

ASSEMBLY, No. 882

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen BLEE and LEFEVRE

1 AN ACT concerning the remediation and redevelopment of municipal  
2 landfill sites, and revising parts of the statutory law.

3

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

6

7 1. (New section) This act shall be known and may be cited as the  
8 "Municipal Landfill Site Remediation and Redevelopment Act."

9

10 2. (New section) As used in this act:

11 "Closing costs" or "closure" means all activities and costs  
12 associated with the design, purchase, construction or maintenance of  
13 all measures required by the department, pursuant to law, in order to  
14 remediate, prevent, minimize or monitor pollution or health hazards  
15 resulting from municipal solid waste landfills subsequent to the  
16 termination of operations at any portion thereof, including, but not  
17 necessarily limited to, the costs of the placement of final earthen or  
18 vegetative cover, groundwater remediation, the installation of methane  
19 gas vents or monitors and leachate monitoring wells or collection  
20 systems, and long-term operations and maintenance, at the site of any  
21 municipal solid waste landfill that ceased operations prior to January 1,  
22 1982 and that is not listed on the National Priorities List pursuant to  
23 the "Comprehensive Environmental Response, Compensation, and  
24 Liability Act of 1980," at 42 U.S.C. §9605. Any activity necessary to  
25 remediate ground or surface water contamination caused by a  
26 municipal solid waste landfill shall be considered a closure activity. As  
27 appropriate, closure activities shall be conducted in accordance with  
28 the remediation standards developed by the department pursuant to  
29 section 35 of P.L.1993, c.139 (C.58:10B-12).

30 "Commercial solid waste" means any nonhazardous solid waste  
31 derived from wholesale, retail or service establishments, including  
32 stores, markets, theaters, offices, restaurants, warehouses, or from

**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 other non-manufacturing commercial activities.

2 "Developer" means any person that enters or proposes to enter into  
3 a redevelopment agreement with the State pursuant to the provisions  
4 of section 3 of P.L. , c. (C. )(pending in the Legislature as  
5 this bill).

6 "Director" means the Director of the Division of Taxation in the  
7 Department of the Treasury.

8 "Household solid waste" means any solid waste derived from  
9 households, including but not limited to single and multiple residences,  
10 hotels and motels, bunkhouses, ranger stations, crew quarters,  
11 campgrounds, picnic grounds and day use recreation areas, except that  
12 "household solid waste" shall not include septic waste as defined in  
13 section 3 of P.L.1970, c.40 (C.48:13A-3).

14 "Industrial solid waste" means any solid waste derived from  
15 manufacturing, industrial and research and development processes and  
16 operations that is not a hazardous waste as defined in section 1 of  
17 P.L.1976, c.99 (C.13:1E-38), except that "industrial solid waste" shall  
18 not include mining waste, oil waste, gas waste, or cement kiln dust  
19 waste.

20 "Municipal solid waste landfill" means a landfill that received for  
21 disposal household solid waste and at least one of the following: (1)  
22 commercial solid waste; (2) industrial solid waste; or (3) waste  
23 material that was received for disposal prior to October 21, 1976 and  
24 that is included within the definition of hazardous waste adopted by  
25 the federal government pursuant to the "Resource Conservation and  
26 Recovery Act," at 42 U.S.C. §6921; except that "municipal solid waste  
27 landfill" shall not include any landfill that is approved for disposal of  
28 hazardous waste and regulated pursuant to Subchapter III of the  
29 "Resource Conservation and Recovery Act," 42 U.S.C. §6921 et seq.

30 "Project" or "redevelopment project" means a specific work or  
31 improvement, including lands, buildings, improvements, real and  
32 personal property or any interest therein, including lands under water,  
33 riparian rights, space rights and air rights, acquired, owned, developed  
34 or redeveloped, constructed, reconstructed, rehabilitated or improved,  
35 undertaken by a developer within an area of land whereon a municipal  
36 solid waste landfill is or has been located under a redevelopment  
37 agreement with the State pursuant to section 3 of P.L. , c.  
38 (C. )(pending in the Legislature as this bill).

39 "Redevelopment agreement" means a contract between the State  
40 and a developer for any work or undertaking for the remediation or  
41 environmentally sound closure, clearance, development or  
42 redevelopment, construction or rehabilitation of any structure or  
43 improvement of commercial, industrial or public structures or  
44 improvements that provide a public benefit within an area of land  
45 whereon a municipal solid waste landfill is or has been located

1 pursuant to section 3 of P.L. , c. (C. ) (pending in the  
2 Legislature as this bill).

3

4 3. (New section) a. The provisions of any other law, or rule or  
5 regulation adopted pursuant thereto, to the contrary notwithstanding,  
6 any developer may enter into a redevelopment agreement with the  
7 State pursuant to the provisions of this section.

8 The Commissioner of the Department of Commerce and Economic  
9 Development shall negotiate the terms and conditions of any  
10 redevelopment agreement on behalf of the State.

11 b. In negotiating a redevelopment agreement with a developer, the  
12 commissioner shall consider the following factors:

13 (1) the economic feasibility of the redevelopment project;

14 (2) the funding source or sources for the closure element of the  
15 redevelopment project;

16 (3) the projected closing costs of the closure element of the  
17 redevelopment project, as certified by the Commissioner of  
18 Environmental Protection pursuant to section 4 of P.L. , c.  
19 (C. )(pending in the Legislature as this bill);

20 (4) the extent of economic and related social distress in the  
21 municipality and the area to be affected by the redevelopment project;

22 (5) the degree to which the redevelopment project will advance  
23 State, regional and local development strategies;

24 (6) the likelihood that the redevelopment project shall upon  
25 completion be capable of repaying all or part of any financing costs  
26 incurred;

27 (7) the relationship of the redevelopment project to a  
28 comprehensive local development strategy, including other major  
29 projects undertaken within the municipality; and

30 (8) the degree to which the redevelopment project enhances and  
31 promotes job creation and economic development.

32

33 4. (New section) a. The provisions of any other law, or rule or  
34 regulation adopted pursuant thereto, to the contrary notwithstanding,  
35 any developer that commences a business operation within a  
36 redevelopment project, the sales receipts of which are subject to the  
37 tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30  
38 (C.54:32B-1 et seq.), may be eligible for a reduction in the tax  
39 otherwise due and payable under P.L.1966, c.30 pursuant to the  
40 provisions of this section.

41 b. To be eligible for a reduction in the tax otherwise due and  
42 payable under P.L.1966, c.30, a developer shall submit an application,  
43 in writing, to the director for review and certification of the reduction.  
44 The director shall review the request for the reduction upon receipt of  
45 an application therefor, and shall approve or deny the application for  
46 certification on a timely basis.

1 The director may certify a developer to be eligible for the reduction  
2 if the director shall find that:

3 (1) the developer owns or operates a place of business located in  
4 the area subject to the redevelopment agreement for the purpose of  
5 making retail sales;

6 (2) non-exempt items are regularly exhibited and offered for retail  
7 sale at that location;

8 (3) the place of business is not utilized primarily for the purpose of  
9 catalogue or mail order sales; and

10 (4) the developer has obtained the approval from the Commissioner  
11 of Environmental Protection of a financial plan for the closure of the  
12 municipal solid waste landfill located on the site of the redevelopment  
13 project pursuant to section 5 of P.L. , c. (C. ) (pending in the  
14 Legislature as this bill).

15  
16 5. (New section) a. To qualify for the reduction in the tax  
17 otherwise due and payable under P.L.1966, c.30 authorized pursuant  
18 to section 6 of P.L. , c. (C. )(pending in the Legislature as  
19 this bill), a developer shall submit to and receive the approval of the  
20 Commissioner of Environmental Protection of a financial plan for the  
21 closure of the municipal solid waste landfill located on the site of the  
22 redevelopment project.

23 b. The financial plan for closure required to be submitted pursuant  
24 to this section shall include an inventory of all specific closure  
25 activities or closing costs associated with environmental or health  
26 measures required by the Department of Environmental Protection,  
27 pursuant to law, to be undertaken by the developer or the governing  
28 body of the municipality within which the municipal solid waste landfill  
29 is or has been located, in the case of delegated closure responsibilities  
30 pursuant to section 7 of P.L. , c. (C. )(pending in the  
31 Legislature as this bill), at the landfill site in order to prevent, minimize  
32 or monitor pollution or health hazards resulting from the municipal  
33 solid waste landfill subsequent to the termination of disposal  
34 operations at the landfill site, and an estimate of the total closing costs  
35 likely to be incurred by the developer in undertaking these activities.  
36 Any activity necessary to remediate ground or surface water  
37 contamination caused by a municipal solid waste landfill shall be  
38 considered a closure activity.

39 c. The Commissioner of Environmental Protection shall have 30  
40 days from the date of receipt to approve or reject a financial plan for  
41 closure submitted by a developer pursuant to this section. Upon  
42 approval, the commissioner shall submit a copy thereof, including a  
43 statement of the projected closing costs of the municipal solid waste  
44 landfill located at the site of the redevelopment project, to the  
45 developer, the Commissioner of the Department of Commerce and  
46 Economic Development, and the director.

1       6. (New section) a. Upon approval of certification of the  
2 reduction by the director pursuant to section 4 of P.L.     , c.  
3 (C.     )(pending in the Legislature as this bill), the taxpayer shall  
4 impose and collect the full amount of the tax due under section 3 of  
5 P.L.1966, c.30 (C.54:32B-3), but shall be entitled to a reduction in the  
6 tax otherwise due and payable to the State with each return filed  
7 pursuant to section 18 of P.L.1966, c.30 (C.54:32B-18) in an amount  
8 equal to \$0.03 of the amount of tax collected on each \$1.00 of  
9 non-exempt sales.

10       b. The reduction authorized pursuant to this section shall remain  
11 in effect until such time as the aggregate dollar amount of the  
12 reductions indicated on the tax returns equal the dollar amount of the  
13 closing costs incurred by the developer, as certified by the  
14 Commissioner of the Department of Environmental Protection,  
15 pursuant to the redevelopment agreement.

16       c. When filing a tax return that includes an initial claim for a  
17 reduction pursuant to this section, the developer shall include a copy  
18 of the certification and a statement that the claim is based on a  
19 redevelopment agreement entered into with the State pursuant to the  
20 provisions of section 3 of P.L.     , c.     (C.     ) (pending in the  
21 Legislature as this bill).

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23       7. (New section) Upon application by the governing body of a  
24 municipality within which a municipal solid waste landfill is or has  
25 been located, or as a predicate to a developer entering into a  
26 redevelopment agreement with the State pursuant to the provisions of  
27 section 3 of P.L.     , c.     (C.     )(pending in the Legislature as this  
28 bill), the Commissioner of Environmental Protection may delegate to  
29 the municipal governing body the closure responsibilities that would  
30 otherwise be required of the developer pursuant to the provisions of  
31 section 5 of P.L.     , c.     (C.     )(pending in the Legislature as this  
32 bill), upon a finding that the municipality is capable of administering  
33 those responsibilities. This delegation shall be in accordance with rules  
34 and regulations adopted by the department pursuant to law.

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36       8. (New section) a. Any municipality proposing to undertake the  
37 environmentally sound closure of a municipal solid waste landfill  
38 pursuant to section 7 of P.L.     , c.     (C.     )(pending in the  
39 Legislature as this bill) shall submit to and receive the approval of the  
40 Commissioner of Environmental Protection of a financial plan for the  
41 closure of the municipal solid waste landfill located on the site of the  
42 proposed redevelopment project.

43       b. The department shall make available moneys from the Sanitary  
44 Landfill Facility Contingency Fund established pursuant to section 6  
45 of P.L.1981, c.306 (C.13:1E-105) for loans to municipalities within  
46 which municipal solid waste landfills are or have been located to

1 undertake municipal solid waste landfill closure projects.

2 c. The department may make a loan from the Sanitary Landfill  
3 Facility Contingency Fund to a municipality to which closure  
4 responsibility has been delegated sufficient to cover the closing costs  
5 of the delegated closure responsibilities.

6 d. Any loan made by the department to a municipality pursuant to  
7 this section shall be repaid to the Sanitary Landfill Facility  
8 Contingency Fund out of moneys received by the municipality from the  
9 developer pursuant to section 9 of P.L. , c. (C. ) (pending in  
10 the Legislature as this bill).

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12 9. (New section) In the case of delegated closure responsibilities  
13 pursuant to section 7 of P.L. , c. (C. ) (pending in the  
14 Legislature as this bill), the developer shall make payments to the chief  
15 fiscal officer of the municipality to which closure responsibility has  
16 been delegated utilizing moneys derived from the reduction authorized  
17 pursuant to section 6 of P.L. , c. (C. ) (pending in the  
18 Legislature as this bill) until such time as the aggregate dollar amount  
19 of the payments equal the dollar amount of the closing costs incurred  
20 by the municipality.

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22 10. Section 9 of P.L.1981, c.306 (C.13:1E-108) is amended to  
23 read as follows:

24 9. Moneys in the fund shall be disbursed by the department for the  
25 following purposes and no others:

26 a. Administrative costs incurred by the department pursuant to  
27 section 6 of P.L.1981, c.306 (C.13:1E-105)[;].

28 b. Damages as provided in section 7 of P.L.1981, c.306  
29 (C.13:1E-106)[;].

30 c. Grants for landfill mining demonstration projects as provided in  
31 section 1 of P.L.1994, c.99 (C.13:1E-34.1)[; and].

32 d. Loans for municipal solid waste landfill closure projects as  
33 provided in section 8 of P.L. , c. (C. ) (pending in the  
34 Legislature as this bill).

35 e. Administrative costs incurred by the Attorney General, the  
36 department or any other State agency to implement the provisions of  
37 P.L.1983, c.392 (C.13:1E-126 et seq.), as amended and supplemented  
38 by P.L.1991, c.269 (C.13:1E-128.1 et al.), on a timely basis, except  
39 that the amounts used for this purpose shall not exceed \$5,000,000.00.  
40 Any moneys disbursed by the department from the fund for this  
41 purpose shall be repaid to the fund in equal amounts from the fees  
42 collected by the department pursuant to section 3 of P.L.1971, c.461  
43 (C.13:1E-18), in annual installments beginning July 1, 1990 and  
44 annually thereafter until the full amount is repaid according to a  
45 schedule of repayments determined by the State Treasurer. For the  
46 purposes of this subsection, "State agency" means any State

1 department, division, agency, commission or authority.  
2 (cf: P.L.1994, c.99, s.2)

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4 11. This act shall take effect immediately.

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#### STATEMENT

8

9 This bill provides for the remediation and redevelopment of  
10 municipal landfill sites under the terms and conditions of a  
11 redevelopment agreement negotiated by a developer and the State.

12 The bill would authorize an eligible developer to receive a sales tax  
13 reduction of up to \$0.03 per \$1.00 of non-exempt sales generated  
14 from any business located within the area subject to the redevelopment  
15 agreement as reimbursement for the remediation costs incurred in  
16 properly closing the municipal landfill site and redeveloping the area.

17 The developer would negotiate with the Commissioner of the  
18 Department of Commerce and Economic Development over the terms  
19 and conditions of the redevelopment agreement. The developer would  
20 undertake the environmentally-sound closure of the municipal landfill  
21 in accordance with a financial plan approved by the Commissioner of  
22 Environmental Protection.

23 To be eligible for the reduction, a developer must submit an  
24 application, in writing, to the Director of the Division of Taxation for  
25 review and certification. The director would review the request for  
26 certification on a timely basis.

27 The director may only certify a developer to be eligible for the  
28 reduction if: (1) the developer owns or operates a place of business  
29 located in the area subject to the redevelopment agreement for the  
30 purpose of making retail sales; (2) non-exempt items are regularly  
31 exhibited and offered for retail sale at that location; (3) the place of  
32 business is not utilized primarily for the purpose of catalogue or mail  
33 order sales; and (4) the developer has obtained the approval from the  
34 Commissioner of Environmental Protection of a financial plan for the  
35 closure of the municipal solid waste landfill located on the site of the  
36 redevelopment project.

37 The sales tax reduction authorized under this bill would remain in  
38 effect until such time as the developer recovered the dollar amount of  
39 the closing costs incurred by the developer, as certified by the  
40 Commissioner of Environmental Protection.

41 The bill also provides that the Commissioner of Environmental  
42 Protection may delegate to the municipal governing body the closure  
43 responsibilities that would otherwise be required of the developer.  
44 This delegation could be either at the initiative of the municipality or  
45 as a predicate to a developer entering into a redevelopment agreement  
46 with the State.

1 Any municipality proposing to undertake a municipal solid waste  
2 landfill closure project must submit to and receive the approval of the  
3 Commissioner of Environmental Protection of a financial plan for the  
4 closure of the municipal solid waste landfill located on the site of the  
5 proposed redevelopment project.

6 The Department of Environmental Protection would make available  
7 moneys from the Sanitary Landfill Facility Contingency Fund  
8 established pursuant to section 6 of P.L.1981, c.306 (C.13:1E-105) for  
9 loans to municipalities to undertake such closure projects. A loan  
10 would be in an amount sufficient to cover the closing costs of the  
11 delegated closure responsibilities. Any loan made by the department  
12 to a municipality must be repaid to the Sanitary Landfill Facility  
13 Contingency Fund out of moneys received by the municipality from the  
14 developer.

15 Accordingly, the bill provides that in the case of delegated closure  
16 responsibilities, the developer would make payments to the chief fiscal  
17 officer of the municipality to which closure responsibility has been  
18 delegated utilizing moneys derived from the sales tax reduction  
19 authorized under the bill. The payments would continue until such time  
20 as the aggregate dollar amount of the payments received by the  
21 municipality equal the dollar amount of the closing costs incurred by  
22 that municipality.

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"Municipal Landfill Site Remediation and Redevelopment Act."