

52:27D-130.4

LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

LAWS OF: 2007 **CHAPTER:** 1

NJSA: 52:27D-130.4 (Requires DHSS standards for safe building interiors; submission of documentation of investigation and remediation as a condition to issuance of construction permit for certain sites; makes changes to the "Industrial Site Recovery Act.")

BILL NO: S2261 (Substituted for A3529)

SPONSOR(S) Madden and Others

DATE INTRODUCED: October 12, 2006

COMMITTEE: **ASSEMBLY:**

SENATE: Environment Committee

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** December 14, 2006

SENATE: December 14, 2006

DATE OF APPROVAL: January 11, 2007

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (2nd reprint enacted)

S2261

[SPONSOR'S STATEMENT:](#) (Begins on page 11 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: [Yes](#)

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

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

A3529

[SPONSOR'S STATEMENT:](#) (Begins on page 11 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** [Yes](#)

SENATE: No

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

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

VETO MESSAGE: No

[GOVERNOR'S PRESS RELEASE ON SIGNING:](#) [Yes](#)

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: Yes

"Corzine signs bill on school pollution," 1-12-07, The Press of Atlantic City, p.A1

"Corzine signs day-care hazards bill," 1-12-07, Courier-Post, p.1

"New law toughens rules for day cares," 1-12-07, The Philadelphia Inquirer, p.B1

"Day car air test now law," 1-12-07, Asbury Park Press, p. 3

"Corzine signs mandate to check air quality at day-care centers," 1-12-07, The Record, p. A03

"Corzine OKs day-care air-quality legislation," 1-12-07, Courier News, p.A3

"It's now law. Day care center to monitor air quality," 1-12-07, The Times, p.B05

"Child centers to be checked on air quality," 1-12-07, The Star-Ledger, p. 25

"Governor signs law for air-quality checks at day care centers," The Trentonian, 1-12-07, p.7

§1 –
C.52:27D-130.4
& Note to
26:1A-17
§2 –
C.52:27D-130.5
§3 - C.13:1K-13.1

P.L. 2007, CHAPTER 1, *approved January 11, 2007*
Senate, No. 2261 (*Second Reprint*)

1 AN ACT concerning contaminated property, supplementing Title 52
2 of the Revised Statutes, and amending and supplementing
3 P.L.1983, c.330.

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

7
8 1. '(New section)' a. Within '~~nine~~ ¹²' months after the
9 effective date of this act, the Department of Health and Senior
10 Services shall adopt rules and regulations pursuant to the
11 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
12 seq.) that establish: (1) procedures for the evaluation and
13 assessment of the interior of buildings that are to be used for a child
14 care center licensed pursuant to the provisions of P.L.1983, c.492
15 (C.30:5B-1 et seq.), or for '~~residential or~~'¹ educational purposes;
16 and (2) standards that establish maximum contaminant levels for
17 building interiors to be used for child care centers licensed pursuant
18 to the provisions of P.L.1983, c.492, or for '~~residential and~~'¹
19 educational purposes, that are protective of the public health and
20 safety. 'The rules and regulations adopted pursuant to this
21 subsection shall be protective of the health of children and infants,
22 and shall account for the difference in rate of the absorption,
23 metabolism, and excretion of compounds between adults and infants
24 and children.'¹

25 b. The department shall establish an application process for the
26 certification issued pursuant to subsection c. of this section. Every
27 application for a certification shall be accompanied by a fee,
28 established in accordance with a fee schedule adopted by the
29 department, by rule or regulation, reflecting the costs of reviewing
30 and processing the application. 'Fees collected pursuant to this
31 subsection shall be deposited into a separate account, and shall be
32 dedicated for use by the department solely for the purposes of
33 administering and enforcing the provisions of this section and any
34 rules or regulations adopted pursuant thereto.'¹

35 c. Upon a demonstration to the department by the applicant
36 that the procedures established pursuant to subsection a. of this

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:

¹Senate SEN committee amendments adopted November 27, 2006.

²Assembly floor amendments adopted December 11, 2006.

1 section for the evaluation and assessment of building interiors have
2 been followed, and that there are no contaminants present in the
3 building that exceed the maximum contaminant levels established in
4 subsection a. of this section, the department shall issue a
5 certification that the building interior is safe for use as a child care
6 center, or for ¹[residential or]¹ educational purposes.

7 d. As used in this section ²[,] ²; ²"contaminant" shall have the
8 same meaning as provided in section 23 of P.L.1993, c.139
9 (C.58:10B-1) ²; and "educational purposes" shall mean for the
10 purposes of a private school or public school as defined in
11 N.J.S.18A:1-1, or a charter school as defined pursuant to P.L.1995,
12 c.426 (C.18A:36A-1 et seq.)².

13 ¹e. Whenever the Commissioner of Health and Senior Services
14 finds that a person has violated any provision of this section, or any
15 rule or regulation adopted pursuant thereto, or knowingly makes a
16 false statement, representation, or certification in any application,
17 record, or other document filed or required to be maintained
18 pursuant to this section, the commissioner may assess a civil
19 administrative penalty of not more than \$25,000 for a first offense,
20 and not more than \$50,000 for the second and every subsequent
21 offense. Each day that a violation continues shall constitute an
22 additional, separate, and distinct offense. The department may
23 compromise and settle any claim for a penalty pursuant to this
24 subsection in an amount as the department determines is appropriate
25 and equitable under the circumstances.

26 Any penalty imposed pursuant to this subsection may be
27 collected, with costs, in a summary proceeding pursuant to the
28 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
29 et seq.). The Superior Court and the municipal court shall have
30 jurisdiction to enforce the provisions of the "Penalty Enforcement
31 Law of 1999" in connection with this section.¹

32
33 2. (New section) a. ¹(1)¹ No construction permit shall be
34 issued pursuant to section 12 of P.L.1975, c.217 (C.52:27D-130) for
35 ¹the reconstruction, alteration, conversion, or repair of¹
36 ¹building or¹ structure ¹to be used for a child care center licensed
37 pursuant to the provisions of P.L.1983, c.492 (C.30:5B-1 et seq.), or
38 for educational purposes, if¹ that ¹building or structure¹
39 previously used for industrial, storage, or high hazard purposes, ¹as
40 a nail salon, dry cleaning facility, or gasoline station,¹ or ¹[that]¹ is
41 on a contaminated site, on a site on which there is suspected
42 contamination, or on an industrial site that is subject to the
43 provisions of the "Industrial Site Recovery Act," P.L.1983, c.330
44 (C.13:1K-6 et al.), except upon the submission of the certification
45 issued by the Department of Health and Senior Services pursuant to
46 section 1 of P.L. , c. (C.)(pending in the Legislature as this bill)
47 to the construction official by the applicant, that the ¹building or¹

1 structure has been evaluated and assessed for contaminants, and that
2 the 'building or' structure is safe for use as a child care center
3 licensed pursuant to the provisions of P.L.1983, c.492, or for
4 '[residential or]' educational purposes.

5 '(2) Notwithstanding the provisions of paragraph (1) of this
6 subsection to the contrary, a construction permit may be issued for
7 the construction or alteration of any building or structure to be used
8 as a child care center licensed pursuant to the provisions of
9 P.L.1983, c.492, or for educational purposes, if the construction
10 permit is necessary to perform work in the building or structure in
11 order to comply with the rules and regulations adopted pursuant to
12 subsection a. of section 1 of P.L. , c. (C.) (pending in the
13 Legislature as this bill) and obtain the certification issued by the
14 Department of Health and Senior Services pursuant to subsection c.
15 of section 1 of P.L. , c. (C.) (pending in the Legislature as
16 this bill).

17 A construction permit issued pursuant to this paragraph shall be
18 limited to the construction or alterations necessary to comply with
19 the rules and regulations adopted pursuant to subsection a. of
20 section 1 of P.L. , c. (C.) (pending in the Legislature as
21 this bill).

22 (3) ²[A municipal] The appropriate² enforcing agency shall not
23 grant a certificate of occupancy for any building or structure to be
24 used as a child care center licensed pursuant to the provisions of
25 P.L.1983, c.492, or for educational purposes, that received a
26 construction permit pursuant to paragraph (2) of this subsection,
27 except upon the submission of the certification issued by the
28 Department of Health and Senior Services pursuant to subsection c.
29 of section 1 of P.L. , c. (C.) (pending in the Legislature as
30 this bill) to the construction official by the applicant, that the
31 building or structure has been evaluated and assessed for
32 contaminants, and that the building or structure is safe for use as a
33 child care center licensed pursuant to the provisions of P.L.1983,
34 c.492, or for educational purposes. ¹

35 b. '(1)' No construction permit shall be issued for the
36 construction or alteration of any building or structure to be used as
37 a child care center licensed pursuant to the provisions of P.L.1983,
38 c.492, or for educational '[or residential]' purposes, 'on a site that
39 was previously used for industrial, storage, or high hazard purposes,
40 as a nail salon, dry cleaning facility, or gasoline station, or' on a
41 contaminated site, on a site on which there is suspected
42 contamination, or on an industrial site that is subject to the
43 provisions of the "Industrial Site Recovery Act," P.L.1983, c.330
44 (C.13:1K-6 et al.), except after submission by the applicant to the
45 construction official of documentation sufficient to establish that
46 ²the Department of Environmental Protection has approved a
47 remedial action workplan for the entire site or that² the site has

1 been remediated consistent with the remediation standards and other
2 remediation requirements established pursuant to section 35 of
3 P.L.1993, c.139 (C.58:10B-12) and a no further action letter has
4 been issued by the Department of Environmental Protection for the
5 entire site.

6 ¹(2) Notwithstanding the provisions of paragraph (1) of this
7 subsection to the contrary, a construction permit may be issued for
8 the construction or alteration of any building or structure to be used
9 as a child care center licensed pursuant to the provisions of
10 P.L.1983, c.492, or for educational purposes, on a site that was
11 previously used for industrial, storage, or high hazard purposes, as a
12 nail salon, dry cleaning facility, or gasoline station, or on a
13 contaminated site, on a site on which there is suspected
14 contamination, or on an industrial site that is subject to the
15 provisions of the "Industrial Site Recovery Act," P.L.1983, c.330
16 (C.13:1K-6 et al.), if the construction permit is necessary to
17 remediate the site consistent with the remediation standards and
18 other remediation requirements established pursuant to section 35
19 of P.L.1993, c.139 (C.58:10B-12) in order to obtain a no further
20 action letter from the Department of Environmental Protection.

21 A construction permit issued pursuant to this paragraph shall be
22 limited to the construction or alterations necessary to ²develop a
23 remedial action workplan to be submitted to the Department of
24 Environmental Protection for approval or to² remediate the site
25 consistent with the remediation standards and other remediation
26 requirements established pursuant to section 35 of P.L.1993, c.139
27 (C.58:10B-12) and receive a no further action letter from the
28 Department of Environmental Protection.

29 (3) ²[A municipal] The appropriate² enforcing agency shall not
30 grant a certificate of occupancy for any building or structure to be
31 used as a child care center licensed pursuant to the provisions of
32 P.L.1983, c.492, or for educational purposes, that received a
33 construction permit pursuant to paragraph (2) of this subsection,
34 except after submission by the applicant to the construction official
35 of documentation sufficient to establish that the site has been
36 remediated consistent with the remediation standards and other
37 remediation requirements established pursuant to section 35 of
38 P.L.1993, c.139 (C.58:10B-12) and a no further action letter has
39 been issued by the Department of Environmental Protection for the
40 entire site.¹

41 c. As used in this section ²[,] ² "contaminated site" means
42 any real property on which there is contamination ²[, and] ²
43 "contamination," "remediation" or "remediate," and "no further
44 action letter" shall have the same meanings as provided in section
45 ¹[1] ²³¹ of P.L.1993, c.139 (C.58:10B-1) ²; and "educational
46 purposes" means for the purposes of a private school or public

1 school as defined in N.J.S.18A:1-1, or a charter school as defined
2 pursuant to P.L.1995, c.426 (C.18A:36A-1 et seq.)² .

3

4 3. (New section) a. Whenever the Commissioner of
5 Environmental Protection finds that a person has violated any
6 provision of this act, or any rule or regulation adopted pursuant
7 thereto, or knowingly makes a false statement, representation, or
8 certification in any application, record, or other document filed or
9 required to be maintained pursuant to P.L.1983, c.330 (C.13:1K-6 et
10 al.), the commissioner may:

11 (1) issue an order requiring the person found to be in violation
12 to comply in accordance with subsection b. of this section;

13 (2) bring a civil action in accordance with subsection c. of this
14 section;

15 (3) levy a civil administrative penalty in accordance with
16 subsection d. of this section; or

17 (4) bring an action for a civil penalty in accordance with
18 subsection e. of this section.

19 Pursuit of any of the remedies specified under this section shall
20 not preclude the seeking of any other remedy specified.

21 Any officer or management official of an industrial
22 establishment who knowingly directs or authorizes the violation of
23 any provisions of P.L.1983, c.330 (C.13:1K-6 et al.) shall be
24 personally liable for the penalties established in this section.

25 b. Whenever the commissioner finds that a person has violated
26 this act, or any rule or regulation adopted pursuant thereto, the
27 commissioner may issue an order specifying the provision or
28 provisions of this act, or the rule or regulation adopted pursuant
29 thereto, of which the person is in violation, citing the action that
30 constituted the violation, ordering abatement of the violation, and
31 giving notice to the person of the person's right to a hearing on the
32 matters contained in the order. The ordered person shall have 20
33 calendar days from receipt of the order within which to deliver to
34 the commissioner a written request for a hearing. After the hearing
35 and upon finding that a violation has occurred, the commissioner
36 may issue a final order. If no hearing is requested, the order shall
37 become final after the expiration of the 20-day period. A request
38 for hearing shall not automatically stay the effect of the order.

39 c. The commissioner may institute an action or proceeding in
40 the Superior Court for injunctive and other relief to enforce the
41 provisions of this act and to prohibit and prevent a violation of this
42 act, or of any rule or regulation adopted pursuant thereto, and the
43 court may proceed in the action in a summary manner. In any such
44 proceeding the court may grant temporary or interlocutory relief.

45 Such relief may include, singly or in combination:

46 (1) a temporary or permanent injunction;

47 (2) assessment of the violator for the reasonable costs of any
48 inspection that led to the establishment of the violation, and for the

1 reasonable costs of preparing and litigating the case under this
2 subsection.

3 d. The commissioner may assess a civil administrative penalty
4 of not more than \$25,000 for a first offense, and not more than
5 \$50,000 for the second and every subsequent offense. Each day
6 that a violation continues shall constitute an additional, separate,
7 and distinct offense.

8 No assessment may be levied pursuant to this section until after
9 the violator has been notified by certified mail or personal service.
10 The notice shall include a reference to the section of the statute,
11 rule, regulation, or order violated, a concise statement of the facts
12 alleged to constitute a violation, a statement of the amount of the
13 civil administrative penalties to be imposed, and a statement of the
14 person's right to a hearing. The ordered person shall have 20
15 calendar days from receipt of the notice within which to deliver to
16 the commissioner a written request for a hearing.

17 After the hearing and upon finding that a violation has occurred,
18 the commissioner may issue a final order after assessing the amount
19 of the fine specified in the notice. If no hearing is requested, the
20 notice shall become a final order after the expiration of the 20-day
21 period. Payment of the assessment is due when a final order is
22 issued or the notice becomes a final order. The authority to levy a
23 civil administrative penalty is in addition to all other enforcement
24 provisions in this act, and the payment of any assessment shall not
25 be deemed to affect the availability of any other enforcement
26 provisions in connection with the violation for which the
27 assessment is levied. The commissioner may compromise any civil
28 administrative penalty assessed under this section in an amount the
29 commissioner determines appropriate.

30 e. A person who violates this act, or any rule or regulation
31 adopted pursuant thereto, shall be liable for a penalty of not more
32 than \$25,000 per day, to be collected in a civil action commenced
33 by the commissioner.

34 A person who violates an administrative order issued pursuant to
35 subsection b. of this section, or a court order issued pursuant to
36 subsection c. of this section, or who fails to pay an administrative
37 assessment in full pursuant to subsection d. of this section is subject
38 upon order of a court to a civil penalty not to exceed \$50,000 per
39 day of each violation.

40 Any penalty imposed pursuant to this subsection may be
41 collected, with costs, in a summary proceeding pursuant to the
42 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
43 et seq.). The Superior Court and the municipal court shall have
44 jurisdiction to enforce the provisions of the "Penalty Enforcement
45 Law of 1999" in connection with this act.

46

47 4. Section 4 of P.L.1983, c.330 (C.13:1K-9) is amended to read
48 as follows:

1 4. a. The owner or operator of an industrial establishment
2 planning to close operations or transfer ownership or operations
3 shall notify the department in writing, no more than five days
4 subsequent to closing operations or of its public release of its
5 decision to close operations, whichever occurs first, or within five
6 days after the execution of an agreement to transfer ownership or
7 operations, as applicable. The notice to the department shall:
8 identify the subject industrial establishment; describe the
9 transaction requiring compliance with P.L.1983, c.330 (C.13:1K-6
10 et al.); state the date of the closing of operations or the date of the
11 public release of the decision to close operations as evidenced by a
12 copy of the appropriate public announcement, if applicable; state
13 the date of execution of the agreement to transfer ownership or
14 operations and the names, addresses and telephone numbers of the
15 parties to the transfer, if applicable; state the proposed date for
16 closing operations or transferring ownership or operations; list the
17 name, address, and telephone number of an authorized agent for the
18 owner or operator; and certify that the information submitted is
19 accurate. The notice shall be transmitted to the department in the
20 manner and form required by the department. The department may,
21 by regulation, require the submission of any additional information
22 in order to improve the efficient implementation of P.L.1983, c.330.
23 The owner or operator of the industrial establishment shall also
24 provide all information required to be submitted to the department
25 pursuant to this subsection, to the clerk of the municipality in which
26 the industrial establishment is located, at the same time the
27 information is submitted to the department.

28 b. (1) Subsequent to the submittal of the notice required
29 pursuant to subsection a. of this section, the owner or operator of an
30 industrial establishment shall, except as otherwise provided by
31 P.L.1983, c.330 or P.L.1993, c.139 (C.13:1K-9.6 et al.), remediate
32 the industrial establishment. The remediation shall be conducted in
33 accordance with criteria, procedures, and time schedules established
34 by the department.

35 (2) The owner or operator shall attach a copy of any approved
36 negative declaration, approved remedial action workplan, no further
37 action letter, or remediation agreement approval to the contract or
38 agreement of sale or agreement to transfer or any option to purchase
39 which may be entered into with respect to the transfer of ownership
40 or operations. In the event that any sale or transfer agreements or
41 options have been executed prior to the approval of a negative
42 declaration, remedial action workplan, no further action letter, or
43 remediation agreement, these documents, as relevant, shall be
44 transmitted by the owner or operator, by certified mail, overnight
45 delivery, or personal service, prior to the transfer of ownership or
46 operations, to all parties to any transaction concerning the transfer
47 of ownership or operations, including purchasers, bankruptcy
48 trustees, mortgagees, sureties, and financiers.

1 (3) The preliminary assessment, site investigation, remedial
2 investigation, and remedial action for the industrial establishment
3 shall be performed and implemented by the owner or operator of the
4 industrial establishment, except that any other party may assume
5 that responsibility pursuant to the provisions of P.L.1983, c.330.

6 c. The owner or operator of an industrial establishment shall,
7 subsequent to closing operations, or of its public release of its
8 decision to close operations, or prior to transferring ownership or
9 operations except as otherwise provided in subsection e. of this
10 section, as applicable, submit to the department for approval a
11 proposed negative declaration or proposed remedial action
12 workplan. The owner or operator shall also ¹ [submit a copy of the
13 proposed negative declaration or proposed remedial action
14 workplan] provide written notification¹ to the clerk of the
15 municipality in which the industrial site is located ¹, that upon
16 written request, the municipality may receive a copy of the
17 proposed negative declaration or proposed remedial action
18 workplan. The owner or operator of the industrial establishment
19 shall provide the requested documents to the clerk of the
20 municipality within five days after receipt of the written request¹ .
21 Except as otherwise provided in section 6 of P.L.1983, c.330
22 (C.13:1K-11), and sections 13, 16, 17 and 18 of P.L.1993, c.139
23 (C.13:1K-11.2, C.13:1K-11.5, C.13:1K-11.6 and C.13:1K-11.7), the
24 owner or operator of an industrial establishment shall not transfer
25 ownership or operations until a negative declaration or a remedial
26 action workplan has been approved by the department or the
27 conditions of subsection e. of this section for remediation
28 agreements have been met and until, in cases where a remedial
29 action workplan is required to be approved or a remediation
30 agreement has been approved, a remediation funding source, as
31 required pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3),
32 has been established.

33 d. (1) Upon the submission of the results of either the
34 preliminary assessment, site investigation, remedial investigation,
35 or remedial action, where applicable, which demonstrate that there
36 are no discharged hazardous substances or hazardous wastes at the
37 industrial establishment, or that have migrated from or are
38 migrating from the industrial establishment, in violation of the
39 applicable remediation regulations, the owner or operator may
40 submit to the department for approval a proposed negative
41 declaration as provided in subsection c. of this section. ¹[The
42 owner or operator shall also submit a copy of the proposed negative
43 declaration to the clerk of the municipality in which the industrial
44 establishment is located.]¹

45 (2) After the submission and review of the information
46 submitted pursuant to a preliminary assessment, site investigation,
47 remedial investigation, or remedial action, as necessary, the

1 department shall, within 45 days of submission of a complete and
2 accurate negative declaration, approve the negative declaration, or
3 inform the owner or operator of the industrial establishment that a
4 remedial action workplan or additional remediation shall be
5 required. The department shall approve a negative declaration by
6 the issuance of a no further action letter.

7 e. The owner or operator of an industrial establishment, who
8 has submitted a notice to the department pursuant to subsection a.
9 of this section, may transfer ownership or operations of the
10 industrial establishment prior to the approval of a negative
11 declaration or remedial action workplan upon application to and
12 approval by the department of a remediation agreement. The owner
13 or operator requesting a remediation agreement shall submit the
14 following documents: (1) an estimate of the cost of the remediation
15 that is approved by the department; (2) a certification of the
16 statutory liability of the owner or operator pursuant to P.L.1983,
17 c.330 to perform and to complete a remediation of the industrial
18 establishment in the manner and time limits provided by the
19 department in regulation and consistent with all applicable laws and
20 regulations; however, nothing in this paragraph shall be construed
21 to be an admission of liability, or to impose liability on the owner
22 or operator, pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) or
23 pursuant to any other statute or common law; (3) evidence of the
24 establishment of a remediation funding source in an amount of the
25 estimated cost of the remediation and in accordance with the
26 provisions of section 25 of P.L.1993, c.139 (C.58:10B-3); (4) a
27 certification that the owner or operator is subject to the provisions
28 of P.L.1983, c.330, including the liability for penalties for violating
29 the act, defenses to liability and limitations thereon, the requirement
30 to perform a remediation as required by the department, allowing
31 the department access to the industrial establishment as provided in
32 section 5 of P.L.1983, c.330 (C.13:1K-10), and the requirement to
33 prepare and submit any document required by the department
34 relevant to the remediation of the industrial establishment; and (5)
35 evidence of the payment of all applicable fees required by the
36 department.

37 The department may require in the remediation agreement that
38 all plans for and results of the preliminary assessment, site
39 investigation, remedial investigation, and the implementation of the
40 remedial action workplan, prepared or initiated subsequent to the
41 transfer of ownership or operations, be submitted to the department,
42 for review purposes only, at the completion of each phase of the
43 remediation.

44 The department shall adopt regulations establishing the manner
45 in which the documents required pursuant to paragraphs (1) through
46 (5), inclusive, of this subsection shall be submitted. The
47 department shall approve the application for the remediation
48 agreement upon the complete and accurate submission of the

1 documents required to be submitted pursuant to this subsection.
2 The regulations shall include a sample form of the certifications.
3 Approval of a remediation agreement shall not affect an owner's or
4 operator's right to avail itself of the provisions of section 6 of
5 P.L.1983, c.330 (C.13:1K-11), of section 13, 14, 15, 16, 17, or 18
6 of P.L.1993, c.139 (C.13:1K-11.2, C.13:1K-11.3, C.13:1K-11.4,
7 C.13:1K-11.5, C.13:1K-11.6 or C.13:1K-11.7), or of the other
8 provisions of this section.

9 The owner or operator of the industrial establishment shall also
10 '[provide all information required to be submitted to the
11 department pursuant to this subsection, to] provide written
12 notification to¹ the clerk of the municipality in which the industrial
13 establishment is located, at the same time the information is
14 submitted to the department¹, that upon written request, the owner
15 or operator shall provide the information required to be submitted to
16 the department pursuant to this subsection, to the municipality. The
17 owner or operator shall provide the information to the municipality
18 within five days after receipt of the written request¹ .

19 f. An owner or operator of an industrial establishment may
20 perform a preliminary assessment, site investigation, or remedial
21 investigation for a soil, surface water, or groundwater remediation
22 without the prior submission to or approval of the department,
23 except as otherwise provided in a remediation agreement required
24 pursuant to subsection e. of this section. However, the plans for and
25 results of the preliminary assessment, site investigation, and
26 remedial investigation may, at the discretion of the owner or
27 operator, be submitted to the department for its review and approval
28 at the completion of each phase of the remediation.

29 g. The soil, groundwater, and surface water remediation
30 standard and the remedial action to be implemented on an industrial
31 establishment shall be selected by the owner or operator, and
32 reviewed and approved by the department, based upon the policies
33 and criteria enumerated in section 35 of P.L.1993, c.139 (C.58:10B-
34 12).

35 h. An owner or operator of an industrial establishment may
36 implement a soil remedial action at an industrial establishment
37 without prior department approval of the remedial action workplan
38 for the remediation of soil when the remedial action can reasonably
39 be expected to be completed pursuant to standards, criteria, and
40 time schedules established by the department, which schedules shall
41 not exceed five years from the commencement of the
42 implementation of the remedial action and if the owner or operator
43 is implementing a soil remediation which meets the established
44 minimum residential or nonresidential use soil remediation
45 standards adopted by the department.

46 Nothing in this subsection shall be construed to authorize the
47 closing of operations or the transfer of ownership or operations of

1 an industrial establishment without the department's approval of a
2 negative declaration, a remedial action workplan or a remediation
3 agreement.

4 i. An owner or operator of an industrial establishment shall
5 base the decision to select a remedial action based upon the
6 standards and criteria set forth in section 35 of P.L.1993, c.139
7 (C.58:10B-12). When a remedial action selected by an owner or
8 operator includes the use of an engineering or institutional controls
9 that necessitates the recording of a notice pursuant to section 36 of
10 P.L.1993, c.139 (C.58:10B-13), the owner or operator shall obtain
11 the approval of the transferee of the industrial establishment.

12 At any time after the effective date of P.L.1993, c.139, an owner
13 or operator may request the department to provide a determination
14 as to whether a proposed remedial action is consistent with the
15 standards and criteria set forth in section 35 of P.L.1993, c.139
16 (C.58:10B-12). The department shall make that determination
17 based upon the standards and criteria set forth in that section. The
18 department shall provide any such determination within 30 calendar
19 days of the department's receipt of the request.

20 j. An owner or operator proposing to implement a soil
21 remedial action other than one which is set forth in subsection h. of
22 this section must receive department approval prior to
23 implementation of the remedial action.

24 k. An owner or operator of an industrial establishment shall not
25 implement a remedial action involving the remediation of
26 groundwater or surface water without the prior review and approval
27 by the department of a remedial action workplan.

28 l. Submissions of a preliminary assessment, site investigation,
29 remedial investigation, remedial action workplan, and the results of
30 a remedial action shall be in a manner and form, and shall contain
31 any relevant information relating to the remediation, as may be
32 required by the department.

33 Upon receipt of a complete and accurate submission, the
34 department shall review and approve or disapprove the submission
35 in accordance with the review schedules established pursuant to
36 section 2 of P.L.1991, c.423 (C.13:1D-106). The owner or operator
37 shall not be required to wait for a response by the department before
38 continuing remediation activities, except as otherwise provided in
39 this section. Upon completion of the remediation, the plans for and
40 results of the preliminary assessment, site investigation, remedial
41 investigation, remedial action workplan, and remedial action and
42 any other information required to be submitted as provided in
43 section 35 of P.L.1993, c.139 (C.58:10B-12), that has not
44 previously been submitted to the department, shall be submitted to
45 the department for its review and approval.

46 The department shall review all information submitted to it by
47 the owner or operator at the completion of the remediation to

1 determine whether the actions taken were in compliance with rules
2 and regulations of the department regarding remediation.

3 The department may review and approve or disapprove every
4 remedial action workplan, no matter when submitted, to determine,
5 in accordance with the criteria listed in subsection g. of section 35
6 of P.L.1993, c.139 (C.58:10B-12) if the remedial action that has
7 occurred or that will occur is appropriate to meet the applicable
8 health risk or environmental standards.

9 The department may order additional remediation activities at the
10 industrial establishment, or offsite where necessary, or may require
11 the submission of additional information, where (a) the department
12 determines that the remediation activities undertaken were not in
13 compliance with the applicable rules or regulations of the
14 department; (b) all documents required to be submitted to the
15 department were not submitted or, if submitted, were inaccurate, or
16 deficient; or (c) discharged hazardous substances or hazardous
17 wastes remain at the industrial establishment, or have migrated or
18 are migrating offsite, at levels or concentrations or in a manner that
19 is in violation of the applicable health risk or environmental
20 standards. Upon a finding by the department that the remediation
21 conducted at the industrial establishment was in compliance with all
22 applicable regulations, that no hazardous substances or hazardous
23 wastes remain at the industrial establishment in a manner that is in
24 violation of the applicable health risk or environmental standards,
25 and that all hazardous substances or hazardous wastes that migrated
26 from the industrial establishment have been remediated in
27 conformance with the applicable health risk or environmental
28 standards, the department shall approve the remediation for that
29 industrial establishment by the issuance of a no further action letter.
30 (cf: P.L.1997, c.278, s.8)

31

32 5. Section 8 of P.L.1983, c.330 (C.13:1K-13) is amended to
33 read as follows:

34 8. **[a.]** Failure of the transferor to perform a remediation and
35 obtain department approval thereof as required pursuant to the
36 provisions of this act is grounds for voiding the sale or transfer of
37 an industrial establishment or any real property utilized in
38 connection therewith by the transferee, entitles the transferee to
39 recover damages from the transferor, and renders the owner or
40 operator of the industrial establishment strictly liable, without
41 regard to fault, for all remediation costs and for all direct and
42 indirect damages resulting from the failure to implement the
43 remedial action workplan. A transferee may not act to void the sale
44 or transfer of an industrial establishment or any real property except
45 upon providing notice to the transferor of the failure to perform and
46 affording the transferor a reasonable amount of time to comply with
47 the provisions of this act. A transferee may bring an action in
48 Superior Court to void the sale or transfer of an industrial

1 establishment or any real property or to recover damages from the
2 transferor, pursuant to this section.

3 **【b. Any person who knowingly gives or causes to be given any**
4 **false information or who fails to comply with the provisions of this**
5 **act is liable for a penalty of not more than \$25,000.00 for each**
6 **offense. If the violation is of a continuing nature, each day during**
7 **which it continues shall constitute an additional and separate**
8 **offense. Penalties shall be collected in a civil action by a summary**
9 **proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et**
10 **seq.). Any officer or management official of an industrial**
11 **establishment who knowingly directs or authorizes the violation of**
12 **any provisions of this act shall be personally liable for the penalties**
13 **established in this subsection.】**

14 (cf: P.L.1997, c.278, s.47)

15

16 6. This act shall take effect immediately.

17

18

19

20

21 _____
22 Requires DHSS standards for safe building interiors; submission
23 of documentation of investigation and remediation as a condition to
24 issuance of construction permit for certain sites; makes changes to
the "Industrial Site Recovery Act."

SENATE, No. 2261

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED OCTOBER 12, 2006

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Co-Sponsored by:

Senator McNamara

SYNOPSIS

Requires DHSS standards for safe building interiors; submission of documentation of investigation and remediation as a condition to issuance of construction permit for certain sites; makes changes to the "Industrial Site Recovery Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/14/2006)

1 AN ACT concerning contaminated property, supplementing Title 52
2 of the Revised Statutes, and amending and supplementing
3 P.L.1983, c.330.

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

7
8 1. a. Within nine months after the effective date of this act, the
9 Department of Health and Senior Services shall adopt rules and
10 regulations pursuant to the "Administrative Procedure Act,"
11 P.L.1968, c.410 (C.52:14B-1 et seq.) that establish: (1) procedures
12 for the evaluation and assessment of the interior of buildings that
13 are to be used for a child care center licensed pursuant to the
14 provisions of P.L.1983, c.492 (C.30:5B-1 et seq.), or for residential
15 or educational purposes; and (2) standards that establish maximum
16 contaminant levels for building interiors to be used for child care
17 centers licensed pursuant to the provisions of P.L.1983, c.492, or
18 for residential and educational purposes, that are protective of the
19 public health and safety.

20 b. The department shall establish an application process for the
21 certification issued pursuant to subsection c. of this section. Every
22 application for a certification shall be accompanied by a fee,
23 established in accordance with a fee schedule adopted by the
24 department, by rule or regulation, reflecting the costs of reviewing
25 and processing the application.

26 c. Upon a demonstration to the department by the applicant that
27 the procedures established pursuant to subsection a. of this section
28 for the evaluation and assessment of building interiors have been
29 followed, and that there are no contaminants present in the building
30 that exceed the maximum contaminant levels established in
31 subsection a. of this section, the department shall issue a
32 certification that the building interior is safe for use as a child care
33 center, or for residential or educational purposes.

34 d. As used in this section, "contaminant" shall have the same
35 meaning as provided in section 23 of P.L.1993, c.139 (C.58:10B-1).

36
37 2. (New section) a. No construction permit shall be issued
38 pursuant to section 12 of P.L.1975, c.217 (C.52:27D-130) for any
39 structure that was previously used for industrial, storage, or high
40 hazard purposes, or that is on a contaminated site, on a site on
41 which there is suspected contamination, or on an industrial site that
42 is subject to the provisions of the "Industrial Site Recovery Act,"
43 P.L.1983, c.330 (C.13:1K-6 et al.), except upon the submission of
44 the certification issued by the Department of Health and Senior
45 Services pursuant to section 1 of P.L. , c. (C.)(pending in the

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 Legislature as this bill) to the construction official by the applicant,
2 that the structure has been evaluated and assessed for contaminants,
3 and that the structure is safe for use as a child care center licensed
4 pursuant to the provisions of P.L.1983, c.492, or for residential or
5 educational purposes.

6 b. No construction permit shall be issued for the construction or
7 alteration of any building or structure to be used as a child care
8 center licensed pursuant to the provisions of P.L.1983, c.492, or for
9 educational or residential purposes, on a contaminated site, on a site
10 on which there is suspected contamination, or on an industrial site
11 that is subject to the provisions of the "Industrial Site Recovery
12 Act," P.L.1983, c.330 (C.13:1K-6 et al.), except after submission by
13 the applicant to the construction official of documentation sufficient
14 to establish that the site has been remediated consistent with the
15 remediation standards and other remediation requirements
16 established pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12)
17 and a no further action letter has been issued by the Department of
18 Environmental Protection for the entire site.

19 c. As used in this section, "contaminated site" means any real
20 property on which there is contamination, and "contamination,"
21 "remediation" or "remediate," and "no further action letter" shall
22 have the same meanings as provided in section 1 of P.L.1993, c.139
23 (C.58:10B-1).

24
25 3. (New section) a. Whenever the Commissioner of
26 Environmental Protection finds that a person has violated any
27 provision of this act, or any rule or regulation adopted pursuant
28 thereto, or knowingly makes a false statement, representation, or
29 certification in any application, record, or other document filed or
30 required to be maintained pursuant to P.L.1983, c.330 (C.13:1K-6 et
31 al.), the commissioner may:

32 (1) issue an order requiring the person found to be in violation
33 to comply in accordance with subsection b. of this section;

34 (2) bring a civil action in accordance with subsection c. of this
35 section;

36 (3) levy a civil administrative penalty in accordance with
37 subsection d. of this section; or

38 (4) bring an action for a civil penalty in accordance with
39 subsection e. of this section.

40 Pursuit of any of the remedies specified under this section shall
41 not preclude the seeking of any other remedy specified.

42 Any officer or management official of an industrial
43 establishment who knowingly directs or authorizes the violation of
44 any provisions of P.L.1983, c.330 (C.13:1K-6 et al.) shall be
45 personally liable for the penalties established in this section.

46 b. Whenever the commissioner finds that a person has violated
47 this act, or any rule or regulation adopted pursuant thereto, the
48 commissioner may issue an order specifying the provision or

1 provisions of this act, or the rule or regulation adopted pursuant
2 thereto, of which the person is in violation, citing the action that
3 constituted the violation, ordering abatement of the violation, and
4 giving notice to the person of the person's right to a hearing on the
5 matters contained in the order. The ordered person shall have 20
6 calendar days from receipt of the order within which to deliver to
7 the commissioner a written request for a hearing. After the hearing
8 and upon finding that a violation has occurred, the commissioner
9 may issue a final order. If no hearing is requested, the order shall
10 become final after the expiration of the 20-day period. A request
11 for hearing shall not automatically stay the effect of the order.

12 c. The commissioner may institute an action or proceeding in the
13 Superior Court for injunctive and other relief to enforce the
14 provisions of this act and to prohibit and prevent a violation of this
15 act, or of any rule or regulation adopted pursuant thereto, and the
16 court may proceed in the action in a summary manner. In any such
17 proceeding the court may grant temporary or interlocutory relief.

18 Such relief may include, singly or in combination:

- 19 (1) a temporary or permanent injunction;
20 (2) assessment of the violator for the reasonable costs of any
21 inspection that led to the establishment of the violation, and for the
22 reasonable costs of preparing and litigating the case under this
23 subsection.

24 d. The commissioner may assess a civil administrative penalty
25 of not more than \$25,000 for a first offense, and not more than
26 \$50,000 for the second and every subsequent offense. Each day
27 that a violation continues shall constitute an additional, separate,
28 and distinct offense.

29 No assessment may be levied pursuant to this section until after
30 the violator has been notified by certified mail or personal service.
31 The notice shall include a reference to the section of the statute,
32 rule, regulation, or order violated, a concise statement of the facts
33 alleged to constitute a violation, a statement of the amount of the
34 civil administrative penalties to be imposed, and a statement of the
35 person's right to a hearing. The ordered person shall have 20
36 calendar days from receipt of the notice within which to deliver to
37 the commissioner a written request for a hearing.

38 After the hearing and upon finding that a violation has occurred,
39 the commissioner may issue a final order after assessing the amount
40 of the fine specified in the notice. If no hearing is requested, the
41 notice shall become a final order after the expiration of the 20-day
42 period. Payment of the assessment is due when a final order is
43 issued or the notice becomes a final order. The authority to levy a
44 civil administrative penalty is in addition to all other enforcement
45 provisions in this act, and the payment of any assessment shall not
46 be deemed to affect the availability of any other enforcement
47 provisions in connection with the violation for which the
48 assessment is levied. The commissioner may compromise any civil

1 administrative penalty assessed under this section in an amount the
2 commissioner determines appropriate.

3 e. A person who violates this act, or any rule or regulation
4 adopted pursuant thereto, shall be liable for a penalty of not more
5 than \$25,000 per day, to be collected in a civil action commenced
6 by the commissioner.

7 A person who violates an administrative order issued pursuant to
8 subsection b. of this section, or a court order issued pursuant to
9 subsection c. of this section, or who fails to pay an administrative
10 assessment in full pursuant to subsection d. of this section is subject
11 upon order of a court to a civil penalty not to exceed \$50,000 per
12 day of each violation.

13 Any penalty imposed pursuant to this subsection may be
14 collected, with costs, in a summary proceeding pursuant to the
15 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
16 et seq.). The Superior Court and the municipal court shall have
17 jurisdiction to enforce the provisions of the "Penalty Enforcement
18 Law of 1999" in connection with this act.

19

20 4. Section 4 of P.L.1983, c.330 (C.13:1K-9) is amended to read
21 as follows:

22 4. a. The owner or operator of an industrial establishment
23 planning to close operations or transfer ownership or operations
24 shall notify the department in writing, no more than five days
25 subsequent to closing operations or of its public release of its
26 decision to close operations, whichever occurs first, or within five
27 days after the execution of an agreement to transfer ownership or
28 operations, as applicable. The notice to the department shall:
29 identify the subject industrial establishment; describe the
30 transaction requiring compliance with P.L.1983, c.330 (C.13:1K-6
31 et al.); state the date of the closing of operations or the date of the
32 public release of the decision to close operations as evidenced by a
33 copy of the appropriate public announcement, if applicable; state
34 the date of execution of the agreement to transfer ownership or
35 operations and the names, addresses and telephone numbers of the
36 parties to the transfer, if applicable; state the proposed date for
37 closing operations or transferring ownership or operations; list the
38 name, address, and telephone number of an authorized agent for the
39 owner or operator; and certify that the information submitted is
40 accurate. The notice shall be transmitted to the department in the
41 manner and form required by the department. The department may,
42 by regulation, require the submission of any additional information
43 in order to improve the efficient implementation of P.L.1983, c.330.
44 The owner or operator of the industrial establishment shall also
45 provide all information required to be submitted to the department
46 pursuant to this subsection, to the clerk of the municipality in which
47 the industrial establishment is located, at the same time the
48 information is submitted to the department.

1 b. (1) Subsequent to the submittal of the notice required
2 pursuant to subsection a. of this section, the owner or operator of an
3 industrial establishment shall, except as otherwise provided by
4 P.L.1983, c.330 or P.L.1993, c.139 (C.13:1K-9.6 et al.), remediate
5 the industrial establishment. The remediation shall be conducted in
6 accordance with criteria, procedures, and time schedules established
7 by the department.

8 (2) The owner or operator shall attach a copy of any approved
9 negative declaration, approved remedial action workplan, no further
10 action letter, or remediation agreement approval to the contract or
11 agreement of sale or agreement to transfer or any option to purchase
12 which may be entered into with respect to the transfer of ownership
13 or operations. In the event that any sale or transfer agreements or
14 options have been executed prior to the approval of a negative
15 declaration, remedial action workplan, no further action letter, or
16 remediation agreement, these documents, as relevant, shall be
17 transmitted by the owner or operator, by certified mail, overnight
18 delivery, or personal service, prior to the transfer of ownership or
19 operations, to all parties to any transaction concerning the transfer
20 of ownership or operations, including purchasers, bankruptcy
21 trustees, mortgagees, sureties, and financiers.

22 (3) The preliminary assessment, site investigation, remedial
23 investigation, and remedial action for the industrial establishment
24 shall be performed and implemented by the owner or operator of the
25 industrial establishment, except that any other party may assume
26 that responsibility pursuant to the provisions of P.L.1983, c.330.

27 c. The owner or operator of an industrial establishment shall,
28 subsequent to closing operations, or of its public release of its
29 decision to close operations, or prior to transferring ownership or
30 operations except as otherwise provided in subsection e. of this
31 section, as applicable, submit to the department for approval a
32 proposed negative declaration or proposed remedial action
33 workplan. The owner or operator shall also submit a copy of the
34 proposed negative declaration or proposed remedial action
35 workplan to the clerk of the municipality in which the industrial site
36 is located. Except as otherwise provided in section 6 of P.L.1983,
37 c.330 (C.13:1K-11), and sections 13, 16, 17 and 18 of P.L.1993,
38 c.139 (C.13:1K-11.2, C.13:1K-11.5, C.13:1K-11.6 and C.13:1K-
39 11.7), the owner or operator of an industrial establishment shall not
40 transfer ownership or operations until a negative declaration or a
41 remedial action workplan has been approved by the department or
42 the conditions of subsection e. of this section for remediation
43 agreements have been met and until, in cases where a remedial
44 action workplan is required to be approved or a remediation
45 agreement has been approved, a remediation funding source, as
46 required pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3),
47 has been established.

1 d. (1) Upon the submission of the results of either the
2 preliminary assessment, site investigation, remedial investigation,
3 or remedial action, where applicable, which demonstrate that there
4 are no discharged hazardous substances or hazardous wastes at the
5 industrial establishment, or that have migrated from or are
6 migrating from the industrial establishment, in violation of the
7 applicable remediation regulations, the owner or operator may
8 submit to the department for approval a proposed negative
9 declaration as provided in subsection c. of this section. The owner
10 or operator shall also submit a copy of the proposed negative
11 declaration to the clerk of the municipality in which the industrial
12 establishment is located.

13 (2) After the submission and review of the information
14 submitted pursuant to a preliminary assessment, site investigation,
15 remedial investigation, or remedial action, as necessary, the
16 department shall, within 45 days of submission of a complete and
17 accurate negative declaration, approve the negative declaration, or
18 inform the owner or operator of the industrial establishment that a
19 remedial action workplan or additional remediation shall be
20 required. The department shall approve a negative declaration by
21 the issuance of a no further action letter.

22 e. The owner or operator of an industrial establishment, who has
23 submitted a notice to the department pursuant to subsection a. of
24 this section, may transfer ownership or operations of the industrial
25 establishment prior to the approval of a negative declaration or
26 remedial action workplan upon application to and approval by the
27 department of a remediation agreement. The owner or operator
28 requesting a remediation agreement shall submit the following
29 documents: (1) an estimate of the cost of the remediation that is
30 approved by the department; (2) a certification of the statutory
31 liability of the owner or operator pursuant to P.L.1983, c.330 to
32 perform and to complete a remediation of the industrial
33 establishment in the manner and time limits provided by the
34 department in regulation and consistent with all applicable laws and
35 regulations; however, nothing in this paragraph shall be construed
36 to be an admission of liability, or to impose liability on the owner
37 or operator, pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) or
38 pursuant to any other statute or common law; (3) evidence of the
39 establishment of a remediation funding source in an amount of the
40 estimated cost of the remediation and in accordance with the
41 provisions of section 25 of P.L.1993, c.139 (C.58:10B-3); (4) a
42 certification that the owner or operator is subject to the provisions
43 of P.L.1983, c.330, including the liability for penalties for violating
44 the act, defenses to liability and limitations thereon, the requirement
45 to perform a remediation as required by the department, allowing
46 the department access to the industrial establishment as provided in
47 section 5 of P.L.1983, c.330 (C.13:1K-10), and the requirement to
48 prepare and submit any document required by the department

1 relevant to the remediation of the industrial establishment; and (5)
2 evidence of the payment of all applicable fees required by the
3 department.

4 The department may require in the remediation agreement that
5 all plans for and results of the preliminary assessment, site
6 investigation, remedial investigation, and the implementation of the
7 remedial action workplan, prepared or initiated subsequent to the
8 transfer of ownership or operations, be submitted to the department,
9 for review purposes only, at the completion of each phase of the
10 remediation.

11 The department shall adopt regulations establishing the manner
12 in which the documents required pursuant to paragraphs (1) through
13 (5), inclusive, of this subsection shall be submitted. The
14 department shall approve the application for the remediation
15 agreement upon the complete and accurate submission of the
16 documents required to be submitted pursuant to this subsection.
17 The regulations shall include a sample form of the certifications.
18 Approval of a remediation agreement shall not affect an owner's or
19 operator's right to avail itself of the provisions of section 6 of
20 P.L.1983, c.330 (C.13:1K-11), of section 13, 14, 15, 16, 17, or 18
21 of P.L.1993, c.139 (C.13:1K-11.2, C.13:1K-11.3, C.13:1K-11.4,
22 C.13:1K-11.5, C.13:1K-11.6 or C.13:1K-11.7), or of the other
23 provisions of this section.

24 The owner or operator of the industrial establishment shall also
25 provide all information required to be submitted to the department
26 pursuant to this subsection, to the clerk of the municipality in which
27 the industrial establishment is located, at the same time the
28 information is submitted to the department.

29 f. An owner or operator of an industrial establishment may
30 perform a preliminary assessment, site investigation, or remedial
31 investigation for a soil, surface water, or groundwater remediation
32 without the prior submission to or approval of the department,
33 except as otherwise provided in a remediation agreement required
34 pursuant to subsection e. of this section. However, the plans for and
35 results of the preliminary assessment, site investigation, and
36 remedial investigation may, at the discretion of the owner or
37 operator, be submitted to the department for its review and approval
38 at the completion of each phase of the remediation.

39 g. The soil, groundwater, and surface water remediation
40 standard and the remedial action to be implemented on an industrial
41 establishment shall be selected by the owner or operator, and
42 reviewed and approved by the department, based upon the policies
43 and criteria enumerated in section 35 of P.L.1993, c.139 (C.58:10B-
44 12).

45 h. An owner or operator of an industrial establishment may
46 implement a soil remedial action at an industrial establishment
47 without prior department approval of the remedial action workplan
48 for the remediation of soil when the remedial action can reasonably

1 be expected to be completed pursuant to standards, criteria, and
2 time schedules established by the department, which schedules shall
3 not exceed five years from the commencement of the
4 implementation of the remedial action and if the owner or operator
5 is implementing a soil remediation which meets the established
6 minimum residential or nonresidential use soil remediation
7 standards adopted by the department.

8 Nothing in this subsection shall be construed to authorize the
9 closing of operations or the transfer of ownership or operations of
10 an industrial establishment without the department's approval of a
11 negative declaration, a remedial action workplan or a remediation
12 agreement.

13 i. An owner or operator of an industrial establishment shall base
14 the decision to select a remedial action based upon the standards
15 and criteria set forth in section 35 of P.L.1993, c.139 (C.58:10B-
16 12). When a remedial action selected by an owner or operator
17 includes the use of an engineering or institutional controls that
18 necessitates the recording of a notice pursuant to section 36 of
19 P.L.1993, c.139 (C.58:10B-13), the owner or operator shall obtain
20 the approval of the transferee of the industrial establishment.

21 At any time after the effective date of P.L.1993, c.139, an owner
22 or operator may request the department to provide a determination
23 as to whether a proposed remedial action is consistent with the
24 standards and criteria set forth in section 35 of P.L.1993, c.139
25 (C.58:10B-12). The department shall make that determination
26 based upon the standards and criteria set forth in that section. The
27 department shall provide any such determination within 30 calendar
28 days of the department's receipt of the request.

29 j. An owner or operator proposing to implement a soil remedial
30 action other than one which is set forth in subsection h. of this
31 section must receive department approval prior to implementation
32 of the remedial action.

33 k. An owner or operator of an industrial establishment shall not
34 implement a remedial action involving the remediation of
35 groundwater or surface water without the prior review and approval
36 by the department of a remedial action workplan.

37 l. Submissions of a preliminary assessment, site investigation,
38 remedial investigation, remedial action workplan, and the results of
39 a remedial action shall be in a manner and form, and shall contain
40 any relevant information relating to the remediation, as may be
41 required by the department.

42 Upon receipt of a complete and accurate submission, the
43 department shall review and approve or disapprove the submission
44 in accordance with the review schedules established pursuant to
45 section 2 of P.L.1991, c.423 (C.13:1D-106). The owner or operator
46 shall not be required to wait for a response by the department before
47 continuing remediation activities, except as otherwise provided in
48 this section. Upon completion of the remediation, the plans for and

1 results of the preliminary assessment, site investigation, remedial
2 investigation, remedial action workplan, and remedial action and
3 any other information required to be submitted as provided in
4 section 35 of P.L.1993, c.139 (C.58:10B-12), that has not
5 previously been submitted to the department, shall be submitted to
6 the department for its review and approval.

7 The department shall review all information submitted to it by
8 the owner or operator at the completion of the remediation to
9 determine whether the actions taken were in compliance with rules
10 and regulations of the department regarding remediation.

11 The department may review and approve or disapprove every
12 remedial action workplan, no matter when submitted, to determine,
13 in accordance with the criteria listed in subsection g. of section 35
14 of P.L.1993, c.139 (C.58:10B-12) if the remedial action that has
15 occurred or that will occur is appropriate to meet the applicable
16 health risk or environmental standards.

17 The department may order additional remediation activities at the
18 industrial establishment, or offsite where necessary, or may require
19 the submission of additional information, where (a) the department
20 determines that the remediation activities undertaken were not in
21 compliance with the applicable rules or regulations of the
22 department; (b) all documents required to be submitted to the
23 department were not submitted or, if submitted, were inaccurate, or
24 deficient; or (c) discharged hazardous substances or hazardous
25 wastes remain at the industrial establishment, or have migrated or
26 are migrating offsite, at levels or concentrations or in a manner that
27 is in violation of the applicable health risk or environmental
28 standards. Upon a finding by the department that the remediation
29 conducted at the industrial establishment was in compliance with all
30 applicable regulations, that no hazardous substances or hazardous
31 wastes remain at the industrial establishment in a manner that is in
32 violation of the applicable health risk or environmental standards,
33 and that all hazardous substances or hazardous wastes that migrated
34 from the industrial establishment have been remediated in
35 conformance with the applicable health risk or environmental
36 standards, the department shall approve the remediation for that
37 industrial establishment by the issuance of a no further action letter.
38 (cf: P.L.1997, c.278, s.8)

39

40 5. Section 8 of P.L.1983, c.330 (C.13:1K-13) is amended to read
41 as follows:

42 8. **[a.]** Failure of the transferor to perform a remediation and
43 obtain department approval thereof as required pursuant to the
44 provisions of this act is grounds for voiding the sale or transfer of
45 an industrial establishment or any real property utilized in
46 connection therewith by the transferee, entitles the transferee to
47 recover damages from the transferor, and renders the owner or
48 operator of the industrial establishment strictly liable, without

1 regard to fault, for all remediation costs and for all direct and
2 indirect damages resulting from the failure to implement the
3 remedial action workplan. A transferee may not act to void the sale
4 or transfer of an industrial establishment or any real property except
5 upon providing notice to the transferor of the failure to perform and
6 affording the transferor a reasonable amount of time to comply with
7 the provisions of this act. A transferee may bring an action in
8 Superior Court to void the sale or transfer of an industrial
9 establishment or any real property or to recover damages from the
10 transferor, pursuant to this section.

11 **【b. Any person who knowingly gives or causes to be given any**
12 **false information or who fails to comply with the provisions of this**
13 **act is liable for a penalty of not more than \$25,000.00 for each**
14 **offense. If the violation is of a continuing nature, each day during**
15 **which it continues shall constitute an additional and separate**
16 **offense. Penalties shall be collected in a civil action by a summary**
17 **proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et**
18 **seq.). Any officer or management official of an industrial**
19 **establishment who knowingly directs or authorizes the violation of**
20 **any provisions of this act shall be personally liable for the penalties**
21 **established in this subsection.】**

22 (cf: P.L.1997, c.278, s.47)

23

24 6. This act shall take effect immediately.

25

26

27

STATEMENT

28

29 This bill would require the Department of Health and Senior
30 Services to adopt rules and regulations that establish: (1)
31 procedures for the evaluation and assessment of the interior of
32 buildings that are to be used for day care centers or for residential
33 or educational purposes; and (2) standards that establish maximum
34 contaminant levels for building interiors to be used for day care
35 centers or for residential and educational purposes, that are
36 protective of the public health and safety. The bill requires the
37 department to issue a certification to an applicant that follows the
38 evaluation and assessment process and meets the standards for
39 building interiors.

40 The bill would also provide that a construction official would not
41 be authorized to issue a construction permit for any structure that
42 was previously used for industrial, storage, or high hazard purposes,
43 or that is on a contaminated site, on a site on which there is
44 suspected contamination, or on an industrial site that is subject to
45 the provisions of the "Industrial Site Recovery Act," P.L.1983,
46 c.330 (C.13:1K-6 et al.), except upon the submission of the
47 certification issued by the Department of Health and Senior
48 Services to the construction official by the applicant, that the

1 structure has been evaluated and assessed for contaminants, and that
2 the structure is safe for use for a day care center or for residential or
3 educational purposes. Further, the bill would provide that no
4 construction permit shall be issued for the construction or alteration
5 of any building that would be used as a child care center, or for
6 educational or residential purposes, on a contaminated site, except
7 after submission by the applicant to the construction official of
8 documentation sufficient to establish that the site has been
9 remediated consistent with the remediation standards and other
10 remediation requirements established pursuant to section 35 of
11 P.L.1993, c.139 (C.58:10B-12) and that a no further action letter
12 has been issued by the Department of Environmental Protection for
13 the entire site.

14 The bill would also replace the existing penalty provision in the
15 "Industrial Site Recovery Act" to provide the Department of
16 Environmental Protection with a range of options to enforce the act,
17 including the authority to issue orders, impose civil administrative
18 penalties, bring an action for civil penalties, or bring a civil action
19 for injunctive or other relief. The bill would increase the maximum
20 penalty that may be imposed for a violation of the act from \$25,000
21 per day to \$50,000 per day.

22 Finally, the bill would require that the owner or operator of an
23 industrial establishment provide notice to the municipality in which
24 an industrial establishment is located of the closing or transfer of
25 ownership or operations, the proposed negative declaration or
26 remedial action workplan, and the request for a remediation
27 agreement and all supporting documentation.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 2261

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 27, 2006

The Senate Environment Committee favorably reports Senate Bill No. 2261 with committee amendments.

As amended by the committee, this bill would require the Department of Health and Senior Services (DHSS), within 12 months after the bill is enacted into law, to adopt rules and regulations that establish: (1) procedures for the evaluation and assessment of the interior of buildings that are to be used for child care centers licensed pursuant to the provisions of P.L.1983, c.492 (C.30:5B-1 et seq.), or for educational purposes; and (2) standards that establish maximum contaminant levels for building interiors to be used for child care centers licensed pursuant to the provisions of P.L.1983, c.492, or for educational purposes, that are protective of the public health and safety. These rules and regulations are to be protective of the health of children and infants, and account for the difference in rate of the absorption, metabolism, and excretion of compounds between adults and infants and children. The bill also requires the DHSS to issue a certification to an applicant who follows the evaluation and assessment process and meets the standards for building interiors.

The bill would also provide that a construction official would not be authorized to issue a construction permit for the reconstruction, alteration, conversion, or repair of any building or structure to be used for a child care center licensed pursuant to the provisions of P.L.1983, c.492, or for educational purposes, if that building or structure was previously used for industrial, storage, or high hazard purposes, as a nail salon, dry cleaning facility, or gasoline station, or is on a contaminated site, on a site on which there is suspected contamination, or on an industrial site that is subject to the provisions of the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.), except upon the submission, to the construction official by the applicant, of the certification issued by the DHSS that the building or structure has been evaluated and assessed for contaminants, and that the building or structure is safe for use for a child care center or for educational purposes.

Further, the bill would provide that no construction permit would be issued for the construction or alteration of any building or structure

that would be used as a licensed child care center, or for educational purposes, on a site that was previously used for industrial, storage, or high hazard purposes, as a nail salon, dry cleaning facility, or gasoline station, or on a contaminated site, on a site on which there is suspected contamination, or on an industrial site that is subject to the provisions of the "Industrial Site Recovery Act," except after submission, by the applicant to the construction official, of documentation sufficient to establish that the site has been remediated consistent with the remediation standards and other remediation requirements established pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12) and that a no further action letter has been issued by the Department of Environmental Protection (DEP) for the entire site.

As amended by the committee, the bill would allow for the issuance of a construction permit for the construction or alteration of any building or structure to be used as a licensed child care center, or for educational purposes, if the construction permit is necessary to perform work in the building or structure in order to comply with the rules and regulations to be adopted by the DHSS and obtain the certification issued by the DHSS pursuant to section 1 of the bill. Such a construction permit would be limited to the construction or alterations necessary to comply with the rules and regulations adopted by the DHSS pursuant to the bill.

In addition, as amended, the bill provides that a municipal enforcing agency would be prohibited from granting a certificate of occupancy for any building or structure to be used as a licensed child care center, or for educational purposes, that received a construction permit for the construction or alterations necessary to comply with the rules and regulations adopted by the DHSS pursuant to the bill, except upon the submission, to the construction official by the applicant, of the certification from the DHSS that the building or structure has been evaluated and assessed for contaminants, and that the building or structure is safe for use as a licensed child care center, or for educational purposes.

As amended by the committee, the bill would allow for the issuance of a construction permit for the construction or alteration of any building or structure to be used as a licensed child care center, or for educational purposes, on a site that was previously used for industrial, storage, or high hazard purposes, as a nail salon, dry cleaning facility, or gasoline station, or on a contaminated site, on a site on which there is suspected contamination, or on an industrial site that is subject to the provisions of the "Industrial Site Recovery Act," if the construction permit is necessary to perform work in the building or structure in order to remediate the site and obtain a no further action letter from the DEP. Such a construction permit would be limited to the construction or alterations necessary to remediate the site and obtain a no further action letter from the DEP.

In addition, as amended, the bill provides that a municipal enforcing agency would be prohibited from granting a certificate of occupancy for any building or structure to be used as a licensed child care center, or for educational purposes, that received a construction permit for the construction or alterations necessary to remediate the site and obtain a no further action letter from the DEP, except upon the submission, to the construction official by the applicant, of documentation sufficient to establish that the site has been remediated consistent with the remediation standards and other remediation requirements established pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12) and that a no further action letter has been issued by the DEP for the entire site.

The bill would also replace the existing penalty provision in the "Industrial Site Recovery Act" to provide the DEP with a range of options to enforce the act, including the authority to issue orders, impose civil administrative penalties, bring an action for civil penalties, or bring a civil action for injunctive or other relief. The bill would increase the maximum penalty that may be imposed for a violation of the act from \$25,000 per day to \$50,000 per day.

Finally, as amended, the bill would require that the owner or operator of an industrial establishment provide notice to the municipality in which an industrial establishment is located of the closing or transfer of ownership or operations, and provide notice to the municipality that the municipality may request copies of the proposed negative declaration or remedial action workplan, and that those documents shall be provided within five days of receipt of the written request.

The committee amendments:

- 1) provide the DHSS with 12 months, rather than nine, to adopt the required rules and regulations;
- 2) require the rules and regulations to be adopted by the DHSS to be protective of the health of children and infants, and account for the difference in rate of the absorption, metabolism, and excretion of compounds between adults and infants and children;
- 3) provide that the fees collected by the DHSS would be dedicated for use by the department solely for the purposes of administering and enforcing its responsibilities pursuant to section 1 of the bill;
- 4) provide the DHSS with enforcement authority;
- 5) delete buildings to be used for residential purposes from the requirements of sections 1 and 2 of the bill;
- 6) specify that the provisions of section 2 of the bill would also apply to structures or sites previously used for nail salons, dry cleaning facilities, or gasoline stations;
- 7) provide for the issuance of a construction permit for the construction or alteration of any building or structure to be used as a licensed child care center, or for educational purposes, if the construction permit is necessary to perform work in the building or

structure in order to comply with the rules and regulations to be adopted by the DHSS and obtain the certification issued by the DHSS pursuant to the bill;

8) provide for the issuance of a construction permit for the construction or alteration of any building or structure to be used as a licensed child care center, or for educational purposes, if the construction permit is necessary to perform work to remediate the site and obtain a no further action letter from the DEP; and

9) provide that the owner or operator of an industrial establishment provide notice to the municipality of the remediation documents submitted to the DEP, and require that they be provided to the municipality within five days of a written request by the municipality.

STATEMENT TO
[First Reprint]
SENATE, No. 2261

with Assembly Floor Amendments
(Proposed By Assemblyman MAYER)

ADOPTED: DECEMBER 11, 2006

These floor amendments would provide that a construction permit may be issued for the construction or alteration of any building or structure to be used as a child care center on a site that was previously used for industrial, storage, or high hazard purposes, or on a contaminated or industrial site, if the applicant has sufficient documentation to establish that the Department of Environmental Protection (DEP) has approved a remedial action workplan for the entire site, or that the site has been remediated consistent with remediation standards and a no further action letter has been issued by the DEP for the entire site.

In addition, the floor amendments would require that the construction permit issued would be limited to the construction or alterations necessary to develop a remedial action workplan to be submitted for approval by the DEP, or to remediate the site consistent with remediation standards and receive a no further action letter from the DEP.

The floor amendments define “educational purposes” as used in the bill and make other technical corrections to the bill.

These floor amendments would make this bill identical to Assembly No. 3529 (2R).

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 2261

STATE OF NEW JERSEY 212th LEGISLATURE

DATED: JANUARY 5, 2007

SUMMARY

- Synopsis:** Requires DHSS standards for safe building interiors; submission of documentation of investigation and remediation as a condition to issuance of construction permit for certain sites; makes changes to the "Industrial Site Recovery Act."
- Type of Impact:** Minimal impact on the General Fund. Some or all program costs would be offset by program fees or fines authorized under the bill.
- Agencies Affected:** Department of Health and Senior Services and the Department of Environmental Protection.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate - See comments below		

- The bill requires the Department of Health and Senior Services (DHSS) to establish procedures to evaluate and assess the interior of buildings that are to be used for licensed child care centers or for educational purposes, and to promulgate standards establishing maximum contaminant levels that are particularly protective of children and infants.
- The DHSS is directed to establish a certification process whereby an applicant must demonstrate that these new procedures and standards for building interiors have been met in buildings that are to be used for licensed child care centers or for educational purposes.
- The bill amends the "Industrial Site Recovery Act" by increasing the Department of Environmental Protection's (DEP) enforcement capabilities in this area, as well as doubling the daily fine rate for violations of this act.
- The Office of Legislative Services (OLS) estimates that the bill would have a minimal fiscal impact on State funds because some or all program costs would be supported by program fees and fines authorized under the bill.

BILL DESCRIPTION

Senate Bill No. 2261 (2R) of 2006 requires the DHSS to establish procedures to evaluate and assess the interior of buildings used for licensed child care centers or for educational purposes. It also requires the department to promulgate standards that establish maximum contaminant levels in such buildings that are protective of the general public, with particular attention to the health of children and infants. The bill further requires the DHSS to establish a certification process whereby an applicant must demonstrate that these new procedures and standards for building interiors have been met. Once this requirement is fulfilled, a certification would be issued to permit these buildings to be used for licensed child care centers or for educational purposes. The bill allows the department to charge fees to applicants to offset administrative costs that may be incurred in managing the program.

The bill provides that a construction official cannot issue a construction permit for work on any building used for a licensed child care center or for educational purposes if that building or structure was previously used for industrial, storage, or high hazard purposes, or is on a suspected contaminated or industrial site, until the proper certification mandated herein by the bill is issued by the DHSS. In addition, documentation proving that the site has been remediated and that a "no further action" letter has been issued by the DEP for the site is also required.

Last, the bill replaces the existing penalty provision in the "Industrial Site Recovery Act" to provide the DEP with a range of options to enforce the act, including the authority to issue orders, impose civil administrative penalties, bring an action for civil penalties, or bring a civil action for injunctive or other relief. The bill increases the maximum penalty that may be imposed for a violation of the act from \$25,000 per day to \$50,000 per day.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill would have a minimal fiscal impact on State funds because some or all program costs would be covered by applicant fees authorized under the bill. If the DHSS does incur additional expenses that exceed program fee collection, it may require increased funding from the General Fund. With respect to the level of enforcement costs that may be incurred by the DEP, the OLS cannot provide an estimate at this time but states that the proposed increase in penalty rates could indirectly cover some or all of any such expenses.

Section: Environment, Agriculture, Energy and Natural Resources

*Analyst: Richard M. Handelman
Senior Fiscal Analyst*

*Approved: David J. Rosen
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.

ASSEMBLY, No. 3529

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED OCTOBER 19, 2006

Sponsored by:

Assemblyman DAVID R. MAYER

District 4 (Camden and Gloucester)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Co-Sponsored by:

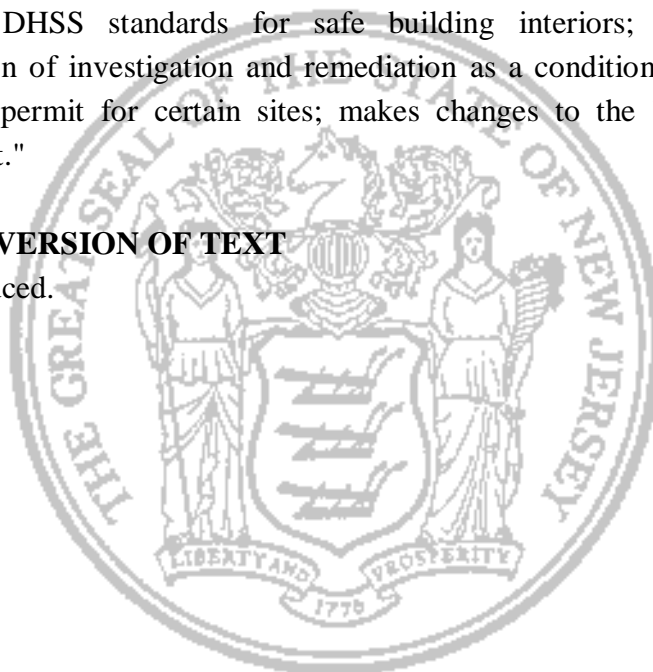
Assemblyman Manzo

SYNOPSIS

Requires DHSS standards for safe building interiors; submission of documentation of investigation and remediation as a condition to issuance of construction permit for certain sites; makes changes to the "Industrial Site Recovery Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/24/2006)

1 AN ACT concerning contaminated property, supplementing Title 52
2 of the Revised Statutes, and amending and supplementing
3 P.L.1983, c.330.

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

7
8 1. (New section) a. Within nine months after the effective
9 date of this act, the Department of Health and Senior Services shall
10 adopt rules and regulations pursuant to the "Administrative
11 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) that establish:
12 (1) procedures for the evaluation and assessment of the interior of
13 buildings that are to be used for a child care center licensed
14 pursuant to the provisions of P.L.1983, c.492 (C.30:5B-1 et seq.), or
15 for residential or educational purposes; and (2) standards that
16 establish maximum contaminant levels for building interiors to be
17 used for child care centers licensed pursuant to the provisions of
18 P.L.1983, c.492, or for residential and educational purposes, that
19 are protective of the public health and safety.

20 b. The department shall establish an application process for the
21 certification issued pursuant to subsection c. of this section. Every
22 application for a certification shall be accompanied by a fee,
23 established in accordance with a fee schedule adopted by the
24 department, by rule or regulation, reflecting the costs of reviewing
25 and processing the application.

26 c. Upon a demonstration to the department by the applicant
27 that the procedures established pursuant to subsection a. of this
28 section for the evaluation and assessment of building interiors have
29 been followed, and that there are no contaminants present in the
30 building that exceed the maximum contaminant levels established in
31 subsection a. of this section, the department shall issue a
32 certification that the building interior is safe for use as a child care
33 center, or for residential or educational purposes.

34 d. As used in this section, "contaminant" shall have the same
35 meaning as provided in section 23 of P.L.1993, c.139 (C.58:10B-1).

36
37 2. (New section) a. No construction permit shall be issued
38 pursuant to section 12 of P.L.1975, c.217 (C.52:27D-130) for any
39 structure that was previously used for industrial, storage, or high
40 hazard purposes, or that is on a contaminated site, on a site on
41 which there is suspected contamination, or on an industrial site that
42 is subject to the provisions of the "Industrial Site Recovery Act,"
43 P.L.1983, c.330 (C.13:1K-6 et al.), except upon the submission of
44 the certification issued by the Department of Health and Senior
45 Services pursuant to section 1 of P.L. , c. (C.)(pending in the

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 Legislature as this bill) to the construction official by the applicant,
2 that the structure has been evaluated and assessed for contaminants,
3 and that the structure is safe for use as a child care center licensed
4 pursuant to the provisions of P.L.1983, c.492, or for residential or
5 educational purposes.

6 b. No construction permit shall be issued for the construction
7 or alteration of any building or structure to be used as a child care
8 center licensed pursuant to the provisions of P.L.1983, c.492, or for
9 educational or residential purposes, on a contaminated site, on a site
10 on which there is suspected contamination, or on an industrial site
11 that is subject to the provisions of the "Industrial Site Recovery
12 Act," P.L.1983, c.330 (C.13:1K-6 et al.), except after submission by
13 the applicant to the construction official of documentation sufficient
14 to establish that the site has been remediated consistent with the
15 remediation standards and other remediation requirements
16 established pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12)
17 and a no further action letter has been issued by the Department of
18 Environmental Protection for the entire site.

19 c. As used in this section, "contaminated site" means any real
20 property on which there is contamination, and "contamination,"
21 "remediation" or "remediate," and "no further action letter" shall
22 have the same meanings as provided in section 23 of P.L.1993,
23 c.139 (C.58:10B-1).

24
25 3. (New section) a. Whenever the Commissioner of
26 Environmental Protection finds that a person has violated any
27 provision of this act, or any rule or regulation adopted pursuant
28 thereto, or knowingly makes a false statement, representation, or
29 certification in any application, record, or other document filed or
30 required to be maintained pursuant to P.L.1983, c.330 (C.13:1K-6 et
31 al.), the commissioner may:

32 (1) issue an order requiring the person found to be in violation
33 to comply in accordance with subsection b. of this section;

34 (2) bring a civil action in accordance with subsection c. of this
35 section;

36 (3) levy a civil administrative penalty in accordance with
37 subsection d. of this section; or

38 (4) bring an action for a civil penalty in accordance with
39 subsection e. of this section.

40 Pursuit of any of the remedies specified under this section shall
41 not preclude the seeking of any other remedy specified.

42 Any officer or management official of an industrial
43 establishment who knowingly directs or authorizes the violation of
44 any provisions of P.L.1983, c.330 (C.13:1K-6 et al.) shall be
45 personally liable for the penalties established in this section.

46 b. Whenever the commissioner finds that a person has violated
47 this act, or any rule or regulation adopted pursuant thereto, the
48 commissioner may issue an order specifying the provision or

1 provisions of this act, or the rule or regulation adopted pursuant
2 thereto, of which the person is in violation, citing the action that
3 constituted the violation, ordering abatement of the violation, and
4 giving notice to the person of the person's right to a hearing on the
5 matters contained in the order. The ordered person shall have 20
6 calendar days from receipt of the order within which to deliver to
7 the commissioner a written request for a hearing. After the hearing
8 and upon finding that a violation has occurred, the commissioner
9 may issue a final order. If no hearing is requested, the order shall
10 become final after the expiration of the 20-day period. A request
11 for hearing shall not automatically stay the effect of the order.

12 c. The commissioner may institute an action or proceeding in
13 the Superior Court for injunctive and other relief to enforce the
14 provisions of this act and to prohibit and prevent a violation of this
15 act, or of any rule or regulation adopted pursuant thereto, and the
16 court may proceed in the action in a summary manner. In any such
17 proceeding the court may grant temporary or interlocutory relief.

18 Such relief may include, singly or in combination:

- 19 (1) a temporary or permanent injunction;
20 (2) assessment of the violator for the reasonable costs of any
21 inspection that led to the establishment of the violation, and for the
22 reasonable costs of preparing and litigating the case under this
23 subsection.

24 d. The commissioner may assess a civil administrative penalty
25 of not more than \$25,000 for a first offense, and not more than
26 \$50,000 for the second and every subsequent offense. Each day
27 that a violation continues shall constitute an additional, separate,
28 and distinct offense.

29 No assessment may be levied pursuant to this section until after
30 the violator has been notified by certified mail or personal service.
31 The notice shall include a reference to the section of the statute,
32 rule, regulation, or order violated, a concise statement of the facts
33 alleged to constitute a violation, a statement of the amount of the
34 civil administrative penalties to be imposed, and a statement of the
35 person's right to a hearing. The ordered person shall have 20
36 calendar days from receipt of the notice within which to deliver to
37 the commissioner a written request for a hearing.

38 After the hearing and upon finding that a violation has occurred,
39 the commissioner may issue a final order after assessing the amount
40 of the fine specified in the notice. If no hearing is requested, the
41 notice shall become a final order after the expiration of the 20-day
42 period. Payment of the assessment is due when a final order is
43 issued or the notice becomes a final order. The authority to levy a
44 civil administrative penalty is in addition to all other enforcement
45 provisions in this act, and the payment of any assessment shall not
46 be deemed to affect the availability of any other enforcement
47 provisions in connection with the violation for which the
48 assessment is levied. The commissioner may compromise any civil

1 administrative penalty assessed under this section in an amount the
2 commissioner determines appropriate.

3 e. A person who violates this act, or any rule or regulation
4 adopted pursuant thereto, shall be liable for a penalty of not more
5 than \$25,000 per day, to be collected in a civil action commenced
6 by the commissioner.

7 A person who violates an administrative order issued pursuant to
8 subsection b. of this section, or a court order issued pursuant to
9 subsection c. of this section, or who fails to pay an administrative
10 assessment in full pursuant to subsection d. of this section is subject
11 upon order of a court to a civil penalty not to exceed \$50,000 per
12 day of each violation.

13 Any penalty imposed pursuant to this subsection may be
14 collected, with costs, in a summary proceeding pursuant to the
15 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
16 et seq.). The Superior Court and the municipal court shall have
17 jurisdiction to enforce the provisions of the "Penalty Enforcement
18 Law of 1999" in connection with this act.

19

20 4. Section 4 of P.L.1983, c.330 (C.13:1K-9) is amended to read
21 as follows:

22 4. a. The owner or operator of an industrial establishment
23 planning to close operations or transfer ownership or operations
24 shall notify the department in writing, no more than five days
25 subsequent to closing operations or of its public release of its
26 decision to close operations, whichever occurs first, or within five
27 days after the execution of an agreement to transfer ownership or
28 operations, as applicable. The notice to the department shall:
29 identify the subject industrial establishment; describe the
30 transaction requiring compliance with P.L.1983, c.330 (C.13:1K-6
31 et al.); state the date of the closing of operations or the date of the
32 public release of the decision to close operations as evidenced by a
33 copy of the appropriate public announcement, if applicable; state
34 the date of execution of the agreement to transfer ownership or
35 operations and the names, addresses and telephone numbers of the
36 parties to the transfer, if applicable; state the proposed date for
37 closing operations or transferring ownership or operations; list the
38 name, address, and telephone number of an authorized agent for the
39 owner or operator; and certify that the information submitted is
40 accurate. The notice shall be transmitted to the department in the
41 manner and form required by the department. The department may,
42 by regulation, require the submission of any additional information
43 in order to improve the efficient implementation of P.L.1983, c.330.
44 The owner or operator of the industrial establishment shall also
45 provide all information required to be submitted to the department
46 pursuant to this subsection, to the clerk of the municipality in which
47 the industrial establishment is located, at the same time the
48 information is submitted to the department.

1 b. (1) Subsequent to the submittal of the notice required
2 pursuant to subsection a. of this section, the owner or operator of an
3 industrial establishment shall, except as otherwise provided by
4 P.L.1983, c.330 or P.L.1993, c.139 (C.13:1K-9.6 et al.), remediate
5 the industrial establishment. The remediation shall be conducted in
6 accordance with criteria, procedures, and time schedules established
7 by the department.

8 (2) The owner or operator shall attach a copy of any approved
9 negative declaration, approved remedial action workplan, no further
10 action letter, or remediation agreement approval to the contract or
11 agreement of sale or agreement to transfer or any option to purchase
12 which may be entered into with respect to the transfer of ownership
13 or operations. In the event that any sale or transfer agreements or
14 options have been executed prior to the approval of a negative
15 declaration, remedial action workplan, no further action letter, or
16 remediation agreement, these documents, as relevant, shall be
17 transmitted by the owner or operator, by certified mail, overnight
18 delivery, or personal service, prior to the transfer of ownership or
19 operations, to all parties to any transaction concerning the transfer
20 of ownership or operations, including purchasers, bankruptcy
21 trustees, mortgagees, sureties, and financiers.

22 (3) The preliminary assessment, site investigation, remedial
23 investigation, and remedial action for the industrial establishment
24 shall be performed and implemented by the owner or operator of the
25 industrial establishment, except that any other party may assume
26 that responsibility pursuant to the provisions of P.L.1983, c.330.

27 c. The owner or operator of an industrial establishment shall,
28 subsequent to closing operations, or of its public release of its
29 decision to close operations, or prior to transferring ownership or
30 operations except as otherwise provided in subsection e. of this
31 section, as applicable, submit to the department for approval a
32 proposed negative declaration or proposed remedial action
33 workplan. The owner or operator shall also submit a copy of the
34 proposed negative declaration or proposed remedial action
35 workplan to the clerk of the municipality in which the industrial site
36 is located. Except as otherwise provided in section 6 of P.L.1983,
37 c.330 (C.13:1K-11), and sections 13, 16, 17 and 18 of P.L.1993,
38 c.139 (C.13:1K-11.2, C.13:1K-11.5, C.13:1K-11.6 and C.13:1K-
39 11.7), the owner or operator of an industrial establishment shall not
40 transfer ownership or operations until a negative declaration or a
41 remedial action workplan has been approved by the department or
42 the conditions of subsection e. of this section for remediation
43 agreements have been met and until, in cases where a remedial
44 action workplan is required to be approved or a remediation
45 agreement has been approved, a remediation funding source, as
46 required pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3),
47 has been established.

1 d. (1) Upon the submission of the results of either the
2 preliminary assessment, site investigation, remedial investigation,
3 or remedial action, where applicable, which demonstrate that there
4 are no discharged hazardous substances or hazardous wastes at the
5 industrial establishment, or that have migrated from or are
6 migrating from the industrial establishment, in violation of the
7 applicable remediation regulations, the owner or operator may
8 submit to the department for approval a proposed negative
9 declaration as provided in subsection c. of this section. The owner
10 or operator shall also submit a copy of the proposed negative
11 declaration to the clerk of the municipality in which the industrial
12 establishment is located.

13 (2) After the submission and review of the information
14 submitted pursuant to a preliminary assessment, site investigation,
15 remedial investigation, or remedial action, as necessary, the
16 department shall, within 45 days of submission of a complete and
17 accurate negative declaration, approve the negative declaration, or
18 inform the owner or operator of the industrial establishment that a
19 remedial action workplan or additional remediation shall be
20 required. The department shall approve a negative declaration by
21 the issuance of a no further action letter.

22 e. The owner or operator of an industrial establishment, who
23 has submitted a notice to the department pursuant to subsection a.
24 of this section, may transfer ownership or operations of the
25 industrial establishment prior to the approval of a negative
26 declaration or remedial action workplan upon application to and
27 approval by the department of a remediation agreement. The owner
28 or operator requesting a remediation agreement shall submit the
29 following documents: (1) an estimate of the cost of the remediation
30 that is approved by the department; (2) a certification of the
31 statutory liability of the owner or operator pursuant to P.L.1983,
32 c.330 to perform and to complete a remediation of the industrial
33 establishment in the manner and time limits provided by the
34 department in regulation and consistent with all applicable laws and
35 regulations; however, nothing in this paragraph shall be construed
36 to be an admission of liability, or to impose liability on the owner
37 or operator, pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) or
38 pursuant to any other statute or common law; (3) evidence of the
39 establishment of a remediation funding source in an amount of the
40 estimated cost of the remediation and in accordance with the
41 provisions of section 25 of P.L.1993, c.139 (C.58:10B-3); (4) a
42 certification that the owner or operator is subject to the provisions
43 of P.L.1983, c.330, including the liability for penalties for violating
44 the act, defenses to liability and limitations thereon, the requirement
45 to perform a remediation as required by the department, allowing
46 the department access to the industrial establishment as provided in
47 section 5 of P.L.1983, c.330 (C.13:1K-10), and the requirement to
48 prepare and submit any document required by the department

1 relevant to the remediation of the industrial establishment; and (5)
2 evidence of the payment of all applicable fees required by the
3 department.

4 The department may require in the remediation agreement that
5 all plans for and results of the preliminary assessment, site
6 investigation, remedial investigation, and the implementation of the
7 remedial action workplan, prepared or initiated subsequent to the
8 transfer of ownership or operations, be submitted to the department,
9 for review purposes only, at the completion of each phase of the
10 remediation.

11 The department shall adopt regulations establishing the manner
12 in which the documents required pursuant to paragraphs (1) through
13 (5), inclusive, of this subsection shall be submitted. The
14 department shall approve the application for the remediation
15 agreement upon the complete and accurate submission of the
16 documents required to be submitted pursuant to this subsection.
17 The regulations shall include a sample form of the certifications.
18 Approval of a remediation agreement shall not affect an owner's or
19 operator's right to avail itself of the provisions of section 6 of
20 P.L.1983, c.330 (C.13:1K-11), of section 13, 14, 15, 16, 17, or 18
21 of P.L.1993, c.139 (C.13:1K-11.2, C.13:1K-11.3, C.13:1K-11.4,
22 C.13:1K-11.5, C.13:1K-11.6 or C.13:1K-11.7), or of the other
23 provisions of this section.

24 The owner or operator of the industrial establishment shall also
25 provide all information required to be submitted to the department
26 pursuant to this subsection, to the clerk of the municipality in which
27 the industrial establishment is located, at the same time the
28 information is submitted to the department.

29 f. An owner or operator of an industrial establishment may
30 perform a preliminary assessment, site investigation, or remedial
31 investigation for a soil, surface water, or groundwater remediation
32 without the prior submission to or approval of the department,
33 except as otherwise provided in a remediation agreement required
34 pursuant to subsection e. of this section. However, the plans for and
35 results of the preliminary assessment, site investigation, and
36 remedial investigation may, at the discretion of the owner or
37 operator, be submitted to the department for its review and approval
38 at the completion of each phase of the remediation.

39 g. The soil, groundwater, and surface water remediation
40 standard and the remedial action to be implemented on an industrial
41 establishment shall be selected by the owner or operator, and
42 reviewed and approved by the department, based upon the policies
43 and criteria enumerated in section 35 of P.L.1993, c.139 (C.58:10B-
44 12).

45 h. An owner or operator of an industrial establishment may
46 implement a soil remedial action at an industrial establishment
47 without prior department approval of the remedial action workplan
48 for the remediation of soil when the remedial action can reasonably

1 be expected to be completed pursuant to standards, criteria, and
2 time schedules established by the department, which schedules shall
3 not exceed five years from the commencement of the
4 implementation of the remedial action and if the owner or operator
5 is implementing a soil remediation which meets the established
6 minimum residential or nonresidential use soil remediation
7 standards adopted by the department.

8 Nothing in this subsection shall be construed to authorize the
9 closing of operations or the transfer of ownership or operations of
10 an industrial establishment without the department's approval of a
11 negative declaration, a remedial action workplan or a remediation
12 agreement.

13 i. An owner or operator of an industrial establishment shall
14 base the decision to select a remedial action based upon the
15 standards and criteria set forth in section 35 of P.L.1993, c.139
16 (C.58:10B-12). When a remedial action selected by an owner or
17 operator includes the use of an engineering or institutional controls
18 that necessitates the recording of a notice pursuant to section 36 of
19 P.L.1993, c.139 (C.58:10B-13), the owner or operator shall obtain
20 the approval of the transferee of the industrial establishment.

21 At any time after the effective date of P.L.1993, c.139, an owner
22 or operator may request the department to provide a determination
23 as to whether a proposed remedial action is consistent with the
24 standards and criteria set forth in section 35 of P.L.1993, c.139
25 (C.58:10B-12). The department shall make that determination
26 based upon the standards and criteria set forth in that section. The
27 department shall provide any such determination within 30 calendar
28 days of the department's receipt of the request.

29 j. An owner or operator proposing to implement a soil
30 remedial action other than one which is set forth in subsection h. of
31 this section must receive department approval prior to
32 implementation of the remedial action.

33 k. An owner or operator of an industrial establishment shall not
34 implement a remedial action involving the remediation of
35 groundwater or surface water without the prior review and approval
36 by the department of a remedial action workplan.

37 l. Submissions of a preliminary assessment, site investigation,
38 remedial investigation, remedial action workplan, and the results of
39 a remedial action shall be in a manner and form, and shall contain
40 any relevant information relating to the remediation, as may be
41 required by the department.

42 Upon receipt of a complete and accurate submission, the
43 department shall review and approve or disapprove the submission
44 in accordance with the review schedules established pursuant to
45 section 2 of P.L.1991, c.423 (C.13:1D-106). The owner or operator
46 shall not be required to wait for a response by the department before
47 continuing remediation activities, except as otherwise provided in
48 this section. Upon completion of the remediation, the plans for and

1 results of the preliminary assessment, site investigation, remedial
2 investigation, remedial action workplan, and remedial action and
3 any other information required to be submitted as provided in
4 section 35 of P.L.1993, c.139 (C.58:10B-12), that has not
5 previously been submitted to the department, shall be submitted to
6 the department for its review and approval.

7 The department shall review all information submitted to it by
8 the owner or operator at the completion of the remediation to
9 determine whether the actions taken were in compliance with rules
10 and regulations of the department regarding remediation.

11 The department may review and approve or disapprove every
12 remedial action workplan, no matter when submitted, to determine,
13 in accordance with the criteria listed in subsection g. of section 35
14 of P.L.1993, c.139 (C.58:10B-12) if the remedial action that has
15 occurred or that will occur is appropriate to meet the applicable
16 health risk or environmental standards.

17 The department may order additional remediation activities at the
18 industrial establishment, or offsite where necessary, or may require
19 the submission of additional information, where (a) the department
20 determines that the remediation activities undertaken were not in
21 compliance with the applicable rules or regulations of the
22 department; (b) all documents required to be submitted to the
23 department were not submitted or, if submitted, were inaccurate, or
24 deficient; or (c) discharged hazardous substances or hazardous
25 wastes remain at the industrial establishment, or have migrated or
26 are migrating offsite, at levels or concentrations or in a manner that
27 is in violation of the applicable health risk or environmental
28 standards. Upon a finding by the department that the remediation
29 conducted at the industrial establishment was in compliance with all
30 applicable regulations, that no hazardous substances or hazardous
31 wastes remain at the industrial establishment in a manner that is in
32 violation of the applicable health risk or environmental standards,
33 and that all hazardous substances or hazardous wastes that migrated
34 from the industrial establishment have been remediated in
35 conformance with the applicable health risk or environmental
36 standards, the department shall approve the remediation for that
37 industrial establishment by the issuance of a no further action letter.
38 (cf: P.L.1997, c.278, s.8)

39

40 5. Section 8 of P.L.1983, c.330 (C.13:1K-13) is amended to
41 read as follows:

42 8. **[a.]** Failure of the transferor to perform a remediation and
43 obtain department approval thereof as required pursuant to the
44 provisions of this act is grounds for voiding the sale or transfer of
45 an industrial establishment or any real property utilized in
46 connection therewith by the transferee, entitles the transferee to
47 recover damages from the transferor, and renders the owner or
48 operator of the industrial establishment strictly liable, without

1 regard to fault, for all remediation costs and for all direct and
2 indirect damages resulting from the failure to implement the
3 remedial action workplan. A transferee may not act to void the sale
4 or transfer of an industrial establishment or any real property except
5 upon providing notice to the transferor of the failure to perform and
6 affording the transferor a reasonable amount of time to comply with
7 the provisions of this act. A transferee may bring an action in
8 Superior Court to void the sale or transfer of an industrial
9 establishment or any real property or to recover damages from the
10 transferor, pursuant to this section.

11 **【b. Any person who knowingly gives or causes to be given any**
12 **false information or who fails to comply with the provisions of this**
13 **act is liable for a penalty of not more than \$25,000.00 for each**
14 **offense. If the violation is of a continuing nature, each day during**
15 **which it continues shall constitute an additional and separate**
16 **offense. Penalties shall be collected in a civil action by a summary**
17 **proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et**
18 **seq.). Any officer or management official of an industrial**
19 **establishment who knowingly directs or authorizes the violation of**
20 **any provisions of this act shall be personally liable for the penalties**
21 **established in this subsection.】**

22 (cf: P.L.1997, c.278, s.47)

23

24 6. This act shall take effect immediately.

25

26

27

STATEMENT

28

29 This bill would require the Department of Health and Senior
30 Services to adopt rules and regulations that establish: (1)
31 procedures for the evaluation and assessment of the interior of
32 buildings that are to be used for day care centers or for residential
33 or educational purposes; and (2) standards that establish maximum
34 contaminant levels for building interiors to be used for day care
35 centers or for residential and educational purposes, that are
36 protective of the public health and safety. The bill requires the
37 department to issue a certification to an applicant that follows the
38 evaluation and assessment process and meets the standards for
39 building interiors.

40 The bill would also provide that a construction official would not
41 be authorized to issue a construction permit for any structure that
42 was previously used for industrial, storage, or high hazard purposes,
43 or that is on a contaminated site, on a site on which there is
44 suspected contamination, or on an industrial site that is subject to
45 the provisions of the "Industrial Site Recovery Act," P.L.1983,
46 c.330 (C.13:1K-6 et al.), except upon the submission of the
47 certification issued by the Department of Health and Senior
48 Services to the construction official by the applicant, that the

1 structure has been evaluated and assessed for contaminants, and that
2 the structure is safe for use for a day care center or for residential or
3 educational purposes. Further, the bill would provide that no
4 construction permit shall be issued for the construction or alteration
5 of any building that would be used as a child care center, or for
6 educational or residential purposes, on a contaminated site, except
7 after submission by the applicant to the construction official of
8 documentation sufficient to establish that the site has been
9 remediated consistent with the remediation standards and other
10 remediation requirements established pursuant to section 35 of
11 P.L.1993, c.139 (C.58:10B-12) and that a no further action letter
12 has been issued by the Department of Environmental Protection for
13 the entire site.

14 The bill would also replace the existing penalty provision in the
15 "Industrial Site Recovery Act" to provide the Department of
16 Environmental Protection with a range of options to enforce the act,
17 including the authority to issue orders, impose civil administrative
18 penalties, bring an action for civil penalties, or bring a civil action
19 for injunctive or other relief. The bill would increase the maximum
20 penalty that may be imposed for a violation of the act from \$25,000
21 per day to \$50,000 per day.

22 Finally, the bill would require that the owner or operator of an
23 industrial establishment provide notice to the municipality in which
24 an industrial establishment is located of the closing or transfer of
25 ownership or operations, the proposed negative declaration or
26 remedial action workplan, and the request for a remediation
27 agreement and all supporting documentation.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3529

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 23, 2006

The Assembly Environment and Solid Waste Committee reports favorably and with committee amendments Assembly Bill No. 3529.

As amended by the committee, this bill would require the Department of Health and Senior Services (DHSS), within 12 months after the bill is enacted into law, to adopt rules and regulations that establish: (1) procedures for the evaluation and assessment of the interior of buildings that are to be used for child care centers licensed pursuant to the provisions of P.L.1983, c.492 (C.30:5B-1 et seq.), or for educational purposes; and (2) standards that establish maximum contaminant levels for building interiors to be used for child care centers licensed pursuant to the provisions of P.L.1983, c.492, or for educational purposes, that are protective of the public health and safety. These rules and regulations are to be protective of the health of children and infants, and account for the difference in rate of the absorption, metabolism, and excretion of compounds between adults and infants and children. The bill also requires the DHSS to issue a certification to an applicant who follows the evaluation and assessment process and meets the standards for building interiors.

The bill would also provide that a construction official would not be authorized to issue a construction permit for the reconstruction, alteration, conversion, or repair of any building or structure to be used for a child care center licensed pursuant to the provisions of P.L.1983, c.492, or for educational purposes, if that building or structure was previously used for industrial, storage, or high hazard purposes, as a nail salon, dry cleaning facility, or gasoline station, or is on a contaminated site, on a site on which there is suspected contamination, or on an industrial site that is subject to the provisions of the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.), except upon the submission, to the construction official by the applicant, of the certification issued by the DHSS that the building or structure has been evaluated and assessed for contaminants, and that the building or structure is safe for use for a child care center or for educational purposes.

Further, the bill would provide that no construction permit would be issued for the construction or alteration of any building or structure that would be used as a licensed child care center, or for educational purposes, on a site that was previously used for industrial, storage, or high hazard purposes, as a nail salon, dry cleaning facility, or gasoline station, or on a contaminated site, on a site on which there is suspected contamination, or on an industrial site that is subject to the provisions of the "Industrial Site Recovery Act," except after submission, by the applicant to the construction official, of documentation sufficient to establish that the site has been remediated consistent with the remediation standards and other remediation requirements established pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12) and that a no further action letter has been issued by the Department of Environmental Protection (DEP) for the entire site.

As amended, the bill would allow for the issuance of a construction permit for the construction or alteration of any building or structure to be used as a licensed child care center, or for educational purposes, if the construction permit is necessary to perform work in the building or structure in order to comply with the rules and regulations to be adopted by the DHSS and obtain the certification issued by the DHSS pursuant to section 1 of the bill. Such a construction permit would be limited to the construction or alterations necessary to comply with the rules and regulations adopted by the DHSS pursuant to the bill.

In addition, as amended, the bill provides that a municipal enforcing agency would be prohibited from granting a certificate of occupancy for any building or structure to be used as a licensed child care center, or for educational purposes, that received a construction permit for the construction or alterations necessary to comply with the rules and regulations adopted by the DHSS pursuant to the bill, except upon the submission, to the construction official by the applicant, of the certification from the DHSS that the building or structure has been evaluated and assessed for contaminants, and that the building or structure is safe for use as a licensed child care center, or for educational purposes.

As amended, the bill would allow for the issuance of a construction permit for the construction or alteration of any building or structure to be used as a licensed child care center, or for educational purposes, on a site that was previously used for industrial, storage, or high hazard purposes, as a nail salon, dry cleaning facility, or gasoline station, or on a contaminated site, on a site on which there is suspected contamination, or on an industrial site that is subject to the provisions of the "Industrial Site Recovery Act," if the construction permit is necessary to perform work in the building or structure in order to remediate the site and obtain a no further action letter from the DEP. Such a construction permit would be limited to the construction or alterations necessary to remediate the site and obtain a no further action letter from the DEP.

In addition, as amended, the bill provides that a municipal enforcing agency would be prohibited from granting a certificate of occupancy for any building or structure to be used as a licensed child care center, or for educational purposes, that received a construction permit for the construction or alterations necessary to remediate the site and obtain a no further action letter from the DEP, except upon the submission, to the construction official by the applicant, of documentation sufficient to establish that the site has been remediated consistent with the remediation standards and other remediation requirements established pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12) and that a no further action letter has been issued by the DEP for the entire site.

The bill would also replace the existing penalty provision in the "Industrial Site Recovery Act" to provide the DEP with a range of options to enforce the act, including the authority to issue orders, impose civil administrative penalties, bring an action for civil penalties, or bring a civil action for injunctive or other relief. The bill would increase the maximum penalty that may be imposed for a violation of the act from \$25,000 per day to \$50,000 per day.

Lastly, the bill would require that the owner or operator of an industrial establishment provide notice to the municipality in which an industrial establishment is located of the closing or transfer of ownership or operations, the proposed negative declaration or remedial action workplan, and the request for a remediation agreement and all supporting documentation.

COMMITTEE AMENDMENTS:

The committee amendments:

- 1) provide the DHSS with 12 months, rather than nine, to adopt the required rules and regulations;
- 2) require the rules and regulations to be adopted by the DHSS to be protective of the health of children and infants, and account for the difference in rate of the absorption, metabolism, and excretion of compounds between adults and infants and children;
- 3) provide that the fees collected by the DHSS would be dedicated for use by the department solely for the purposes of administering and enforcing their responsibilities pursuant to section 1 of the bill;
- 4) provide the DHSS with enforcement authority;
- 5) delete buildings to be used for residential purposes from the requirements of sections 1 and 2 of the bill;
- 6) specify that the provisions of section 2 of the bill would also apply to structures or sites previously used for nail salons, dry cleaning facilities, or gasoline stations;
- 7) provide for the issuance of a construction permit for the construction or alteration of any building or structure to be used as a licensed child care center, or for educational purposes, if the construction permit is necessary to perform work in the building or

structure in order to comply with the rules and regulations to be adopted by the DHSS and obtain the certification issued by the DHSS pursuant to the bill; and

8) provide for the issuance of a construction permit for the construction or alteration of any building or structure to be used as a licensed child care center, or for educational purposes, if the construction permit is necessary to perform work to remediate the site and obtain a no further action letter from the DEP.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 3529

with Assembly Floor Amendments
(Proposed By Assemblyman MAYER)

ADOPTED: DECEMBER 11, 2006

These floor amendments would require the owner or operator of an industrial establishment to provide written notification to the municipality in which an industrial establishment is located that the municipality may request copies of the proposed negative declaration or remedial action workplan, or any other document required to be submitted to the Department of Environmental Protection (DEP) pursuant to the bill, and that these documents shall be provided within five days after receipt of the written request.

The floor amendments also would provide that a construction permit may be issued for the construction or alteration of any building or structure to be used as a child care center on a site that was previously used for industrial, storage, or high hazard purposes, or on a contaminated or industrial site, if the applicant has sufficient documentation to establish that the Department of Environmental Protection (DEP) has approved a remedial action workplan for the entire site, or that the site has been remediated consistent with remediation standards and a no further action letter has been issued by the DEP for the entire site.

In addition, the floor amendments would require that the construction permit issued would be limited to the construction or alterations necessary to develop a remedial action workplan to be submitted for approval by the DEP, or to remediate the site consistent with remediation standards and receive a no further action letter from the DEP.

The floor amendments also define “educational purposes” as used in the bill and make other technical corrections to the bill.

These amendments would make this bill identical to Senate No. 2261 (2R).

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 3529

STATE OF NEW JERSEY 212th LEGISLATURE

DATED: JANUARY 5, 2007

SUMMARY

- Synopsis:** Requires DHSS standards for safe building interiors; submission of documentation of investigation and remediation as a condition to issuance of construction permit for certain sites; makes changes to the "Industrial Site Recovery Act."
- Type of Impact:** Minimal impact on the General Fund. Some or all program costs would be offset by program fees or fines authorized under the bill.
- Agencies Affected:** Department of Health and Senior Services and the Department of Environmental Protection.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate - See comments below		

- The bill requires the Department of Health and Senior Services (DHSS) to establish procedures to evaluate and assess the interior of buildings that are to be used for licensed child care centers or for educational purposes, and to promulgate standards establishing maximum contaminant levels that are particularly protective of children and infants.
- The DHSS is directed to establish a certification process whereby an applicant must demonstrate that these new procedures and standards for building interiors have been met in buildings that are to be used for licensed child care centers or for educational purposes.
- The bill amends the "Industrial Site Recovery Act" by increasing the Department of Environmental Protection's (DEP) enforcement capabilities in this area, as well as doubling the daily fine rate for violations of this act.
- The Office of Legislative Services (OLS) estimates that the bill would have a minimal fiscal impact on State funds because some or all program costs would be supported by program fees and fines authorized under the bill.

BILL DESCRIPTION

Assembly Bill No. 3529 (2R) of 2006 requires the DHSS to establish procedures to evaluate and assess the interior of buildings used for licensed child care centers or for educational purposes. It also requires the department to promulgate standards that establish maximum contaminant levels in such buildings that are protective of the general public, with particular attention to the health of children and infants. The bill further requires the DHSS to establish a certification process whereby an applicant must demonstrate that these new procedures and standards for building interiors have been met. Once this requirement is fulfilled, a certification would be issued to permit these buildings to be used for licensed child care centers or for educational purposes. The bill allows the department to charge fees to applicants to offset administrative costs that may be incurred in managing the program.

The bill provides that a construction official cannot issue a construction permit for work on any building used for a licensed child care center or for educational purposes if that building or structure was previously used for industrial, storage, or high hazard purposes, or is on a suspected contaminated or industrial site, until the proper certification mandated herein by the bill is issued by the DHSS. In addition, documentation proving that the site has been remediated and that a "no further action" letter has been issued by the DEP for the site is also required.

Last, the bill replaces the existing penalty provision in the "Industrial Site Recovery Act" to provide the DEP with a range of options to enforce the act, including the authority to issue orders, impose civil administrative penalties, bring an action for civil penalties, or bring a civil action for injunctive or other relief. The bill increases the maximum penalty that may be imposed for a violation of the act from \$25,000 per day to \$50,000 per day.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill would have a minimal fiscal impact on State funds because some or all program costs would be covered by applicant fees authorized under the bill. If the DHSS does incur additional expenses that exceed program fee collection, it may require increased funding from the General Fund. With respect to the level of enforcement costs that may be incurred by the DEP, the OLS cannot provide an estimate at this time but states that the proposed increase in penalty rates could indirectly cover some or all of any such expenses.

Section: Environment, Agriculture, Energy and Natural Resources

*Analyst: Richard M. Handelman
Senior Fiscal Analyst*

*Approved: David J. Rosen
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.

Jan-11-07 Governor Corzine Signs Legislation to Improve Environmental Safety at Schools and Child Care Centers

FOR IMMEDIATE RELEASE
DATE: January 11, 2007

CONTACT: Anthony Coley
Brendan Gilfillan
PHONE: 609-777-2600

GOVERNOR CORZINE SIGNS LEGISLATION TO IMPROVE ENVIRONMENTAL SAFETY AT SCHOOLS AND CHILD CARE CENTERS

TRENTON - Governor Jon S. Corzine today signed legislation to help ensure that child care and educational facilities are environmentally safe for the children attending them.

"This bill will help identify and remediate educational facilities and child care centers located on environmentally high risk sites," Governor Corzine said. "This puts New Jersey at the forefront of states nationally in protecting children from environmental contaminants while at child care facilities and schools."

According to the new law, if a child care or educational facility located on an environmentally high risk site applies for a local building permit, it must meet two sets of criteria before the municipality issues the permit. First, it must obtain certification for indoor environmental quality from the Department of Health and Senior Services (DHSS). Second, it must demonstrate that the site has been remediated to Department of Environmental Protection (DEP) standards and that a DEP-issued "no further action letter" has been obtained. Construction permits will be issued in cases where that permit is necessary to make changes to a facility in order to bring it into compliance with DHSS indoor environmental quality standards.

DHSS certification will require a facility to demonstrate that it meets indoor environmental quality standards. Those standards will be set in the coming year by DHSS through the rulemaking process. The DHSS regulations will be required to be protective of infants and children and must take into account the metabolic differences between adults and children.

Fines for violating a provision of the certification process, knowingly making false statements in any application or record will result in a fine of no more than \$25,000 and \$50,000 per day for first and second violations, respectively.

Environmentally high risk sites include sites that were previously used for industrial, storage, or high hazard purposes; known or suspected to be contaminated; industrial sites that are subject to the provisions of the Industrial Site Recovery Act (ISRA); or used as a nail salon, dry cleaning facility or gasoline station.

The new law also amends the ISRA to provide the DEP with a broader range of penalty enforcement options, including the authority to issue orders, impose civil administrative penalties, bring an action for civil penalties, or bring a civil action for injunctive or other relief. The bill would increase the maximum penalty that may be imposed for a violation of this measure from \$25,000 per day to \$50,000 per day.

Finally, the new law requires industrial facilities to alert local municipalities when the facility closes or transfers ownership or operations. Also, they must also inform the municipality that the industrial facility's proposed remedial action plan is available to the municipality upon request. Both of these notifications are currently required by DEP.

The bill, S2261/A3529, was sponsored in the Senate by Fred H. Madden Jr. and Stephen M. Sweeney, and in the Assembly by David R. Mayer, Paul D. Moriarty, Louis D. Greenwald and Linda R. Greenstein. It was passed to address the problems that occurred at Kiddie Kollege, a child care center in Franklin Township that was built on the grounds of what had been a thermometer factory.

"The discovery of mercury at Kiddie Kollege was devastating to the parents, children and residents of Franklin," said Senator Madden, D-Camden and Gloucester. "As adults, it's our responsibility to keep our kids safe. This legislation is not about pointing fingers and placing blame, but instead we want to ensure that what happened at Kiddie Kollege never happens again."

"As a parent, nothing is more important than the safety of my children," said Senator Sweeney, D-Gloucester, Cumberland and Salem. "This law establishes necessary guidelines to regulate the buildings that house our children for eight hours a day. Today's bill signing shows the state's commitment to protecting New Jersey's families."

"The Kiddie Kollege episode was regrettable and tragic, but it also taught us a valuable lesson, to be more vigilant going forward," said Assemblyman Mayer, D-Gloucester and Camden. "Our first concern must always be to protect the health and safety of our most vulnerable New Jerseyans – children. The public safety and public health debacle at Kiddie Kollege must never be allowed to happen again."

"All parents deserve absolute peace of mind when placing their children at facilities that are supposed to be safe havens for care and nurturing," said Assemblyman Moriarty, D-Gloucester and Camden. "By taking the Kiddie Kollege experience and using it to enact better safeguards for our children, we can ensure that contaminated sites will not unwittingly become a parent's worst nightmare."

"This legislation will help ensure that a situation like the one at Kiddie Kollege cannot happen again," said Assemblyman Greenwald, D-Camden. "The Department of Health and Senior Services must have every resource at its disposal to protect our kids from dangerous contamination."

"Keeping our children safe, sound, and healthy should be our number one priority," said Assemblywoman Greenstein, D-Mercer. "This legislation will give state health authorities a stronger tool to fulfill that child-protection mission."

This bill signing is the most recent action taken by the Corzine Administration in response to the incidents that occurred at Kiddie Kollege. Previously the Governor directed cabinet officials in DEP, DHSS, the Department of Children and Families (DCF), the Department of Community Affairs, and the Department of Labor to form an interagency task force to investigate how to improve communication among state agencies and local officials. DEP was charged with establishing better safeguards, including improved tracking and prioritization of contaminated sites, and increased enforcement. To help ensure the safety of

existing child care facilities, the DEP cross-checked its known contaminated site list with DCF's list of existing licensed child care centers to prioritize its inspections. The interagency task force continues to work to cross check and review state databases that can provide information about environmental conditions at currently licensed child care centers.

The Governor also directed DCF to mandate stricter regulations on child care center licensing. The regulations now require license applicants to certify that any building or property proposed for the site of a child care center was not previously used for operations that could pose an environmental concern. If the site is considered an environmentally high risk site, the applicant must certify that the site has been remediated to DEP standards and meets environmental indoor air requirements established by DHSS.

Finally, DHSS has worked extensively with Kiddie Kollege families and staff, organizing community outreach meetings, supplying educational materials, and providing testing and medical reviews for mercury exposure to anyone requesting them.