

ASSEMBLY, No. 3689

STATE OF NEW JERSEY

210th LEGISLATURE

INTRODUCED JUNE 5, 2003

Sponsored by:

Assemblyman REED GUSCIORA

District 15 (Mercer)

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

Assemblywoman CONNIE MYERS

District 23 (Warren and Hunterdon)

SYNOPSIS

Revises laws concerning financial assistance for contaminated site remediation.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/6/2003)

1 AN ACT concerning the remediation of contaminated sites, and
2 amending and supplementing 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 23 of P.L.1993, c.139 (C.58:10B-1) is amended to read
8 as follows:

9 23. As used in sections 23 through 43 and section 45 of P.L.1993,
10 c.139 (C.58:10B-1 et seq.), as may be amended and supplemented:

11 "Area of concern" means any location where contaminants are or
12 were known or suspected to have been discharged, generated,
13 manufactured, refined, transported, stored, handled, treated, or
14 disposed, or where contaminants have or may have migrated;

15 "Authority" means the New Jersey Economic Development
16 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);

17 "Brownfield development area" means an area that has been so
18 designated by the department, in writing, pursuant to the provisions of
19 section 7 of P.L. , c. (C.) (now in the Legislature as this bill);

20 "Brownfield site" means any former or current commercial or
21 industrial site that is currently vacant or underutilized and on which
22 there has been, or there is suspected to have been, a discharge of a
23 contaminant;

24 "Contamination" or "contaminant" means any discharged hazardous
25 substance as defined pursuant to section 3 of P.L.1976, c.141
26 (C.58:10-23.11b), hazardous waste as defined pursuant to section 1 of
27 P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to
28 section 3 of P.L.1977, c.74 (C.58:10A-3);

29 "Department" means the Department of Environmental Protection;

30 "Discharge" means an intentional or unintentional action or
31 omission resulting in the releasing, spilling, leaking, pumping, pouring,
32 emitting, emptying, or dumping of a contaminant onto the land or into
33 the waters of the State;

34 "Engineering controls" means any mechanism to contain or stabilize
35 contamination or ensure the effectiveness of a remedial action.
36 Engineering controls may include, without limitation, caps, covers,
37 dikes, trenches, leachate collection systems, signs, fences and physical
38 access controls;

39 "Environmental opportunity zone" has the meaning given that term
40 pursuant to section 3 of P.L.1995, c.413 (C.54:4-3.152);

41 "Financial assistance" means loans or loan guarantees;

42 "Institutional controls" means a mechanism used to limit human
43 activities at or near a contaminated site, or to ensure the effectiveness

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

Matter underlined thus is new matter.

1 of the remedial action over time, when contaminants remain at a
2 contaminated site in levels or concentrations above the applicable
3 remediation standard that would allow unrestricted use of that
4 property. Institutional controls may include, without limitation,
5 structure, land, and natural resource use restrictions, well restriction
6 areas, and deed notices;

7 "Limited restricted use remedial action" means any remedial action
8 that requires the continued use of institutional controls but does not
9 require the use of an engineering control;

10 "No further action letter" means a written determination by the
11 department that based upon an evaluation of the historical use of a
12 particular site, or of an area of concern or areas of concern at that site,
13 as applicable, and any other investigation or action the department
14 deems necessary, there are no discharged contaminants present at the
15 site, at the area of concern or areas of concern, at any other site to
16 which a discharge originating at the site has migrated, or that any
17 discharged contaminants present at the site or that have migrated from
18 the site have been remediated in accordance with applicable
19 remediation regulations;

20 "Person" means an individual, corporation, company, partnership,
21 firm, or other private business entity;

22 "Preliminary assessment" means the first phase in the process of
23 identifying areas of concern and determining whether contaminants are
24 or were present at a site or have migrated or are migrating from a site,
25 and shall include the initial search for and evaluation of, existing site
26 specific operational and environmental information, both current and
27 historic, to determine if further investigation concerning the
28 documented, alleged, suspected or latent discharge of any contaminant
29 is required. The evaluation of historic information shall be conducted
30 from 1932 to the present, except that the department may require the
31 search for and evaluation of additional information relating to
32 ownership and use of the site prior to 1932 if such information is
33 available through diligent inquiry of the public records;

34 "Recreation and conservation purposes" means the use of lands for
35 beaches, biological or ecological study, boating, camping, fishing,
36 forests, greenways, hunting, natural areas, parks, playgrounds,
37 protecting historic properties, water reserves, watershed protection,
38 wildlife preserves, active sports, or a similar use for either public
39 outdoor recreation or conservation of natural resources, or both;

40 "Remedial action" means those actions taken at a site or offsite if
41 a contaminant has migrated or is migrating therefrom, as may be
42 required by the department, including the removal, treatment,
43 containment, transportation, securing, or other engineering or
44 treatment measures, whether to an unrestricted use or otherwise,
45 designed to ensure that any discharged contaminant at the site or that
46 has migrated or is migrating from the site, is remediated in compliance

1 with the applicable health risk or environmental standards;

2 "Remedial action workplan" means a plan for the remedial action to
3 be undertaken at a site, or at any area to which a discharge originating
4 at a site is migrating or has migrated; a description of the remedial
5 action to be used to remediate a site; a time schedule and cost estimate
6 of the implementation of the remedial action; and any other
7 information the department deems necessary;

8 "Remedial investigation" means a process to determine the nature
9 and extent of a discharge of a contaminant at a site or a discharge of
10 a contaminant that has migrated or is migrating from the site and the
11 problems presented by a discharge, and may include data collected,
12 site characterization, sampling, monitoring, and the gathering of any
13 other sufficient and relevant information necessary to determine the
14 necessity for remedial action and to support the evaluation of remedial
15 actions if necessary;

16 "Remediation" or "remediate" means all necessary actions to
17 investigate and clean up or respond to any known, suspected, or
18 threatened discharge of contaminants, including, as necessary, the
19 preliminary assessment, site investigation, remedial investigation, and
20 remedial action, provided, however, that "remediation" or "remediate"
21 shall not include the payment of compensation for damage to, or loss
22 of, natural resources;

23 "Remediation fund" means the Hazardous Discharge Site
24 Remediation Fund established pursuant to section 26 of P.L.1993,
25 c.139 (C.58:10B-4);

26 "Remediation funding source" means the methods of financing the
27 remediation of a discharge required to be established by a person
28 performing the remediation pursuant to section 25 of P.L.1993, c.139
29 (C.58:10B-3);

30 "Remediation standards" means the combination of numeric
31 standards that establish a level or concentration, and narrative
32 standards to which contaminants must be treated, removed, or
33 otherwise cleaned for soil, groundwater, or surface water, as provided
34 by the department pursuant to section 35 of P.L.1993, c.139
35 (C.58:10B-12) in order to meet the health risk or environmental
36 standards;

37 "Restricted use remedial action" means any remedial action that
38 requires the continued use of engineering and institutional controls in
39 order to meet the established health risk or environmental standards;

40 "Site investigation" means the collection and evaluation of data
41 adequate to determine whether or not discharged contaminants exist
42 at a site or have migrated or are migrating from the site at levels in
43 excess of the applicable remediation standards. A site investigation
44 shall be developed based upon the information collected pursuant to
45 the preliminary assessment;

46 "Unrestricted use remedial action" means any remedial action that

1 does not require the continued use of engineering or institutional
2 controls in order to meet the established health risk or environmental
3 standards;

4 "Voluntarily perform a remediation" means performing a
5 remediation without having been ordered or directed to do so by the
6 department or by a court and without being compelled to perform a
7 remediation pursuant to the provisions of P.L.1983, c.330 (C.13:1K-6
8 et al.).

9 (cf: P.L.2001, c.154, s.3)

10
11 2. Section 26 of P.L.1993, c.139 (C.58:10B-4) is amended to read
12 as follows:

13 26. a. There is established in the New Jersey Economic
14 Development Authority a special, revolving fund to be known as the
15 Hazardous Discharge Site Remediation Fund. Moneys in the
16 remediation fund shall be dedicated for the provision of financial
17 assistance or grants to municipal governmental entities, [the New
18 Jersey Redevelopment Authority, individuals, corporations,
19 partnerships, and other private business entities] county governmental
20 entities, redevelopment entities authorized to exercise redevelopment
21 powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), and
22 persons, for the purpose of financing remediation activities at sites at
23 which there is, or is suspected of being, a discharge of hazardous
24 substances or hazardous wastes.

25 b. The remediation fund shall be credited with:

26 (1) moneys as are appropriated by the Legislature;

27 (2) moneys deposited into the fund as repayment of principal and
28 interest on outstanding loans made from the fund;

29 (3) any return on investment of moneys deposited in the fund;

30 (4) remediation funding source surcharges imposed pursuant to
31 section 33 of P.L.1993, c.139 (C.58:10B-11);

32 (5) moneys deposited in the fund as repayment of recoverable
33 grants made by the New Jersey Redevelopment Authority for
34 brownfield redevelopment;

35 (6) moneys deposited into the fund from cost recovery subrogation
36 actions; and

37 [(6)] (7) moneys made available to the authority for the purposes
38 of the fund.

39 (cf: P.L.1997, c.278, s.12)

40
41 3. Section 27 of P.L.1993, c.139 (C.58:10B-5) is amended to read
42 as follows:

43 27. a. (1) Financial assistance from the remediation fund may only
44 be rendered to persons who cannot establish a remediation funding
45 source for the full amount of a remediation. Financial assistance
46 pursuant to this act may be rendered only for that amount of the cost

1 of a remediation for which the person cannot establish a remediation
2 funding source. The limitations on receiving financial assistance
3 established in this paragraph (1) shall not limit the ability of municipal
4 governmental entities, [the New Jersey Redevelopment Authority,]
5 county governmental entities, redevelopment entities authorized to
6 exercise redevelopment powers pursuant to section 4 of P.L.1992,
7 c.79 (C.40A:12A-4), persons who are not required to establish a
8 remediation funding source for the part of the remediation involving
9 an innovative technology, an unrestricted use remedial action or a
10 limited restricted use remedial action, persons performing a
11 remediation in an environmental opportunity zone, or persons who
12 voluntarily perform a remediation, from receiving financial assistance
13 from the fund.

14 (2) Financial assistance rendered to persons who voluntarily
15 perform a remediation or perform a remediation in an environmental
16 opportunity zone may only be made for that amount of the cost of the
17 remediation that the person cannot otherwise fund by any of the
18 authorized methods to establish a remediation funding source.

19 (3) Financial assistance rendered to persons who do not have to
20 provide a remediation funding source for the part of the remediation
21 that involves an innovative technology, an unrestricted use remedial
22 action, or a limited restricted use remedial action may only be made
23 for that amount of the cost of the remediation that the person cannot
24 otherwise fund by any of the authorized methods to establish a
25 remediation funding source.

26 b. Financial assistance may be rendered from the remediation fund
27 to (1) owners or operators of industrial establishments who are
28 required to perform remediation activities pursuant to P.L.1983, c.330
29 (C.13:1K-6 et al.), upon closing operations or prior to the transfer of
30 ownership or operations of an industrial establishment, (2) persons
31 who are liable for the cleanup and removal costs of a hazardous
32 substance pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), and
33 (3) persons who voluntarily perform a remediation of a discharge of
34 a hazardous substance or hazardous waste.

35 c. Financial assistance and grants may be made from the
36 remediation fund to a municipal governmental entity [or the New
37 Jersey Redevelopment Authority], county governmental entity, or
38 redevelopment entity authorized to exercise redevelopment powers
39 pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), for real
40 property: (1) on which it holds a tax sale certificate; (2) that it has
41 acquired through foreclosure or other similar means; or (3) that it has
42 acquired, or in the case of a county governmental entity governed by
43 a board of chosen freeholders, has passed a resolution or, in the case
44 of a municipal governmental entity, or a county operating under the
45 "Optional County Charter Law," P.L.1972, c.154 (C.40:41A-1 et
46 seq.), has passed an ordinance or other appropriate document to

1 acquire, by voluntary conveyance for the purpose of redevelopment ,
2 or for recreation and conservation purposes. Financial assistance and
3 grants may only be awarded for real property on which there has been
4 a discharge or on which there is a suspected discharge of a hazardous
5 substance or hazardous waste. [Financial assistance and grants may
6 not be made to any entity listed in this subsection for any real property
7 used by that entity for the conduct of its official business.]

8 d. Grants may be made from the remediation fund to persons [and
9 the New Jersey Redevelopment Authority,] who own real property on
10 which there has been a discharge of a hazardous substance or a
11 hazardous waste and that person [or the authority] qualifies for an
12 innocent party grant pursuant to section 28 of P.L.1993, c.139
13 (C.58:10B-6).

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

18 f. Grants may be made from the remediation fund to municipal
19 governmental entities, county governmental entities, redevelopment
20 entities authorized to exercise redevelopment powers pursuant to
21 section 4 of P.L.1992, c.79 (C.40A:12A-4), for the preliminary
22 assessment, site investigation, remedial investigation and remedial
23 action on contaminated real property within a brownfield development
24 area. Grants may be made from the redevelopment fund to nonprofit
25 organizations, corporations, or associations that are qualified for
26 exemption from federal taxation pursuant to section 501 (c)(3) of the
27 federal Internal Revenue Code, 26 U.S.C.s.501 (c)(3) for the
28 preliminary assessment, site investigation, and remedial investigation
29 of on contaminated real property within a brownfield development
30 area. An ownership interest in the contaminated property shall not be
31 required in order for a municipal governmental entity, county
32 governmental entity, or redevelopment entity authorized to exercise
33 redemption powers pursuant to section 4 of P.L.1992, c.79
34 (C.40A:12A-4) to receive a grant for a remediation of property in a
35 brownfield redevelopment area. Any property on which a municipal
36 governmental entity, county governmental entity, or redevelopment
37 entity makes expenditures for a remedial action and the property is not
38 owned by that entity shall be subject to the provisions of section 8 of
39 P.L. , c. (C.) (now in the Legislature as this bill).

40 g. Grants may be made to nonprofit organizations, corporations,
41 or associations that are qualified for exemption from federal taxation
42 pursuant to section 501 (c)(3) of the federal Internal Revenue Code,
43 26 U.S.C. s.501 (c)(3), for matching grants of up to 25% of the costs
44 of the remedial action for projects involving the redevelopment of
45 contaminated property for recreation and conservation purposes, or
46 for affordable housing pursuant to P.L.1985, c.222 (C.52:27D-301 et

1 seq.), and for the preliminary assessment, site investigation or remedial
2 investigation of a contaminated site.

3 [For the purposes of this section, "person" shall not include any
4 governmental entity.]

5 (cf: P.L.1999, c.214, s.1)

6
7 4. Section 28 of P.L.1993, c.139 (58:10B-6) is amended to read as
8 follows:

9 28. a. Except for moneys deposited in the remediation fund for
10 specific purposes, financial assistance and grants from the remediation
11 fund shall be rendered for the following purposes and, on an annual
12 basis, obligated in the percentages as provided in this subsection.
13 Upon a written joint determination by the authority and the department
14 that the demand for financial assistance or grants for moneys allocated
15 in any paragraph exceeds the percentage of funds allocated for that
16 paragraph, financial assistance and grants dedicated for the purposes
17 and in the percentages set forth in any other paragraph of this
18 subsection, may, for any particular year, if the demand for financial
19 assistance or grants for moneys allocated in that paragraph is less than
20 the percentage of funds allocated for that paragraph, be obligated to
21 the purposes set forth in the over allocated paragraph. The written
22 determination shall be sent to the Senate Environment Committee, and
23 the Assembly Agriculture and Waste Management Committee, or their
24 successors. [For the purposes of this section, "person" shall not
25 include any governmental entity.]

26 (1) At least [15%] 10% of the moneys shall be allocated for
27 financial assistance to persons, [and the New Jersey Redevelopment
28 Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.),]
29 for remediation of real property located in a qualifying municipality as
30 defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

31 (2) At least [10%] 35% of the moneys shall be allocated [for
32 financial assistance and grants] to: (a) municipal governmental entities
33 [and the New Jersey Redevelopment Authority], county governmental
34 entities, redevelopment entities authorized to exercise redevelopment
35 powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), or
36 nonprofit organizations, corporations, or associations that are qualified
37 for exemption from federal taxation pursuant to section 501 (c)(3) of
38 the federal Internal Revenue Code, 26 U.S.C. s.501 (c)(3), for

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

41 (ii) matching grants of up to 25% of the costs of the remedial
42 action for projects involving the redevelopment of contaminated
43 property for recreation and conservation purposes, or for affordable
44 housing pursuant to P.L.1985, c.222 (C.52:27D-301 et seq.),

45 (iii) grants for preliminary assessment, site investigation or

1 remedial investigation of a contaminated site.
2 (iv) financial assistance for the implementation of a remedial
3 action, or
4 (v) financial assistance for remediation activities at sites that have
5 been contaminated by a discharge of a hazardous substance or
6 hazardous waste, or at which there is an imminent and significant
7 threat of a discharge of a hazardous substance or hazardous waste, and
8 the discharge or threatened discharge poses or would pose an
9 imminent and significant threat to a drinking water source, to human
10 health, or to a sensitive or significant ecological area; or
11 (b) persons for financial assistance for remediation activities at
12 sites that have been contaminated by a discharge of a hazardous
13 substance or hazardous waste, or at which there is an imminent and
14 significant threat of a discharge of a hazardous substance or hazardous
15 waste, and the discharge or threatened discharge poses or would pose
16 an imminent and significant threat to a drinking water source, to
17 human health, or to a sensitive or significant ecological area.
18 Except as provided in subsection f. of section 27 of P.L.1993, c.139
19 (C.58:10B-5), financial assistance and grants to municipal
20 governmental entities, county governmental entities, or redevelopment
21 entities authorized to exercise redevelopment powers pursuant to
22 section 4 of P.L.1992, c.79 (C.40A:12A-4) may be made for real
23 property: (1) on which they hold a tax sale certificate; (2) that they
24 have acquired through foreclosure or other similar means; or (3) that
25 they have acquired, or , in the case of a county governmental entities
26 governed by a board of chosen freeholders, have passed a resolution
27 or, in the case of a municipal governmental entities or counties
28 operating under the "Optional County Charter Law," P.L.1972, c.154
29 (C.40:41A-1 et seq.), have passed an ordinance or other appropriate
30 document to acquire, by voluntary conveyance for the purpose of
31 redevelopment, or for recreation and conservation purposes. Financial
32 assistance and grants may only be awarded for real property on which
33 there has been or on which there is suspected of being a discharge of
34 a hazardous substance or a hazardous waste. Grants provided
35 pursuant to this paragraph shall be used for performing preliminary
36 assessments, site investigations, [and] remedial investigations, and
37 remedial actions on real property in order to determine the existence
38 or extent of any hazardous substance or hazardous waste
39 contamination, and to remediate the site in compliance with the
40 applicable health risk and environmental standards on those properties.
41 No grant shall be awarded pursuant to this paragraph (2) for the
42 purposes of a remedial investigation and no financial assistance for a
43 remedial action shall be awarded until the municipal government entity
44 [or the New Jersey Redevelopment Authority], county governmental
45 entity, or redevelopment entity authorized to exercise redevelopment
46 powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4),

1 actually owns the real property, provided that a matching grant for
2 25% of the costs of a remedial action for a project involving the
3 redevelopment of contaminated property for recreation and
4 conservation purposes, or for affordable housing pursuant to
5 P.L.1985, c.222 (C.52:27D-301 et seq.) may be made to a municipal
6 governmental entity even if it does not own the real property and a
7 grant may be made to a municipal governmental entity, a county
8 governmental entity, or redevelopment entity authorized to exercise
9 redevelopment powers pursuant to section 4 of P.L.1992, c.79
10 (C.40A:12A-4) for a remediation in a brownfield development area
11 pursuant to subsection f. of section 27 of P.L.1993, c.139 (C.58: 10B-
12 5) even if the entity does not own the real property. A municipal
13 governmental entity [or the New Jersey Redevelopment Authority]
14 that has performed, or on which there has been performed, a
15 preliminary assessment, site investigation or remedial investigation on
16 property may obtain a loan for the purpose of continuing the
17 remediation on those properties as necessary to comply with the
18 applicable remediation regulations adopted by the department. No
19 grant shall be awarded pursuant to this paragraph to a municipal
20 government entity, a county governmental entity, a redevelopment
21 entity authorized to exercise redevelopment powers pursuant to
22 section 4 of P.L.1992, c.79 (C.40A:12A-4), or a nonprofit
23 organization, corporation, or association that is qualified for
24 exemption from federal taxation pursuant to section 501 (c)(3) of the
25 federal Internal Revenue Code, 26 U.S.C. s.501 (c)(3) unless that
26 entity has adopted by ordinance or resolution a comprehensive plan
27 specifically for the development or redevelopment of contaminated or
28 potentially contaminated real property in that municipality or the entity
29 can demonstrate to the authority that a realistic opportunity exists that
30 the subject real property will be developed or redeveloped within a
31 three-year period from the completion of the remediation;

32 (3) [At least 15% of the moneys shall be allocated for financial
33 assistance to persons, the New Jersey Redevelopment Authority, or
34 municipal governmental entities for remediation activities at sites that
35 have been contaminated by a discharge of a hazardous substance or
36 hazardous waste, or at which there is an imminent and significant
37 threat of a discharge of a hazardous substance or hazardous waste, and
38 the discharge or threatened discharge poses or would pose an
39 imminent and significant threat to a drinking water source, to human
40 health, or to a sensitive or significant ecological area;

41 (4)] At least 10% of the moneys shall be allocated for financial
42 assistance to persons who voluntarily perform a remediation of a
43 hazardous substance or hazardous waste discharge;

44 [(5) At least 10% of the moneys shall be allocated for financial
45 assistance to persons who are required to perform remediation
46 activities at an industrial establishment pursuant to P.L.1983, c.330

1 (C.13:1K-6 et al.), as a condition of the closure, transfer, or
2 termination of operations at that industrial establishment;

3 (6)] (4) At least 15% of the moneys shall be allocated for grants
4 to persons who own real property on which there has been a discharge
5 of a hazardous substance or a hazardous waste and that person
6 qualifies for an innocent party grant. A person qualifies for an
7 innocent party grant if that person acquired the property prior to
8 December 31, 1983, [except as provided hereunder,] the hazardous
9 substance or hazardous waste that was discharged at the property was
10 not used by the person at that site, and that person certifies that he did
11 not discharge any hazardous substance or hazardous waste at an area
12 where a discharge is discovered[; provided, however, that
13 notwithstanding any other provision of this section the New Jersey
14 Redevelopment Authority established pursuant to P.L.1996, c.62
15 (C.55:19-20 et al.), shall qualify for an innocent party grant pursuant
16 to this paragraph where the immediate predecessor in title to the
17 authority would have qualified for but failed to apply for or receive
18 such grant]. A grant authorized pursuant to this paragraph may be for
19 up to 50% of the remediation costs at the area of concern for which
20 the person qualifies for an innocent party grant, except that no grant
21 awarded pursuant to this paragraph to any person [or the New Jersey
22 Redevelopment Authority] may exceed \$1,000,000;

23 [(7)] (5) At least [5%] 10% of the moneys shall be allocated for
24 (a) financial assistance to persons who own and plan to remediate an
25 environmental opportunity zone for which an exemption from real
26 property taxes has been granted pursuant to section 5 of P.L.1995,
27 c.413 (C.54:4-3.154)[;

28 (8) At least 5% of the moneys shall be allocated for], or (b)
29 matching grants for up to 25% of the project costs to qualifying
30 persons, municipal governmental entities, county governmental
31 entities, redevelopment entities authorized to exercise redevelopment
32 powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), and
33 nonprofit organizations, corporations, or associations that are qualified
34 for exemption from federal taxation pursuant to section 501 (c)(3) of
35 the federal Internal Revenue Code, 26 U.S.C. s.501 (c)(3), who
36 propose to perform a remedial action that uses an innovative
37 technology, or for the implementation of a limited restricted use
38 remedial action or an unrestricted use remedial action except that no
39 grant awarded pursuant to this paragraph [to any qualifying person]
40 may exceed [\$100,000] \$250,000;

41 [(9) At least 5% of the moneys shall be allocated for matching
42 grants for up to 25% of the project costs to qualifying persons for the
43 implementation of a limited restricted use remedial action or an
44 unrestricted use remedial action except that no grant awarded pursuant
45 to this paragraph to any qualifying person may exceed \$100,000. The

1 authority may use money allocated pursuant to this paragraph to
2 provide loan guarantees to encourage financial institutions to provide
3 loans to any person who may receive financial assistance from the fund
4 who plans to implement a limited restricted use remedial action or an
5 unrestricted use remedial action;

6 (10) At least 5% of the moneys shall be allocated for grants to
7 persons who own real property on which there has been a discharge of
8 a hazardous substance or a hazardous waste from an underground
9 storage tank and that person qualifies for an underground storage tank
10 grant. A person qualifies for an underground storage tank grant if that
11 person acquired the property prior to December 31, 1986, the person
12 complied with all laws, rules and regulations regarding the
13 underground storage tank, the underground storage tank was closed
14 or removed prior to December 31, 1990, and there is a discovery of
15 contamination that originated from the underground storage tank and
16 that discovery is made more than five years after closure or removal
17 of the underground storage tank. A grant authorized pursuant to this
18 paragraph may be for up to 50% of the remediation costs at the area
19 of concern for which the person qualifies for an underground storage
20 tank grant, except that no grant awarded pursuant to this paragraph to
21 any person may exceed \$1,000,000]; and

22 [(11) Five] (6) Twenty percent of the moneys in the remediation
23 fund shall be allocated for financial assistance or grants for any of the
24 purposes enumerated in paragraphs (1) through [(10)] (5) of this
25 subsection[, except that where moneys in the fund are insufficient to
26 fund all the applications in any calendar year that would otherwise
27 qualify for financial assistance or a grant pursuant to this paragraph,
28 the authority shall give priority to financial assistance applications that
29 meet the criteria enumerated in paragraph (3) of this subsection].

30 For the purposes of [paragraphs (8) and (9)] paragraph (5) of this
31 subsection, "qualifying persons" means any person who has a net
32 worth of not more than \$2,000,000 and "project costs" means that
33 portion of the total costs of a remediation that is specifically for the
34 use of an innovative technology or to implement an unrestricted use
35 remedial action or a limited restricted use remedial action, as
36 applicable.

37 b. Loans issued from the remediation fund shall be for a term not
38 to exceed ten years, except that upon the transfer of ownership of any
39 real property for which the loan was made, the unpaid balance of the
40 loan shall become immediately payable in full. Loans to municipal
41 governmental entities [and the New Jersey Redevelopment Authority
42 established pursuant to P.L.1996, c.62 (C.55:19-20 et al.),], county
43 governmental entities, redevelopment entities authorized to exercise
44 redevelopment powers pursuant to section 4 of P.L.1992, c.79
45 (C.40A:12A-4), and nonprofit organizations, corporations, or
46 associations that are qualified for exemption from federal taxation

1 pursuant to section 501 (c)(3) of the federal Internal Revenue Code,
2 26 U.S.C. s.501 (c)(3), shall bear an interest rate equal to 2 points
3 below the Federal Discount Rate at the time of approval or at the time
4 of loan closing, whichever is lower, except that the rate shall be no
5 lower than 3 percent. All other loans shall bear an interest rate equal
6 to the Federal Discount Rate at the time of approval or at the time of
7 the loan closing, whichever is lower, except that the rate on such loans
8 shall be no lower than five percent. Financial assistance and grants
9 may be issued for up to 100% of the estimated applicable remediation
10 cost, except that the cumulative maximum amount of financial
11 assistance which may be issued to a person, in any calendar year, for
12 one or more properties, shall be \$1,000,000. Financial assistance and
13 grants to any one municipal governmental entity [or the New Jersey
14 Redevelopment Authority], county governmental entity, a
15 redevelopment entity authorized to exercise redevelopment powers
16 pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), or a nonprofit
17 organization, corporation, or association that is qualified for
18 exemption from federal taxation pursuant to section 501 (c)(3) of the
19 federal Internal Revenue Code, 26 U.S.C. s.501 (c)(3) may not exceed
20 \$2,000,000 in any calendar year. Grants to a municipal government
21 entity, county governmental entity, a redevelopment entity authorized
22 to exercise redevelopment powers pursuant to section 4 of P.L.1992,
23 c.79 (C.40A:12A-4), or a nonprofit organization, corporation, or
24 association that is qualified for exemption from federal taxation
25 pursuant to section 501 (c)(3) of the federal Internal Revenue Code,
26 26 U.S.C. s.501 (c)(3) may not exceed 50% of the total costs of the
27 remediation at any one site. Repayments of principal and interest on
28 the loans issued from the remediation fund shall be paid to the
29 authority and shall be deposited into the remediation fund.

30 The total amount of grant monies awarded in any one year may not
31 exceed 70 percent of the total amount of financial assistance and
32 grants awarded in that year.

33 c. No person, other than a qualified person planning to use an
34 innovative technology for the cost of that technology, a qualified
35 person planning to use a limited restricted use remedial action or an
36 unrestricted use remedial action for the cost of the remedial action, a
37 person performing a remediation in an environmental opportunity
38 zone, or a person voluntarily performing a remediation, shall be
39 eligible for financial assistance from the remediation fund to the extent
40 that person is capable of establishing a remediation funding source for
41 the remediation as required pursuant to section 25 of P.L.1993, c.139
42 (C.58:10B-3).

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

1 grants.

2 e. Prior to March 1 of each year, the authority shall submit to the
3 Senate Environment Committee and the Assembly Agriculture and
4 Waste Management Committee, or their successors, a report detailing
5 the amount of money that was available for financial assistance and
6 grants from the remediation fund for the previous calendar year, the
7 amount of money estimated to be available for financial assistance and
8 grants for the current calendar year, the amount of financial assistance
9 and grants issued for the previous calendar year and the category for
10 which each financial assistance and grant was rendered, and any
11 suggestions for legislative action the authority deems advisable to
12 further the legislative intent to facilitate remediation and promote the
13 redevelopment and use of existing industrial sites.
14 (cf: P.L.2001, c.70, s.1).

15

16 5. Section 29 of P.L.1993, c.139 (C.58:10B-7) is amended to read
17 as follows:

18 29. a. A qualified applicant for financial assistance or a grant from
19 the remediation fund shall be awarded financial assistance or a grant
20 by the authority upon the availability of sufficient moneys in the
21 remediation fund for the purpose of the financial assistance or grant.
22 When moneys in the fund are not sufficient at any point to fully fund
23 all applications for financial assistance and grants that have been
24 approved by the authority, the authority shall award financial
25 assistance and grants in the following order of priority:

26 (1) Sites on which there has been a discharge and the discharge
27 poses and imminent and significant threat to a drinking water source,
28 to human health, or to a sensitive or significant ecological area shall
29 be given first priority; and

30 (2) Sites in areas designated as Planning Area 1 (Metropolitan),
31 Planning Area 2 (Suburban), or designated centers, as designated
32 pursuant to the "State Planning Act," sections 1 through 12 of
33 P.L.1985, c.398 (C.52:18A-196 et seq.), and sites in brownfield
34 development areas, shall be given second priority.

35 [Priority] The priority ranking of applicants within any priority
36 category enumerated in this section for awarding financial assistance
37 and grants from the remediation fund shall be based upon the date of
38 receipt by the authority of [a complete] an application from the
39 applicant. If an application is determined to be incomplete by the
40 authority, an applicant shall have 30 days from receipt of written
41 notice of incompleteness to file any additional information as may be
42 required by the authority for a completed application. If an applicant
43 fails to file the additional information within those 30 days, the filing
44 date for that application for financial assistance or a grant for a site
45 that is not within a priority category enumerated in this section, shall
46 be the date that the additional information is received by the authority.

1 An application shall be deemed complete when all the information
2 required by the authority has been received in the required form.
3 [Notwithstanding that the New Jersey Redevelopment Authority is
4 eligible for grants and financial assistance from the fund, the authority
5 shall be awarded a grant or financial assistance based upon the priority
6 system for such awards as provided in this subsection.]

7 b. Within 90 days, for a private entity, or 180 days for a municipal
8 governmental entity [or the New Jersey Redevelopment Authority],
9 a county governmental entity, a redevelopment entity authorized to
10 exercise redevelopment powers pursuant to section 4 of P.L.1992,
11 c.79 (C.40A:12A-4), or a nonprofit organization, corporation, or
12 association that is qualified for exemption from federal taxation
13 pursuant to section 501 (c)(3) of the federal Internal Revenue Code,
14 26 U.S.C. s.501 (c)(3), of notice of approval of a financial assistance
15 or grant application, an applicant shall submit to the authority an
16 executed contract for the remediation activities for which the financial
17 assistance or grant application was made. The contract shall be
18 consistent with the terms and conditions for which the financial
19 assistance or grant was rendered. Failure to submit an executed
20 contract within the time provided, without good cause, shall constitute
21 grounds for the alteration of an applicant's priority ranking for the
22 awarding of financial assistance or a grant.

23 (cf: P.L.1996, c.62, s.66)

24
25 6. Section 30 of P.L.1993, c.139 (C.58:10B-8) is amended to read
26 as follows:

27 30. a. The authority shall, by rule or regulation:

28 (1) require a financial assistance or grant recipient to provide to
29 the authority, as necessary or upon request, evidence that financial
30 assistance or grant moneys are being spent for the purposes for which
31 the financial assistance or grant was made, and that the applicant is
32 adhering to all of the terms and conditions of the financial assistance
33 or grant agreement;

34 (2) require the financial assistance or grant recipient to provide
35 access at reasonable times to the subject property to determine
36 compliance with the terms and conditions of the financial assistance or
37 grant;

38 (3) establish a priority system for rendering financial assistance or
39 grants for remediations identified by the department as involving an
40 imminent and significant threat to a public water source, human health,
41 or to a sensitive or significant ecological area pursuant to [paragraph
42 (3) of] subsection a. of section 28 of P.L.1993, c.139 (C.58:10B-6);

43 (4) provide that payment of a grant shall be conditioned upon the
44 subrogation to the department of all rights of the recipient to recover
45 remediation costs from the discharger or other liable parties. All
46 moneys collected in a cost recovery subrogation action shall be

1 deposited into the remediation fund;

2 (5) provide that an applicant for financial assistance or a grant pay
3 a reasonable fee for the application which shall be used by the
4 authority for the administration of the loan and grant program;

5 (6) provide that where financial assistance to a person other than
6 a municipal governmental entity 【or the New Jersey Redevelopment
7 Authority】, a county governmental entity, a redevelopment entity
8 authorized to exercise redevelopment powers pursuant to section 4 of
9 P.L.1992, c.79 (C.40A:12A-4), or a nonprofit organization,
10 corporation, or association that is qualified for exemption from federal
11 taxation pursuant to section 501 (c)(3) of the federal Internal Revenue
12 Code, 26 U.S.C. s.501 (c)(3), is for a portion of the remediation cost,
13 that the proceeds thereof not be disbursed to the applicant until the
14 costs of the remediation for which a remediation funding source has
15 been established has been expended;

16 (7) provide that the amount of a grant for the costs of a remedial
17 action shall not include the cost to remediate a site to meet residential
18 soil remediation standards if the local zoning ordinances adopted
19 pursuant to the "Municipal Land Use Law," P.L.1975, c.291
20 (C.40:55D-1 et seq.) does not allow for residential use;

21 (8) adopt such other requirements as the authority shall deem
22 necessary or appropriate in carrying out the purposes for which the
23 Hazardous Discharge Site Remediation Fund was created.

24 b. An applicant for financial assistance or a grant shall be required
25 to:

26 (1) provide proof, as determined sufficient by the authority, that
27 the applicant, where applicable, cannot establish a remediation funding
28 source for all or part of the remediation costs, as required by section
29 25 of P.L.1993, c.139 (C.58:10B-3). The provisions of this paragraph
30 do not apply to grants to innocent persons, grants for the use of
31 innovative technologies, or grants for the implementation of
32 unrestricted use remedial actions or limited restricted use remedial
33 actions or to financial assistance or grants to municipal governmental
34 entities 【or the New Jersey Redevelopment Authority】, county
35 governmental entities, or redevelopment entities authorized to exercise
36 redemption powers pursuant to section 4 of P.L.1992, c.79
37 (C.40A:12A-4); and

38 (2) demonstrate the ability to repay the amount of the financial
39 assistance and interest, and, if necessary, to provide adequate
40 collateral to secure the financial assistance amount.

41 c. Information submitted as part of a loan or grant application or
42 agreement shall be deemed a public record subject to the provisions of
43 P.L.1963, c.73 (C.47:1A-1 et seq.).

44 d. In establishing requirements for financial assistance or grant
45 applications and financial assistance or grant agreements, the
46 authority:

1 (1) shall minimize the complexity and costs to applicants or
2 recipients of complying with such requirements;

3 (2) may not require financial assistance or grant conditions that
4 interfere with the everyday normal operations of the recipient's
5 business activities, except to the extent necessary to ensure the
6 recipient's ability to repay the financial assistance and to preserve the
7 value of the loan collateral; and

8 (3) shall expeditiously process all financial assistance or grant
9 applications in accordance with a schedule established by the authority
10 for the review and the taking of final action on the application, which
11 schedule shall reflect the degree of complexity of a financial assistance
12 or grant application.

13 (cf: P.L.1997, c.278, s.15)

14
15 7. (New section) The Department of Environmental Protection
16 shall establish guidelines to establish a procedure for the designation
17 of brownfield development areas. In establishing criteria for the
18 establishment of a brownfield development area, the department shall
19 require:

20 (1) that a brownfield development area includes at least two
21 brownfield sites within a contiguous area;

22 (2) that the boundaries are consistent with the boundaries of a
23 distinct neighborhood;

24 (3) broad community support for the establishment of a brownfield
25 development area; and

26 (4) that the establishment of a brownfield development area will
27 result in a benefit to the public health and safety, and the environment.

28 A brownfield development area shall be designated by the
29 department, in writing, upon application by a person proposing to
30 remediate a site or sites within the area, or upon the department's
31 initiative.

32 The guidelines, and any subsequent revisions thereto, and a list of
33 the brownfield development areas, and any subsequent revisions
34 thereto, and shall be published in the New Jersey Register. The
35 adoption of the guidelines or of the revisions thereto, shall not be
36 subject to the requirements of the "Administrative Procedure Act,"
37 P.L.1968, c.410 (C.52:14B-1 et seq.).

38
39 8. (New section) Any expenditure of grant monies for a remedial
40 action in a brownfield development area by a municipal governmental
41 entity, county governmental entity, or redevelopment entity on
42 property in which the municipal governmental entity, county
43 governmental entity, or redevelopment entity does not have an
44 ownership interest, shall constitute a debt of the property owner to the
45 fund. The debt shall constitute a lien on the real property at which the
46 remedial action is performed. The lien shall be in the amount of the

1 grant awarded for the remedial action on that property. The lien shall
2 attach when a notice of lien, incorporating the name of the property
3 owner, a description of the property subject to the remedial action and
4 an identification of the amount of the grant awarded from the fund, is
5 duly filed with the county recording officer in the county in which the
6 property is located. The lien filed pursuant to this section which
7 affects the property subject to the remedial action shall create a lien
8 with priority over all other claims or liens which are or have been filed
9 against the property, except if the property comprises six dwelling
10 units or less and is used exclusively for residential purposes, this notice
11 of lien shall not affect any valid lien, right or interest in the property
12 filed in accordance with established procedure prior to the filing of this
13 notice of lien. A lien that is filed on real property pursuant to this
14 section shall be removed upon transfer of ownership of the property
15 to the municipal governmental entity, county governmental entity, or
16 redevelopment entity that expended grant monies for a remedial action
17 on that property.

18

19 9. (New section) Notwithstanding the provisions of any other law,
20 or any rule or regulation adopted pursuant thereto to the contrary, the
21 New Jersey Economic Development Authority may provide grants or
22 recoverable grants from the fund to a municipal governmental entity
23 that has received a commitment prior to the effective date of this act,
24 from the New Jersey Redevelopment Authority, established pursuant
25 to P.L.1996, c.62 (C.55:19-20 et al.), for funding the implementation
26 of a remedial action. Any repayments to the New Jersey
27 Redevelopment Authority for grants or other financial assistance made
28 for brownfields remediation or redevelopment shall be paid to the New
29 Jersey Economic Development Authority and shall be deposited into
30 the fund.

31

32 10. This act shall take effect immediately.

33

34

35

STATEMENT

36

37 This bill would make various changes to the laws governing
38 financial assistance from the Hazardous Discharge Site Remediation
39 Fund. This bill would allow county governmental entities and
40 redevelopment entities authorized to exercise redevelopment powers
41 pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) to receive
42 financial assistance and grants from the fund. Currently, municipal
43 governmental entities and the New Jersey Redevelopment Authority
44 are eligible to receive financial assistance and grants from the fund.
45 With regard to the New Jersey Redevelopment Authority, (NJRA)
46 because that agency is no longer receiving State funding, the bill

1 would delete all reference of that authority from the law. However,
2 the bill provides that notwithstanding any provisions of any law to the
3 contrary, the Economic Development Authority may provide grants
4 and recoverable grants to any municipality that has received a
5 commitment from the NJRA prior to the effective date of this bill to
6 fund a remedial action of a contaminated site. Any repayments would
7 be required to be deposited in the fund.

8 The bill allows the Department of Environmental Protection to
9 establish brownfield development areas in which grant monies may be
10 awarded to municipal and county governmental entities and
11 redevelopment entities authorized to exercise redevelopment powers
12 pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) for the
13 performance of a remedial action. Nonprofit organizations would be
14 eligible for grants in brownfield development areas for a preliminary
15 assessment, site investigation, or remedial investigation. The bill
16 would allow grants to a municipal or county governmental entity or a
17 redevelopment entity for a remedial action in a brownfield
18 development area even if the entity does not own the property. In that
19 circumstance, a lien would attach to the property.

20 The bill requires DEP to establish guidelines that establish a
21 procedure for the designation of brownfield development areas. In
22 establishing criteria for the establishment of a brownfield development
23 area, the department must require that a brownfield development area
24 includes at least two brownfield sites within a contiguous area, that the
25 boundaries are consistent with the boundaries of a distinct
26 neighborhood, broad community support for the establishment of a
27 brownfield development area; and that the establishment of a
28 brownfield development area will result in a benefit to the public
29 health and safety, and the environment. A brownfield development
30 area may be designated by the department, in writing, upon application
31 by a person proposing to remediate a site or sites within the area, or
32 upon the department's initiative.

33 The bill would also authorize matching grants to nonprofit
34 organizations, municipal and county governmental entities, and
35 redevelopment entities for up to 25% of the cost of a remedial action
36 for a project that involves the redevelopment of property for
37 affordable housing or for recreation and conservation purposes.

38 The bill would also authorize grants to nonprofit organizations for
39 the preliminary assessment, site investigation and remedial
40 investigation of any contaminated site.

41 The bill would change the funding categories governing the
42 allocation of the use of monies in the fund. The bill would continue
43 the allocation of 10 percent of the moneys for financial assistance to
44 persons who perform remediations in qualifying municipalities. The
45 bill would require 35 percent of the monies to be allocated to:

46 (1) municipal governmental entities, county governmental entities,

1 redevelopment entities authorized to exercise redevelopment powers
2 pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), or nonprofit
3 organizations, corporations, or associations that are qualified for
4 exemption from federal taxation pursuant to section 501 (c)(3) of the
5 federal Internal Revenue Code, 26 U.S.C. s.501 (c)(3), for:

- 6 (a) projects in brownfield development areas;
7 (b) matching grants of up to 25% of the costs of the remedial
8 action for projects involving the redevelopment of contaminated
9 property for recreation and conservation purposes, or for affordable
10 housing pursuant to P.L.1985, c.222 (C.52:27D-301 et seq.);
11 (c) grants for preliminary assessment, site investigation or remedial
12 investigation of a contaminated site;
13 (d) financial assistance for the implementation of a remedial action;
14 or

15 (e) financial assistance for remediation activities at sites that have
16 been contaminated by a discharge of a hazardous substance or
17 hazardous waste, or at which there is an imminent and significant
18 threat of a discharge of a hazardous substance or hazardous waste, and
19 the discharge or threatened discharge poses or would pose an
20 imminent and significant threat to a drinking water source, to human
21 health, or to a sensitive or significant ecological area; or

22 (2) persons for financial assistance for remediation activities at
23 sites that have been contaminated by a discharge of a hazardous
24 substance or hazardous waste, or at which there is an imminent and
25 significant threat of a discharge of a hazardous substance or hazardous
26 waste, and the discharge or threatened discharge poses or would pose
27 an imminent and significant threat to a drinking water source, to
28 human health, or to a sensitive or significant ecological area.

29 At least 10% of the moneys shall be allocated for financial
30 assistance to persons who voluntarily perform a remediation of a
31 hazardous substance or hazardous waste discharge;

32 At least 15% of the moneys shall be allocated for grants to persons
33 who own real property on which there has been a discharge of a
34 hazardous substance or a hazardous waste and that person qualifies for
35 an innocent party grant.

36 At least 10% of the moneys shall be allocated for (a) financial
37 assistance to persons who own and plan to remediate an environmental
38 opportunity zone for which an exemption from real property taxes has
39 been granted pursuant to section 5 of P.L.1995, c.413 (C.54:4-3.154),
40 or (b) matching grants for up to 25% of the project costs to
41 qualifying persons, municipal governmental entities, county
42 governmental entities, redevelopment entities authorized to exercise
43 redevelopment powers pursuant to section 4 of P.L.1992, c.79
44 (C.40A:12A-4), and nonprofit organizations, corporations, or
45 associations that are qualified for exemption from federal taxation
46 pursuant to section 501 (c)(3) of the federal Internal Revenue Code,

1 26 U.S.C. s.501 (c)(3), who propose to perform a remedial action
2 that uses an innovative technology, or for the implementation of a
3 limited restricted use remedial action or an unrestricted use remedial
4 action.

5 Twenty percent of the moneys in the remediation fund shall be
6 allocated for financial assistance or grants for any of the above
7 purposes.

8 The bill would establish that the authority give funding priority first
9 to sites on which there has been a discharge and the discharge poses
10 and imminent and significant threat to a drinking water source, to
11 human health, or to a sensitive or significant ecological area and
12 second, to sites in areas designated as Planning Area 1 (Metropolitan),
13 Planning Area 2 (Suburban), or designated centers, as designated
14 pursuant to the "State Planning Act," (C.52:18A-196 et seq.), and
15 sites in brownfield development areas.

16 The bill would eliminate the funding allocation for financial
17 assistance to persons required to perform a remediation at an industrial
18 establishment pursuant to P.L.1983, c.330 (C.13:1K-9 et seq.).
19 Further, the bill would allow local government entities to use financial
20 assistance and grant money for a remediation on the entity's's place of
21 business.

22 The bill would establish that grants to municipal and county
23 governmental entities, redevelopment entities, and nonprofit
24 organizations may not exceed 50 percent of the total costs of
25 remediation at any one site, and the total financial assistance and
26 grants to any one of those entities may not exceed \$2 million in any
27 one year. The bill allows nonprofit organizations to be eligible for
28 loans at the same interest rate available to local government entities.
29 Finally, the bill establishes a new limit on the total amount in grants
30 that may be awarded at 70 percent of total amount of grants and loans
31 awarded.