

New Jersey Wastewater Treatment Trust Act—Financing Infrastructure Projects—Environment N.J. Stat. Ann. §§ 58:11B-1 to -27 (West Supp. 1986).

By means of a complex amalgamation of legislation, the New Jersey Legislature has taken an old financing tool—the trust fund—and taught it new financial tricks. In 1985, the Legislature established the New Jersey Wastewater Treatment Trust,¹ the keystone of a financing mechanism for funding the rehabilitation and construction of wastewater treatment and resource recovery facilities.² To fully understand the import of the Wastewater Treatment Trust, it must be viewed in light of the factors which spurred its creation, as well as the role it plays within the larger infrastructure funding framework.

In 1981, New Jersey faced a serious dilemma. The state's infrastructure—roads, sewer plants, waterpipes and bridges—lay in disrepair from years of neglect. Many existing sewer plants, operating well beyond design capacity, contaminated surface waters with inadequately treated effluent. A thousand miles of state roadway lay in need of repair. And dangerous landfills remained open because no alternative garbage disposal sites were available.

The need to construct new facilities and rehabilitate old ones was enormous, but so was the cost. Estimates placed the cost of financing the state's infrastructure needs through the end of the decade between ten and twenty billion dollars. Without a capital budget, the state faced its crumbling roads, bridges and sewers

¹ New Jersey Wastewater Treatment Trust Act, Pub. L. No. 1985, Ch. 334, 1985 N.J. Sess. Law Serv. 334 (West), N.J. STAT. ANN. §§ 58:11B-1 to -27 (West Supp. 1986) [hereinafter cited as Wastewater Treatment Trust or Trust].

² In addition to the Wastewater Treatment Trust, five other legislative acts compose the infrastructure financing package: Wastewater Treatment Bond Act of 1985, Pub. L. No. 1985, Ch. 329, 1985 N.J. Sess. Law Serv. 329 (West); Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985, Pub. L. No. 1985, Ch. 330, 1985 N.J. Sess. Law Serv. 330 (West); Natural Resources Bond Act—Natural Resources Fund—Disposition, Pub. L. No. 1985, Ch. 331, 1985 N.J. Sess. Law Serv. 331 (West); Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985—Disposition of Funds, Pub. L. No. 1985, Ch. 335, 1985 N.J. Sess. Law Serv. 335 (West); Resource Recovery and Solid Waste Disposal Facility Fund—Appropriation, Pub. L. No. 1985, Ch. 332, 1985 N.J. Sess. Law Serv. 332 (West).

with only enough money to patch its most glaring holes and hope for the best.

The revenue for the limited infrastructure work the state could afford came primarily from two sources: money generated through state issuance of general obligation bonds, and federal wastewater construction grants administered by the federal government through the Federal Water Pollution Control Act³ (Clean Water Act). The State passed several bond issues over the years to fund various infrastructure projects, but because of the nature of this debt financing, these bonds were issued infrequently. Although the bond issue funds provided a temporary source of rehabilitation money, the state sank deeper into debt in an effort to meet only its most dire infrastructure needs. Moreover, much of the money raised through these bond issues ultimately was used to fund new construction, rather than to rehabilitate existing facilities.

The fate of the Clean Water Act construction grants has followed a pattern of "here today, gone tomorrow." After passing the Clean Water Act amendments of 1972, Congress made generous grants available to local and regional sewer authorities for construction and repair of sewer systems and wastewater treatment plants. Throughout the 1970s, the federal government paid seventy-five percent (75%) of these construction costs; the State of New Jersey paid fifteen percent (15%). Consequently, with municipalities paying only ten percent (10%) of the bill, large elaborate treatment plants were built throughout the state, while existing leaking, malfunctioning wastewater treatment systems in the state's urban centers were left to further decay.

Unfortunately, the bottom dropped out of the federal construction grant program in 1980, when the Reagan administration cut the wastewater treatment grants in half, from \$5 billion a year to less than \$2.4 billion.⁴ In New Jersey, this cut meant a loss of \$150 million in federal funds per year, leaving only enough money to fund less than six percent (6%) of the projects on the state's priority list.⁵ Aggravating this loss of revenue was the re-

³ Federal Water Pollution Control Act of 1972, Pub. L. No. 92-500, § 2, 86 STAT. 816, 33 U.S.C. §§ 1281-1292 (1982).

⁴ Federal Water Pollution Control Act of 1972, Pub. L. No. 97-117, § 17, 95 STAT. 1630, 33 U.S.C. § 1287 (1982).

⁵ From fiscal year 1973 to fiscal year 1978, New Jersey received federal con-

alization that both the state and Congress had greatly underestimated the cost of rehabilitating wastewater treatment systems sufficiently to bring them into compliance with federal Clean Water Act standards.

To assure a more stable funding source to capitalize infrastructure improvement projects statewide, Governor Kean, in 1982, proposed the New Jersey Infrastructure Bank,⁶ the precursor of the Wastewater Treatment Trust. The Infrastructure Bank was to function as an authority, similar to the Garden State Parkway Authority or the Port Authority of New York and New Jersey. It was to be a repository for federal and state funds for financing infrastructure projects through low interest loans to municipalities and regional agencies.

The most notable feature of the Infrastructure Bank, one which the New Jersey Wastewater Treatment Trust incorporated into the core of its financing mechanism, gave the Bank authority to leverage a portion of the Bank's funds by issuing its own revenue bonds, a practice in which the State of New Jersey cannot participate. The money gained through the sale of these bonds would have been available to provide financing for a greater number of infrastructure projects than the original Bank funding levels would permit. The Infrastructure Bank also featured a revolving loan account fund for wastewater and water supply projects. Loans from both the Trust and the revolving accounts had to be repaid with interest by local units. Once repaid, the Bank could then use these funds to finance other projects.

While the concept of the Infrastructure Bank impressed the Legislature, its substance was not enthusiastically received. Two of its provisions were controversial. First, the Bank would have deposited all federal Clean Water Act grant money into the loan hotchpot, ending the days of ten percent (10%) local share of wastewater treatment projects. This provision angered the thirty or so municipalities that had been promised federal grants for their projects, who would now have to settle for loans and pay the entire cost. Second, the Infrastructure Bank would have

struction grant appropriations of \$251 million per year. In fiscal year 1985, the state received a construction grant appropriation of \$100 million, an amount sufficient to fund only 14 of the 256 wastewater projects on the DEP priority list.

⁶ S. 1867, 200th Leg., 1st Sess. (1982) (introduced October 25, 1982) [hereinafter cited as Infrastructure Bank or Bank].

transferred part of the Legislature's traditional appropriation authority to the Bank's board of directors. The Bank would have had the authority to appropriate not only the proceeds of the state bond issues, but the proceeds from repaid loans as well. The Legislature refused to relinquish control over its appropriation responsibilities; accordingly, the Infrastructure Bank proposal failed to win legislative approval.

The setback was only temporary. In 1984, the Kean administration took what was essentially the Infrastructure Bank proposal of the previous year, renamed it the Environmental Trust, and reintroduced it to the Legislature. The Environmental Trust retained both the revolving loan account and the reserve account (the trust fund feature) of the Infrastructure Bank to finance wastewater, resource recovery and transportation projects. However, the controversial portions of the old Infrastructure Bank were also retained, leading to another clash over who would control the Environmental Trust's spending.

In the meantime, part of the Environmental Trust package, the transportation funding component, was established by the New Jersey Transportation Trust Fund Authority Act of 1984.⁷ The Act created a transportation trust fund authority and account to finance state transportation projects. The Act also provided for legislative approval of the Transportation Trust's appropriations. It was the Transportation Trust which served as the model for the Wastewater Treatment Trust.

In 1985, a compromise was reached between the administration and the Legislature over a method to fund wastewater treatment and resource recovery projects, the two infrastructure funding categories remaining from the Environmental Trust proposal. It took six pieces of legislation to give form to this compromise scheme and to create and fund two infrastructure financing components—the reserve account of the Wastewater Treatment Trust,⁸ and the revolving loan accounts for resource recovery and wastewater treatment projects.⁹ Most of the financ-

⁷ N.J. STAT. ANN. §§ 27:1B-1 to -31 (West 1984) [hereinafter cited as Transportation Trust].

⁸ N.J. STAT. ANN. § 58:11B-11.a. (West Supp. 1986).

⁹ Resource Recovery and Solid Waste Disposal Facility Fund, Pub. L. No. 1985, Ch. 330, § 14, 1985 N.J. Sess. Law Serv. 330 (West); Wastewater Treatment Fund, Pub. L. No. 1985, Ch. 329, § 15.a., 1985 N.J. Sess. Law Serv. 329 (West).

ing structure was erected by three of the Acts—the New Jersey Wastewater Treatment Trust Act,¹⁰ the Wastewater Treatment Bond Act of 1985,¹¹ and the Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985.¹²

The Wastewater Treatment Trust is the creative core of this infrastructure financing package; it establishes the trust, or reserve account, and it authorizes the trust to issue revenue bonds to leverage the money initially deposited into the reserve account. Although municipalities and authorities can issue revenue bonds, the State of New Jersey cannot. Thus, by placing the Wastewater Treatment Trust into the hands of an independent authority, additional money can be borrowed with which to finance a greater number of infrastructure projects statewide.

The mechanisms of the reserve and revolving loan accounts are certainly less complex than the legislation that created them. The reserve account's corpus of \$40 million, its principal capital, is supplied by the \$190 million Wastewater Treatment Bond Act. The Trust is authorized to issue revenue bonds against this money; in essence, the Trust sells its promise to repay the money loaned to it, backing the promise with the corpus amount in the reserve account and with the strength of the state's excellent bond rating. Large financial institutions—banks, money market funds, insurance companies—purchase these bonds, and in turn, loan money to the Trust. The Trust is required to repay this loan money. Furthermore, the Trust's decision to issue bonds, and to what amount, must be approved by the Governor, the State Treasurer, and the Legislature's Joint Appropriation Committee prior to the sale of any bonds. The Act also places a \$600 million cap on the amount of debt the Trust can incur at any one time.

Money raised on sale of the bonds, which conceivably could be five times the corpus amount, is to be deposited into the Trust's General Loan Fund.¹³ Loans to municipalities are to be made solely from the General Loan Fund. The \$40 million corpus amount is required to remain in the reserve account, and no loans are to be drawn from it. However, the interest earned

¹⁰ See *supra* note 1.

¹¹ See *supra* note 2.

¹² *Id.*

¹³ N.J. STAT. ANN. § 58:11B-10 (West Supp. 1986).

on the corpus may be used by the Trust to reduce the interest rate on loans made to municipalities.

To receive a loan from the Trust, each municipality must contract with the Trust to repay the low interest loan. To secure repayment, the Act requires each municipality to pledge that it will raise revenue to repay the loan, either by charging its residents a user fee, or by assessing an additional tax for the new or expanded wastewater treatment supplied. In short, the taxpayer benefitting from the service will pay for it. This mandatory repayment pledge is crucial; it is the bondholders guarantee that the Trust will have sufficient capital to repay its indebtedness to them.

Another mechanism in the Act guarantees repayment to the bond holders. The Trust Act provides a loan default intercept that is triggered when a municipality fails or is unable to repay its loan to the Trust.¹⁴ If the municipality defaults, the Act authorizes the State Treasurer to "intercept" state aid that would normally be paid to that particular municipality.¹⁵ These captured funds are to be redirected into the Trust's General Loan Fund in an amount sufficient to pay the municipality's loan obligation.

Each fiscal year, the New Jersey Department of Environmental Protection (DEP) must produce a wastewater treatment project priority list and submit it to the Legislature for approval. The Legislature may amend, modify, and supplement the DEP's list. The Legislature, however, must approve an appropriation act for the listed projects by April 1st. By May 15th, the Trust must submit to the Legislature a plan to finance these projects. And unless the financial plan is approved by concurrent resolution of the Legislature by July 1st, the trust cannot fund any of the proposed projects.

The second component of the infrastructure funding scheme is the revolving loan account fund, one for resource recovery and solid waste projects,¹⁶ and another for wastewater treatment projects.¹⁷ Both revolving accounts are to be administered by the

¹⁴ N.J. STAT. ANN. § 58:11B-12.a. (West Supp. 1986).

¹⁵ Sources of State aid which may be intercepted include Business Personal Property Tax Replacement Revenues, State urban aid, and State revenue sharing as defined in N.J. STAT. ANN. § 40A:3-3 (West 1980).

¹⁶ Resource Recovery and Solid Waste Disposal Facility Fund. *See supra* note 9.

¹⁷ Wastewater Treatment Fund, *see supra* note 9.

DEP, subject to legislative appropriation and approval of municipal loans, grants, and loan guarantees.

The Wastewater Treatment Fund is to be funded with \$150 million from the \$190 million Wastewater Treatment Bond Act of 1985, the same bond act which is to fund the \$40 million corpus of the Wastewater Treatment Trust reserve account.¹⁸ Money loaned from the revolving account to municipalities will be required by contract to be repaid. However, there is no provision for a loan default intercept with either the wastewater treatment or resource recovery revolving loan accounts. Only the loan money repaid to the revolving account will be available for future loans for other projects.

The other revolving loan account, the Resource Recovery and Solid Waste Disposal Facility Fund, is to be funded primarily from the proceeds of the \$85 million Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985. Additional money will come from the Natural Resources Bond Act of 1980.¹⁹ Loans from the revolving account will be used to finance construction of sanitary landfills and resource recovery facilities which are identified in District Solid Waste Management plans mandated by the Solid Waste Management Act.²⁰

Although the engine for infrastructure financing has been designed, the tracks to guide its implementation are still being laid. At present, the four non-ex officio members of the Wastewater Treatment Trust board of directors have yet to be appointed, and the Trust's financial advisor has not been selected. Consequently, the formal Trust mechanisms required to effectuate the Act, such as its bonding and loan contract provisions, have yet to be developed.

Similarly, the DEP's responsibilities under the Act remain unfulfilled. Although the DEP has developed a project priority list for Clean Water Act grants, it still must decide how that list will be used to determine which municipalities will be eligible for reserve or revolving loans. The DEP has also drafted procedural regulations which will guide the operation of the Trust, as well as

¹⁸ Wastewater treatment projects on the DEP priority list that are approved by the New Jersey Legislature are eligible for loans from both the Wastewater Treatment Trust, *see supra* note 1, and the Wastewater Treatment Fund, *see supra* note 9.

¹⁹ Pub. L. No. 1980, Ch. 70, 1980 N.J. Sess. Law Serv. 70 (West).

²⁰ Solid Waste Management Act, N.J. STAT. ANN. § 13:1E-23 (West 1970).

the loan application procedure for municipalities. These regulations, however, will not be promulgated until they can be coordinated with those yet to be produced by the Trust's board of directors.

Given these delays, the Trust's administrating agencies may be unable to adhere to the Act's implementation schedule unless an expedited approval process for fiscal year 1987 project funding is instituted. The delay may result in less time for legislative review of project and funding proposals, which, in turn, may translate into fewer projects receiving loans in the next fiscal year. Correspondingly, the Trust's ability to fully leverage its corpus may also be hampered. Whatever the ultimate affect of the delay, it will be some time before the administration and the Legislature know whether the Trust and the revolving loan accounts will meet their expectations as stable sources for financing the State's burgeoning infrastructure needs.

Paul C. Dritsas