

54:4-3.150

LEGISLATIVE HISTORY CHECKLIST
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(~~"Environmental Opportunity Zone Act"~~)

NJSA: 54:4-3.150

LAWS OF: 1995 CHAPTER: 413

BILL NO: A1631

SPONSOR(S): Bagger and Roberts

DATE INTRODUCED: April 25, 1994

COMMITTEE: ASSEMBLY: Policy and Rules

SENATE: Budget

AMENDED DURING PASSAGE: Yes Assembly Committee Substitute (2R)

DATE OF PASSAGE: ASSEMBLY: June 19, 1995

SENATE: December 18, 1995

DATE OF APPROVAL: January 10, 1996

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBP:pp

[SECOND REPRINT]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1631

STATE OF NEW JERSEY

ADOPTED JUNE 12, 1995

Sponsored by Assemblymen BAGGER, ROBERTS, Cohen, Garcia,
Assemblywoman Cruz-Perez, Assemblymen Petrillo, Pascrell,
Assemblywoman Turner, Assemblyman Brown, Assemblywoman
Gill, Assemblymen Impreveduto, Jones, Mattison, Romano,
Suliga, Corodemus and Charles

1 AN ACT concerning real property tax exemptions for certain
2 contaminated real property, supplementing Title 54 of the
3 Revised Statutes, and amending and supplementing P.L.1993,
4 c.139.

5

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

8 1. (New section) This act shall be known and may be cited as
9 the "Environmental Opportunity Zone Act."

10 2. (New section) The Legislature finds that there are
11 numerous properties that are underutilized or that have been
12 abandoned and that are not being utilized for any commercial use
13 because of contamination that exists at those properties; that
14 abandoned contaminated properties harm society by causing a
15 burden on municipal services while failing to contribute to the
16 funding of those services; that a disproportionate percentage of
17 these properties are located in older urban municipalities given
18 the fact that these municipalities were once the center for
19 industrial production; that the revitalization of these properties
20 will not only bring tax ratables to the municipality and other
21 local governments, but will result in job creation and foster urban
22 redevelopment; that one of the central tenets of the State
23 Development and Redevelopment Plan is to redevelop urban areas
24 with existing utilities and infrastructure and that the use of these
25 now abandoned or underutilized sites for commercial purposes
26 will make a significant contribution toward implementing the
27 plan; that the federal "Clean Air Act" encourages the
28 reindustrialization of urban areas as this would provide jobs near
29 where people live thus reducing harmful air pollutants emitted
30 from automobiles needed to travel distances to places of
31 employment; and that it is in the economic interest of the State
32 and the municipalities in which abandoned or underutilized
33 contaminated properties are located to encourage the
34 remediation of these properties so that they can be reused or
35 fully used for commercial purposes.

36 3. (New section) As used in this act:

37 "Assessor" means the municipal tax assessor appointed
38 pursuant to the provisions of chapter 9 of Title 40A of the New
39 Jersey Statutes;

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 floor amendments adopted June 12, 1995.

² Senate SBA committee amendments adopted December 11, 1995.

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

6 "Environmental opportunity zone" means any qualified real
7 property that has been designated by the governing body as an
8 environmental opportunity zone pursuant to section 4 of P.L. ,
9 c. (C.) (now pending before the Legislature as this bill);

10 "Qualified real property" means any parcel of real property
11 that is now vacant or underutilized, which is in need of a
12 remediation due to a discharge or threatened discharge of a
13 contaminant, and which is listed in the most recent Department
14 of Environmental Protection publication of known hazardous
15 discharge sites in New Jersey prepared pursuant to P.L.1982,
16 c.202 (C.58:10-23.15 et seq.);

17 "Remediation" means all necessary actions to investigate and
18 clean up any known, suspected, or threatened discharge of
19 contaminants, including, as necessary, the preliminary
20 assessment, site investigation, remedial investigation, and
21 remedial action.

22 4. (New section) The governing body of a municipality may, by
23 ordinance, designate one or more qualified real properties in that
24 municipality as an environmental opportunity zone. The
25 ordinance adopted by the municipality shall list the qualified real
26 properties designated as environmental opportunity zones. The
27 designation of environmental opportunity zones shall be
28 consistent with the permitted use of those properties pursuant to
29 the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et
30 seq.).

31 5. (New section) The governing body of a municipality which
32 has adopted an ordinance pursuant to section 4 of P.L. , c.
33 (C.) (now pending before the Legislature as this bill), may, by
34 ordinance, provide for exemptions of real property taxes for
35 environmental opportunity zones. The governing body shall
36 include the following items in its enabling ordinance:

37 a. A property tax exemption term of ten years;

38 b. The application procedure for an exemption authorized
39 under P.L. , c. (C.) (now pending before the Legislature as
40 this bill);

41 c. The method of computing payments in lieu of real property
42 taxes pursuant to subsection b. of section 7 of P.L. , c. (C.)
43 (now pending before the Legislature as this bill);

44 d. An approval method for exemption applications by the
45 assessor or by ordinance on a per application basis; and

46 e. A requirement that the environmental opportunity zone will
47 be remediated in compliance with the remediation standards
48 adopted by the Department of Environmental Protection pursuant
49 to P.L.1993, c.139 (C.58:10B-1 et al.), that the owner of the
50 property will enter into a memorandum of agreement or
51 administrative consent order with the department to perform the
52 remediation and will complete the remediation pursuant to the
53 agreement or order, and that, once remediated, the
54 environmental opportunity zone will be used for a commercial or

1 industrial purpose during the time period for which the real
2 property tax exemption is given.

3 6. (New section) No exemption shall be granted pursuant to
4 P.L. , c. (C.) (now pending before the Legislature as this
5 bill) except upon written application filed with the assessor of the
6 taxing district wherein the environmental opportunity zone is
7 located and is approved by the governing body by resolution or
8 ordinance, as required by the enabling ordinance. Every
9 application shall be on a form prescribed by the Director of the
10 Division of Taxation, in the Department of the Treasury, and
11 provided for the use of claimants by the governing body of the
12 municipality constituting the taxing district. Every application
13 for an exemption may be approved and allowed by the governing
14 body to the degree that the application is consistent with the
15 provisions of the enabling ordinance. The exemption shall not be
16 granted by the governing body until the owner of the property
17 enters into a memorandum of agreement or administrative
18 consent order with the Department of Environmental Protection
19 for the remediation. An exemption that is granted shall take
20 effect upon the approval by the governing body and it shall be
21 recorded and made a permanent part of the official tax records
22 of the taxing district, which record shall contain a notice of the
23 termination date of the exemption. ¹The owner of the property
24 shall deliver a copy of the approved exemption application to the
25 Division of Local Government Services in the Department of
26 Community Affairs.¹

27 7. (New section) a. Each approved exemption shall be
28 evidenced by a financial agreement between the municipality and
29 the applicant. The agreement shall be prepared by the applicant
30 and shall contain the representations that are required by the
31 enabling ordinance. The agreement shall provide for the
32 applicant to annually pay to the municipality an amount in lieu of
33 real property taxes, to be computed according to subsection b. of
34 this section. With the approval of the governing body, the
35 agreement may be assigned to a subsequent owner of the
36 environmental opportunity zone.

37 b. Payments in lieu of real property taxes may be computed as
38 a portion of the real property taxes otherwise due, according to
39 the following schedule:

40 (1) In the first tax year following execution of a memorandum
41 of agreement or administrative consent order, no payment in lieu
42 of taxes otherwise due;

43 (2) In the second tax year following execution of a
44 memorandum of agreement or administrative consent order, an
45 amount not less than 10% of taxes otherwise due;

46 (3) In the third tax year following execution of a memorandum
47 of agreement or administrative consent order, an amount not less
48 than 20% of taxes otherwise due;

49 (4) In the fourth tax year following execution of a
50 memorandum of agreement or administrative consent order, an
51 amount not less than 30% of taxes otherwise due;

52 (5) In the fifth tax year following execution of a memorandum
53 of agreement or administrative consent order, an amount not less
54 than 40% of taxes otherwise due;

- 1 (6) In the sixth tax year following execution of a memorandum
2 of agreement or administrative consent order, an amount not less
3 than 50% of the taxes otherwise due;
- 4 (7) In the seventh tax year following execution of a
5 memorandum of agreement or administrative consent order, an
6 amount not less than 60% of the taxes otherwise due;
- 7 (8) In the eighth tax year following execution of a
8 memorandum of agreement or administrative consent order, an
9 amount not less than 70% of the taxes otherwise due;
- 10 (9) In the ninth tax year following execution of a
11 memorandum of agreement or administrative consent order, an
12 amount not less than 80% of the taxes otherwise due;
- 13 (10) In the tenth and all subsequent tax years following
14 execution of a memorandum of agreement or administrative
15 consent order, the exemption shall expire and the full amount of
16 the assessed real property taxes, taking into account the value of
17 the real property in its remediated state, shall be due.
- 18 c. For the purposes of this section, the amount of "taxes
19 otherwise due" shall be determined by using the assessed
20 valuation of the environmental opportunity zone at the time of
21 the approval by the assessor of the exemption, regardless of any
22 improvement made to the environmental opportunity zone
23 thereafter.
- 24 d. Notwithstanding any other provision in P.L. , c. (C.)
25 (now pending before the Legislature as this bill), if at any time
26 the governing body of the municipality finds that the
27 memorandum of agreement for remediation of the environmental
28 opportunity zone has been terminated at the option of the
29 applicant, unless if an administrative consent order is issued in its
30 place, or that any of the conditions in the ordinance as required
31 by subsection e. of section 5 of P.L. , c. (C.)(now pending
32 before the Legislature as this bill) are not met, the period of the
33 property tax exemption shall end.
- 34 8. (New section) The payments required pursuant to section 7
35 of P.L. , c. (C.) (now pending before the Legislature as this
36 bill) shall be made in quarterly installments according to the
37 same schedule as real property taxes are due and payable.
38 Failure to make these payments shall result in the termination of
39 the exemption. In addition to the remedy set forth herein, the
40 requirements imposed pursuant to section 7 of P.L. , c.
41 (C.)(now pending before the Legislature as this bill) shall be
42 enforced in the same manner as is provided for real property
43 taxes pursuant to Title 54 of the Revised Statutes.
- 44 9. (New section) a. The Department of Environmental
45 Protection shall take final action on a technically complete
46 remedial action workplan, submitted ²[pursuant to] for² a
47 remediation ²[on] in² an environmental opportunity zone ²for
48 which an exemption from real property taxes has been granted
49 pursuant to section 5 of P.L. ,c. (C.)(now before the
50 Legislature as this bill)², within 45 days of receipt of the
51 submission in the case of soil remediations, and within 90 days of
52 receipt of the submission in the case of remediations involving
53 groundwater or surface water.
- 54 b. ²[The Department of Environmental Protection shall waive

1 any and all fees or other charges of any kind it would impose
2 relating to a remediation where the remediation is being
3 conducted on an environmental opportunity zone.

4 c.]² Any owner or operator of an environmental opportunity
5 zone for which an exemption from real property taxes has been
6 granted pursuant to section 5 of P.L. ,c. (C.) (now before
7 the Legislature as this bill)² shall be exempt from the
8 requirement to establish a remediation funding source pursuant to
9 section 25 of P.L.1993, c.139 (C.58:10B-3).

10 ²[10. (New section) a. Notwithstanding any provision of
11 section 36 of P.L.1993, c.139 (C.58:10B-13) or any other law,
12 rule, or regulation to the contrary, whenever contamination at
13 any environmental opportunity zone, as defined pursuant to
14 section 3 of P.L. , c. (C.) (now pending before the
15 Legislature as this bill), is remediated in compliance with any
16 soil, groundwater, or surface water remediation standard that
17 was in effect when the Department of Environmental Protection
18 approved the remedial action workplan for that real property, the
19 owner and operator of the property, the persons performing the
20 remediation, and all of their successors, shall not be liable for the
21 cost of any additional remediation that may be required (1) by a
22 subsequent adoption by the department of a more stringent
23 remediation standard for any particular contaminant or (2) a
24 subsequent discovery of a contaminant on the environmental
25 opportunity zone that existed, but was not discovered, prior to
26 the approval by the department of the remedial action workplan.

27 b. Notwithstanding any provisions of section 36 of P.L.1993,
28 c.139 (C.58:10B-13) or any other law, rule or regulation to the
29 contrary, the owner or operator of any environmental opportunity
30 zone, who has acquired or begun operation of that real property
31 subsequent to it being designated as an environmental opportunity
32 zone, shall have no liability for any actions, claims, or damages
33 for on-site contamination, off-site contamination, or third party
34 actions arising from contamination existing at the environmental
35 opportunity zone prior to the owner or operator taking title to
36 the property, or commencing operations on the property. The
37 provisions of this subsection shall only apply where (1) an owner
38 or operator implements a remedial action workplan approved by
39 the department for the remediation of that environmental
40 opportunity zone as required by an ordinance adopted pursuant to
41 section 5 of P.L. , c. (C.) (now pending before the Legislature
42 as this bill) and (2) if the remedial action workplan involves the
43 use of institutional or engineering controls, that those controls
44 are continually maintained in the manner required by the
45 department in its approval of the remedial action workplan.
46 Nothing in this subsection shall be construed to limit the
47 liability of any person who discharged a contaminant or was in
48 any way responsible for the discharge of that contaminant.
49 Nothing in this subsection shall be construed to limit the liability
50 of any person for the discharge of any contaminant occurring
51 after the implementation of the remedial action workplan and the
52 approval of that implementation by the Department of
53 Environmental Protection.¹²

54 ²[11.]^{10.2} Section 28 of P.L.1993, c.139 (C.58:10B-6) is
55 amended to read as follows:

1 28. a. Except for moneys deposited in the remediation fund
2 for specific purposes, financial assistance and grants from the
3 remediation fund shall be rendered for the following purposes
4 and, on an annual basis, obligated in the percentages as provided
5 in this subsection. Upon a written joint determination by the
6 authority and the department that it is in the public interest,
7 financial assistance and grants dedicated for the purposes and in
8 the percentages set forth in paragraph (1), (2), or (3) of this
9 subsection, may, for any particular year, be obligated to other
10 purposes set forth in this subsection. The written determination
11 shall be sent to the Senate Environment Committee, and the
12 Assembly Energy and Hazardous Waste Committee, or their
13 successors.

14 (1) At least 15% of the moneys shall be allocated for financial
15 assistance to persons, other than governmental entities, for
16 remediation of real property located in a qualifying municipality
17 as defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

18 (2) At least 10% of the moneys shall be allocated for financial
19 assistance and grants to municipal governmental entities that
20 own or hold a tax sale certificate on real property on which there
21 has been or on which there is suspected of being a discharge of
22 hazardous substances or hazardous wastes. Grants shall be used
23 for performing preliminary assessments and site investigations on
24 property owned by a municipal governmental entity, or on which
25 the municipality holds a tax sale certificate, in order to
26 determine the existence or extent of any hazardous substance or
27 hazardous waste contamination on those properties. A municipal
28 governmental entity that has performed a preliminary assessment
29 and site investigation on property may obtain a loan for the
30 purpose of continuing the remediation on those properties it owns
31 as necessary to comply with the applicable remediation standards
32 adopted by the department;

33 (3) At least 15% of the moneys shall be allocated for financial
34 assistance to persons or municipal governmental entities for
35 remediation activities at sites that have been contaminated by a
36 discharge of a hazardous substance or hazardous waste, or at
37 which there is an imminent and significant threat of a discharge
38 of a hazardous substance or hazardous waste, and the discharge
39 or threatened discharge poses or would pose an imminent and
40 significant threat to a drinking water source, to human health, or
41 to a sensitive or significant ecological area;

42 (4) At least 10% of the moneys shall be allocated for financial
43 assistance to persons, other than municipal governmental
44 entities, who voluntarily undertake the remediation of a
45 hazardous substance or hazardous waste discharge, and who have
46 not been ordered to undertake the remediation by the department
47 or by a court;

48 (5) At least 20% of the moneys shall be allocated for financial
49 assistance to persons, other than municipal governmental
50 entities, who are required to perform remediation activities at an
51 industrial establishment pursuant to P.L.1983, c.330 (C.13:1K-6
52 et al.), as a condition of the closure, transfer, or termination of
53 operations at that industrial establishment;

54 (6) At least 20% of the moneys shall be allocated for grants to

1 persons, other than municipal governmental entities, who own
2 real property on which there has been a discharge of a hazardous
3 substance or a hazardous waste and that person qualifies for an
4 innocent party grant. A person qualifies for an innocent party
5 grant if that person acquired the property prior to December 31,
6 1983, the hazardous substance or hazardous waste that was
7 discharged at the property was not used by the person at that
8 site, and that person certifies that he did not discharge any
9 hazardous substance or hazardous waste at an area where a
10 discharge is discovered. A grant authorized pursuant to this
11 paragraph may be for up to 50% of the remediation costs at the
12 area of concern for which the person qualifies for an innocent
13 party grant, except that no grant awarded pursuant to this
14 paragraph to any person may exceed \$1,000,000;

15 (7) At least 5% of the moneys shall be allocated for loans to
16 persons, other than municipal governmental entities, who own and
17 plan to remediate an environmental opportunity zone²[as
18 provided in P.L. , c. (C.) (now before the Legislature as
19 this bill)] for which an exemption from real property taxes has
20 been granted pursuant to section 5 of P.L. , c. (C.) (now
21 before the Legislature as this bill)²; and

22 ~~[(7)]~~ (8) ~~[Ten]~~ Five percent of the moneys in the remediation
23 fund shall be allocated for financial assistance or grants for any
24 of the purposes enumerated in paragraphs (1) through ~~[(6)]~~ (7) of
25 this subsection, except that where moneys in the fund are
26 insufficient to fund all the applications in any calendar year that
27 would otherwise qualify for financial assistance or a grant
28 pursuant to this paragraph, the authority shall give priority to
29 financial assistance applications that meet the criteria
30 enumerated in paragraph (3) of this subsection.

31 b. Loans issued from the remediation fund shall be for a term
32 not to exceed ten years, except that upon the transfer of
33 ownership of any real property for which the loan was made, the
34 unpaid balance of the loan shall become immediately payable in
35 full. Loans shall bear an interest rate equal to the Federal
36 Discount Rate at the time of approval or at the time of the loan
37 closing, whichever is lower, except that the rate shall be no lower
38 than five percent. Financial assistance and grants may be issued
39 for up to 100% of the estimated applicable remediation cost,
40 except that the cumulative maximum amount of financial
41 assistance which may be issued to a person other than a
42 governmental entity in any calendar year, for one or more
43 properties, shall be \$1,000,000. Financial assistance and grants
44 to any one municipal governmental entity may not exceed
45 \$2,000,000 in any calendar year. Repayments of principal and
46 interest on the loans issued from the remediation fund shall be
47 paid to the authority and shall be deposited into the remediation
48 fund.

49 c. No person, other than a municipal governmental entity, or a
50 person engaging in a voluntary remediation, shall be eligible for
51 financial assistance from the remediation fund to the extent that
52 person is capable of establishing a remediation funding source for
53 the remediation as required pursuant to section 25 of P.L.1993,
54 c.139 (C.58:10B-3).

1 d. The authority may use a sum that represents up to 2% of
2 the moneys issued as financial assistance or grants from the
3 remediation fund each year for administrative expenses incurred
4 in connection with the operation of the fund and the issuance of
5 financial assistance and grants.

6 e. Prior to March 1 of each year, the authority shall submit to
7 the Senate Environment Committee and the Assembly Energy and
8 Hazardous Waste Committee, or their successors, a report
9 detailing the amount of money that was available for financial
10 assistance and grants from the remediation fund for the previous
11 calendar year, the amount of money estimated to be available for
12 financial assistance and grants for the current calendar year, the
13 amount of financial assistance and grants issued for the previous
14 calendar year and the category for which each financial
15 assistance and grant was rendered, and any suggestions for
16 legislative action the authority deems advisable to further the
17 legislative intent to facilitate remediation and promote the
18 redevelopment and use of existing industrial sites.

19 (cf: P.L.1993, c.139, s.28)

20 ²[12.] 11.² This act shall take effect immediately.

21

22

23

24

25 Provides tax exemptions for remediation of certain contaminated
26 real properties.

ASSEMBLY, No. 1631
STATE OF NEW JERSEY

INTRODUCED APRIL 25, 1994

By Assemblymen BAGGER and ROBERTS

1 AN ACT concerning real property tax exemptions for certain
2 contaminated real property, supplementing Title 54 of the
3 Revised Statutes, and amending and supplementing P.L.1993,
4 c.139.

5

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

8 1. (New section) This act shall be known and may be cited as
9 the "Environmental Opportunity Zone Act."

10 2. (New section) The Legislature finds that there are
11 numerous properties that have been abandoned and that are not
12 being utilized for any commercial use because of contamination
13 that exists at those properties; that abandoned contaminated
14 properties harm society by causing a burden on municipal services
15 while failing to contribute to the funding of those services; that a
16 disproportionate percentage of these properties are located in
17 older urban municipalities given the fact that these
18 municipalities were once the center for industrial production;
19 that the revitalization of these properties will not only bring tax
20 ratables to the municipality and other local governments, but will
21 result in job creation and foster urban redevelopment; that one of
22 the central tenants of the State Development and Redevelopment
23 Plan is to redevelop urban areas with existing utilities and
24 infrastructure and that the use of these now abandoned sites for
25 commercial purposes will make a significant contribution toward
26 implementing the Plan; that the federal "Clean Air Act"
27 encourages the reindustrialization of urban areas as this would
28 provide jobs near where people work thus reducing harmful air
29 pollutants emitted from automobiles needed to travel distances
30 to places of employment; and that it is in the economic interest
31 of the State and the municipalities in which abandoned
32 contaminated properties are located to encourage the
33 remediation of these properties so that they can be reused for
34 commercial purposes.

35 3. (New section) As used in this act:

36 "Assessor" means the municipal tax assessor appointed
37 pursuant to the provisions of chapter 9 of Title 40A of the New
38 Jersey Statutes.

39 "Contamination" or "contaminant" means any discharged
40 hazardous substance as defined pursuant to section 3 of P.L.1976,
41 c.141 (C.58:10-23.11b) or hazardous waste as defined pursuant to
42 section 1 of P.L.1976, c.99 (C.13:1E-38);

43 "Environmental opportunity zones" means any area of a
44 qualified municipality in which real property is located which real

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 property was used for industrial purposes but is now vacant, and
2 which real property is in need of a remediation due to a discharge
3 or threatened discharge of a contaminant;

4 "Qualified municipality" means a municipality that is an
5 eligible municipality pursuant to the "Special Municipal Aid Act,"
6 P.L.1987, c.75 (C.52:27D-118.24) or a municipality in which an
7 urban enterprise zone or part of an urban enterprise zone has
8 been designated pursuant to the "New Jersey Urban Enterprise
9 Zones Act," P.L.1983, c.303 (C.52:27H-60 et seq.), and shall
10 include the entire area within the corporate boundaries of that
11 municipality, whether or not that area is included within an urban
12 enterprise zone;

13 "Qualified real property" means any parcel of real property in
14 a contaminated industrial area that has been determined to be in
15 need of remediation and that could be used for industrial or
16 commercial purposes pursuant to section 4 of this act;

17 "Remediation" means all necessary actions to investigate and
18 clean up any known, suspected, or threatened discharge of
19 contaminants, including, as necessary, the preliminary
20 assessment, site investigation, and remedial action.

21 4. (New section) The governing body of a qualified
22 municipality may, by ordinance, determine that one or more
23 areas within the municipality are environmental opportunity
24 zones and that one or more parcels of real property in that zone
25 could be remediated and used for industrial or other commercial
26 purposes and that can be deemed to be qualified real property.
27 The ordinance adopted by the municipality shall designate the
28 parcels of real property designated as qualified real property.
29 The designation of qualified real property shall be consistent with
30 the permitted use of those properties pursuant to the "Municipal
31 Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.). Any
32 designation of an environmental opportunity zone and of qualified
33 real property shall be made consistent with regulations, in effect
34 at that time, adopted by the Department of Environmental
35 Protection concerning the need for remediation of real property.

36 5. (New section) The governing body of a qualified
37 municipality which has adopted an ordinance pursuant to section
38 4 of this act, may, by ordinance, provide for exemptions of real
39 property taxes for qualified real property. The governing body
40 shall include the following items in its enabling ordinance the
41 following where appropriate:

42 a. A property tax exemption term of ten years;

43 b. The application procedure for an exemption authorized
44 under this act;

45 c. The method of computing in lieu of real property taxes
46 pursuant to subsection b. of section 7 of this act;

47 d. An approval method for exemption applications by the
48 assessor or by ordinance on a per application basis; and

49 e. A requirement that the qualified real property will be
50 remediated in compliance with the remediations standards
51 adopted by the department pursuant to section 35 of P.L.1993,
52 c.139 (C.58:10B-1 et seq.), that the owner or the property will
53 enter into a memorandum of agreement or administrative consent
54 order with the department to perform the remediation and will

1 complete the remediation pursuant to the agreement or order,
2 and that the qualified real property will be used for a commercial
3 or industrial purpose for the time period for which the real
4 property tax exemption is given.

5 6. (New section) No abatement shall be granted pursuant to
6 this act except upon written application filed with the assessor of
7 the taxing district wherein the qualified real property is located
8 and is approved by the assessor or by ordinance, as required by
9 the enabling ordinance. Every application shall be on a form
10 prescribed by the Director of the Division of Taxation, in the
11 Department of the Treasury, and provided for the use of
12 claimants by the governing body of the municipality constituting
13 the taxing district. The application shall be filed with the
14 assessor within 30 calendar days following the approval by the
15 department of a remedial action workplan for the qualified real
16 property. Every application for an exemption which is filed
17 within the time specified may be approved and allowed by the
18 assessor to the degree that the application is consistent with the
19 provisions of the enabling ordinance. An exemption that is
20 granted shall take effect upon the approval by the assessor and it
21 shall be recorded and made a permanent part of the official tax
22 records of the taxing district, which record shall contain a notice
23 of the termination date of the exemption.

24 7. (New section) a. Each approved exemption shall be
25 evidenced by a financial agreement between the qualified
26 municipality and the applicant. The agreement shall be prepared
27 by the applicant and shall contain the representations that are
28 required by the enabling ordinance. The agreement shall provide
29 for the applicant to annually pay to the municipality an amount in
30 lieu of real property taxes, to be computed according to
31 subsection b. of this section.

32 b. Payments in lieu of taxes may be computed as a portion of
33 the real property taxes otherwise due, according to the following
34 schedule:

35 (1) In the first tax year following approval of the remedial
36 action workplan, no payment in lieu of taxes otherwise due;

37 (2) In the second tax year following approval of the remedial
38 action workplan, an amount not less than 10% of taxes otherwise
39 due;

40 (3) In the third tax year following approval of the remedial
41 action workplan, an amount not less than 20% of taxes otherwise
42 due;

43 (4) In the fourth tax year following approval of the remedial
44 action workplan, an amount not less than 30% of taxes otherwise
45 due;

46 (5) In the fifth tax year following approval of the remedial
47 action workplan, an amount not less than 40% of taxes otherwise
48 due;

49 (6) In the sixth tax year following approval of the remedial
50 action workplan, an amount not less than 50% of the taxes
51 otherwise due;

52 (7) In the seventh tax year following approval of the remedial
53 action workplan, an amount not less than 60% of the taxes
54 otherwise due;

1 (8) In the eighth tax year following approval of the remedial
2 action workplan, an amount not less than 70% of the taxes
3 otherwise due;

4 (9) In the ninth tax year following approval of the remedial
5 action workplan, an amount not less than 80% of the taxes
6 otherwise due;

7 (10) In the tenth and all subsequent tax years following
8 approval of the remedial action workplan, the exemption shall
9 expire and the full amount of the assessed real property taxes,
10 taking into account the value of the real property in its
11 remediated state, shall be due.

12 c. For the purposes of this section, the amount of "taxes
13 otherwise due" shall be determined by using the assessed
14 valuation of the qualified real property at the time of the
15 approval by the assessor of the exemption, regardless of any
16 improvement made to the qualified real property thereafter.

17 d. Notwithstanding any other provision in this act, if at any
18 time the total amount of real property taxes exempted on a
19 qualified real property less the in lieu of taxes payment made on
20 that real property, equals or exceeds the total cost of the
21 remediation, the period of the property tax exemption shall end.

22 8. (New section) The payments required pursuant to section 7
23 of this act shall be made in quarterly installments according to
24 the same schedule as real property taxes are due and payable.
25 Failure to make these payments shall result in the termination of
26 the exemption. In addition to the remedy set forth herein, the
27 requirements imposed pursuant to section 7 of this act shall be
28 enforced in the same manner as is provided for real property
29 taxes pursuant to Title 54 of the Revised Statutes.

30 9. (New section) No exemption shall be granted pursuant to
31 this act with respect to any real property for which real property
32 taxes are delinquent or remain unpaid, or for which penalties for
33 nonpayment of taxes are due, unless those taxes or penalties are
34 expressly waived by the qualified municipality.

35 10. (New section) a. The Department of Environmental
36 Protection shall take final action on a remedial action workplan,
37 submitted pursuant to a remediation on a qualified real property,
38 within 45 days of receipt of the submission.

39 b. The Department of Environmental Protection shall waive
40 any fee it would normally impose relating to a remediation where
41 the remediation is being conducted on a qualified real property.

42 11. (New section) a. Notwithstanding any provision of section
43 36 of P.L.1993, c.139 (C.58:10B-13) or any other law, rule, or
44 regulation to the contrary, whenever contamination at any
45 qualified real property, as defined pursuant to section 3 of
46 P.L. , c. (C.)(now before the Legislature as this bill), is
47 remediated in compliance with any soil, groundwater, or surface
48 water remediation standard that was in effect when the
49 Department of Environmental Protection approved the remedial
50 action workplan for that real property, the owner and operator of
51 the property, the persons performing the remediation, and all of
52 their successors, shall not be liable for the cost of any additional
53 remediation that may be required (1) by a subsequent adoption by
54 the department of a more stringent remediation standard for any

1 particular contaminant or (2) a subsequent discovery of a
2 contaminant on the qualified real property that existed, but was
3 not discovered, prior to the approval by the department of the
4 remedial action workplan.

5 b. The owner or operator of any qualified real property, who
6 has acquired or begun operation of that real property subsequent
7 to it being designated as a qualified real property, shall have no
8 liability for any actions, claims, or damages for on-site
9 contamination, off-site contamination, or third party actions
10 arising from contamination existing at the qualified real property
11 prior to the owner or operator taking title to the property, or
12 commencing operations on the property, providing the owner or
13 operator satisfactorily implements a remedial action workplan
14 approved by the department.

15 12. Section 28 of P.L.1993, c.139 (C.58:10B-6) is amended to
16 read as follows:

17 28. a. Except for moneys deposited in the remediation fund
18 for specific purposes, financial assistance and grants from the
19 remediation fund shall be rendered for the following purposes
20 and, on an annual basis, obligated in the percentages as provided
21 in this subsection. Upon a written joint determination by the
22 authority and the department that it is in the public interest,
23 financial assistance and grants dedicated for the purposes and in
24 the percentages set forth in paragraph (1), (2), or (3) of this
25 subsection, may, for any particular year, be obligated to other
26 purposes set forth in this subsection. The written determination
27 shall be sent to the Senate Environment Committee, and the
28 Assembly Energy and Hazardous Waste Committee, or their
29 successors.

30 (1) At least 15% of the moneys shall be allocated for financial
31 assistance to persons, other than governmental entities, for
32 remediation of real property located in a qualifying municipality
33 as defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

34 (2) At least 10% of the moneys shall be allocated for financial
35 assistance and grants to municipal governmental entities that
36 own or hold a tax sale certificate on real property on which there
37 has been or on which there is suspected of being a discharge of
38 hazardous substances or hazardous wastes. Grants shall be used
39 for performing preliminary assessments and site investigations on
40 property owned by a municipal governmental entity, or on which
41 the municipality holds a tax sale certificate, in order to
42 determine the existence or extent of any hazardous substance or
43 hazardous waste contamination on those properties. A municipal
44 governmental entity that has performed a preliminary assessment
45 and site investigation on property may obtain a loan for the
46 purpose of continuing the remediation on those properties it owns
47 as necessary to comply with the applicable remediation standards
48 adopted by the department;

49 (3) At least 15% of the moneys shall be allocated for financial
50 assistance to persons or municipal governmental entities for
51 remediation activities at sites that have been contaminated by a
52 discharge of a hazardous substance or hazardous waste, or at
53 which there is an imminent and significant threat of a discharge
54 of a hazardous substance or hazardous waste, and the discharge

1 or threatened discharge poses or would pose an imminent and
2 significant threat to a drinking water source, to human health, or
3 to a sensitive or significant ecological area;

4 (4) At least 10% of the moneys shall be allocated for financial
5 assistance to persons, other than municipal governmental
6 entities, who voluntarily undertake the remediation of a
7 hazardous substance or hazardous waste discharge, and who have
8 not been ordered to undertake the remediation by the department
9 or by a court;

10 (5) At least 20% of the moneys shall be allocated for financial
11 assistance to persons, other than municipal governmental
12 entities, who are required to perform remediation activities at an
13 industrial establishment pursuant to P.L.1983, c.330 (C.13:1K-6
14 et al.), as a condition of the closure, transfer, or termination of
15 operations at that industrial establishment;

16 (6) At least 20% of the moneys shall be allocated for grants to
17 persons, other than municipal governmental entities, who own
18 real property on which there has been a discharge of a hazardous
19 substance or a hazardous waste and that person qualifies for an
20 innocent party grant. A person qualifies for an innocent party
21 grant if that person acquired the property prior to December 31,
22 1983, the hazardous substance or hazardous waste that was
23 discharged at the property was not used by the person at that
24 site, and that person certifies that he did not discharge any
25 hazardous substance or hazardous waste at an area where a
26 discharge is discovered. A grant authorized pursuant to this
27 paragraph may be for up to 50% of the remediation costs at the
28 area of concern for which the person qualifies for an innocent
29 party grant, except that no grant awarded pursuant to this
30 paragraph to any person may exceed \$1,000,000;

31 (7) At least 5% of the moneys shall be allocated for loans to
32 persons, other than municipal governmental entities, who own and
33 plan to remediate qualified real property as provided in P.L. ,
34 c. (C.)(now before the Legislature as this bill; and

35 ~~[(7)]~~ (8) ~~[Ten]~~ Five percent of the moneys in the remediation
36 fund shall be allocated for financial assistance or grants for any
37 of the purposes enumerated in paragraphs (1) through ~~[(6)]~~ (7) of
38 this subsection, except that where moneys in the fund are
39 insufficient to fund all the applications in any calendar year that
40 would otherwise qualify for financial assistance or a grant
41 pursuant to this paragraph, the authority shall give priority to
42 financial assistance applications that meet the criteria
43 enumerated in paragraph (3) of this subsection.

44 b. Loans issued from the remediation fund shall be for a term
45 not to exceed ten years, except that upon the transfer of
46 ownership of any real property for which the loan was made, the
47 unpaid balance of the loan shall become immediately payable in
48 full. Loans shall bear an interest rate equal to the Federal
49 Discount Rate at the time of approval or at the time of the loan
50 closing, whichever is lower, except that the rate shall be no lower
51 than five percent. Financial assistance and grants may be issued
52 for up to 100% of the estimated applicable remediation cost,
53 except that the cumulative maximum amount of financial
54 assistance which may be issued to a person other than a

1 governmental entity in any calendar year, for one or more
2 properties, shall be \$1,000,000. Financial assistance and grants
3 to any one municipal governmental entity may not exceed
4 \$2,000,000 in any calendar year. Repayments of principal and
5 interest on the loans issued from the remediation fund shall be
6 paid to the authority and shall be deposited into the remediation
7 fund.

8 c. No person, other than a municipal governmental entity, or a
9 person engaging in a voluntary remediation, shall be eligible for
10 financial assistance from the remediation fund to the extent that
11 person is capable of establishing a remediation funding source for
12 the remediation as required pursuant to section 25 of P.L.1993,
13 c.139 (C.58:10B-3).

14 d. The authority may use a sum that represents up to 2% of
15 the moneys issued as financial assistance or grants from the
16 remediation fund each year for administrative expenses incurred
17 in connection with the operation of the fund and the issuance of
18 financial assistance and grants.

19 e. Prior to March 1 of each year, the authority shall submit to
20 the Senate Environment Committee and the Assembly Energy and
21 Hazardous Waste Committee, or their successors, a report
22 detailing the amount of money that was available for financial
23 assistance and grants from the remediation fund for the previous
24 calendar year, the amount of money estimated to be available for
25 financial assistance and grants for the current calendar year, the
26 amount of financial assistance and grants issued for the previous
27 calendar year and the category for which each financial
28 assistance and grant was rendered, and any suggestions for
29 legislative action the authority deems advisable to further the
30 legislative intent to facilitate remediation and promote the
31 redevelopment and use of existing industrial sites.

32 (cf: P.L.1993, c.139, s.28)

33 13. This act shall take effect immediately.

36 STATEMENT

37
38 This bill provides for real property tax exemptions for certain
39 contaminated real property located in municipalities containing
40 urban enterprise zones or that are eligible municipalities pursuant
41 to the "Special Municipal Aid Act." The intent of this bill is to
42 provide an economic incentive for businesses to acquire and
43 remediate contaminated properties in older, industrial urban
44 areas and to return those properties to commercial or industrial
45 use. Without providing these economic incentives, many or most
46 of these properties will continue to be vacant, draining the
47 treasury of the local governments, and furthering to contaminate
48 the environment. Additionally, by promoting urban
49 redevelopment, this bill would further the intent and provisions of
50 the State Development and Redevelopment Plan as well as the
51 federal "Clean Air Act."

52 Specifically, this bill authorizes the governing bodies of
53 municipalities in which urban enterprise zones are located, to
54 designate areas within those municipalities in which are located

1 contaminated industrial properties. Those contaminated
2 properties would than be eligible for a ten year property tax
3 exemption on that property so long as the property is properly
4 remediated and returned to a commercial or industrial use. The
5 amount of money saved from the tax exemption may not exceed
6 the cost of the remediation.

7 The bill provides that during the term of the property tax
8 exemption, the owner of the property will pay in lieu of tax
9 payments. These payments will start a zero percent and increase
10 by 10% each year during the ten year exemption period.

11 The bill also ensures that a person who acquires or operates any
12 qualified real property and who remediates the property will not
13 be liable for the acts of the prior owner or operator, for any
14 contamination that was not discovered, or if the remediation
15 standards subsequently change.

16 Finally, the bill dedicates five percent of the moneys in the
17 Hazardous Discharge Site Remediation Fund, created pursuant to
18 P.L.1993, c.139, for remediations of the subject properties.

19

20

21

22

23 Provides tax exemptions for remediation of certain contaminated
24 real properties.

ASSEMBLY POLICY AND RULES COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 1631

STATE OF NEW JERSEY

DATED: MARCH 27, 1995

The Assembly Policy and Rules Committee favorably reports an Assembly Committee Substitute for Assembly Bill No. 1631.

The committee substitute, designated the "Environmental Opportunity Zone Act," permits municipalities to grant property tax exemptions for contaminated property which an owner agrees to remediate. The intent of the substitute is to provide an economic incentive for businesses to acquire and remediate contaminated properties, especially in older, urban industrial areas, and to return those properties to full commercial or industrial use.

Under the provisions of the substitute, the governing body of any municipality is authorized to designate environmental opportunity zones within its borders. To be eligible for designation as an economic opportunity zone, the parcel of real property must (1) be vacant or underutilized, (2) need remediation due to an actual or threatened discharge of a contaminant, and (3) be included on the State's list of hazardous discharge sites. Such a property, designated as an environmental opportunity zone, would be eligible for a 10 year property tax exemption if the owner agreed to remediate it and return it to commercial or industrial use.

The governing body of a municipality, by ordinance, is to designate a municipality's economic opportunity zones. In addition, the ordinance is to authorize the 10 year tax exemption and include provisions for establishing a method of computing in-lieu tax payments. Finally, the ordinance is to specify that the owner of the exempt property must remediate it and use it for commercial or industrial purposes and require that the owner enter into a memorandum of agreement or an administrative consent order with the Department of Environmental Protection for the remediation.

The substitute also provides that an approved exemption must be evidenced by a financial agreement between the owner and the municipality, and that the tax exemption terminates if the governing body finds that the remediation is not being performed as required or that the property is not being used for commercial or industrial purposes.

After the first year of the tax exemption, the owner of the property is required to make annual in-lieu of tax payments to the municipality. Following the second year, the owner's in-lieu liability would increase by 10 percent during each remaining year of the exemption period. The taxable value of the property at the time of the agreement between the owner and the governing body is to be used as the base for determining the amount of in-lieu payments.

To remove legal and financial impediments to performing remediations, the substitute provides that:

(1) Technically complete remedial action work plans must be approved by the Department of Environmental Protection within 45 days for soil remediations and within 90 days for water remediations;

(2) All departmental remediation related fees are waived;

(3) No remediation funding source need be established;

(4) The owner and operator of an environmental opportunity zone, and any successors, will not be liable for additional remediation due to subsequent changes in a remediation standard of for the subsequent discovery or previously existing, but unknown contaminants on the property. This provision is similar to the liability protections already afforded in subsection e. of section 13 of P.L.1993, c.139 (C.58:10B-13 e.), except for the extension of the grant of immunity for undiscovered contaminants; and

(5) The owner or operator of real property designated as an environmental opportunity zone who acquires or begins operations there subsequent to its designation shall not be liable in any action, claim, or suit for damages for contamination at the site that existed prior to his ownership or operation. This limit on liability only applies if the site was remediated pursuant to an environmental opportunity zone ordinance and if any engineering or institutional controls, if any, are maintained.

Finally, the substitute dedicates five percent of the moneys in the Hazardous Discharge Site Remediation Fund, created pursuant to P.L.1993, c.139, for remediations of environmental opportunity zones.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 1631

with Senate committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 11, 1995

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 1631 (ACS/1R) with committee amendments.

Assembly Bill No. 1631 (ACS/1R), as amended, provides for permissive real property tax exemptions for contaminated real property. The intent of this bill is to provide an economic incentive for businesses to acquire and remediate contaminated properties, especially in older, industrial urban areas, and to return those properties to full commercial or industrial use.

Specifically, the bill authorizes the governing body of any municipality to designate environmental opportunity zones by adoption of an ordinance. An environmental opportunity zone must consist of one or more parcels of real property which is currently underutilized or vacant, that needs to be remediated due to an actual or threatened discharge of a contaminant, and that is on the State list of known hazardous discharge sites. Designated contaminated properties would be eligible for a ten year property tax exemption on that property so long as the property is properly remediated and returned to a commercial or industrial use. During the term of the property tax exemption, the owner of the property will pay in lieu of real property tax payments. These payments will start at zero percent and increase by 10% each year during the ten year exemption period.

The bill provides that an approved exemption must be evidenced by a financial agreement between the applicant and the municipality. The tax exemption would end if the governing body of the municipality finds that the remediation is not being performed as required or if the property is not being used for commercial or industrial purposes.

In order to remove legal and financial impediments to performing remediations, the bill provides that technically complete remedial action workplans must be approved by the Department within 45 days for soil remediations and within 90 days for water remediations, and no remediation funding source needs to be established.

The bill's provisions do not change the requirement of existing law that mandates the Department of Environmental Protection to require a residential soil remediation at a site if the owner of the property does not agree to issue a deed notice on the property.

Finally, the bill provides that five percent of the moneys in the Hazardous Discharge Site Remediation Fund, created pursuant to P.L.1993, c.139, may be used for loans for remediation of environmental opportunity zones.

As amended and reported, this bill is identical to Senate Bill No. 969 SCS of 1995 (McNamara/Baer) as amended and reported by this committee on December 11, 1995.

COMMITTEE AMENDMENTS

The committee amended the bill to eliminate section 10. The deletion of this section results in the removal of provisions which would have eliminated liability for the owner and operator of an environmental opportunity zone for additional remediation due to subsequent changes in a remediation standard or for the subsequent discovery of previously existing, but unknown contaminants on the property; and eliminated liability for the owner or operator of real property designated as an environmental opportunity zone who acquires or begins operations subsequent to zone designation for contamination at the site that existed prior to the ownership or operation.

The amendments were proposed by the sponsor of the bill.

FISCAL IMPACT

The bill has not been certified as requiring a fiscal note because it does not have an impact on State revenues and expenditures. The bill will have an impact in municipalities that decide to offer the property tax exemption provide therein.