

CHAPTER 128

AN ACT concerning the Clean Communities Program, and amending, supplementing and repealing parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.13:1E-213 Short title.

1. Sections 1 through 10 and section 13 of P.L.2002, c.128 (C.13:1E-213 et seq.) shall be known and may be cited as the "Clean Communities and Recycling Grant Act."

C.13:1E-214 Findings, declarations relative to the Clean Communities Program.

2. The Legislature finds that an uncluttered landscape is among the most priceless heritages which New Jersey can bequeath to posterity; that it is the duty of government to promote and encourage a clean and safe environment; that the proliferation and accumulation of carelessly discarded litter may pose a threat to the public health and safety; that the litter problem is especially serious in a State as densely populated and heavily traveled as New Jersey; and that unseemly litter has an adverse economic effect on New Jersey by making the State less attractive to tourists and new industry and residents.

The Legislature further finds that the recycling of waste materials decreases waste flow to county solid waste facilities and out-of-State disposal sites, reduces waste flow to the State's solid waste incinerators while contributing to their overall combustion efficiency through the removal of noncombustible and nonprocessable materials at the source, recovers valuable resources, conserves energy in the manufacturing process, and offers a supply of domestic raw materials for the State's industries; that economically viable municipal and county recycling programs are necessary to achieve the maximum practicable recovery of reusable materials from solid waste in this State; and that such programs will reduce the amount of solid waste disposed at county solid waste facilities, result in more efficient solid waste incinerators, conserve energy and resources, and recover materials for industrial uses.

The Legislature, therefore, declares it to be in the aesthetic, environmental, and economic interests of the State of New Jersey to support a Clean Communities Program and to maintain support for municipal and county recycling programs.

C.13:1E-215 Definitions relative to the Clean Communities Program.

3. As used in the provisions of P.L.2002, c.128 (C.13:1E-213 et al.):

- a. "Department" means the Department of Environmental Protection.
- b. "Division" means the Division of Taxation in the Department of the Treasury.
- c. "Director" means the Director of the Division of Taxation in the Department of the Treasury.
- d. "Litter" means any used or unconsumed substance or waste material which has been discarded, whether made of aluminum, glass, plastic, rubber, paper, or other natural or synthetic material, or any combination thereof, including, but not limited to, any bottle, jar or can, or any top, cap or detachable tab of any bottle, jar or can, any unlighted cigarette, cigar, match or any flaming or glowing material or any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste, newspapers, magazines, glass, metal, plastic or paper containers or other packaging or construction material, but does not include the waste of the primary processes of mining or other extraction processes, logging, sawmilling, farming or manufacturing.

e. "Litter-generating products" means the following specific goods which are produced, distributed, or purchased in disposable containers, packages or wrappings; or which are not usually sold in packages, containers, or wrappings but which are commonly discarded in public places; or which are of an unsightly or unsanitary nature, commonly thrown, dropped, discarded, placed, or deposited by a person on public property, or on private property not owned by that person:

- (1) Beer and other malt beverages;
- (2) Cigarettes and tobacco products;
- (3) Cleaning agents and toiletries;
- (4) Distilled spirits;
- (5) Food for human or pet consumption;
- (6) Glass containers sold as such;
- (7) Groceries;
- (8) Metal containers sold as such;
- (9) Motor vehicle tires;
- (10) Newsprint and magazine paper stock;
- (11) Drugstore sundry products, but not including prescription drugs or nonprescription drugs;
- (12) Paper products and household paper, but not including roll stock produced by paper product manufacturers and wood pulp;
- (13) Plastic or fiber containers made of synthetic material and sold as such, but not including any container which is routinely reused, has a useful life of more than one year and is ordinarily sold empty at retail;
- (14) Soft drinks and carbonated waters; and
- (15) Wine.

f. "Litter receptacle" means a container suitable for the depositing of litter.

g. "Municipality" means any city, borough, town, township or village situated within the boundaries of this State.

h. "Person" means any individual or business concern.

I. "Public place" means any area that is used or held out for use by the public, whether owned or operated by public or private interests.

j. "Recycling" means any process by which materials which would otherwise become solid waste are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

k. "Sold within the State" or "sales within the State" means all sales of retailers engaged in business within the State and, in the case of manufacturers, wholesalers and distributors, all sales of products for use and consumption within the State. It shall be presumed that all sales of manufacturers, wholesalers and distributors sold within the State are for use and consumption within the State unless it is determined by the director that the products are shipped out of State for out-of-State use.

C.13:1E-216 User fee imposed on sales by manufacturer, wholesaler, distributor, retailer of litter-generating products.

4. a. There is imposed upon each person engaged in business in the State as a manufacturer, wholesaler, or distributor of litter-generating products a user fee of 3/100 of 1% (.0003) on sales of those products within the State, and each person engaged in business in the State as a retailer of litter-generating products a user fee of 2.25/100 of 1% (.000225) on sales of those products within the State, except any retailer with less than \$500,000.00 in annual retail sales of litter-generating products is exempt from the user fee imposed under this section. A sale by a wholesaler or distributor to another wholesaler or distributor, a sale by a company to another company owned wholly by the same

individuals or companies, or a sale by a wholesaler or distributor owned cooperatively by retailers to those retailers is not subject to the user fee imposed under this section. For the purposes of this section, "retailer" includes the owner or operator of a take-out or drive-thru restaurant, the principal activity of which consists of selling for consumption off the premises of the restaurant a meal or food prepared and ready to be eaten. A retailer shall not include (1) the owner or operator of a restaurant with less than 10% in annual retail sales of meals or food prepared and ready to be eaten for consumption off the premises of the restaurant; or (2) the owner or operator of a restaurant, the principal activity of which consists of preparing for consumption within the restaurant a meal or food to be eaten on the premises.

b. Every person subject to the user fee on the sale of litter-generating products imposed pursuant to subsection a. of this section shall file with the director a certificate of registration on a form prescribed by the director. Any person who is registered under any law administered by the division or who is subject to and files returns under any of these laws shall not be required to comply with the provisions of this subsection.

c. Every person subject to the user fee on the sale of litter-generating products imposed pursuant to subsection a. of this section shall, on or before March 15 of each year, prepare and file a return, under oath, for the preceding calendar year with the director on forms and containing any information as the director shall prescribe. The return shall indicate the dollar value of the sales within the State of litter-generating products and at the same time the person shall pay the full amount of user fees due.

d. If a return required by this section is not filed, or if a return when filed is incorrect or insufficient in the opinion of the director, the amount of user fees due shall be determined by the director based on collections from the person liable for the payment of the user fees during the previous five years. Notice of the determination shall be given to the person liable for the payment of the user fees. The determination shall finally and irrevocably fix the user fees unless the person against whom it is assessed, within 90 days after the giving of the notice of the determination, shall file a protest in writing as provided in R.S.54:49-18 and request a hearing, or unless the director on the director's own motion shall redetermine the same. After the hearing the director shall give notice of the determination to the person to whom the user fees are assessed.

e. Any person who shall fail to file a return when due or to pay any user fee when the user fee becomes due, as herein provided, shall be subject to such penalties and interest as may be provided by law. If the director determines that the failure to comply with any provision of this section was excusable under the circumstances, the director may remit any part of the penalty as shall be appropriate under the circumstances.

f. In addition to the other powers granted by this section, the director may:

(1) Delegate to any officer or employee of the division those powers and duties as the director may deem necessary to carry out efficiently the provisions of this section, and the person or persons to whom the powers have been delegated shall possess and may exercise all of the powers and perform all of the duties delegated by the director;

(2) Prescribe and distribute all necessary forms for the implementation of this section; and

(3) Adopt any rules and regulations necessary for the implementation of this section.

g. Notwithstanding the provisions of subparagraph © of paragraph (2) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), if any, to the contrary, any deduction of the user fee imposed pursuant to subsection a. of this section allowed in computing a taxpayer's taxable income which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its federal taxable income shall be allowed in determining the taxpayer's "entire net income" pursuant to subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4).

h. Subsections a. through g. of this section shall be without effect on and after the tenth day following a certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection b. of section 13 of P.L.2002, c.128 (C.13:1E-223).

C.13:1E-217 Clean Communities Program Fund.

5. The Clean Communities Program Fund is established as a nonlapsing, revolving fund in the Department of the Treasury. The Clean Communities Program Fund shall be administered by the Department of Environmental Protection and credited, in addition to any appropriations made thereto, with all user fees imposed pursuant to section 4 of P.L.2002, c.128 (C.13:1E-216) or penalties imposed pursuant to section 10 of P.L.2002, c.128 (C.13:1E-222), and any sums received as voluntary contributions from private sources. Interest received on moneys in the Clean Communities Program Fund shall be credited to the fund. Unless otherwise expressly provided by the specific appropriation thereof by the Legislature, which shall take the form of a discrete legislative appropriations act and shall not be included within the annual appropriations act, all available moneys in the Clean Communities Program Fund shall be appropriated annually solely for the following purposes and no others:

a. 10% of the estimated annual balance of the Clean Communities Program Fund shall be used for a State program of litter pickup and removal and of enforcement of litter-related laws and ordinances in State owned places and areas that are accessible to the public;

b. 50% of the estimated annual balance of the Clean Communities Program Fund shall be distributed as State aid to eligible municipalities with total housing units of 200 or more for programs of litter pickup and removal, including establishing an "Adopt-A-Highway" program, of public education and information relating to litter abatement and of enforcement of litter-related laws and ordinances. The amount of State aid due each municipality shall be solely calculated based on the proportion which the housing units of a qualifying municipality bear to the total housing units in the State. Total housing units shall be determined using the most recent federal decennial population estimates for New Jersey and its municipalities, filed in the office of the Secretary of State. Moneys in the fund may also be used by an eligible municipality to abate graffiti;

c. 30% of the estimated annual balance of the Clean Communities Program Fund shall be distributed as State aid to eligible municipalities with total housing units of 200 or more for programs of litter pickup and removal, including establishing an "Adopt-A-Highway" program, of public education and information relating to litter abatement and of enforcement of litter-related laws and ordinances. The amount of State aid due each municipality shall be solely calculated based on the proportion which the municipal road mileage of a qualifying municipality bears to the total municipal road mileage within the State. For the purposes of this subsection, "municipal road mileage" means that road mileage under the jurisdiction of municipalities, as determined by the Department of Transportation. Moneys in the fund may also be used by an eligible municipality to abate graffiti;

d. 10% of the estimated annual balance of the Clean Communities Program Fund shall be distributed as State aid to eligible counties for programs of litter pickup and removal, including establishing an "Adopt-A-Highway" program, of public education and information relating to litter abatement and of enforcement of litter-related laws and ordinances. The amount of State aid due each county shall be solely calculated based on the proportion which the county road mileage of an eligible county bears to the total county road mileage within the State. For the purposes of this subsection, "county road mileage" means that road mileage under the jurisdiction of counties, as determined by the Department of Transportation. Moneys in the fund may also be used by an eligible county to abate graffiti;

e. No eligible municipality shall receive less than \$4,000 in State aid as apportioned pursuant to subsections b. and c. of this section. A municipality or county may use up to 5% of its State aid for administrative expenses;

f. Prior to the distribution of funds pursuant to subsections a. through d. of this section:

(1) 25% of the estimated annual balance of the Clean Communities Program Fund shall be annually appropriated to the State Recycling Fund established pursuant to section 5 of P.L.1981, c.278 (C.13:1E-96). These moneys shall be used by the Department of Environmental Protection for direct recycling grants to counties and municipalities, up to a maximum appropriation of \$4,000,000 per year. The moneys made available to the department from the Clean Communities Program Fund for direct recycling grants shall be annually appropriated to the State Recycling Fund until such time as an alternative funding mechanism for direct recycling grants is enacted into law; and

(2) \$300,000 of the estimated annual balance of the Clean Communities Program Fund shall be annually appropriated to the department and made available on July 1 of every year to the organization under contract with the department pursuant to section 6 of P.L.2002, c.128 (C.13:1E-218) for a Statewide public information and education program concerning antilittering activities and other aspects of responsible solid waste handling behavior.

The organization under contract with the department pursuant to section 6 of P.L.2002, c.128 (C.13:1E-218) shall, no later than the date on which the contract period concludes, submit a report to the Governor and the Legislature concerning its activities during the contract period and any recommendations concerning improving the program. Every eligible municipality and county shall cooperate with the organization under contract with the department pursuant to section 6 of P.L.2002, c.128 (C.13:1E-218) in providing information concerning its program of litter pickup and removal.

g. As used in this section, "graffiti" means any inscription drawn, painted or otherwise made on a bridge, building, public transportation vehicle, rock, wall, sidewalk, street or other exposed surface on public property.

The department may carry forward any unexpended balances in the Clean Communities Program Fund as of June 30 of each year.

C.13:1E-218 Statewide public information and education program.

6. a. The organization under contract with the department pursuant to section 2 of P.L.1999, c.418 (C.13:1E-99.2b et al.) on the effective date of P.L.2002, c.128 (C.13:1E-213 et al.) shall administer a Statewide public information and education program concerning antilittering activities and other aspects of responsible solid waste handling behavior as part of the Clean Communities Program.

b. The contract to administer the Clean Communities Statewide public information and education program concerning antilittering activities and other aspects of responsible solid waste handling behavior shall provide (1) the terms and conditions of the contract; (2) conditions under which the contract may be terminated and grant funds recaptured by the Department of Environmental Protection; and (3) that the Commissioner of Environmental Protection and the State Treasurer, or their designees, are included as members on the Board of Trustees of the organization.

c. The contract shall be for a period of two years and a contract recipient shall be eligible for a subsequent contract unless the recipient is otherwise disqualified or fails to meet the conditions provided in subsection d. of this section.

d. An organization may be awarded a contract with the department if it meets the following criteria:

(1) the organization is exempt from federal income tax under section 501(c)(3) of the United States Internal Revenue Code (26 U.S.C.s.501(c)(3));

(2) the organization qualifies for tax deductible contributions under section 170(b)(1)(A)(vi) or (viii) of the United States Internal Revenue Code (26 U.S.C.s.170(b)(1)(A)(vi) or (viii));

(3) the organization is incorporated under and subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Registration and Investigation Act," P.L.1994, c.16 (C.45:17A-18 et seq.);

(4) the sole purpose of the organization is the funding and administration of a Statewide public information and education program concerning antilittering activities and other aspects of responsible solid waste handling behavior as part of the Clean Communities Program;

(5) the organization demonstrates that it has raised funds or has the capability to raise funds from the private sector for the same purposes moneys in the Clean Communities Program Fund are appropriated; and

(6) the membership of the governing board of the organization consists of representatives of private sector companies or organizations that were subject to the provisions of section 6 of P.L.1985, c.533 (C.13:1E-99.1) prior to December 31, 2000, representatives of the public sector who are local clean community coordinators duly appointed by their county or municipal governing bodies, the Commissioner of Environmental Protection and the State Treasurer or their designees, and representatives of community organizations, academia and organizations that have an interest in litter prevention and education.

C.13:1E-219 Contract not required for receipt of State aid.

7. a. (1) No contract shall be required as a prerequisite to the distribution of State aid to eligible municipalities and counties for programs of litter pickup and removal pursuant to section 5 of P.L.2002, c.128 (C.13:1E-217). All State aid funds for each fiscal year for which these funds are to be distributed shall be distributed by May 31 of the following year.

(2) Every eligible municipality and county shall submit a brief annual report to the department summarizing the uses and expenditure of funds received for its program of litter pickup and removal.

b. The department shall report to the Governor and the Legislature on the success of the county and municipal litter pickup and removal programs in reducing litter in New Jersey not later than August 30 of each year.

c. Additional expenditures or incremental costs necessary and reasonably incurred by a municipality or county for the abatement and control of litter or any other antilittering activities as a direct result of the implementation of the provisions of P.L.2002, c.128 (C.13:1E-213 et al.) shall, for the purposes of P.L.1976, c.68 (C.40A:4-45.1 et seq.), be considered expenditures mandated by State law.

C.13:1E-220 Additional duties, responsibilities of department.

8. In addition to the duties and responsibilities imposed pursuant to P.L.2002, c.128 (C.13:1E-213 et al.), the Department of Environmental Protection shall:

a. Coordinate the various industry and business organizations seeking to aid in the antilitter effort;

b. Conduct periodic litter surveys or random inspections in various parts of the State to ensure the satisfactory implementation of the county and municipal litter pickup and removal programs required pursuant to section 5 of P.L.2002, c.128 (C.13:1E-217);

c. Encourage and cooperate with all local voluntary and government antilitter campaigns attempting to focus public attention on the Statewide public information and education program concerning antilittering activities and other aspects of responsible solid waste handling behavior as part of the Clean Communities Program;

d. Investigate the availability of, and apply for, funds available from any private or public source to be used in the Clean Communities Program;

e. Investigate the successful methods of litter pickup and removal programs in other states or jurisdictions, encourage the use of litter receptacles, and evaluate their possible incorporation into the New Jersey Clean Communities Program.

C.13:1E-221 Violations, penalties.

9. Every person convicted of a violation of the provisions of P.L.2002, c.128 (C.13:1E-213 et al.) for which no penalty is specifically provided is subject to a fine of not more than \$100 for each violation. If the violation is of a continuing nature, each day during which it continues constitutes a separate and distinct offense.

C.13:1E-222 Rules, regulations.

10. a. The Commissioner of Environmental Protection shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations as are necessary to effectuate the provisions of P.L.2002, c.128 (C.13:1E-213 et al.).

b. The director shall adopt, pursuant to the "Administrative Procedure Act," rules and regulations as are necessary to effectuate the provisions of section 4 of P.L.2002, c.128 (C.13:1E-216).

11. Section 5 of P.L.1981, c.278 (C.13:1E-96) is amended to read as follows:

C.13:1E-96 State Recycling Fund; allocation of moneys.

5 a. The State Recycling Fund (hereinafter referred to as the "fund") is established as a nonlapsing, revolving fund. The fund shall be administered by the Department of Environmental Protection, and shall be credited with all sums received from the Clean Communities Program Fund established pursuant to section 5 of P.L.2002, c.128 (C.13:1E-217). Interest received on moneys in the fund and sums received as repayment of principal and interest on outstanding loans made from the fund shall be credited to the fund.

b. Unless otherwise expressly provided by the specific appropriation thereof by the Legislature, moneys in the fund shall be allocated and used as follows:

Moneys in the fund received from the Clean Communities Program Fund established pursuant to section 5 of P.L.2002, c.128 (C.13:1E-217) shall be used for the annual expenses of a program for direct recycling grants to municipalities or counties in those instances where a county, at its own expense, provides for the collection, processing and marketing of recyclable materials on a regional basis. The amount of these grants shall be calculated on the basis of the total number of tons of recyclable materials annually recycled from residential, commercial and institutional sources within that municipality, or group of municipalities in the case of a county recycling program, except that no such grant shall exceed \$10 per ton of recyclable materials recycled. The department may allocate a portion of these grant moneys as bonus grants to municipalities and counties in those instances where a municipality or county, at its own expense, provides for the collection of recyclable materials in its recycling program. The department shall announce each year the total amount of moneys available in the bonus grant fund.

A municipality may distribute a portion of its grant moneys to nonprofit groups that are located within that municipality and which have contributed to the receipt of the recycling grant, except that this distribution shall not exceed the value of approved documented tonnage contributed by a nonprofit group.

A municipality may designate any nonprofit group as a recycling agent. A recycling agent shall receive that part of the municipality's recycling grant under this subsection that represents the percentage of the grant received by the municipality due to the documented tonnage contributed by that recycling agent. Moneys received by a recycling agent shall be expended only for its recycling program. Any moneys not used for recycling shall be returned by the recycling agent to the municipality.

To be eligible for a grant pursuant to this subsection, a municipality or county in the case of a county recycling program shall demonstrate that the recyclable materials recycled by the municipal or county

recycling program were not diverted from a commercial recycling program already in existence on the effective date of the ordinance or resolution establishing the municipal or county recycling program.

No recycling grant to any municipality shall be used for constructing or operating any facility for the baling of wastepaper or for the shearing, baling or shredding of ferrous or nonferrous materials.

Repealer.

12. The following are repealed:

Sections 1 through 4 inclusive of P.L.1981, c.278

(C.13:1E-92 through 13:1E-95);

Sections 6 and 7 of P.L.1981, c.278

(C.13:1E-97 and 13:1E-98);

Sections 6 and 7 of P.L.1985, c.533

(C.13:1E-99.1 and 13:1E-99.2);

Section 2 of P.L.1989, c.108 (C.13:1E-99.2a);

Section 2 of P.L.1999, c.418 (C.13:1E-99.2b);

Sections 10 through 12 inclusive of P.L.1985, c.533

(C.13:1E-99.5 through 13:1E-99.7); and

Sections 7 through 9 inclusive of P.L.1986, c.187

(C.13:1E-99.8 through 13:1E-99.10).

C.13:1E-223 Annual appropriations; conditions.

13. a. The annual appropriations act for each State fiscal year shall, without other conditions, limitations or restrictions on the following:

(1) appropriate the amounts specified pursuant to paragraph (1) of subsection f. of section 5 of P.L.2002, c.128 (C.13:1E-217) to the State Recycling Fund established pursuant to section 5 of P.L.1981, c.278 (C.13:1E-96) for use by the Department of Environmental Protection for direct recycling grants to counties and municipalities;

(2) appropriate the amount specified pursuant to paragraph (2) of subsection f. of section 5 of P.L.2002, c.128 (C.13:1E-217) to the Department of Environmental Protection for use by the organization under contract with the department pursuant to section 6 of P.L.2002, c.128 (C.13:1E-218) for a Statewide public information and education program concerning antilittering activities and other aspects of responsible solid waste handling behavior; and

(3) appropriate the balance of the Clean Communities Program Fund established pursuant to section 5 of P.L.2002, c.128 (C.13:1E-217) for the purposes set forth in subsections a., b., c. and d. of that section.

b. If the requirements of subsection a. of this section are not met on the effective date of an annual appropriations act for the State fiscal year, or if an amendment or supplement to an annual appropriations act for the State fiscal year should violate any of the requirements of subsection a. of this section, the Director of the Division of Budget and Accounting in the Department of the Treasury shall, not later than five days after the enactment of the annual appropriations act, or an amendment or supplement thereto, that violates any of the requirements of subsection a. of this section, certify to the Director of the Division of Taxation that the requirements of subsection a. of this section have not been met.

14. This act shall take effect immediately and section 4 shall be retroactive to January 1, 2002.

Approved December 20, 2002.