

[First Reprint]

ASSEMBLY, No. 3167

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED SEPTEMBER 16, 2010

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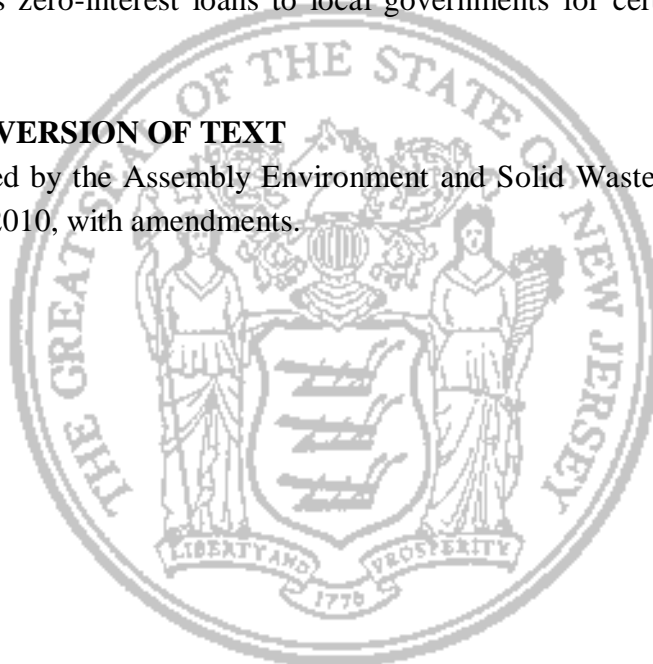
Assemblymen Schaer, O'Donnell and Chivukula

SYNOPSIS

Authorizes zero-interest loans to local governments for certain brownfield remediations.

CURRENT VERSION OF TEXT

As reported by the Assembly Environment and Solid Waste Committee on October 14, 2010, with amendments.



(Sponsorship Updated As Of: 10/26/2010)

1 AN ACT concerning loans in brownfield development areas, and
2 amending P.L.1993, c.139.

3

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

6

7 1. Section 27 of P.L.P.L.1993, c.139 (C.58:10B-5) is amended
8 to read as follows:

9 27. a. (1) Except as provided in section 4 of P.L.2007, c.135
10 (C.52:27D-130.7), financial assistance from the remediation fund
11 may only be rendered to persons who cannot establish a remediation
12 funding source for the full amount of a remediation. Financial
13 assistance pursuant to this act may be rendered only for that amount
14 of the cost of a remediation for which the person cannot establish a
15 remediation funding source. The limitations on receiving financial
16 assistance established in this paragraph (1) shall not limit the ability
17 of municipalities, counties, redevelopment entities authorized to
18 exercise redevelopment powers pursuant to section 4 of P.L.1992,
19 c.79 (C.40A:12A-4), persons who are not required to establish a
20 remediation funding source for the part of the remediation involving
21 an innovative technology, an unrestricted use remedial action or a
22 limited restricted use remedial action, persons performing a
23 remediation in an environmental opportunity zone, or persons who
24 voluntarily perform a remediation, from receiving financial
25 assistance from the fund.

26 (2) Financial assistance rendered to persons who voluntarily
27 perform a remediation or perform a remediation in an
28 environmental opportunity zone may only be made for that amount
29 of the cost of the remediation that the person cannot otherwise fund
30 by any of the authorized methods to establish a remediation funding
31 source.

32 (3) Financial assistance rendered to persons who do not have to
33 provide a remediation funding source for the part of the remediation
34 that involves an innovative technology, an unrestricted use remedial
35 action, or a limited restricted use remedial action may only be made
36 for that amount of the cost of the remediation that the person cannot
37 otherwise fund by any of the authorized methods to establish a
38 remediation funding source.

39 b. Financial assistance may be rendered from the remediation
40 fund to (1) owners or operators of industrial establishments who are
41 required to perform remediation activities pursuant to P.L.1983,
42 c.330 (C.13:1K-6 et al.), upon closing operations or prior to the
43 transfer of ownership or operations of an industrial establishment,
44 (2) persons who are liable for the cleanup and removal costs of a

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AEN committee amendments adopted October 14, 2010.

1 hazardous substance pursuant to P.L.1976, c.141 (C.58:10-23.11 et
2 seq.), and (3) persons who voluntarily perform a remediation of a
3 discharge of a hazardous substance or hazardous waste.

4 c. Financial assistance and grants may be made from the
5 remediation fund to a municipality, county, or redevelopment entity
6 authorized to exercise redevelopment powers pursuant to section 4
7 of P.L.1992, c.79 (C.40A:12A-4), for real property: (1) on which it
8 holds a tax sale certificate; (2) that it has acquired through
9 foreclosure or other similar means; or (3) that it has acquired, or in
10 the case of a county governed by a board of chosen freeholders, has
11 passed a resolution or, in the case of a municipality or a county
12 operating under the "Optional County Charter Law," P.L.1972,
13 c.154 (C.40:41A-1 et seq.), has passed an ordinance or other
14 appropriate document to acquire, by voluntary conveyance for the
15 purpose of redevelopment, for renewable energy generation or for
16 recreation and conservation purposes. Financial assistance and
17 grants may only be awarded for real property on which there has
18 been a discharge or on which there is a suspected discharge of a
19 hazardous substance or hazardous waste.

20 d. Grants may be made from the remediation fund to persons
21 who own real property on which there has been a discharge of a
22 hazardous substance or a hazardous waste and that person qualifies
23 for an innocent party grant pursuant to section 28 of P.L.1993,
24 c.139 (C.58:10B-6).

25 e. Grants may be made from the remediation fund to qualifying
26 persons who propose to perform a remedial action that uses an
27 innovative technology or that would result in an unrestricted use
28 remedial action or a limited restricted use remedial action.

29 f. Grants may be made from the remediation fund to
30 municipalities, counties, and redevelopment entities authorized to
31 exercise redevelopment powers pursuant to section 4 of P.L.1992,
32 c.79 (C.40A:12A-4), for the preliminary assessment, site
33 investigation, remedial investigation and remedial action on
34 contaminated real property within a brownfield development area.
35 An ownership interest in the contaminated property shall not be
36 required in order for a municipality, county, or redevelopment
37 entity authorized to exercise redevelopment powers pursuant to
38 section 4 of P.L.1992, c.79 (C.40A:12A-4) to receive a grant for a
39 remediation of property in a brownfield redevelopment area.
40 Notwithstanding the limitation on the total amount of financial
41 assistance and grants that may be awarded in any one year pursuant
42 to subsection b. of section 28 of P.L.1993, c.139 (C.58:10B-6), the
43 authority may award an additional amount of financial assistance
44 and grants in any one year, of up to \$2,000,000, to any one
45 municipality, county, or redevelopment entity for the remediation of
46 property in a brownfield development area. Notwithstanding the
47 limitations on the term and interest rates of loans to a municipality,
48 county or redevelopment entity pursuant to subsection b. of section

1 28 of P.L.1993, c.139 (C.58:10B-6), the authority may issue a zero
2 interest loan for up to 25% of the total costs of a remedial action in
3 a brownfield development area for a term not to exceed '[40] 10'
4 years to a municipality, county or redevelopment entity. Any
5 property on which a municipality, county, or redevelopment entity
6 makes expenditures for a remedial action and the property is not
7 owned by that entity shall be subject to the provisions of section 8
8 of P.L.2005, c.223 (C.58:10B-25.2).
9 (cf: P.L.2009, c.302, s.1)

10

11 2. Section 28 of P.L.1993, c.139 (C.58:10B-6) is amended to
12 read as follows:

13 28. a. Except for moneys deposited in the remediation fund for
14 specific purposes, and as provided in section 4 of P.L.2007, c.135
15 (C.52:27D-130.7), financial assistance and grants from the
16 remediation fund shall be rendered for the following purposes. A
17 written report shall be sent to the Senate Environment Committee,
18 and the Assembly Environment and Solid Waste Committee, or
19 their successors at the end of each calendar quarter detailing the
20 allocation and expenditures related to the financial assistance and
21 grants from the fund.

22 (1) Moneys shall be allocated for financial assistance to persons,
23 for remediation of real property located in a qualifying municipality
24 as defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

25 (2) Moneys shall be allocated to: (a) municipalities, counties, or
26 redevelopment entities authorized to exercise redevelopment
27 powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), for:

28 (i) projects in brownfield development areas pursuant to
29 subsection f. of section 27 of P.L.1993, c.139 (C.58:10B-5),

30 (ii) matching grants up to a cumulative total amount from the
31 fund of \$5,000,000 per year of up to 75% of the costs of the
32 remedial action for projects involving the redevelopment of
33 contaminated property for recreation and conservation purposes,
34 provided that the use of the property for recreation and conservation
35 purposes is included in the comprehensive plan for the development
36 or redevelopment of contaminated property, up to 75% of the costs
37 of the remedial action for projects involving the redevelopment of
38 contaminated property for renewable energy generation, or up to
39 50% of the costs of the remedial action for projects involving the
40 redevelopment of contaminated property for affordable housing
41 pursuant to P.L.1985, c.222 (C.52:27D-301 et al.),

42 (iii) grants for preliminary assessment, site investigation or
43 remedial investigation of a contaminated site,

44 (iv) financial assistance for the implementation of a remedial
45 action, or

46 (v) financial assistance for remediation activities at sites that
47 have been contaminated by a discharge of a hazardous substance or
48 hazardous waste, or at which there is an imminent and significant

1 threat of a discharge of a hazardous substance or hazardous waste,
2 and the discharge or threatened discharge poses or would pose an
3 imminent and significant threat to a drinking water source, to
4 human health, or to a sensitive or significant ecological area; or

5 (b) persons for financial assistance for remediation activities at
6 sites that have been contaminated by a discharge of a hazardous
7 substance or hazardous waste, or at which there is an imminent and
8 significant threat of a discharge of a hazardous substance or
9 hazardous waste, and the discharge or threatened discharge poses or
10 would pose an imminent and significant threat to a drinking water
11 source, to human health, or to a sensitive or significant ecological
12 area.

13 Except as provided in subsection f. of section 27 of P.L.1993,
14 c.139 (C.58:10B-5), financial assistance and grants to
15 municipalities, counties, or redevelopment entities authorized to
16 exercise redevelopment powers pursuant to section 4 of P.L.1992,
17 c.79 (C.40A:12A-4) may be made for real property: (1) on which
18 they hold a tax sale certificate; (2) that they have acquired through
19 foreclosure or other similar means; or (3) that they have acquired,
20 or, in the case of a county governed by a board of chosen
21 freeholders, have passed a resolution or, in the case of a
22 municipality or a county operating under the "Optional County
23 Charter Law," P.L.1972, c.154 (C.40:41A-1 et seq.), have passed an
24 ordinance or other appropriate document to acquire, by voluntary
25 conveyance for the purpose of redevelopment, or for recreation and
26 conservation purposes. Financial assistance and grants may only be
27 awarded for real property on which there has been or on which there
28 is suspected of being a discharge of a hazardous substance or a
29 hazardous waste. Grants and financial assistance provided pursuant
30 to this paragraph shall be used for performing preliminary
31 assessments, site investigations, remedial investigations, and
32 remedial actions on real property in order to determine the existence
33 or extent of any hazardous substance or hazardous waste
34 contamination, and to remediate the site in compliance with the
35 applicable health risk and environmental standards on those
36 properties. No financial assistance or grants for a remedial action
37 shall be awarded until the municipality, county, or redevelopment
38 entity authorized to exercise redevelopment powers pursuant to
39 section 4 of P.L.1992, c.79 (C.40A:12A-4), actually owns the real
40 property, provided that a matching grant for 75% of the costs of a
41 remedial action for a project involving the redevelopment of
42 contaminated property for recreation and conservation purposes, or
43 a matching grant for 50% of the costs of a remedial action for a
44 project involving the redevelopment of contaminated property for
45 affordable housing pursuant to P.L.1985, c.222 (C.52:27D-301 et
46 al.) may be made to a municipality, county, or redevelopment entity
47 authorized to exercise redevelopment powers pursuant to section 4
48 of P.L.1992, c.79 (C.40A:12A-4) even if it does not own the real

1 property and a grant may be made to a municipality, county, or
2 redevelopment entity authorized to exercise redevelopment powers
3 pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) for a
4 remediation in a brownfield development area pursuant to
5 subsection f. of section 27 of P.L.1993, c.139 (C.58:10B-5) even if
6 the entity does not own the real property. No grant shall be
7 awarded for a remedial action for a project involving the
8 redevelopment of contaminated property for recreation or
9 conservation purposes unless the use of the property is preserved
10 for recreation and conservation purposes by conveyance of a
11 development easement, conservation restriction or easement, or
12 other restriction or easement permanently restricting development,
13 which shall be recorded and indexed with the deed in the registry of
14 deeds for the county. A municipality that has performed, or on
15 which there has been performed, a preliminary assessment, site
16 investigation or remedial investigation on property may obtain a
17 loan for the purpose of continuing the remediation on those
18 properties as necessary to comply with the applicable remediation
19 regulations adopted by the department. No grant shall be awarded
20 pursuant to this paragraph to a municipality, a county, or a
21 redevelopment entity authorized to exercise redevelopment powers
22 pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) unless that
23 entity has adopted by ordinance or resolution a comprehensive plan
24 specifically for the development or redevelopment of contaminated
25 or potentially contaminated real property in that municipality or the
26 entity can demonstrate to the authority that a realistic opportunity
27 exists that the subject real property will be developed or
28 redeveloped within a three-year period from the completion of the
29 remediation;

30 (3) Moneys shall be allocated for financial assistance to persons
31 who voluntarily perform a remediation of a hazardous substance or
32 hazardous waste discharge;

33 (4) Moneys shall be allocated for grants to persons who own
34 real property on which there has been a discharge of a hazardous
35 substance or a hazardous waste and that person qualifies for an
36 innocent party grant. A person qualifies for an innocent party grant
37 if that person acquired the property prior to December 31, 1983 and
38 continues to own the property until such time as the authority
39 approves the grant, the hazardous substance or hazardous waste that
40 was discharged at the property was not used by the person at that
41 site, and that person certifies that he did not discharge any
42 hazardous substance or hazardous waste at an area where a
43 discharge is discovered. A grant authorized pursuant to this
44 paragraph may be for up to 50% of the remediation costs at the area
45 of concern for which the person qualifies for an innocent party
46 grant, except that no grant awarded pursuant to this paragraph to
47 any person may exceed \$1,000,000;

1 (5) Moneys shall be allocated for (a) financial assistance to
2 persons who own and plan to remediate an environmental
3 opportunity zone for which an exemption from real property taxes
4 has been granted pursuant to section 5 of P.L.1995, c.413 (C.54:4-
5 3.154), or (b) matching grants for up to 25% of the project costs to
6 qualifying persons, municipalities, counties, and redevelopment
7 entities authorized to exercise redevelopment powers pursuant to
8 section 4 of P.L.1992, c.79 (C.40A:12A-4), who propose to perform
9 a remedial action that uses an innovative technology, or for the
10 implementation of a limited restricted use remedial action or an
11 unrestricted use remedial action except that no grant awarded
12 pursuant to this paragraph may exceed \$250,000; and

13 (6) Twenty percent of the moneys in the remediation fund shall
14 be allocated for financial assistance or grants for any of the
15 purposes enumerated in paragraphs (1) through (5) of this
16 subsection.

17 For the purposes of paragraph (5) of this subsection, "qualifying
18 persons" means any person who has a net worth of not more than
19 \$2,000,000 and "project costs" means that portion of the total costs
20 of a remediation that is specifically for the use of an innovative
21 technology or to implement an unrestricted use remedial action or a
22 limited restricted use remedial action, as applicable.

23 b. **【Loans】** Except as otherwise provided in subsection f. of
24 section 27 of P.L.1993, c.139 (C.58:10B-5), loans issued from the
25 remediation fund shall be for a term not to exceed ten years, except
26 that upon the transfer of ownership of any real property for which
27 the loan was made, the unpaid balance of the loan shall become
28 immediately payable in full. The unpaid balance of a loan for the
29 remediation of real property that is transferred by devise or
30 succession shall not become immediately payable in full, and loan
31 repayments shall be made by the person who acquires the property.
32 **【Loans】** Except as otherwise provided in subsection f. of section 27
33 of P.L.1993, c.139 (C.58:10B-5), loans to municipalities, counties,
34 and redevelopment entities authorized to exercise redevelopment
35 powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4),
36 shall bear an interest rate equal to 2 points below the Federal
37 Discount Rate at the time of approval or at the time of loan closing,
38 whichever is lower, except that the rate shall be no lower than 3
39 percent. All other loans shall bear an interest rate equal to the
40 Federal Discount Rate at the time of approval or at the time of the
41 loan closing, whichever is lower, except that the rate on such loans
42 shall be no lower than five percent. Financial assistance and grants
43 may be issued for up to 100% of the estimated applicable
44 remediation cost, except that the cumulative maximum amount of
45 financial assistance which may be issued to a person, in any
46 calendar year, for one or more properties, shall be \$1,000,000.
47 Financial assistance and grants to any one municipality, county, or
48 redevelopment entity authorized to exercise redevelopment powers

1 pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) may not
2 exceed \$3,000,000 in any calendar year except as provided in
3 subsection f. of section 27 of P.L.1993, c.139 (C.58:10B-5). Grants
4 to a municipality, county, or redevelopment entity authorized to
5 exercise redevelopment powers pursuant to section 4 of P.L.1992,
6 c.79 (C.40A:12A-4) may be for up to 100% of the total costs of the
7 preliminary assessment, site investigation, or remedial investigation
8 regardless of when the application was received by the department.
9 Grants to a municipality, a county, or a redevelopment entity
10 authorized to exercise redevelopment powers pursuant to section 4
11 of P.L.1992, c.79 (C.40A:12A-4) may not exceed 75% of the total
12 costs of the remedial action at any one site for any application
13 received by the department on or after September 15, 2005.
14 Repayments of principal and interest on the loans issued from the
15 remediation fund shall be paid to the authority and shall be
16 deposited into the remediation fund.

17 c. No person, other than a qualified person planning to use an
18 innovative technology for the cost of that technology, a qualified
19 person planning to use a limited restricted use remedial action or an
20 unrestricted use remedial action for the cost of the remedial action,
21 a person performing a remediation in an environmental opportunity
22 zone, or a person voluntarily performing a remediation, shall be
23 eligible for financial assistance from the remediation fund to the
24 extent that person is capable of establishing a remediation funding
25 source for the remediation as required pursuant to section 25 of
26 P.L.1993, c.139 (C.58:10B-3).

27 d. The authority may use a sum that represents up to 2% of the
28 moneys issued as financial assistance or grants from the
29 remediation fund each year for administrative expenses incurred in
30 connection with the operation of the fund and the issuance of
31 financial assistance and grants.

32 e. Prior to March 1 of each year, the authority shall submit to
33 the Senate Environment Committee and the Assembly Environment
34 and Solid Waste Committee, or their successors, a report detailing
35 the amount of money that was available for financial assistance and
36 grants from the remediation fund for the previous calendar year, the
37 amount of money estimated to be available for financial assistance
38 and grants for the current calendar year, the amount of financial
39 assistance and grants issued for the previous calendar year and the
40 category for which each financial assistance and grant was
41 rendered, and any suggestions for legislative action the authority
42 deems advisable to further the legislative intent to facilitate
43 remediation and promote the redevelopment and use of existing
44 industrial sites.

45 (cf: P.L.2009, c.303, s.1)

46

47 3. This act shall take effect immediately.