper to carry out the purposes of this act;
- 25      r. Administer such Federal energy regulations as are applicable to  
26      the states, including, but not limited to, the mandatory petroleum  
27      allocation regulations and State energy conservation plans.
- 28      s. Have authority to sue and be sued;
- 29      t. Have authority to acquire by purchase, grant, contract or  
30      eminent domain title to real property for the purpose of demonstrating  
31      facilities which improve the efficiency of energy use, conserve energy  
32      or generate energy in new and efficient ways;
- 33      u. Have authority to construct and operate, on an experimental or  
34      demonstration basis, facilities which improve the efficiency of energy  
35      use, conserve energy or generate power in new and efficient ways;
- 36      v. Have authority to contract with any other public agency or  
37      corporation incorporated under the laws of this or any other state for  
38      the performance of any function under this act;
- 39      w. Determine the effect of energy and fuel shortages upon  
40      consumers, and formulate proposals designed to encourage the lowest  
41      possible cost of energy and fuels consumed in the State consistent with  
42      the conservation and efficient use of energy;
- 43      x. Keep complete and accurate minutes of all hearings held before  
44      the **【commissioner】** director or any member of the Division of Energy  
45      Planning and Conservation pursuant to the provisions of this act. All  
46      such minutes shall be retained in a permanent record and shall be

1 available for public inspection at all times during the office hours of  
2 the department.

3 (cf: P.L.1978, c.80, s.2)

4  
5 96. Section 11 of P.L.1977, c.146 (C.52:27F-13) is amended to  
6 read as follows:

7 11. The Advisory Council on Energy Planning and Conservation is  
8 empowered to:

9 a. Request from the **【commissioner and from the Director】**  
10 director of the Division of Energy Planning and Conservation such  
11 energy information as it may deem necessary;

12 b. Consider any matter relating to the production, distribution,  
13 consumption or conservation of energy;

14 c. From time to time submit to the **【commissioner】** director any  
15 recommendations which it deems necessary for the long-term planning  
16 and management of energy;

17 d. Study energy programs and make its recommendations thereon  
18 to the **【commissioner】** director;

19 e. Review, prior to their promulgation, proposed rules and  
20 regulations of the **【department】** division, and make its  
21 recommendations thereupon, except such rules and regulations  
22 determined by the **【commissioner】** director to be emergency measures  
23 essential to preserve the public health, safety, or welfare.

24 f. Hold public hearings in regard to existing statutes and  
25 regulations governing the production, distribution, consumption or  
26 conservation of energy.

27 (cf: P.L.1977, c.146, s.11)

28  
29 97. Section 12 of P.L.1977, c.146 (C.52:27F-14) is amended to  
30 read as follows:

31 12. a. There is established an Energy Master Plan Committee  
32 (hereinafter "Committee") which shall be composed of the president  
33 of the Board of Public Utility Commissioners or his designee and the  
34 heads of the following principal departments or their designees:  
35 Commerce**【, Energy】** and Economic Development; Community  
36 Affairs; Environmental Protection; Health; Human Services;  
37 Transportation; and Treasury. The **【Commissioner of Commerce,**  
38 **Energy and Economic Development】** president of the Board of Public  
39 Utility Commissioners or his designee shall be the chairperson of the  
40 committee. The committee shall be responsible for the preparation,  
41 adoption and revision of master plans regarding the production,  
42 distribution, and conservation of energy in this State.

43 b. The committee **【within one year of the effective date of this act】**  
44 shall prepare or cause to be prepared, and, after public hearings as  
45 hereinafter provided, adopt a master plan for a period of 10 years on

1 the production, distribution, consumption and conservation of energy  
2 in this State. Such plan shall be revised and updated at least once  
3 every three years. The plan shall include long-term objectives but shall  
4 provide for the interim implementation of measures consistent with  
5 said objectives. The committee may from time to time and after public  
6 hearings amend the master plan. In preparing the master plan or any  
7 portion thereof or amendment thereto the **【department】** committee  
8 shall give due consideration to the energy needs and supplies in the  
9 several geographic areas of the State, and shall consult and cooperate  
10 with any federal or State agency having an interest in the production,  
11 distribution, consumption or conservation of energy.

12 c. Upon preparation of such master plan, and each revision thereof,  
13 the committee shall cause copies thereof to be printed, shall transmit  
14 sufficient copies thereof to the Governor and the Legislature, for the  
15 use of the members thereof, and shall advertise, in such newspapers as  
16 the **【commissioner】** committee determines appropriate to reach the  
17 greatest possible number of citizens of New Jersey, the existence and  
18 availability of such draft plan from the offices of the committee for the  
19 use of such citizens as may request same. In addition, the  
20 **【department】** committee shall:

21 (1) Fix dates for the commencement of a series of public hearings,  
22 at least one of which shall be held in each geographical area delineated  
23 in the master plan. Each such public hearing shall concern the overall  
24 content of the plan and those aspects thereof that have relevance to the  
25 specific geographical area in which each such public hearing is being  
26 held;

27 (2) At least 60 days prior to each public hearing held pursuant to  
28 this section, notify each energy industry and each State department,  
29 commission, authority, council, agency, or board charged with the  
30 regulation, supervision or control of any business, industry or utility  
31 engaged in the production, processing, distribution, transmission, or  
32 storage of energy in any form of the time and place for the hearing and  
33 shall publish such notice in a newspaper of general circulation in the  
34 region where the hearing is to be held, and in such newspapers of  
35 general circulation in the State as the **【commissioner】** committee  
36 determines appropriate to reach the greatest possible number of  
37 citizens of New Jersey.

38 d. Upon the completion of the requirements of subsection c. of this  
39 section, the committee shall consider the testimony presented at all  
40 such public hearings and adopt the energy master plan, together with  
41 any additions, deletions, or revisions it shall deem appropriate.

42 e. Upon the adoption of the energy master plan, and upon each  
43 revision thereof, the committee shall cause copies thereof to be printed  
44 and shall transmit sufficient copies thereof to the Governor and the  
45 Legislature, for the use of the members thereof, and to each State  
46 department, commission, authority, council, agency, division or board

1 charged with the regulation, supervision or control of any business,  
2 industry or utility engaged in the production, processing, distribution,  
3 transmission, or storage of energy in any form. In addition, the  
4 committee shall advertise in the manner provided in subsection c. of  
5 this section the existence and availability of the energy master plan  
6 from the offices of the committee for the use of such citizens of New  
7 Jersey as may request same; provided, however, that the committee  
8 may charge a fee for such copies of the energy master plan sufficient  
9 to cover the costs of printing and distributing same.

10 (cf: P.L.1987, c.365, s.14)

11  
12 98. Section 13 of P.L.1977, c.146 (C.52:27F-15) is amended to  
13 read as follows:

14 13. a. The Division of Energy Planning and Conservation is  
15 empowered and directed to intervene in any proceedings before, and  
16 appeals from, any State department, division, commission, authority,  
17 council, agency or board (hereinafter referred to as "State  
18 instrumentalities" ) including the Board of Public **【Utilities】** Utility  
19 Commissioners charged with the regulation, supervision or control of  
20 any business, industry or utility engaged in the production, processing,  
21 distribution, transmission or storage of energy in any form, when, in  
22 the discretion of the **【commissioner】** director, such intervention is  
23 necessary to insure the proper consideration by such State  
24 instrumentalities of the State energy master plan, or any part or aspect  
25 thereof, adopted by the **【department】** division pursuant to section 12  
26 of **【this act】** P.L.1977, c.146 (C.52:27F-14), or any rule or regulation  
27 promulgated by the **【department】** division pursuant to the provisions  
28 of this act. To facilitate the intervention provisions of this section,  
29 each such State instrumentality shall consider the **【department】**  
30 division a party of interest in any proceedings before such  
31 instrumentality with respect to energy and shall give the same notice  
32 to the **【department】** division as is given to every other party of interest  
33 in such proceedings of any meeting, public hearing or other proceeding  
34 of such instrumentality in implementing its regulatory, supervisory or  
35 control powers, responsibilities and duties with respect to such  
36 businesses, industries or utilities.

37 b. It being the intention of the Legislature that the actions,  
38 decisions, determinations and rulings of the State Government with  
39 respect to energy shall to the maximum extent practicable and feasible  
40 conform with the energy master plan adopted by the **【department】**  
41 division pursuant to section 12 of **【this act】** P.L.1977, c.146  
42 (C.52:27F-14), the **【department】** division shall prepare, periodically  
43 revise and distribute to each State instrumentality charged with the  
44 regulation, supervision or control of any business, industry or utility  
45 engaged in the production, processing, distribution, transmission or

1 storage of energy in any form, such guidelines as the [department]  
2 division determines to be relevant to assist each such instrumentality  
3 in conforming with said energy master plan in implementing its  
4 regulatory, supervisory or control powers, responsibilities and duties  
5 with respect to such businesses, industries or utilities.

6 c. With respect to the siting of any energy facility in any part of  
7 New Jersey, the [department] division shall, the provisions of any law  
8 to the contrary notwithstanding, have jurisdiction coextensive with  
9 that of any other State instrumentality, and to that end, no State  
10 instrumentality with the power to grant or deny any permit for the  
11 construction or location of any energy facility shall exercise its powers  
12 without referring to the Division of Energy Planning and Conservation,  
13 for its review and comments, a copy of such application and all papers,  
14 documents and materials appurtenant thereto filed by the applicant  
15 with such State instrumentality. Prior to making a final decision with  
16 respect to any such application, the State instrumentality with power  
17 of approval over such application shall solicit the views of the  
18 [department] division thereupon. Such views shall be communicated  
19 to the State instrumentality with the power of approval over such  
20 application in the form of a report describing the findings of the  
21 [department] division with respect to such application. Such report  
22 shall be prepared by the Director of the Division of Energy Planning  
23 and Conservation and shall be signed by said director[ and by the  
24 commissioner]. In the event that such report is not prepared and  
25 transmitted to the State instrumentality with power of approval over  
26 such application within 90 days after the [department's] division's  
27 receipt of such application, such State instrumentality shall act upon  
28 such application pursuant to the law providing its power of approval  
29 thereof. In the event that the views of the [department] division, as  
30 contained in its report, with respect to any such application differ from  
31 the views of the State instrumentality with the power of approval over  
32 such application, there shall be established an Energy Facility Review  
33 Board which shall consist of the Director of the Division of Energy  
34 Planning and Conservation, the director or chief executive officer of  
35 the State instrumentality with the power of approval over such  
36 application, and a designee of the Governor. The decision of the  
37 Energy Facility Review Board created with respect to a specific energy  
38 facility application shall be binding with respect to such facility and  
39 shall be implemented forthwith by the State instrumentality with the  
40 power of approval over such application.

41 In implementing its responsibilities pursuant to this subsection, the  
42 [department] division shall have the power to adopt, by regulation, a  
43 fee schedule for reviewing applications for the construction or  
44 location of energy facilities; provided, however, that fees shall be  
45 charged to applicants for permits to construct or locate energy

1 facilities only in those instances where the nature and extent of the  
2 proposed energy facility are such as to necessitate the employment of  
3 consultants or other expert personnel from without the **【department】**  
4 division before the **【department】** division can make its determination  
5 with respect to any such application, and that such fees shall in any  
6 event be the minimum amount necessary to permit the **【department】**  
7 division to fulfill its responsibilities under this section.

8 The provisions of this section shall not be regarded as to be in  
9 derogation of any powers now existing and shall be regarded as  
10 supplemental and in addition to powers conferred by other laws,  
11 including municipal zoning authority.

12 (cf: P.L.1977, c.146, s.13)

13  
14 99. Section 14 of P.L.1977, c.146 (C.52:27F-16) is amended to  
15 read as follows:

16 14. The **【commissioner】** director shall prepare and adopt an  
17 emergency allocation plan specifying actions to be taken in the event  
18 of an impending serious shortage of energy which poses grave threats  
19 to the public health, safety, or welfare. The **【commissioner】** director  
20 shall direct all State Government departments and agencies, including  
21 the Board of Public **【Utilities】** Utility Commissioners, to develop,  
22 subject to his approval, contingency plans for dealing with said  
23 emergencies.

24 (cf: P.L.1977, c.146, s.14)

25  
26 100. Section 1 of P.L.1983, c.559 (C.52:27F-16.1) is amended to  
27 read as follows:

28 1. The Legislature finds and determines that the prospects of the  
29 occurrence of periodic energy emergencies due to the volatility and  
30 unpredictability of energy markets necessitates the systematic  
31 preparation for such emergencies; that the **【Department of Energy】**  
32 Division of Energy Planning and Conservation possesses the expertise  
33 and ability to plan for such emergencies; and that formulation of  
34 energy emergency preparedness plans will contribute to the security of  
35 the State of New Jersey in energy matters.

36 The Legislature, therefore, declares it to be in the best interest of  
37 the citizens of this State to require the **【Department of Energy】**  
38 Division of Energy Planning and Conservation to periodically review  
39 the situation with regard to the energy preparedness of the State and  
40 to prepare and submit a report thereon to the Governor and the  
41 Legislature.

42 (cf: P.L.1983, c. 559, s.1)

43  
44 101. Section 2 of P.L.1983, c.559 (C.52:27F-16.2) is amended to  
45 read as follows:

46 2. In order to evaluate the energy preparedness of the State, the

1   **【commissioner】** director shall, within 1 year of the effective date of  
2   this act and at least once every 3 years thereafter, prepare and submit  
3   to the Governor and the Legislature a comprehensive report on the  
4   status of the emergency allocation plan adopted pursuant to section 14  
5   of P.L.1977, c.146 (C.52:27F-16). The report shall provide for:

6       a. A means to identify, monitor and evaluate situations and  
7       conditions which may give rise to a critical energy shortage, which  
8       shall include but not be limited to methods of evaluating supply and  
9       demand conditions which may trigger a critical energy shortage;

10      b. The evaluation of various emergency response measures, based  
11      on the relative technical and economic impact and effectiveness of  
12      each;

13      c. The evaluation of existing emergency response plans of other  
14      agencies and instrumentalities of the State government, including the  
15      Board of Public **【Utilities】** Utility Commissioners. The  
16      **【commissioner】** director shall have the authority to require these plans  
17      to conform with the conclusions and recommendations of the report,  
18      and to require the development or modification of those plans or  
19      portions thereof which do not comply with the report;

20      d. A means for establishing a comprehensive energy information  
21      service to function during an energy emergency;

22      e. The development, in advance of and during an energy  
23      emergency, of a coordinated public and private sector plan to mitigate  
24      the effects of an energy emergency.

25   (cf: P.L.1983, c.559, s.2)

26

27      102. Section 3 of P.L.1983, c.559 (C.52:27F-16.3) is amended to  
28      read as follows:

29      3. In order to implement the responsibilities required by section 2  
30      of this act, the **【commissioner】** director shall:

31       a. Review and evaluate, every 3 years, existing State programs and  
32       policies concerning energy emergency preparedness; and

33       b. Hold public hearings, as the **【commissioner】** director deems  
34       necessary, concerning energy supply shortages, energy emergency  
35       preparedness and related matters.

36   (cf: P.L.1983, c.559, s.3)

37

38      103. Section 15 of P.L.1977, c.146 (C.52:27F-17) is amended to  
39      read as follows:

40      15. a. Upon a finding by the **【commissioner】** director that there  
41      exists or impends an energy supply shortage of a dimension which  
42      endangers the public health, safety, or welfare in all or any part of the  
43      State, the Governor is authorized to proclaim by executive order a  
44      state of energy emergency for a period of up to 6 months. The  
45      Governor may limit the applicability of any such state of emergency to  
46      specific kinds of energy forms or to specific areas of the State in which



1 such a shortage exists or impends.

2 b. During the duration of a state of energy emergency the  
3 **【commissioner】** director to the extent not in conflict with applicable  
4 Federal law or regulation but notwithstanding any State or local law  
5 or contractual agreement, shall be empowered to:

6 (1) Order any person to reduce by a specified amount the use of  
7 any energy form; to make use of an alternate energy form, where  
8 possible; or to cease the use of any energy form;

9 (2) Order any person engaged in the distribution of any energy  
10 form to reduce or increase by a specified amount or to cease the  
11 distribution of such energy form; to distribute a specified amount and  
12 type of energy form to certain users as specified by the  
13 **【commissioner】** director; or to share supplies of any energy form with  
14 other distributors thereof;

15 (3) Establish priorities for the distribution of any energy form;

16 (4) Regulate and control the distribution and sale of any energy  
17 form by:

18 (a) Establishing such limitations, priorities, or rationing procedures  
19 as shall be necessary to insure a fair and equitable distribution of  
20 available supplies;

21 (b) Establishing minimum and maximum quantities to be sold to  
22 any purchaser;

23 (c) Fixing the days and hours of access to retail dealers;

24 (d) Compelling sales to members of the general public during times  
25 when a retail dealer is open for the sale of an energy form;

26 (e) Establishing methods for notifying the public by flags, symbols,  
27 or other appropriate means whether such retail dealers are open and  
28 selling the subject energy form;

29 (5) Direct the heads of those departments and agencies within  
30 State Government that were ordered to develop contingency plans  
31 pursuant to section 14 of this act to implement said plans;

32 (6) Adopt and promulgate such rules and regulations as are  
33 necessary and proper to carry out the purposes of this section.

34 c. During the existence of a state of energy emergency, the  
35 Governor may order the suspension of any laws, rules, regulations, or  
36 orders of any department or agency in State Government or within any  
37 political subdivision which deal with or affect energy and which  
38 impede his ability to alleviate or terminate a state of energy  
39 emergency.

40 d. Any aggrieved person, upon application to the **【commissioner】**  
41 director shall be granted a review of whether the continuance of any  
42 order issued by the commissioner pursuant to this section is  
43 unreasonable in light of then prevailing conditions of emergency.

44 e. During a state of energy emergency the **【commissioner】** director  
45 may require any other department or other agency within State  
46 Government to provide such information, assistance, resources, and

1 personnel as shall be necessary to discharge his functions and  
2 responsibilities under this act, rules and regulations adopted hereunder,  
3 or applicable Federal law and regulations.

4 f. The powers granted to the Governor and the **【commissioner】**  
5 director under this section shall be in addition to and not in limitation  
6 of any emergency powers now or hereafter vested in the Governor, the  
7 **【commissioner】** director, or any other State Government department  
8 or agency pursuant to any other laws, including but not limited to any  
9 power vested in the Board of Public **【Utilities】** Utility Commissioners  
10 to require utility companies to allocate available supplies of energy;  
11 provided, however, that upon declaring a state of energy emergency,  
12 the Governor may supersede any other such emergency powers.

13 g. The state of energy emergency declared by the Governor  
14 pursuant to this section shall remain in effect until the Governor  
15 declares by a subsequent executive order that the state of energy  
16 emergency has terminated.

17 (cf: P.L.1977, c.146, s.15)

18  
19 104. Section 16 of P.L.1977, c.146 (C.52:27F-18) is amended to  
20 read as follows:

21 16. a. The **【commissioner】** director shall adopt rules and  
22 regulations requiring the periodic reporting by energy industries of  
23 energy information which shall include but not be limited to the  
24 following:

25 (1) Electrical generating capacity in the State; long-range plans for  
26 additions to said capacity; efficiency of electrical generation; price and  
27 cost factors in electrical generation; types and quantities of fuels used;  
28 projections of future demand, consumption of electricity by sectors;  
29 times, duration, and levels of peak demand;

30 (2) Petroleum refining capacity; amount and type of fuel produced;  
31 amount and type of fuel sold; interstate transfers of fuel; price and cost  
32 factors in refining, production, and sale; long-term plans for alterations  
33 or additions to refining capacity; location, amount, and type of fuel  
34 storage;

35 (3) Storage capacity for gases; amount and end uses of gases sold;  
36 price and cost factors in the sale and use of gases; and

37 (4) Such other information as the **【commissioner】** director may  
38 determine necessary for carrying out the purposes of this act.

39 b. The **【commissioner】** director shall at least annually publish a  
40 report analyzing all energy information collected.

41 c. The **【commissioner】** director shall have the discretion to obtain  
42 energy information from an affiliate of any energy industry or from an  
43 association or organization of industries of which any such energy  
44 industry is a member. Whenever energy information supplied by an  
45 energy industry is so obtained by the **【commissioner】** director, the  
46 energy industry to which such information pertains shall be promptly

1 notified of the energy information so obtained and shall be given an  
2 opportunity to correct or amplify such information.

3 d. Trade secrets collected under this section shall be exempt from  
4 the requirements of P.L.1963, c.73 (C.47:1A-1 et seq.). The  
5 **【commissioner】** director shall promulgate rules and regulations for the  
6 conduct of administrative hearings on the issue of whether certain  
7 energy information should not be disclosed to the public.

8 (cf: P.L.1977, c.146, s.16)

9  
10 105. Section 17 of P.L.1977, c.146 (C.52:27F-19) is amended to  
11 read as follows:

12 17. No person who is an official or employee of the **【department】**  
13 division shall participate in any manner in any decision or action of the  
14 **【department】** division wherein he has a direct or indirect financial  
15 interest.

16 (cf: P.L.1977, c.146, s.17)

17  
18 106. Section 18 of P.L.1977, c.146 (C.52:27F-20) is amended to  
19 read as follows:

20 18. The **【commissioner】** director may issue subpoenas requiring the  
21 attendance and testimony of witnesses and the production of books,  
22 documents, papers, statistics, data, information, and records for the  
23 purpose of carrying out any of his responsibilities under this act.  
24 Whenever there arises a refusal to honor his subpoena, the  
25 **【commissioner】** director may petition a court of competent  
26 jurisdiction for an order requiring the attendance and testimony of a  
27 witness or the production of the requested books, documents, papers,  
28 statistics, data, information, and records. Any failure to obey such an  
29 order issued by a court shall be punished by the court as a contempt  
30 thereof.

31 (cf: P.L.1977, c.146, s.18)

32  
33 107. Section 19 of P.L.1977, c.146 (C.52:27F-21) is amended to  
34 read as follows:

35 19. a. Upon a violation of this act or of any rules, regulations, or  
36 orders promulgated hereunder, the **【commissioner】** director, the  
37 county prosecutor of the county in which the violation occurs if he has  
38 the approval of the **【commissioner】** director, or any aggrieved person  
39 shall be entitled to institute a civil action in a court of competent  
40 jurisdiction for injunctive relief to restrain such violation and for such  
41 other relief as the court shall deem proper. The court may proceed in  
42 a summary manner.

43 b. Except as otherwise specifically provided, any person who  
44 violates the provisions of this act or any rule, regulation or order  
45 adopted pursuant to this act shall be liable to a penalty of not more  
46 than \$300~~00~~ for the first offense and not more than \$3,000~~00~~

1 for the second or any subsequent offense, to be collected in a civil  
2 action by a summary proceeding under "the penalty enforcement law"  
3 (N.J.S.2A:58-1 et seq.), or in any case before a court of competent  
4 jurisdiction wherein injunctive relief has been requested. The Superior  
5 Court shall also have jurisdiction to enforce "the penalty enforcement  
6 law." If the violation is of a continuing nature, each day during which  
7 it continues shall constitute an additional, separate and distinct  
8 offense.

9 c. The **[department]** division may compromise and settle any claim  
10 for a penalty under this section in such amount in the discretion of the  
11 department as may appear appropriate and equitable under all of the  
12 circumstances.

13 (cf: P.L.1980, c.152, s.1)

14  
15 108. Section 22 of P.L.1977, c.146 (C.52:27F-24) is amended to  
16 read as follows:

17 22. a. Any person who violates any provision of section 15  
18 (C.52:27F-17) of this act, or any rule, regulation or order adopted  
19 pursuant thereto, shall be liable to a penalty of not more than  
20 \$500~~00~~ for the first offense and not more than \$5,000~~00~~ for the  
21 second or any subsequent offense.

22 b. In addition to any other penalties provided under this or any  
23 other act, the **[commissioner]** director may recommend to the  
24 appropriate agency the suspension or revocation of the license of any  
25 retail dealer, gasoline jobber, wholesale dealer, distributor, or supplier  
26 of fuel, who has violated this act or any rules, regulations, or orders  
27 promulgated hereunder.

28 c. All penalties imposed pursuant to this section shall be collected  
29 in a civil action by a summary proceeding under the "penalty  
30 enforcement law" (N.J.S.2A:58-1 et seq.). If the violation is of a  
31 continuing nature, each day during which it continues shall constitute  
32 an additional and separate offense. In addition to the jurisdiction  
33 conferred by N.J.S.2A:58-2, the municipal court and the Superior  
34 Court shall have jurisdiction of proceedings initiated on or after June  
35 20, 1979 for the enforcement of the penalties provided by this section.

36 d. The **[department]** division may compromise and settle any claim  
37 for a penalty under this section in such amount in the discretion of the  
38 department as may appear appropriate and equitable under all of the  
39 circumstances.

40 (cf: P.L.1980, c.152, s.2)

41  
42 109. Section 2 of P.L.1981, c.122 (C.52:27H-2) is amended to  
43 read as follows:

44 2. The Legislature finds and determines that the well-being of the  
45 people of New Jersey, and of their institutions, including government,  
46 is directly related to the well-being of New Jersey's business and

1 industrial enterprises, including the housing industry and small  
2 business enterprises, which provide the economic base of employment  
3 and taxes upon which all other institutions of society depend.

4     【The Legislature further finds and determines that a secure, stable  
5 and adequate supply of energy at reasonable prices is vital to the  
6 State's economy and for the promotion of economic opportunity in the  
7 State, as well as for ensuring the public health, safety and welfare. The  
8 Legislature further finds that reducing energy costs is essential to  
9 reducing the costs of doing business in this State, which in turn will  
10 promote and maximize economic growth, speed business development,  
11 promote employment and ensure general prosperity in the State.

12     The Legislature further finds and determines that the principal  
13 methods for achieving the goals of this act include: the widespread  
14 use of alternative energy sources, including electric cogeneration of  
15 energy, with independent power producers selling excess power to  
16 utilities; the fullest possible cost-effective implementation of energy  
17 conservation programs; and the introduction of market-based pricing  
18 principles and competition in the setting of rates for electricity, natural  
19 gas and other energy forms.

20     The Legislature further finds that the original mission of a separate  
21 Department of Energy--to address and solve the problems caused by  
22 threatened catastrophic loss of near-and-long-term energy sources--no  
23 longer justifies retaining a separate Department of Energy as a  
24 principal department within the Executive Branch. The Legislature  
25 further finds that it is in the best interests of the citizens of this State  
26 that a single principal department within the Executive Branch of this  
27 State coordinate the promotion of the State's economy and serve as a  
28 focus for business and industrial concerns, promote the availability of  
29 energy at reasonable prices to all consumers and integrate the State's  
30 economic, business and energy policies and programs to retain and to  
31 enhance this State's economic health and to ensure that the State's  
32 economy remains competitive. The Legislature further finds and  
33 determines that an important method to achieve these goals is to  
34 promote and assist the development and utilization of cogeneration of  
35 energy and programs of energy conservation.】

36     The Legislature further finds and determines that New Jersey's  
37 economy has deteriorated in recent years from its one-time position of  
38 national prominence and leadership in many fields of business and  
39 industry, a trend particularly evident in the almost continuous decline  
40 of manufacturing employment over a span of a decade or more, a fact  
41 which has had significant and deleterious effects upon the economy of  
42 the State, impacting adversely upon a broad cross-section of New  
43 Jersey's citizenry.

44     The Legislature further finds and determines that the variety and  
45 magnitude of New Jersey's economic development programs have now  
46 reached a level that warrants their consolidation into a separate

1 cabinet-level administrative department devoted exclusively to  
2 monitoring the interests and concerns of business and industry,  
3 maintaining continuous liaison with the business community and its  
4 leadership for the purpose of assisting in the formulation and direction  
5 of economic policy so as to provide business and industry the optimum  
6 climate within which enterprises may grow and prosper to the benefit  
7 of society as a whole. The Legislature also finds that the variety and  
8 complexity of programs which serve to protect the occupational health  
9 and safety of workers at the work place, to provide skill development  
10 and training programs, to provide employability development and  
11 employment placement programs, to administer the programs designed  
12 to protect the income security of our workers, to assist in the  
13 development and preservation of sound labor management relations  
14 and to maintain continuing liaison with organized labor and its  
15 leadership for the purpose of assisting in the formulation and direction  
16 of policy so as to provide the optimum climate within which organized  
17 labor can serve the needs of New Jersey's working men and women,  
18 warrants a cabinet level department devoted exclusively to this  
19 purpose which shall be known as the Department of Labor.

20 The Legislature, therefore, declares it to be in the best interest of  
21 the citizens of this State to establish a principal department within the  
22 Executive Branch to serve as a focus for business and industrial  
23 problems and concerns; as a center for gathering and disseminating  
24 appropriate data and information of significance to the business  
25 community; to continually analyze such data and to help formulate  
26 economic policies of the State on the basis thereof; to serve as a major  
27 focal point for economic development activities in cooperation with  
28 other entities, public and private, active in this field; to serve as a  
29 voice for and advocate of the interests of the business sector, not only  
30 within the highest councils of the Executive Branch but also before the  
31 Legislature and the general public; to assist in translating input it  
32 receives into programs and policies of the State itself to the end that  
33 New Jersey citizens shall enjoy optimum economic security and the  
34 highest possible standard of living; to assist in coordinating authority,  
35 regulation and planning by the State in matters related to the economy.  
36 (cf: P.L.1987, c.365, s.1)

37

38 110. Section 3 of P.L.1981, c.122 (C.52:27H-3) is amended to  
39 read as follows:

40 3. As used in this act:

41 a. "Commissioner" means the Commissioner of the Department of  
42 Commerce**【, Energy】** and Economic Development.

43 b. "Department" means the Department of Commerce**【, Energy】**  
44 and Economic Development established by this act.

45 (cf: P.L.1987, c.365, s.2)

1       111. Section 4 of P.L.1981, c.122 (C.52:27H-4) is amended to  
2 read as follows:

3       4. There is established in the Executive Branch of the State  
4 Government a principal department which shall be known as the  
5 Department of Commerce【, Energy】 and Economic Development.  
6 (cf: P.L.1987, c.365, s.3)  
7

8       112. Section 5 of P.L.1981, c.122 (C.52:27H-5) is amended to  
9 read as follows:

10       5. The administrator and chief executive officer of the department  
11 shall be a commissioner, who shall be known as the Commissioner of  
12 Commerce【, Energy】 and Economic Development, and who shall be  
13 a person qualified by training and experience to perform the duties of  
14 his office. The commissioner shall be appointed by the Governor, with  
15 the advice and consent of the Senate, and shall serve at the pleasure of  
16 the Governor during the Governor's term of office and until the  
17 appointment and qualification of the commissioner's successor. He  
18 shall devote his entire time to the duties of the office and shall receive  
19 such salary as shall be provided by law. Any vacancy occurring in the  
20 office of the commissioner shall be filled in the same manner as the  
21 original appointment.  
22 (cf: P.L.1987, c.365, s.4)  
23

24       113. Section 10 of P.L.1987, c.365 (C.52:27H-20.3) is amended  
25 to read as follows:

26       10. a. The New Jersey Public Broadcasting Authority, allocated  
27 within the Department of Energy pursuant to P.L.1977, c.146  
28 (C.52:27F-1 et seq.), together with all its functions, powers and duties  
29 is continued and is transferred to and constituted the New Jersey  
30 Public Broadcasting Authority in but not of the Department of  
31 Commerce【, Energy】 and Economic Development. Notwithstanding  
32 this allocation, the authority shall be independent of any supervision  
33 or control by the Department of Commerce【, Energy】 and Economic  
34 Development or by any officer or employee thereof. This act shall not  
35 affect the terms of office of, nor the salaries received by, the present  
36 members of the New Jersey Public Broadcasting Authority, or of any  
37 officers or employees thereof.

38       b. Whenever in any law, rule, regulation, order, contract,  
39 document, judicial or administrative proceeding or otherwise,  
40 reference is made to the New Jersey Public Broadcasting Authority in  
41 the Department of Energy, the same shall mean and refer to the New  
42 Jersey Public Broadcasting Authority in the Department of  
43 Commerce【, Energy】 and Economic Development.  
44 (cf: P.L.1987, c.365, s.10)  
45

46       114. (New section) The provisions of any statute which are

1 inconsistent with P.L. , c. (C. ) (pending in the Legislature as  
2 this bill) shall be null and void.

3  
4 115. This act shall take effect immediately.

5  
6  
7 STATEMENT

8  
9 The bill would reorganize and transfer the Board of Regulatory  
10 Commissioners and the energy planning functions in the Department  
11 of Environmental Protection into an independent Board of Public  
12 Utility Commissioners in but not of the Department of the Treasury.  
13 The bill would invalidate many provisions of Reorganization Plan No.  
14 002-1991.

15 The board would not be subject to the provisions of the "Executive  
16 Reorganization Act," and hence could not be transferred except by  
17 legislative action. The principal office of the board would be in  
18 Newark, and decisions concerning board offices would be made by the  
19 board rather than the Governor. The board would be mandated to hire  
20 its own counsel for administrative purposes.

21 The bill also codifies the 1991 reorganization plan transfer to the  
22 DEP of the board's authority in rate making and public utility aspects  
23 of solid waste collection and disposal facilities and operations under  
24 the "Solid Waste Utility Control Act," P.L.1970, c.40 (C.48:13A-1 et  
25 seq.).

26 The Division of Energy Planning and Conservation, which was  
27 abolished by the 1991 reorganization plan, is reestablished in the  
28 Board of Public Utility Commissioners. The Advisory Council on  
29 Energy Planning and Conservation, and all energy planning functions  
30 that were transferred to the DEP, are transferred back to the division.  
31 The director of the division is given essentially the same regulatory  
32 authority as the former Commissioner of Energy, and is charged with  
33 cooperating with the board in the collection of energy information.  
34 The Office of Energy Planning created in the DEP by the  
35 reorganization plan is continued and shall perform such functions as  
36 the Commissioner of Environmental Protection shall prescribe.

37 The bill also amends many sections of law to conform them to the  
38 transfers made in the bill. The board is uniformly renamed the Board  
39 of Public Utility Commissioners throughout chapters 2 and 3 of Title  
40 48. The Department of Commerce, Energy and Economic  
41 Development is renamed the Department of Commerce and Economic  
42 Development to reflect its current purpose. The Department of  
43 Environmental Protection and Energy, as it is denominated in the  
44 reorganization plan, is formally renamed the Department of  
45 Environmental Protection.