

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 39, ASSEMBLY, No. 2250 ACS, SENATE, Nos. 1815 and 1539**

with Senate committee amendments

## **STATE OF NEW JERSEY**

DATED: JUNE 12, 1997

The Senate Budget and Appropriations Committee reports favorably the Senate Committee Substitute for Senate Bill No. 39, Assembly Bill No. 2250 ACS, Senate Bill Nos. 1815 and 1539 with amendments.

This bill, the "Brownfields and Contaminated Site Remediation Act," removes impediments in current law and creates incentives in order to promote and facilitate the cleanup and reuse of New Jersey's older industrial sites. The redevelopment of these industrial sites, often referred to as "brownfields" will help protect the public health and environment, conserve open space, improve the economy, create jobs, and revitalize our cities and neighborhoods.

This bill was crafted with three predominant policy goals. First, the bill is intended to result in more remediations being performed and brownfields being redeveloped. Second, the bill will not lessen any environmental or health standard. The strict standards set in the 1993 legislation and enforced by the Department of Environmental Protection (DEP) will remain in place. Finally, the persons responsible for the discharge will not be given any relief from liability. Only those "innocent" parties who either unknowingly buy contaminated property or who clean up a contaminated property that they have purchased will be given any liability protections.

There are four general areas that need to be addressed in order to facilitate brownfield remediation and redevelopment. These areas include technical, legal, financial, and institutional policies. This committee substitute addresses each of these areas in a comprehensive manner in order to fully address the problems posed.

For a comprehensive and detailed discussion of technical, legal, financial and institutional policies in the bill, the Senate Environment Committee's statement for this bill, dated June 5, 1997, should be consulted.

COMMITTEE AMENDMENTS:

The committee amended the bill at the request of the sponsor to: require a municipality to provide for an exemption of real property taxes in an environmental opportunity zone under certain circumstances; require both the Commissioner of Commerce and Economic Development and the State Treasurer to agree to enter into a redevelopment agreement; limit the amount of reimbursement made through property tax exemptions and State, local or federal tax incentives or grants to a maximum of 75% of the cost of remediation; permit redevelopment agreements only if there is a finding that the State tax revenues to be realized from the redevelopment project will be in excess of the amount necessary to reimburse the developer; permit the finding to be made by an estimate based upon the professional judgment of the commissioner and the State Treasurer; condition the percentage of each payment to be made to the developer pursuant to the redevelopment agreement on the occupancy rate of the buildings or other work areas located on the property; permit the Commissioner of Commerce and Economic Development and the State Treasurer to estimate the amount of monies to be credited annually to the Brownfield Site Reimbursement Fund; and make technical amendments to correct wording in current law.

FISCAL IMPACT:

The bill contains the following provisions that may have fiscal impacts on public entities: First, financial incentives would be offered in the form of 25 percent matching grants or loan guarantees from the Hazardous Discharge Site Remediation Fund, as administered by the New Jersey Economic Development Authority (EDA), to support the implementation of permanent remedies. Such matching grants or loans would also be available to persons who propose to use an innovative technology for a remedial action, provided that person has assets of less than \$2.0 million.

Second, the bill directs the Department of Environmental Protection (DEP) to investigate and determine the extent of contamination in the State's aquifers and make the results public through its inclusion in the State Geographic Information System. An appropriation of \$3.0 million from the 1996 Environmental Cleanup Fund, which is funded from bond monies approved in November, 1996 (P.L. 1996, c.70), is appropriated for this purpose. In addition, \$2.0 million from this funding source is provided to the DEP to support an investigation and mapping project concerning known areas of historic fill. The availability of data generated from both studies is intended to lower the costs of performing brownfields remediations by private parties.

Third, the bill amends current law to limit public entity liability for contaminated property that is acquired by any means. This provision also extends this immunity from liability to third party suits.

Fourth, the 10-year property tax exemptions provided under the

Environmental Opportunity Zone Act (P.L.1995, c.413) would be extended to 15 years if a permanent remediation remedy is employed for brownfields sites within those zones. This provision is also expanded to allow for such tax benefits when a site is redeveloped for residential use.

Fifth, the bill provides that cleanup and removal costs assessed by the DEP under the Spill Compensation and Control Act are not to include administrative indirect costs unless the costs are being assessed in a cost recovery action.

Sixth, the bill provides that where new taxes are to be realized from the redevelopment of a brownfields site, the Commissioner of the Department of Commerce and Economic Development (DCED) can enter into a redevelopment agreement with the site developer to reimburse the developer for up to 75 percent of the costs of the remediation. Reimbursement funding could be derived from various taxes generated from new businesses developed on these sites.

Finally, the bill creates a Brownfields Redevelopment Task Force to plan and coordinate brownfields issues, and a Legislative Underground Storage Tank Remediation Task Force to study the policy implications of implementing a risk-based corrective action program for petroleum releases. The Brownfields Task Force would be funded by a \$250,000 appropriation that is included in the recommended FY 1998 budget for the Office of State Planning (if adopted).

The Office of Legislative Services estimates that the matching grant and loan programs proposed by the bill will have no fiscal impact on the State budget or the General Fund, since these costs will be covered by the monies already contained in the Hazardous Discharge Site Remediation Fund. Most of these funds are derived from previously appropriated bond funds, loan repayments, and other non-State funding sources.

Likewise, the \$5.0 million in combined appropriations for the two task forces established are also supported by bonds and thus will not affect the State budget until debt service payments for these funds are initiated sometime in the future.

Regarding the proposed amendment to limit public entity liability for contaminated property that is acquired by any means, as well as extending this immunity from liability to third party suits, the OLS estimates that municipalities, counties and public improvement authorities will benefit from this provision by enabling them to acquire more brownfields property without the threat of such liabilities or potential lawsuits.

The OLS contends that the exclusion of administrative indirect costs that are currently assessed under the Spill Compensation and Control Act will have the effect of lowering the fees assessed by the DEP to review a remediation, thereby lowering the cost for a person to perform a remediation. Conversely, the General Fund will receive less revenue from this source, thereby requiring a greater proportion

of State funds to support DEP staff operations in this area. Estimates of potential revenue loss cannot be ascertained at this time.

Concerning the reimbursement of new taxes to be realized from the redevelopment of a brownfields site, the potential net tax revenue gain from such projects cannot be estimated since the DCED commissioner is given broad discretion in deciding the terms and conditions of such agreements. Although similar legislation was enacted last year (P.L. 1996, c.124) that provided for remediation cost reimbursement to developers of landfills, no comparative tax revenue data has yet been generated.

Last, the OLS estimates the legislative task force established by the bill may incur some costs that cannot be totally borne by the participating public agencies or the private participants. While final costs cannot be estimated until the study parameters are developed, the actual efforts of the task force may be limited by the amount of time and resources that can be donated by the participants if additional funding is indeed needed but not provided.