

ASSEMBLY, No. 1907

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Assemblyman JOHN J. BURZICHELLI
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District 21 (Morris, Somerset and Union)
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Assemblywoman PAMELA R. LAMPITT
District 6 (Burlington and Camden)
Assemblyman BENJIE E. WIMBERLY
District 35 (Bergen and Passaic)

Co-Sponsored by:

Assemblywomen Watson Coleman, Handlin, McHose, Pintor Marin,
Assemblyman Space and Assemblywoman Pinkin

SYNOPSIS

Reinstates moratorium on imposition of Statewide non-residential development fees until January 2015.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 5/9/2014)

1 AN ACT concerning the Statewide non-residential development fee,
2 amending P.L.2008, c. 46 and P.L.2009, c.90.

3

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

6

7 1. Section 37 of P.L.2008, c.46 (C.40:55D-8.6) is amended to
8 read as follows:

9 37. a. The provisions of this subsection shall not apply to a
10 financial or other contribution that a developer made or committed
11 itself to make prior to the effective date of sections 32 through 38 of
12 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7). The
13 provisions of P.L.2008, c.46 that would permit the imposition of a
14 fee upon a developer of non-residential property shall not apply to:

15 (1) Non-residential property for which a site plan has received
16 either preliminary approval, pursuant to section 34 of P.L.1975,
17 c.291 (C.40:55D-46), or final approval, pursuant to section 38 of
18 P.L.1975, c.291 (C.40:55D-50), prior to **July** January 1, [2013]
19 2015 including, but not limited to, the time period commencing on
20 July 1, 2013 through the effective date of P.L. , c. (pending
21 before the Legislature as this bill); provided that a permit for the
22 construction of the building has been issued by the local enforcing
23 agency having jurisdiction, in accordance with section 13 of
24 P.L.1975, c.217 (C.52:27D-131), prior to **January** July 1, [2015]
25 2016;

26 (2) A non-residential planned development which has received
27 approval of a general development plan pursuant to section 5 of
28 P.L.1987, c.129 (C.40:55D-45.3), or a nonresidential development
29 for which the developer has entered into a developer's agreement
30 pursuant to a development approval granted pursuant to P.L.1975,
31 c.291 (C.40:55D-1 et seq.) or for which the redeveloper has entered
32 into a redevelopment agreement pursuant to P.L.1992, c.79
33 (C.40A:12A-1 et al.) prior to the effective date of P.L.2008, c.46
34 (C.52:27D-329.1 et al.); provided, however, that the general
35 development plan, developer's agreement, redevelopment
36 agreement, or any development agreement pursuant to the
37 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
38 provides that the developer or redeveloper pay a fee for affordable
39 housing of at least one percent of the equalized assessed value of
40 the improvements which are the subject of the development plan,
41 developer's agreement, or redevelopment agreement;

42 (3) A non-residential project that, prior to **July** January 1,
43 [2013] 2015 including, but not limited to, the time period
44 commencing on July 1, 2013 through the effective date of P.L. ,
45 c. (pending before the Legislature as this bill), has been referred

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.

1 to a planning board by the State, a governing body, or other public
2 agency for review pursuant to section 22 of P.L.1975, c.291
3 (C.40:55D-31); provided that a permit for the construction of the
4 building has been issued by the local enforcing agency having
5 jurisdiction, in accordance with section 13 of P.L.1975, c.217
6 (C.52:27D-131), prior to **【January】** July 1, 【2015】 2016;

7 (4) A non-residential property for which a site plan application
8 has received approval by the New Jersey Meadowlands
9 Commission, pursuant to section 13 of P.L.1968, c.404 (C.13:17-
10 14) prior to **【July】** January 1, 【2013】 2015 including, but not
11 limited to, the time period commencing on July 1, 2013 through the
12 effective date of P.L. , c. (pending before the Legislature as this
13 bill); provided that a permit for the construction of the building has
14 been issued by the local enforcing agency having jurisdiction, in
15 accordance with section 13 of P.L.1975, c.217 (C.52:27D-131),
16 prior to **【January】** July 1, 【2015】 2016;

17 (5) Individual buildings within a nonresidential phased
18 development that received either preliminary or final approval prior
19 to **【July】** January 1, 【2013】 2015 including, but not limited to, the
20 time period commencing on July 1, 2013 through the effective date
21 of P.L. , c. (pending before the Legislature as this bill),
22 provided that a permit for the construction of the building has been
23 issued prior to **【January】** July 1, 【2015】 2016.

24 b. A developer may challenge non-residential development fees
25 imposed pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) by
26 filing a challenge with the Director of the Division of Taxation.
27 Pending a review and determination by the director, which shall be
28 made within 45 days of receipt of the challenge, collected fees shall
29 be placed in an interest bearing escrow account by the municipality
30 or by the State, as the case may be. Appeals from a determination
31 of the director may be made to the tax court in accordance with the
32 provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et
33 seq., within 90 days after the date of such determination. Interest
34 earned on amounts escrowed shall be credited to the prevailing
35 party.

36 c. Whenever non-residential development is situated on real
37 property that has been previously developed with a building,
38 structure, or other improvement, the non-residential development
39 fee shall be equal to two and a half (2.5) percent of the equalized
40 assessed value of the land and improvements on the property where
41 the non-residential development is situated at the time the final
42 certificate of occupancy is issued, less the equalized assessed value
43 of the land and improvements on the property where the non-
44 residential development is situated, as determined by the tax
45 assessor of the municipality at the time the developer or owner,
46 including any previous owners, first sought approval for a
47 construction permit, including, but not limited to, demolition

1 permits, pursuant to the State Uniform Construction Code, or
2 approval under the "Municipal Land Use Law," P.L.1975, c.291
3 (C.40:55D-1 et seq.). If the calculation required under this section
4 results in a negative number, the non-residential development fee
5 shall be zero.

6 Whenever the developer of a non-residential development has
7 made or committed itself to make a financial or other contribution
8 relating to the provision of housing affordable to low and moderate
9 income households prior to the enactment of P.L.2008, c.46
10 (C.52:27D-329.1 et al.), the non-residential development fee shall
11 be reduced by the amount of the financial contribution and the fair
12 market value of any other contribution made by or committed to be
13 made by the developer. For purposes of this section, a developer is
14 considered to have made or committed itself to make a financial or
15 other contribution, if and only if: (1) the contribution has been
16 transferred, including but not limited to when the funds have
17 already been received by the municipality; (2) the developer has
18 obligated itself to make a contribution as set forth in a written
19 agreement with the municipality, such as a developer's agreement;
20 or (3) the developer's obligation to make a contribution is set forth
21 as a condition in a land use approval issued by a municipal land use
22 agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291
23 (C.40:55D-1 et seq.).

24 d. Unless otherwise provided for by law, no municipality shall
25 be required to return a financial or any other contribution made by
26 or committed to be made by the developer of a non-residential
27 development prior to the enactment of P.L.2008, c.46 (C.52:27D-
28 329.1 et al.) relating to the provision of housing affordable to low
29 and moderate income households, provided that the developer does
30 not obtain an amended, modified, or new municipal land use
31 approval with a substantial change in the non-residential
32 development. If the developer obtains an amended, modified, or
33 new land use approval for non-residential development, the
34 municipality, person, or entity shall be required to return to the
35 developer any funds or other contribution provided by the developer
36 for the provision of housing affordable to low and moderate income
37 households and the developer shall not be entitled to a reduction in
38 the affordable housing development fee based upon that
39 contribution.

40 e. The provisions of sections 32 through 38 of P.L.2008, c.46
41 (C.40:55D-8.1 through C.40:55D-8.7) shall not be construed in any
42 manner as affecting the method or timing of assessing real property
43 for property taxation purposes. The payment of a non-residential
44 development fee shall not increase the equalized assessed value of
45 any property.

46 (cf: P.L.2011, c.122, s.1)

1 2. Section 39 of P.L.2009, c.90 (C.40:55D-8.8) is amended to
2 read as follows:

3 39. The provisions of this section shall apply only to those
4 developments for which a fee was imposed pursuant to sections 32
5 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7),
6 known as the "Statewide Non-residential Development Fee Act."

7 a. A developer of a property that received preliminary site plan
8 approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46),
9 or final approval, pursuant to section 38 of P.L.1975, c.291
10 (C.40:55D-50) prior to July 17, 2008 and that was subject to the
11 payment of a nonresidential development fee prior to the enactment
12 of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to a
13 return of any moneys paid that represent the difference between
14 moneys committed prior to July 17, 2008 and monies paid on or
15 after that date.

16 b. A developer of a non-residential project that, prior to July
17 17, 2008, has been referred to a planning board by the State, a
18 governing body, or other public agency for review pursuant to
19 section 22 of P.L.1975, c.291 (C. 40:55D-31) and that was subject
20 to the payment of a nonresidential development fee prior to the
21 enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be
22 entitled to a return of any moneys paid that represent the difference
23 between moneys committed prior to July 17, 2008 and moneys paid
24 on or after that date.

25 c. If moneys are required to be returned under subsection a., b.
26 or d. of this section, a claim shall be submitted, in writing, to the
27 same entity to which the moneys were paid, within 120 days of the
28 effective date of P.L.2009, c.90 (C.52:27D-489a et al.). The entity
29 to whom the funds were paid shall promptly review all requests for
30 returns, and the fees paid shall be returned to the claimant within 30
31 days of receipt of the claim for return.

32 d. A developer of a non-residential project that paid a fee
33 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
34 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to July 17, 2008
35 but prior to the effective date of P.L.2009, c.90 (C.52:27D-489a et
36 al.), shall be entitled to the return of those moneys paid, provided
37 that the provisions of section 37 of P.L.2008, c.46 (C.40:55D-8.6),
38 as amended by P.L.2009, c.90 do not permit the imposition of a fee
39 upon the developer of that non-residential property.

40 e. Notwithstanding the provisions of subsections a., b., c., and
41 d. of this section, if, on the effective date of P.L.2009, c.90
42 (C.52:27D-489a et al.), a municipality that has returned all or a
43 portion of non-residential fees in accordance with subsection a. or
44 b. of this section shall be reimbursed from the funds available
45 through the appropriation made into the "New Jersey Affordable
46 Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90

1 (C.52:27D-320.1) within 30 days of the municipality providing
2 written notice to the Council on Affordable Housing.

3 f. A developer of a non-residential project that paid a fee
4 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
5 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to June 30, 2010
6 but prior to the effective date of P.L.2011, c.122, shall be entitled to
7 the return of those monies paid, provided that said monies have not
8 already been expended by the municipality on affordable housing
9 projects, and provided that the provisions of section 37 of P.L.2008,
10 c.46 (C.40:55D-8.6), as amended by P.L.2011, c.122 do not permit
11 the imposition of a fee upon the developer of that non-residential
12 property. If moneys are eligible to be returned under this
13 subsection, a claim shall be submitted, in writing, to the same entity
14 to which the moneys were paid, within 120 days of the effective
15 date of P.L.2011, c.122. The entity to whom the funds were paid
16 shall promptly review all requests for returns, to ensure
17 applicability of section 37 of P.L.2008, c.46 (C.40:55D-8.6) and the
18 fees paid shall be returned to the claimant within 30 days of receipt
19 of the claim for return.

20 g. A developer of a non-residential project that paid a fee
21 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
22 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to June 30, 2013
23 but prior to the effective date of P.L. , c. (pending before the
24 Legislature as this bill) shall be entitled to the return of those
25 monies paid, provided that said monies have not already been
26 expended by the municipality on affordable housing projects, and
27 provided that the provisions of section 37 of P.L.2008, c.46
28 (C.40:55D-8.6), as amended by P.L. , c. (pending before the
29 Legislature as this bill) do not permit the imposition of a fee upon
30 the developer of that non-residential property. If moneys are
31 eligible to be returned under this subsection, a claim shall be
32 submitted, in writing, to the same entity to which the moneys were
33 paid, within 120 days of the effective date of P.L. , c. (pending
34 before the Legislature as this bill). The entity to whom the funds
35 were paid shall promptly review all requests for returns, to ensure
36 applicability of section 37 of P.L.2008, c.46 (C.40:55D-8.6), as
37 amended by P.L. , c. (pending before the Legislature as this
38 bill), and the fees paid shall be returned to the claimant within 30
39 days of receipt of the claim for return.

40 (cf: P.L.2011, c.122, s.2)

41

42 3. This act shall take effect immediately.

1 STATEMENT

2

3 The bill re-instates the moratorium on the imposition of fees on
4 non-residential construction projects that expired on July 1, 2013,
5 and continues the moratorium through December 31, 2014.

6 The bill requires municipalities to return any monies paid, due to
7 the previous expiration of the moratorium, during the time period
8 commencing on July 1, 2013 through the effective date of the bill.
9 However, the bill does not require municipalities that are eligible to
10 collect non-residential development fees to refund monies that have
11 already been expended by the municipality on affordable housing
12 projects.