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(ECRA--  
amendment)

LAWS OF: 1991

CHAPTER: 238

Bill No: S2103

Sponsor(s): Lipman

Date Introduced: Pre-filed

Committee: Assembly: Municipal Government

Senate: County & Municipal Government

Amended during passage: Yes      Amendments during passage  
denoted by asterisks.

Date of Passage: Assembly: June 17, 1991

Senate: October 11, 1990

Date of Approval: August 2, 1991

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

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[FIRST REPRINT]

SENATE, No. 2103

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Senator LIPMAN

1 A *SUPPLEMENT* to the "Environmental Cleanup Responsibility  
2 Act," approved September 2, 1983 (P.L.1983, c.330: C.13:1K-6  
3 et seq.).

4

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

7 1. Upon the date set for the sale of a tax sale certificate, or  
8 the provision of legal notice by a municipality of its intent to  
9 foreclose the right of redemption from a previously issued  
10 certificate, for failure to pay taxes, assessments and other  
11 municipal charges, on property on which an industrial  
12 establishment is located, the owner or operator of that  
13 establishment shall be deemed to be planning to close operations  
14 pursuant to <sup>1</sup>[section 4 of]<sup>1</sup> P.L.1983, c.330 (C.13:1K-9), and the  
15 sale of the tax sale certificate or the provision of the legal notice  
16 of the municipality's intent to foreclose shall have the same  
17 effect as a public release of a decision to close operations. <sup>1</sup>A  
18 municipality shall notify the Department of all actions  
19 undertaken by the municipality pursuant to this section.<sup>1</sup>

20 2. The acquiring of title to an industrial establishment by a  
21 municipality pursuant to a foreclosure action pertaining to a  
22 certificate of tax sale purchased and held by the municipality  
23 shall not relieve the previous owner or operator of the industrial  
24 establishment of his duty to implement a cleanup plan if the  
25 implementation is deemed necessary by the Department of  
26 Environmental Protection.

27 3. If a municipality <sup>1</sup>[voluntarily]<sup>1</sup> undertakes to clean up  
28 hazardous substances and wastes on the site of an industrial  
29 establishment, the title to which the municipality acquired  
30 pursuant to a foreclosure action pertaining to a certificate of tax  
31 sale, all expenditures incurred in the cleanup shall be a debt of  
32 the immediate past owners of the industrial establishment. The  
33 debt shall constitute a lien on all property owned by the  
34 immediate past owner when a notice of lien, incorporating a  
35 description of the property subject to the cleanup and removal  
36 and an identification of the amount of cleanup, removal and  
37 related costs expended by the municipality is duly filed with the  
38 clerk of the Superior Court. The clerk shall promptly enter upon

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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate SCM committee amendments adopted May 17, 1990.

1 the civil judgment or order docket the name and address of the  
2 immediate past owner and the amount of the lien as set forth in  
3 the notice of lien. Upon entry by the clerk, the lien shall attach  
4 to the revenues and all real and personal property of the  
5 immediate past owner, whether or not he is insolvent. The notice  
6 of lien filed pursuant to this section which affects any property  
7 of an immediate past owner shall have priority from the day of  
8 the filing of the notice of the lien, but shall not affect any valid  
9 lien, right, or interest in the property filed in accordance with  
10 established procedure prior to the filing of a notice of lien  
11 pursuant to this section.

12 4. The provisions of P.L.1983, c.330 (C.13:1K-6 et seq.) shall  
13 not apply to a governmental unit or agent thereof, pursuing  
14 foreclosure proceedings against the owner or operator of an  
15 industrial establishment to satisfy a delinquent tax liability of the  
16 owner or operator. However, when the governmental unit seeks  
17 to issue a tax sale certificate for the property on which is located  
18 an industrial establishment to satisfy a delinquent tax liability, or  
19 seeks to convey any parcel of such property acquired by it, the  
20 governmental unit shall notify prospective purchasers in writing  
21 that the property may be subject to the provisions of the  
22 "Environmental Cleanup Responsibility Act," P.L.1983, c.330  
23 (C.13:1K-6 et seq.)<sup>1</sup>, "Spill Compensation and Control Act,"  
24 P.L.1976, c.141 (C.58:10-23.11 et seq.), and the "Water Pollution  
25 Control Act" P.L.1977, c.44 (C.58:10A-1 et seq.). When a  
26 governmental unit seeks to issue a tax sale certificate for the  
27 property on which is located an industrial establishment to satisfy  
28 a delinquent tax liability, or seeks to convey any parcel of such  
29 property acquired by it, the governmental unit shall not consider  
30 prospective purchasers who are, or were in any way connected to  
31 the previous owner or operator of the site<sup>1</sup>.

32 5. If a municipality <sup>1</sup>[voluntarily]<sup>1</sup> undertakes a cleanup of  
33 hazardous substances and wastes on the site of an industrial  
34 establishment, the municipality shall make any submissions  
35 required by <sup>1</sup>[section 4 of]<sup>1</sup> P.L.1983, c.330 (C.13:1K-9) and shall  
36 obtain approval of the Department of Environmental Protection  
37 prior to the initiation of the <sup>1</sup>sampling plan and the<sup>1</sup> cleanup plan.

38 6. This act shall take effect immediately.

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#### LOCAL TAXATION

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Provides municipality with lien against former owner for cleanup  
of hazardous waste on property acquired by tax sale.

of lien filed pursuant to this section which affects any property of an immediate past owner shall have priority from the day of the filing of the notice of the lien, but shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien pursuant to this section.

4. The provisions of P.L.1983, c.330 (C.13:1K-6 et seq.) shall not apply to a governmental unit or agent thereof, pursuing foreclosure proceedings against the owner or operator of an industrial establishment to satisfy a delinquent tax liability of the owner or operator. However, when the governmental unit seeks to issue a tax sale certificate for the property on which is located an industrial establishment to satisfy a delinquent tax liability, or seeks to convey any parcel of such property acquired by it, the governmental unit shall notify prospective purchasers in writing that the property may be subject to the provisions of the "Environmental Cleanup Responsibility Act," P.L.1983, c.330 (C.13:1K-6 et seq.).

5. If a municipality voluntarily undertakes a cleanup of hazardous substances and wastes on the site of an industrial establishment, the municipality shall make any submissions required by section 4 of P.L.1983, c.330 (C.13:1K-9) and shall obtain approval of the Department of Environmental Protection prior to the initiation of the cleanup plan.

6. This act shall take effect immediately.

#### STATEMENT

This bill provides that the setting of a date for the sale of a tax sale certificate or the provision of legal notice of the municipality's intent to foreclose the right of redemption from a previously issued tax sale certificate, for failure to pay taxes, assessments and other municipal charges, on property on which an industrial establishment is located shall have the same effect as a public release of a decision to close operations by the owner or operator of the industrial establishment, as provided by section 4 of P.L.1983, c.330 (C.13:1K-9). The owner or operator would then have to comply with the "Environmental Cleanup Responsibility Act" in the same fashion as an owner who had decided to close operations. Compliance includes the filing of a negative declaration or a cleanup plan and the implementation of the cleanup plan, if necessary.

This bill also provides that the acquiring of title to an industrial establishment by a municipality pursuant to a tax foreclosure proceeding shall not relieve the previous owner or operator of his duty to implement a cleanup plan.

Finally, the bill provides that if a municipality which acquired industrial property pursuant to a tax foreclosure proceeding

voluntarily undertakes to clean up hazardous substances and wastes on the site, it shall have a lien against all the property, real and personal, of the former owner or operator.

Under the provisions of section 4 of P.L.1983, c.330 (C.13:1K-9), the owner of an industrial establishment planning to close operations or to sell or transfer operations must submit a clean up plan or declaration that there have been no hazardous substances or wastes discharged on the site in question. The submission date is tied to public release of a decision to close or transfer operations or to the date on which title is transferred in the case of a sale.

#### LOCAL TAXATION

Provides municipality with lien against former owner for cleanup of hazardous waste on property acquired by tax sale.

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 2103

STATE OF NEW JERSEY

DATED: MAY 23, 1991

The Assembly Municipal Government Committee favorably reports Senate Bill No. 2103(1R).

This bill, provides that the setting of a date for the sale of a tax sale certificate or the provision of legal notice of the municipality's intent to foreclose the right of redemption from a previously issued tax sale certificate, for failure to pay taxes, assessments and other municipal charges, on property on which an industrial establishment is located shall have the same effect as a public release of a decision to close operations by the owner or operator of the industrial establishment, as provided by section 4 of P.L.1983, c.330 (C.13:1K-9). The owner or operator would then have to comply with the "Environmental Cleanup Responsibility Act" in the same fashion as an owner who had decided to close operations. Compliance includes the filing of a negative declaration or a cleanup plan and the implementation of the cleanup plan, if necessary.

The bill provides that the acquiring of title to an industrial establishment by a municipality pursuant to a tax foreclosure proceeding shall not relieve the previous owner or operator of his duty to implement a cleanup plan.

This bill also provides that if a municipality which acquired industrial property pursuant to a tax foreclosure proceeding undertakes to clean up hazardous substances and wastes on the site, it shall have a lien against all the property, real and personal, of the former owner or operator.

Under the provisions of section 4 of P.L.1983, c.330 (C.13:1K-9), the owner of an industrial establishment planning to close operations or to sell or transfer operations must submit a cleanup plan or declaration that there have been no hazardous substances or wastes discharged on the site in question. The submission date is tied to public release of a decision to close or transfer operations or to the date on which title is transferred in the case of a sale.

The bill extends the list of environmental laws that the governmental unit must include in its notice to a prospective purchaser and warns the governmental unit not to consider issuance of a tax sale certificate to a prospective purchaser who is, or was in any way connected to the previous owner or operator of the site so as not to undermine ECRA applicability of potentially contaminated sites.

SENATE COUNTY AND MUNICIPAL  
GOVERNMENT COMMITTEE

STATEMENT TO

**SENATE, No. 2103**

with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: MAY 17, 1990

The Senate County and Municipal Government Committee reports favorably Senate Bill No. 2103 with committee amendments.

Senate Bill No. 2103, as amended by the committee, provides that the setting of a date for the sale of a tax sale certificate or the provision of legal notice of the municipality's intent to foreclose the right of redemption from a previously issued tax sale certificate, for failure to pay taxes, assessments and other municipal charges, on property on which an industrial establishment is located shall have the same effect as a public release of a decision to close operations by the owner or operator of the industrial establishment, as provided by section 4 of P.L.1983, c.330 (C.13:1K-9). The owner or operator would then have to comply with the "Environmental Cleanup Responsibility Act" in the same fashion as an owner who had decided to close operations. Compliance includes the filing of a negative declaration or a cleanup plan and the implementation of the cleanup plan, if necessary.

As amended this bill also provides that the acquiring of title to an industrial establishment by a municipality pursuant to a tax foreclosure proceeding shall not relieve the previous owner or operator of his duty to implement a cleanup plan.

As amended this bill provides that if a municipality which acquired industrial property pursuant to a tax foreclosure proceeding undertakes to clean up hazardous substances and wastes on the site, it shall have a lien against all the property, real and personal, of the former owner or operator.

Under the provisions of section 4 of P.L.1983, c.330 (C.13:1K-9), the owner of an industrial establishment planning to close operations or to sell or transfer operations must submit a clean up plan or declaration that there have been no hazardous substances or wastes discharged on the site in question. The submission date is tied to public release of a decision to close or transfer operations or to the date on which title is transferred in the case of a sale.

The amended bill extends the list of environmental laws that the governmental unit must include in its notice to a prospective purchaser and warns the governmental unit not to consider issuance of a tax sale certificate to a prospective purchaser who is, or was in any way connected to the previous owner or operator of the site so as not to undermine ECRA applicability of potentially contaminated sites.

This bill was pre-filed for introduction in the 1990 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.