

SENATE, No. 868

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 26, 1996

By Senator McGREEVEY

1 AN ACT concerning certain public utility property subject to closure,  
2 supplementing P.L.1940, c.5 (C.54:30A-58), and amending  
3 P.L.1983, c.330.

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

7  
8 1. a. Notwithstanding the provisions of section 10 of P.L.1940,  
9 c.5 (C.54:30A-58) or any other provision of law to the contrary, for  
10 the purpose of apportioning public utility taxes, the unit value of an  
11 electric generating station included in the scheduled property of a  
12 public utility subject to closure shall be proportionately reduced during  
13 the four years after the closure of that scheduled property, based upon  
14 the generating capacity of the property in the year preceding the  
15 closure.

16 b. Notwithstanding the provisions of section 10 of P.L.1940, c.5  
17 (C.54:30A-58) or any other provision of law to the contrary, for the  
18 purpose of apportioning public utility taxes, the unit value of a gas  
19 manufacturing plant included in the scheduled property of a public  
20 utility subject to closure shall be proportionately reduced during the  
21 four years after the closure of that scheduled property, based upon the  
22 generating capacity of the property in the year preceding the closure.

23  
24 2. Section 3 of P.L.1983, c.330 (C.13:1K-8) is amended to read  
25 as follows:

26 3. As used in this act:

27 "Remedial action workplan" means a plan for the remedial action to  
28 be undertaken at an industrial establishment, or at any area to which  
29 a discharge originating at the industrial establishment is migrating or  
30 has migrated; a description of the remedial action to be used to  
31 remediate the industrial establishment; a time schedule and cost  
32 estimate of the implementation of the remedial action; and any other  
33 relevant information the department deems necessary;

34 "Closing operations" means:

**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 (1) the cessation of operations resulting in at least a 90 percent  
2 reduction in the total value of the product output from the entire  
3 industrial establishment, as measured on a constant, annual  
4 date-specific basis, within any five year period, or, for industrial  
5 establishments for which the product output is undefined, a 90 percent  
6 reduction in the number of employees or a 90 percent reduction in the  
7 area of operations of an industrial establishment within any five year  
8 period; provided, however, the department may approve a waiver of  
9 the provisions of this paragraph for any owner or operator who, upon  
10 application and review, evidences a good faith effort to maintain and  
11 expand product output, the number of employees, or area of  
12 operations of the affected industrial establishment; except that for any  
13 electric generating station or gas manufacturing plant owned by a  
14 public utility, the reduction in product output, number of employees  
15 or area of operations shall be measured over a one year period;

16 (2) any temporary cessation of operations of an industrial  
17 establishment for a period of not less than two years; except that for  
18 any electric generating station or gas manufacturing plant owned by a  
19 public utility, any temporary cessation of operations for a period of  
20 not less than one year;

21 (3) any judicial proceeding or final agency action through which an  
22 industrial establishment becomes nonoperational for health or safety  
23 reasons;

24 (4) the initiation of bankruptcy proceedings pursuant to Chapter 7  
25 of the federal Bankruptcy Code, 11 U.S.C. {701} et seq. or the filing  
26 of a plan of reorganization that provides for a liquidation pursuant to  
27 Chapter 11 of the federal Bankruptcy Code, 11 U.S.C. {1101} et seq.;

28 (5) any change in operations of an industrial establishment that  
29 changes the industrial establishment's Standard Industrial Classification  
30 number to one that is not subject to this act; or

31 (6) the termination of a lease unless there is no disruption in  
32 operations of the industrial establishment, or the assignment of a lease;  
33 "Transferring ownership or operations" means:

34 (1) any transaction or proceeding through which an industrial  
35 establishment undergoes a change in ownership;

36 (2) the sale or transfer of more than 50% of the assets of an  
37 industrial establishment within any five year period, as measured on a  
38 constant, annual date-specific basis;

39 (3) the execution of a lease for a period of 99 years or longer for  
40 an industrial establishment; or

41 (4) the dissolution of an entity that is an owner or operator or an  
42 indirect owner of an industrial establishment, except for any  
43 dissolution of an indirect owner of an industrial establishment whose  
44 assets would have been unavailable for the remediation of the  
45 industrial establishment if the dissolution had not occurred;

46 "Change in ownership" means:

- 1 (1) the sale or transfer of the business of an industrial establishment  
2 or any of its real property;
  - 3 (2) the sale or transfer of stock in a corporation resulting in a  
4 merger or consolidation involving the direct owner or operator or  
5 indirect owner of the industrial establishment;
  - 6 (3) the sale or transfer of stock in a corporation, or the transfer of  
7 a partnership interest, resulting in a change in the person holding the  
8 controlling interest in the direct owner or operator or indirect owner  
9 of an industrial establishment;
  - 10 (4) the sale or transfer of title to an industrial establishment or the  
11 real property of an industrial establishment by exercising an option to  
12 purchase; or
  - 13 (5) the sale or transfer of a partnership interest in a partnership that  
14 owns or operates an industrial establishment, that would reduce, by  
15 10% or more, the assets available for remediation of the industrial  
16 establishment;
- 17 "Change in ownership" shall not include:
- 18 (1) a corporate reorganization not substantially affecting the  
19 ownership of the industrial establishment;
  - 20 (2) a transaction or series of transactions involving the transfer of  
21 stock, assets or both, among corporations under common ownership,  
22 if the transaction or transactions will not result in the diminution of the  
23 net worth of the corporation that directly owns or operates the  
24 industrial establishment by more than 10%, or if an equal or greater  
25 amount in assets is available for the remediation of the industrial  
26 establishment before and after the transaction or transactions;
  - 27 (3) a transaction or series of transactions involving the transfer of  
28 stock, assets or both, resulting in the merger or de facto merger or  
29 consolidation of the indirect owner with another entity, or in a change  
30 in the person holding the controlling interest of the indirect owner of  
31 an industrial establishment, when the indirect owner's assets would  
32 have been unavailable for cleanup if the transaction or transactions had  
33 not occurred;
  - 34 (4) a transfer where the transferor is the sibling, spouse, child,  
35 parent, grandparent, child of a sibling, or sibling of a parent of the  
36 transferee;
  - 37 (5) a transfer to confirm or correct any deficiencies in the recorded  
38 title of an industrial establishment;
  - 39 (6) a transfer to release a contingent or reversionary interest except  
40 for any transfer of a lessor's reversionary interest in leased real  
41 property;
  - 42 (7) a transfer of an industrial establishment by devise or intestate  
43 succession;
  - 44 (8) the granting or termination of an easement or a license to any  
45 portion of an industrial establishment;
  - 46 (9) the sale or transfer of real property pursuant to a condemnation

1 proceeding initiated pursuant to the "Eminent Domain Act of 1971,"  
2 P.L.1971, c.361 (C.20:3-1 et seq.);

3 (10) execution, delivery and filing or recording of any mortgage,  
4 security interest, collateral assignment or other lien on real or personal  
5 property; or

6 (11) any transfer of personal property pursuant to a valid security  
7 agreement, collateral assignment or other lien, including, but not  
8 limited to, seizure or replevin of such personal property which transfer  
9 is for the purpose of implementing the secured party's rights in the  
10 personal property which is the collateral.

11 "Department" means the Department of Environmental Protection  
12 and Energy;

13 "Hazardous substances" means those elements and compounds,  
14 including petroleum products, which are defined as such by the  
15 department, after public hearing, and which shall be consistent to the  
16 maximum extent possible with, and which shall include, the list of  
17 hazardous substances adopted by the Environmental Protection  
18 Agency pursuant to Section 311 of the "Federal Water Pollution  
19 Control Act Amendments of 1972" (33 U.S.C.{1321) and the list of  
20 toxic pollutants designated by Congress or the Environmental  
21 Protection Agency pursuant to Section 307 of that act (33  
22 U.S.C.{1317); except that sewage and sewage sludge shall not be  
23 considered as hazardous substances for the purposes of this act;

24 "Hazardous waste" shall have the same meaning as provided in  
25 section 1 of P.L.1976, c.99 (C.13:1E-38);

26 "Industrial establishment" means any place of business engaged in  
27 operations which involve the generation, manufacture, refining,  
28 transportation, treatment, storage, handling, or disposal of hazardous  
29 substances or hazardous wastes on-site, above or below ground,  
30 having a Standard Industrial Classification number within 22-39  
31 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard  
32 Industrial Classifications Manual prepared by the Office of  
33 Management and Budget in the Executive Office of the President of  
34 the United States. Those facilities or parts of facilities subject to  
35 operational closure and post-closure maintenance requirements  
36 pursuant to the "Solid Waste Management Act," P.L.1970, c.39  
37 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting  
38 Act," P.L.1981, c.279 (C.13:1E-49 et seq.) or the "Solid Waste  
39 Disposal Act" (42 U.S.C.{6901 et seq.), or any establishment engaged  
40 in the production or distribution of agricultural commodities, shall not  
41 be considered industrial establishments for the purposes of this act.  
42 The department may, pursuant to the "Administrative Procedure Act,"  
43 P.L.1968, c.410 (C.52:14B-1 et seq.), exempt certain sub-groups or  
44 classes of operations within those sub-groups within the Standard  
45 Industrial Classification major group numbers listed in this subsection  
46 upon a finding that the operation of the industrial establishment does

1 not pose a risk to public health and safety;

2 "Negative declaration" means a written declaration, submitted by  
3 the owner or operator of an industrial establishment or other person  
4 assuming responsibility for the remediation under paragraph (3) of  
5 subsection b. of section 4 of P.L.1983, c.330 to the department,  
6 certifying that there has been no discharge of hazardous substances or  
7 hazardous wastes on the site, or that any such discharge on the site or  
8 discharge that has migrated or is migrating from the site has been  
9 remediated in accordance with procedures approved by the department  
10 and in accordance with any applicable remediation regulations;

11 "Discharge" means an intentional or unintentional action or  
12 omission resulting in the releasing, spilling, leaking, pumping, pouring,  
13 emitting, emptying, or dumping of a hazardous substance or hazardous  
14 waste into the waters or onto the lands of the State;

15 "No further action letter" means a written determination by the  
16 department that, based upon an evaluation of the historical use of the  
17 industrial establishment and the property, or of an area of concern or  
18 areas of concern, as applicable, and any other investigation or action  
19 the department deems necessary, there are no discharged hazardous  
20 substances or hazardous wastes present at the site of the industrial  
21 establishment, at the area of concern or areas of concern, or at any  
22 other site to which discharged hazardous substances or hazardous  
23 wastes originating at the industrial establishment have migrated, and  
24 that any discharged hazardous substances or hazardous wastes present  
25 at the industrial establishment or that have migrated from the site have  
26 been remediated in accordance with applicable remediation  
27 regulations;

28 "Indirect owner" means any person who holds a controlling interest  
29 in a direct owner or operator, holds a controlling interest in another  
30 indirect owner, or holds an interest in a partnership which is an  
31 indirect owner or a direct owner or operator, of an industrial  
32 establishment;

33 "Direct owner or operator" means any person that directly owns or  
34 operates an industrial establishment. A holder of a mortgage or other  
35 security interest in the industrial establishment shall not be deemed to  
36 be a direct owner or operator of the industrial establishment unless or  
37 until it loses its exemption under P.L.1993, c.112 (C.58:10-23.11g4  
38 et al.) or obtains title to the industrial establishment by deed of  
39 foreclosure, by other deed, or by court order or other process;

40 "Area of concern" means any location where hazardous substances  
41 or hazardous wastes are or were known or suspected to have been  
42 discharged, generated, manufactured, refined, transported, stored,  
43 handled, treated, or disposed, or where hazardous substances or  
44 hazardous wastes have or may have migrated;

45 "Remediation standards" means the combination of numeric and  
46 narrative standards to which hazardous substances or hazardous

1 wastes must be investigated or remediated as established by the  
2 department pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12);

3 "Owner" means any person who owns the real property of an  
4 industrial establishment or who owns the industrial establishment. A  
5 holder of a mortgage or other security interest in the industrial  
6 establishment shall not be deemed to be an owner of the industrial  
7 establishment unless or until it loses its exemption under P.L.1993,  
8 c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial  
9 establishment by deed of foreclosure, by other deed, or by court order  
10 or other process;

11 "Operator" means any person, including users, tenants, or  
12 occupants, having and exercising direct actual control of the  
13 operations of an industrial establishment. A holder of a mortgage or  
14 other security interest in the industrial establishment shall not be  
15 deemed to be an operator of the industrial establishment unless or until  
16 it loses its exemption under P.L.1993, c.112 (C.58:10-23.11g4 et al.)  
17 or obtains title to the industrial establishment by deed of foreclosure,  
18 by other deed, or by court order or other process;

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

33 "Remediation" or "remediate" means all necessary actions to  
34 investigate and clean up any known, suspected, or threatened  
35 discharge of hazardous substances or hazardous wastes, including, as  
36 necessary, the preliminary assessment, site investigation, remedial  
37 investigation, and remedial action;

38 "Remedial action" means those actions taken at an industrial  
39 establishment or offsite of an industrial establishment if hazardous  
40 substances or hazardous wastes have migrated or are migrating  
41 therefrom, as may be required by the department to protect public  
42 health, safety, and the environment. These actions may include the  
43 removal, treatment, containment, transportation, securing, or other  
44 engineering measures, whether of a permanent nature or otherwise,  
45 designed to ensure that any discharged hazardous substances or  
46 hazardous wastes at the site or that have migrated or are migrating

1 from the site, are remediated in compliance with the applicable  
2 remediation standards;

3 "Remedial investigation" means a process to determine the nature  
4 and extent of a discharge of hazardous substances or hazardous wastes  
5 at an industrial establishment or a discharge of hazardous substances  
6 or hazardous wastes that have migrated or are migrating from the site  
7 and the problems presented by a discharge, and may include data  
8 collection, site characterization, sampling, monitoring, and the  
9 gathering of any other sufficient and relevant information necessary to  
10 determine the necessity for remedial action and to support the  
11 evaluation of remedial actions if necessary;

12 "Site investigation" means the collection and evaluation of data  
13 adequate to determine whether or not discharged hazardous  
14 substances or hazardous wastes exist at the industrial establishment or  
15 have migrated or are migrating from the site at levels in excess of the  
16 applicable remediation standards. A site investigation shall be  
17 developed based upon the information collected pursuant to the  
18 preliminary assessment.

19 (cf: P.L.1993, c.39, s.3)

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21 3. This act shall take effect immediately.

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#### STATEMENT

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26 Under current law, when an electric generating station or a gas  
27 manufacturing plant closes, the municipality where the utility is located  
28 incurs an immediate elimination of public utility tax allocation  
29 payments. For many municipalities this abrupt reduction in allocation  
30 payments causes an undue hardship.

31 This bill would phase out these payments over five years by  
32 proportionately reducing the value of the utility's closed property.  
33 This will ensure a gradual reduction in the allocation of payments to  
34 the affected municipality.

35 The bill would also amend the definition of "closing operations" in  
36 the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et  
37 seq.) to measure the period in which a closing takes place over a one  
38 year period rather than a five year period for public utility owned  
39 electric generating stations and gas manufacturing plants. Therefore,  
40 upon a 90 percent reduction in product output, or if applicable, a 90%  
41 reduction in the number of employees or area of operations, measured  
42 over a one year period, a public utility would be required to remediate  
43 an electric generating station or gas manufacturing plant.

1

2

3 Phases out the public utility tax apportionment value of electric

4 generating stations and gas manufacturing plants subject to closure;

5 makes certain changes to ISRA with regard to such closures.