

SENATE, No. 294

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senators GORMLEY, LYNCH, Bryant, LaRossa, Kyrillos, Singer, Littell, Sinagra, Kosco, Ewing, Martin, Rice, Baer, Lesniak, DiFrancesco, Haines, Scott, Casey, Schluter, Inverso, Connors, Cafiero, Ciesla, Lipman, Girgenti, O'Connor, Matheussen, Bennett, Adler, Kenny, Sacco, Zane, MacInnes and McGreevey

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  
22 1, 1982 and that is not listed on the National Priorities List pursuant  
23 to 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).

**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 "Commercial solid waste" means any nonhazardous solid waste  
2 derived from wholesale, retail or service establishments, including  
3 stores, markets, theaters, offices, restaurants, warehouses, or from  
4 other non-manufacturing commercial activities.

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

9 "Director" means the Director of the Division of Taxation in the  
10 Department of the Treasury.

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

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

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

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

42 "Redevelopment agreement" means a contract between the State  
43 and a developer for any work or undertaking for the remediation or  
44 environmentally sound closure, clearance, development or  
45 redevelopment, construction or rehabilitation of any structure or  
46 improvement of commercial, industrial or public structures or

1 improvements that provide a public benefit within an area of land  
2 whereon a municipal solid waste landfill is or has been located  
3 pursuant to section 3 of P.L. , c. (C. ) (pending in the  
4 Legislature as this bill)

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

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

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

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

16 (2) the funding source or sources for the closure element of the  
17 redevelopment project;

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

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

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

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

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

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

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

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

1 an application therefor, and shall approve or deny the application for  
2 certification on a timely basis.

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

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

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

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

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

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

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

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

1 developer, the Commissioner of the Department of Commerce and  
2 Economic Development, and the director.

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4 6. (New section) a. Upon approval of certification of the reduction  
5 by the director pursuant to section 4 of P.L. , c. (C. )(pending  
6 in the Legislature as this bill), the taxpayer shall impose and collect the  
7 full amount of the tax due under section 3 of P.L.1966, c.30  
8 (C.54:32B-3), but shall be entitled to a reduction in the tax otherwise  
9 due and payable to the State with each return filed pursuant to section  
10 18 of P.L.1966, c.30 (C.54:32B-18) in an amount equal to \$0.03 of  
11 the amount of tax collected on each \$1.00 of non-exempt sales.

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

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

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

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

45 b. The department shall make available moneys from the Sanitary  
46 Landfill Facility Contingency Fund established pursuant to section 6

1 of P.L.1981, c.306 (C.13:1E-105) for loans to municipalities within  
2 which municipal solid waste landfills are or have been located to  
3 undertake municipal solid waste landfill closure projects.

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

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

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

23

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

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

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

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

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

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

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

1 schedule of repayments determined by the State Treasurer. For the  
2 purposes of this subsection, "State agency" means any State  
3 department, division, agency, commission or authority.

4 (cf: P.L.1994, c.99, s.2)

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6 11. This act shall take effect immediately.

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9 STATEMENT

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

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

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

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

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

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

43 The bill also provides that the Commissioner of Environmental  
44 Protection may delegate to the municipal governing body the closure  
45 responsibilities that would otherwise be required of the developer.  
46 This delegation could be either at the initiative of the municipality or

1 as a predicate to a developer entering into a redevelopment agreement  
2 with the State.

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

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

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

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"Municipal Landfill Site Remediation and Redevelopment Act."