§1304-B. Delivery of solid wastes to specific waste facilities

1. Findings and purpose. The Legislature makes the following findings of fact. Subject to the provisions of chapter 24, the State requires each municipality to provide for disposal services for domestic and commercial solid waste generated within the municipality. Solid waste contains valuable recoverable resources, including energy. Many municipalities have found that energy recovery reduces the cost of solid waste disposal. Energy recovery technology is complex and the equipment requires a steady supply of waste to operate efficiently. Because of the complicated technology, most energy recovery facilities have high capital costs and long payback periods. In order to remain cost effective throughout their lives, these energy recovery facilities require a guaranteed, steady supply of waste. Consequently, municipalities utilizing energy recovery facilities are usually required to enter long-term agreements to provide the facilities with specific amounts of waste. In order to make these energy recovery facilities financially feasible, and thereby simultaneously improve the environmental impacts and the economics of municipal solid waste disposal, municipalities shall have the legal authority to control the handling of solid waste generated within their borders.

The purpose of this section is to promote the recovery of resources from solid waste by creating one of the conditions which make energy recovery economically feasible, assuring municipalities the authority to guarantee a steady supply of solid waste to specific waste facilities.
[PL 1989, c. 585, Pt. E, §12 (AMD).]

2. Flow control. Subject to the provisions of chapter 24, municipalities are expressly authorized to enact ordinances that control solid waste collection, its transportation or its delivery to a specific facility, when the purpose and effect of such an ordinance is to gain management control over solid waste and enable the reclamation of resources, including energy, from these wastes. This authorization includes, but is not limited to, ordinances:

A. Requiring segregation of wastes; [PL 1987, c. 517, §14 (AMD).]

B. Requiring delivery of wastes generated within the municipality, or any portion of those wastes, to a designated disposal or reclamation facility; [PL 1991, c. 72, §4 (AMD).]

C. Designating certain materials as recyclable and exempt from the provisions of paragraph B; and [PL 1991, c. 72, §5 (AMD).]

D. Designating yard wastes as compost material and requiring delivery of these wastes to a designated composting facility. [PL 1991, c. 72, §6 (NEW).]
[PL 1991, c. 72, §§4-6 (AMD).]

3. Ordinances.
[PL 1989, c. 585, Pt. E, §14 (RP).]

4. Contracts. In order to encourage and facilitate the financing and development of solid waste facilities, including, but not limited to, facilities for resource recovery, municipalities shall have the following powers, notwithstanding any law, charter, ordinance provision or limitation to the contrary:

A. To contract with a corporation described in subsection 5 or a refuse disposal district organized under chapter 17 or any person, including, but not limited to, the owner or operator of any waste facility, for the collection, transportation, storage, processing, salvaging or disposal of waste. Any such contract may be for such term of years and may contain such other provisions as the municipality may approve. Any such contract may provide that, in consideration for the obligation of the facility owner or operator to handle all or any portion of the solid waste generated in the municipality, the municipality shall pay to the facility owner or operator such fees, assessments and other payments as shall be established in accordance with the contract. [PL 1985, c. 593, §8 (AMD).]

B. Without limiting the generality of the powers conferred in paragraph A, to agree in such a contract to pay fees, assessments or other payments in such amounts as may be reasonably necessary to pay:

(1) Costs associated with financing, developing, constructing, repairing, maintaining and operating all or any one or more of the waste facilities owned or operated by the facility owner or operator, including, but not limited to, the payment of debt service and the maintenance of reasonable reserves or sinking funds in connection with the financing or operation of any such waste facilities;

(2) Any other costs incurred by the facility owner or operator in connection with the handling of solid waste, whether performed at any waste facility referred to in subparagraph (1) or at another such facility differently owned and operated; and

(3) Any deficiencies arising by virtue of the failure of any other municipality so agreeing to meet its obligations to pay the costs set forth in subparagraphs (1) and (2) in accordance with any similar agreement with the same facility owner; and [PL 1985, c. 593, §8 (AMD).]

C. To pledge the full faith and credit of the municipality for the payment of fees, assessments and other payments, as provided in paragraphs A and B, and to levy upon and raise from taxable estates within the municipality by general taxes the amounts required to pay these fees, assessments and payments or to raise those amounts by means of any fee, user charge or other cost-sharing or assessment mechanism duly adopted and authorized by the municipality or to borrow those amounts by issuance of general obligation bonds or notes. [PL 1985, c. 337, §3 (NEW).]

Any contract complying with the requirements of this subsection and subsection 6 shall be a properly authorized, legal, valid, binding and enforceable obligation of the municipality, regardless of whether the agreement was authorized, executed or delivered prior to or after the effective date of this subsection.
[PL 1985, c. 593, §8 (AMD).]

4-A. Contract limitations. Any contract, including any contract in existence on the effective date of this subsection, for the provision of waste disposal, transportation or handling services to municipalities is subject to the following limitations.

A. No contract for waste disposal, transportation or handling services may prevent a municipality from recycling any portion of its solid waste, provided that any minimum BTU content level and minimum tonnage level required by that contract is maintained by the municipality. [PL 1987, c. 517, §17 (NEW).]

B. No contract for waste disposal, transportation or handling services may prevent a municipality from meeting its obligations to supply a minimum BTU content level and minimum tonnage level required by that contract using solid waste generated outside its borders, provided that:

(1) The municipality is or will be unable, as the direct result of recycling or source reduction efforts, to meet the obligations using solid waste generated within its jurisdiction; and

(2) The municipality is liable for any damages caused by any solid waste it relies upon to satisfy the provisions of its contract. [PL 1987, c. 517, §17 (NEW).]

C. For those waste disposal, transportation or handling services contracts which do not principally rely upon requiring minimum BTU content level or minimum tonnage level to secure solid waste for the waste disposal facility, but which instead rely upon a requirement that the municipality provide all or most of its solid waste to the waste disposal facility, no such contract may prohibit a municipality during the term of the contract from recycling those materials which the municipality determines to be recyclable. [PL 1987, c. 517, §17 (NEW).]

D. A municipality that anticipates that it will be unable to meet its contract obligation to supply a minimum BTU content level or minimum tonnage due to waste reduction or recycling programs and is unable to reach an agreement with the incinerator for the anticipated reduction may request the department to intercede. The department shall assist the incinerator in soliciting solid waste to mitigate any anticipated shortfall in minimum BTU content level or minimum tonnage. If no agreement on mitigation of an anticipated shortfall is reached, the terms of the original contract prevail, except as otherwise provided in this chapter. [PL 2011, c. 655, Pt. GG, §12 (AMD); PL 2011, c. 655, Pt. GG, §70 (AFF).]

[PL 2011, c. 655, Pt. GG, §12 (AMD); PL 2011, c. 655, Pt. GG, §70 (AFF).]

5. Public waste disposal corporations. Notwithstanding any law, charter, ordinance provision or limitation to the contrary, pursuant to an interlocal agreement entered into in accordance with Title 30-A, chapter 115, 2 or more municipalities may organize or cause to be organized or may participate in one or more corporations organized as nonprofit corporations under Title 13, chapter 81 or Title 13-B for the purpose, among other permissible purposes, of owning or operating one or more waste facilities described in subsection 4, paragraph A. A subscribing municipality may agree in an interlocal agreement to pay fees, assessments or other payments as described in subsection 4, paragraph B for such a term of years and on such other terms as the interlocal agreement may provide and may pledge the full faith and credit of the municipality to the same extent provided in subsection 4, paragraph C. The applicable interlocal agreement or the articles of incorporation or the bylaws of the corporation may provide that the municipal officers of a municipality participating in the corporation may appoint an alternate director or alternate directors to act as the municipality's representative to the corporation's board of directors in the absence of the director or directors elected by the municipal officers. A corporation described in this subsection is a public municipal corporation as that term is used in Title 36, section 651, subsection 1, paragraph D, and its real and personal property located in subscribing, participating and associate member municipalities is exempt from municipal property taxation to the extent provided by Title 36, section 651, subsection 1, paragraph D. The applicable interlocal agreement or the articles of incorporation or bylaws of the corporation must provide that:

A. The corporation must be organized and continuously thereafter operated as a nonprofit corporation, no part of the net earnings of which may inure to the benefit of any member, director, officer or other private person; [PL 1995, c. 81, §1 (AMD).]

B. The directors of the corporation must be elected by the municipal officers of the municipalities participating in the corporation; and [PL 1995, c. 81, §1 (AMD).]

C. Upon dissolution or liquidation of the corporation, title to all of its property vests in one or more of the municipalities participating in the corporation. [PL 1995, c. 81, §1 (AMD).]

Any interlocal agreement complying with the requirements of this subsection and subsection 6 must be a properly authorized, legal, valid, binding and enforceable obligation of the municipality, regardless of whether the agreement was authorized, executed or delivered prior to or after the effective date of this subsection. Any corporation organized in a manner that satisfies the requirements set forth in this subsection and subsection 6, whether organized prior to or after the effective date of this subsection, is deemed for all purposes as organized pursuant to this subsection. If so provided in the applicable interlocal agreement, any such corporation has the power, in addition to any other powers that may be delegated under Title 30-A, chapter 115, to issue, on behalf of one or more of the municipalities participating in the corporation, in order to finance the facilities, revenue obligation securities issued in accordance with Title 10, chapter 110, subchapter 4 and any other bonds, notes or debt obligations that municipalities are authorized to issue by applicable law. For these purposes, the term "municipal officers" as used in Title 10, chapter 110, subchapter 4 means the board of directors of any corporation described in this subsection. Title 10, section 1064, subsection 6 may not be construed to prohibit the assignment or pledge as collateral security of any contract of a municipality authorized by this section or of any or all of the payments under this section, regardless of whether the provisions of subsection

4, paragraph C are applicable to the contract or payments. The provisions of Title 10, sections 1063 and 1064, subsection 1, paragraph A and paragraph C, subparagraph (4) do not apply to revenue obligation securities issued by any public waste disposal corporation described in this subsection. [PL 2007, c. 91, §1 (AMD).]

5-A. Other regional associations. Notwithstanding any law, charter, ordinance provision or limitation to the contrary, any 2 or more municipalities, counties, refuse disposal districts, public waste disposal corporations or other quasi-municipal corporations may organize or cause to be organized or may acquire membership in one or more regional associations for the purpose, among other permissible purposes, of facilitating the disposal of domestic and commercial solid waste generated within the geographic boundaries of each member of the regional association. In accordance with this subsection, a regional association may conduct business without an interlocal agreement.

A. The articles of incorporation or bylaws of the regional association must provide that:

(1) The regional association must be organized and continuously operated as a nonprofit corporation, no part of the net earnings of which may inure to the benefit of any member, director, officer or other private person; the receipt, directing and application of money in accordance with paragraph E may not be considered to be part of the net earnings, income or profit of the regional association;

(2) The directors of the regional association must be elected by the municipal officers, the trustees or the directors, as applicable, of the members of the regional association; and

(3) Upon dissolution or liquidation of the corporation, title to all of its property vests in one or more of the municipalities participating in the regional association. [PL 1997, c. 602, §2 (NEW); PL 1997, c. 602, §3 (AFF).]

B. Each member must enter into at least one solid waste disposal agreement with the owners of at least one solid waste disposal facility, including, but not limited to, a solid waste disposal facility that is a qualifying facility as defined in Title 35-A, section 3303. [PL 1997, c. 602, §2 (NEW); PL 1997, c. 602, §3 (AFF).]

C. Each member must be in good standing with the regional association and abide by the bylaws of the regional association. [PL 1997, c. 602, §2 (NEW); PL 1997, c. 602, §3 (AFF).]

D. Notwithstanding any limitation imposed by Title 30-A, chapter 223, subchapter III-A, or any other limitation on investments imposed on a member pursuant to state law, each member may invest its funds in and participate in the ownership of:

(1) One or more solid waste disposal facilities;

(2) An entity that owns one or more solid waste disposal facilities;

(3) A transmission and distribution utility that has a power purchase agreement with the owners of a solid waste disposal facility that, in turn, has a solid waste disposal contract with the member;

(4) A competitive electricity provider, as defined in Title 35-A, section 3201, affiliated with a public utility whether or not it is regulated by the Public Utilities Commission or a successor state agency; and

(5) A subsidiary entity formed by a transmission and distribution utility. [PL 1999, c. 657, §26 (AMD).]

E. To the extent provided in its bylaws, a regional association may perform the following functions, among others, on behalf of its members:

(1) Receive and direct distributions of cash from and ownership interests in the entities described in paragraph D as well as other revenues from activities authorized under this subsection, including, but not limited to:

(a) Distribution on behalf of members based on a minimum tonnage guaranteed to be delivered or actually delivered to solid waste disposal facilities; and

(b) Earnings and other distributions from the members' investments in and participation in the entities described in paragraph D in the form of capital stock, limited partnership interest, warrants for equity interest or other equity positions in entities;

(2) Manage assets of its members that are related to the functions of the regional association, including, but not limited to, functions related to the entities described in paragraph D;

(3) Manage money or other value received on account of members from any source;

(4) Determine the use and application of assets on behalf of and for the benefit of its members, including investment and reinvestment in the entities described in paragraph D;

(5) Purchase, sell and otherwise deal with ownership interests, including the authority to exercise warrants for the purpose of making any purchase, in the entities described in paragraph D; and

(6) Administer the solid waste disposal agreement described in paragraph B and act as agent for its members under and pursuant to and to the extent provided by the solid waste disposal agreement, including the authority to bind its members through arbitration proceedings. [PL 1997, c. 602, §2 (NEW); PL 1997, c. 602, §3 (AFF).]

F. A regional association may receive, direct and apply money as described in paragraph E without the need for further action by any member by appropriation or otherwise and, unless otherwise provided by a member in connection with its participation in a regional association, that money may not be taken into account for purposes of calculating any limitation on the member's annual expenditures or appropriations. [PL 1997, c. 602, §2 (NEW); PL 1997, c. 602, §3 (AFF).]

A regional association may not pledge the full faith and credit of its members but it has all other powers necessary and incidental to carry out the purposes of this chapter. Notwithstanding any contrary provision in Title 13-B, a regional association may have more than one class of members as prescribed or established in its bylaws.
[PL 1999, c. 657, §26 (AMD).]

6. Relationship to other laws. The obligation of a municipality to pay any fees, assessments or other payments in accordance with any agreement entered into pursuant to subsection 4 or any interlocal agreement referred to in subsection 5 shall not constitute a "debt" or "indebtedness" of the municipality within the meaning of any statutory, charter or ordinance provision limiting the incurrence or the amount of municipal indebtedness nor shall the authorization or incurrence of the obligation or any municipal action to raise funds to meet the obligation by any means set forth in subsection 4, paragraph C, require or be subject to any voter referendum or approval under any law or any charter or ordinance provision.

A. A municipality may agree to make payments in accordance with subsection 4, paragraph B, or in accordance with the provisions of any interlocal agreement referred to in subsection 5 with regard to all or any portion of debt incurred or to be incurred for the financing of one or more waste facilities, provided that no such payments shall be made with respect to debt or any portion of debt which, when incurred, would cause the total principal balance of all then outstanding debt or portions of debt to which the payments apply to exceed:

(1) Three percent of the last full state valuation of the municipality; minus

(2) The municipality's then obtaining allocable share of any debt or portions of debt described in paragraph B with regard to which it is obliged to make payments. [PL 1985, c. 593, §10 (NEW).]

B. Notwithstanding paragraph A, 2 or more municipalities may agree to make payments in accordance with subsection 4, paragraph B, or in accordance with any interlocal agreement referred to in subsection 5 with regard to all or any portion of debt incurred or to be incurred for the financing of one or more waste facilities, provided that no such payments may be made with respect to debt or any portions of debts which, when incurred, would cause the total principal balance of all then outstanding debt or portions of debt to which the payments apply to exceed:

(1) Three percent of the sum of the last full state valuation of all municipalities so agreeing; minus

(2) Any amounts of debt or portions of debt described in paragraph A in connection with which any such municipality is obliged to make payments.

The limitations set forth in paragraphs A and B shall only apply to agreements by which a municipality or group of municipalities have agreed to make payments directly based, among other things, on a facility owner's costs of debt service and other costs of financing and shall not be construed to apply to contract payments calculated on any other basis, even if the facility owner uses the payments to meet its debt service obligations. [PL 1985, c. 593, §10 (NEW).]

The obligation of the municipality to pay fees, assessments and other payments in accordance with subsection 4 or any interlocal agreement referred to in subsection 5 shall be binding upon and enforceable against the municipality without regard to whether all or any one or more of the waste facilities referred to in subsection 4, paragraph B, subparagraph (1), becomes operational or was or will be in operation during the period for which the fees, assessments or other payments are so charged.

No contract entered into in accordance with subsection 4 nor any ordinance adopted under the authority of subsection 2 may be deemed a contract in restraint of trade or otherwise unlawful under Title 10, chapter 201.

Notwithstanding any law, charter or ordinance provisions to the contrary, the powers conferred upon a municipality pursuant to subsections 4 and 5 and this subsection may be exercised by the municipal officers as defined in Title 30-A, section 2001, including the assessors of a plantation, only when authorized, in the case of a municipality with a city or town council, by action of the council and, in the case of a municipality without such a council, by action of the town meeting. This paragraph shall apply whether or not the action of the city council, town council or town meeting was taken before or after March 21, 1986.

Nothing in this section may be construed to be a limitation on the Home Rule powers granted to municipalities under Title 30-A, section 3001, or on the ability of communities to jointly exercise their powers as is recognized in Title 30-A, section 2201. This section provides an additional and alternative method for carrying out this subchapter.
[PL 1987, c. 737, Pt. C, §§96, 106 (AMD); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

7. Subjugation. Notwithstanding any provision of this section to the contrary, the exercise of any power or authority granted under this section is subject to the provisions of chapter 24.
[PL 1989, c. 585, Pt. E, §16 (NEW).]

SECTION HISTORY

PL 1983, c. 380, §1 (NEW). PL 1983, c. 726, §1 (AMD). PL 1983, c. 743, §16 (AMD). PL 1985, c. 337, §§3,4 (AMD). PL 1985, c. 506, §B38 (AMD). PL 1985, c. 593, §§8-10 (AMD). PL 1987, c. 517, §§14-17 (AMD). PL 1987, c. 737, §§C95,C96, C106 (AMD). PL 1989, c. 6 (AMD). PL

1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,C10 (AMD). PL 1989, c. 585, §§E12-16 (AMD). PL 1989, c. 869, §C10 (AMD). PL 1991, c. 72, §§4-6 (AMD). PL 1995, c. 81, §1 (AMD). PL 1995, c. 656, §A24 (AMD). PL 1997, c. 602, §2 (AMD). PL 1997, c. 602, §3 (AFF). PL 1999, c. 657, §26 (AMD). PL 2007, c. 91, §1 (AMD). PL 2011, c. 655, Pt. GG, §12 (AMD). PL 2011, c. 655, Pt. GG, §70 (AFF).

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