

4700

2015-2016 Regular Sessions

I N A S S E M B L Y

February 5, 2015

Introduced by M. of A. CLARK, COLTON -- read once and referred to the  
Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to the  
siting of solid waste management facilities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY,  
DO ENACT AS FOLLOWS:

1 Section 1. Paragraphs (a) and (b) of subdivision 1 of section 27-0107  
2 of the environmental conservation law, paragraph (a) as amended by chap-  
3 ter 88 of the laws of 1996 and paragraph (b) as added by chapter 70 of  
4 the laws of 1988, are amended to read as follows:

5 (a) A planning unit [may undertake and complete a timely process lead-  
6 ing to] SHALL DEVELOP a local solid waste management plan for such unit  
7 for at least a ten-year period. For purposes of this section and section  
8 27-0109 of this [article] TITLE, "planning unit" shall mean a county,  
9 two or more counties acting jointly, a local government agency or  
10 authority established pursuant to state law for the purposes of managing  
11 solid waste, any city located in the county of Nassau, or two or more  
12 other municipalities which the department determines to be capable of  
13 implementing a regional solid waste management program.

14 (b) The local solid waste management plan shall:

15 (i) characterize the solid waste stream to be managed in the planning  
16 period. THIS CHARACTERIZATION SHALL INCLUDE PROJECTED CHANGES IN WASTE  
17 VOLUME OVER THE TEN-YEAR PLANNING PERIOD ATTRIBUTABLE TO CHANGING POPU-  
18 LATIONS, INCREASED REGIONAL RECYCLING, REGIONAL WASTE REDUCTION EFFORTS  
19 AND OTHER FACTORS;

20 (ii) assess [existing and alternate proposed solid waste management  
21 programs and facilities] DISPOSAL CAPACITY AVAILABLE IN EXISTING FACILI-  
22 TIES WITHIN THE PLANNING UNIT OR CAPACITY AVAILABLE TO THE PLANNING UNIT  
23 THROUGH CONTRACTUAL ARRANGEMENTS, AND FOR EACH YEAR IN THE TEN-YEAR  
24 PLANNING PERIOD, IDENTIFY PROJECTED SURPLUSES OR DEFICIENCIES IN WASTE  
25 DISPOSAL CAPACITY AVAILABLE TO THE PLANNING UNIT;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 (iii) IDENTIFY AND ASSESS SPECIFIC OPTIONS FOR ADDRESSING PROJECTED  
2 DEFICIENCIES IN DISPOSAL CAPACITY DURING THE TEN-YEAR PLANNING PERIOD,  
3 INCLUDING RECYCLING, WASTE REDUCTION AND REUSE, COMPOSTING, AND RESOURCE  
4 RECOVERY AND LAND DISPOSAL. THIS ASSESSMENT SHALL INCLUDE THE FEASIBIL-  
5 ITY OF DEVELOPING ADDITIONAL WASTE MANAGEMENT AND DISPOSAL CAPACITY  
6 WITHIN THE REGION AND THE ACCESSIBILITY OF WASTE MANAGEMENT AND DISPOSAL  
7 CAPACITY OUTSIDE OF THE REGION, GIVING PRIORITY TO FACILITIES WITHIN NEW  
8 YORK STATE. THIS ASSESSMENT SHALL ALSO INCLUDE THE ANNUAL COSTS OF  
9 PROVIDING FOR ADEQUATE WASTE MANAGEMENT AND DISPOSAL CAPACITY, AND AN  
10 ASSESSMENT OF POTENTIAL REVENUE FEE STRUCTURES TO MEET THOSE COSTS;

11 (IV) address to the maximum extent practicable the comments and views  
12 expressed by concerned governmental, environmental, commercial and  
13 industrial interests and the public on the waste reduction, recycling,  
14 reuse and disposal alternatives;

15 [(iv)] (V) INCLUDE A PLAN AND TIMETABLE FOR EVALUATING, SELECTING AND  
16 IMPLEMENTING MEASURES FOR ADDRESSING PROJECTED DEFICIENCIES IN DISPOSAL  
17 CAPACITY;

18 (VI) identify the parties with responsibility to implement each  
19 element of the plan and the steps which must be undertaken by each;

20 [(v)] set forth a timetable for implementing the plan;

21 [(vi)] (VII) describe the participation in the preparation of the plan  
22 of each municipality which has chosen to participate in such prepara-  
23 tion; and

24 [(vii)] (VIII) describe (A) measures undertaken by the municipalities  
25 participating in the planning unit to secure participation of neighbor-  
26 ing jurisdictions, (B) the limitations, if any, imposed by the proposed  
27 plan on solid waste management alternatives available to such neighbor-  
28 ing jurisdictions, and (C) alternatives which would be available if a  
29 local solid waste management plan including such jurisdictions were  
30 prepared. Specific written suggestions received from neighboring juris-  
31 ddictions shall be summarized and reflected in the plan.

32 S 2. The environmental conservation law is amended by adding a new  
33 section 27-0709 to read as follows:

34 S 27-0709. CRITERIA FOR SITING SOLID WASTE MANAGEMENT FACILITIES.

35 1. ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION, NO PERSON SHALL  
36 COMMENCE THE PREPARATION OF A SITE FOR, OR BEGIN THE CONSTRUCTION OF, A  
37 SOLID WASTE MANAGEMENT FACILITY IN THE STATE WITHOUT HAVING FIRST  
38 OBTAINED A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NECES-  
39 SITY FROM THE STATE SOLID WASTE MANAGEMENT FACILITY SITE REVIEW BOARD.

40 2. THE COMMISSIONER SHALL, AFTER INVESTIGATION AND OPPORTUNITY FOR  
41 PUBLIC COMMENT AND WITHIN SIX MONTHS FROM THE EFFECTIVE DATE OF THIS  
42 SECTION, PUBLISH CRITERIA FOR SITING SOLID WASTE MANAGEMENT FACILITIES  
43 UPON WHICH A DETERMINATION OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC  
44 NECESSITY SHALL BE BASED. THE COMMISSIONER SHALL ALSO WITHIN SIX MONTHS  
45 FROM THE EFFECTIVE DATE OF THIS SECTION PROMULGATE REGULATIONS PRESCRIB-  
46 ING THE FORM AND CONTENT OF APPLICATIONS FOR A CERTIFICATE OF ENVIRON-  
47 MENTAL COMPATIBILITY AND PUBLIC NECESSITY TO CONSTRUCT A SOLID WASTE  
48 MANAGEMENT FACILITY.

49 3. THE CRITERIA ISSUED PURSUANT TO SUBDIVISION ONE OF THIS SECTION FOR  
50 THE SITING OF SOLID WASTE MANAGEMENT FACILITIES SHALL INCLUDE:

51 (A) THE CONSISTENCY OF THE APPLICATION WITH THE PLAN ADOPTED PURSUANT  
52 TO SECTION 27-0103 OF THIS ARTICLE;

53 (B) THE CONSISTENCY OF THE APPLICATION WITH ANY LOCALLY ADOPTED SOLID  
54 WASTE MANAGEMENT PLAN, INCLUDING THE EXTENT TO WHICH A PROPOSED FACILITY  
55 ADDRESSES DISPOSAL CAPACITY DEFICIENCIES IDENTIFIED IN SUCH PLANS;

1 (C) THE EXTENT TO WHICH THOSE MUNICIPALITIES THAT WILL UTILIZE THE  
2 PROPOSED FACILITY HAVE EVALUATED POSSIBLE WASTE MANAGEMENT SITES WITHIN  
3 THEIR JURISDICTIONS;

4 (D) THE NATURE OF THE PROBABLE ENVIRONMENTAL IMPACT CAUSED BY THE  
5 FACILITY, INCLUDING SPECIFICATION OF THE PREDICTABLE ADVERSE EFFECTS ON  
6 THE NATURAL ENVIRONMENT AND ECOLOGY, PUBLIC HEALTH AND SAFETY, SCENIC,  
7 HISTORIC, CULTURAL AND RECREATIONAL VALUE, WATER AND AIR QUALITY, WILD-  
8 LIFE AND AN EVALUATION OF MEASURES TO MITIGATE ADVERSE EFFECTS;

9 (E) THE NATURE OF THE ENVIRONMENTAL BENEFITS LIKELY TO BE DERIVED FROM  
10 SUCH FACILITY, INCLUDING THE RESULTANT DECREASE IN RELIANCE UPON EXIST-  
11 ING SOLID WASTE DISPOSAL FACILITIES WHICH DO NOT COMPLY WITH APPLICABLE  
12 LAWS AND REGULATIONS, THE DECREASE IN RELIANCE ON SOLID WASTE MANAGEMENT  
13 CAPACITY OUTSIDE OF NEW YORK STATE, AND A REDUCTION IN FUEL CONSUMPTION  
14 AND VEHICLE EMISSIONS RELATED TO LONG-DISTANCE TRANSPORTATION OF SOLID  
15 WASTE; AND

16 (F) THE ECONOMIC BENEFITS LIKELY TO BE DERIVED FROM SUCH FACILITY,  
17 INCLUDING BUT NOT LIMITED TO A REDUCTION IN EXISTING COSTS FOR THE  
18 DISPOSAL OF SOLID WASTES, IMPROVEMENT TO THE STATE'S ABILITY TO RETAIN  
19 AND ATTRACT BUSINESS AND INDUSTRY DUE TO PREDICTABLE AND STABLE SOLID  
20 WASTE DISPOSAL COSTS AND AVAILABILITY, MAINTENANCE OF THE COMPETITIVE-  
21 NNESS OF THE STATE'S SOLID WASTE INDUSTRY AND ANY ECONOMIC BENEFITS WHICH  
22 MAY ACCRUE TO THE MUNICIPALITY IN WHICH THE FACILITY IS TO BE LOCATED.

23 S 3. Section 27-0711 of the environmental conservation law, as added  
24 by chapter 399 of the laws of 1973 and renumbered by chapter 425 of the  
25 laws of 1977, is amended to read as follows:

26 S 27-0711. Local laws, ordinances and regulations.

27 Any local laws, ordinances or regulations of any governing body of a  
28 county, city, town or village which are not inconsistent with this title  
29 or with any rule or regulation which shall be promulgated pursuant to  
30 this title shall not be superseded by it, and nothing in this title or  
31 in any rule or regulation which shall be promulgated pursuant to this  
32 title shall preclude the right of any governing body of a county, city,  
33 town or village to adopt local laws, ordinances or regulations which are  
34 not inconsistent with this title or with any rule or regulation which  
35 shall be promulgated pursuant to this title provided, however, THAT NO  
36 MUNICIPALITY MAY, EXCEPT AS EXPRESSLY AUTHORIZED BY THE BOARD ESTAB-  
37 LISHED PURSUANT TO SECTION 27-0713 OF THIS TITLE, REQUIRE ANY APPROVAL,  
38 CONSENT, PERMIT, CERTIFICATE OR OTHER CONDITION INCLUDING CONFORMITY  
39 WITH LOCAL ZONING OR LAND USE LAWS AND ORDINANCES REGARDING THE OPERA-  
40 TION OF A SOLID WASTE MANAGEMENT FACILITY WITH RESPECT TO WHICH A  
41 CERTIFICATE HAS BEEN GRANTED IN ACCORDANCE WITH SECTION 27-0713 OF THIS  
42 TITLE, AND FURTHER PROVIDED, HOWEVER, that the exercise of such right by  
43 a county shall relate only to the area thereof outside any city, village  
44 or area of any town outside the village or villages therein during such  
45 time as such city, village or town has local laws, ordinances or regu-  
46 lations consistent with this title or with any rule or regulation which  
47 shall be promulgated pursuant to this title. Any local laws, ordinances  
48 or regulations of a county, city, town or village which comply with at  
49 least the minimum applicable requirements set forth in any rule or regu-  
50 lation promulgated pursuant to this title shall be deemed consistent  
51 with this title or with any such rule or regulation, EXCEPT AS PROVIDED  
52 HEREIN.

53 S 4. The environmental conservation law is amended by adding two new  
54 sections 27-0713 and 27-0714 to read as follows:

55 S 27-0713. SITING SOLID WASTE MANAGEMENT FACILITIES.

1 1. THERE IS HEREBY ESTABLISHED A SOLID WASTE MANAGEMENT FACILITY SITE  
2 REVIEW BOARD TO BE COMPOSED OF THE COMMISSIONERS OF ECONOMIC DEVELOP-  
3 MENT, ENVIRONMENTAL CONSERVATION, HEALTH, AND TRANSPORTATION, THE SECRE-  
4 TARY OF STATE, AND FOUR AD HOC MEMBERS APPOINTED BY THE GOVERNOR, TWO OF  
5 WHOM MUST BE RESIDENTS OF THE PLANNING UNIT IN WHICH THE PROPOSED SOLID  
6 WASTE MANAGEMENT FACILITY IS TO BE LOCATED. THE FOUR AD HOC MEMBERS  
7 SHALL BE EMPLOYEES OF THE STATE FOR PURPOSES OF SECTION SEVENTEEN OF THE  
8 PUBLIC OFFICERS LAW. THE TERM OF THE AD HOC MEMBERS SHALL CONTINUE UNTIL  
9 A FINAL DETERMINATION HAS BEEN MADE IN THE PARTICULAR PROCEEDING FOR  
10 WHICH THEY WERE APPOINTED. FIVE OF THE PERSONS ON THE BOARD SHALL  
11 CONSTITUTE A QUORUM FOR THE TRANSACTION OF ANY BUSINESS OF THE BOARD,  
12 AND THE DECISION OF FIVE MEMBERS OF THE BOARD SHALL CONSTITUTE ACTION OF  
13 THE BOARD. IN ADDITION TO THE REQUIREMENTS OF THE PUBLIC OFFICERS LAW,  
14 NO PERSON SHALL BE ELIGIBLE TO BE AN APPOINTEE OF THE GOVERNOR TO THE  
15 BOARD WHO HOLDS ANOTHER STATE OR LOCAL OFFICE. THE GOVERNOR SHALL  
16 APPOINT THE CHAIRMAN OF THE BOARD AND THE COMMISSIONER OF ENVIRONMENTAL  
17 CONSERVATION SHALL MAKE AVAILABLE TO THE BOARD DEPARTMENTAL STAFF IN  
18 ORDER TO SUPPORT THE BOARD IN CARRYING OUT ITS RESPONSIBILITIES.

19 2. THE SOLID WASTE MANAGEMENT FACILITY SITE REVIEW BOARD IS EMPOWERED  
20 TO:

21 (A) ISSUE CERTIFICATES OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC  
22 NECESSITY FOR SOLID WASTE MANAGEMENT FACILITIES. A CERTIFICATE FOR A  
23 SOLID WASTE MANAGEMENT FACILITY MAY BE ISSUED ONLY PURSUANT TO THIS  
24 ARTICLE; AND

25 (B) DEVELOP NON-BINDING ASSESSMENTS OF INCREASED PUBLIC EXPENDITURES  
26 TO BE CAUSED BY SOLID WASTE MANAGEMENT FACILITIES, FACILITATE SETTLE-  
27 MENTS ON PAYMENTS BY FACILITY OWNERS/OPERATORS TO OFFSET INCREASED  
28 PUBLIC EXPENDITURES, AND TO CONVENE ARBITRATION PANELS FOR THE PURPOSE  
29 OF ESTABLISHING FAIR AND EQUITABLE HOST COMMUNITY FEES PAYABLE TO  
30 AFFECTED MUNICIPALITIES AND DISTRICTS.

31 3. AN APPLICANT FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND  
32 PUBLIC NECESSITY SHALL SUBMIT ITS APPLICATION TO THE COMMISSIONER OF THE  
33 DEPARTMENT. UPON RECEIPT OF A COMPLETE APPLICATION, THE COMMISSIONER  
34 SHALL CONVENE THE SOLID WASTE MANAGEMENT FACILITY SITE REVIEW BOARD  
35 ESTABLISHED BY THIS SECTION. SUCH APPLICATION SHALL BE SUBMITTED IN  
36 ACCORDANCE WITH THE FOLLOWING PROCEDURE:

37 (A) ON OR BEFORE FIFTEEN CALENDAR DAYS AFTER THE RECEIPT OF SUCH  
38 APPLICATION, THE DEPARTMENT SHALL MAIL WRITTEN NOTICE TO THE APPLICANT  
39 AS TO WHETHER OR NOT SUCH APPLICATION IS COMPLETE. IF THE APPLICATION IS  
40 NOT COMPLETE, THE PROVISIONS OF SECTION 70-0109 OF THIS CHAPTER SHALL BE  
41 APPLICABLE. IF, OR WHEN, THE APPLICATION IS COMPLETE, THE DEPARTMENT  
42 SHALL, CONCURRENT WITH NOTIFICATION TO THE APPLICANT, SO NOTIFY THE  
43 COMMISSIONER SO THAT HE MAY CONVENE THE SOLID WASTE MANAGEMENT FACILITY  
44 SITE REVIEW BOARD.

45 (B) IMMEDIATELY UPON DETERMINING THAT AN APPLICATION IS COMPLETE, THE  
46 DEPARTMENT SHALL CAUSE A NOTICE TO BE PUBLISHED IN THE NEXT AVAILABLE  
47 ENVIRONMENTAL NOTICE BULLETIN WHICH SHALL NOT BE LATER THAN TEN CALENDAR  
48 DAYS AFTER THE DATE OF SUCH NOTICE AND SHALL PROVIDE NOTICE TO THE CHIEF  
49 EXECUTIVE OFFICER OF EACH MUNICIPALITY IN WHICH THE PROPOSED PROJECT IS  
50 TO BE LOCATED, AND SHALL DIRECT THE APPLICANT TO PROVIDE SUCH REASONABLE  
51 NOTICE TO THE PUBLIC AS THE DEPARTMENT DEEMS APPROPRIATE. SUCH NOTICE  
52 SHALL, AT A MINIMUM, INCLUDE PUBLICATION IN AT LEAST TWO NEWSPAPERS  
53 HAVING A GENERAL CIRCULATION IN THE VICINITY IN WHICH THE PROPOSED  
54 FACILITY IS PROPOSED TO BE LOCATED.

1 (C) ON OR BEFORE FIFTEEN CALENDAR DAYS AFTER THE DEPARTMENT DETERMINES  
2 THAT THE APPLICATION IS COMPLETE THE COMMISSIONER SHALL CONVENE THE  
3 SOLID WASTE MANAGEMENT FACILITY SITE REVIEW BOARD.

4 (D) THE COMMISSIONER SHALL APPOINT A HEARING OFFICER WHO SHALL CONDUCT  
5 AN ADJUDICATORY PUBLIC HEARING UPON THE APPLICATION. SUCH HEARING SHALL  
6 COMMENCE AFTER FORTY CALENDAR DAYS BUT BEFORE SIXTY CALENDAR DAYS AFTER  
7 THE SOLID WASTE MANAGEMENT FACILITY SITE REVIEW BOARD IS CONVENED.

8 (E) MUNICIPALITIES IN WHICH THE PROPOSED FACILITY WOULD BE LOCATED  
9 SHALL HAVE FORTY DAYS AFTER THE CONVENING OF THE SITE REVIEW BOARD TO

10 (I) CONCUR WITH THE SITE IDENTIFIED BY THE PERMIT APPLICANT OR (II)  
11 OBJECT TO THE ESTABLISHMENT OF A FACILITY OF THE KIND DESCRIBED BY THE  
12 APPLICANT BECAUSE ITS APPROVAL WOULD RESULT IN SUCH A CONCENTRATION OF  
13 SOLID WASTE MANAGEMENT FACILITIES IN THE MUNICIPALITY OR IN THE AREA IN  
14 PROXIMITY TO THE SITE SELECTED THAT THE NATURE AND CHARACTER OF THE  
15 AREAS WITHIN THE MUNICIPALITY WOULD BE SUBSTANTIALLY ALTERED. IN THE  
16 EVENT THE MUNICIPALITY OBJECTS TO ESTABLISHMENT OF A FACILITY IN THE  
17 MUNICIPALITY BECAUSE TO DO SO WOULD RESULT IN SUCH A CONCENTRATION OF  
18 WASTE MANAGEMENT FACILITIES THAT THE NATURE AND CHARACTER OF AREAS WITH-  
19 IN THE MUNICIPALITY WOULD BE SUBSTANTIALLY ALTERED, THE SITE REVIEW  
20 BOARD SHALL MEET WITHIN FIFTEEN DAYS OF RECEIPT OF SUCH AN OBJECTION TO  
21 RESOLVE THE ISSUE. IN REVIEWING ANY SUCH OBJECTION, THE BOARD SHALL  
22 CONSIDER THE NEED FOR SUCH A FACILITY IN THE MUNICIPALITY AND IN THE  
23 SOLID WASTE PLANNING REGION IN WHICH THE MUNICIPALITY IS LOCATED AND THE  
24 EXISTING CONCENTRATION OF SUCH FACILITIES IN THE MUNICIPALITY OR IN THE  
25 AREA IN PROXIMITY TO THE SITE PROPOSED BY THE PERMIT APPLICANT. THE  
26 SITE REVIEW BOARD SHALL SUSTAIN THE OBJECTION IF IT DETERMINES THAT THE  
27 NATURE AND CHARACTER OF THE AREA IN WHICH THE FACILITY IS TO BE BASED  
28 WOULD BE SUBSTANTIALLY ALTERED BECAUSE OF THE CONCENTRATION OF SOLID  
29 WASTE MANAGEMENT FACILITIES RESULTING FROM THE ESTABLISHMENT OF THE  
30 PROPOSED FACILITY. THE BOARD SHALL MAKE SUCH A DETERMINATION WITHIN  
31 THIRTY DAYS OF THE HEARING.

32 (F) THE SOLID WASTE MANAGEMENT FACILITY SITE REVIEW BOARD SHALL RENDER  
33 A DECISION, BASED UPON THE RECORD, EITHER GRANTING THE APPLICATION,  
34 DENYING IT, OR GRANTING IT UPON SUCH TERMS, CONDITIONS, LIMITATIONS OR  
35 MODIFICATIONS THEREOF AS THE BOARD DEEMS APPROPRIATE. THE BOARD SHALL  
36 BASE ITS DECISION UPON WHETHER OR NOT THE PROPOSED FACILITY IS CONSIST-  
37 ENT WITH THE STATE SOLID WASTE MANAGEMENT PLAN ADOPTED BY THE DEPARTMENT  
38 PURSUANT TO SECTION 27-0103 OF THIS ARTICLE AND ANY LOCALLY ADOPTED  
39 SOLID WASTE MANAGEMENT PLAN, WHETHER OR NOT SITING THE FACILITY IS  
40 CONSISTENT WITH THE CRITERIA ESTABLISHED BY SECTION 27-0107 OF THIS  
41 ARTICLE AND AS TO WHETHER OR NOT THERE EXISTS A NEED FOR THE PROPOSED  
42 FACILITY.

43 (G) THE BOARD SHALL MAKE THE FINAL DETERMINATION ON AN APPLICATION  
44 UPON THE RECORD MADE BEFORE THE HEARING OFFICER, AFTER RECEIVING BRIEFS  
45 FROM THE PARTIES TO THE HEARING AND EXCEPTIONS TO THE RECOMMENDED DECI-  
46 SION OF THE HEARING OFFICER AND AFTER HEARING SUCH ORAL ARGUMENTS AS THE  
47 BOARD SHALL DETERMINE TO BE NECESSARY. THE CHAIRMAN OF THE BOARD SHALL  
48 MAIL ITS DECISION TO THE APPLICANT, TO THE DEPARTMENT, AND TO ALL  
49 PARTIES TO THE HEARING ON OR BEFORE SIXTY CALENDAR DAYS AFTER RECEIPT BY  
50 THE BOARD OF A COMPLETE RECORD, AS THAT TERM IS DEFINED IN PARAGRAPHS

51 (A) THROUGH (E) OF SUBDIVISION ONE OF SECTION THREE HUNDRED TWO OF THE  
52 STATE ADMINISTRATIVE PROCEDURE ACT, OR WITHIN SIXTY DAYS OF MAKING A  
53 DETERMINATION ON AN OBJECTION ENTERED BY A MUNICIPALITY THAT ESTABLISH-  
54 MENT OF THE PROPOSED FACILITY IN THE MUNICIPALITY WOULD RESULT IN SUCH A  
55 CONCENTRATION OF SOLID WASTE MANAGEMENT FACILITIES THAT THE NATURE AND

1 CHARACTER OF AREAS WITHIN THE MUNICIPALITY WOULD BE SUBSTANTIALLY  
2 ALTERED.

3 (H) THE PROVISIONS OF ARTICLE 70 OF THIS CHAPTER SHALL APPLY TO APPLI-  
4 CATIONS PURSUANT TO THIS TITLE, TO THE EXTENT SUCH PROVISIONS ARE NOT  
5 INCONSISTENT HEREWITH.

6 4. APPLICATIONS FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND  
7 PUBLIC NECESSITY SHALL BE ACCOMPANIED BY A FEE OF ONE HUNDRED THOUSAND  
8 DOLLARS FOR A REQUEST THAT PERTAINS TO THE SITING OF A LANDFILL OR AN  
9 ENERGY RESOURCE RECOVERY FACILITY WITH PLANNED DISPOSAL CAPACITY OF TWO  
10 THOUSAND TONS PER DAY OR GREATER, FIFTY THOUSAND DOLLARS FOR A REQUEST  
11 THAT PERTAINS TO THE SITING OF A LANDFILL OR AN ENERGY RESOURCE RECOVERY  
12 FACILITY WITH PLANNED DISPOSAL CAPACITY OF LESS THAN TWO THOUSAND TONS  
13 PER DAY, OR TEN THOUSAND DOLLARS FOR A REQUEST THAT PERTAINS TO THE  
14 SITING OF A SOLID WASTE MANAGEMENT FACILITY OTHER THAN A LANDFILL OR AN  
15 ENERGY RESOURCE RECOVERY FACILITY.

16 THIS FEE SHALL BE RECEIVED BY THE DEPARTMENT AND DISBURSED AT THE  
17 BOARD'S DIRECTION TO PROVIDE FUNDING FOR MUNICIPAL AND OTHER LOCAL  
18 PARTIES AS PROVIDED IN THIS SECTION. ANY MONEYS REMAINING IN THE FUND  
19 AFTER THE BOARD HAS ISSUED ITS DECISION AND AFTER ALL RELATED  
20 PROCEEDINGS ARE COMPLETED AND THE TIME FOR APPLYING FOR JUDICIAL REVIEW  
21 HAS EXPIRED SHALL BE RETURNED TO THE APPLICANT.

22 5. MUNICIPAL AND OTHER PARTIES (EXCEPT A MUNICIPALITY WHICH IS AN  
23 APPLICANT) MAY APPLY TO AND RECEIVE FROM THE BOARD FUNDING TO DEFRAY  
24 REASONABLE EXPENSES INCURRED BY SUCH PARTIES FOR EXPERT WITNESSES AND  
25 CONSULTANT SERVICES IN CONNECTION WITH THEIR PARTICIPATION IN  
26 PROCEEDINGS BEFORE THE BOARD OR IN PROCEEDINGS RELATED TO THE ISSUANCE  
27 OF ANY PERMIT OR APPROVAL FOR THE FACILITY. THE BOARD SHALL ASSURE THAT  
28 SUCH FUNDS ARE MADE AVAILABLE ON AN EQUITABLE BASIS AND IN A MANNER  
29 WHICH FACILITATES BROAD PUBLIC PARTICIPATION.

30 S 27-0714. COMPENSATION FOR SOLID WASTE MANAGEMENT FACILITY HOST COMMU-  
31 NITIES.

32 1. UPON ISSUANCE OF A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND  
33 PUBLIC NECESSITY BY THE SOLID WASTE MANAGEMENT FACILITY SITE REVIEW  
34 BOARD, THE BOARD SHALL PREPARE A NON-BINDING ASSESSMENT OF ANY INCREASE  
35 IN PUBLIC EXPENDITURES LIKELY TO BE INCURRED BY ANY MUNICIPALITY OR  
36 DISTRICT WITHIN WHICH THE FACILITY IS LOCATED THAT IS ATTRIBUTABLE TO  
37 THE FACILITY'S OPERATION. THE BOARD SHALL ALSO MAKE RECOMMENDATIONS FOR  
38 OTHER OPERATING CONDITIONS OR RESTRICTIONS THAT, BASED ON THE RECORD,  
39 MAY BE WARRANTED TO ALLEVIATE ADVERSE IMPACTS ON AFFECTED COMMUNITIES  
40 RESULTING FROM THE OPERATION OF THE FACILITY. THE ASSESSMENT OF  
41 INCREASED PUBLIC EXPENDITURES AND THE RECOMMENDED CONDITIONS AND  
42 RESTRICTIONS MAY SERVE AS THE BASIS FOR SETTLEMENT BETWEEN THE FACILITY  
43 OWNER/OPERATOR AND THE MUNICIPALITIES AND DISTRICTS IN WHICH THE FACILI-  
44 TY IS LOCATED AND WHICH WILL INCUR INCREASED PUBLIC EXPENDITURES OR  
45 POTENTIALLY INCUR OTHER ADVERSE EFFECTS DUE TO THE OPERATION OF SUCH A  
46 FACILITY.

47 2. IN THE EVENT THAT A SETTLEMENT ON HOST COMMUNITY FEES AND OTHER  
48 OPERATING CONDITIONS AND RESTRICTIONS NECESSARY TO ALLEVIATE ADVERSE  
49 IMPACTS ON AFFECTED COMMUNITIES CANNOT BE ACHIEVED AMONG THE FACILITY  
50 OWNER/OPERATOR AND THE AFFECTED MUNICIPALITIES AND DISTRICTS, ANY PARTY  
51 TO THE SETTLEMENT MAY SUBMIT A REQUEST TO THE BOARD TO CONVENE A PROCESS  
52 OF BINDING ARBITRATION TO SETTLE OUTSTANDING ISSUES RELATING TO SUCH  
53 FEES AND OTHER OPERATING CONDITIONS AND RESTRICTIONS. THE ARBITRATION  
54 PANEL SHALL BE COMPRISED OF INDEPENDENT PRIVATE ARBITRATORS, AND SHALL  
55 HAVE RELEVANT ARBITRATION BACKGROUND AND EXPERIENCE RELEVANT TO THE  
56 ASSESSMENT OF FINANCIAL IMPACTS. AN ARBITRATION PANEL SHALL BE SELECTED

1 FOR INDIVIDUAL SOLID WASTE MANAGEMENT FACILITIES AND SHALL CONSIST OF  
2 THREE MEMBERS, SELECTED AS FOLLOWS:

3 (A) ONE ARBITRATOR SHALL BE SELECTED BY THE BOARD.

4 (B) ONE ARBITRATOR SHALL BE SELECTED BY THE APPLICANT.

5 (C) ONE ARBITRATOR SHALL BE SELECTED UPON MUTUAL AGREEMENT BY THE  
6 AFFECTED MUNICIPALITIES.

7 3. WITHIN THIRTY DAYS OF ITS APPOINTMENT, THE ARBITRATION PANEL SHALL  
8 SCHEDULE A HEARING ON THE OUTSTANDING ISSUES RELATING TO HOST COMMUNITY  
9 FEES AND OTHER OPERATING CONDITIONS AND RESTRICTIONS NECESSARY TO ALLE-  
10 VIATE ADVERSE IMPACTS ON AFFECTED COMMUNITIES. THE ARBITRATION PANEL  
11 SHALL ISSUE ITS DECISION WITHIN NINETY DAYS OF ITS APPOINTMENT.

12 4. COMPENSATION TO A MUNICIPALITY OR DISTRICT PURSUANT TO THIS SECTION  
13 MAY INCLUDE BUT NEED NOT BE LIMITED TO OR EXEMPLIFIED BY THE FOLLOWING  
14 PAYMENTS:

15 (A) IN THE EVENT THAT THE FACILITY WILL BE LOCATED ON PROPERTY WHICH  
16 IS EXEMPT FROM LOCAL PROPERTY TAXATION BY VIRTUE OF PUBLIC OWNERSHIP  
17 THEREOF, NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A SUM EQUAL TO THE  
18 AMOUNT WHICH WOULD ANNUALLY BE DUE IF THE LAND UPON WHICH SUCH FACILITY  
19 IS LOCATED AND ANY IMPROVEMENTS THERETO WERE ASSESSED AND TAXED AS REAL  
20 PROPERTY SUBJECT TO LOCAL REAL PROPERTY TAXATION;

21 (B) PAYMENTS TO DEFRAY ANY INCREASE IN PUBLIC EXPENDITURES BY SUCH  
22 MUNICIPALITY OR DISTRICT CAUSED BY THE FACILITY'S OPERATION; AND

23 (C) ANY OTHER COMPENSATION THE BOARD SHALL DETERMINE TO BE FAIR AND  
24 EQUITABLE UNDER THE CIRCUMSTANCES.

25 5. ANY DECISION REACHED BY THE PANEL SHALL BE BINDING ON ALL PARTIES  
26 TO THE DECISION. ANY PARTY TO THE DECISION MAY PETITION THE BOARD TO  
27 MODIFY THE DECISION OF THE PANEL UPON A SHOWING OF A MATERIAL CHANGE IN  
28 THE FACTS KNOWN TO THE PARTIES TO THE SETTLEMENT AT THE TIME IT WAS  
29 ENTERED INTO. THE BOARD MAY MODIFY THE SETTLEMENT TO REFLECT THESE  
30 CHANGED FACTS.

31 6. JUDICIAL REVIEW OF THE PANEL DECISION ON THE IMPOSITION OF HOST  
32 COMMUNITY FEES IS LIMITED TO A SHOWING OF FRAUD BY A PARTY TO THE DECI-  
33 SION OR AN ABUSE OF DISCRETION BY THE PANEL, OR BOTH.

34 S 5. This act shall take effect immediately.