

SENATE, No. 3162

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED NOVEMBER 9, 2020

Sponsored by:
Senator NILSA I. CRUZ-PEREZ
District 5 (Camden and Gloucester)

SYNOPSIS

Provides economic development incentives for remediating and redeveloping legacy landfills, brownfields, and contaminated sites.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning economic development incentives for
2 remediating and redeveloping legacy landfills, brownfields, and
3 contaminated sites, and supplementing P.L.1974, c.80 (C.34:1B-
4 1 et seq.).

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

8
9 1. P.L. , c. (C.) (pending before the Legislature as this
10 bill) shall be known and may be cited as the “Landfills,
11 Brownfields, and Contaminated Sites Redevelopment Incentive
12 Program Act.”

13
14 2. As used in P.L. , c. (C.) (pending before the
15 Legislature as this bill):

16 "Authority" means the New Jersey Economic Development
17 Authority established by section 4 of P.L.1974, c.80 (C.34:1B-4).

18 "Benefit" or "benefits" mean any tax benefit or benefits provided
19 pursuant to sections 7 through 9 of P.L. , c. (C.) (pending
20 before the Legislature as this bill) to which a developer becomes
21 eligible by entering into a redevelopment agreement.

22 "Board" means the Board of the New Jersey Economic
23 Development Authority, established pursuant to section 4 of
24 P.L.1974, c.80 (C.34:1B-4).

25 "Brownfield site" means the same as that term is defined in
26 section 23 of P.L.1993, c.139 (C.58:10B-1).

27 "Building services" means any cleaning or routine building
28 maintenance work, including but not limited to sweeping,
29 vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse
30 or trash, window cleaning, securing, patrolling, or other work in
31 connection with the care or securing of an existing building,
32 including services typically provided by a door-attendant or
33 concierge. “Building services” shall not include any skilled
34 maintenance work, professional services, or other public work for
35 which a contractor is required to pay the “prevailing wage” as
36 defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).

37 "Contaminated site" means any real property on which there is
38 contamination.

39 "Contamination" or "contaminant" mean the same as those terms
40 are defined in section 23 of P.L.1993, c.139 (C.58:10B-1).

41 “Closure” means all activities associated with the design,
42 purchase, construction, or maintenance of all measures required by
43 the department, pursuant to law, in order to prevent, minimize, or
44 monitor pollution or health hazards resulting from a legacy landfill
45 subsequent to the termination of operations at any portion thereof,
46 including, but not necessarily limited to, the placement of final
47 earthen or vegetative cover, the installation of methane gas vents or
48 monitors and leachate monitoring wells or collection systems, and

1 long-term operations and maintenance, at the site of any legacy
2 landfill that is not listed on the National Priorities List pursuant to
3 the "Comprehensive Environmental Response, Compensation, and
4 Liability Act of 1980," 42 U.S.C. s.9605.

5 "Department" means the Department of Environmental
6 Protection.

7 "Developer" means any person that enters or proposes to enter
8 into a redevelopment agreement with the authority pursuant to the
9 provisions of P.L. , c. (C.) (pending before the Legislature
10 as this bill).

11 "Director" means the Director of the Division of Taxation in the
12 Department of the Treasury.

13 "Legacy landfill" means the same as that term is defined in
14 section 1 of P.L.2013, c.69 (C.13:1E-125.1).

15 "Program" means the Landfills, Brownfields, and Contaminated
16 Sites Redevelopment Incentive Program established by section 3 of
17 P.L. , c. (C.) (pending before the Legislature as this bill).

18 "Redevelopment agreement" means an agreement entered into
19 between the authority and a developer pursuant to P.L. ,
20 c. (C.) (pending before the Legislature as this bill) under
21 which the developer agrees to perform any work or undertaking
22 necessary for the closure and remediation of a legacy landfill, or for
23 the remediation of a brownfield site or contaminated site, and for
24 the completion of a redevelopment project on the area of land
25 whereon the legacy landfill, brownfield site, or contaminated site is
26 located.

27 "Redevelopment project" means a specific construction project
28 or improvement that is undertaken, pursuant to the terms of a
29 redevelopment agreement, by a developer within an area of land
30 whereon a legacy landfill, brownfield site, or contaminated site is
31 located, and that is appropriate and safe for the site and complies
32 with the provisions of P.L.1993, c.139 (C.58:10B-1 et al.). A
33 redevelopment project may involve construction or improvement
34 upon lands, buildings, improvements, or real and personal property,
35 or any interest therein, including lands under water, riparian rights,
36 space rights, and air rights, acquired, owned, developed or
37 redeveloped, constructed, reconstructed, rehabilitated, or improved.

38 "Redevelopment zone" means an area determined to be in need
39 of redevelopment on or before the effective date of this act pursuant
40 to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-
41 6), as made pursuant to the authority of Article VIII, Section III,
42 paragraph 1 of the Constitution. A redevelopment zone may
43 include lands, buildings, or improvements which of themselves are
44 not detrimental to the public health, safety or welfare, but the
45 inclusion of which is found necessary, with or without change in
46 their condition, for the effective redevelopment of the area of which
47 they are a part.

1 "Remediation" or "remediate" means the same as those terms are
2 defined in section 23 of P.L.1993, c.139 (C.58:10B-1).

3 "Remediation costs" means all reasonable costs associated with
4 the remediation of a contaminated site, except any costs incurred in
5 financing the remediation.

6
7 3. The Landfills, Brownfields, and Contaminated Sites
8 Redevelopment Incentive Program is established as a program
9 under the jurisdiction of the New Jersey Economic Development
10 Authority. The purpose of the program is to provide economic
11 incentives for developers who remediate and properly close a
12 legacy landfill, or remediate a brownfield site or contaminated site,
13 as appropriate, and undertake a redevelopment project on the
14 premises of a closed landfill, brownfield site, or contaminated site
15 within a redevelopment zone. As provided in section 7 of P.L. ,
16 c. (C.) (pending before the Legislature as this bill),
17 developers that are approved to participate in the program are
18 entitled to an exemption to the extent of 50 percent from the tax
19 imposed under the "Sales and Use Tax Act," P.L.1966, c.30
20 (C.54:32B-1 et seq.). In addition, as provided in section 8 of
21 P.L. , c. (C.) (pending before the Legislature as this bill),
22 receipts from retail sales of certain tangible personal property and
23 sales of certain services to developers for the exclusive use or
24 consumption of the developers are exempt from the taxes imposed
25 under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et
26 seq.). As provided in section 9 of P.L. , c. (C.) (pending
27 before the Legislature as this bill), retail sales of energy and utility
28 service to a developer or group of developers who meet certain
29 requirements are exempt from the taxes imposed under the "Sales
30 and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

31
32 4. a. The authority shall develop an application, review, and
33 approval process for a developer to participate in the program. The
34 authority shall review and approve up to five applications for
35 participation in the program over a period of not more than five
36 years. Following approval of an application by the board, but prior
37 to the start of any remediation or redevelopment at the site of the
38 redevelopment project, the authority shall enter into a
39 redevelopment agreement with the developer. The chief executive
40 officer of the authority shall negotiate the terms and conditions of
41 the redevelopment agreement on behalf of the State.

42 b. The developer shall complete the remediation and
43 redevelopment of the proposed site by a date no later than seven
44 years after the date on which the authority and the developer
45 execute the redevelopment agreement. The authority may grant a
46 developer one additional period of not more than three years to
47 complete the redevelopment project if the developer demonstrates,
48 and the authority finds, that the benefits received under the program

1 are continuing to assist in the redevelopment of the site, and that, if
2 the benefits are no longer provided, the developer will be unable to
3 continue making progress in the redevelopment of the site. The
4 developer shall submit a progress report to the authority and to the
5 department every six months pursuant to section 10 of P.L. ,
6 c. (C.) (pending before the Legislature as this bill).

7 c. The authority shall not enter into a redevelopment agreement
8 with a developer unless:

9 (1) the redevelopment project complies with standards
10 established by the authority in accordance with the green building
11 manual prepared by the Commissioner of Community Affairs
12 pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6),
13 regarding the use of renewable energy, energy-efficient technology,
14 and non-renewable resources to reduce environmental degradation
15 and encourage long-term cost reduction;

16 (2) the redevelopment project complies with the authority's
17 affirmative action requirements, adopted pursuant to section 4 of
18 P.L.1979, c.303 (C.34:1B-5.4);

19 (3) the developer pays each worker employed to perform
20 remediation work or construction work at the redevelopment project
21 not less than the prevailing wage rate for the worker's craft or trade,
22 as determined by the Commissioner of Labor and Workforce
23 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
24 and P.L.2005, c.379 (C.34:11-56.58 et seq.);

25 (4) each worker employed to perform building services work at
26 the redevelopment project, for 10 years following completion of the
27 remediation work at the redevelopment project, shall be paid not
28 less than the prevailing wage rate for the worker's craft or trade, as
29 determined by the Commissioner of Labor and Workforce
30 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
31 and P.L.2005, c.379 (C.34:11-56.58 et seq.); and

32 (5) the developer complies with all applicable laws, rules, and
33 regulations for the closure and remediation of a legacy landfill or
34 for the remediation of a brownfield or contaminated site.

35 d. The authority shall not enter into a redevelopment agreement
36 with a developer who is the owner or operator of an industrial
37 establishment subject to the provisions of P.L.1983, c.330
38 (C.13:1K-6 et al.), the discharger of a hazardous substance or a
39 person in any way responsible for a hazardous substance pursuant to
40 the provisions of subsection c. of section 8 of P.L.1976, c.141
41 (C.58:10-23.11g), or the owner or operator of an underground
42 storage tank regulated pursuant to the provisions of P.L.1986, c.102
43 (C.58:10A-21 et seq.), that has discharged a hazardous substance at
44 the closed landfill, brownfield site, or contaminated site proposed to
45 be in the redevelopment agreement.

46 e. The redevelopment agreement shall provide that issuance of
47 any benefit under the program shall be conditioned upon the
48 subrogation to the department of all rights of the developer to

1 recover remediation costs from any other person who discharged a
2 hazardous substance or is in any way responsible, pursuant to
3 section 8 of P.L.1976, c.141 (C.58:10-23.11g), for a hazardous
4 substance that was discharged at the legacy landfill, brownfield site,
5 or contaminated site.

6 f. Nothing in P.L. , c. (C.) (pending before the
7 Legislature as this bill) shall be construed to alter any remediation
8 requirement or timeframe established pursuant to P.L.1993, c.139
9 (C.58:10B-1 et al.), P.L.1976, c.141 (C.58:10-23.11 et seq.),
10 P.L.2009, c.60 (C.58:10C-1 et seq.), or any other law.

11
12 5. The redevelopment agreement shall include, but shall not be
13 limited to, the following:

14 a. A detailed description of the redevelopment project;

15 b. The economic and other benefits to be received by the
16 developer, the State, and the local community in which the
17 redevelopment project is located, from entering into the
18 redevelopment agreement;

19 c. A requirement that the developer submit a progress report to
20 the authority and to the department every six months;

21 d. A requirement that the developer report to the authority and
22 the division quarterly any sales tax paid by the developer during the
23 fiscal quarter;

24 e. A provision which permits the authority to amend the
25 redevelopment agreement;

26 f. A requirement that the developer enter into a memorandum
27 of agreement or oversight document with the department to perform
28 and complete a closure and remediation, as appropriate, and the
29 date on which the developer shall complete the closure,
30 remediation, and redevelopment, which shall be no later than seven
31 years after the date on which the authority and the developer
32 execute the redevelopment agreement, unless this time frame is
33 extended by the authority pursuant to subsection b. of section 4 of
34 P.L. , c. (C.) (pending before the Legislature as this bill);

35 g. A provision which permits the authority to recapture all or
36 part of the value of any benefits awarded, at its discretion, if the
37 developer does not comply with any of provisions of the
38 redevelopment agreement; and

39 h. A provision requiring the developer to certify the truth of the
40 information provided to the authority and the division, under
41 penalty of perjury, and establishing the conditions under which the
42 redevelopment agreement may be terminated.

43
44 6. To qualify for a benefit under the program, a developer, after
45 executing a redevelopment agreement with the authority, shall enter
46 into a memorandum of agreement or oversight document with the
47 Commissioner of Environmental Protection for the proper closure
48 and remediation of the legacy landfill, or the remediation of the

1 brownfield site or contaminated site, as appropriate. Under the
2 memorandum of agreement or oversight document, the developer
3 shall agree to perform and complete any action necessary for the
4 closure and remediation of the legacy landfill, or for the
5 remediation of the brownfield site or contaminated site, as may be
6 required by the department pursuant to law, rule, or regulation.

7
8 7. A developer that undertakes a redevelopment project in a
9 redevelopment zone pursuant to a redevelopment agreement shall
10 be entitled to an exemption to the extent of 50 percent from the tax
11 imposed under the "Sales and Use Tax Act," P.L.1966, c.30
12 (C.54:32B-1 et seq.). The exemption granted pursuant to this
13 section shall be effective for the duration of the remediation and
14 redevelopment project, as specified in the redevelopment
15 agreement, as may be extended by the authority.

16
17 8. a. Receipts from retail sales of tangible personal property,
18 except motor vehicles and energy, and sales of services, except
19 telecommunications services and utility services, to a developer that
20 undertakes a redevelopment project in a redevelopment zone
21 pursuant to a redevelopment agreement for the exclusive use or
22 consumption of the developer for the purposes of the redevelopment
23 project are exempt from the taxes imposed under the "Sales and Use
24 Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

25 b. (1) Notwithstanding the provisions of section 20 of
26 P.L.1966, c.30 (C.54:32B-20) and the provisions of R.S.54:49-14,
27 the director shall refund to a developer the amount of any sales tax
28 or any use tax paid by the developer in connection with that
29 developer's purchase of tangible personal property or services that
30 are exempt, pursuant to subsection a. of this section, from the taxes
31 imposed by P.L.1966, c.30 (C.54:32B-1 et seq.) if the developer
32 makes and files a claim for refund with the director within one year
33 of the date the payment of tax for purchase is made.

34 (2) A developer shall make and file a claim for refund,
35 accompanied by auditable receipts and other necessary
36 documentation, as the director may prescribe.

37 c. The exemption granted pursuant to this section shall be
38 effective for the duration of the remediation and redevelopment
39 project, as specified in the redevelopment agreement, as may be
40 extended by the authority.

41
42 9. a. Retail sales of energy and utility service to:

43 (1) a developer that undertakes a redevelopment project in a
44 redevelopment zone pursuant to a redevelopment agreement and
45 that employs at least 250 people within the redevelopment zone, at
46 least 50 percent of whom are directly employed in a manufacturing
47 process, for the exclusive use or consumption of the developer
48 within the redevelopment zone, or

1 (2) a group of two or more persons: (a) each of whom is a
2 developer that undertakes a redevelopment project in a
3 redevelopment zone pursuant to a redevelopment agreement; (b)
4 that collectively employ at least 250 people within a redevelopment
5 zone, at least 50 percent of whom are directly employed in a
6 manufacturing process; (c) that are each engaged in a vertically
7 integrated business, evidenced by the manufacture and distribution
8 of a product or family of products that, when taken together, are
9 primarily used, packaged, and sold as a single product; and (d) that
10 collectively use the energy and utility service within the
11 redevelopment zone; are exempt from the taxes imposed under the
12 “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.).

13 A developer will continue to be subject to applicable Board of
14 Public Utilities tariff regulations except that the developer’s bills
15 from utility companies and third party suppliers for energy and
16 utility service shall not include chargers for sales and use tax.

17 b. A developer that meets the requirements of subsection a. of
18 this section shall not be allowed the exemption granted pursuant to
19 this section until it has complied with the requirements for
20 obtaining the exemption as may be provided pursuant to P.L. ,
21 c. (C.) (pending before the Legislature as this bill) and
22 P.L.1966, c.30 (C.54:32B-1 et seq.). The authority shall provide
23 prompt notice to the President of the Board of Public Utilities and
24 to the Director of the Division of Taxation in the Department of the
25 Treasury, of a developer that has qualified for the exemption under
26 this subsection, and shall provide the president and the director an
27 annual list of all developers that qualify.

28 c. The exemption granted pursuant to this section shall be
29 effective for the duration of the remediation and redevelopment
30 project, as specified in the redevelopment agreement, as may be
31 extended by the authority.

32
33 10. a. No later than six months after the date on which the
34 authority and a developer execute a redevelopment agreement, and
35 every six months thereafter until completion of the redevelopment
36 project, the developer shall submit an update on the status of the
37 redevelopment project to the authority and to the department,
38 including the remediation and closure costs incurred by the
39 developer for the remediation and closure of the legacy landfill, or
40 for the remediation of the brownfield site or contaminated site, as
41 applicable. Unless the authority determines that extenuating
42 circumstances exist, the authority's approval of any benefit under
43 the program shall expire if the authority, the department, or both, do
44 not timely receive the status update required under this subsection.
45 The authority may rescind an award of any benefit under the
46 program if a redevelopment project fails to advance in accordance
47 with the redevelopment agreement.

1 b. The director may require a developer to submit any
2 information that the director deems necessary to effectuate the
3 provisions of P.L. , c. (C.) (pending before the Legislature
4 as this bill).

5 c. The authority may audit, or cause to be audited, at any time,
6 any developer receiving benefits under the program.

7 d. No later than one year after the effective date of this act,
8 and every year thereafter, the authority shall prepare a report on the
9 implementation, use, and benefits of the program, and submit the
10 report to the Governor, and, pursuant to section 2 of P.L.1991,
11 c.164 (C.52:14-19.1), to the Legislature.

12
13 11. a. The chief executive officer of the authority, in
14 consultation with the Commissioner of Environmental Protection,
15 shall promulgate rules and regulations in accordance with the
16 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
17 seq.), as the chief executive officer deems necessary to administer
18 the provisions of P.L. , c. (C.) (pending before the
19 Legislature as this bill). The rules and regulations shall include
20 provisions as necessary to implement the Landfills, Brownfields,
21 and Contaminated Sites Redevelopment Incentive Program,
22 including requirements for the retention, collection, and
23 determination of taxes and tax withholdings by developers and for
24 the regular reporting of information by developers to the authority
25 and the division. The rules may provide for the recipients of
26 benefits under the program to be charged an initial application fee,
27 and ongoing service fees, to cover the administrative costs related
28 to the program.

29 b. The Director of the Division of Taxation in the Department
30 of the Treasury shall promulgate rules and regulations in
31 accordance with the "Administrative Procedure Act," P.L.1968,
32 c.410 (C.52:14B-1 et seq.), as the director deems necessary to
33 administer the provisions of P.L. , c. (C.) (pending before
34 the Legislature as this bill). The rules and regulations shall include
35 provisions as necessary to collect and analyze information from
36 each developer that receives benefits under the program, to allow
37 the division to reconcile any sales tax savings incurred by the
38 developer from participation in the program with data on New
39 Jersey sales tax expenditures. The Director of the Division of
40 Taxation is also authorized to promulgate any additional rules
41 necessary to effectuate the tax related provisions of the Landfills,
42 Brownfields, and Contaminated Sites Redevelopment Incentive
43 Program.

44
45 12. This act shall take effect immediately.

STATEMENT

This bill establishes the Landfills, Brownfields, and Contaminated Sites Redevelopment Incentive Program (program), to be administered by the New Jersey Economic Development Authority (EDA), in consultation with the Department of Environmental Protection (DEP). The program is to provide economic incentives for developers who undertake redevelopment projects on the premises of legacy landfills, brownfield sites, or contaminated sites within redevelopment zones.

As provided in the bill, developers that are approved to participate in the program are entitled to an exemption to the extent of 50 percent from the tax imposed under the “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.). In addition, receipts from retail sales of certain tangible personal property and sales of certain services to a developer for the exclusive use or consumption of the developer is to be exempt from the taxes imposed under the “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.). As provided in the bill, retail sales of energy and utility service to a developer or group of developers who meet certain requirements is to be exempt from the taxes imposed under the “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.).

The EDA is required to develop an application, review, and approval process for a developer to participate in the program. The EDA is to review and approve up to five applications for participation in the program over a period of not more than five years. Following approval of an application by the board of the EDA, but prior to the start of any remediation or redevelopment at the site of the redevelopment project, the EDA is to enter into a redevelopment agreement with the developer. The chief executive officer of the EDA is required to negotiate the terms and conditions of the redevelopment agreement on behalf of the State.

The developer is required to complete the remediation and redevelopment by a date no later than seven years after the date on which the EDA and the developer execute the redevelopment agreement. The developer may be eligible for an additional period of not more than three years to complete the redevelopment project if the developer demonstrates, and the EDA finds, that the benefits received under the program are continuing to assist in the redevelopment of the site, and that if the benefits are no longer provided the developer would be unable to continue making progress in the redevelopment of the site.

Under the bill, a developer that enters into a redevelopment agreement with the EDA is required to comply with certain environmental standards, green building standards, and labor and workforce requirements.

No later than six months after the date the EDA and a developer execute a redevelopment agreement, and every six months

1 thereafter until completion of the project, the developer is required
2 to submit an update of the status of the redevelopment project to the
3 EDA and to the DEP, including the closure and remediation costs
4 incurred by the developer. Unless the EDA determines that
5 extenuating circumstances exist, the EDA's approval of any benefit
6 under the program are required to expire if the EDA, the DEP, or
7 both, do not timely receive this status update. The EDA may
8 rescind an award of any benefit under the program if a
9 redevelopment project fails to advance in accordance with the
10 redevelopment agreement.

11 Under the bill, the EDA may audit, or cause to be audited, at any
12 time, any developer receiving benefits under the program. In
13 addition, the EDA, in consultation with the Director of the Division
14 of Taxation in the Department of the Treasury, may, until the
15 completion of the redevelopment project, require a developer to
16 provide additional information relevant to the administration of the
17 program and to analyze and report on the program's use and
18 benefits.

19 Beginning one year after the effective date of the bill, and every
20 year thereafter, the EDA is required to prepare a report on the
21 implementation, use, and benefits of the program, and submit the
22 report to the Governor and the Legislature.