

SENATE, No. 1815

STATE OF NEW JERSEY

INTRODUCED JANUARY 27, 1997

By Senator SINGER

1 AN ACT concerning contaminated sites and amending P.L.1996, c.124.

2

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

5

6 1. Section 1 of P.L.1996, c.124 (C.13:1E-166.1) is amended to  
7 read as follows:

8 1. This act shall be known and may be cited as the "Brownfield and  
9 Municipal Landfill Site Closure, Remediation and Redevelopment  
10 Act."

11 (cf: P.L.1996, c.124, s.1)

12

13 2. Section 2 of P.L.1996, c.124 (C.13:1E-116.2) is amended to  
14 read as follows:

15 2. As used in this act:

16 "Closure" means all activities associated with the design, purchase,  
17 construction or maintenance of all measures required by the  
18 department, pursuant to law, in order to prevent, minimize or monitor  
19 pollution or health hazards resulting from municipal solid waste  
20 landfills subsequent to the termination of operations at any portion  
21 thereof, including, but not necessarily limited to, the placement of final  
22 earthen or vegetative cover, the installation of methane gas vents or  
23 monitors and leachate monitoring wells or collection systems, and  
24 long-term operations and maintenance, at the site of any municipal  
25 solid waste landfill that is not listed on the National Priorities List  
26 pursuant to the "Comprehensive Environmental Response,  
27 Compensation, and Liability Act of 1980," 42 U.S.C. 9605.

28 "Closure and remediation costs" means all reasonable costs  
29 associated with the closure and remediation of a municipal solid waste  
30 landfill, or the remediation of an eligible brownfield site except that  
31 "closure and remediation costs" shall not include any costs incurred in  
32 financing the closure or remediation.

33 "Commercial solid waste" means any nonhazardous solid waste  
34 derived from wholesale, retail or service establishments, including

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 stores, markets, theaters, offices, restaurants, warehouses, or from  
2 other non-manufacturing commercial activities.

3 "Contaminant" or "contamination" means any discharged hazardous  
4 substance as defined pursuant to section 3 of P.L.1976, c.141  
5 (C.58:10-23.11b), hazardous waste as defined pursuant to section 1 of  
6 P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to  
7 section 3 of P.L.1977, c.74 (C.58:10A-3).

8 "Developer" means any person that enters or proposes to enter into  
9 a redevelopment agreement with the State pursuant to the provisions  
10 of section 3 of P.L.1996, c.124 (C.13:1E-116.3).

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

13 "Eligible brownfield site" means a former industrial or commercial  
14 property in a qualifying municipality as defined pursuant to section 3  
15 of P.L.1982, c.303 (C.52:27H-62) that is currently underutilized or  
16 abandoned and at which there has been, or there is perceived to have  
17 been, a discharge, or threat of a discharge, of a contaminant.

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

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

30 "Municipal solid waste landfill" means a landfill that ceased  
31 operations prior to January 1, 1982 and received for disposal  
32 household solid waste and at least one of the following: (1)  
33 commercial solid waste; (2) industrial solid waste; or (3) waste  
34 material that was received for disposal prior to October 21, 1976 and  
35 that is included within the definition of hazardous waste adopted by  
36 the federal government pursuant to the "Resource Conservation and  
37 Recovery Act," 42 U.S.C. 6921 et seq.; except that "municipal solid  
38 waste landfill" shall not include any landfill that is approved for  
39 disposal of hazardous waste and regulated pursuant to Subchapter III  
40 of the "Resource Conservation and Recovery Act," 42 U.S.C. 6921 et  
41 seq.

42 "Project" or "redevelopment project" means a specific work or  
43 improvement, including lands, buildings, improvements, real and  
44 personal property or any interest therein, including lands under water,  
45 riparian rights, space rights and air rights, acquired, owned, developed  
46 or redeveloped, constructed, reconstructed, rehabilitated or improved,

1 undertaken by a developer within an area of land whereon a municipal  
2 solid waste landfill is or has been located, or on an eligible brownfield  
3 site, under a redevelopment agreement with the State pursuant to  
4 section 3 of P.L.1996, c.124 (C.13:1E-116.3).

5 "Redevelopment agreement" means an agreement between the  
6 State and a developer under which the developer agrees to perform  
7 any work or undertaking necessary for the environmentally sound and  
8 proper closure and remediation of the municipal solid waste landfill or  
9 a remediation of an eligible brownfield site located at the site of the  
10 redevelopment project, and for the clearance, development or  
11 redevelopment, construction or rehabilitation of any structure or  
12 improvement of commercial, industrial or public structures or  
13 improvements within an area of land whereon a municipal solid waste  
14 landfill is or has been located or on an eligible brownfield site pursuant  
15 to section 3 of P.L.1996, c.124 (C.13:1E-116.3), and the State agrees  
16 that the developer shall be eligible for the reimbursement of 75% of  
17 the costs of closure and remediation of the municipal solid waste  
18 landfill or 75% of the costs of the remediation of the eligible  
19 brownfield site from the fund established pursuant to section 6 of  
20 P.L.1996, c.124 (C.13:1E-116.6) (pending in the Legislature as this  
21 bill) as authorized pursuant to section 4 of P.L.1996, c.124  
22 (C.13:1E-116.4).

23 "Remediation" or "remediate" means all necessary actions to  
24 investigate and clean up any known, suspected, or threatened  
25 discharge of contaminants, including, as necessary, the preliminary  
26 assessment, site investigation, remedial investigation, and remedial  
27 action, as those terms are defined in section 23 of P.L.1993, c.139  
28 (C.58:10B-1).

29 (cf: P.L.1996, c.124, s.2)

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31 3. Section 4 of P.L.1996, c.124 (13:1E-116.4) is amended to read  
32 as follows:

33 4. a. The provisions of any other law, or rule or regulation  
34 adopted pursuant thereto, to the contrary notwithstanding, any  
35 developer that enters into a redevelopment agreement pursuant to  
36 section 3 of P.L.1996, c.124 (C.13:1E-116.4), may be eligible for  
37 reimbursement of 75% of the costs of the closure and remediation of  
38 the municipal solid waste landfill or 75% of the costs of remediation  
39 of an eligible brownfield site pursuant to the provisions of this section  
40 upon the commencement of a business operation within a  
41 redevelopment project, the sales receipts of which are subject to the  
42 tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30  
43 (C.54:32B-1 et seq.).

44 b. To be eligible for reimbursement of 75% of the costs of closure  
45 and remediation, or 75% of the costs of remediation, as the case may  
46 be, a developer shall submit an application, in writing, to the director

1 for review and certification of the reimbursement. The director shall  
2 review the request for the reimbursement upon receipt of an  
3 application therefor, and shall approve or deny the application for  
4 certification on a timely basis.

5 The director shall certify a developer to be eligible for the  
6 reimbursement if the director shall find that:

7 (1) a place of business is located in the area subject to the  
8 redevelopment agreement for the purpose of making retail sales;

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

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

13 (4) the developer has entered into a memorandum of agreement  
14 with the Commissioner of Environmental Protection for the  
15 environmentally sound and proper closure and remediation of the  
16 municipal solid waste landfill, or the remediation of the eligible  
17 brownfield site located on the site of the redevelopment project  
18 pursuant to section 5 of P.L.1996, c.124 (C.13:1E-116.5) and is in  
19 compliance with the memorandum of agreement.

20 c. When filing an application for certification for a reimbursement  
21 pursuant to this section, the developer shall submit to the director a  
22 certification of the total closure and remediation costs incurred by the  
23 developer for the closure and remediation of the municipal solid waste  
24 landfill, or the total remediation costs of the eligible brownfield site,  
25 as the case may be, located at the site of the redevelopment project as  
26 provided in the redevelopment agreement.

27 (cf: P.L.1996, c.124, s.4)

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29 4. Section 5 of P.L.1996, c.124 (13:1E-116.5) is amended to read  
30 as follows:

31 5. a. To qualify for the certification of reimbursement of 75% of  
32 the closure and remediation costs, or 75% of the remediation costs,  
33 as the case may be, authorized pursuant to section 4 of P.L.1996,  
34 c.124 (C.13:1E-116.4), a developer shall enter into a memorandum of  
35 agreement with the Commissioner of Environmental Protection for the  
36 environmentally sound and proper closure or remediation of the  
37 municipal solid waste landfill or the remediation of the eligible  
38 brownfield site located on the site of the redevelopment project.

39 b. Under the memorandum of agreement, the developer shall agree  
40 to perform and complete any closure activity or remediation as may be  
41 required by the Department of Environmental Protection, pursuant to  
42 law, to ensure the environmentally sound and proper closure and  
43 remediation of the municipal solid waste landfill or the remediation of  
44 the eligible brownfield site located at the site of the redevelopment  
45 project. Any activity necessary to remediate ground or surface water  
46 contamination caused by a municipal solid waste landfill or by

1 contamination at an eligible brownfield site shall be undertaken in  
2 compliance with the remediation standards adopted by the Department  
3 of Environmental Protection pursuant to P.L.1993, c.139 (C.58:10B-1  
4 et al.).

5 c. After the developer has entered into a memorandum of  
6 agreement with the Commissioner of Environmental Protection, the  
7 commissioner shall submit a copy thereof to the developer, the clerk  
8 of the municipality in which the municipal solid waste landfill or the  
9 eligible brownfield site is located, the Commissioner of the Department  
10 of Commerce and Economic Development, and the director.

11 (cf: P.L.1996, c.124, s.5)

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13 5. Section 6 of P.L.1996, c.124 (13:1E-116.6) is amended to read  
14 as follows:

15 6. a. There is created in the Department of the Treasury a special  
16 fund to be known as the Brownfield and Municipal Landfill Closure  
17 and Remediation Fund. Moneys in the fund shall be dedicated to the  
18 purpose of reimbursing a developer who enters into a redevelopment  
19 agreement pursuant to section 3 of P.L.1996, c.124 (C.13:1E-116.3)  
20 and is certified for reimbursement pursuant to section 4 of P.L.1996,  
21 c.124 (C.13:1E-116.4) in an amount equal to 75% of the closure and  
22 remediation costs of the municipal solid waste landfill or 75% of the  
23 remediation costs of the eligible brownfield site. A special account  
24 within the fund shall be created for each developer upon approval of  
25 a certification pursuant to section 4 of P.L.1996, c.124  
26 (C.13:1E-116.4). The Legislature shall annually appropriate the entire  
27 balance of the fund for the purposes of reimbursement of closure and  
28 remediation costs as provided in section 7 of P.L.1996, c.124  
29 (C.13:1E-116.7).

30 b. The fund shall be credited with one half of all taxes due and  
31 payable pursuant to the "Sales and Use Tax Act," P.L.1966, c.30  
32 (C.54:32B-1 et seq.) by any person required to collect the tax at the  
33 site of a redevelopment project which is the subject of a  
34 redevelopment agreement with the State pursuant to section 3 of  
35 P.L.1996, c.124 (C.13:1E-116.3) until the amount credited equals  
36 75% of the dollar amount of the closure and remediation costs, or  
37 75% of the remediation costs of an eligible brownfield site, as the case  
38 may be, actually and reasonably incurred by the developer, as certified  
39 to the director by the developer.

40 (cf: P.L.1996, c.124, s.6)

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42 6. Section 7 of P.L.1996, c.124 (C.13:1E-116.7) is amended to  
43 read as follows:

44 7. a. The State Treasurer shall reimburse the developer for 75%  
45 of the closure and remediation costs of the municipal solid waste  
46 landfill or 75% of the remediation costs of an eligible brownfield site,

1 as the case may be, from the Brownfield and Municipal Landfill  
2 Closure and Remediation Fund upon approval of certification of the  
3 reimbursement pursuant to section 4 of P.L.1996, c.124  
4 (C.13:1E-116.4). The developer shall be entitled to periodic payments  
5 from the fund in an amount equal to one half of the taxes due and  
6 payable pursuant to the "Sales and Use Tax Act," P.L.1966, c.30  
7 (C.54:32B-1 et seq.) from any person required to collect the tax at the  
8 site of a redevelopment project which is subject to a redevelopment  
9 agreement between the developer and the State pursuant to section 3  
10 of P.L.1996, c.124 (C.13:1E-116.3). Payments from the fund shall be  
11 made to a developer at the same frequency in which the payments are  
12 made to the State from the persons required to collect the tax.  
13 Payments to the developer shall be made within 15 days of receipt by  
14 the State of the taxes.

15 b. A developer shall submit to the director updated closure and  
16 remediation costs actually incurred by the developer for the closure or  
17 remediation of the municipal solid waste landfill or the remediation of  
18 an eligible brownfield site, as the case may be, located at the site of the  
19 redevelopment project as provided in the redevelopment agreement.  
20 The reimbursement authorized pursuant to this section shall continue  
21 until such time as the aggregate dollar amount of the reimbursement  
22 equals 75% of the dollar amount of the closure and remediation costs  
23 or 75% of the dollar amount of the remediation costs of an eligible  
24 brownfield site actually incurred by the developer, as certified to the  
25 director by the developer. To remain entitled to the reimbursement  
26 authorized pursuant to this section, the developer shall perform and  
27 complete all closure and remediation activities during the closure and  
28 post-closure periods as may be required pursuant to the memorandum  
29 of agreement entered into with the Commissioner of Environmental  
30 Protection pursuant to section 5 of P.L.1996, c.124 (C.13:1E-116.5).  
31 The Department of Environmental Protection may review the closure  
32 and remediation costs incurred by the developer to determine if they  
33 are reasonable.

34 (cf: P.L.1996, c.124, s.7)

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36 7. This act shall take effect immediately.

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#### STATEMENT

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41 This bill would expand the "Municipal Landfill Site Closure,  
42 Remediation and Redevelopment Act" to apply its provisions to  
43 brownfield sites in qualifying municipalities. Under the bill, a  
44 developer who enters into an agreement with the State to redevelop an  
45 eligible brownfield site would be entitled to reimbursement of 75% of  
46 the costs of remediation from one-half of the sales taxes generated at

1 the site. An eligible brownfield site is a former industrial or  
2 commercial property in a qualifying municipality as defined pursuant  
3 to section 3 of P.L.1982, c.303 (C.52:27H-62) that is currently  
4 underutilized or abandoned and at which there has been, or there is  
5 perceived to have been, a discharge, or threat of a discharge, of a  
6 hazardous substance.

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11 Authorizes partial reimbursement for remediation costs of certain  
12 brownfield sites.