

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 dictions 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;

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

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

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

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

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

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

Any local laws, ordinances or regulations of any governing body of a county, city, town or village which are not inconsistent with this title or with any rule or regulation which shall be promulgated pursuant to this title shall not be superseded by it, and nothing in this title or in any rule or regulation which shall be promulgated pursuant to this title shall preclude the right of any governing body of a county, city, town or village to adopt local laws, ordinances or regulations which are not inconsistent with this title or with any rule or regulation which shall be promulgated pursuant to this title provided, however, THAT NO MUNICIPALITY MAY, EXCEPT AS EXPRESSLY AUTHORIZED BY THE BOARD ESTABLISHED PURSUANT TO SECTION 27-0713 OF THIS TITLE, REQUIRE ANY APPROVAL, CONSENT, PERMIT, CERTIFICATE OR OTHER CONDITION INCLUDING CONFORMITY WITH LOCAL ZONING OR LAND USE LAWS AND ORDINANCES REGARDING THE OPERATION OF A SOLID WASTE MANAGEMENT FACILITY WITH RESPECT TO WHICH A CERTIFICATE HAS BEEN GRANTED IN ACCORDANCE WITH SECTION 27-0713 OF THIS TITLE, AND FURTHER PROVIDED, HOWEVER, that the exercise of such right by a county shall relate only to the area thereof outside any city, village or area of any town outside the village or villages therein during such time as such city, village or town has local laws, ordinances or regulations consistent with this title or with any rule or regulation which shall be promulgated pursuant to this title. Any local laws, ordinances or regulations of a county, city, town or village which comply with at least the minimum applicable requirements set forth in any rule or regulation promulgated pursuant to this title shall be deemed consistent with this title or with any such rule or regulation, EXCEPT AS PROVIDED HEREIN.

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

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.