

58:10-23.11g

LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

LAWS OF: 2003 **CHAPTER:** 224

NJSA: 58:10-23.11g (Cleanup of hazardous substances)

BILL NO: A2585 (Substituted for S1714)

SPONSOR(S): Gusciora and Greenwald

DATE INTRODUCED: June 24, 2002

COMMITTEE: **ASSEMBLY:** Environment and Solid Waste; Appropriations

SENATE: Environment

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 30, 2003

SENATE: December 11, 2003

DATE OF APPROVAL: January 9, 2004

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (3rd reprint enacted)
(Amendments during passage denoted by superscript numbers)

A2585

[SPONSOR'S STATEMENT](#): (Begins on page 21 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** Yes [11-25-2002 \(Environ.\)](#)
 [2-3-2003 \(Approp.\)](#)

SENATE: [Yes](#)

[FLOOR AMENDMENT STATEMENT](#): [Yes](#)

[LEGISLATIVE FISCAL ESTIMATE](#): [Yes](#)

S1714

[SPONSOR'S STATEMENT](#): (Begins on page 21 of original bill) [Yes](#)
Bill and Sponsors Statement identical to A2585

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>.

REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

No

P.L. 2003, CHAPTER 224, *approved January 9, 2004*
Assembly, No. 2585 (*Third Reprint*)

1 **AN ACT** concerning hazardous discharge site cleanup, and amending
2 and supplementing Title 58 of the Revised Statutes.

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

6
7 ²[1. (New section) The New Jersey Economic Development
8 Authority may enter into a loan agreement with a developer who has
9 entered into a redevelopment agreement with the State pursuant to
10 section 35 of P.L.1997, c.278 (C.58:10B-27), to provide a loan for the
11 costs of the remediation at the site of the redevelopment project. In
12 making a finding of an applicant's ability to repay a loan, the authority
13 may consider the reimbursements authorized to be made to the
14 developer, pursuant to section 39 of P.L.1997, c.278 (C.58:10B-31)
15 from the "Brownfield Site Reimbursement Fund," created pursuant to
16 section 38 of P.L.1997, c.278 (C.58:10B-30).]²

17
18 ²[2.] 1.² Section 8 of P.L.1976, c.141 (C.58:10-23.11g) is
19 amended to read as follows:

20 8. a. The fund shall be strictly liable, without regard to fault, for
21 all cleanup and removal costs and for all direct and indirect damages
22 no matter by whom sustained, including but not limited to:

23 (1) The cost of restoring, repairing, or replacing any real or
24 personal property damaged or destroyed by a discharge, any income
25 lost from the time such property is damaged to the time such property
26 is restored, repaired or replaced, and any reduction in value of such
27 property caused by such discharge by comparison with its value prior
28 thereto;

29 (2) The cost of restoration and replacement, where possible, of any
30 natural resource damaged or destroyed by a discharge;

31 (3) Loss of income or impairment of earning capacity due to
32 damage to real or personal property, including natural resources
33 destroyed or damaged by a discharge; provided that such loss or
34 impairment exceeds 10% of the amount which claimant derives, based
35 upon income or business records, exclusive of other sources of
36 income, from activities related to the particular real or personal
37 property or natural resources damaged or destroyed by such discharge
38 during the week, month or year for which the claim is filed;

39 (4) Loss of tax revenue by the State or local governments for a

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:

¹ Assembly AEN committee amendments adopted November 25, 2002.

² Senate SEN committee amendments adopted June 12, 2003.

³ Assembly floor amendments adopted June 30, 2003.

1 period of one year due to damage to real or personal property
2 proximately resulting from a discharge;

3 (5) Interest on loans obtained or other obligations incurred by a
4 claimant for the purpose of ameliorating the adverse effects of a
5 discharge pending the payment of a claim in full as provided by this
6 act.

7 b. The damages which may be recovered by the fund, without
8 regard to fault, subject to the defenses enumerated in subsection d. of
9 this section against the owner or operator of a major facility or vessel,
10 shall not exceed \$50,000,000.00 for each major facility or \$150.00 per
11 gross ton for each vessel, except that such maximum limitation shall
12 not apply and the owner or operator shall be liable, jointly and
13 severally, for the full amount of such damages if it can be shown that
14 such discharge was the result of (1) gross negligence or willful
15 misconduct, within the knowledge and privity of the owner, operator
16 or person in charge, or (2) a gross or willful violation of applicable
17 safety, construction or operating standards or regulations. Damages
18 which may be recovered from, or by, any other person shall be limited
19 to those authorized by common or statutory law.

20 c. (1) Any person who has discharged a hazardous substance, or
21 is in any way responsible for any hazardous substance, shall be strictly
22 liable, jointly and severally, without regard to fault, for all cleanup and
23 removal costs no matter by whom incurred. Such person shall also be
24 strictly liable, jointly and severally, without regard to fault, for all
25 cleanup and removal costs incurred by the department or a local unit
26 pursuant to subsection b. of section 7 of P.L.1976, c.141
27 (C.58:10-23.11f).

28 (2) In addition to the persons liable pursuant to this subsection, in
29 the case of a discharge of a hazardous substance from a vessel into the
30 waters of the State, the owner or operator of a refinery, storage,
31 transfer, or pipeline facility to which the vessel was en route to deliver
32 the hazardous substance who, by contract, agreement, or otherwise,
33 was scheduled to assume ownership of the discharged hazardous
34 substance, and any other person who was so scheduled to assume
35 ownership of the discharged hazardous substance, shall be strictly
36 liable, jointly and severally, without regard to fault, for all cleanup and
37 removal costs if the owner or operator of the vessel did not have the
38 evidence of financial responsibility required pursuant to section 2 of
39 P.L.1991, c.58 (C.58:10-23.11g2).

40 Where a person is liable for cleanup and removal costs as provided
41 in this paragraph, any expenditures made by the administrator for that
42 cleanup and removal shall constitute a debt of that person to the fund.
43 The debt shall constitute a lien on all property owned by that person
44 when a notice of lien identifying the nature of the discharge and the
45 amount of the cleanup, removal and related costs expended from the
46 fund is duly filed with the clerk of the Superior Court. The clerk shall

1 promptly enter upon the civil judgment or order docket the name and
2 address of the liable person and the amount of the lien as set forth in
3 the notice of lien. Upon entry by the clerk, the lien, to the amount
4 committed by the administrator for cleanup and removal, shall attach
5 to the revenues and all real and personal property of the liable person,
6 whether or not that person is insolvent.

7 For the purpose of determining priority of this lien over all other
8 claims or liens which are or have been filed against the property of an
9 owner or operator of a refinery, storage, transfer, or pipeline facility,
10 the lien on the facility to which the discharged hazardous substance
11 was en route shall have priority over all other claims or liens which are
12 or have been filed against the property. The notice of lien filed
13 pursuant to this paragraph which affects any property of a person
14 liable pursuant to this paragraph other than the property of an owner
15 or operator of a refinery, storage, transfer, or pipeline facility to which
16 the discharged hazardous substance was en route, shall have priority
17 from the day of the filing of the notice of the lien over all claims and
18 liens filed against the property, but shall not affect any valid lien, right,
19 or interest in the property filed in accordance with established
20 procedure prior to the filing of a notice of lien pursuant to this
21 paragraph.

22 To the extent that a person liable pursuant to this paragraph is not
23 otherwise liable pursuant to paragraph (1) of this subsection, or under
24 any other provision of law or under common law, that person may
25 bring an action for indemnification for costs paid pursuant to this
26 paragraph against any other person who is strictly liable pursuant to
27 paragraph (1) of this subsection.

28 Nothing in this paragraph shall be construed to extend or negate the
29 right of any person to bring an action for contribution that may exist
30 under P.L.1976, c.141, or any other act or under common law.

31 (3) In addition to the persons liable pursuant to this subsection, any
32 person who owns real property acquired on or after September 14,
33 1993 on which there has been a discharge prior to the person's
34 acquisition of that property and who knew or should have known that
35 a hazardous substance had been discharged at the real property, shall
36 be strictly liable, jointly and severally, without regard to fault, for all
37 cleanup and removal costs no matter by whom incurred. Such person
38 shall also be strictly liable, jointly and severally, without regard to
39 fault, for all cleanup and removal costs incurred by the department or
40 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141
41 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter
42 liability of any person who acquired real property prior to September
43 14, 1993.

44 d. (1) In addition to those defenses provided in this subsection, an
45 act or omission caused solely by war, sabotage, or God, or a
46 combination thereof, shall be the only defenses which may be raised by

1 any owner or operator of a major facility or vessel responsible for a
2 discharge in any action arising under the provisions of this act.

3 (2) A person, including an owner or operator of a major facility,
4 who owns real property acquired on or after September 14, 1993 on
5 which there has been a discharge, shall not be liable for cleanup and
6 removal costs or for any other damages to the State or to any other
7 person for the discharged hazardous substance pursuant to subsection
8 c. of this section or pursuant to civil common law, if that person can
9 establish by a preponderance of the evidence that subparagraphs (a)
10 through (d) apply, or if applicable, subparagraphs (a) through (e)
11 apply:

12 (a) the person acquired the real property after the discharge of that
13 hazardous substance at the real property;

14 (b) (i) at the time the person acquired the real property, the person
15 did not know and had no reason to know that any hazardous substance
16 had been discharged at the real property, or (ii) the person acquired
17 the real property by devise or succession, except that any other funds
18 or property received by that person from the deceased real property
19 owner who discharged a hazardous substance or was in any way
20 responsible for a hazardous substance, shall be made available to
21 satisfy the requirements of P.L.1976, c.141, or (iii) the person
22 complies with the provisions of subparagraph (e) of paragraph (2) of
23 this subsection;

24 (c) the person did not discharge the hazardous substance, is not in
25 any way responsible for the hazardous substance, and is not a
26 corporate successor to the discharger or to any person in any way
27 responsible for the hazardous substance or to anyone liable for cleanup
28 and removal costs pursuant to this section;

29 (d) the person gave notice of the discharge to the department upon
30 actual discovery of that discharge.

31 To establish that a person had no reason to know that any
32 hazardous substance had been discharged for the purposes of this
33 paragraph (2), the person must have undertaken, at the time of
34 acquisition, all appropriate inquiry into the previous ownership and
35 uses of the property. For the purposes of this paragraph (2), all
36 appropriate inquiry shall mean the performance of a preliminary
37 assessment, and site investigation, if the preliminary assessment
38 indicates that a site investigation is necessary, as defined in section 23
39 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance with
40 rules and regulations promulgated by the department defining these
41 terms.

42 Nothing in this paragraph (2) shall be construed to alter liability of
43 any person who acquired real property prior to September 14, 1993;
44 and

45 (e) For the purposes of this subparagraph the person must have (i)
46 acquired the property subsequent to a hazardous substance being

1 discharged on the site and which discharge was discovered at the time
2 of acquisition as a result of the appropriate inquiry, as defined in this
3 paragraph (2), (ii) performed, following the effective date of P.L.1997,
4 c.278, a remediation of the site or discharge consistent with the
5 provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied
6 upon a valid no further action letter from the department for a
7 remediation performed prior to acquisition, or obtained approval of a
8 remedial action workplan by the department after the effective date of
9 P.L.1997, c.278 and continued to comply with the conditions of that
10 workplan, and (iii) established and maintained all engineering and
11 institutional controls as may be required pursuant to sections 35 and
12 36 of P.L.1993, c.139. A person who complies with the provisions of
13 this subparagraph by actually performing a remediation of the site or
14 discharge as set forth in (ii) above shall be issued, upon application, a
15 no further action letter by the department. A person who complies
16 with the provisions of this subparagraph either by receipt of a no
17 further action letter from the department following the effective date
18 of P.L.1997, c.278, or by relying on a previously issued no further
19 action letter shall not be liable for any further remediation including
20 any changes in a remediation standard or for the subsequent discovery
21 of a hazardous substance, at the site, or emanating from the site, if the
22 remediation was for the entire site, and the hazardous substance was
23 discharged prior to the person acquiring the property.
24 Notwithstanding any other provisions of this subparagraph, a person
25 who complies with the provisions of this subparagraph only by virtue
26 of the existence of a previously issued no further action letter shall
27 receive no liability protections for any discharge which occurred
28 during the time period between the issuance of the no further action
29 letter and the property acquisition. Compliance with the provisions of
30 this subparagraph (e) shall not relieve any person of any liability for a
31 discharge that is off the site of the property covered by the no further
32 action letter, for a discharge that occurs at that property after the
33 person acquires the property, for any actions that person negligently
34 takes that aggravates or contributes to a discharge of a hazardous
35 substance, for failure to comply in the future with laws and
36 regulations, or if that person fails to maintain the institutional or
37 engineering controls on the property or to otherwise comply with the
38 provisions of the no further action letter.

39 (3) Notwithstanding the provisions of paragraph (2) of this
40 subsection to the contrary, if a person who owns real property obtains
41 actual knowledge of a discharge of a hazardous substance at the real
42 property during the period of that person's ownership and
43 subsequently transfers ownership of the property to another person
44 without disclosing that knowledge, the transferor shall be strictly liable
45 for the cleanup and removal costs of the discharge and no defense
46 under this subsection shall be available to that person.

1 (4) Any federal, State, or local governmental entity which acquires
2 ownership of real property through bankruptcy, tax delinquency,
3 abandonment, escheat, eminent domain, condemnation or any
4 circumstance in which the governmental entity involuntarily acquires
5 title by virtue of its function as sovereign, or where the governmental
6 entity acquires the property by any means for the purpose of
7 promoting the redevelopment of that property, shall not be liable,
8 pursuant to subsection c. of this section or pursuant to common law,
9 to the State or to any other person for any discharge which occurred
10 or began prior to that ownership. This paragraph shall not provide any
11 liability protection to any federal, State or local governmental entity
12 which has caused or contributed to the discharge of a hazardous
13 substance. This paragraph shall not provide any liability protection to
14 any federal, State, or local government entity that acquires ownership
15 of real property by condemnation or eminent domain where the real
16 property is being remediated in a timely manner at the time of the
17 condemnation or eminent domain action.

18 (5) A person, including an owner or operator of a major facility,
19 who owns real property acquired prior to September 14, 1993 on
20 which there has been a discharge, shall not be liable for cleanup and
21 removal costs or for any other damages to the State or to any other
22 person for the discharged hazardous substance pursuant to subsection
23 c. of this section or pursuant to civil common law, if that person can
24 establish by a preponderance of the evidence that subparagraphs (a)
25 through (d) apply:

26 (a) the person acquired the real property after the discharge of that
27 hazardous substance at the real property;

28 (b) (i) at the time the person acquired the real property, the person
29 did not know and had no reason to know that any hazardous substance
30 had been discharged at the real property, or (ii) the person acquired
31 the real property by devise or succession, except that any other funds
32 or property received by that person from the deceased real property
33 owner who discharged a hazardous substance or was in any way
34 responsible for a hazardous substance, shall be made available to
35 satisfy the requirements of P.L.1976, c.141;

36 (c) the person did not discharge the hazardous substance, is not in
37 any way responsible for the hazardous substance, and is not a
38 corporate successor to the discharger or to any person in any way
39 responsible for the hazardous substance or to anyone liable for cleanup
40 and removal costs pursuant to this section;

41 (d) the person gave notice of the discharge to the department upon
42 actual discovery of that discharge.

43 To establish that a person had no reason to know that any
44 hazardous substance had been discharged for the purposes of this
45 paragraph (5), the person must have undertaken, at the time of
46 acquisition, all appropriate inquiry on the previous ownership and uses

1 of the property based upon generally accepted good and customary
2 standards.

3 Nothing in this paragraph (5) shall be construed to alter liability of
4 any person who acquired real property on or after September 14,
5 1993.

6 e. Neither the fund nor the Sanitary Landfill Contingency Fund
7 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall be
8 liable for any damages incurred by any person who is relieved from
9 liability pursuant to subsection d. or f. of this section for a remediation
10 that involves the use of engineering controls but the fund and the
11 Sanitary Landfill Contingency Fund shall be liable for any remediation
12 that involves only the use of institutional controls if after a valid no
13 further action letter has been issued the department orders additional
14 remediation except that the fund and the Sanitary Landfill Contingency
15 Fund shall not be liable for any additional remediation that is required
16 to remove an institutional control.

17 f. Notwithstanding any other provision of this section, a person,
18 who owns real property acquired on or after the effective date of
19 P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for any
20 cleanup and removal costs or damages, under this section or pursuant
21 to any other statutory or civil common law, to any person, other than
22 the State and the federal government, harmed by any hazardous
23 substance discharged on that property prior to acquisition, and any
24 migration off that property related to that discharge, provided all the
25 conditions of this subsection are met:

26 (1) the person acquired the real property after the discharge of that
27 hazardous substance at the real property;

28 (2) the person did not discharge the hazardous substance, is not in
29 any way responsible for the hazardous substance, and is not a
30 corporate successor to the discharger or to any person in any way
31 responsible for the hazardous substance or to anyone liable for a
32 discharge pursuant to this section;

33 (3) the person gave notice of the discharge to the department upon
34 actual discovery of that discharge;

35 (4) within 30 days after acquisition of the property, the person
36 commenced a remediation of the discharge, including any migration,
37 pursuant to a department oversight document executed prior to
38 acquisition, and the department is satisfied that remediation was
39 completed in a timely and appropriate fashion; and

40 (5) Within ten days after acquisition of the property, or within 30
41 days after the expiration of the period or periods allowed for the right
42 of redemption pursuant to tax foreclosure law, the person agrees in
43 writing to provide access to the State for remediation and related
44 activities, as determined by the State.

45 The provisions of this subsection shall not relieve any person of any
46 liability:

1 (1) for a discharge that occurs at that property after the person
2 acquired the property;

3 (2) for any actions that person negligently takes that aggravates or
4 contributes to the harm inflicted upon any person;

5 (3) if that person fails to maintain the institutional or engineering
6 controls on the property or to otherwise comply with the provisions
7 of a no further action letter or a remedial action workplan and a
8 person is harmed thereby;

9 (4) for any liability to clean up and remove, pursuant to the
10 department's regulations and directions, any hazardous substances that
11 may have been discharged on the property or that may have migrated
12 therefrom; and

13 (5) for that person's failure to comply in the future with laws and
14 regulations.

15 g. Nothing in the amendatory provisions to this section adopted
16 pursuant to P.L.1997, c.278 shall be construed to remove any defense
17 to liability that a person may have had pursuant to subsection e. of this
18 section that existed prior to the effective date of P.L.1997, c.278.

19 h. Nothing in this section shall limit the requirements of any person
20 to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).
21 (cf: P.L.2001, c.154, s.2)

22

23 ²[3.] 2² Section 25 of P.L.1993, c.139 (C.58:10B-3) is amended
24 to read as follows:

25 25. a. The owner or operator of an industrial establishment or any
26 other person required to perform remediation activities pursuant to
27 P.L.1983, c.330 (C.13:1K-6 et al.), or a discharger, a person in any
28 way responsible for a hazardous substance , or a person otherwise
29 liable for cleanup and removal costs pursuant to P.L.1976, c.141
30 (C.58:10-23.11 et seq.) who has been issued a directive or an order by
31 a State agency, who has entered into an administrative consent order
32 with a State agency, or who has been ordered by a court to clean up
33 and remove a hazardous substance or hazardous waste discharge
34 pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), shall establish
35 and maintain a remediation funding source in the amount necessary to
36 pay the estimated cost of the required remediation. A person who
37 voluntarily undertakes a remediation pursuant to a memorandum of
38 agreement with the department, or without the department's oversight,
39 or who performs a remediation in an environmental opportunity zone
40 is not required to establish or maintain a remediation funding source.
41 A person who uses an innovative technology or who, in a timely
42 fashion, implements an unrestricted use remedial action or a limited
43 restricted use remedial action for all or part of a remedial action is not
44 required to establish a remediation funding source for the cost of the
45 remediation involving the innovative technology or permanent remedy.
46 A person required to establish a remediation funding source pursuant

1 to this section shall provide to the department satisfactory
2 documentation that the requirement has been met.

3 The remediation funding source shall be established in an amount
4 equal to or greater than the cost estimate of the implementation of the
5 remediation (1) as approved by the department, (2) as provided in an
6 administrative consent order or remediation agreement as required
7 pursuant to subsection e. of section 4 of P.L.1983, c.330, (3) as stated
8 in a departmental order or directive, or (4) as agreed to by a court, and
9 shall be in effect for a term not less than the actual time necessary to
10 perform the remediation at the site. Whenever the remediation cost
11 estimate increases, the person required to establish the remediation
12 funding source shall cause the amount of the remediation funding
13 source to be increased to an amount at least equal to the new estimate.
14 Whenever the remediation or cost estimate decreases, the person
15 required to obtain the remediation funding source may file a written
16 request to the department to decrease the amount in the remediation
17 funding source. The remediation funding source may be decreased to
18 the amount of the new estimate upon written approval by the
19 department delivered to the person who established the remediation
20 funding source and to the trustee or the person or institution providing
21 the remediation trust, the environmental insurance policy, or the line
22 of credit, as applicable. The department shall approve the request
23 upon a finding that the remediation cost estimate decreased by the
24 requested amount. The department shall review and respond to the
25 request to decrease the remediation funding source within [90] ²[30]
26 45² days of receipt of the request.

27 b. The person responsible for performing the remediation and who
28 established the remediation funding source may use the remediation
29 funding source to pay for the actual cost of the remediation. The
30 department may not require any other financial assurance by the
31 person responsible for performing the remediation other than that
32 required in this section. In the case of a remediation performed
33 pursuant to P.L.1983, c.330, the remediation funding source shall be
34 established no more than 14 days after the approval by the department
35 of a remedial action workplan or upon approval of a remediation
36 agreement pursuant to subsection e. of section 4 of P.L.1983, c.330
37 (C.13:1K-9), unless the department approves an extension. In the case
38 of a remediation performed pursuant to P.L.1976, c.141, the
39 remediation funding source shall be established as provided in an
40 administrative consent order signed by the parties, as provided by a
41 court, or as directed or ordered by the department. The establishment
42 of a remediation funding source for that part of the remediation
43 funding source to be established by a grant or financial assistance from
44 the remediation fund may be established for the purposes of this
45 subsection by the application for a grant or financial assistance from
46 the remediation fund and satisfactory evidence submitted to the

1 department that the grant or financial assistance will be awarded.
2 However, if the financial assistance or grant is denied or the
3 department finds that the person responsible for establishing the
4 remediation funding source did not take reasonable action to obtain
5 the grant or financial assistance, the department shall require that the
6 full amount of the remediation funding source be established within 14
7 days of the denial or finding. The remediation funding source shall be
8 evidenced by the establishment and maintenance of (1) a remediation
9 trust fund, (2) an environmental insurance policy, issued by an entity
10 licensed by the Department of Banking and Insurance to transact
11 business in the State of New Jersey, to fund the remediation, (3) a line
12 of credit from a person or institution satisfactory to the department
13 authorizing the person responsible for performing the remediation to
14 borrow money, or (4) a self-guarantee, or by any combination thereof.
15 Where it can be demonstrated that a person cannot establish and
16 maintain a remediation funding source for the full cost of the
17 remediation by a method specified in this subsection, that person may
18 establish the remediation funding source for all or a portion of the
19 remediation, by securing financial assistance from the Hazardous
20 Discharge Site Remediation Fund as provided in section 29 of
21 P.L.1993, c.139 (C.58:10B-7).

22 c. A remediation trust fund shall be established pursuant to the
23 provisions of this subsection. An originally signed duplicate of the
24 trust agreement shall be delivered to the department by certified mail
25 within 14 days of receipt of notice from the department that the
26 remedial action workplan or remediation agreement as provided in
27 subsection e. of section 4 of P.L.1983, c.330 is approved or as
28 specified in an administrative consent order, civil order, or order of the
29 department, as applicable. The remediation trust fund agreement shall
30 conform to a model trust fund agreement as established by the
31 department and shall be accompanied by a certification of
32 acknowledgment that conforms to a model established by the
33 department. The trustee shall be an entity which has the authority to
34 act as a trustee and whose trust operations are regulated and examined
35 by a federal or New Jersey agency.

36 The trust fund agreement shall provide that the remediation trust
37 fund may not be revoked or terminated by the person required to
38 establish the remediation funding source or by the trustee without the
39 written consent of the department. The trustee shall release to the
40 person required to establish the remediation funding source, or to the
41 department or transferee of the property, as appropriate, only those
42 moneys as the department authorizes, in writing, to be released. The
43 person entitled to receive money from the remediation trust fund shall
44 submit documentation to the department detailing the costs incurred
45 or to be incurred as part of the remediation. Upon a determination by
46 the department that the costs are consistent with the remediation of

1 the site, the department shall, in writing, authorize a disbursement of
2 moneys from the remediation trust fund in the amount of the
3 documented costs.

4 The department shall return the original remediation trust fund
5 agreement to the trustee for termination after the person required to
6 establish the remediation funding source substitutes an alternative
7 remediation funding source as specified in this section or the
8 department notifies the person that that person is no longer required
9 to maintain a remediation funding source for remediation of the
10 contaminated site.

11 d. An environmental insurance policy shall be established pursuant
12 to the provisions of this subsection. An originally signed duplicate of
13 the insurance policy shall be delivered to the department by certified
14 mail, overnight delivery, or personal service within 30 days of receipt
15 of notice from the department that the remedial action workplan or
16 remediation agreement, as provided in subsection e. of section 4 of
17 P.L.1983, c.330, is approved or as specified in an administrative
18 consent order, civil order, or order of the department, as applicable.
19 The environmental insurance policy may not be revoked or terminated
20 without the written consent of the department. The insurance
21 company shall release to the person required to establish the
22 remediation funding source, or to the department or transferee of the
23 property, as appropriate, only those moneys as the department
24 authorizes, in writing, to be released. The person entitled to receive
25 money from the environmental insurance policy shall submit
26 documentation to the department detailing the costs incurred or to be
27 incurred as part of the remediation.

28 e. A line of credit shall be established pursuant to the provisions of
29 this subsection. A line of credit shall allow the person establishing it
30 to borrow money up to a limit established in a written agreement in
31 order to pay for the cost of the remediation for which the line of credit
32 was established. An originally signed duplicate of the line of credit
33 agreement shall be delivered to the department by certified mail,
34 overnight delivery, or personal service within 14 days of receipt of
35 notice from the department that the remedial action workplan or
36 remediation agreement as provided in subsection e. of section 4 of
37 P.L.1983, c.330 is approved, or as specified in an administrative
38 consent order, civil order, or order of the department, as applicable.
39 The line of credit agreement shall conform to a model agreement as
40 established by the department and shall be accompanied by a
41 certification of acknowledgment that conforms to a model established
42 by the department.

43 A line of credit agreement shall provide that the line of credit may
44 not be revoked or terminated by the person required to obtain the
45 remediation funding source or the person or institution providing the
46 line of credit without the written consent of the department. The

1 person or institution providing the line of credit shall release to the
2 person required to establish the remediation funding source, or to the
3 department or transferee of the property as appropriate, only those
4 moneys as the department authorizes, in writing, to be released. The
5 person entitled to draw upon the line of credit shall submit
6 documentation to the department detailing the costs incurred or to be
7 incurred as part of the remediation. Upon a determination that the
8 costs are consistent with the remediation of the site, the department
9 shall, in writing, authorize a disbursement from the line of credit in the
10 amount of the documented costs.

11 The department shall return the original line of credit agreement to
12 the person or institution providing the line of credit for termination
13 after the person required to establish the remediation funding source
14 substitutes an alternative remediation funding source as specified in
15 this section, or after the department notifies the person that that
16 person is no longer required to maintain a remediation funding source
17 for remediation of the contaminated site.

18 f. A person may self-guarantee a remediation funding source upon
19 the submittal of documentation to the department demonstrating that
20 the cost of the remediation as estimated in the remedial action
21 workplan, in the remediation agreement as provided in subsection e.
22 of section 4 of P.L.1983, c.330, in an administrative consent order, or
23 as provided in a departmental or court order, would not exceed
24 one-third of the tangible net worth of the person required to establish
25 the remediation funding source, and that the person has a cash flow
26 sufficient to assure the availability of sufficient moneys for the
27 remediation during the time necessary for the remediation. Satisfactory
28 documentation of a person's capacity to self-guarantee a remediation
29 funding source shall consist **[only]** of a statement of income and
30 expenses or similar statement of that person and the balance sheet or
31 similar statement of assets and liabilities as used by that person for the
32 fiscal year of the person making the application that ended closest in
33 time to the date of the self-guarantee application , or in the case of a
34 special purpose entity established specifically for the purpose of
35 acquiring and redeveloping a contaminated site, and for which a
36 statement of income and expenses is not available, a statement of
37 assets and liabilities ²[attested to.] certified² by a certified public
38 accountant . The self-guarantee application shall be certified as true
39 to the best of the applicant's information, knowledge, and belief, by the
40 chief financial, or similar officer or employee, or general partner, or
41 principal of the person making the self-guarantee application. A
42 person shall be deemed by the department to possess the required cash
43 flow pursuant to this section if that person's gross receipts exceed its
44 gross payments in that fiscal year in an amount at least equal to the
45 estimated costs of completing the remedial action workplan schedule
46 to be performed in the 12-month period following the date on which

1 the application for self-guarantee is made. In the event that a
2 self-guarantee is required for a period of more than one year,
3 applications for a self-guarantee shall be renewed annually pursuant to
4 this subsection for each successive year. The department may
5 establish requirements and reporting obligations to ensure that the
6 person proposing to self-guarantee a remediation funding source meets
7 the criteria for self-guaranteeing prior to the initiation of remedial
8 action and until completion of the remediation.

9 g. (1) If the person required to establish the remediation funding
10 source fails to perform the remediation as required, the department
11 shall make a written determination of this fact. A copy of the
12 determination by the department shall be delivered to the person
13 required to establish the remediation funding source and, in the case
14 of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6
15 et al.), to any transferee of the property. Following this written
16 determination, the department may perform the remediation in place
17 of the person required to establish the remediation funding source. In
18 order to finance the cost of the remediation the department may make
19 disbursements from the remediation trust fund or the line of credit or
20 claims upon the environmental insurance policy, as appropriate, or, if
21 sufficient moneys are not available from those funds, from the
22 remediation guarantee fund created pursuant to section 45 of
23 P.L.1993, c.139 (C.58:10B-20).

24 (2) The transferee of property subject to a remediation conducted
25 pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), may, at any time after
26 the department's determination of nonperformance by the owner or
27 operator required to establish the remediation funding source, petition
28 the department, in writing, with a copy being sent to the owner and
29 operator, for authority to perform the remediation at the industrial
30 establishment. The department, upon a determination that the
31 transferee is competent to do so, may grant that petition which shall
32 authorize the transferee to perform the remediation as specified in an
33 approved remedial action workplan, or to perform the activities as
34 required in a remediation agreement, and to avail itself of the moneys
35 in the remediation trust fund or line of credit or to make claims upon
36 the environmental insurance policy for these purposes. The petition
37 of the transferee shall not be granted by the department if the owner
38 or operator continues or begins to perform its obligations within 14
39 days of the petition being filed with the department.

40 (3) After the department has begun to perform the remediation in
41 the place of the person required to establish the remediation funding
42 source or has granted the petition of the transferee to perform the
43 remediation, the person required to establish the remediation funding
44 source shall not be permitted by the department to continue its
45 performance obligations except upon the agreement of the department
46 or the transferee, as applicable, or except upon a determination by the

1 department that the transferee is not adequately performing the
2 remediation.

3 (cf: P.L.1997, c.278, s.11)

4

5 ²[4.] 3.² Section 3 of P.L.1997, c.278 (C.58:10B-21) is amended
6 to read as follows:

7 3. a. The Department of Environmental Protection shall
8 investigate and determine the extent of contamination of every aquifer
9 in this State. The department shall prioritize its investigations of
10 aquifers giving the highest priority to those aquifers underlying urban
11 or industrial areas that are known or suspected of having large areas
12 of contamination. This information shall be updated periodically as
13 necessary. The information derived from the investigation shall be
14 made available to the public by entering it into the Department of
15 Environmental Protection's existing geographic information system,
16 by making this information available on the system, and by making
17 copies of any maps and data available to the public. The functions
18 required pursuant to this section shall be considered a site remediation
19 obligation of the State. The department may charge a reasonable fee
20 for the reproduction of the maps and data which fee shall reflect the
21 cost of their reproduction.

22 b. Upon completion of an investigation of an aquifer by the
23 department and upon the department's determination of the extent of
24 contamination of an aquifer, a person performing a remediation may
25 rely upon that information for that person's submission of information
26 to the department in the performance of a remediation.

27 c. The entire cost of the investigation required pursuant to this
28 section shall be borne by the department from appropriations made to
29 it by the Legislature specifically for this purpose. The department may
30 not fund any part of this investigation by the imposition of a fee or
31 charge on any person performing a remediation or upon any person
32 who is in need of a permit or approval from the department.

33 d. Nothing in this section shall be construed to require or obligate
34 the department to reclassify the groundwater of any aquifer.

35 e. Any information concerning the contamination of an aquifer that
36 is submitted to the department in digital form by a person performing
37 a remediation, shall be entered into the geographical information
38 system maintained by the department and shall be made available to
39 the public within 90 days of the receipt of the information by the
40 department.

41 (cf: P.L.1997, c.278, s.3)

42

43 ²[5.] 4.² Section 4 of P.L.1997, c.278 (C.58:10B-22) is amended
44 to read as follows:

45 4. a. 【The】 Within 270 days of the effective date of P.L. , c.
46 (C.) (now in the Legislature as this bill), the Department of

1 Environmental Protection shall investigate and map those areas of the
2 State at which large areas of historic fill exist. The department shall
3 prioritize its investigations of historic fill areas giving highest priority
4 to those areas of the State that are known or suspected to contain
5 historic fill. This information shall be updated periodically as
6 necessary. The information derived from the investigation shall be
7 made available to the public by entering it into the Department of
8 Environmental Protection's existing geographic information system,
9 by making this information available on the system, and by making
10 copies of any maps and data available to the public. The functions
11 required pursuant to this section shall be considered a site remediation
12 obligation of the State. The department may charge a reasonable fee
13 for the reproduction of the maps and data which fee shall reflect the
14 cost of their reproduction.

15 b. Upon completion of an investigation of an area of historic fill by
16 the department and upon the department's determination of the
17 location of historic fill in an area, a person performing a remediation
18 may rely upon that information for that person's performance of a
19 remediation and selection of a remedial action pursuant to subsection
20 h. of section 35 of P.L.1993, c.139 (C.58:10B-12).

21 c. The entire cost of investigation required pursuant to this section
22 shall be borne by the department from appropriations made to it by the
23 Legislature specifically for this purpose. The department may not fund
24 any part of this investigation by the imposition of a fee or charge on
25 any person performing a remediation or upon any person who is in
26 need of a permit or approval from the department.

27 (cf: P.L.1997, c.278, s.4)

28

29 ²[6.] 5.² Section 34 of P.L.1997, c.278 (C.58:10B-26) is amended
30 to read as follows:

31 34. As used in sections 34 through 39 of P.L.1997, c.278
32 (C.58:10B-26 through 58:10B-31):

33 "Contamination" or "contaminant" means any discharged hazardous
34 substance as defined pursuant to section 3 of P.L.1976, c.141
35 (C.58:10-23.11b), hazardous waste as defined pursuant to section 1 of
36 P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to
37 section 3 of P.L.1977, c.74 (C.58:10A-3) ²[;] ²

38 "Developer" means any person that enters or proposes to enter into
39 a redevelopment agreement with the State pursuant to the provisions
40 of section 35 of P.L.1997, c.278 (C.58:10B-27).

41 "Director" means the Director of the Division of Taxation in the
42 Department of the Treasury.

43 ² "No further action letter" means a written determination by the
44 Department of Environmental Protection that based upon an
45 evaluation of the historical use of a particular site, or of an area of
46 concern or areas of concern at that site, as applicable, and any other

1 investigation or action the department deems necessary, there are no
2 discharged contaminants present at the site, at the area of concern or
3 areas of concern, at any other site to which a discharge originating at
4 the site has migrated, or that any discharged contaminants present at
5 the site or that have migrated from the site have been remediated in
6 accordance with applicable remediation regulations.²

7 "Project" or "redevelopment project" means a specific work or
8 improvement, including lands, buildings, improvements, real and
9 personal property or any interest therein, including lands under water,
10 riparian rights, space rights and air rights, acquired, owned, developed
11 or redeveloped, constructed, reconstructed, rehabilitated or improved,
12 undertaken by a developer within an area of land whereon a
13 contaminated site is located, under a redevelopment agreement with
14 the State pursuant to section 35 of P.L.1997, c.278 (C.58:10B-27).

15 "Redevelopment agreement" means an agreement between the
16 State and a developer under which the developer agrees to perform
17 any work or undertaking necessary for the remediation of the
18 contaminated site located at the site of the redevelopment project, and
19 for the clearance, development or redevelopment, construction or
20 rehabilitation of any structure or improvement of commercial,
21 industrial or public structures or improvements within an area of land
22 whereon a contaminated site is located pursuant to section 35 of
23 P.L.1997, c.278 (C.58:10B-27), and the State agrees that the
24 developer shall be eligible for the reimbursement of up to ¹[75%]
25 ²[100%¹] 75%² of the costs of remediation of the contaminated site
26 from the fund established pursuant to section 38 of P.L.1997, c.278
27 (C.58:10B-30) as authorized pursuant to section 36 of P.L.1997,
28 c.278 (C.58:10B-28).

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

35 "Remediation costs" means all reasonable costs associated with the
36 remediation of a contaminated site ²[, including the fees paid for
37 department oversight of the remediation,]² except that "remediation
38 costs" shall not include any costs incurred in financing the remediation.
39 (cf: P.L.1997, c.278, s.34)

40
41 ¹[7. Section 35 of P.L.1997, c.278 (C.58:10B-27) is amended to
42 read as follows:

43 35. a. The provisions of any other law, or rule or regulation
44 adopted pursuant thereto, to the contrary notwithstanding, any
45 developer may enter into a redevelopment agreement with the State
46 pursuant to the provisions of this section. The State may not enter

1 into a redevelopment agreement with a developer who is liable,
2 pursuant to paragraph (1) of subsection c. of section 8 of P.L.1976,
3 c.141 (C.58:10-23.11g), for the contamination at the site proposed to
4 be in the redevelopment agreement.

5 The decision whether or not to enter into a redevelopment
6 agreement is solely within the discretion of the [Commissioner of
7 Commerce and Economic Development] Chief Executive Officer and
8 Secretary of the Commerce and Economic Growth Commission and
9 the State Treasurer and both must agree to enter into the
10 redevelopment agreement. Nothing in P.L.1997, c.278 (C.58:10B-1.1
11 et al.) may be construed to compel the [commissioner] Secretary and
12 the State Treasurer to enter into any redevelopment agreement.

13 The [Commissioner of Commerce and Economic Development]
14 Chief Executive Officer and Secretary of the Commerce and Economic
15 Growth Commission, in consultation with the State Treasurer shall
16 negotiate the terms and conditions of any redevelopment agreement on
17 behalf of the State. The redevelopment agreement shall specify the
18 amount of the reimbursement to be awarded the developer, the
19 frequency of payments and the length of time in which that
20 reimbursement shall be granted. In no event shall the amount of the
21 reimbursement, when taken together with the property tax exemption
22 received pursuant to the "Environmental Opportunity Zone Act,"
23 P.L.1995, c.413 (C.54:4-3.151), less any in lieu of tax payments made
24 pursuant to that act, or any other State, local, or federal tax incentive
25 or grant to remediate a site, exceed [75%] 100% of the total cost of
26 the remediation.

27 The [commissioner] Secretary and the State Treasurer may only
28 enter into a redevelopment agreement if they make a finding that the
29 State tax revenues to be realized from the redevelopment project will
30 be in excess of the amount necessary to reimburse the developer. This
31 finding may be made by an estimation based upon the professional
32 judgment of the [commissioner] Secretary and the State Treasurer.

33 [The percentage of each payment to be made to the developer
34 pursuant to the redevelopment agreement shall be conditioned on the
35 occupancy rate of the buildings or other work areas located on the
36 property. The redevelopment agreement shall provide for the
37 payments made in order to reimburse the developer to be in the same
38 percentages as the occupancy rate at the site except that upon the
39 attainment of a 90% occupancy rate, the developer shall be entitled to
40 the entire amount of each payment toward the reimbursement as set
41 forth in the redevelopment agreement. The redevelopment agreement
42 shall provide for the frequency of the director's finding of the
43 occupancy rate during the payment schedule.]

44 b. In deciding whether or not to enter into a redevelopment
45 agreement and in negotiating a redevelopment agreement with a

1 developer, the [commissioner] Secretary shall consider the following
2 factors:

- 3 (1) the economic feasibility of the redevelopment project;
- 4 (2) the extent of economic and related social distress in the
5 municipality and the area to be affected by the redevelopment project;
- 6 (3) the degree to which the redevelopment project will advance
7 State, regional and local development and planning strategies;
- 8 (4) the likelihood that the redevelopment project shall , upon
9 completion , be capable of generating new tax revenue in an amount
10 in excess of the amount necessary to reimburse the developer for the
11 remediation costs incurred as provided in the redevelopment
12 agreement;
- 13 (5) the relationship of the redevelopment project to a
14 comprehensive local development strategy, including other major
15 projects undertaken within the municipality;
- 16 (6) the need of the redevelopment agreement to the viability of the
17 redevelopment project; and
- 18 (7) the degree to which the redevelopment project enhances and
19 promotes job creation and economic development.

20 (cf: P.L.1997, c.278, s.35)]¹

21

22 ¹[8. Section 36 of P.L.1997, c.278 (C.58:10B-28) is amended to
23 read as follows:

24 36. a. The provisions of any other law, or rule or regulation
25 adopted pursuant thereto, to the contrary notwithstanding, any
26 developer that enters into a redevelopment agreement pursuant to
27 section 35 of P.L.1997, c.278 (C.58:10B-27), may be eligible for
28 reimbursement of up to [75%] 100% of the costs of the remediation
29 of the subject real property pursuant to the provisions of this section
30 [upon the commencement of a business operation within a
31 redevelopment project].

32 b. To be eligible for reimbursement of the costs of remediation, a
33 developer shall submit an application, in writing, to the director for
34 review and certification of the reimbursement. The director shall
35 review the request for the reimbursement upon receipt of an
36 application therefor, and shall approve or deny the application for
37 certification on a timely basis. [The director shall also make a finding
38 of the occupancy rate of the property subject to the redevelopment
39 agreement in the frequency set forth in the redevelopment agreement
40 as provided in section 35 of P.L.1997, c.278 (C.58:10B-27).]

41 The director shall certify a developer to be eligible for the
42 reimbursement if the director finds that:

- 43 (1) a place of business is located in the area subject to the
44 redevelopment agreement that has generated new tax revenues;
- 45 (2) the developer had entered into a memorandum of agreement ,
46 or other oversight document, with the Commissioner of Environmental

1 Protection, after the developer entered into the redevelopment
2 agreement, for the remediation of contamination located on the site of
3 the redevelopment project pursuant to section 37 of P.L.1997, c.278
4 (C.58:10B-29) and the developer is in compliance with the
5 memorandum of agreement; and

6 (3) the costs of the remediation were actually and reasonably
7 incurred. In making this finding the director may consult with the
8 Department of Environment Protection.

9 c. When filing an application for certification for a reimbursement
10 pursuant to this section, the developer shall submit to the director a
11 certification of the total remediation costs incurred by the developer
12 for the remediation of the subject property located at the site of the
13 redevelopment project as provided in the redevelopment agreement,
14 information concerning the occupancy rate of the buildings or other
15 work areas located on the property subject to the redevelopment
16 agreement, and such other information as the director deems necessary
17 in order to make the certifications and findings pursuant to this
18 section.

19 (cf: P.L.1997, c.278, s.36)]¹

20

21 ²[¹7.] 6.² Section 35 of P.L.1997, c.278 (C.58:10B-27) is
22 amended to read as follows:

23 35. a. The provisions of any other law, or rule or regulation
24 adopted pursuant thereto, to the contrary notwithstanding, any
25 developer may enter into a redevelopment agreement with the State
26 pursuant to the provisions of this section. The State may not enter
27 into a redevelopment agreement with a developer who is liable,
28 pursuant to paragraph (1) of subsection c. of section 8 of P.L.1976,
29 c.141 (C.58:10-23.11g), for the contamination at the site proposed to
30 be in the redevelopment agreement.

31 The decision whether or not to enter into a redevelopment
32 agreement is solely within the discretion of the [Commissioner of
33 Commerce and Economic Development] Chief Executive Officer and
34 Secretary of the Commerce and Economic Growth Commission and
35 the State Treasurer and both must agree to enter into the
36 redevelopment agreement. Nothing in P.L.1997, c.278 (C.58:10B-1.1
37 et al.) may be construed to compel the [commissioner] Secretary and
38 the State Treasurer to enter into any redevelopment agreement.

39 The [Commissioner of Commerce and Economic Development]
40 Chief Executive Officer and Secretary of the Commerce and Economic
41 Growth Commission, in consultation with the State Treasurer shall
42 negotiate the terms and conditions of any redevelopment agreement on
43 behalf of the State. The redevelopment agreement shall specify the
44 amount of the reimbursement to be awarded the developer, the
45 frequency of payments and the length of time in which that
46 reimbursement shall be granted. In no event shall the amount of the

1 reimbursement, when taken together with the property tax exemption
2 received pursuant to the "Environmental Opportunity Zone Act,"
3 P.L.1995, c.413 (C.54:4-3.151), less any in lieu of tax payments made
4 pursuant to that act, or any other State, local, or federal tax incentive
5 or grant to remediate a site, exceed ~~[75%]~~ ²~~[100%]~~75%² of the total
6 cost of the remediation.

7 The ~~[commissioner]~~ Secretary and the State Treasurer may only
8 enter into a redevelopment agreement if they make a finding that the
9 State tax revenues to be realized from the redevelopment project will
10 be in excess of the amount necessary to reimburse the developer. This
11 finding may be made by an estimation based upon the professional
12 judgment of the ~~[commissioner]~~ Secretary and the State Treasurer.

13 [The percentage of each payment to be made to the developer
14 pursuant to the redevelopment agreement shall be conditioned on the
15 occupancy rate of the residential dwelling units, buildings, or other
16 work areas located on the property. The redevelopment agreement
17 shall provide for the payments made in order to reimburse the
18 developer to be in the same percentages as the occupancy rate at the
19 site except that upon the attainment of a 90% occupancy rate, the
20 developer shall be entitled to the entire amount of each payment
21 toward the reimbursement as set forth in the redevelopment
22 agreement. The redevelopment agreement shall provide for the
23 frequency of the director's finding of the occupancy rate during the
24 payment schedule.] ²The percentage of each payment to be made to
25 the developer pursuant to the redevelopment agreement shall be
26 conditioned on the occupancy rate of the residential dwelling units,
27 buildings, or other work areas located on the property. The
28 redevelopment agreement shall provide for the payments made in order
29 to reimburse the developer to be in the same percentages as the
30 occupancy rate at the site except that upon the attainment of a 90%
31 occupancy rate, the developer shall be entitled to the entire amount of
32 each payment toward the reimbursement as set forth in the
33 redevelopment agreement. If the redevelopment of the property is
34 performed in phases, then the redevelopment agreement shall provide
35 for the payments to reimburse the developer to commence prior to the
36 completion of the redevelopment at the entire site. The redevelopment
37 agreement shall provide that payments to reimburse the developer be
38 in the same percentages as the occupancy rate of that portion of the
39 site for which the developer has received a no further action letter, and
40 on which new residential construction is completed or a place of
41 business is located, that has generated new tax revenues. The
42 redevelopment agreement shall provide for the frequency of the
43 director's finding of the occupancy rate during the payment schedule.
44 If a redevelopment project is completed in phases, where a portion of
45 the property subject to the redevelopment agreement is generating new
46 tax revenues, then the redevelopment agreement shall provide for the

1 frequency of the director's finding of the occupancy rate for each
2 phase of the redevelopment.²

3 b. In deciding whether or not to enter into a redevelopment
4 agreement and in negotiating a redevelopment agreement with a
5 developer, the [commissioner] Secretary shall consider the following
6 factors:

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

8 (2) the extent of economic and related social distress in the
9 municipality and the area to be affected by the redevelopment project;

10 (3) the degree to which the redevelopment project will advance
11 State, regional and local development and planning strategies;

12 (4) the likelihood that the redevelopment project shall, upon
13 completion, be capable of generating new tax revenue in an amount in
14 excess of the amount necessary to reimburse the developer for the
15 remediation costs incurred as provided in the redevelopment
16 agreement;

17 (5) the relationship of the redevelopment project to a
18 comprehensive local development strategy, including other major
19 projects undertaken within the municipality;

20 (6) the need of the redevelopment agreement to the viability of the
21 redevelopment project; and

22 (7) the degree to which the redevelopment project enhances and
23 promotes job creation and economic development.¹

24 (cf: P.L.2002, c.87, s.1)

25

26 ²[^{18.}] 7.² Section 36 of P.L.1997, c.278 (C.58:10B-28) is
27 amended to read as follows:

28 36. a. The provisions of any other law, or rule or regulation
29 adopted pursuant thereto, to the contrary notwithstanding, any
30 developer that enters into a redevelopment agreement pursuant to
31 section 35 of P.L.1997, c.278 (C.58:10B-27), may be eligible for
32 reimbursement of up to [75%] ²[100%] 75%² of the costs of the
33 remediation of the subject real property pursuant to the provisions of
34 this section [upon the commencement of a business operation, or the
35 completion of the construction of one or more new residences, within
36 a redevelopment project] ²upon the commencement of a business
37 operation, or the completion of the construction of one or more new
38 residences, within a redevelopment project².

39 b. To be eligible for reimbursement of the costs of remediation, a
40 developer shall submit an application, in writing, to the director for
41 review and certification of the reimbursement. The director shall
42 review the request for the reimbursement upon receipt of an
43 application therefor, and shall approve or deny the application for
44 certification on a timely basis. [The director shall also make a finding
45 of the occupancy rate of the property subject to the redevelopment
46 agreement in the frequency set forth in the redevelopment agreement

1 as provided in section 35 of P.L.1997, c.278 (C.58:10B-27).] ²The
2 director shall also make a finding of the occupancy rate of the property
3 subject to the redevelopment agreement in the frequency set forth in
4 the redevelopment agreement as provided in section 35 of P.L.1997,
5 c.278 (C.58:10B-27).²

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

8 (1) residential construction is complete, or a place of business is
9 located, in the area subject to the redevelopment agreement that has
10 generated new tax revenues;

11 (2) the developer had entered into a memorandum of agreement ,
12 or other oversight document, with the Commissioner of Environmental
13 Protection, after the developer entered into the redevelopment
14 agreement, for the remediation of contamination located on the site of
15 the redevelopment project pursuant to section 37 of P.L.1997, c.278
16 (C.58:10B-29) and the developer is in compliance with the
17 memorandum of agreement; and

18 (3) the costs of the remediation were actually and reasonably
19 incurred. In making this finding the director may consult with the
20 Department of Environment Protection.

21 c. When filing an application for certification for a reimbursement
22 pursuant to this section, the developer shall submit to the director a
23 certification of the total remediation costs incurred by the developer
24 for the remediation of the subject property located at the site of the
25 redevelopment project as provided in the redevelopment agreement,
26 information concerning the occupancy rate of the buildings or other
27 work areas located on the property subject to the redevelopment
28 agreement, and such other information as the director deems necessary
29 in order to make the certifications and findings pursuant to this
30 section.¹

31 (cf: P.L.2002, c.87, s.2)

32

33 ²[9.] 8.² Section 37 of P.L.1997, c.278 (C.58:10B-29) is amended
34 to read as follows:

35 37. a. To qualify for the certification of reimbursement of the
36 remediation costs authorized pursuant to section 36 of P.L.1997,
37 c.278 (C.58:10B-28), a developer shall enter into a memorandum of
38 agreement , or other oversight document with the Commissioner of
39 Environmental Protection for the remediation of the site of the
40 redevelopment project.

41 b. Under the memorandum of agreement, , or other oversight
42 document, the developer shall agree to perform and complete any
43 remediation activity as may be required by the Department of
44 Environmental Protection to ensure the remediation is conducted
45 pursuant to the regulations adopted by the Department of
46 Environmental Protection pursuant to P.L.1993, c.139 (C.58:10B-1 et

1 seq.).

2 c. After the developer has entered into a memorandum of
3 agreement , or other oversight document with the Commissioner of
4 Environmental Protection, the commissioner shall submit a copy
5 thereof to the developer, the clerk of the municipality in which the
6 subject property is located, the [Commissioner of the Department of
7 Commerce and Economic Development] Chief Executive Officer and
8 Secretary of the Commerce and Economic Growth Commission , and
9 the director.

10 (cf: P.L.1997, c.278, s.37)

11

12 ¹[10. Section 38 of P.L.1997, c.278 (C.58:10B-30) is amended to
13 read as follows:

14 38. a. There is created in the Department of Treasury a special
15 fund to be known as the Brownfield Site Reimbursement Fund.
16 Moneys in the fund shall be dedicated to the purpose of reimbursing
17 a developer who enters into a redevelopment agreement pursuant to
18 section 35 of P.L.1997, c.278 (C.58:10B-27) and is certified for
19 reimbursement pursuant to section 36 of P.L.1997, c.278
20 (C.58:10B-28). A special account within the fund shall be created for
21 each developer upon approval of a certification pursuant to section 36
22 of P.L.1997, c.278 (C.58:10B-28). The Legislature shall annually
23 appropriate the entire balance of the fund for the purposes of
24 reimbursement of remediation costs as provided in section 39 of
25 P.L.1997, c.278 (C.58:10B-31).

26 b. The fund shall be credited with an amount from the General
27 Fund, determined sufficient by the [Commissioner of Commerce and
28 Economic Development] Chief Executive Officer and Secretary of the
29 Commerce and Economic Growth Commission, to provide the
30 negotiated reimbursement to the developer. Moneys credited to the
31 fund shall be an amount that equals the percent of the remediation
32 costs expected to be reimbursed pursuant to the redevelopment
33 agreement. In estimating the amount of new State taxes that is
34 anticipated to be derived from a redevelopment project pursuant to
35 section 35 of P.L.1997, c.278 (C.58:10B-27), the [Commissioner of
36 Commerce and Economic Development] Chief Executive Officer and
37 Secretary of the Commerce and Economic Growth Commission and
38 the State Treasurer shall consider taxes from the following: the
39 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
40 et seq.), "The Savings Institution Tax Act," P.L.1973, c.31
41 (C.54:10D-1 et seq.), the tax imposed on marine insurance companies
42 pursuant to R.S.54:16-1 et seq., the tax imposed on fire insurance
43 companies pursuant to R.S.54:17-4 et al., the tax imposed on insurers
44 generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), the
45 public utility franchise tax, public utilities gross receipts tax and public
46 utility excise tax imposed pursuant to P.L.1940, c.4, and P.L.1940, c.5

1 (C.54:30A-16 et seq. and C.54:30A-49 et seq.), [that is a taxpayer in
2 respect of] the tax derived from net profits from business, a
3 distributive share of partnership income, or a prorata share of S
4 corporation income under the "New Jersey Gross Income Tax Act,"
5 N.J.S.54A:1-1 et seq., [or who] the tax derived from a business at
6 the site of a redevelopment project that is required to collect the tax
7 pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1
8 et seq.). The Chief Executive Officer and Secretary of the Commerce
9 and Economic Growth Commission and the State Treasurer shall also
10 consider amounts equivalent to the tax revenue generated by persons
11 engaged in remediation activities at the site, or by persons engaged in
12 redevelopment activities at the site pursuant to the "New Jersey Gross
13 Income Tax Act," N.J.S.54A:1-1 et seq., and taxes generated by
14 persons engaged in remediation activities at the site, or by persons
15 engaged in redevelopment activities at the site pursuant to the "Sales
16 and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).
17 (cf: P.L.1997, c.278, s.38)]¹

18

19 ²[¹10.] 9.² Section 38 of P.L.1997, c.278 (C.58:10B-30) is
20 amended to read as follows:

21 38. a. There is created in the Department of the Treasury a special
22 fund to be known as the Brownfield Site Reimbursement Fund.
23 Moneys in the fund shall be dedicated to the purpose of reimbursing
24 a developer who enters into a redevelopment agreement pursuant to
25 section 35 of P.L.1997, c.278 (C.58:10B-27) and is certified for
26 reimbursement pursuant to section 36 of P.L.1997, c.278
27 (C.58:10B-28). A special account within the fund shall be created for
28 each developer upon approval of a certification pursuant to section 36
29 of P.L.1997, c.278 (C.58:10B-28). The Legislature shall annually
30 appropriate the entire balance of the fund for the purposes of
31 reimbursement of remediation costs as provided in section 39 of
32 P.L.1997, c.278 (C.58:10B-31).

33 b. The fund shall be credited with an amount from the General
34 Fund, determined sufficient by the [Commissioner of Commerce and
35 Economic Development] Chief Executive Officer and Secretary of the
36 Commerce and Economic Growth Commission , to provide the
37 negotiated reimbursement to the developer. Moneys credited to the
38 fund shall be an amount that equals the percent of the remediation
39 costs expected to be reimbursed pursuant to the redevelopment
40 agreement. In estimating the amount of new State taxes that is
41 anticipated to be derived from a redevelopment project pursuant to
42 section 35 of P.L.1997, c.278 (C.58:10B-27), the [Commissioner of
43 Commerce and Economic Development] Chief Executive Officer and
44 Secretary of the Commerce and Economic Growth Commission and
45 the State Treasurer shall consider taxes from the following: the

1 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
2 et seq.), "The Savings Institution Tax Act," P.L.1973, c.31
3 (C.54:10D-1 et seq.), the tax imposed on marine insurance companies
4 pursuant to R.S.54:16-1 et seq., the tax imposed on fire insurance
5 companies pursuant to R.S.54:17-4 et al., the tax imposed on insurers
6 generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), the
7 public utility franchise tax, public utilities gross receipts tax and public
8 utility excise tax imposed pursuant to P.L.1940, c.4, and P.L.1940, c.5
9 (C.54:30A-16 et seq. and C.54:30A-49 et seq.), the tax derived from
10 net profits from business, a distributive share of partnership income,
11 or a prorata share of S corporation income under the "New Jersey
12 Gross Income Tax Act," N.J.S.54A:1-1 et seq., the tax derived from
13 a business at the site of a redevelopment project that is required to
14 collect the tax pursuant to the "Sales and Use Tax Act," P.L.1966,
15 c.30 (C.54:32B-1 et seq.), the tax imposed pursuant to P.L.1966, c.30
16 (C.54:32B-1 et seq.) from the purchase of materials used for ² the
17 remediation, the construction of new structures, or² the construction
18 of new residences at the site of a redevelopment project, or the portion
19 of the fee imposed pursuant to section 3 of P.L.1968, c.49 (C.46:15-7)
20 derived from the sale of real property at the site of the redevelopment
21 project and paid to the State Treasurer for use by the State, that is not
22 credited to the "Shore Protection Fund" or the "Neighborhood
23 Preservation Nonlapsing Revolving Fund" pursuant to section 4 of
24 P.L.1968, c.49 (C.46:15-8). ²[The Chief Executive Officer and
25 Secretary of the Commerce and Economic Growth Commission and
26 the State Treasurer shall also consider amounts equivalent to the tax
27 revenue generated by persons engaged in remediation activities at the
28 site, or by persons engaged in redevelopment activities at the site
29 pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1
30 et seq., and taxes generated by persons engaged in remediation
31 activities at the site, or by persons engaged in redevelopment activities
32 at the site pursuant to the "Sales and Use Tax Act," P.L.1966, c.30
33 (C.54:32B-1 et seq.).¹² ³For the purpose of computing the sales and
34 use tax on the purchase of materials used for the remediation, the
35 construction of new structures, or the construction of new residences
36 at the site of a redevelopment project, it shall be presumed by the
37 Director of the Division of Taxation, in lieu of an exact accounting
38 from the developer, suppliers, contractors, subcontractors and other
39 parties connected with the project, that the tax equals one percent of
40 the developer's contract price for remediation and improvements or
41 such other percentage, not to exceed three percent, that may be agreed
42 to by the director upon the presentation of clear and convincing
43 evidence that the tax on materials is greater than one percent of the
44 contract price for the remediation and improvements. ³
45 (cf: P.L.2002, c.87, s.3)
46

1 ²[11.] 10.² This act shall take effect immediately.

2

3

4

5

6 _____

6 Makes changes in the law concerning the cleanup of hazardous

7 substances.

ASSEMBLY, No. 2585

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED JUNE 24, 2002

Sponsored by:
Assemblyman REED GUSCIORA
District 15 (Mercer)

SYNOPSIS

Makes changes in the law concerning the cleanup of hazardous substances.

CURRENT VERSION OF TEXT

As introduced.



A2585 GUSCIORA

2

1 AN ACT concerning hazardous discharge site cleanup, and amending
2 and supplementing Title 58 of the Revised Statutes.

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

6
7 1. (New section) The New Jersey Economic Development
8 Authority may enter into a loan agreement with a developer who has
9 entered into a redevelopment agreement with the State pursuant to
10 section 35 of P.L.1997, c.278 (C.58:10B-27), to provide a loan for the
11 costs of the remediation at the site of the redevelopment project. In
12 making a finding of an applicant's ability to repay a loan, the authority
13 may consider the reimbursements authorized to be made to the
14 developer, pursuant to section 39 of P.L.1997, c.278 (C.58:10B-31)
15 from the "Brownfield Site Reimbursement Fund," created pursuant to
16 section 38 of P.L.1997, c.278 (C.58:10B-30).

17
18 2. Section 8 of P.L.1976, c.141 (C.58:10-23.11g) is amended to
19 read as follows:

20 8. a. The fund shall be strictly liable, without regard to fault, for
21 all cleanup and removal costs and for all direct and indirect damages
22 no matter by whom sustained, including but not limited to:

23 (1) The cost of restoring, repairing, or replacing any real or
24 personal property damaged or destroyed by a discharge, any income
25 lost from the time such property is damaged to the time such property
26 is restored, repaired or replaced, and any reduction in value of such
27 property caused by such discharge by comparison with its value prior
28 thereto;

29 (2) The cost of restoration and replacement, where possible, of any
30 natural resource damaged or destroyed by a discharge;

31 (3) Loss of income or impairment of earning capacity due to
32 damage to real or personal property, including natural resources
33 destroyed or damaged by a discharge; provided that such loss or
34 impairment exceeds 10% of the amount which claimant derives, based
35 upon income or business records, exclusive of other sources of
36 income, from activities related to the particular real or personal
37 property or natural resources damaged or destroyed by such discharge
38 during the week, month or year for which the claim is filed;

39 (4) Loss of tax revenue by the State or local governments for a
40 period of one year due to damage to real or personal property
41 proximately resulting from a discharge;

42 (5) Interest on loans obtained or other obligations incurred by a
43 claimant for the purpose of ameliorating the adverse effects of a

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 discharge pending the payment of a claim in full as provided by this
2 act.

3 b. The damages which may be recovered by the fund, without
4 regard to fault, subject to the defenses enumerated in subsection d. of
5 this section against the owner or operator of a major facility or vessel,
6 shall not exceed \$50,000,000.00 for each major facility or \$150.00 per
7 gross ton for each vessel, except that such maximum limitation shall
8 not apply and the owner or operator shall be liable, jointly and
9 severally, for the full amount of such damages if it can be shown that
10 such discharge was the result of (1) gross negligence or willful
11 misconduct, within the knowledge and privity of the owner, operator
12 or person in charge, or (2) a gross or willful violation of applicable
13 safety, construction or operating standards or regulations. Damages
14 which may be recovered from, or by, any other person shall be limited
15 to those authorized by common or statutory law.

16 c. (1) Any person who has discharged a hazardous substance, or
17 is in any way responsible for any hazardous substance, shall be strictly
18 liable, jointly and severally, without regard to fault, for all cleanup and
19 removal costs no matter by whom incurred. Such person shall also be
20 strictly liable, jointly and severally, without regard to fault, for all
21 cleanup and removal costs incurred by the department or a local unit
22 pursuant to subsection b. of section 7 of P.L.1976, c.141
23 (C.58:10-23.11f).

24 (2) In addition to the persons liable pursuant to this subsection, in
25 the case of a discharge of a hazardous substance from a vessel into the
26 waters of the State, the owner or operator of a refinery, storage,
27 transfer, or pipeline facility to which the vessel was en route to deliver
28 the hazardous substance who, by contract, agreement, or otherwise,
29 was scheduled to assume ownership of the discharged hazardous
30 substance, and any other person who was so scheduled to assume
31 ownership of the discharged hazardous substance, shall be strictly
32 liable, jointly and severally, without regard to fault, for all cleanup and
33 removal costs if the owner or operator of the vessel did not have the
34 evidence of financial responsibility required pursuant to section 2 of
35 P.L.1991, c.58 (C.58:10-23.11g2).

36 Where a person is liable for cleanup and removal costs as provided
37 in this paragraph, any expenditures made by the administrator for that
38 cleanup and removal shall constitute a debt of that person to the fund.
39 The debt shall constitute a lien on all property owned by that person
40 when a notice of lien identifying the nature of the discharge and the
41 amount of the cleanup, removal and related costs expended from the
42 fund is duly filed with the clerk of the Superior Court. The clerk shall
43 promptly enter upon the civil judgment or order docket the name and
44 address of the liable person and the amount of the lien as set forth in
45 the notice of lien. Upon entry by the clerk, the lien, to the amount
46 committed by the administrator for cleanup and removal, shall attach

1 to the revenues and all real and personal property of the liable person,
2 whether or not that person is insolvent.

3 For the purpose of determining priority of this lien over all other
4 claims or liens which are or have been filed against the property of an
5 owner or operator of a refinery, storage, transfer, or pipeline facility,
6 the lien on the facility to which the discharged hazardous substance
7 was en route shall have priority over all other claims or liens which are
8 or have been filed against the property. The notice of lien filed
9 pursuant to this paragraph which affects any property of a person
10 liable pursuant to this paragraph other than the property of an owner
11 or operator of a refinery, storage, transfer, or pipeline facility to which
12 the discharged hazardous substance was en route, shall have priority
13 from the day of the filing of the notice of the lien over all claims and
14 liens filed against the property, but shall not affect any valid lien, right,
15 or interest in the property filed in accordance with established
16 procedure prior to the filing of a notice of lien pursuant to this
17 paragraph.

18 To the extent that a person liable pursuant to this paragraph is not
19 otherwise liable pursuant to paragraph (1) of this subsection, or under
20 any other provision of law or under common law, that person may
21 bring an action for indemnification for costs paid pursuant to this
22 paragraph against any other person who is strictly liable pursuant to
23 paragraph (1) of this subsection.

24 Nothing in this paragraph shall be construed to extend or negate the
25 right of any person to bring an action for contribution that may exist
26 under P.L.1976, c.141, or any other act or under common law.

27 (3) In addition to the persons liable pursuant to this subsection, any
28 person who owns real property acquired on or after September 14,
29 1993 on which there has been a discharge prior to the person's
30 acquisition of that property and who knew or should have known that
31 a hazardous substance had been discharged at the real property, shall
32 be strictly liable, jointly and severally, without regard to fault, for all
33 cleanup and removal costs no matter by whom incurred. Such person
34 shall also be strictly liable, jointly and severally, without regard to
35 fault, for all cleanup and removal costs incurred by the department or
36 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141
37 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter
38 liability of any person who acquired real property prior to September
39 14, 1993.

40 d. (1) In addition to those defenses provided in this subsection, an
41 act or omission caused solely by war, sabotage, or God, or a
42 combination thereof, shall be the only defenses which may be raised by
43 any owner or operator of a major facility or vessel responsible for a
44 discharge in any action arising under the provisions of this act.

45 (2) A person, including an owner or operator of a major facility,
46 who owns real property acquired on or after September 14, 1993 on

1 which there has been a discharge, shall not be liable for cleanup and
2 removal costs or for any other damages to the State or to any other
3 person for the discharged hazardous substance pursuant to subsection
4 c. of this section or pursuant to civil common law, if that person can
5 establish by a preponderance of the evidence that subparagraphs (a)
6 through (d) apply, or if applicable, subparagraphs (a) through (e)
7 apply:

8 (a) the person acquired the real property after the discharge of that
9 hazardous substance at the real property;

10 (b) (i) at the time the person acquired the real property, the person
11 did not know and had no reason to know that any hazardous substance
12 had been discharged at the real property, or (ii) the person acquired
13 the real property by devise or succession, except that any other funds
14 or property received by that person from the deceased real property
15 owner who discharged a hazardous substance or was in any way
16 responsible for a hazardous substance, shall be made available to
17 satisfy the requirements of P.L.1976, c.141, or (iii) the person
18 complies with the provisions of subparagraph (e) of paragraph (2) of
19 this subsection;

20 (c) the person did not discharge the hazardous substance, is not in
21 any way responsible for the hazardous substance, and is not a
22 corporate successor to the discharger or to any person in any way
23 responsible for the hazardous substance or to anyone liable for cleanup
24 and removal costs pursuant to this section;

25 (d) the person gave notice of the discharge to the department upon
26 actual discovery of that discharge.

27 To establish that a person had no reason to know that any
28 hazardous substance had been discharged for the purposes of this
29 paragraph (2), the person must have undertaken, at the time of
30 acquisition, all appropriate inquiry into the previous ownership and
31 uses of the property. For the purposes of this paragraph (2), all
32 appropriate inquiry shall mean the performance of a preliminary
33 assessment, and site investigation, if the preliminary assessment
34 indicates that a site investigation is necessary, as defined in section 23
35 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance with
36 rules and regulations promulgated by the department defining these
37 terms.

38 Nothing in this paragraph (2) shall be construed to alter liability of
39 any person who acquired real property prior to September 14, 1993;
40 and

41 (e) For the purposes of this subparagraph the person must have (i)
42 acquired the property subsequent to a hazardous substance being
43 discharged on the site and which discharge was discovered at the time
44 of acquisition as a result of the appropriate inquiry, as defined in this
45 paragraph (2), (ii) performed, following the effective date of P.L.1997,
46 c.278, a remediation of the site or discharge consistent with the

1 provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied
2 upon a valid no further action letter from the department for a
3 remediation performed prior to acquisition, or obtained approval of a
4 remedial action workplan by the department after the effective date of
5 P.L.1997, c.278 and continued to comply with the conditions of that
6 workplan, and (iii) established and maintained all engineering and
7 institutional controls as may be required pursuant to sections 35 and
8 36 of P.L.1993, c.139. A person who complies with the provisions of
9 this subparagraph by actually performing a remediation of the site or
10 discharge as set forth in (ii) above shall be issued, upon application, a
11 no further action letter by the department. A person who complies
12 with the provisions of this subparagraph either by receipt of a no
13 further action letter from the department following the effective date
14 of P.L.1997, c.278, or by relying on a previously issued no further
15 action letter shall not be liable for any further remediation including
16 any changes in a remediation standard or for the subsequent discovery
17 of a hazardous substance, at the site, or emanating from the site, if the
18 remediation was for the entire site, and the hazardous substance was
19 discharged prior to the person acquiring the property.
20 Notwithstanding any other provisions of this subparagraph, a person
21 who complies with the provisions of this subparagraph only by virtue
22 of the existence of a previously issued no further action letter shall
23 receive no liability protections for any discharge which occurred
24 during the time period between the issuance of the no further action
25 letter and the property acquisition. Compliance with the provisions of
26 this subparagraph (e) shall not relieve any person of any liability for a
27 discharge that is off the site of the property covered by the no further
28 action letter, for a discharge that occurs at that property after the
29 person acquires the property, for any actions that person negligently
30 takes that aggravates or contributes to a discharge of a hazardous
31 substance, for failure to comply in the future with laws and
32 regulations, or if that person fails to maintain the institutional or
33 engineering controls on the property or to otherwise comply with the
34 provisions of the no further action letter.

35 (3) Notwithstanding the provisions of paragraph (2) of this
36 subsection to the contrary, if a person who owns real property obtains
37 actual knowledge of a discharge of a hazardous substance at the real
38 property during the period of that person's ownership and
39 subsequently transfers ownership of the property to another person
40 without disclosing that knowledge, the transferor shall be strictly liable
41 for the cleanup and removal costs of the discharge and no defense
42 under this subsection shall be available to that person.

43 (4) Any federal, State, or local governmental entity which acquires
44 ownership of real property through bankruptcy, tax delinquency,
45 abandonment, escheat, eminent domain, condemnation or any
46 circumstance in which the governmental entity involuntarily acquires

1 title by virtue of its function as sovereign, or where the governmental
2 entity acquires the property by any means for the purpose of
3 promoting the redevelopment of that property, shall not be liable,
4 pursuant to subsection c. of this section or pursuant to common law,
5 to the State or to any other person for any discharge which occurred
6 or began prior to that ownership. This paragraph shall not provide any
7 liability protection to any federal, State or local governmental entity
8 which has caused or contributed to the discharge of a hazardous
9 substance. This paragraph shall not provide any liability protection to
10 any federal, State, or local government entity that acquires ownership
11 of real property by condemnation or eminent domain where the real
12 property is being remediated in a timely manner at the time of the
13 condemnation or eminent domain action.

14 (5) A person, including an owner or operator of a major facility,
15 who owns real property acquired prior to September 14, 1993 on
16 which there has been a discharge, shall not be liable for cleanup and
17 removal costs or for any other damages to the State or to any other
18 person for the discharged hazardous substance pursuant to subsection
19 c. of this section or pursuant to civil common law, if that person can
20 establish by a preponderance of the evidence that subparagraphs (a)
21 through (d) apply:

22 (a) the person acquired the real property after the discharge of that
23 hazardous substance at the real property;

24 (b) (i) at the time the person acquired the real property, the person
25 did not know and had no reason to know that any hazardous substance
26 had been discharged at the real property, or (ii) the person acquired
27 the real property by devise or succession, except that any other funds
28 or property received by that person from the deceased real property
29 owner who discharged a hazardous substance or was in any way
30 responsible for a hazardous substance, shall be made available to
31 satisfy the requirements of P.L.1976, c.141;

32 (c) the person did not discharge the hazardous substance, is not in
33 any way responsible for the hazardous substance, and is not a
34 corporate successor to the discharger or to any person in any way
35 responsible for the hazardous substance or to anyone liable for cleanup
36 and removal costs pursuant to this section;

37 (d) the person gave notice of the discharge to the department upon
38 actual discovery of that discharge.

39 To establish that a person had no reason to know that any
40 hazardous substance had been discharged for the purposes of this
41 paragraph (5), the person must have undertaken, at the time of
42 acquisition, all appropriate inquiry on the previous ownership and uses
43 of the property based upon generally accepted good and customary
44 standards.

45 Nothing in this paragraph (5) shall be construed to alter liability of
46 any person who acquired real property on or after September 14,

1 1993.

2 e. Neither the fund nor the Sanitary Landfill Contingency Fund
3 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall be
4 liable for any damages incurred by any person who is relieved from
5 liability pursuant to subsection d. or f. of this section for a remediation
6 that involves the use of engineering controls but the fund and the
7 Sanitary Landfill Contingency Fund shall be liable for any remediation
8 that involves only the use of institutional controls if after a valid no
9 further action letter has been issued the department orders additional
10 remediation except that the fund and the Sanitary Landfill Contingency
11 Fund shall not be liable for any additional remediation that is required
12 to remove an institutional control.

13 f. Notwithstanding any other provision of this section, a person,
14 who owns real property acquired on or after the effective date of
15 P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for any
16 cleanup and removal costs or damages, under this section or pursuant
17 to any other statutory or civil common law, to any person, other than
18 the State and the federal government, harmed by any hazardous
19 substance discharged on that property prior to acquisition, and any
20 migration off that property related to that discharge, provided all the
21 conditions of this subsection are met:

22 (1) the person acquired the real property after the discharge of that
23 hazardous substance at the real property;

24 (2) the person did not discharge the hazardous substance, is not in
25 any way responsible for the hazardous substance, and is not a
26 corporate successor to the discharger or to any person in any way
27 responsible for the hazardous substance or to anyone liable for a
28 discharge pursuant to this section;

29 (3) the person gave notice of the discharge to the department upon
30 actual discovery of that discharge;

31 (4) within 30 days after acquisition of the property, the person
32 commenced a remediation of the discharge, including any migration,
33 pursuant to a department oversight document executed prior to
34 acquisition, and the department is satisfied that remediation was
35 completed in a timely and appropriate fashion; and

36 (5) Within ten days after acquisition of the property, or within 30
37 days after the expiration of the period or periods allowed for the right
38 of redemption pursuant to tax foreclosure law, the person agrees in
39 writing to provide access to the State for remediation and related
40 activities, as determined by the State.

41 The provisions of this subsection shall not relieve any person of any
42 liability:

43 (1) for a discharge that occurs at that property after the person
44 acquired the property;

45 (2) for any actions that person negligently takes that aggravates or
46 contributes to the harm inflicted upon any person;

1 (3) if that person fails to maintain the institutional or engineering
2 controls on the property or to otherwise comply with the provisions
3 of a no further action letter or a remedial action workplan and a
4 person is harmed thereby;

5 (4) for any liability to clean up and remove, pursuant to the
6 department's regulations and directions, any hazardous substances that
7 may have been discharged on the property or that may have migrated
8 therefrom; and

9 (5) for that person's failure to comply in the future with laws and
10 regulations.

11 g. Nothing in the amendatory provisions to this section adopted
12 pursuant to P.L.1997, c.278 shall be construed to remove any defense
13 to liability that a person may have had pursuant to subsection e. of this
14 section that existed prior to the effective date of P.L.1997, c.278.

15 h. Nothing in this section shall limit the requirements of any person
16 to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).

17 (cf: P.L.2001, c.154, s.2)

18
19 3. Section 25 of P.L.1993, c.139 (C.58:10B-3) is amended to read
20 as follows:

21 25. a. The owner or operator of an industrial establishment or any
22 other person required to perform remediation activities pursuant to
23 P.L.1983, c.330 (C.13:1K-6 et al.), or a discharger, a person in any
24 way responsible for a hazardous substance , or a person otherwise
25 liable for cleanup and removal costs pursuant to P.L.1976, c.141
26 (C.58:10-23.11 et seq.) who has been issued a directive or an order by
27 a State agency, who has entered into an administrative consent order
28 with a State agency, or who has been ordered by a court to clean up
29 and remove a hazardous substance or hazardous waste discharge
30 pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), shall establish
31 and maintain a remediation funding source in the amount necessary to
32 pay the estimated cost of the required remediation. A person who
33 voluntarily undertakes a remediation pursuant to a memorandum of
34 agreement with the department, or without the department's oversight,
35 or who performs a remediation in an environmental opportunity zone
36 is not required to establish or maintain a remediation funding source.
37 A person who uses an innovative technology or who, in a timely
38 fashion, implements an unrestricted use remedial action or a limited
39 restricted use remedial action for all or part of a remedial action is not
40 required to establish a remediation funding source for the cost of the
41 remediation involving the innovative technology or permanent remedy.
42 A person required to establish a remediation funding source pursuant
43 to this section shall provide to the department satisfactory
44 documentation that the requirement has been met.

45 The remediation funding source shall be established in an amount
46 equal to or greater than the cost estimate of the implementation of the

1 remediation (1) as approved by the department, (2) as provided in an
2 administrative consent order or remediation agreement as required
3 pursuant to subsection e. of section 4 of P.L.1983, c.330, (3) as stated
4 in a departmental order or directive, or (4) as agreed to by a court, and
5 shall be in effect for a term not less than the actual time necessary to
6 perform the remediation at the site. Whenever the remediation cost
7 estimate increases, the person required to establish the remediation
8 funding source shall cause the amount of the remediation funding
9 source to be increased to an amount at least equal to the new estimate.
10 Whenever the remediation or cost estimate decreases, the person
11 required to obtain the remediation funding source may file a written
12 request to the department to decrease the amount in the remediation
13 funding source. The remediation funding source may be decreased to
14 the amount of the new estimate upon written approval by the
15 department delivered to the person who established the remediation
16 funding source and to the trustee or the person or institution providing
17 the remediation trust, the environmental insurance policy, or the line
18 of credit, as applicable. The department shall approve the request
19 upon a finding that the remediation cost estimate decreased by the
20 requested amount. The department shall review and respond to the
21 request to decrease the remediation funding source within ~~[90]~~ 30
22 days of receipt of the request.

23 b. The person responsible for performing the remediation and who
24 established the remediation funding source may use the remediation
25 funding source to pay for the actual cost of the remediation. The
26 department may not require any other financial assurance by the
27 person responsible for performing the remediation other than that
28 required in this section. In the case of a remediation performed
29 pursuant to P.L.1983, c.330, the remediation funding source shall be
30 established no more than 14 days after the approval by the department
31 of a remedial action workplan or upon approval of a remediation
32 agreement pursuant to subsection e. of section 4 of P.L.1983, c.330
33 (C.13:1K-9), unless the department approves an extension. In the case
34 of a remediation performed pursuant to P.L.1976, c.141, the
35 remediation funding source shall be established as provided in an
36 administrative consent order signed by the parties, as provided by a
37 court, or as directed or ordered by the department. The establishment
38 of a remediation funding source for that part of the remediation
39 funding source to be established by a grant or financial assistance from
40 the remediation fund may be established for the purposes of this
41 subsection by the application for a grant or financial assistance from
42 the remediation fund and satisfactory evidence submitted to the
43 department that the grant or financial assistance will be awarded.
44 However, if the financial assistance or grant is denied or the
45 department finds that the person responsible for establishing the
46 remediation funding source did not take reasonable action to obtain

1 the grant or financial assistance, the department shall require that the
2 full amount of the remediation funding source be established within 14
3 days of the denial or finding. The remediation funding source shall be
4 evidenced by the establishment and maintenance of (1) a remediation
5 trust fund, (2) an environmental insurance policy, issued by an entity
6 licensed by the Department of Banking and Insurance to transact
7 business in the State of New Jersey, to fund the remediation, (3) a line
8 of credit from a person or institution satisfactory to the department
9 authorizing the person responsible for performing the remediation to
10 borrow money, or (4) a self-guarantee, or by any combination thereof.
11 Where it can be demonstrated that a person cannot establish and
12 maintain a remediation funding source for the full cost of the
13 remediation by a method specified in this subsection, that person may
14 establish the remediation funding source for all or a portion of the
15 remediation, by securing financial assistance from the Hazardous
16 Discharge Site Remediation Fund as provided in section 29 of
17 P.L.1993, c.139 (C.58:10B-7).

18 c. A remediation trust fund shall be established pursuant to the
19 provisions of this subsection. An originally signed duplicate of the
20 trust agreement shall be delivered to the department by certified mail
21 within 14 days of receipt of notice from the department that the
22 remedial action workplan or remediation agreement as provided in
23 subsection e. of section 4 of P.L.1983, c.330 is approved or as
24 specified in an administrative consent order, civil order, or order of the
25 department, as applicable. The remediation trust fund agreement shall
26 conform to a model trust fund agreement as established by the
27 department and shall be accompanied by a certification of
28 acknowledgment that conforms to a model established by the
29 department. The trustee shall be an entity which has the authority to
30 act as a trustee and whose trust operations are regulated and examined
31 by a federal or New Jersey agency.

32 The trust fund agreement shall provide that the remediation trust
33 fund may not be revoked or terminated by the person required to
34 establish the remediation funding source or by the trustee without the
35 written consent of the department. The trustee shall release to the
36 person required to establish the remediation funding source, or to the
37 department or transferee of the property, as appropriate, only those
38 moneys as the department authorizes, in writing, to be released. The
39 person entitled to receive money from the remediation trust fund shall
40 submit documentation to the department detailing the costs incurred
41 or to be incurred as part of the remediation. Upon a determination by
42 the department that the costs are consistent with the remediation of
43 the site, the department shall, in writing, authorize a disbursement of
44 moneys from the remediation trust fund in the amount of the
45 documented costs.

46 The department shall return the original remediation trust fund

1 agreement to the trustee for termination after the person required to
2 establish the remediation funding source substitutes an alternative
3 remediation funding source as specified in this section or the
4 department notifies the person that that person is no longer required
5 to maintain a remediation funding source for remediation of the
6 contaminated site.

7 d. An environmental insurance policy shall be established pursuant
8 to the provisions of this subsection. An originally signed duplicate of
9 the insurance policy shall be delivered to the department by certified
10 mail, overnight delivery, or personal service within 30 days of receipt
11 of notice from the department that the remedial action workplan or
12 remediation agreement, as provided in subsection e. of section 4 of
13 P.L.1983, c.330, is approved or as specified in an administrative
14 consent order, civil order, or order of the department, as applicable.
15 The environmental insurance policy may not be revoked or terminated
16 without the written consent of the department. The insurance
17 company shall release to the person required to establish the
18 remediation funding source, or to the department or transferee of the
19 property, as appropriate, only those moneys as the department
20 authorizes, in writing, to be released. The person entitled to receive
21 money from the environmental insurance policy shall submit
22 documentation to the department detailing the costs incurred or to be
23 incurred as part of the remediation.

24 e. A line of credit shall be established pursuant to the provisions of
25 this subsection. A line of credit shall allow the person establishing it
26 to borrow money up to a limit established in a written agreement in
27 order to pay for the cost of the remediation for which the line of credit
28 was established. An originally signed duplicate of the line of credit
29 agreement shall be delivered to the department by certified mail,
30 overnight delivery, or personal service within 14 days of receipt of
31 notice from the department that the remedial action workplan or
32 remediation agreement as provided in subsection e. of section 4 of
33 P.L.1983, c.330 is approved, or as specified in an administrative
34 consent order, civil order, or order of the department, as applicable.
35 The line of credit agreement shall conform to a model agreement as
36 established by the department and shall be accompanied by a
37 certification of acknowledgment that conforms to a model established
38 by the department.

39 A line of credit agreement shall provide that the line of credit may
40 not be revoked or terminated by the person required to obtain the
41 remediation funding source or the person or institution providing the
42 line of credit without the written consent of the department. The
43 person or institution providing the line of credit shall release to the
44 person required to establish the remediation funding source, or to the
45 department or transferee of the property as appropriate, only those
46 moneys as the department authorizes, in writing, to be released. The

1 person entitled to draw upon the line of credit shall submit
2 documentation to the department detailing the costs incurred or to be
3 incurred as part of the remediation. Upon a determination that the
4 costs are consistent with the remediation of the site, the department
5 shall, in writing, authorize a disbursement from the line of credit in the
6 amount of the documented costs.

7 The department shall return the original line of credit agreement to
8 the person or institution providing the line of credit for termination
9 after the person required to establish the remediation funding source
10 substitutes an alternative remediation funding source as specified in
11 this section, or after the department notifies the person that that
12 person is no longer required to maintain a remediation funding source
13 for remediation of the contaminated site.

14 f. A person may self-guarantee a remediation funding source upon
15 the submittal of documentation to the department demonstrating that
16 the cost of the remediation as estimated in the remedial action
17 workplan, in the remediation agreement as provided in subsection e.
18 of section 4 of P.L.1983, c.330, in an administrative consent order, or
19 as provided in a departmental or court order, would not exceed
20 one-third of the tangible net worth of the person required to establish
21 the remediation funding source, and that the person has a cash flow
22 sufficient to assure the availability of sufficient moneys for the
23 remediation during the time necessary for the remediation. Satisfactory
24 documentation of a person's capacity to self-guarantee a remediation
25 funding source shall consist [only] of a statement of income and
26 expenses or similar statement of that person and the balance sheet or
27 similar statement of assets and liabilities as used by that person for the
28 fiscal year of the person making the application that ended closest in
29 time to the date of the self-guarantee application , or in the case of a
30 special purpose entity established specifically for the purpose of
31 acquiring and redeveloping a contaminated site, and for which a
32 statement of income and expenses is not available, a statement of
33 assets and liabilities attested to by a certified public accountant . The
34 self-guarantee application shall be certified as true to the best of the
35 applicant's information, knowledge, and belief, by the chief financial,
36 or similar officer or employee, or general partner, or principal of the
37 person making the self-guarantee application. A person shall be
38 deemed by the department to possess the required cash flow pursuant
39 to this section if that person's gross receipts exceed its gross payments
40 in that fiscal year in an amount at least equal to the estimated costs of
41 completing the remedial action workplan schedule to be performed in
42 the 12-month period following the date on which the application for
43 self-guarantee is made. In the event that a self-guarantee is required
44 for a period of more than one year, applications for a self-guarantee
45 shall be renewed annually pursuant to this subsection for each
46 successive year. The department may establish requirements and

1 reporting obligations to ensure that the person proposing to
2 self-guarantee a remediation funding source meets the criteria for
3 self-guaranteeing prior to the initiation of remedial action and until
4 completion of the remediation.

5 g. (1) If the person required to establish the remediation funding
6 source fails to perform the remediation as required, the department
7 shall make a written determination of this fact. A copy of the
8 determination by the department shall be delivered to the person
9 required to establish the remediation funding source and, in the case
10 of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6
11 et al.), to any transferee of the property. Following this written
12 determination, the department may perform the remediation in place
13 of the person required to establish the remediation funding source. In
14 order to finance the cost of the remediation the department may make
15 disbursements from the remediation trust fund or the line of credit or
16 claims upon the environmental insurance policy, as appropriate, or, if
17 sufficient moneys are not available from those funds, from the
18 remediation guarantee fund created pursuant to section 45 of
19 P.L.1993, c.139 (C.58:10B-20).

20 (2) The transferee of property subject to a remediation conducted
21 pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), may, at any time after
22 the department's determination of nonperformance by the owner or
23 operator required to establish the remediation funding source, petition
24 the department, in writing, with a copy being sent to the owner and
25 operator, for authority to perform the remediation at the industrial
26 establishment. The department, upon a determination that the
27 transferee is competent to do so, may grant that petition which shall
28 authorize the transferee to perform the remediation as specified in an
29 approved remedial action workplan, or to perform the activities as
30 required in a remediation agreement, and to avail itself of the moneys
31 in the remediation trust fund or line of credit or to make claims upon
32 the environmental insurance policy for these purposes. The petition
33 of the transferee shall not be granted by the department if the owner
34 or operator continues or begins to perform its obligations within 14
35 days of the petition being filed with the department.

36 (3) After the department has begun to perform the remediation in
37 the place of the person required to establish the remediation funding
38 source or has granted the petition of the transferee to perform the
39 remediation, the person required to establish the remediation funding
40 source shall not be permitted by the department to continue its
41 performance obligations except upon the agreement of the department
42 or the transferee, as applicable, or except upon a determination by the
43 department that the transferee is not adequately performing the
44 remediation.

45 (cf: P.L.1997, c.278, s.11)

1 4. Section 3 of P.L.1997, c.278 (C.58:10B-21) is amended to read
2 as follows:

3 3. a. The Department of Environmental Protection shall
4 investigate and determine the extent of contamination of every aquifer
5 in this State. The department shall prioritize its investigations of
6 aquifers giving the highest priority to those aquifers underlying urban
7 or industrial areas that are known or suspected of having large areas
8 of contamination. This information shall be updated periodically as
9 necessary. The information derived from the investigation shall be
10 made available to the public by entering it into the Department of
11 Environmental Protection's existing geographic information system,
12 by making this information available on the system, and by making
13 copies of any maps and data available to the public. The functions
14 required pursuant to this section shall be considered a site remediation
15 obligation of the State. The department may charge a reasonable fee
16 for the reproduction of the maps and data which fee shall reflect the
17 cost of their reproduction.

18 b. Upon completion of an investigation of an aquifer by the
19 department and upon the department's determination of the extent of
20 contamination of an aquifer, a person performing a remediation may
21 rely upon that information for that person's submission of information
22 to the department in the performance of a remediation.

23 c. The entire cost of the investigation required pursuant to this
24 section shall be borne by the department from appropriations made to
25 it by the Legislature specifically for this purpose. The department may
26 not fund any part of this investigation by the imposition of a fee or
27 charge on any person performing a remediation or upon any person
28 who is in need of a permit or approval from the department.

29 d. Nothing in this section shall be construed to require or obligate
30 the department to reclassify the groundwater of any aquifer.

31 e. Any information concerning the contamination of an aquifer that
32 is submitted to the department in digital form by a person performing
33 a remediation, shall be entered into the geographical information
34 system maintained by the department and shall be made available to
35 the public within 90 days of the receipt of the information by the
36 department.

37 (cf: P.L.1997, c.278, s.3)

38

39 5. Section 4 of P.L.1997, c.278 (C.58:10B-22) is amended to read
40 as follows:

41 4. a. 【The】 Within 270 days of the effective date of P.L. , c.
42 (C.) (now in the Legislature as this bill), the Department of
43 Environmental Protection shall investigate and map those areas of the
44 State at which large areas of historic fill exist. The department shall
45 prioritize its investigations of historic fill areas giving highest priority
46 to those areas of the State that are known or suspected to contain

1 historic fill. This information shall be updated periodically as
2 necessary. The information derived from the investigation shall be
3 made available to the public by entering it into the Department of
4 Environmental Protection's existing geographic information system,
5 by making this information available on the system, and by making
6 copies of any maps and data available to the public. The functions
7 required pursuant to this section shall be considered a site remediation
8 obligation of the State. The department may charge a reasonable fee
9 for the reproduction of the maps and data which fee shall reflect the
10 cost of their reproduction.

11 b. Upon completion of an investigation of an area of historic fill by
12 the department and upon the department's determination of the
13 location of historic fill in an area, a person performing a remediation
14 may rely upon that information for that person's performance of a
15 remediation and selection of a remedial action pursuant to subsection
16 h. of section 35 of P.L.1993, c.139 (C.58:10B-12).

17 c. The entire cost of investigation required pursuant to this section
18 shall be borne by the department from appropriations made to it by the
19 Legislature specifically for this purpose. The department may not fund
20 any part of this investigation by the imposition of a fee or charge on
21 any person performing a remediation or upon any person who is in
22 need of a permit or approval from the department.

23 (cf: P.L.1997, c.278, s.4)

24

25 6. Section 34 of P.L.1997, c.278 (C.58:10B-26) is amended to
26 read as follows:

27 34. As used in sections 34 through 39 of P.L.1997, c.278
28 (C.58:10B-26 through 58:10B-31):

29 "Contamination" or "contaminant" means any discharged hazardous
30 substance as defined pursuant to section 3 of P.L.1976, c.141
31 (C.58:10-23.11b), hazardous waste as defined pursuant to section 1 of
32 P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to
33 section 3 of P.L.1977, c.74 (C.58:10A-3);

34 "Developer" means any person that enters or proposes to enter into
35 a redevelopment agreement with the State pursuant to the provisions
36 of section 35 of P.L.1997, c.278 (C.58:10B-27).

37 "Director" means the Director of the Division of Taxation in the
38 Department of the Treasury.

39 "Project" or "redevelopment project" means a specific work or
40 improvement, including lands, buildings, improvements, real and
41 personal property or any interest therein, including lands under water,
42 riparian rights, space rights and air rights, acquired, owned, developed
43 or redeveloped, constructed, reconstructed, rehabilitated or improved,
44 undertaken by a developer within an area of land whereon a
45 contaminated site is located, under a redevelopment agreement with
46 the State pursuant to section 35 of P.L.1997, c.278 (C.58:10B-27).

1 "Redevelopment agreement" means an agreement between the
2 State and a developer under which the developer agrees to perform
3 any work or undertaking necessary for the remediation of the
4 contaminated site located at the site of the redevelopment project, and
5 for the clearance, development or redevelopment, construction or
6 rehabilitation of any structure or improvement of commercial,
7 industrial or public structures or improvements within an area of land
8 whereon a contaminated site is located pursuant to section 35 of
9 P.L.1997, c.278 (C.58:10B-27), and the State agrees that the
10 developer shall be eligible for the reimbursement of up to 75% of the
11 costs of remediation of the contaminated site from the fund established
12 pursuant to section 38 of P.L.1997, c.278 (C.58:10B-30) as
13 authorized pursuant to section 36 of P.L.1997, c.278 (C.58:10B-28).

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

20 "Remediation costs" means all reasonable costs associated with the
21 remediation of a contaminated site, including the fees paid for
22 department oversight of the remediation, except that "remediation
23 costs" shall not include any costs incurred in financing the remediation.
24 (cf: P.L.1997, c.278, s.34)

25

26 7. Section 35 of P.L.1997, c.278 (C.58:10B-27) is amended to
27 read as follows:

28 35. a. The provisions of any other law, or rule or regulation
29 adopted pursuant thereto, to the contrary notwithstanding, any
30 developer may enter into a redevelopment agreement with the State
31 pursuant to the provisions of this section. The State may not enter
32 into a redevelopment agreement with a developer who is liable,
33 pursuant to paragraph (1) of subsection c. of section 8 of P.L.1976,
34 c.141 (C.58:10-23.11g), for the contamination at the site proposed to
35 be in the redevelopment agreement.

36 The decision whether or not to enter into a redevelopment
37 agreement is solely within the discretion of the [Commissioner of
38 Commerce and Economic Development] Chief Executive Officer and
39 Secretary of the Commerce and Economic Growth Commission and
40 the State Treasurer and both must agree to enter into the
41 redevelopment agreement. Nothing in P.L.1997, c.278 (C.58:10B-1.1
42 et al.) may be construed to compel the [commissioner] Secretary and
43 the State Treasurer to enter into any redevelopment agreement.

44 The [Commissioner of Commerce and Economic Development]
45 Chief Executive Officer and Secretary of the Commerce and Economic
46 Growth Commission, in consultation with the State Treasurer shall

1 negotiate the terms and conditions of any redevelopment agreement on
2 behalf of the State. The redevelopment agreement shall specify the
3 amount of the reimbursement to be awarded the developer, the
4 frequency of payments and the length of time in which that
5 reimbursement shall be granted. In no event shall the amount of the
6 reimbursement, when taken together with the property tax exemption
7 received pursuant to the "Environmental Opportunity Zone Act,"
8 P.L.1995, c.413 (C.54:4-3.151), less any in lieu of tax payments made
9 pursuant to that act, or any other State, local, or federal tax incentive
10 or grant to remediate a site, exceed ~~[75%]~~ 100% of the total cost of
11 the remediation.

12 The ~~[commissioner]~~ Secretary and the State Treasurer may only
13 enter into a redevelopment agreement if they make a finding that the
14 State tax revenues to be realized from the redevelopment project will
15 be in excess of the amount necessary to reimburse the developer. This
16 finding may be made by an estimation based upon the professional
17 judgment of the ~~[commissioner]~~ Secretary and the State Treasurer.

18 [The percentage of each payment to be made to the developer
19 pursuant to the redevelopment agreement shall be conditioned on the
20 occupancy rate of the buildings or other work areas located on the
21 property. The redevelopment agreement shall provide for the
22 payments made in order to reimburse the developer to be in the same
23 percentages as the occupancy rate at the site except that upon the
24 attainment of a 90% occupancy rate, the developer shall be entitled to
25 the entire amount of each payment toward the reimbursement as set
26 forth in the redevelopment agreement. The redevelopment agreement
27 shall provide for the frequency of the director's finding of the
28 occupancy rate during the payment schedule.]

29 b. In deciding whether or not to enter into a redevelopment
30 agreement and in negotiating a redevelopment agreement with a
31 developer, the ~~[commissioner]~~ Secretary shall consider the following
32 factors:

- 33 (1) the economic feasibility of the redevelopment project;
- 34 (2) the extent of economic and related social distress in the
35 municipality and the area to be affected by the redevelopment project;
- 36 (3) the degree to which the redevelopment project will advance
37 State, regional and local development and planning strategies;
- 38 (4) the likelihood that the redevelopment project shall , upon
39 completion , be capable of generating new tax revenue in an amount
40 in excess of the amount necessary to reimburse the developer for the
41 remediation costs incurred as provided in the redevelopment
42 agreement;
- 43 (5) the relationship of the redevelopment project to a
44 comprehensive local development strategy, including other major
45 projects undertaken within the municipality;
- 46 (6) the need of the redevelopment agreement to the viability of the

1 redevelopment project; and

2 (7) the degree to which the redevelopment project enhances and
3 promotes job creation and economic development.

4 (cf: P.L.1997, c.278, s.35)

5

6 8. Section 36 of P.L.1997, c.278 (C.58:10B-28) is amended to
7 read as follows:

8 36. a. The provisions of any other law, or rule or regulation
9 adopted pursuant thereto, to the contrary notwithstanding, any
10 developer that enters into a redevelopment agreement pursuant to
11 section 35 of P.L.1997, c.278 (C.58:10B-27), may be eligible for
12 reimbursement of up to ~~[75%]~~ 100% of the costs of the remediation
13 of the subject real property pursuant to the provisions of this section
14 [upon the commencement of a business operation within a
15 redevelopment project].

16 b. To be eligible for reimbursement of the costs of remediation, a
17 developer shall submit an application, in writing, to the director for
18 review and certification of the reimbursement. The director shall
19 review the request for the reimbursement upon receipt of an
20 application therefor, and shall approve or deny the application for
21 certification on a timely basis. [The director shall also make a finding
22 of the occupancy rate of the property subject to the redevelopment
23 agreement in the frequency set forth in the redevelopment agreement
24 as provided in section 35 of P.L.1997, c.278 (C.58:10B-27).]

25 The director shall certify a developer to be eligible for the
26 reimbursement if the director finds that:

27 (1) a place of business is located in the area subject to the
28 redevelopment agreement that has generated new tax revenues;

29 (2) the developer had entered into a memorandum of agreement ,
30 or other oversight document, with the Commissioner of Environmental
31 Protection, after the developer entered into the redevelopment
32 agreement, for the remediation of contamination located on the site of
33 the redevelopment project pursuant to section 37 of P.L.1997, c.278
34 (C.58:10B-29) and the developer is in compliance with the
35 memorandum of agreement; and

36 (3) the costs of the remediation were actually and reasonably
37 incurred. In making this finding the director may consult with the
38 Department of Environment Protection.

39 c. When filing an application for certification for a reimbursement
40 pursuant to this section, the developer shall submit to the director a
41 certification of the total remediation costs incurred by the developer
42 for the remediation of the subject property located at the site of the
43 redevelopment project as provided in the redevelopment agreement,
44 information concerning the occupancy rate of the buildings or other
45 work areas located on the property subject to the redevelopment
46 agreement, and such other information as the director deems necessary

1 in order to make the certifications and findings pursuant to this
2 section.

3 (cf: P.L.1997, c.278, s.36)

4

5 9. Section 37 of P.L.1997, c.278 (C.58:10B-29) is amended to
6 read as follows:

7 37. a. To qualify for the certification of reimbursement of the
8 remediation costs authorized pursuant to section 36 of P.L.1997,
9 c.278 (C.58:10B-28), a developer shall enter into a memorandum of
10 agreement , or other oversight document with the Commissioner of
11 Environmental Protection for the remediation of the site of the
12 redevelopment project.

13 b. Under the memorandum of agreement, , or other oversight
14 document, the developer shall agree to perform and complete any
15 remediation activity as may be required by the Department of
16 Environmental Protection to ensure the remediation is conducted
17 pursuant to the regulations adopted by the Department of
18 Environmental Protection pursuant to P.L.1993, c.139 (C.58:10B-1 et
19 seq.).

20 c. After the developer has entered into a memorandum of
21 agreement , or other oversight document with the Commissioner of
22 Environmental Protection, the commissioner shall submit a copy
23 thereof to the developer, the clerk of the municipality in which the
24 subject property is located, the [Commissioner of the Department of
25 Commerce and Economic Development] Chief Executive Officer and
26 Secretary of the Commerce and Economic Growth Commission , and
27 the director.

28 (cf: P.L.1997, c.278, s.37)

29

30 10. Section 38 of P.L.1997, c.278 (C.58:10B-30) is amended to
31 read as follows:

32 38. a. There is created in the Department of Treasury a special
33 fund to be known as the Brownfield Site Reimbursement Fund.
34 Moneys in the fund shall be dedicated to the purpose of reimbursing
35 a developer who enters into a redevelopment agreement pursuant to
36 section 35 of P.L.1997, c.278 (C.58:10B-27) and is certified for
37 reimbursement pursuant to section 36 of P.L.1997, c.278
38 (C.58:10B-28). A special account within the fund shall be created for
39 each developer upon approval of a certification pursuant to section 36
40 of P.L.1997, c.278 (C.58:10B-28). The Legislature shall annually
41 appropriate the entire balance of the fund for the purposes of
42 reimbursement of remediation costs as provided in section 39 of
43 P.L.1997, c.278 (C.58:10B-31).

44 b. The fund shall be credited with an amount from the General
45 Fund, determined sufficient by the [Commissioner of Commerce and
46 Economic Development] Chief Executive Officer and Secretary of the

1 Commerce and Economic Growth Commission, to provide the
2 negotiated reimbursement to the developer. Moneys credited to the
3 fund shall be an amount that equals the percent of the remediation
4 costs expected to be reimbursed pursuant to the redevelopment
5 agreement. In estimating the amount of new State taxes that is
6 anticipated to be derived from a redevelopment project pursuant to
7 section 35 of P.L.1997, c.278 (C.58:10B-27), the [Commissioner of
8 Commerce and Economic Development]Chief Executive Officer and
9 Secretary of the Commerce and Economic Growth Commission and
10 the State Treasurer shall consider taxes from the following: the
11 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
12 et seq.), "The Savings Institution Tax Act," P.L.1973, c.31
13 (C.54:10D-1 et seq.), the tax imposed on marine insurance companies
14 pursuant to R.S.54:16-1 et seq., the tax imposed on fire insurance
15 companies pursuant to R.S.54:17-4 et al., the tax imposed on insurers
16 generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), the
17 public utility franchise tax, public utilities gross receipts tax and public
18 utility excise tax imposed pursuant to P.L.1940, c.4, and P.L.1940, c.5
19 (C.54:30A-16 et seq. and C.54:30A-49 et seq.), [that is a taxpayer in
20 respect of] the tax derived from net profits from business, a
21 distributive share of partnership income, or a prorata share of S
22 corporation income under the "New Jersey Gross Income Tax Act,"
23 N.J.S.54A:1-1 et seq., [or who] the tax derived from a business at
24 the site of a redevelopment project that is required to collect the tax
25 pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1
26 et seq.). The Chief Executive Officer and Secretary of the Commerce
27 and Economic Growth Commission and the State Treasurer shall also
28 consider amounts equivalent to the tax revenue generated by persons
29 engaged in remediation activities at the site, or by persons engaged in
30 redevelopment activities at the site pursuant to the "New Jersey Gross
31 Income Tax Act," N.J.S.54A:1-1 et seq., and taxes generated by
32 persons engaged in remediation activities at the site, or by persons
33 engaged in redevelopment activities at the site pursuant to the "Sales
34 and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).
35 (cf: P.L.1997, c.278, s.38)

36

37 11. This act shall take effect immediately.

38

39

40

STATEMENT

41

42 This bill would make changes to the laws concerning site
43 remediation. The bill would require the department to complete its
44 investigation and mapping of the States large areas of historic fill
45 within nine months of the bill's effective date. The investigation and
46 mapping of the areas in the State in which large areas of historic fill

1 exist was required to be performed in the "Brownfield and
2 Contaminated Site Remediation Act," P.L.1997, c.278. At that time,
3 \$2 million was appropriated for the historic fill study from the "1996
4 Environmental Cleanup Fund" created by the "Port of New Jersey
5 Revitalization, Dredging, Environmental Cleanup, Lake Restoration,
6 and Delaware Bay Area Economic Development Bond Act of 1996,"
7 P.L.1996, c.70. The bill also requires that the department enter data
8 concerning the contamination of an aquifer in the geographical
9 information system, that is submitted in digital form by a person
10 performing a remediation and that it be made available to the public
11 within 90 days of the department's receipt of the information.

12 The bill would decrease the time provided for the department to
13 review and respond to a request to decrease a remediation funding
14 source from 90 to 30 days and would authorize a self-guarantee for
15 the remediation funding source for special purpose entities by allowing
16 the consideration of a statement of assets and liabilities to constitute
17 satisfactory documentation of a person's ability to self-guarantee.

18 The bill would make changes to the redevelopment agreement
19 program by: (1) including oversight costs within the definition of
20 remediation costs to allow for DEP fees charged for oversight to be
21 included in the costs that may be reimbursed from the tax revenues
22 generated at the property; (2) increasing amount of remediation costs
23 that may be reimbursed under remediation agreement with the State
24 from 75% to 100%; and (3) authorizing use of income tax and sales
25 tax generated by employees engaged in remediation or redevelopment
26 at the site in the reimbursement of remediation costs to the developer.
27 The bill also would authorize loans for remediation by the New Jersey
28 Economic Development Authority to a developer who enters into a
29 redevelopment agreement with the State to remediate a site. The loan
30 may be repaid from reimbursements made to the developer pursuant
31 to section 39 of P.L.1997, c.278 (C.58:10B-31) from the "Brownfield
32 Site Reimbursement Fund," created pursuant to section 38 of
33 P.L.1997, c.278 (C.58:10B-30).

34 Further, the bill would clarify the liability of a person who is not a
35 responsible party pursuant to the "Spill Compensation and Control
36 Act" and who voluntarily remediates a contaminated site or relies on
37 a previously issued no further action letter issued by the department
38 for a site, for contamination that emanates from the site covered by the
39 no further action letter. The bill clarifies that the person would not be
40 liable for the subsequent discovery of a hazardous substance that has
41 emanated from the property covered by the no further action letter
42 even if the hazardous substance is no longer on the site covered by the
43 no further action letter.

44 Finally, the bill provides that to be eligible for the existing
45 protection from third party suits, a person who voluntarily acquires
46 contaminated property may have 30 days after the expiration of the

A2585 GUSCIORA

23

- 1 period or periods allowed for the right of redemption pursuant to tax
- 2 foreclosure law, to agree in writing to provide access to the State for
- 3 remediation and related activities. Current law requires the person to
- 4 agree in writing within 10 days after acquisition of the property.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2585

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 25, 2002

The Assembly Environment and Solid Waste Committee reports favorably and with committee amendments Assembly Bill No. 2585.

This bill would make changes to the laws concerning site remediation. The bill would require the department to complete its investigation and mapping of the State's large areas of historic fill within nine months of the bill's effective date. The bill also requires that the department enter data concerning the contamination of an aquifer in the geographical information system, that is submitted in digital form by a person performing a remediation and that it be made available to the public within 90 days of the department's receipt of the information.

The bill would decrease the time provided for the department to review and respond to a request to decrease a remediation funding source from 90 to 30 days and would authorize a self-guarantee for the remediation funding source for special purpose entities by allowing the consideration of a statement of assets and liabilities to constitute satisfactory documentation of a person's ability to self-guarantee.

The bill would make changes to the redevelopment agreement program by: (1) including oversight costs within the definition of remediation costs to allow for DEP fees charged for oversight to be included in the costs that may be reimbursed from the tax revenues generated at the property; (2) increasing the amount of remediation costs that may be reimbursed under remediation agreement with the State from 75% to 100%; (3) deleting the requirement that the percentage of each payment to be made to the developer pursuant to the redevelopment agreement be conditioned on the occupancy rate of the residential dwelling units, buildings, or other work areas located on the property; and (4) authorizing use of income tax and sales tax generated by employees engaged in remediation or redevelopment at the site in the reimbursement of remediation costs to the developer.

The bill also would authorize loans for remediation by the New Jersey Economic Development Authority to a developer who enters into a redevelopment agreement with the State to remediate a site.

The loan may be repaid from reimbursements made to the developer pursuant to section 39 of P.L.1997, c.278 (C.58:10B-31) from the "Brownfield Site Reimbursement Fund," created pursuant to section 38 of P.L.1997, c.278 (C.58:10B-30).

Further, the bill would clarify the liability of a person who is not a responsible party pursuant to the "Spill Compensation and Control Act" and who voluntarily remediates a contaminated site or relies on a previously issued no further action letter issued by the department for a site, for contamination that emanates from the site covered by the no further action letter. The bill clarifies that the person would not be liable for the subsequent discovery of a hazardous substance that has emanated from the property covered by the no further action letter even if the hazardous substance is no longer on the site covered by the no further action letter.

Finally, the bill provides that to be eligible for the existing protection from third party suits, a person who voluntarily acquires contaminated property may have 30 days after the expiration of the period or periods allowed for the right of redemption pursuant to tax foreclosure law, to agree in writing to provide access to the State for remediation and related activities. Current law requires the person to agree in writing within 10 days after acquisition of the property.

The committee adopted technical amendments to the bill to update statutory text to reflect the enactment of P.L.2002, c.87, and to make a technical correction to the bill.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2585

STATE OF NEW JERSEY

DATED: FEBRUARY 3, 2003

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2585 (1R).

Assembly Bill No. 2585 (1R) makes changes to the laws concerning site remediation. The bill requires the Department of Environmental Protection (DEP) to complete its investigation and mapping of the State's large areas of historic fill within nine months of the bill's effective date. The bill also requires that the DEP enter data concerning the contamination of an aquifer in the geographical information system, that is submitted in digital form by a person performing a remediation and that it be made available to the public within 90 days of the DEP's receipt of the information.

The bill decreases the time provided for the DEP to review and respond to a request to decrease a remediation funding source from 90 to 30 days and authorizes a self-guarantee for the remediation funding source for special purpose entities by allowing the consideration of a statement of assets and liabilities to constitute satisfactory documentation of a person's ability to self-guarantee.

The bill makes changes to the redevelopment agreement program by: (1) including oversight costs within the definition of remediation costs to allow for DEP fees charged for oversight to be included in the costs that may be reimbursed from the tax revenues generated at the property; (2) increasing the amount of remediation costs that may be reimbursed under remediation agreement with the State from 75% to 100%; (3) deleting the requirement that the percentage of each payment to be made to the developer pursuant to the redevelopment agreement be conditioned on the occupancy rate of the residential dwelling units, buildings, or other work areas located on the property; and (4) authorizing use of income tax and sales tax generated by employees engaged in remediation or redevelopment at the site in the reimbursement of remediation costs to the developer.

The bill also authorizes loans for remediation by the New Jersey Economic Development Authority to a developer who enters into a redevelopment agreement with the State to remediate a site. The loan may be repaid from reimbursements made to the developer pursuant to section 39 of P.L.1997, c.278 (C.58:10B-31) from the "Brownfield

Site Reimbursement Fund," created pursuant to section 38 of P.L.1997, c.278 (C.58:10B-30).

Further, the bill clarifies the liability of a person who is not a responsible party pursuant to the "Spill Compensation and Control Act" and who voluntarily remediates a contaminated site or relies on a previously issued no further action letter issued by the DEP for a site, for contamination that emanates from the site covered by the no further action letter. The bill clarifies that the person would not be liable for the subsequent discovery of a hazardous substance that has emanated from the property covered by the no further action letter even if the hazardous substance is no longer on the site covered by the no further action letter.

Finally, the bill provides that to be eligible for the existing protection from third party suits, a person who voluntarily acquires contaminated property may have 30 days after the expiration of the period or periods allowed for the right of redemption pursuant to tax foreclosure law, to agree in writing to provide access to the State for remediation and related activities. Current law requires the person to agree in writing within 10 days after acquisition of the property.

FISCAL IMPACT:

No fiscal information has been provided on this legislation. The Office of Legislative Services cannot estimate the bill's impact on State sales or income tax revenues because future estimates can only be determined on a project-by-project basis.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2585

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 12, 2003

The Senate Environment Committee favorably reports Assembly Bill No. 2585 (1R) with committee amendments.

This bill, as amended, would make changes to the laws concerning site remediation. The bill, as amended, would require the department to complete its investigation and mapping of the State's large areas of historic fill within nine months of the bill's effective date. The investigation and mapping of the areas in the State in which large areas of historic fill exist was required to be performed in the "Brownfield and Contaminated Site Remediation Act," P.L.1997, c.278. At that time, \$2 million was appropriated for the historic fill study from the "1996 Environmental Cleanup Fund" created by the "Port of New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond Act of 1996," P.L.1996, c.70. The bill, as amended, also requires that the department enter data concerning the contamination of an aquifer in the geographical information system, that is submitted in digital form by a person performing a remediation and that it be made available to the public within 90 days of the department's receipt of the information.

The bill, as amended, would decrease the time provided for the department to review and respond to a request to decrease a remediation funding source from 90 to 45 days and would authorize a self-guarantee for the remediation funding source for special purpose entities by allowing the consideration of a statement of assets and liabilities certified by a certified public accountant to constitute satisfactory documentation of a person's ability to self-guarantee.

The bill, as amended, would make changes to the redevelopment agreement program. The bill, as amended, would authorize use of sales tax generated from the purchase of materials used for the remediation or redevelopment at the site in the reimbursement of remediation costs to the developer. The proposed amendments would also require that, if the redevelopment of the property is performed in phases, the redevelopment agreement provide for payments to reimburse the

developer to commence prior to the completion of the redevelopment at the entire site. The redevelopment agreement must provide that payments to reimburse the developer be in the same percentages as the occupancy rate of that portion of the site for which the developer has received a no further action letter, and on which new residential construction is completed or a place of business is located, that has generated new tax revenues. Further, the bill, as amended would clarify the liability of a person who is not a responsible party pursuant to the "Spill Compensation and Control Act" and who voluntarily remediates a contaminated site or relies on a previously issued no further action letter issued by the department for a site, for contamination that emanates from the site covered by the no further action letter. The bill, as amended clarifies that the person would not be liable for the subsequent discovery of a hazardous substance that has emanated from the property covered by the no further action letter even if the hazardous substance is no longer on the site covered by the no further action letter.

Finally, the bill, as amended, provides that to be eligible for the existing protection from third party suits, a person who voluntarily acquires contaminated property may have 30 days after the expiration of the period or periods allowed for the right of redemption pursuant to tax foreclosure law, to agree in writing to provide access to the State for remediation and related activities. Current law requires the person to agree in writing within 10 days after acquisition of the property.

Specifically, the committee amendments would:

(1) delete the provision authorizing the New Jersey Economic Development Authority to provide loans to redevelopers based on the reimbursements authorized to be made pursuant to section 39 of P.L.1997, c.278 (C.58:10B-31) from the "Brownfield Site Reimbursement Fund;"

(2) provide that for the purpose of a self guarantee for a remediation funding source, a special purpose entity established specifically for the purpose of acquiring and redeveloping a contaminated site who is authorized to submit a statement of assets and liabilities, must have the statement certified rather than attested to by a certified public accountant;

(3) change the amount of time in which DEP must review and respond to a request to reduce a remediation funding source from 30 to 45 days (current law authorizes 90 days);

(4) delete the provision authorizing the reimbursement of DEP oversight costs pursuant to a redevelopment agreement;

(5) delete the provision changing the reimbursement rate of the remediation costs from 75% to 100% to a redeveloper pursuant to the redevelopment agreement program;

(6) delete the provision authorizing the State to consider amounts equivalent to the tax revenue generated by persons engaged in remediation activities at the site, or by persons engaged in

redevelopment activities at the site pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and taxes generated by persons engaged in remediation activities at the site, or by persons engaged in redevelopment activities at the site pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), and instead authorize the consideration of tax revenue generated by the sales tax from the purchase of materials used for the remediation and the construction of new structures at the site of the redevelopment in the estimate of new taxes to be generated from the redevelopment;

(7) retain the provision requiring the project to be complete before reimbursement of remediation costs, but require that if a redevelopment is performed in phases, provide for payments to reimburse the developer to commence prior to the completion of the redevelopment at the entire site, but rather at the completion of each phase of the redevelopment; and

(8) retain the provision requiring the reimbursement of remediation costs to the developer to be made in the same percentage as the occupancy rate but require that when a redevelopment is performed in phases, provide for the reimbursement to be made in the same percentage as the occupancy rate of that portion of the site for which the redevelopment is complete.

As amended, this bill is identical to the committee substitute for Senate Bill No. 1714, which was also released by the committee.

STATEMENT TO
[Second Reprint]
ASSEMBLY, No. 2585

with Assembly Floor Amendments
(Proposed By Assemblyman GUSCIORA)

ADOPTED: JUNE 30, 2003

These floor amendments provide that for the purpose of computing the sales and use tax on the purchase of materials used for the remediation, the construction of new structures, or the construction of new residences at the site of a redevelopment project, it shall be presumed by the Director of the Division of Taxation, in lieu of an exact accounting from the developer, suppliers, contractors, subcontractors and other parties connected with the project, that the tax equals one percent of the developer's contract price for remediation and improvements or such other percentage, not to exceed three percent, that may be agreed to by the director upon the presentation of clear and convincing evidence that the tax on materials is greater than one percent of the contract price for the remediation and improvements.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 2585

STATE OF NEW JERSEY

210th LEGISLATURE

DATED: FEBRUARY 19, 2003

SUMMARY

- Synopsis:** Makes changes in the law concerning the cleanup of hazardous substances.
- Type of Impact:** Increase in various tax revenues to the General Fund.
- Agencies Affected:** Department of Environmental Protection, New Jersey Economic Development Authority, Commerce and Economic Growth Commission, and Department of the Treasury

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	Indeterminate - See Comments Below		

- ! The bill encourages greater participation of redevelopers in the Brownfields Reimbursement Program by liberalizing reimbursement criteria concerning remediation costs.
- ! The Brownfields Reimbursement Program currently encourages the remediation and development of brownfield properties by reimbursing redevelopers for up to 75 percent of remediation costs; reimbursement funds are derived from new State taxes generated from the businesses or residences built on the redeveloped property.
- ! The bill directs the Department of Environmental Protection (DEP) to expedite and modify certain review and response procedures to facilitate the redevelopment process.
- ! The Office of Legislative Services estimates that the bill will encourage greater participation in the program and thereby increase future State tax revenues.

BILL DESCRIPTION

Assembly Bill No. 2528 (1R) of 2002 amends the Brownfields Redevelopment laws concerning site remediation. In addition to directing the Department of Environmental Protection (DEP) to streamline or modify various regulatory procedures and operations to

facilitate remediation review and response periods, the bill makes changes to the redevelopment agreement program by: (1) including oversight costs within the definition of remediation costs so DEP oversight charges may be reimbursed from the tax revenues generated at the property; (2) increasing the amount of remediation costs that may be reimbursed under remediation agreement with the State from 75 to 100 percent; (3) deleting the requirement that the percentage of each payment made to the developer be conditioned on the occupancy rate of the residential dwelling units, buildings, or other work areas located on the property; and (4) authorizing use of income tax and sales tax revenue generated by employees engaged in remediation or redevelopment at the site in the reimbursement of remediation costs to the developer.

The bill also authorizes loans for remediation by the New Jersey Economic Development Authority to a developer who enters into a redevelopment agreement with the State to remediate a site. The loan may be repaid from reimbursements made to the developer pursuant to the Brownfield Site Reimbursement Fund, created pursuant to section 38 of P.L.1997, c.278.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) cannot estimate the bill's impact on State sales or income tax revenues because such future estimates can only be determined on a project-by-project basis. However, it can be assumed that the bill's intention of expanding the Brownfields Reimbursement Program through liberal program reimbursement incentives will certainly generate additional, long-term State tax revenues on properties that currently contribute little or no such revenues.

Section: *Environment, Agriculture, Energy and Natural Resources*

Analyst: *Richard M. Handelman*
Senior Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

SENATE, No. 1714

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED JUNE 27, 2002

Sponsored by:

Senator JOHN O. BENNETT

District 12 (Mercer and Monmouth)

Senator JOHN H. ADLER

District 6 (Camden)

Co-Sponsored by:

Senator Buono

SYNOPSIS

Makes changes in the law concerning the cleanup of hazardous substances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/10/2003)

1 AN ACT concerning hazardous discharge site cleanup, and amending
2 and supplementing Title 58 of the Revised Statutes.

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

6
7 1. (New section) The New Jersey Economic Development
8 Authority may enter into a loan agreement with a developer who has
9 entered into a redevelopment agreement with the State pursuant to
10 section 35 of P.L.1997, c.278 (C.58:10B-27), to provide a loan for the
11 costs of the remediation at the site of the redevelopment project. In
12 making a finding of an applicant's ability to repay a loan, the authority
13 may consider the reimbursements authorized to be made to the
14 developer, pursuant to section 39 of P.L.1997, c.278 (C.58:10B-31)
15 from the "Brownfield Site Reimbursement Fund," created pursuant to
16 section 38 of P.L.1997, c.278 (C.58:10B-30).

17
18 2. Section 8 of P.L.1976, c.141 (C.58:10-23.11g) is amended to
19 read as follows:

20 8. a. The fund shall be strictly liable, without regard to fault, for
21 all cleanup and removal costs and for all direct and indirect damages
22 no matter by whom sustained, including but not limited to:

23 (1) The cost of restoring, repairing, or replacing any real or
24 personal property damaged or destroyed by a discharge, any income
25 lost from the time such property is damaged to the time such property
26 is restored, repaired or replaced, and any reduction in value of such
27 property caused by such discharge by comparison with its value prior
28 thereto;

29 (2) The cost of restoration and replacement, where possible, of any
30 natural resource damaged or destroyed by a discharge;

31 (3) Loss of income or impairment of earning capacity due to
32 damage to real or personal property, including natural resources
33 destroyed or damaged by a discharge; provided that such loss or
34 impairment exceeds 10% of the amount which claimant derives, based
35 upon income or business records, exclusive of other sources of
36 income, from activities related to the particular real or personal
37 property or natural resources damaged or destroyed by such discharge
38 during the week, month or year for which the claim is filed;

39 (4) Loss of tax revenue by the State or local governments for a
40 period of one year due to damage to real or personal property
41 proximately resulting from a discharge;

42 (5) Interest on loans obtained or other obligations incurred by a
43 claimant for the purpose of ameliorating the adverse effects of a

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 discharge pending the payment of a claim in full as provided by this
2 act.

3 b. The damages which may be recovered by the fund, without
4 regard to fault, subject to the defenses enumerated in subsection d. of
5 this section against the owner or operator of a major facility or vessel,
6 shall not exceed \$50,000,000.00 for each major facility or \$150.00 per
7 gross ton for each vessel, except that such maximum limitation shall
8 not apply and the owner or operator shall be liable, jointly and
9 severally, for the full amount of such damages if it can be shown that
10 such discharge was the result of (1) gross negligence or willful
11 misconduct, within the knowledge and privity of the owner, operator
12 or person in charge, or (2) a gross or willful violation of applicable
13 safety, construction or operating standards or regulations. Damages
14 which may be recovered from, or by, any other person shall be limited
15 to those authorized by common or statutory law.

16 c. (1) Any person who has discharged a hazardous substance, or is
17 in any way responsible for any hazardous substance, shall be strictly
18 liable, jointly and severally, without regard to fault, for all cleanup and
19 removal costs no matter by whom incurred. Such person shall also be
20 strictly liable, jointly and severally, without regard to fault, for all
21 cleanup and removal costs incurred by the department or a local unit
22 pursuant to subsection b. of section 7 of P.L.1976, c.141
23 (C.58:10-23.11f).

24 (2) In addition to the persons liable pursuant to this subsection, in
25 the case of a discharge of a hazardous substance from a vessel into the
26 waters of the State, the owner or operator of a refinery, storage,
27 transfer, or pipeline facility to which the vessel was en route to deliver
28 the hazardous substance who, by contract, agreement, or otherwise,
29 was scheduled to assume ownership of the discharged hazardous
30 substance, and any other person who was so scheduled to assume
31 ownership of the discharged hazardous substance, shall be strictly
32 liable, jointly and severally, without regard to fault, for all cleanup and
33 removal costs if the owner or operator of the vessel did not have the
34 evidence of financial responsibility required pursuant to section 2 of
35 P.L.1991, c.58 (C.58:10-23.11g2).

36 Where a person is liable for cleanup and removal costs as provided
37 in this paragraph, any expenditures made by the administrator for that
38 cleanup and removal shall constitute a debt of that person to the fund.
39 The debt shall constitute a lien on all property owned by that person
40 when a notice of lien identifying the nature of the discharge and the
41 amount of the cleanup, removal and related costs expended from the
42 fund is duly filed with the clerk of the Superior Court. The clerk shall
43 promptly enter upon the civil judgment or order docket the name and
44 address of the liable person and the amount of the lien as set forth in
45 the notice of lien. Upon entry by the clerk, the lien, to the amount
46 committed by the administrator for cleanup and removal, shall attach

1 to the revenues and all real and personal property of the liable person,
2 whether or not that person is insolvent.

3 For the purpose of determining priority of this lien over all other
4 claims or liens which are or have been filed against the property of an
5 owner or operator of a refinery, storage, transfer, or pipeline facility,
6 the lien on the facility to which the discharged hazardous substance
7 was en route shall have priority over all other claims or liens which are
8 or have been filed against the property. The notice of lien filed
9 pursuant to this paragraph which affects any property of a person
10 liable pursuant to this paragraph other than the property of an owner
11 or operator of a refinery, storage, transfer, or pipeline facility to which
12 the discharged hazardous substance was en route, shall have priority
13 from the day of the filing of the notice of the lien over all claims and
14 liens filed against the property, but shall not affect any valid lien, right,
15 or interest in the property filed in accordance with established
16 procedure prior to the filing of a notice of lien pursuant to this
17 paragraph.

18 To the extent that a person liable pursuant to this paragraph is not
19 otherwise liable pursuant to paragraph (1) of this subsection, or under
20 any other provision of law or under common law, that person may
21 bring an action for indemnification for costs paid pursuant to this
22 paragraph against any other person who is strictly liable pursuant to
23 paragraph (1) of this subsection.

24 Nothing in this paragraph shall be construed to extend or negate the
25 right of any person to bring an action for contribution that may exist
26 under P.L.1976, c.141, or any other act or under common law.

27 (3) In addition to the persons liable pursuant to this subsection, any
28 person who owns real property acquired on or after September 14,
29 1993 on which there has been a discharge prior to the person's
30 acquisition of that property and who knew or should have known that
31 a hazardous substance had been discharged at the real property, shall
32 be strictly liable, jointly and severally, without regard to fault, for all
33 cleanup and removal costs no matter by whom incurred. Such person
34 shall also be strictly liable, jointly and severally, without regard to
35 fault, for all cleanup and removal costs incurred by the department or
36 a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141
37 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter
38 liability of any person who acquired real property prior to
39 September 14, 1993.

40 d. (1) In addition to those defenses provided in this subsection, an
41 act or omission caused solely by war, sabotage, or God, or a
42 combination thereof, shall be the only defenses which may be raised by
43 any owner or operator of a major facility or vessel responsible for a
44 discharge in any action arising under the provisions of this act.

45 (2) A person, including an owner or operator of a major facility,
46 who owns real property acquired on or after September 14, 1993 on

1 which there has been a discharge, shall not be liable for cleanup and
2 removal costs or for any other damages to the State or to any other
3 person for the discharged hazardous substance pursuant to subsection
4 c. of this section or pursuant to civil common law, if that person can
5 establish by a preponderance of the evidence that subparagraphs (a)
6 through (d) apply, or if applicable, subparagraphs (a) through (e)
7 apply:

8 (a) the person acquired the real property after the discharge of that
9 hazardous substance at the real property;

10 (b) (i) at the time the person acquired the real property, the person
11 did not know and had no reason to know that any hazardous substance
12 had been discharged at the real property, or (ii) the person acquired
13 the real property by devise or succession, except that any other funds
14 or property received by that person from the deceased real property
15 owner who discharged a hazardous substance or was in any way
16 responsible for a hazardous substance, shall be made available to
17 satisfy the requirements of P.L.1976, c.141, or (iii) the person
18 complies with the provisions of subparagraph (e) of paragraph (2) of
19 this subsection;

20 (c) the person did not discharge the hazardous substance, is not in
21 any way responsible for the hazardous substance, and is not a
22 corporate successor to the discharger or to any person in any way
23 responsible for the hazardous substance or to anyone liable for cleanup
24 and removal costs pursuant to this section;

25 (d) the person gave notice of the discharge to the department upon
26 actual discovery of that discharge.

27 To establish that a person had no reason to know that any
28 hazardous substance had been discharged for the purposes of this
29 paragraph (2), the person must have undertaken, at the time of
30 acquisition, all appropriate inquiry into the previous ownership and
31 uses of the property. For the purposes of this paragraph (2), all
32 appropriate inquiry shall mean the performance of a preliminary
33 assessment, and site investigation, if the preliminary assessment
34 indicates that a site investigation is necessary, as defined in section 23
35 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance with
36 rules and regulations promulgated by the department defining these
37 terms.

38 Nothing in this paragraph (2) shall be construed to alter liability of
39 any person who acquired real property prior to September 14, 1993;
40 and

41 (e) For the purposes of this subparagraph the person must have (i)
42 acquired the property subsequent to a hazardous substance being
43 discharged on the site and which discharge was discovered at the time
44 of acquisition as a result of the appropriate inquiry, as defined in this
45 paragraph (2), (ii) performed, following the effective date of P.L.1997,
46 c.278, a remediation of the site or discharge consistent with the

1 provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied
2 upon a valid no further action letter from the department for a
3 remediation performed prior to acquisition, or obtained approval of a
4 remedial action workplan by the department after the effective date of
5 P.L.1997, c.278 and continued to comply with the conditions of that
6 workplan, and (iii) established and maintained all engineering and
7 institutional controls as may be required pursuant to sections 35 and
8 36 of P.L.1993, c.139. A person who complies with the provisions of
9 this subparagraph by actually performing a remediation of the site or
10 discharge as set forth in (ii) above shall be issued, upon application, a
11 no further action letter by the department. A person who complies
12 with the provisions of this subparagraph either by receipt of a no
13 further action letter from the department following the effective date
14 of P.L.1997, c.278, or by relying on a previously issued no further
15 action letter shall not be liable for any further remediation including
16 any changes in a remediation standard or for the subsequent discovery
17 of a hazardous substance, at the site, or emanating from the site, if the
18 remediation was for the entire site, and the hazardous substance was
19 discharged prior to the person acquiring the property.
20 Notwithstanding any other provisions of this subparagraph, a person
21 who complies with the provisions of this subparagraph only by virtue
22 of the existence of a previously issued no further action letter shall
23 receive no liability protections for any discharge which occurred
24 during the time period between the issuance of the no further action
25 letter and the property acquisition. Compliance with the provisions of
26 this subparagraph (e) shall not relieve any person of any liability for a
27 discharge that is off the site of the property covered by the no further
28 action letter, for a discharge that occurs at that property after the
29 person acquires the property, for any actions that person negligently
30 takes that aggravates or contributes to a discharge of a hazardous
31 substance, for failure to comply in the future with laws and
32 regulations, or if that person fails to maintain the institutional or
33 engineering controls on the property or to otherwise comply with the
34 provisions of the no further action letter.

35 (3) Notwithstanding the provisions of paragraph (2) of this
36 subsection to the contrary, if a person who owns real property obtains
37 actual knowledge of a discharge of a hazardous substance at the real
38 property during the period of that person's ownership and
39 subsequently transfers ownership of the property to another person
40 without disclosing that knowledge, the transferor shall be strictly liable
41 for the cleanup and removal costs of the discharge and no defense
42 under this subsection shall be available to that person.

43 (4) Any federal, State, or local governmental entity which acquires
44 ownership of real property through bankruptcy, tax delinquency,
45 abandonment, escheat, eminent domain, condemnation or any
46 circumstance in which the governmental entity involuntarily acquires

1 title by virtue of its function as sovereign, or where the governmental
2 entity acquires the property by any means for the purpose of
3 promoting the redevelopment of that property, shall not be liable,
4 pursuant to subsection c. of this section or pursuant to common law,
5 to the State or to any other person for any discharge which occurred
6 or began prior to that ownership. This paragraph shall not provide any
7 liability protection to any federal, State or local governmental entity
8 which has caused or contributed to the discharge of a hazardous
9 substance. This paragraph shall not provide any liability protection to
10 any federal, State, or local government entity that acquires ownership
11 of real property by condemnation or eminent domain where the real
12 property is being remediated in a timely manner at the time of the
13 condemnation or eminent domain action.

14 (5) A person, including an owner or operator of a major facility,
15 who owns real property acquired prior to September 14, 1993 on
16 which there has been a discharge, shall not be liable for cleanup and
17 removal costs or for any other damages to the State or to any other
18 person for the discharged hazardous substance pursuant to subsection
19 c. of this section or pursuant to civil common law, if that person can
20 establish by a preponderance of the evidence that subparagraphs (a)
21 through (d) apply:

22 (a) the person acquired the real property after the discharge of that
23 hazardous substance at the real property;

24 (b) (i) at the time the person acquired the real property, the person
25 did not know and had no reason to know that any hazardous substance
26 had been discharged at the real property, or (ii) the person acquired
27 the real property by devise or succession, except that any other funds
28 or property received by that person from the deceased real property
29 owner who discharged a hazardous substance or was in any way
30 responsible for a hazardous substance, shall be made available to
31 satisfy the requirements of P.L.1976, c.141;

32 (c) the person did not discharge the hazardous substance, is not in
33 any way responsible for the hazardous substance, and is not a
34 corporate successor to the discharger or to any person in any way
35 responsible for the hazardous substance or to anyone liable for cleanup
36 and removal costs pursuant to this section;

37 (d) the person gave notice of the discharge to the department upon
38 actual discovery of that discharge.

39 To establish that a person had no reason to know that any
40 hazardous substance had been discharged for the purposes of this
41 paragraph (5), the person must have undertaken, at the time of
42 acquisition, all appropriate inquiry on the previous ownership and uses
43 of the property based upon generally accepted good and customary
44 standards.

45 Nothing in this paragraph (5) shall be construed to alter liability of
46 any person who acquired real property on or after September 14,
47 1993.

1 e. Neither the fund nor the Sanitary Landfill Contingency Fund
2 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall be
3 liable for any damages incurred by any person who is relieved from
4 liability pursuant to subsection d. or f. of this section for a remediation
5 that involves the use of engineering controls but the fund and the
6 Sanitary Landfill Contingency Fund shall be liable for any remediation
7 that involves only the use of institutional controls if after a valid no
8 further action letter has been issued the department orders additional
9 remediation except that the fund and the Sanitary Landfill Contingency
10 Fund shall not be liable for any additional remediation that is required
11 to remove an institutional control.

12 f. Notwithstanding any other provision of this section, a person,
13 who owns real property acquired on or after the effective date of
14 P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for any
15 cleanup and removal costs or damages, under this section or pursuant
16 to any other statutory or civil common law, to any person, other than
17 the State and the federal government, harmed by any hazardous
18 substance discharged on that property prior to acquisition, and any
19 migration off that property related to that discharge, provided all the
20 conditions of this subsection are met:

21 (1) the person acquired the real property after the discharge of that
22 hazardous substance at the real property;

23 (2) the person did not discharge the hazardous substance, is not in
24 any way responsible for the hazardous substance, and is not a
25 corporate successor to the discharger or to any person in any way
26 responsible for the hazardous substance or to anyone liable for a
27 discharge pursuant to this section;

28 (3) the person gave notice of the discharge to the department upon
29 actual discovery of that discharge;

30 (4) within 30 days after acquisition of the property, the person
31 commenced a remediation of the discharge, including any migration,
32 pursuant to a department oversight document executed prior to
33 acquisition, and the department is satisfied that remediation was
34 completed in a timely and appropriate fashion; and

35 (5) Within ten days after acquisition of the property, or within
36 30 days after the expiration of the period or periods allowed for the
37 right of redemption pursuant to tax foreclosure law, the person agrees
38 in writing to provide access to the State for remediation and related
39 activities, as determined by the State.

40 The provisions of this subsection shall not relieve any person of any
41 liability:

42 (1) for a discharge that occurs at that property after the person
43 acquired the property;

44 (2) for any actions that person negligently takes that aggravates or
45 contributes to the harm inflicted upon any person;

1 (3) if that person fails to maintain the institutional or engineering
2 controls on the property or to otherwise comply with the provisions
3 of a no further action letter or a remedial action workplan and a
4 person is harmed thereby;

5 (4) for any liability to clean up and remove, pursuant to the
6 department's regulations and directions, any hazardous substances that
7 may have been discharged on the property or that may have migrated
8 therefrom; and

9 (5) for that person's failure to comply in the future with laws and
10 regulations.

11 g. Nothing in the amendatory provisions to this section adopted
12 pursuant to P.L.1997, c.278 shall be construed to remove any defense
13 to liability that a person may have had pursuant to subsection e. of this
14 section that existed prior to the effective date of P.L.1997, c.278.

15 h. Nothing in this section shall limit the requirements of any person
16 to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).

17 (cf: P.L.2001, c.154, s.2)

18
19 3. Section 25 of P.L.1993, c.139 (C.58:10B-3) is amended to read
20 as follows:

21 25. a. The owner or operator of an industrial establishment or any
22 other person required to perform remediation activities pursuant to
23 P.L.1983, c.330 (C.13:1K-6 et al.), or a discharger, a person in any
24 way responsible for a hazardous substance, or a person otherwise
25 liable for cleanup and removal costs pursuant to P.L.1976, c.141
26 (C.58:10-23.11 et seq.) who has been issued a directive or an order by
27 a State agency, who has entered into an administrative consent order
28 with a State agency, or who has been ordered by a court to clean up
29 and remove a hazardous substance or hazardous waste discharge
30 pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), shall establish
31 and maintain a remediation funding source in the amount necessary to
32 pay the estimated cost of the required remediation. A person who
33 voluntarily undertakes a remediation pursuant to a memorandum of
34 agreement with the department, or without the department's oversight,
35 or who performs a remediation in an environmental opportunity zone
36 is not required to establish or maintain a remediation funding source.
37 A person who uses an innovative technology or who, in a timely
38 fashion, implements an unrestricted use remedial action or a limited
39 restricted use remedial action for all or part of a remedial action is not
40 required to establish a remediation funding source for the cost of the
41 remediation involving the innovative technology or permanent remedy.
42 A person required to establish a remediation funding source pursuant
43 to this section shall provide to the department satisfactory
44 documentation that the requirement has been met.

45 The remediation funding source shall be established in an amount
46 equal to or greater than the cost estimate of the implementation of the

1 remediation (1) as approved by the department, (2) as provided in an
2 administrative consent order or remediation agreement as required
3 pursuant to subsection e. of section 4 of P.L.1983, c.330, (3) as stated
4 in a departmental order or directive, or (4) as agreed to by a court, and
5 shall be in effect for a term not less than the actual time necessary to
6 perform the remediation at the site. Whenever the remediation cost
7 estimate increases, the person required to establish the remediation
8 funding source shall cause the amount of the remediation funding
9 source to be increased to an amount at least equal to the new estimate.
10 Whenever the remediation or cost estimate decreases, the person
11 required to obtain the remediation funding source may file a written
12 request to the department to decrease the amount in the remediation
13 funding source. The remediation funding source may be decreased to
14 the amount of the new estimate upon written approval by the
15 department delivered to the person who established the remediation
16 funding source and to the trustee or the person or institution providing
17 the remediation trust, the environmental insurance policy, or the line
18 of credit, as applicable. The department shall approve the request
19 upon a finding that the remediation cost estimate decreased by the
20 requested amount. The department shall review and respond to the
21 request to decrease the remediation funding source within [90]
22 30 days of receipt of the request.

23 b. The person responsible for performing the remediation and who
24 established the remediation funding source may use the remediation
25 funding source to pay for the actual cost of the remediation. The
26 department may not require any other financial assurance by the
27 person responsible for performing the remediation other than that
28 required in this section. In the case of a remediation performed
29 pursuant to P.L.1983, c.330, the remediation funding source shall be
30 established no more than 14 days after the approval by the department
31 of a remedial action workplan or upon approval of a remediation
32 agreement pursuant to subsection e. of section 4 of P.L.1983, c.330
33 (C.13:1K-9), unless the department approves an extension. In the case
34 of a remediation performed pursuant to P.L.1976, c.141, the
35 remediation funding source shall be established as provided in an
36 administrative consent order signed by the parties, as provided by a
37 court, or as directed or ordered by the department. The establishment
38 of a remediation funding source for that part of the remediation
39 funding source to be established by a grant or financial assistance from
40 the remediation fund may be established for the purposes of this
41 subsection by the application for a grant or financial assistance from
42 the remediation fund and satisfactory evidence submitted to the
43 department that the grant or financial assistance will be awarded.
44 However, if the financial assistance or grant is denied or the
45 department finds that the person responsible for establishing the
46 remediation funding source did not take reasonable action to obtain

1 the grant or financial assistance, the department shall require that the
2 full amount of the remediation funding source be established within 14
3 days of the denial or finding. The remediation funding source shall be
4 evidenced by the establishment and maintenance of (1) a remediation
5 trust fund, (2) an environmental insurance policy, issued by an entity
6 licensed by the Department of Banking and Insurance to transact
7 business in the State of New Jersey, to fund the remediation, (3) a line
8 of credit from a person or institution satisfactory to the department
9 authorizing the person responsible for performing the remediation to
10 borrow money, or (4) a self-guarantee, or by any combination thereof.
11 Where it can be demonstrated that a person cannot establish and
12 maintain a remediation funding source for the full cost of the
13 remediation by a method specified in this subsection, that person may
14 establish the remediation funding source for all or a portion of the
15 remediation, by securing financial assistance from the Hazardous
16 Discharge Site Remediation Fund as provided in section 29 of
17 P.L.1993, c.139 (C.58:10B-7).

18 c. A remediation trust fund shall be established pursuant to the
19 provisions of this subsection. An originally signed duplicate of the
20 trust agreement shall be delivered to the department by certified mail
21 within 14 days of receipt of notice from the department that the
22 remedial action workplan or remediation agreement as provided in
23 subsection e. of section 4 of P.L.1983, c.330 is approved or as
24 specified in an administrative consent order, civil order, or order of the
25 department, as applicable. The remediation trust fund agreement shall
26 conform to a model trust fund agreement as established by the
27 department and shall be accompanied by a certification of
28 acknowledgment that conforms to a model established by the
29 department. The trustee shall be an entity which has the authority to
30 act as a trustee and whose trust operations are regulated and examined
31 by a federal or New Jersey agency.

32 The trust fund agreement shall provide that the remediation trust
33 fund may not be revoked or terminated by the person required to
34 establish the remediation funding source or by the trustee without the
35 written consent of the department. The trustee shall release to the
36 person required to establish the remediation funding source, or to the
37 department or transferee of the property, as appropriate, only those
38 moneys as the department authorizes, in writing, to be released. The
39 person entitled to receive money from the remediation trust fund shall
40 submit documentation to the department detailing the costs incurred
41 or to be incurred as part of the remediation. Upon a determination by
42 the department that the costs are consistent with the remediation of
43 the site, the department shall, in writing, authorize a disbursement of
44 moneys from the remediation trust fund in the amount of the
45 documented costs.

1 The department shall return the original remediation trust fund
2 agreement to the trustee for termination after the person required to
3 establish the remediation funding source substitutes an alternative
4 remediation funding source as specified in this section or the
5 department notifies the person that that person is no longer required
6 to maintain a remediation funding source for remediation of the
7 contaminated site.

8 d. An environmental insurance policy shall be established pursuant
9 to the provisions of this subsection. An originally signed duplicate of
10 the insurance policy shall be delivered to the department by certified
11 mail, overnight delivery, or personal service within 30 days of receipt
12 of notice from the department that the remedial action workplan or
13 remediation agreement, as provided in subsection e. of section 4 of
14 P.L.1983, c.330, is approved or as specified in an administrative
15 consent order, civil order, or order of the department, as applicable.
16 The environmental insurance policy may not be revoked or terminated
17 without the written consent of the department. The insurance
18 company shall release to the person required to establish the
19 remediation funding source, or to the department or transferee of the
20 property, as appropriate, only those moneys as the department
21 authorizes, in writing, to be released. The person entitled to receive
22 money from the environmental insurance policy shall submit
23 documentation to the department detailing the costs incurred or to be
24 incurred as part of the remediation.

25 e. A line of credit shall be established pursuant to the provisions of
26 this subsection. A line of credit shall allow the person establishing it
27 to borrow money up to a limit established in a written agreement in
28 order to pay for the cost of the remediation for which the line of credit
29 was established. An originally signed duplicate of the line of credit
30 agreement shall be delivered to the department by certified mail,
31 overnight delivery, or personal service within 14 days of receipt of
32 notice from the department that the remedial action workplan or
33 remediation agreement as provided in subsection e. of section 4 of
34 P.L.1983, c.330 is approved, or as specified in an administrative
35 consent order, civil order, or order of the department, as applicable.
36 The line of credit agreement shall conform to a model agreement as
37 established by the department and shall be accompanied by a
38 certification of acknowledgment that conforms to a model established
39 by the department.

40 A line of credit agreement shall provide that the line of credit may
41 not be revoked or terminated by the person required to obtain the
42 remediation funding source or the person or institution providing the
43 line of credit without the written consent of the department. The
44 person or institution providing the line of credit shall release to the
45 person required to establish the remediation funding source, or to the
46 department or transferee of the property as appropriate, only those

1 moneys as the department authorizes, in writing, to be released. The
2 person entitled to draw upon the line of credit shall submit
3 documentation to the department detailing the costs incurred or to be
4 incurred as part of the remediation. Upon a determination that the
5 costs are consistent with the remediation of the site, the department
6 shall, in writing, authorize a disbursement from the line of credit in the
7 amount of the documented costs.

8 The department shall return the original line of credit agreement to
9 the person or institution providing the line of credit for termination
10 after the person required to establish the remediation funding source
11 substitutes an alternative remediation funding source as specified in
12 this section, or after the department notifies the person that that
13 person is no longer required to maintain a remediation funding source
14 for remediation of the contaminated site.

15 f. A person may self-guarantee a remediation funding source upon
16 the submittal of documentation to the department demonstrating that
17 the cost of the remediation as estimated in the remedial action
18 workplan, in the remediation agreement as provided in subsection e.
19 of section 4 of P.L.1983, c.330, in an administrative consent order, or
20 as provided in a departmental or court order, would not exceed
21 one-third of the tangible net worth of the person required to establish
22 the remediation funding source, and that the person has a cash flow
23 sufficient to assure the availability of sufficient moneys for the
24 remediation during the time necessary for the remediation. Satisfactory
25 documentation of a person's capacity to self-guarantee a remediation
26 funding source shall consist [only] of a statement of income and
27 expenses or similar statement of that person and the balance sheet or
28 similar statement of assets and liabilities as used by that person for the
29 fiscal year of the person making the application that ended closest in
30 time to the date of the self-guarantee application, or in the case of a
31 special purpose entity established specifically for the purpose of
32 acquiring and redeveloping a contaminated site, and for which a
33 statement of income and expenses is not available, a statement of
34 assets and liabilities attested to by a certified public accountant. The
35 self-guarantee application shall be certified as true to the best of the
36 applicant's information, knowledge, and belief, by the chief financial,
37 or similar officer or employee, or general partner, or principal of the
38 person making the self-guarantee application. A person shall be
39 deemed by the department to possess the required cash flow pursuant
40 to this section if that person's gross receipts exceed its gross payments
41 in that fiscal year in an amount at least equal to the estimated costs of
42 completing the remedial action workplan schedule to be performed in
43 the 12-month period following the date on which the application for
44 self-guarantee is made. In the event that a self-guarantee is required
45 for a period of more than one year, applications for a self-guarantee
46 shall be renewed annually pursuant to this subsection for each

1 successive year. The department may establish requirements and
2 reporting obligations to ensure that the person proposing to
3 self-guarantee a remediation funding source meets the criteria for
4 self-guaranteeing prior to the initiation of remedial action and until
5 completion of the remediation.

6 g. (1) If the person required to establish the remediation funding
7 source fails to perform the remediation as required, the department
8 shall make a written determination of this fact. A copy of the
9 determination by the department shall be delivered to the person
10 required to establish the remediation funding source and, in the case
11 of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6
12 et al.), to any transferee of the property. Following this written
13 determination, the department may perform the remediation in place
14 of the person required to establish the remediation funding source. In
15 order to finance the cost of the remediation the department may make
16 disbursements from the remediation trust fund or the line of credit or
17 claims upon the environmental insurance policy, as appropriate, or, if
18 sufficient moneys are not available from those funds, from the
19 remediation guarantee fund created pursuant to section 45 of
20 P.L.1993, c.139 (C.58:10B-20).

21 (2) The transferee of property subject to a remediation conducted
22 pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), may, at any time after
23 the department's determination of nonperformance by the owner or
24 operator required to establish the remediation funding source, petition
25 the department, in writing, with a copy being sent to the owner and
26 operator, for authority to perform the remediation at the industrial
27 establishment. The department, upon a determination that the
28 transferee is competent to do so, may grant that petition which shall
29 authorize the transferee to perform the remediation as specified in an
30 approved remedial action workplan, or to perform the activities as
31 required in a remediation agreement, and to avail itself of the moneys
32 in the remediation trust fund or line of credit or to make claims upon
33 the environmental insurance policy for these purposes. The petition
34 of the transferee shall not be granted by the department if the owner
35 or operator continues or begins to perform its obligations within
36 14 days of the petition being filed with the department.

37 (3) After the department has begun to perform the remediation in
38 the place of the person required to establish the remediation funding
39 source or has granted the petition of the transferee to perform the
40 remediation, the person required to establish the remediation funding
41 source shall not be permitted by the department to continue its
42 performance obligations except upon the agreement of the department
43 or the transferee, as applicable, or except upon a determination by the
44 department that the transferee is not adequately performing the
45 remediation.

46 (cf: P.L.1997, c.278, s.11)

1 4. Section 3 of P.L.1997, c.278 (C.58:10B-21) is amended to read
2 as follows:

3 3. a. The Department of Environmental Protection shall investigate
4 and determine the extent of contamination of every aquifer in this
5 State. The department shall prioritize its investigations of aquifers
6 giving the highest priority to those aquifers underlying urban or
7 industrial areas that are known or suspected of having large areas of
8 contamination. This information shall be updated periodically as
9 necessary. The information derived from the investigation shall be
10 made available to the public by entering it into the Department of
11 Environmental Protection's existing geographic information system,
12 by making this information available on the system, and by making
13 copies of any maps and data available to the public. The functions
14 required pursuant to this section shall be considered a site remediation
15 obligation of the State. The department may charge a reasonable fee
16 for the reproduction of the maps and data which fee shall reflect the
17 cost of their reproduction.

18 b. Upon completion of an investigation of an aquifer by the
19 department and upon the department's determination of the extent of
20 contamination of an aquifer, a person performing a remediation may
21 rely upon that information for that person's submission of information
22 to the department in the performance of a remediation.

23 c. The entire cost of the investigation required pursuant to this
24 section shall be borne by the department from appropriations made to
25 it by the Legislature specifically for this purpose. The department may
26 not fund any part of this investigation by the imposition of a fee or
27 charge on any person performing a remediation or upon any person
28 who is in need of a permit or approval from the department.

29 d. Nothing in this section shall be construed to require or obligate
30 the department to reclassify the groundwater of any aquifer.

31 e. Any information concerning the contamination of an aquifer that
32 is submitted to the department in digital form by a person performing
33 a remediation, shall be entered into the geographical information
34 system maintained by the department and shall be made available to
35 the public within 90 days of the receipt of the information by the
36 department.

37 (cf: P.L.1997, c.278, s.3)

38

39 5. Section 4 of P.L.1997, c.278 (C.58:10B-22) is amended to read
40 as follows:

41 4. a. [The] Within 270 days of the effective date of P.L. _____, c.
42 (C. _____) (now in the Legislature as this bill), the Department of
43 Environmental Protection shall investigate and map those areas of the
44 State at which large areas of historic fill exist. The department shall
45 prioritize its investigations of historic fill areas giving highest priority
46 to those areas of the State that are known or suspected to contain

1 historic fill. This information shall be updated periodically as
2 necessary. The information derived from the investigation shall be
3 made available to the public by entering it into the Department of
4 Environmental Protection's existing geographic information system,
5 by making this information available on the system, and by making
6 copies of any maps and data available to the public. The functions
7 required pursuant to this section shall be considered a site remediation
8 obligation of the State. The department may charge a reasonable fee
9 for the reproduction of the maps and data which fee shall reflect the
10 cost of their reproduction.

11 b. Upon completion of an investigation of an area of historic fill by
12 the department and upon the department's determination of the
13 location of historic fill in an area, a person performing a remediation
14 may rely upon that information for that person's performance of a
15 remediation and selection of a remedial action pursuant to subsection
16 h. of section 35 of P.L.1993, c.139 (C.58:10B-12).

17 c. The entire cost of investigation required pursuant to this section
18 shall be borne by the department from appropriations made to it by the
19 Legislature specifically for this purpose. The department may not fund
20 any part of this investigation by the imposition of a fee or charge on
21 any person performing a remediation or upon any person who is in
22 need of a permit or approval from the department.

23 (cf: P.L.1997, c.278, s.4)

24

25 6. Section 34 of P.L.1997, c.278 (C.58:10B-26) is amended to
26 read as follows:

27 34. As used in sections 34 through 39 of P.L.1997, c.278
28 (C.58:10B-26 through 58:10B-31):

29 "Contamination" or "contaminant" means any discharged hazardous
30 substance as defined pursuant to section 3 of P.L.1976, c.141
31 (C.58:10-23.11b), hazardous waste as defined pursuant to section 1 of
32 P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to
33 section 3 of P.L.1977, c.74 (C.58:10A-3);

34 "Developer" means any person that enters or proposes to enter into
35 a redevelopment agreement with the State pursuant to the provisions
36 of section 35 of P.L.1997, c.278 (C.58:10B-27).

37 "Director" means the Director of the Division of Taxation in the
38 Department of the Treasury.

39 "Project" or "redevelopment project" means a specific work or
40 improvement, including lands, buildings, improvements, real and
41 personal property or any interest therein, including lands under water,
42 riparian rights, space rights and air rights, acquired, owned, developed
43 or redeveloped, constructed, reconstructed, rehabilitated or improved,
44 undertaken by a developer within an area of land whereon a
45 contaminated site is located, under a redevelopment agreement with
46 the State pursuant to section 35 of P.L.1997, c.278 (C.58:10B-27).

1 "Redevelopment agreement" means an agreement between the
2 State and a developer under which the developer agrees to perform
3 any work or undertaking necessary for the remediation of the
4 contaminated site located at the site of the redevelopment project, and
5 for the clearance, development or redevelopment, construction or
6 rehabilitation of any structure or improvement of commercial,
7 industrial or public structures or improvements within an area of land
8 whereon a contaminated site is located pursuant to section 35 of
9 P.L.1997, c.278 (C.58:10B-27), and the State agrees that the
10 developer shall be eligible for the reimbursement of up to 75% of the
11 costs of remediation of the contaminated site from the fund established
12 pursuant to section 38 of P.L.1997, c.278 (C.58:10B-30) as
13 authorized pursuant to section 36 of P.L.1997, c.278 (C.58:10B-28).

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

20 "Remediation costs" means all reasonable costs associated with the
21 remediation of a contaminated site, including the fees paid for
22 department oversight of the remediation, except that "remediation
23 costs" shall not include any costs incurred in financing the remediation.
24 (cf: P.L.1997, c.278, s.34)

25

26 7. Section 35 of P.L.1997, c.278 (C.58:10B-27) is amended to
27 read as follows:

28 35. a. The provisions of any other law, or rule or regulation
29 adopted pursuant thereto, to the contrary notwithstanding, any
30 developer may enter into a redevelopment agreement with the State
31 pursuant to the provisions of this section. The State may not enter
32 into a redevelopment agreement with a developer who is liable,
33 pursuant to paragraph (1) of subsection c. of section 8 of P.L.1976,
34 c.141 (C.58:10-23.11g), for the contamination at the site proposed to
35 be in the redevelopment agreement.

36 The decision whether or not to enter into a redevelopment
37 agreement is solely within the discretion of the [Commissioner of
38 Commerce and Economic Development] Chief Executive Officer and
39 Secretary of the Commerce and Economic Growth Commission and
40 the State Treasurer and both must agree to enter into the
41 redevelopment agreement. Nothing in P.L.1997, c.278 (C.58:10B-1.1
42 et al.) may be construed to compel the [commissioner] Secretary and
43 the State Treasurer to enter into any redevelopment agreement.

44 The [Commissioner of Commerce and Economic Development]
45 Chief Executive Officer and Secretary of the Commerce and Economic
46 Growth Commission, in consultation with the State Treasurer shall

1 negotiate the terms and conditions of any redevelopment agreement on
2 behalf of the State. The redevelopment agreement shall specify the
3 amount of the reimbursement to be awarded the developer, the
4 frequency of payments and the length of time in which that
5 reimbursement shall be granted. In no event shall the amount of the
6 reimbursement, when taken together with the property tax exemption
7 received pursuant to the "Environmental Opportunity Zone Act,"
8 P.L.1995, c.413 (C.54:4-3.151), less any in lieu of tax payments made
9 pursuant to that act, or any other State, local, or federal tax incentive
10 or grant to remediate a site, exceed [~~75%~~] 100% of the total cost of
11 the remediation.

12 The [~~commissioner~~] Secretary and the State Treasurer may only
13 enter into a redevelopment agreement if they make a finding that the
14 State tax revenues to be realized from the redevelopment project will
15 be in excess of the amount necessary to reimburse the developer. This
16 finding may be made by an estimation based upon the professional
17 judgment of the [~~commissioner~~] Secretary and the State Treasurer.

18 [The percentage of each payment to be made to the developer
19 pursuant to the redevelopment agreement shall be conditioned on the
20 occupancy rate of the buildings or other work areas located on the
21 property. The redevelopment agreement shall provide for the
22 payments made in order to reimburse the developer to be in the same
23 percentages as the occupancy rate at the site except that upon the
24 attainment of a 90% occupancy rate, the developer shall be entitled to
25 the entire amount of each payment toward the reimbursement as set
26 forth in the redevelopment agreement. The redevelopment agreement
27 shall provide for the frequency of the director's finding of the
28 occupancy rate during the payment schedule.]

29 b. In deciding whether or not to enter into a redevelopment
30 agreement and in negotiating a redevelopment agreement with a
31 developer, the [~~commissioner~~] Secretary shall consider the following
32 factors:

- 33 (1) the economic feasibility of the redevelopment project;
- 34 (2) the extent of economic and related social distress in the
35 municipality and the area to be affected by the redevelopment project;
- 36 (3) the degree to which the redevelopment project will advance
37 State, regional and local development and planning strategies;
- 38 (4) the likelihood that the redevelopment project shall , upon
39 completion , be capable of generating new tax revenue in an amount
40 in excess of the amount necessary to reimburse the developer for the
41 remediation costs incurred as provided in the redevelopment
42 agreement;
- 43 (5) the relationship of the redevelopment project to a
44 comprehensive local development strategy, including other major
45 projects undertaken within the municipality;

1 (6) the need of the redevelopment agreement to the viability of the
2 redevelopment project; and

3 (7) the degree to which the redevelopment project enhances and
4 promotes job creation and economic development.

5 (cf: P.L.1997, c.278, s.35)

6

7 8. Section 36 of P.L.1997, c.278 (C.58:10B-28) is amended to
8 read as follows:

9 36. a. The provisions of any other law, or rule or regulation
10 adopted pursuant thereto, to the contrary notwithstanding, any
11 developer that enters into a redevelopment agreement pursuant to
12 section 35 of P.L.1997, c.278 (C.58:10B-27), may be eligible for
13 reimbursement of up to ~~[75%]~~ 100% of the costs of the remediation
14 of the subject real property pursuant to the provisions of this section
15 [upon the commencement of a business operation within a
16 redevelopment project].

17 b. To be eligible for reimbursement of the costs of remediation, a
18 developer shall submit an application, in writing, to the director for
19 review and certification of the reimbursement. The director shall
20 review the request for the reimbursement upon receipt of an
21 application therefor, and shall approve or deny the application for
22 certification on a timely basis. [The director shall also make a finding
23 of the occupancy rate of the property subject to the redevelopment
24 agreement in the frequency set forth in the redevelopment agreement
25 as provided in section 35 of P.L.1997, c.278 (C.58:10B-27).]

26 The director shall certify a developer to be eligible for the
27 reimbursement if the director finds that:

28 (1) a place of business is located in the area subject to the
29 redevelopment agreement that has generated new tax revenues;

30 (2) the developer had entered into a memorandum of agreement ~~,~~
31 or other oversight document, with the Commissioner of Environmental
32 Protection, after the developer entered into the redevelopment
33 agreement, for the remediation of contamination located on the site of
34 the redevelopment project pursuant to section 37 of P.L.1997, c.278
35 (C.58:10B-29) and the developer is in compliance with the
36 memorandum of agreement; and

37 (3) the costs of the remediation were actually and reasonably
38 incurred. In making this finding the director may consult with the
39 Department of Environment Protection.

40 c. When filing an application for certification for a reimbursement
41 pursuant to this section, the developer shall submit to the director a
42 certification of the total remediation costs incurred by the developer
43 for the remediation of the subject property located at the site of the
44 redevelopment project as provided in the redevelopment agreement,
45 information concerning the occupancy rate of the buildings or other
46 work areas located on the property subject to the redevelopment

1 agreement, and such other information as the director deems necessary
2 in order to make the certifications and findings pursuant to this
3 section.

4 (cf: P.L.1997, c.278, s.36)

5

6 9. Section 37 of P.L.1997, c.278 (C.58:10B-29) is amended to
7 read as follows:

8 37. a. To qualify for the certification of reimbursement of the
9 remediation costs authorized pursuant to section 36 of P.L.1997,
10 c.278 (C.58:10B-28), a developer shall enter into a memorandum of
11 agreement, or other oversight document with the Commissioner of
12 Environmental Protection for the remediation of the site of the
13 redevelopment project.

14 b. Under the memorandum of agreement, or other oversight
15 document, the developer shall agree to perform and complete any
16 remediation activity as may be required by the Department of
17 Environmental Protection to ensure the remediation is conducted
18 pursuant to the regulations adopted by the Department of
19 Environmental Protection pursuant to P.L.1993, c.139 (C.58:10B-1 et
20 seq.).

21 c. After the developer has entered into a memorandum of
22 agreement, or other oversight document with the Commissioner of
23 Environmental Protection, the commissioner shall submit a copy
24 thereof to the developer, the clerk of the municipality in which the
25 subject property is located, the [Commissioner of the Department of
26 Commerce and Economic Development] Chief Executive Officer and
27 Secretary of the Commerce and Economic Growth Commission , and
28 the director.

29 (cf: P.L.1997, c.278, s.37)

30

31 10. Section 38 of P.L.1997, c.278 (C.58:10B-30) is amended to
32 read as follows:

33 38. a. There is created in the Department of Treasury a special
34 fund to be known as the Brownfield Site Reimbursement Fund.
35 Moneys in the fund shall be dedicated to the purpose of reimbursing
36 a developer who enters into a redevelopment agreement pursuant to
37 section 35 of P.L.1997, c.278 (C.58:10B-27) and is certified for
38 reimbursement pursuant to section 36 of P.L.1997, c.278
39 (C.58:10B-28). A special account within the fund shall be created for
40 each developer upon approval of a certification pursuant to section 36
41 of P.L.1997, c.278 (C.58:10B-28). The Legislature shall annually
42 appropriate the entire balance of the fund for the purposes of
43 reimbursement of remediation costs as provided in section 39 of
44 P.L.1997, c.278 (C.58:10B-31).

45 b. The fund shall be credited with an amount from the General
46 Fund, determined sufficient by the [Commissioner of Commerce and

1 Economic Development] Chief Executive Officer and Secretary of the
2 Commerce and Economic Growth Commission, to provide the
3 negotiated reimbursement to the developer. Moneys credited to the
4 fund shall be an amount that equals the percent of the remediation
5 costs expected to be reimbursed pursuant to the redevelopment
6 agreement. In estimating the amount of new State taxes that is
7 anticipated to be derived from a redevelopment project pursuant to
8 section 35 of P.L.1997, c.278 (C.58:10B-27), the [Commissioner of
9 Commerce and Economic Development]Chief Executive Officer and
10 Secretary of the Commerce and Economic Growth Commission and
11 the State Treasurer shall consider taxes from the following: the
12 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
13 et seq.), "The Savings Institution Tax Act," P.L.1973, c.31
14 (C.54:10D-1 et seq.), the tax imposed on marine insurance companies
15 pursuant to R.S.54:16-1 et seq., the tax imposed on fire insurance
16 companies pursuant to R.S.54:17-4 et al., the tax imposed on insurers
17 generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), the
18 public utility franchise tax, public utilities gross receipts tax and public
19 utility excise tax imposed pursuant to P.L.1940, c.4, and P.L.1940, c.5
20 (C.54:30A-16 et seq. and C.54:30A-49 et seq.), [that is a taxpayer in
21 respect of] the tax derived from net profits from business, a
22 distributive share of partnership income, or a prorata share of S
23 corporation income under the "New Jersey Gross Income Tax Act,"
24 N.J.S.54A:1-1 et seq., [or who] the tax derived from a business at the
25 site of a redevelopment project that is required to collect the tax
26 pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1
27 et seq.). The Chief Executive Officer and Secretary of the Commerce
28 and Economic Growth Commission and the State Treasurer shall also
29 consider amounts equivalent to the tax revenue generated by persons
30 engaged in remediation activities at the site, or by persons engaged in
31 redevelopment activities at the site pursuant to the "New Jersey Gross
32 Income Tax Act," N.J.S.54A:1-1 et seq., and taxes generated by
33 persons engaged in remediation activities at the site, or by persons
34 engaged in redevelopment activities at the site pursuant to the "Sales
35 and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).
36 (cf: P.L.1997, c.278, s.38)

37

38 11. This act shall take effect immediately.

39

40

41

STATEMENT

42

43 This bill would make changes to the laws concerning site
44 remediation. The bill would require the department to complete its
45 investigation and mapping of the States large areas of historic fill
46 within nine months of the bill's effective date. The investigation and

1 mapping of the areas in the State in which large areas of historic fill
2 exist was required to be performed in the "Brownfield and
3 Contaminated Site Remediation Act," P.L.1997, c.278. At that time,
4 \$2 million was appropriated for the historic fill study from the "1996
5 Environmental Cleanup Fund" created by the "Port of New Jersey
6 Revitalization, Dredging, Environmental Cleanup, Lake Restoration,
7 and Delaware Bay Area Economic Development Bond Act of 1996,"
8 P.L.1996, c.70. The bill also requires that the department enter data
9 concerning the contamination of an aquifer in the geographical
10 information system, that is submitted in digital form by a person
11 performing a remediation and that it be made available to the public
12 within 90 days of the department's receipt of the information.

13 The bill would decrease the time provided for the department to
14 review and respond to a request to decrease a remediation funding
15 source from 90 to 30 days and would authorize a self-guarantee for
16 the remediation funding source for special purpose entities by allowing
17 the consideration of a statement of assets and liabilities to constitute
18 satisfactory documentation of a person's ability to self-guarantee.

19 The bill would make changes to the redevelopment agreement
20 program by: (1) including oversight costs within the definition of
21 remediation costs to allow for DEP fees charged for oversight to be
22 included in the costs that may be reimbursed from the tax revenues
23 generated at the property; (2) increasing amount of remediation costs
24 that may be reimbursed under remediation agreement with the State
25 from 75% to 100%; and (3) authorizing use of income tax and sales
26 tax generated by employees engaged in remediation or redevelopment
27 at the site in the reimbursement of remediation costs to the developer.
28 The bill also would authorize loans for remediation by the New Jersey
29 Economic Development Authority to a developer who enters into a
30 redevelopment agreement with the State to remediate a site. The loan
31 may be repaid from reimbursements made to the developer pursuant
32 to section 39 of P.L.1997, c.278 (C.58:10B-31) from the "Brownfield
33 Site Reimbursement Fund," created pursuant to section 38 of
34 P.L.1997, c.278 (C.58:10B-30).

35 Further, the bill would clarify the liability of a person who is not a
36 responsible party pursuant to the "Spill Compensation and Control
37 Act" and who voluntarily remediates a contaminated site or relies on
38 a previously issued no further action letter issued by the department
39 for a site, for contamination that emanates from the site covered by the
40 no further action letter. The bill clarifies that the person would not be
41 liable for the subsequent discovery of a hazardous substance that has
42 emanated from the property covered by the no further action letter
43 even if the hazardous substance is no longer on the site covered by the
44 no further action letter.

45 Finally, the bill provides that to be eligible for the existing
46 protection from third party suits, a person who voluntarily acquires

1 contaminated property may have 30 days after the expiration of the
2 period or periods allowed for the right of redemption pursuant to tax
3 foreclosure law, to agree in writing to provide access to the State for
4 remediation and related activities. Current law requires the person to
5 agree in writing within 10 days after acquisition of the property.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1714**

STATE OF NEW JERSEY

DATED: JUNE 12, 2003

The Senate Environment Committee favorably reports a committee substitute for Senate Bill No. 1714.

This committee substitute would make changes to the laws concerning site remediation. The committee substitute would require the department to complete its investigation and mapping of the State's large areas of historic fill within nine months of the bill's effective date. The investigation and mapping of the areas in the State in which large areas of historic fill exist was required to be performed in the "Brownfield and Contaminated Site Remediation Act," P.L.1997, c.278. At that time, \$2 million was appropriated for the historic fill study from the "1996 Environmental Cleanup Fund" created by the "Port of New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond Act of 1996," P.L.1996, c.70. The committee substitute also requires that the department enter data concerning the contamination of an aquifer in the geographical information system, that is submitted in digital form by a person performing a remediation and that it be made available to the public within 90 days of the department's receipt of the information.

The committee substitute would decrease the time provided for the department to review and respond to a request to decrease a remediation funding source from 90 to 30 days and would authorize a self-guarantee for the remediation funding source for special purpose entities by allowing the consideration of a statement of assets and liabilities certified by a certified public accountant to constitute satisfactory documentation of a person's ability to self-guarantee.

The committee substitute would make changes to the redevelopment agreement program. The committee substitute would authorize use of sales tax generated from the purchase of materials used for the remediation or redevelopment at the site in the reimbursement of remediation costs to the developer. The substitute would also require that, if the redevelopment of the property is performed in phases, the redevelopment agreement provide for payments to reimburse the developer to commence prior to the completion of the redevelopment at the entire site. The redevelopment

agreement must provide that payments to reimburse the developer be in the same percentages as the occupancy rate of that portion of the site for which the developer has received a no further action letter, and on which new residential construction is completed or a place of business is located, that has generated new tax revenues.

Further, the committee substitute would clarify the liability of a person who is not a responsible party pursuant to the "Spill Compensation and Control Act" and who voluntarily remediates a contaminated site or relies on a previously issued no further action letter issued by the department for a site, for contamination that emanates from the site covered by the no further action letter. The committee substitute clarifies that the person would not be liable for the subsequent discovery of a hazardous substance that has emanated from the property covered by the no further action letter even if the hazardous substance is no longer on the site covered by the no further action letter.

Finally, the committee substitute provides that to be eligible for the existing protection from third party suits, a person who voluntarily acquires contaminated property may have 30 days after the expiration of the period or periods allowed for the right of redemption pursuant to tax foreclosure law, to agree in writing to provide access to the State for remediation and related activities. Current law requires the person to agree in writing within 10 days after acquisition of the property.

This committee substitute is identical to Assembly Bill No. 2585 (1R) as amended, which was also released by the committee.