

58:10B-1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2005 **CHAPTER:** 223

NJSA: 58:10B-1 (Revises laws concerning financial assistance for contaminated site remediation)

BILL NO: S277 (Substituted for A2815)

SPONSOR(S): Adler and others

DATE INTRODUCED: January 13, 2004

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

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 27, 2005

SENATE: June 27, 2005

DATE OF APPROVAL: September 15, 2005

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (3rd reprint enacted)

S277

[SPONSOR'S STATEMENT](#): (Begins on page 17 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** Yes [5-19-2005 \(Env & SW\)](#)
[6-22-2005 \(Budget\)](#)

SENATE: Yes [11-15-2004 \(Env\)](#)
[2-7-2005 \(B & A\)](#)

FLOOR AMENDMENT STATEMENT: No

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

A2815

[SPONSOR'S STATEMENT](#): (Begins on page 17 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** Yes [5-19-2005 \(Env. & SW\)](#)
[6-22-2005 \(Budget\)](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

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

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING:

No

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P.L. 2005, CHAPTER 223, *approved September 15, 2005*
Senate, No. 277 (*Third Reprint*)

1 **AN ACT** concerning the remediation of contaminated sites, and
2 amending and supplementing P.L.1993, c.139.

3

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

6

7 1. Section 23 of P.L.1993, c.139 (C.58:10B-1) is amended to read
8 as follows:

9 23. As used in sections 23 through 43 and section 45 of P.L.1993,
10 c.139 (C.58:10B-1 et seq.), as may be amended and supplemented:

11 "Area of concern" means any location where contaminants are or
12 were known or suspected to have been discharged, generated,
13 manufactured, refined, transported, stored, handled, treated, or
14 disposed, or where contaminants have or may have migrated;

15 "Authority" means the New Jersey Economic Development
16 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);

17 "Brownfield development area" means an area that has been so
18 designated by the department, in writing, pursuant to the provisions of
19 section 7 of P.L. , c. (C.) (now in the Legislature as this bill);

20 "Brownfield site" means any former or current commercial or
21 industrial site that is currently vacant or underutilized and on which
22 there has been, or there is suspected to have been, a discharge of a
23 contaminant;

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

29 "Department" means the Department of Environmental Protection;

30 "Discharge" means an intentional or unintentional action or
31 omission resulting in the releasing, spilling, leaking, pumping, pouring,
32 emitting, emptying, or dumping of a contaminant onto the land or into
33 the waters of the State;

34 "Engineering controls" means any mechanism to contain or stabilize
35 contamination or ensure the effectiveness of a remedial action.
36 Engineering controls may include, without limitation, caps, covers,
37 dikes, trenches, leachate collection systems, signs, fences and physical

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SEN committee amendments adopted November 15, 2004.

² Assembly AEN committee amendments adopted May 19, 2005.

³ Assembly ABU committee amendments adopted June 23, 2005.

1 access controls;

2 "Environmental opportunity zone" has the meaning given that term
3 pursuant to section 3 of P.L.1995, c.413 (C.54:4-3.152);

4 "Financial assistance" means loans or loan guarantees;

5 "Institutional controls" means a mechanism used to limit human
6 activities at or near a contaminated site, or to ensure the effectiveness
7 of the remedial action over time, when contaminants remain at a
8 contaminated site in levels or concentrations above the applicable
9 remediation standard that would allow unrestricted use of that
10 property. Institutional controls may include, without limitation,
11 structure, land, and natural resource use restrictions, well restriction
12 areas, and deed notices;

13 "Limited restricted use remedial action" means any remedial action
14 that requires the continued use of institutional controls but does not
15 require the use of an engineering control;

16 "No further action letter" means a written determination by the
17 department that based upon an evaluation of the historical use of a
18 particular site, or of an area of concern or areas of concern at that site,
19 as applicable, and any other investigation or action the department
20 deems necessary, there are no discharged contaminants present at the
21 site, at the area of concern or areas of concern, at any other site to
22 which a discharge originating at the site has migrated, or that any
23 discharged contaminants present at the site or that have migrated from
24 the site have been remediated in accordance with applicable
25 remediation regulations;

26 "Person" means an individual, corporation, company, partnership,
27 firm, or other private business entity;

28 "Preliminary assessment" means the first phase in the process of
29 identifying areas of concern and determining whether contaminants are
30 or were present at a site or have migrated or are migrating from a site,
31 and shall include the initial search for and evaluation of, existing site
32 specific operational and environmental information, both current and
33 historic, to determine if further investigation concerning the
34 documented, alleged, suspected or latent discharge of any contaminant
35 is required. The evaluation of historic information shall be conducted
36 from 1932 to the present, except that the department may require the
37 search for and evaluation of additional information relating to
38 ownership and use of the site prior to 1932 if such information is
39 available through diligent inquiry of the public records;

40 "Recreation and conservation purposes" means the use of lands for
41 beaches, biological or ecological study, boating, camping, fishing,
42 forests, greenways, hunting, natural areas, parks, playgrounds,
43 protecting historic properties, water reserves, watershed protection,
44 wildlife preserves, active sports, or a similar use for either public
45 outdoor recreation or conservation of natural resources, or both;

46 "Remedial action" means those actions taken at a site or offsite if

1 a contaminant has migrated or is migrating therefrom, as may be
2 required by the department, including the removal, treatment,
3 containment, transportation, securing, or other engineering or
4 treatment measures, whether to an unrestricted use or otherwise,
5 designed to ensure that any discharged contaminant at the site or that
6 has migrated or is migrating from the site, is remediated in compliance
7 with the applicable health risk or environmental standards;

8 "Remedial action workplan" means a plan for the remedial action to
9 be undertaken at a site, or at any area to which a discharge originating
10 at a site is migrating or has migrated; a description of the remedial
11 action to be used to remediate a site; a time schedule and cost estimate
12 of the implementation of the remedial action; and any other
13 information the department deems necessary;

14 "Remedial investigation" means a process to determine the nature
15 and extent of a discharge of a contaminant at a site or a discharge of
16 a contaminant that has migrated or is migrating from the site and the
17 problems presented by a discharge, and may include data collected,
18 site characterization, sampling, monitoring, and the gathering of any
19 other sufficient and relevant information necessary to determine the
20 necessity for remedial action and to support the evaluation of remedial
21 actions if necessary;

22 "Remediation" or "remediate" means all necessary actions to
23 investigate and clean up or respond to any known, suspected, or
24 threatened discharge of contaminants, including, as necessary, the
25 preliminary assessment, site investigation, remedial investigation, and
26 remedial action, provided, however, that "remediation" or "remediate"
27 shall not include the payment of compensation for damage to, or loss
28 of, natural resources;

29 "Remediation fund" means the Hazardous Discharge Site
30 Remediation Fund established pursuant to section 26 of P.L.1993,
31 c.139 (C.58:10B-4);

32 "Remediation funding source" means the methods of financing the
33 remediation of a discharge required to be established by a person
34 performing the remediation pursuant to section 25 of P.L.1993, c.139
35 (C.58:10B-3);

36 "Remediation standards" means the combination of numeric
37 standards that establish a level or concentration, and narrative
38 standards to which contaminants must be treated, removed, or
39 otherwise cleaned for soil, groundwater, or surface water, as provided
40 by the department pursuant to section 35 of P.L.1993, c.139
41 (C.58:10B-12) in order to meet the health risk or environmental
42 standards;

43 "Restricted use remedial action" means any remedial action that
44 requires the continued use of engineering and institutional controls in
45 order to meet the established health risk or environmental standards;

46 "Site investigation" means the collection and evaluation of data

1 adequate to determine whether or not discharged contaminants exist
2 at a site or have migrated or are migrating from the site at levels in
3 excess of the applicable remediation standards. A site investigation
4 shall be developed based upon the information collected pursuant to
5 the preliminary assessment;

6 "Unrestricted use remedial action" means any remedial action that
7 does not require the continued use of engineering or institutional
8 controls in order to meet the established health risk or environmental
9 standards;

10 "Voluntarily perform a remediation" means performing a
11 remediation without having been ordered or directed to do so by the
12 department or by a court and without being compelled to perform a
13 remediation pursuant to the provisions of P.L.1983, c.330 (C.13:1K-6
14 et al.).

15 (cf: P.L.2001, c.154, s.3)

16

17 2. Section 26 of P.L.1993, c.139 (C.58:10B-4) is amended to read
18 as follows:

19 26. a. There is established in the New Jersey Economic
20 Development Authority a special, revolving fund to be known as the
21 Hazardous Discharge Site Remediation Fund. Moneys in the
22 remediation fund shall be dedicated for the provision of financial
23 assistance or grants to [municipal governmental entities, the New
24 Jersey Redevelopment Authority, individuals, corporations,
25 partnerships, and other private business entities] municipalities,
26 counties, redevelopment entities authorized to exercise redevelopment
27 powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), and
28 persons , for the purpose of financing remediation activities at sites at
29 which there is, or is suspected of being, a discharge of hazardous
30 substances or hazardous wastes.

31 b. The remediation fund shall be credited with:

32 (1) moneys as are appropriated by the Legislature;

33 (2) moneys deposited into the fund as repayment of principal and
34 interest on outstanding loans made from the fund;

35 (3) any return on investment of moneys deposited in the fund;

36 (4) remediation funding source surcharges imposed pursuant to
37 section 33 of P.L.1993, c.139 (C.58:10B-11);

38 (5) moneys deposited in the fund as repayment of recoverable
39 grants made by the New Jersey Redevelopment Authority for
40 brownfield redevelopment;

41 (6) moneys deposited into the fund from cost recovery subrogation
42 actions; and

43 [(6)] (7) moneys made available to the authority for the purposes
44 of the fund.

45 (cf: P.L.1997, c.278, s.12)

1 3. Section 27 of P.L.1993, c.139 (C.58:10B-5) is amended to read
2 as follows:

3 27. a. (1) Financial assistance from the remediation fund may only
4 be rendered to persons who cannot establish a remediation funding
5 source for the full amount of a remediation. Financial assistance
6 pursuant to this act may be rendered only for that amount of the cost
7 of a remediation for which the person cannot establish a remediation
8 funding source. The limitations on receiving financial assistance
9 established in this paragraph (1) shall not limit the ability of [municipal
10 governmental entities, the New Jersey Redevelopment Authority,]
11 municipalities, counties, redevelopment entities authorized to exercise
12 redevelopment powers pursuant to section 4 of P.L.1992, c.79
13 (C.40A:12A-4), persons who are not required to establish a
14 remediation funding source for the part of the remediation involving
15 an innovative technology, an unrestricted use remedial action or a
16 limited restricted use remedial action, persons performing a
17 remediation in an environmental opportunity zone, or persons who
18 voluntarily perform a remediation, from receiving financial assistance
19 from the fund.

20 (2) Financial assistance rendered to persons who voluntarily
21 perform a remediation or perform a remediation in an environmental
22 opportunity zone may only be made for that amount of the cost of the
23 remediation that the person cannot otherwise fund by any of the
24 authorized methods to establish a remediation funding source.

25 (3) Financial assistance rendered to persons who do not have to
26 provide a remediation funding source for the part of the remediation
27 that involves an innovative technology, an unrestricted use remedial
28 action, or a limited restricted use remedial action may only be made
29 for that amount of the cost of the remediation that the person cannot
30 otherwise fund by any of the authorized methods to establish a
31 remediation funding source.

32 b. Financial assistance may be rendered from the remediation fund
33 to (1) owners or operators of industrial establishments who are
34 required to perform remediation activities pursuant to P.L.1983, c.330
35 (C.13:1K-6 et al.), upon closing operations or prior to the transfer of
36 ownership or operations of an industrial establishment, (2) persons
37 who are liable for the cleanup and removal costs of a hazardous
38 substance pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), and
39 (3) persons who voluntarily perform a remediation of a discharge of
40 a hazardous substance or hazardous waste.

41 c. Financial assistance and grants may be made from the
42 remediation fund to a [municipal governmental entity or the New
43 Jersey Redevelopment Authority] municipality, county, or
44 redevelopment entity authorized to exercise redevelopment powers
45 pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), for real
46 property: (1) on which it holds a tax sale certificate; (2) that it has

1 acquired through foreclosure or other similar means; or (3) that it has
2 acquired, or in the case of a county governed by a board of chosen
3 freeholders, has passed a resolution or , in the case of a municipality
4 or a county operating under the "Optional County Charter Law,"
5 P.L.1972, c.154 (C.40:41A-1 et seq.), has passed an ordinance or
6 other appropriate document to acquire, by voluntary conveyance for
7 the purpose of redevelopment , or for recreation and conservation
8 purposes. Financial assistance and grants may only be awarded for
9 real property on which there has been a discharge or on which there
10 is a suspected discharge of a hazardous substance or hazardous waste.
11 [Financial assistance and grants may not be made to any entity listed
12 in this subsection for any real property used by that entity for the
13 conduct of its official business.]

14 d. Grants may be made from the remediation fund to persons [and
15 the New Jersey Redevelopment Authority,] who own real property on
16 which there has been a discharge of a hazardous substance or a
17 hazardous waste and that person [or the authority] qualifies for an
18 innocent party grant pursuant to section 28 of P.L.1993, c.139
19 (C.58:10B-6).

20 e. Grants may be made from the remediation fund to qualifying
21 persons who propose to perform a remedial action that uses an
22 innovative technology or that would result in an unrestricted use
23 remedial action or a limited restricted use remedial action.

24 f. Grants may be made from the remediation fund to municipalities,
25 counties, and redevelopment entities authorized to exercise
26 redevelopment powers pursuant to section 4 of P.L.1992, c.79
27 (C.40A:12A-4), for the preliminary assessment, site investigation,
28 remedial investigation and remedial action on contaminated real
29 property within a brownfield development area. An ownership interest
30 in the contaminated property shall not be required in order for a
31 municipality, county, or redevelopment entity authorized to exercise
32 redevelopment powers pursuant to section 4 of P.L.1992, c.79
33 (C.40A:12A-4) to receive a grant for a remediation of property in a
34 brownfield redevelopment area.¹Notwithstanding the limitation on the
35 total amount of financial assistance and grants that may be awarded in
36 any one year pursuant to subsection b. of section 28 of P.L.1993,
37 c.139 (C.58:10B-6), the authority may award an additional amount of
38 financial assistance and grants in any one year, of up to \$2,000,000, to
39 any one municipality, county, or redevelopment entity for the
40 remediation of property in a brownfield development area.¹ Any
41 property on which a municipality, county, or redevelopment entity
42 makes expenditures for a remedial action and the property is not
43 owned by that entity shall be subject to the provisions of section 8 of
44 P.L. , c. (C.) (now in the Legislature as this bill).

45 [For the purposes of this section, "person" shall not include any

1 governmental entity.]

2 (cf: P.L.1999, c.214, s.1)

3

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

6 28. a. Except for moneys deposited in the remediation fund for
7 specific purposes, financial assistance and grants from the remediation
8 fund shall be rendered for the following purposes ¹[and, on an annual
9 basis, obligated in the percentages as provided in this subsection.
10 Upon a written joint determination by the authority and the department
11 that the demand for financial assistance or grants for moneys allocated
12 in any paragraph exceeds the percentage of funds allocated for that
13 paragraph, financial assistance and grants dedicated for the purposes
14 and in the percentages set forth in any other paragraph of this
15 subsection, may, for any particular year, if the demand for financial
16 assistance or grants for moneys allocated in that paragraph is less than
17 the percentage of funds allocated for that paragraph, be obligated to
18 the purposes set forth in the over allocated paragraph. The] ^{2,2} A¹
19 written ¹[determination] report¹ shall be sent to the Senate
20 Environment Committee, and the Assembly [Agriculture and Waste
21 Management] Environment and Solid Waste Committee, or their
22 successors ¹at the end of each calender quarter detailing the allocation
23 and expenditures related to the financial assistance and grants from the
24 fund¹. [For the purposes of this section, "person" shall not include
25 any governmental entity.]

26 (1) ¹[At least [15%] 10% of the moneys] Moneys¹ shall be
27 allocated for financial assistance to persons, [and the New Jersey
28 Redevelopment Authority established pursuant to P.L.1996, c.62
29 (C.55:19-20 et al.),] for remediation of real property located in a
30 qualifying municipality as defined in section 1 of P.L.1978, c.14
31 (C.52:27D-178);

32 (2) ¹[At least [10%] 35% of the moneys] Moneys¹ shall be
33 allocated [for financial assistance and grants] to : (a) [municipal
34 governmental entities and the New Jersey Redevelopment Authority]
35 municipalities, counties, or redevelopment entities authorized to
36 exercise redevelopment powers pursuant to section 4 of P.L.1992,
37 c.79 (C.40A:12A-4), for:

38 (i) projects in brownfield development areas pursuant to subsection
39 f. of section 27 of P.L.1993, c.139 (C.58:10B-5),

40 (ii) matching grants¹ up to a cumulative total amount from the fund
41 of \$5,000,000 per year¹ of up to¹ [25%]² [50%]¹ 75%² of the costs
42 of the remedial action for projects involving the redevelopment of
43 contaminated property for recreation and conservation purposes,
44 ¹provided that the use of the property for recreation and conservation
45 purposes is included in the comprehensive plan for the development or
46 redevelopment of contaminated property,¹ or² up to 50% of the costs

1 of the remedial action for projects involving the redevelopment of
2 contaminated property² for affordable housing pursuant to P.L.1985,
3 c.222 (C.52:27D-301 et seq.).

4 (iii) grants for preliminary assessment, site investigation or remedial
5 investigation of a contaminated site,

6 (iv) financial assistance for the implementation of a remedial action,
7 or

8 (v) financial assistance for remediation activities at sites that have
9 been contaminated by a discharge of a hazardous substance or
10 hazardous waste, or at which there is an imminent and significant
11 threat of a discharge of a hazardous substance or hazardous waste, and
12 the discharge or threatened discharge poses or would pose an
13 imminent and significant threat to a drinking water source, to human
14 health, or to a sensitive or significant ecological area; or

15 (b) persons for financial assistance for remediation activities at sites
16 that have been contaminated by a discharge of a hazardous substance
17 or hazardous waste, or at which there is an imminent and significant
18 threat of a discharge of a hazardous substance or hazardous waste, and
19 the discharge or threatened discharge poses or would pose an
20 imminent and significant threat to a drinking water source, to human
21 health, or to a sensitive or significant ecological area.

22 Except as provided in subsection f. of section 27 of P.L.1993, c.139
23 (C.58:10B-5), financial assistance and grants to municipalities,
24 counties, or redevelopment entities authorized to exercise
25 redevelopment powers pursuant to section 4 of P.L.1992, c.79
26 (C.40A:12A-4) may be made for real property: (1) on which they hold
27 a tax sale certificate; (2) that they have acquired through foreclosure
28 or other similar means; or (3) that they have acquired, or , in the case
29 of a county governed by a board of chosen freeholders, have passed a
30 resolution or, in the case of a municipality or a county operating under
31 the "Optional County Charter Law," P.L.1972, c.154 (C.40:41A-1 et
32 seq.), have passed an ordinance or other appropriate document to
33 acquire, by voluntary conveyance for the purpose of redevelopment,
34 or for recreation and conservation purposes . Financial assistance and
35 grants may only be awarded for real property on which there has been
36 or on which there is suspected of being a discharge of a hazardous
37 substance or a hazardous waste. Grants and financial assistance
38 provided pursuant to this paragraph shall be used for performing
39 preliminary assessments, site investigations, [and] remedial
40 investigations , and remedial actions on real property in order to
41 determine the existence or extent of any hazardous substance or
42 hazardous waste contamination , and to remediate the site in
43 compliance with the applicable health risk and environmental standards
44 on those properties. No ¹[grant shall be awarded pursuant to this
45 paragraph (2) for the purposes of a remedial investigation and no]¹
46 financial assistance ¹or grants¹ for a remedial action shall be awarded

1 until the [municipal government entity or the New Jersey
2 Redevelopment Authority] municipality, county, or redevelopment
3 entity authorized to exercise redevelopment powers pursuant to
4 section 4 of P.L.1992, c.79 (C.40A:12A-4), actually owns the real
5 property , provided that a matching grant for ¹[25%] ²[50%¹] 75%²
6 of the costs of a remedial action for a project involving the
7 redevelopment of contaminated property for recreation and
8 conservation purposes, or ²a matching grant for 50% of the costs of
9 a remedial action for a project involving the redevelopment of
10 contaminated property² for affordable housing pursuant to P.L.1985,
11 c.222 (C.52:27D-301 et seq.) may be made to a municipality, county,
12 or redevelopment entity authorized to exercise redevelopment powers
13 pursuant to section 4 of P.L.1992, c.79 even if it does not own the real
14 property and a grant may be made to a municipality, county, or
15 redevelopment entity authorized to exercise redevelopment powers
16 pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) for a
17 remediation in a brownfield development area pursuant to subsection
18 f. of section 27 of P.L.1993, c.139 (C.58:10B-5) even if the entity
19 does not own the real property . ¹No grant shall be awarded for a
20 remedial action for a project involving the redevelopment of
21 contaminated property for recreation or conservation purposes unless
22 the use of the property is preserved for recreation and conservation
23 purposes by conveyance of a development easement, conservation
24 restriction or easement, or other restriction or easement permanently
25 restricting development, which shall be recorded and indexed with the
26 deed in the registry of deeds for the county.¹ A [municipal
27 governmental entity or the New Jersey Redevelopment Authority]
28 municipality that has performed, or on which there has been
29 performed, a preliminary assessment, site investigation or remedial
30 investigation on property may obtain a loan for the purpose of
31 continuing the remediation on those properties as necessary to comply
32 with the applicable remediation regulations adopted by the department.
33 No grant shall be awarded pursuant to this paragraph to a [municipal
34 government entity] municipality, a county, or a redevelopment entity
35 authorized to exercise redevelopment powers pursuant to section 4 of
36 P.L.1992, c.79 (C.40A:12A-4) unless that entity has adopted by
37 ordinance or resolution a comprehensive plan specifically for the
38 development or redevelopment of contaminated or potentially
39 contaminated real property in that municipality or the entity can
40 demonstrate to the authority that a realistic opportunity exists that the
41 subject real property will be developed or redeveloped within a
42 three-year period from the completion of the remediation;
43 (3) [At least 15% of the moneys shall be allocated for financial
44 assistance to persons, the New Jersey Redevelopment Authority, or
45 municipal governmental entities for remediation activities at sites that
46 have been contaminated by a discharge of a hazardous substance or

1 hazardous waste, or at which there is an imminent and significant
2 threat of a discharge of a hazardous substance or hazardous waste, and
3 the discharge or threatened discharge poses or would pose an
4 imminent and significant threat to a drinking water source, to human
5 health, or to a sensitive or significant ecological area;

6 (4) ¹[At least 10% of the moneys] Moneys¹ shall be allocated for
7 financial assistance to persons who voluntarily perform a remediation
8 of a hazardous substance or hazardous waste discharge;

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

14 (6) (4) ¹[At least 15% of the moneys] Moneys¹ shall be allocated
15 for grants to persons who own real property on which there has been
16 a discharge of a hazardous substance or a hazardous waste and that
17 person qualifies for an innocent party grant. A person qualifies for an
18 innocent party grant if that person acquired the property prior to
19 December 31, 1983, [except as provided hereunder,] the hazardous
20 substance or hazardous waste that was discharged at the property was
21 not used by the person at that site, and that person certifies that he did
22 not discharge any hazardous substance or hazardous waste at an area
23 where a discharge is discovered [; provided, however, that
24 notwithstanding any other provision of this section the New Jersey
25 Redevelopment Authority established pursuant to P.L.1996, c.62
26 (C.55:19-20 et al.), shall qualify for an innocent party grant pursuant
27 to this paragraph where the immediate predecessor in title to the
28 authority would have qualified for but failed to apply for or receive
29 such grant] . A grant authorized pursuant to this paragraph may be
30 for up to 50% of the remediation costs at the area of concern for
31 which the person qualifies for an innocent party grant, except that no
32 grant awarded pursuant to this paragraph to any person [or the New
33 Jersey Redevelopment Authority] may exceed \$1,000,000;

34 [(7) (5) ¹[At least [5%] 10% of the moneys] Moneys¹ shall be
35 allocated for (a) financial assistance to persons who own and plan to
36 remediate an environmental opportunity zone for which an exemption
37 from real property taxes has been granted pursuant to section 5 of
38 P.L.1995, c.413 (C.54:4-3.154) [;

39 (8) At least 5% of the moneys shall be allocated for] , or (b)
40 matching grants for up to 25% of the project costs to qualifying
41 persons , municipalities, counties, and redevelopment entities
42 authorized to exercise redevelopment powers pursuant to section 4 of
43 P.L.1992, c.79 (C.40A:12A-4), who propose to perform a remedial
44 action that uses an innovative technology , or for the implementation
45 of a limited restricted use remedial action or an unrestricted use
46 remedial action except that no grant awarded pursuant to this

1 paragraph [to any qualifying person] may exceed [\\$100,000]
2 \\$250,000 ;

3 [(9) At least 5% of the moneys shall be allocated for matching
4 grants for up to 25% of the project costs to qualifying persons for the
5 implementation of a limited restricted use remedial action or an
6 unrestricted use remedial action except that no grant awarded pursuant
7 to this paragraph to any qualifying person may exceed \$100,000. The
8 authority may use money allocated pursuant to this paragraph to
9 provide loan guarantees to encourage financial institutions to provide
10 loans to any person who may receive financial assistance from the fund
11 who plans to implement a limited restricted use remedial action or an
12 unrestricted use remedial action;

13 (10) At least 5% of the moneys shall be allocated for grants to
14 persons who own real property on which there has been a discharge of
15 a hazardous substance or a hazardous waste from an underground
16 storage tank and that person qualifies for an underground storage tank
17 grant. A person qualifies for an underground storage tank grant if that
18 person acquired the property prior to December 31, 1986, the person
19 complied with all laws, rules and regulations regarding the
20 underground storage tank, the underground storage tank was closed
21 or removed prior to December 31, 1990, and there is a discovery of
22 contamination that originated from the underground storage tank and
23 that discovery is made more than five years after closure or removal
24 of the underground storage tank. A grant authorized pursuant to this
25 paragraph may be for up to 50% of the remediation costs at the area
26 of concern for which the person qualifies for an underground storage
27 tank grant, except that no grant awarded pursuant to this paragraph to
28 any person may exceed \$1,000,000] ; and

29 [(11) Five] (6) Twenty percent of the moneys in the remediation
30 fund shall be allocated for financial assistance or grants for any of the
31 purposes enumerated in paragraphs (1) through [(10)] (5) of this
32 subsection [, except that where moneys in the fund are insufficient to
33 fund all the applications in any calendar year that would otherwise
34 qualify for financial assistance or a grant pursuant to this paragraph,
35 the authority shall give priority to financial assistance applications that
36 meet the criteria enumerated in paragraph (3) of this subsection] .

37 For the purposes of [paragraphs (8) and (9)] paragraph (5) of this
38 subsection, "qualifying persons" means any person who has a net
39 worth of not more than \$2,000,000 and "project costs" means that
40 portion of the total costs of a remediation that is specifically for the
41 use of an innovative technology or to implement an unrestricted use
42 remedial action or a limited restricted use remedial action, as
43 applicable.

44 b. Loans issued from the remediation fund shall be for a term not
45 to exceed ten years, except that upon the transfer of ownership of any
46 real property for which the loan was made, the unpaid balance of the

1 loan shall become immediately payable in full. The unpaid balance of
2 a loan for the remediation of real property that is transferred by devise
3 or succession shall not become immediately payable in full, and loan
4 repayments shall be made by the person who acquires the property.
5 Loans to [municipal governmental entities and the New Jersey
6 Redevelopment Authority established pursuant to P.L.1996, c.62
7 (C.55:19-20 et al.),] municipalities, counties, and redevelopment
8 entities authorized to exercise redevelopment powers pursuant to
9 section 4 of P.L.1992, c.79 (C.40A:12A-4) , shall bear an interest rate
10 equal to 2 points below the Federal Discount Rate at the time of
11 approval or at the time of loan closing, whichever is lower, except that
12 the rate shall be no lower than 3 percent. All other loans shall bear an
13 interest rate equal to the Federal Discount Rate at the time of approval
14 or at the time of the loan closing, whichever is lower, except that the
15 rate on such loans shall be no lower than five percent. Financial
16 assistance and grants may be issued for up to 100% of the estimated
17 applicable remediation cost, except that the cumulative maximum
18 amount of financial assistance which may be issued to a person, in any
19 calendar year, for one or more properties, shall be \$1,000,000.
20 Financial assistance and grants to any one [municipal governmental
21 entity or the New Jersey Redevelopment Authority] municipality,
22 county, or redevelopment entity authorized to exercise redevelopment
23 powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) may
24 not exceed ¹[\$2,000,000] \$3,000,000¹ in any calendar year ¹except
25 as provided in subsection f. of P.L.1993, c.139 (C.58:10B-5)¹ .
26 Grants to a municipality, a county, or a redevelopment entity
27 authorized to exercise redevelopment powers pursuant to section 4 of
28 P.L.1992, c.79 (C.40A:12A-4) may not exceed ¹[50%] 75%¹ of the
29 total costs of the remediation at any one site. Repayments of principal
30 and interest on the loans issued from the remediation fund shall be paid
31 to the authority and shall be deposited into the remediation fund.
32 ²[The total amount of grant monies awarded in any one year may
33 not exceed 70 percent of the total amount of financial assistance and
34 grants awarded in that year.]² ³The total amount of grant monies
35 awarded in any one year may not exceed 70 percent of the total
36 amount of financial assistance and grants awarded in that year.³
37 c. No person, other than a qualified person planning to use an
38 innovative technology for the cost of that technology, a qualified
39 person planning to use a limited restricted use remedial action or an
40 unrestricted use remedial action for the cost of the remedial action, a
41 person performing a remediation in an environmental opportunity
42 zone, or a person voluntarily performing a remediation, shall be
43 eligible for financial assistance from the remediation fund to the extent
44 that person is capable of establishing a remediation funding source for
45 the remediation as required pursuant to section 25 of P.L.1993, c.139

1 (C.58:10B-3).

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

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

20 (cf: P.L.2001, c.70, s.1)

21

22 5. Section 29 of P.L.1993, c.139 (C.58:10B-7) is amended to read
23 as follows:

24 29. a. A qualified applicant for financial assistance or a grant from
25 the remediation fund shall be awarded financial assistance or a grant
26 by the authority upon the availability of sufficient moneys in the
27 remediation fund for the purpose of the financial assistance or grant.
28 The authority shall award financial assistance and grants in the
29 following order of priority:

30 (1) Sites on which there has been a discharge and the discharge
31 poses and imminent and significant threat to a drinking water source,
32 to human health, or to a sensitive or significant ecological area shall
33 be given first priority; and

34 (2) Sites in areas designated as Planning Area 1 (Metropolitan),
35 Planning Area 2 (Suburban), designated centers, or areas receiving
36 plan endorsement as designated pursuant to the "State Planning Act,"
37 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.),
38 1 sites that the Brownfields Redevelopment Task Force, established
39 pursuant to section 5 of P.L.1997, c.278 (C.58:10B-23), determines
40 are of immediate economic development potential,¹ and sites in
41 brownfield development areas, shall be given second priority.

42 [Priority] The priority ranking of applicants within any priority
43 category enumerated in this section for awarding financial assistance
44 and grants from the remediation fund shall be based upon the date of
45 receipt by the authority of [a complete] an application from the
46 applicant. If an application is determined to be incomplete by the

1 authority, an applicant shall have 30 days from receipt of written
2 notice of incompleteness to file any additional information as may be
3 required by the authority for a completed application. If an applicant
4 fails to file the additional information within those 30 days, the filing
5 date for that application for financial assistance or a grant for a site
6 that is not within a priority category enumerated in this section, shall
7 be the date that the additional information is received by the authority.
8 An application shall be deemed complete when all the information
9 required by the authority has been received in the required form.
10 [Notwithstanding that the New Jersey Redevelopment Authority is
11 eligible for grants and financial assistance from the fund, the authority
12 shall be awarded a grant or financial assistance based upon the priority
13 system for such awards as provided in this subsection.]

14 b. Within 90 days, for a private entity, or 180 days for a [municipal
15 governmental entity or the New Jersey Redevelopment Authority]
16 municipality, county, or a redevelopment entity authorized to exercise
17 redevelopment powers pursuant to section 4 of P.L.1992, c.79
18 (C.40A:12A-4), of notice of approval of a financial assistance or grant
19 application, an applicant shall submit to the authority an executed
20 contract for the remediation activities for which the financial assistance
21 or grant application was made. The contract shall be consistent with
22 the terms and conditions for which the financial assistance or grant
23 was rendered. Failure to submit an executed contract within the time
24 provided, without good cause, shall constitute grounds for the
25 alteration of an applicant's priority ranking for the awarding of
26 financial assistance or a grant.
27 (cf: P.L.1996, c.62, s.66)

28

29 6. Section 30 of P.L.1993, c.139 (C.58:10B-8) is amended to read
30 as follows:

31 30. a. The authority shall, by rule or regulation:

32 (1) require a financial assistance or grant recipient to provide to the
33 authority, as necessary or upon request, evidence that financial
34 assistance or grant moneys are being spent for the purposes for which
35 the financial assistance or grant was made, and that the applicant is
36 adhering to all of the terms and conditions of the financial assistance
37 or grant agreement;

38 (2) require the financial assistance or grant recipient to provide
39 access at reasonable times to the subject property to determine
40 compliance with the terms and conditions of the financial assistance or
41 grant;

42 (3) establish a priority system for rendering financial assistance or
43 grants for remediations identified by the department as involving an
44 imminent and significant threat to a public water source, human health,
45 or to a sensitive or significant ecological area pursuant to [paragraph

- 1 (3) of] subsection a. of section 28 of P.L.1993, c.139 (C.58:10B-6);
- 2 (4) provide that payment of a grant shall be conditioned upon the
3 subrogation to the department of all rights of the recipient to recover
4 remediation costs from the discharger or other liable parties. All
5 moneys collected in a cost recovery subrogation action shall be
6 deposited into the remediation fund;
- 7 (5) provide that an applicant for financial assistance or a grant pay
8 a reasonable fee for the application which shall be used by the
9 authority for the administration of the loan and grant program;
- 10 (6) provide that where financial assistance to a person other than a
11 [municipal governmental entity or the New Jersey Redevelopment
12 Authority] municipality, a county, or a redevelopment entity
13 authorized to exercise redevelopment powers pursuant to section 4 of
14 P.L.1992, c.79 (C.40A:12A-4), is for a portion of the remediation
15 cost, that the proceeds thereof not be disbursed to the applicant until
16 the costs of the remediation for which a remediation funding source
17 has been established has been expended;
- 18 (7) provide that the amount of a grant for the costs of a remedial
19 action shall not include the cost to remediate a site to meet residential
20 soil remediation standards if the local zoning ordinances adopted
21 pursuant to the "Municipal Land Use Law," P.L.1975, c.291
22 (C.40:55D-1 et seq.) does not allow for residential use;
- 23 (8) adopt such other requirements as the authority shall deem
24 necessary or appropriate in carrying out the purposes for which the
25 Hazardous Discharge Site Remediation Fund was created.
- 26 b. An applicant for financial assistance or a grant shall be required
27 to:
- 28 (1) provide proof, as determined sufficient by the authority, that the
29 applicant, where applicable, cannot establish a remediation funding
30 source for all or part of the remediation costs, as required by section
31 25 of P.L.1993, c.139 (C.58:10B-3). The provisions of this paragraph
32 do not apply to grants to innocent persons, grants for the use of
33 innovative technologies, or grants for the implementation of
34 unrestricted use remedial actions or limited restricted use remedial
35 actions or to financial assistance or grants to [municipal governmental
36 entities or the New Jersey Redevelopment Authority] municipalities,
37 counties, or redevelopment entities authorized to exercise
38 redevelopment powers pursuant to section 4 of P.L.1992, c.79
39 (C.40A:12A-4); and
- 40 (2) demonstrate the ability to repay the amount of the financial
41 assistance and interest, and, if necessary, to provide adequate
42 collateral to secure the financial assistance amount.
- 43 c. Information submitted as part of a loan or grant application or
44 agreement shall be deemed a public record subject to the provisions of
45 P.L.1963, c.73 (C.47:1A-1 et seq.).
- 46 d. In establishing requirements for financial assistance or grant

1 applications and financial assistance or grant agreements, the
2 authority:

3 (1) shall minimize the complexity and costs to applicants or
4 recipients of complying with such requirements;

5 (2) may not require financial assistance or grant conditions that
6 interfere with the everyday normal operations of the recipient's
7 business activities, except to the extent necessary to ensure the
8 recipient's ability to repay the financial assistance and to preserve the
9 value of the loan collateral; and

10 (3) shall expeditiously process all financial assistance or grant
11 applications in accordance with a schedule established by the authority
12 for the review and the taking of final action on the application, which
13 schedule shall reflect the degree of complexity of a financial assistance
14 or grant application.

15 (cf: P.L.1997, c.278, s.15)

16

17 7. (New section) The Department of Environmental Protection
18 shall establish guidelines to establish a procedure for the designation
19 of brownfield development areas. In establishing criteria for the
20 establishment of a brownfield development area, the department shall
21 require:

22 (1) that a brownfield development area includes at least two
23 brownfield sites within a contiguous area;

24 (2) that the boundaries are consistent with the boundaries of a
25 distinct neighborhood;

26 (3) broad community support for the establishment of a brownfield
27 development area; and

28 (4) that the establishment of a brownfield development area will
29 result in a benefit to the public health and safety, and the environment.

30 A brownfield development area shall be designated by the
31 department, in writing, upon application by a person proposing to
32 remediate a site or sites within the area, or upon the department's
33 initiative.

34 The guidelines, and any subsequent revisions thereto, and a list of
35 the brownfield development areas, and any subsequent revisions
36 thereto, and shall be published in the New Jersey Register. The
37 adoption of the guidelines or of the revisions thereto, shall not be
38 subject to the requirements of the "Administrative Procedure Act,"
39 P.L.1968, c.410 (C.52:14B-1 et seq.).

40

41 8. (New section) Any expenditure of grant monies for a remedial
42 action in a brownfield development area by a municipality, county, or
43 redevelopment entity on property in which the municipality, county,
44 or redevelopment entity does not have an ownership interest, shall
45 constitute a debt of the property owner to the fund. The debt shall
46 constitute a lien on the real property at which the remedial action is

1 performed. The lien shall be in the amount of the grant awarded for
2 the remedial action on that property. The lien shall attach when a
3 notice of lien, incorporating the name of the property owner, a
4 description of the property subject to the remedial action and an
5 identification of the amount of the grant awarded from the fund, is
6 duly filed with the county recording officer in the county in which the
7 property is located. The lien filed pursuant to this section which
8 affects the property subject to the remedial action shall create a lien
9 with priority over all other claims or liens which are or have been filed
10 against the property, except if the property comprises six dwelling
11 units or less and is used exclusively for residential purposes, this notice
12 of lien shall not affect any valid lien, right or interest in the property
13 filed in accordance with established procedure prior to the filing of this
14 notice of lien. A lien that is filed on real property pursuant to this
15 section shall be removed upon transfer of ownership of the property
16 to the municipality, county, or redevelopment entity that expended
17 grant monies for a remedial action on that property.

18

19 [19. (New section) Notwithstanding the provisions of sections 27
20 and 28 of P.L.1993, c.139 (C.58:10B-5 and 58:10B-6), or any other
21 law, or any rule or regulation adopted pursuant thereto to the
22 contrary, the New Jersey Economic Development Authority may
23 provide grants or recoverable grants from the fund to a municipality
24 that has received a commitment prior to the effective date of this act,
25 from the New Jersey Redevelopment Authority, established pursuant
26 to P.L.1996, c.62 (C.55:19-20 et al.), for funding the implementation
27 of a remedial action and any other activities within the approved scope
28 of work associated with the redevelopment of a brownfield site. Any
29 repayments to the New Jersey Redevelopment Authority for grants or
30 other financial assistance made for brownfields remediation or
31 redevelopment shall be paid to the New Jersey Economic Development
32 Authority and shall be deposited into the fund.]¹

33

34 19. (New section) a. The Department of Environmental Protection,
35 in consultation with the New Jersey Economic Development
36 Authority, shall develop a pilot program to award grants from the
37 Hazardous Discharge Site Remediation Fund established pursuant to
38 section 26 of P.L.1993, c.139 (C.58:10B-4) to nonprofit organizations
39 described in section 501(c)(3) of the federal Internal Revenue Code,
40 26 U.S.C. s.501(c)(3), that are exempt from taxation pursuant to
41 section 501(a) of the federal Internal Revenue Code, 26 U.S.C.
42 s.501(a), for the preliminary assessment, site investigation, and
43 remedial investigation of real property that has been contaminated or
44 is suspected of being contaminated by the discharge of a hazardous
45 substance. All of the limitations and conditions for the award of

1 financial assistance and grants applicable to municipalities pursuant to
2 the provisions of the "Brownfield and Contaminated Site Remediation
3 Act," P.L.1997, c.278 (C.58:10B-1.1 et al.) shall apply to the award
4 of grants to a nonprofit organization pursuant to this section. The
5 total amount awarded pursuant to this pilot program shall not exceed
6 \$5,000,000.

7 b. Prior to March 1 of each year, the Department of Environmental
8 Protection shall prepare and transmit to the members of the Senate
9 Environment Committee and the Assembly Environment and Solid
10 Waste Committee, or their successors, an annual report that provides
11 ²[of] a ²description of the projects for which grants have been
12 awarded, the grant recipients for each project, the owner of the
13 property being remediated, the amount of each grant, and the location
14 of the property being remediated.¹

15

16 10. This act shall take effect immediately.

17

18

19

20

21 Revises laws concerning financial assistance for contaminated site
22 remediation.

SENATE, No. 277

STATE OF NEW JERSEY
211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

Sponsored by:

Senator JOHN H. ADLER

District 6 (Camden)

Senator HENRY P. MCNAMARA

District 40 (Bergen, Essex and Passaic)

SYNOPSIS

Revises laws concerning financial assistance for contaminated site remediation.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 11/16/2004)

1 AN ACT concerning the remediation of contaminated sites, and
2 amending and supplementing P.L.1993, c.139.

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

6
7 1. Section 23 of P.L.1993, c.139 (C.58:10B-1) is amended to read
8 as follows:

9 23. As used in sections 23 through 43 and section 45 of P.L.1993,
10 c.139 (C.58:10B-1 et seq.), as may be amended and supplemented:

11 "Area of concern" means any location where contaminants are or
12 were known or suspected to have been discharged, generated,
13 manufactured, refined, transported, stored, handled, treated, or
14 disposed, or where contaminants have or may have migrated;

15 "Authority" means the New Jersey Economic Development
16 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);

17 "Brownfield development area" means an area that has been so
18 designated by the department, in writing, pursuant to the provisions of
19 section 7 of P.L. , c. (C.) (now in the Legislature as this bill);

20 "Brownfield site" means any former or current commercial or
21 industrial site that is currently vacant or underutilized and on which
22 there has been, or there is suspected to have been, a discharge of a
23 contaminant;

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

29 "Department" means the Department of Environmental Protection;

30 "Discharge" means an intentional or unintentional action or
31 omission resulting in the releasing, spilling, leaking, pumping, pouring,
32 emitting, emptying, or dumping of a contaminant onto the land or into
33 the waters of the State;

34 "Engineering controls" means any mechanism to contain or stabilize
35 contamination or ensure the effectiveness of a remedial action.
36 Engineering controls may include, without limitation, caps, covers,
37 dikes, trenches, leachate collection systems, signs, fences and physical
38 access controls;

39 "Environmental opportunity zone" has the meaning given that term
40 pursuant to section 3 of P.L.1995, c.413 (C.54:4-3.152);

41 "Financial assistance" means loans or loan guarantees;

42 "Institutional controls" means a mechanism used to limit human
43 activities at or near a contaminated site, or to ensure the effectiveness

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

Matter underlined thus is new matter.

1 of the remedial action over time, when contaminants remain at a
2 contaminated site in levels or concentrations above the applicable
3 remediation standard that would allow unrestricted use of that
4 property. Institutional controls may include, without limitation,
5 structure, land, and natural resource use restrictions, well restriction
6 areas, and deed notices;

7 "Limited restricted use remedial action" means any remedial action
8 that requires the continued use of institutional controls but does not
9 require the use of an engineering control;

10 "No further action letter" means a written determination by the
11 department that based upon an evaluation of the historical use of a
12 particular site, or of an area of concern or areas of concern at that site,
13 as applicable, and any other investigation or action the department
14 deems necessary, there are no discharged contaminants present at the
15 site, at the area of concern or areas of concern, at any other site to
16 which a discharge originating at the site has migrated, or that any
17 discharged contaminants present at the site or that have migrated from
18 the site have been remediated in accordance with applicable
19 remediation regulations;

20 "Person" means an individual, corporation, company, partnership,
21 firm, or other private business entity;

22 "Preliminary assessment" means the first phase in the process of
23 identifying areas of concern and determining whether contaminants are
24 or were present at a site or have migrated or are migrating from a site,
25 and shall include the initial search for and evaluation of, existing site
26 specific operational and environmental information, both current and
27 historic, to determine if further investigation concerning the
28 documented, alleged, suspected or latent discharge of any contaminant
29 is required. The evaluation of historic information shall be conducted
30 from 1932 to the present, except that the department may require the
31 search for and evaluation of additional information relating to
32 ownership and use of the site prior to 1932 if such information is
33 available through diligent inquiry of the public records;

34 "Recreation and conservation purposes" means the use of lands for
35 beaches, biological or ecological study, boating, camping, fishing,
36 forests, greenways, hunting, natural areas, parks, playgrounds,
37 protecting historic properties, water reserves, watershed protection,
38 wildlife preserves, active sports, or a similar use for either public
39 outdoor recreation or conservation of natural resources, or both;

40 "Remedial action" means those actions taken at a site or offsite if
41 a contaminant has migrated or is migrating therefrom, as may be
42 required by the department, including the removal, treatment,
43 containment, transportation, securing, or other engineering or
44 treatment measures, whether to an unrestricted use or otherwise,
45 designed to ensure that any discharged contaminant at the site or that
46 has migrated or is migrating from the site, is remediated in compliance
47 with the applicable health risk or environmental standards;

1 "Remedial action workplan" means a plan for the remedial action to
2 be undertaken at a site, or at any area to which a discharge originating
3 at a site is migrating or has migrated; a description of the remedial
4 action to be used to remediate a site; a time schedule and cost estimate
5 of the implementation of the remedial action; and any other
6 information the department deems necessary;

7 "Remedial investigation" means a process to determine the nature
8 and extent of a discharge of a contaminant at a site or a discharge of
9 a contaminant that has migrated or is migrating from the site and the
10 problems presented by a discharge, and may include data collected,
11 site characterization, sampling, monitoring, and the gathering of any
12 other sufficient and relevant information necessary to determine the
13 necessity for remedial action and to support the evaluation of remedial
14 actions if necessary;

15 "Remediation" or "remediate" means all necessary actions to
16 investigate and clean up or respond to any known, suspected, or
17 threatened discharge of contaminants, including, as necessary, the
18 preliminary assessment, site investigation, remedial investigation, and
19 remedial action, provided, however, that "remediation" or "remediate"
20 shall not include the payment of compensation for damage to, or loss
21 of, natural resources;

22 "Remediation fund" means the Hazardous Discharge Site
23 Remediation Fund established pursuant to section 26 of P.L.1993,
24 c.139 (C.58:10B-4);

25 "Remediation funding source" means the methods of financing the
26 remediation of a discharge required to be established by a person
27 performing the remediation pursuant to section 25 of P.L.1993, c.139
28 (C.58:10B-3);

29 "Remediation standards" means the combination of numeric
30 standards that establish a level or concentration, and narrative
31 standards to which contaminants must be treated, removed, or
32 otherwise cleaned for soil, groundwater, or surface water, as provided
33 by the department pursuant to section 35 of P.L.1993, c.139
34 (C.58:10B-12) in order to meet the health risk or environmental
35 standards;

36 "Restricted use remedial action" means any remedial action that
37 requires the continued use of engineering and institutional controls in
38 order to meet the established health risk or environmental standards;

39 "Site investigation" means the collection and evaluation of data
40 adequate to determine whether or not discharged contaminants exist
41 at a site or have migrated or are migrating from the site at levels in
42 excess of the applicable remediation standards. A site investigation
43 shall be developed based upon the information collected pursuant to
44 the preliminary assessment;

45 "Unrestricted use remedial action" means any remedial action that
46 does not require the continued use of engineering or institutional

1 controls in order to meet the established health risk or environmental
2 standards;

3 "Voluntarily perform a remediation" means performing a
4 remediation without having been ordered or directed to do so by the
5 department or by a court and without being compelled to perform a
6 remediation pursuant to the provisions of P.L.1983, c.330 (C.13:1K-6
7 et al.).

8 (cf: P.L.2001, c.154, s.3)

9

10 2. Section 26 of P.L.1993, c.139 (C.58:10B-4) is amended to read
11 as follows:

12 26. a. There is established in the New Jersey Economic
13 Development Authority a special, revolving fund to be known as the
14 Hazardous Discharge Site Remediation Fund. Moneys in the
15 remediation fund shall be dedicated for the provision of financial
16 assistance or grants to [municipal governmental entities, the New
17 Jersey Redevelopment Authority, individuals, corporations,
18 partnerships, and other private business entities] municipalities,
19 counties, redevelopment entities authorized to exercise redevelopment
20 powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), and
21 persons , for the purpose of financing remediation activities at sites at
22 which there is, or is suspected of being, a discharge of hazardous
23 substances or hazardous wastes.

24 b. The remediation fund shall be credited with:

25 (1) moneys as are appropriated by the Legislature;

26 (2) moneys deposited into the fund as repayment of principal and
27 interest on outstanding loans made from the fund;

28 (3) any return on investment of moneys deposited in the fund;

29 (4) remediation funding source surcharges imposed pursuant to
30 section 33 of P.L.1993, c.139 (C.58:10B-11);

31 (5) moneys deposited in the fund as repayment of recoverable
32 grants made by the New Jersey Redevelopment Authority for
33 brownfield redevelopment;

34 (6) moneys deposited into the fund from cost recovery subrogation
35 actions; and

36 [(6)] (7) moneys made available to the authority for the purposes
37 of the fund.

38 (cf: P.L.1997, c.278, s.12)

39

40 3. Section 27 of P.L.1993, c.139 (C.58:10B-5) is amended to read
41 as follows:

42 27. a. (1) Financial assistance from the remediation fund may only
43 be rendered to persons who cannot establish a remediation funding
44 source for the full amount of a remediation. Financial assistance
45 pursuant to this act may be rendered only for that amount of the cost
46 of a remediation for which the person cannot establish a remediation

1 funding source. The limitations on receiving financial assistance
2 established in this paragraph (1) shall not limit the ability of [municipal
3 governmental entities, the New Jersey Redevelopment Authority,]
4 municipalities, counties, redevelopment entities authorized to exercise
5 redevelopment powers pursuant to section 4 of P.L.1992, c.79
6 (C.40A:12A-4), persons who are not required to establish a
7 remediation funding source for the part of the remediation involving
8 an innovative technology, an unrestricted use remedial action or a
9 limited restricted use remedial action, persons performing a
10 remediation in an environmental opportunity zone, or persons who
11 voluntarily perform a remediation, from receiving financial assistance
12 from the fund.

13 (2) Financial assistance rendered to persons who voluntarily
14 perform a remediation or perform a remediation in an environmental
15 opportunity zone may only be made for that amount of the cost of the
16 remediation that the person cannot otherwise fund by any of the
17 authorized methods to establish a remediation funding source.

18 (3) Financial assistance rendered to persons who do not have to
19 provide a remediation funding source for the part of the remediation
20 that involves an innovative technology, an unrestricted use remedial
21 action, or a limited restricted use remedial action may only be made
22 for that amount of the cost of the remediation that the person cannot
23 otherwise fund by any of the authorized methods to establish a
24 remediation funding source.

25 b. Financial assistance may be rendered from the remediation fund
26 to (1) owners or operators of industrial establishments who are
27 required to perform remediation activities pursuant to P.L.1983, c.330
28 (C.13:1K-6 et al.), upon closing operations or prior to the transfer of
29 ownership or operations of an industrial establishment, (2) persons
30 who are liable for the cleanup and removal costs of a hazardous
31 substance pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), and
32 (3) persons who voluntarily perform a remediation of a discharge of
33 a hazardous substance or hazardous waste.

34 c. Financial assistance and grants may be made from the
35 remediation fund to a [municipal governmental entity or the New
36 Jersey Redevelopment Authority] municipality, county, or
37 redevelopment entity authorized to exercise redevelopment powers
38 pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), for real
39 property: (1) on which it holds a tax sale certificate; (2) that it has
40 acquired through foreclosure or other similar means; or (3) that it has
41 acquired, or in the case of a county governed by a board of chosen
42 freeholders, has passed a resolution or , in the case of a municipality
43 or a county operating under the "Optional County Charter Law,"
44 P.L.1972, c.154 (C.40:41A-1 et seq.), has passed an ordinance or
45 other appropriate document to acquire, by voluntary conveyance for
46 the purpose of redevelopment , or for recreation and conservation

1 purposes. Financial assistance and grants may only be awarded for
2 real property on which there has been a discharge or on which there
3 is a suspected discharge of a hazardous substance or hazardous waste.
4 [Financial assistance and grants may not be made to any entity listed
5 in this subsection for any real property used by that entity for the
6 conduct of its official business.]

7 d. Grants may be made from the remediation fund to persons [and
8 the New Jersey Redevelopment Authority,] who own real property on
9 which there has been a discharge of a hazardous substance or a
10 hazardous waste and that person [or the authority] qualifies for an
11 innocent party grant pursuant to section 28 of P.L.1993, c.139
12 (C.58:10B-6).

13 e. Grants may be made from the remediation fund to qualifying
14 persons who propose to perform a remedial action that uses an
15 innovative technology or that would result in an unrestricted use
16 remedial action or a limited restricted use remedial action.

17 f. Grants may be made from the remediation fund to municipalities,
18 counties, and redevelopment entities authorized to exercise
19 redevelopment powers pursuant to section 4 of P.L.1992, c.79
20 (C.40A:12A-4), for the preliminary assessment, site investigation,
21 remedial investigation and remedial action on contaminated real
22 property within a brownfield development area. An ownership interest
23 in the contaminated property shall not be required in order for a
24 municipality, county, or redevelopment entity authorized to exercise
25 redevelopment powers pursuant to section 4 of P.L.1992, c.79
26 (C.40A:12A-4) to receive a grant for a remediation of property in a
27 brownfield redevelopment area. Any property on which a
28 municipality, county, or redevelopment entity makes expenditures for
29 a remedial action and the property is not owned by that entity shall be
30 subject to the provisions of section 8 of P.L. , c. (C.) (now in the
31 Legislature as this bill).

32 [For the purposes of this section, "person" shall not include any
33 governmental entity.]

34 (cf: P.L.1999, c.214, s.1)

35
36 4. Section 28 of P.L.1993, c.139 (58:10B-6) is amended to read as
37 follows:

38 28. a. Except for moneys deposited in the remediation fund for
39 specific purposes, financial assistance and grants from the remediation
40 fund shall be rendered for the following purposes and, on an annual
41 basis, obligated in the percentages as provided in this subsection.
42 Upon a written joint determination by the authority and the department
43 that the demand for financial assistance or grants for moneys allocated
44 in any paragraph exceeds the percentage of funds allocated for that
45 paragraph, financial assistance and grants dedicated for the purposes
46 and in the percentages set forth in any other paragraph of this

1 subsection, may, for any particular year, if the demand for financial
2 assistance or grants for moneys allocated in that paragraph is less than
3 the percentage of funds allocated for that paragraph, be obligated to
4 the purposes set forth in the over allocated paragraph. The written
5 determination shall be sent to the Senate Environment Committee, and
6 the Assembly [Agriculture and Waste Management] Environment and
7 Solid Waste Committee, or their successors. [For the purposes of this
8 section, "person" shall not include any governmental entity.]

9 (1) At least [~~15%~~] 10% of the moneys shall be allocated for
10 financial assistance to persons, [and the New Jersey Redevelopment
11 Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.),]
12 for remediation of real property located in a qualifying municipality as
13 defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

14 (2) At least [~~10%~~] 35% of the moneys shall be allocated [for
15 financial assistance and grants] to: (a) [municipal governmental
16 entities and the New Jersey Redevelopment Authority] municipalities,
17 counties, or redevelopment entities authorized to exercise
18 redevelopment powers pursuant to section 4 of P.L.1992, c.79
19 (C.40A:12A-4), for:

20 (i) projects in brownfield development areas pursuant to subsection
21 f. of section 27 of P.L.1993, c.139 (C.58:10B-5),

22 (ii) matching grants of up to 25% of the costs of the remedial
23 action for projects involving the redevelopment of contaminated
24 property for recreation and conservation purposes, or for affordable
25 housing pursuant to P.L.1985, c.222 (C.52:27D-301 et seq.),

26 (iii) grants for preliminary assessment, site investigation or
27 remedial investigation of a contaminated site,

28 (iv) financial assistance for the implementation of a remedial
29 action, or

30 (v) financial assistance for remediation activities at sites that have
31 been contaminated by a discharge of a hazardous substance or
32 hazardous waste, or at which there is an imminent and significant
33 threat of a discharge of a hazardous substance or hazardous waste, and
34 the discharge or threatened discharge poses or would pose an
35 imminent and significant threat to a drinking water source, to human
36 health, or to a sensitive or significant ecological area; or

37 (b) persons for financial assistance for remediation activities at
38 sites that have been contaminated by a discharge of a hazardous
39 substance or hazardous waste, or at which there is an imminent and
40 significant threat of a discharge of a hazardous substance or hazardous
41 waste, and the discharge or threatened discharge poses or would pose
42 an imminent and significant threat to a drinking water source, to
43 human health, or to a sensitive or significant ecological area.

44 Except as provided in subsection f. of section 27 of P.L.1993, c.139
45 (C.58:10B-5), financial assistance and grants to municipalities,

1 counties, or redevelopment entities authorized to exercise
2 redevelopment powers pursuant to section 4 of P.L.1992, c.79
3 (C.40A:12A-4) may be made for real property: (1) on which they hold
4 a tax sale certificate; (2) that they have acquired through foreclosure
5 or other similar means; or (3) that they have acquired, or, in the case
6 of a county governed by a board of chosen freeholders, have passed a
7 resolution or, in the case of a municipality or a county operating under
8 the "Optional County Charter Law," P.L.1972, c.154 (C.40:41A-1 et
9 seq.), have passed an ordinance or other appropriate document to
10 acquire, by voluntary conveyance for the purpose of redevelopment,
11 or for recreation and conservation purposes. Financial assistance and
12 grants may only be awarded for real property on which there has been
13 or on which there is suspected of being a discharge of a hazardous
14 substance or a hazardous waste. Grants and financial assistance
15 provided pursuant to this paragraph shall be used for performing
16 preliminary assessments, site investigations, [and] remedial
17 investigations, and remedial actions on real property in order to
18 determine the existence or extent of any hazardous substance or
19 hazardous waste contamination, and to remediate the site in
20 compliance with the applicable health risk and environmental standards
21 on those properties. No grant shall be awarded pursuant to this
22 paragraph (2) for the purposes of a remedial investigation and no
23 financial assistance for a remedial action shall be awarded until the
24 [municipal government entity or the New Jersey Redevelopment
25 Authority] municipality, county, or redevelopment entity authorized
26 to exercise redevelopment powers pursuant to section 4 of P.L.1992,
27 c.79 (C.40A:12A-4), actually owns the real property, provided that a
28 matching grant for 25% of the costs of a remedial action for a project
29 involving the redevelopment of contaminated property for recreation
30 and conservation purposes, or for affordable housing pursuant to
31 P.L.1985, c.222 (C.52:27D-301 et seq.) may be made to a
32 municipality, county, or redevelopment entity authorized to exercise
33 redevelopment powers pursuant to section 4 of P.L.1992, c.79 even
34 if it does not own the real property and a grant may be made to a
35 municipality, county, or redevelopment entity authorized to exercise
36 redevelopment powers pursuant to section 4 of P.L.1992, c.79
37 (C.40A:12A-4) for a remediation in a brownfield development area
38 pursuant to subsection f. of section 27 of P.L.1993, c.139 (C.58: 10B-
39 5) even if the entity does not own the real property. A [municipal
40 governmental entity or the New Jersey Redevelopment Authority]
41 municipality that has performed, or on which there has been
42 performed, a preliminary assessment, site investigation or remedial
43 investigation on property may obtain a loan for the purpose of
44 continuing the remediation on those properties as necessary to comply
45 with the applicable remediation regulations adopted by the department.
46 No grant shall be awarded pursuant to this paragraph to a [municipal

1 government entity] municipality, a county, or a redevelopment entity
2 authorized to exercise redevelopment powers pursuant to section 4 of
3 P.L.1992, c.79 (C.40A:12A-4) unless that entity has adopted by
4 ordinance or resolution a comprehensive plan specifically for the
5 development or redevelopment of contaminated or potentially
6 contaminated real property in that municipality or the entity can
7 demonstrate to the authority that a realistic opportunity exists that the
8 subject real property will be developed or redeveloped within a
9 three-year period from the completion of the remediation;

10 (3) [At least 15% of the moneys shall be allocated for financial
11 assistance to persons, the New Jersey Redevelopment Authority, or
12 municipal governmental entities for remediation activities at sites that
13 have been contaminated by a discharge of a hazardous substance or
14 hazardous waste, or at which there is an imminent and significant
15 threat of a discharge of a hazardous substance or hazardous waste, and
16 the discharge or threatened discharge poses or would pose an
17 imminent and significant threat to a drinking water source, to human
18 health, or to a sensitive or significant ecological area;

19 (4)] At least 10% of the moneys shall be allocated for financial
20 assistance to persons who voluntarily perform a remediation of a
21 hazardous substance or hazardous waste discharge;

22 [(5) At least 10% of the moneys shall be allocated for financial
23 assistance to persons who are required to perform remediation
24 activities at an industrial establishment pursuant to P.L.1983, c.330
25 (C.13:1K-6 et al.), as a condition of the closure, transfer, or
26 termination of operations at that industrial establishment;

27 (6)] (4) At least 15% of the moneys shall be allocated for grants
28 to persons who own real property on which there has been a discharge
29 of a hazardous substance or a hazardous waste and that person
30 qualifies for an innocent party grant. A person qualifies for an
31 innocent party grant if that person acquired the property prior to
32 December 31, 1983, [except as provided hereunder,] the hazardous
33 substance or hazardous waste that was discharged at the property was
34 not used by the person at that site, and that person certifies that he did
35 not discharge any hazardous substance or hazardous waste at an area
36 where a discharge is discovered[; provided, however, that
37 notwithstanding any other provision of this section the New Jersey
38 Redevelopment Authority established pursuant to P.L.1996, c.62
39 (C.55:19-20 et al.), shall qualify for an innocent party grant pursuant
40 to this paragraph where the immediate predecessor in title to the
41 authority would have qualified for but failed to apply for or receive
42 such grant]. A grant authorized pursuant to this paragraph may be for
43 up to 50% of the remediation costs at the area of concern for which
44 the person qualifies for an innocent party grant, except that no grant
45 awarded pursuant to this paragraph to any person [or the New Jersey
46 Redevelopment Authority] may exceed \$1,000,000;

1 ~~[(7)] (5)~~ At least ~~[5%]~~ 10% of the moneys shall be allocated for
2 (a) financial assistance to persons who own and plan to remediate an
3 environmental opportunity zone for which an exemption from real
4 property taxes has been granted pursuant to section 5 of P.L.1995,
5 c.413 (C.54:4-3.154)[;

6 (8) At least 5% of the moneys shall be allocated for~~], or (b)~~
7 matching grants for up to 25% of the project costs to qualifying
8 persons ~~, municipalities, counties, and redevelopment entities~~
9 authorized to exercise redevelopment powers pursuant to section 4 of
10 P.L.1992, c.79 (C.40A:12A-4), who propose to perform a remedial
11 action that uses an innovative technology, or for the implementation
12 of a limited restricted use remedial action or an unrestricted use
13 remedial action except that no grant awarded pursuant to this
14 paragraph ~~[to any qualifying person]~~ may exceed ~~[\$100,000]~~
15 \$250,000;

16 [(9) At least 5% of the moneys shall be allocated for matching
17 grants for up to 25% of the project costs to qualifying persons for the
18 implementation of a limited restricted use remedial action or an
19 unrestricted use remedial action except that no grant awarded pursuant
20 to this paragraph to any qualifying person may exceed \$100,000. The
21 authority may use money allocated pursuant to this paragraph to
22 provide loan guarantees to encourage financial institutions to provide
23 loans to any person who may receive financial assistance from the fund
24 who plans to implement a limited restricted use remedial action or an
25 unrestricted use remedial action;

26 (10) At least 5% of the moneys shall be allocated for grants to
27 persons who own real property on which there has been a discharge of
28 a hazardous substance or a hazardous waste from an underground
29 storage tank and that person qualifies for an underground storage tank
30 grant. A person qualifies for an underground storage tank grant if that
31 person acquired the property prior to December 31, 1986, the person
32 complied with all laws, rules and regulations regarding the
33 underground storage tank, the underground storage tank was closed
34 or removed prior to December 31, 1990, and there is a discovery of
35 contamination that originated from the underground storage tank and
36 that discovery is made more than five years after closure or removal
37 of the underground storage tank. A grant authorized pursuant to this
38 paragraph may be for up to 50% of the remediation costs at the area
39 of concern for which the person qualifies for an underground storage
40 tank grant, except that no grant awarded pursuant to this paragraph to
41 any person may exceed \$1,000,000]; and

42 ~~[(11) Five]~~ (6) Twenty percent of the moneys in the remediation
43 fund shall be allocated for financial assistance or grants for any of the
44 purposes enumerated in paragraphs (1) through ~~[(10)] (5)~~ of this
45 subsection[, except that where moneys in the fund are insufficient to

1 fund all the applications in any calendar year that would otherwise
2 qualify for financial assistance or a grant pursuant to this paragraph,
3 the authority shall give priority to financial assistance applications that
4 meet the criteria enumerated in paragraph (3) of this subsection].

5 For the purposes of [paragraphs (8) and (9)] paragraph (5) of this
6 subsection, "qualifying persons" means any person who has a net
7 worth of not more than \$2,000,000 and "project costs" means that
8 portion of the total costs of a remediation that is specifically for the
9 use of an innovative technology or to implement an unrestricted use
10 remedial action or a limited restricted use remedial action, as
11 applicable.

12 b. Loans issued from the remediation fund shall be for a term not
13 to exceed ten years, except that upon the transfer of ownership of any
14 real property for which the loan was made, the unpaid balance of the
15 loan shall become immediately payable in full. The unpaid balance of
16 a loan for the remediation of real property that is transferred by devise
17 or succession shall not become immediately payable in full, and loan
18 repayments shall be made by the person who acquires the property.

19 Loans to [municipal governmental entities and the New Jersey
20 Redevelopment Authority established pursuant to P.L.1996, c.62
21 (C.55:19-20 et al.),] municipalities, counties, and redevelopment
22 entities authorized to exercise redevelopment powers pursuant to
23 section 4 of P.L.1992, c.79 (C.40A:12A-4) , shall bear an interest rate
24 equal to 2 points below the Federal Discount Rate at the time of
25 approval or at the time of loan closing, whichever is lower, except that
26 the rate shall be no lower than 3 percent. All other loans shall bear an
27 interest rate equal to the Federal Discount Rate at the time of approval
28 or at the time of the loan closing, whichever is lower, except that the
29 rate on such loans shall be no lower than five percent. Financial
30 assistance and grants may be issued for up to 100% of the estimated
31 applicable remediation cost, except that the cumulative maximum
32 amount of financial assistance which may be issued to a person, in any
33 calendar year, for one or more properties, shall be \$1,000,000.
34 Financial assistance and grants to any one [municipal governmental
35 entity or the New Jersey Redevelopment Authority] municipality,
36 county, or redevelopment entity authorized to exercise redevelopment
37 powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) may
38 not exceed \$2,000,000 in any calendar year. Grants to a municipality,
39 a county, or a redevelopment entity authorized to exercise
40 redevelopment powers pursuant to section 4 of P.L.1992, c.79
41 (C.40A:12A-4) may not exceed 50% of the total costs of the
42 remediation at any one site. Repayments of principal and interest on
43 the loans issued from the remediation fund shall be paid to the
44 authority and shall be deposited into the remediation fund.

45 The total amount of grant monies awarded in any one year may not
46 exceed 70 percent of the total amount of financial assistance and
47 grants awarded in that year.

1 c. No person, other than a qualified person planning to use an
2 innovative technology for the cost of that technology, a qualified
3 person planning to use a limited restricted use remedial action or an
4 unrestricted use remedial action for the cost of the remedial action, a
5 person performing a remediation in an environmental opportunity
6 zone, or a person voluntarily performing a remediation, shall be
7 eligible for financial assistance from the remediation fund to the extent
8 that person is capable of establishing a remediation funding source for
9 the remediation as required pursuant to section 25 of P.L.1993, c.139
10 (C.58:10B-3).

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

16 e. Prior to March 1 of each year, the authority shall submit to the
17 Senate Environment Committee and the Assembly [Agriculture and
18 Waste Management] Environment and Solid Waste Committee, or
19 their successors, a report detailing the amount of money that was
20 available for financial assistance and grants from the remediation fund
21 for the previous calendar year, the amount of money estimated to be
22 available for financial assistance and grants for the current calendar
23 year, the amount of financial assistance and grants issued for the
24 previous calendar year and the category for which each financial
25 assistance and grant was rendered, and any suggestions for legislative
26 action the authority deems advisable to further the legislative intent to
27 facilitate remediation and promote the redevelopment and use of
28 existing industrial sites.
29 (cf: P.L.2001, c.70, s.1).

30

31 5. Section 29 of P.L.1993, c.139 (C.58:10B-7) is amended to read
32 as follows:

33 29. a. A qualified applicant for financial assistance or a grant from
34 the remediation fund shall be awarded financial assistance or a grant
35 by the authority upon the availability of sufficient moneys in the
36 remediation fund for the purpose of the financial assistance or grant.
37 The authority shall award financial assistance and grants in the
38 following order of priority:

39 (1) Sites on which there has been a discharge and the discharge
40 poses and imminent and significant threat to a drinking water source,
41 to human health, or to a sensitive or significant ecological area shall
42 be given first priority; and

43 (2) Sites in areas designated as Planning Area 1 (Metropolitan),
44 Planning Area 2 (Suburban), designated centers, or areas receiving
45 plan endorsement as designated pursuant to the "State Planning Act,"
46 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.), and

1 sites in brownfield development areas, shall be given second priority.
2 **[Priority]** The priority ranking of applicants within any priority
3 category enumerated in this section for awarding financial assistance
4 and grants from the remediation fund shall be based upon the date of
5 receipt by the authority of **[a complete]** an application from the
6 applicant. If an application is determined to be incomplete by the
7 authority, an applicant shall have 30 days from receipt of written
8 notice of incompleteness to file any additional information as may be
9 required by the authority for a completed application. If an applicant
10 fails to file the additional information within those 30 days, the filing
11 date for that application for financial assistance or a grant for a site
12 that is not within a priority category enumerated in this section, shall
13 be the date that the additional information is received by the authority.
14 An application shall be deemed complete when all the information
15 required by the authority has been received in the required form.
16 **[Notwithstanding that the New Jersey Redevelopment Authority is**
17 **eligible for grants and financial assistance from the fund, the authority**
18 **shall be awarded a grant or financial assistance based upon the priority**
19 **system for such awards as provided in this subsection.]**

20 b. Within 90 days, for a private entity, or 180 days for a **[municipal**
21 **governmental entity or the New Jersey Redevelopment Authority]**
22 municipality, county, or a redevelopment entity authorized to exercise
23 redevelopment powers pursuant to section 4 of P.L.1992, c.79
24 (C.40A:12A-4), of notice of approval of a financial assistance or grant
25 application, an applicant shall submit to the authority an executed
26 contract for the remediation activities for which the financial assistance
27 or grant application was made. The contract shall be consistent with
28 the terms and conditions for which the financial assistance or grant
29 was rendered. Failure to submit an executed contract within the time
30 provided, without good cause, shall constitute grounds for the
31 alteration of an applicant's priority ranking for the awarding of
32 financial assistance or a grant.

33 (cf: P.L.1996, c.62, s.66)

34

35 6. Section 30 of P.L.1993, c.139 (C.58:10B-8) is amended to read
36 as follows:

37 30. a. The authority shall, by rule or regulation:

38 (1) require a financial assistance or grant recipient to provide to
39 the authority, as necessary or upon request, evidence that financial
40 assistance or grant moneys are being spent for the purposes for which
41 the financial assistance or grant was made, and that the applicant is
42 adhering to all of the terms and conditions of the financial assistance
43 or grant agreement;

44 (2) require the financial assistance or grant recipient to provide
45 access at reasonable times to the subject property to determine
46 compliance with the terms and conditions of the financial assistance or
47 grant;

1 (3) establish a priority system for rendering financial assistance or
2 grants for remediations identified by the department as involving an
3 imminent and significant threat to a public water source, human health,
4 or to a sensitive or significant ecological area pursuant to [paragraph
5 (3) of] subsection a. of section 28 of P.L.1993, c.139 (C.58:10B-6);

6 (4) provide that payment of a grant shall be conditioned upon the
7 subrogation to the department of all rights of the recipient to recover
8 remediation costs from the discharger or other liable parties. All
9 moneys collected in a cost recovery subrogation action shall be
10 deposited into the remediation fund;

11 (5) provide that an applicant for financial assistance or a grant pay
12 a reasonable fee for the application which shall be used by the
13 authority for the administration of the loan and grant program;

14 (6) provide that where financial assistance to a person other than
15 a [municipal governmental entity or the New Jersey Redevelopment
16 Authority] municipality, a county, or a redevelopment entity
17 authorized to exercise redevelopment powers pursuant to section 4 of
18 P.L.1992, c.79 (C.40A:12A-4), is for a portion of the remediation
19 cost, that the proceeds thereof not be disbursed to the applicant until
20 the costs of the remediation for which a remediation funding source
21 has been established has been expended;

22 (7) provide that the amount of a grant for the costs of a remedial
23 action shall not include the cost to remediate a site to meet residential
24 soil remediation standards if the local zoning ordinances adopted
25 pursuant to the "Municipal Land Use Law," P.L.1975, c.291
26 (C.40:55D-1 et seq.) does not allow for residential use;

27 (8) adopt such other requirements as the authority shall deem
28 necessary or appropriate in carrying out the purposes for which the
29 Hazardous Discharge Site Remediation Fund was created.

30 b. An applicant for financial assistance or a grant shall be required
31 to:

32 (1) provide proof, as determined sufficient by the authority, that
33 the applicant, where applicable, cannot establish a remediation funding
34 source for all or part of the remediation costs, as required by section
35 25 of P.L.1993, c.139 (C.58:10B-3). The provisions of this paragraph
36 do not apply to grants to innocent persons, grants for the use of
37 innovative technologies, or grants for the implementation of
38 unrestricted use remedial actions or limited restricted use remedial
39 actions or to financial assistance or grants to [municipal governmental
40 entities or the New Jersey Redevelopment Authority] municipalities,
41 counties, or redevelopment entities authorized to exercise
42 redevelopment powers pursuant to section 4 of P.L.1992, c.79
43 (C.40A:12A-4); and

44 (2) demonstrate the ability to repay the amount of the financial
45 assistance and interest, and, if necessary, to provide adequate
46 collateral to secure the financial assistance amount.

1 c. Information submitted as part of a loan or grant application or
2 agreement shall be deemed a public record subject to the provisions of
3 P.L.1963, c.73 (C.47:1A-1 et seq.).

4 d. In establishing requirements for financial assistance or grant
5 applications and financial assistance or grant agreements, the
6 authority:

7 (1) shall minimize the complexity and costs to applicants or
8 recipients of complying with such requirements;

9 (2) may not require financial assistance or grant conditions that
10 interfere with the everyday normal operations of the recipient's
11 business activities, except to the extent necessary to ensure the
12 recipient's ability to repay the financial assistance and to preserve the
13 value of the loan collateral; and

14 (3) shall expeditiously process all financial assistance or grant
15 applications in accordance with a schedule established by the authority
16 for the review and the taking of final action on the application, which
17 schedule shall reflect the degree of complexity of a financial assistance
18 or grant application.

19 (cf: P.L.1997, c.278, s.15)

20
21 7. (New section) The Department of Environmental Protection
22 shall establish guidelines to establish a procedure for the designation
23 of brownfield development areas. In establishing criteria for the
24 establishment of a brownfield development area, the department shall
25 require:

26 (1) that a brownfield development area includes at least two
27 brownfield sites within a contiguous area;

28 (2) that the boundaries are consistent with the boundaries of a
29 distinct neighborhood;

30 (3) broad community support for the establishment of a brownfield
31 development area; and

32 (4) that the establishment of a brownfield development area will
33 result in a benefit to the public health and safety, and the environment.

34 A brownfield development area shall be designated by the
35 department, in writing, upon application by a person proposing to
36 remediate a site or sites within the area, or upon the department's
37 initiative.

38 The guidelines, and any subsequent revisions thereto, and a list of
39 the brownfield development areas, and any subsequent revisions
40 thereto, and shall be published in the New Jersey Register. The
41 adoption of the guidelines or of the revisions thereto, shall not be
42 subject to the requirements of the "Administrative Procedure Act,"
43 P.L.1968, c.410 (C.52:14B-1 et seq.).

44
45 8. (New section) Any expenditure of grant monies for a remedial
46 action in a brownfield development area by a municipality, county, or

1 redevelopment entity on property in which the municipality, county,
2 or redevelopment entity does not have an ownership interest, shall
3 constitute a debt of the property owner to the fund. The debt shall
4 constitute a lien on the real property at which the remedial action is
5 performed. The lien shall be in the amount of the grant awarded for
6 the remedial action on that property. The lien shall attach when a
7 notice of lien, incorporating the name of the property owner, a
8 description of the property subject to the remedial action and an
9 identification of the amount of the grant awarded from the fund, is
10 duly filed with the county recording officer in the county in which the
11 property is located. The lien filed pursuant to this section which
12 affects the property subject to the remedial action shall create a lien
13 with priority over all other claims or liens which are or have been filed
14 against the property, except if the property comprises six dwelling
15 units or less and is used exclusively for residential purposes, this notice
16 of lien shall not affect any valid lien, right or interest in the property
17 filed in accordance with established procedure prior to the filing of this
18 notice of lien. A lien that is filed on real property pursuant to this
19 section shall be removed upon transfer of ownership of the property
20 to the municipality, county, or redevelopment entity that expended
21 grant monies for a remedial action on that property.

22

23 9. (New section) Notwithstanding the provisions of sections 27
24 and 28 of P.L.1993, c.139 (C.58:10B-5 and 58:10B-6), or any other
25 law, or any rule or regulation adopted pursuant thereto to the
26 contrary, the New Jersey Economic Development Authority may
27 provide grants or recoverable grants from the fund to a municipality
28 that has received a commitment prior to the effective date of this act,
29 from the New Jersey Redevelopment Authority, established pursuant
30 to P.L.1996, c.62 (C.55:19-20 et al.), for funding the implementation
31 of a remedial action and any other activities within the approved scope
32 of work associated with the redevelopment of a brownfield site. Any
33 repayments to the New Jersey Redevelopment Authority for grants or
34 other financial assistance made for brownfields remediation or
35 redevelopment shall be paid to the New Jersey Economic Development
36 Authority and shall be deposited into the fund.

37

38 10. This act shall take effect immediately.

39

40

41

STATEMENT

42

43 This bill makes various changes to the laws governing financial
44 assistance from the Hazardous Discharge Site Remediation Fund.

45 This bill would allow counties and redevelopment entities
46 authorized to exercise redevelopment powers pursuant to section 4 of

1 P.L.1992, c.79 (C.40A:12A-4) to receive financial assistance and
2 grants from the fund. Currently, private parties, municipal
3 governmental entities and the New Jersey Redevelopment Authority
4 are eligible to receive financial assistance and grants from the fund.
5 With regard to the New Jersey Redevelopment Authority (NJRA),
6 because that agency is no longer receiving State funding, the bill
7 would delete all reference of that authority from the law. However,
8 the bill provides that notwithstanding any provisions of any law to the
9 contrary, the Economic Development Authority may provide grants
10 and recoverable grants to any municipality that has received a
11 commitment from the NJRA prior to the effective date of this bill to
12 fund a remedial action and any other approved activities associated
13 with the redevelopment of a contaminated site. Any repayments
14 would be required to be deposited in the fund.

15 The bill allows the Department of Environmental Protection (DEP)
16 to establish brownfield development areas in which grant monies may
17 be awarded to municipalities, counties and redevelopment entities
18 authorized to exercise redevelopment powers pursuant to section 4 of
19 P.L.1992, c.79 for the performance of a remedial action. The bill
20 would allow grants to a municipality, county or a redevelopment entity
21 for a remedial action in a brownfield development area even if the
22 entity does not own the property. In that circumstance, a lien would
23 attach to the property.

24 The bill requires DEP to establish guidelines that establish a
25 procedure for the designation of brownfield development areas. In
26 establishing criteria for the establishment of a brownfield development
27 area, the DEP must require that a brownfield development area include
28 at least two brownfield sites within a contiguous area, that the
29 boundaries are consistent with the boundaries of a distinct
30 neighborhood, broad community support for the establishment of a
31 brownfield development area, and that the establishment of a
32 brownfield development area will result in a benefit to the public
33 health and safety, and the environment. A brownfield development
34 area may be designated by the DEP, in writing, upon application by a
35 person proposing to remediate a site or sites within the area, or upon
36 the department's initiative.

37 The bill would also authorize matching grants to municipalities,
38 counties, and redevelopment entities for up to 25% of the cost of a
39 remedial action for a project that involves the redevelopment of
40 property for affordable housing or for recreation and conservation
41 purposes.

42 The bill would change the funding categories governing the
43 allocation of the use of monies in the fund. The bill would continue
44 the allocation of 10% of the moneys for financial assistance to persons
45 who perform remediations in qualifying municipalities. The bill would
46 require 35% of the monies to be allocated to:

1 (1) municipalities, counties, or redevelopment entities authorized
2 to exercise redevelopment powers pursuant to section 4 of P.L.1992,
3 c.79, for:

4 (a) projects in brownfield development areas;

5 (b) matching grants of up to 25% of the costs of the remedial
6 action for projects involving the redevelopment of contaminated
7 property for recreation and conservation purposes, or for affordable
8 housing pursuant to P.L.1985, c.222 (C.52:27D-301 et seq.);

9 (c) grants for preliminary assessment, site investigation or remedial
10 investigation of a contaminated site;

11 (d) financial assistance for the implementation of a remedial action;
12 or

13 (e) financial assistance for remediation activities at sites that have
14 been contaminated by a discharge of a hazardous substance or
15 hazardous waste, or at which there is an imminent and significant
16 threat of a discharge of a hazardous substance or hazardous waste, and
17 the discharge or threatened discharge poses or would pose an
18 imminent and significant threat to a drinking water source, to human
19 health, or to a sensitive or significant ecological area; or

20 (2) persons for financial assistance for remediation activities at
21 sites that have been contaminated by a discharge of a hazardous
22 substance or hazardous waste, or at which there is an imminent and
23 significant threat of a discharge of a hazardous substance or hazardous
24 waste, and the discharge or threatened discharge poses or would pose
25 an imminent and significant threat to a drinking water source, to
26 human health, or to a sensitive or significant ecological area.

27 At least 10% of the moneys shall be allocated for financial
28 assistance to persons who voluntarily perform a remediation of a
29 hazardous substance or hazardous waste discharge;

30 At least 15% of the moneys shall be allocated for grants to persons
31 who own real property on which there has been a discharge of a
32 hazardous substance or a hazardous waste and that person qualifies for
33 an innocent party grant.

34 At least 10% of the moneys shall be allocated for (a) financial
35 assistance to persons who own and plan to remediate an environmental
36 opportunity zone for which an exemption from real property taxes has
37 been granted pursuant to section 5 of P.L.1995, c.413 (C.54:4-3.154),
38 or (b) matching grants for up to 25% of the project costs to qualifying
39 persons, municipalities, counties, and redevelopment entities
40 authorized to exercise redevelopment powers pursuant to section 4 of
41 P.L.1992, c.79, who propose to perform a remedial action that uses an
42 innovative technology, or for the implementation of a limited restricted
43 use remedial action or an unrestricted use remedial action.

44 Twenty percent of the moneys in the remediation fund shall be
45 allocated for financial assistance or grants for any of the above
46 purposes.

1 The bill would establish that the authority give funding priority first
2 to sites on which there has been a discharge and the discharge poses
3 and imminent and significant threat to a drinking water source, to
4 human health, or to a sensitive or significant ecological area and
5 second, to sites in areas designated as Planning Area 1 (Metropolitan),
6 Planning Area 2 (Suburban), or designated centers or areas receiving
7 plan endorsement, pursuant to the "State Planning Act," P.L.1985,
8 c.398 (C.52:18A-196 et seq.), and sites in brownfield development
9 areas.

10 The bill would eliminate the funding allocation for financial
11 assistance to persons required to perform a remediation at an industrial
12 establishment pursuant to P.L.1983, c.330 (C.13:1K-9 et seq.).
13 Further, the bill would allow local government entities to use financial
14 assistance and grant money for a remediation on the entity's place of
15 business.

16 The bill would establish that grants to municipalities, counties and
17 redevelopment entities may not exceed 50% of the total costs of
18 remediation at any one site, and the total financial assistance and
19 grants to any one of those entities may not exceed \$2 million in any
20 one year. Finally, the bill establishes a new limit on the total amount
21 in grants that may be awarded in any one year at 70% of total amount
22 of grants and loans awarded in that year.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 277

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 19, 2005

The Assembly Environment and Solid Waste Committee reports favorably Senate Bill No. 277 (1R) with committee amendments.

As amended, this bill makes various changes to the laws governing financial assistance from the Hazardous Discharge Site Remediation Fund.

This bill would allow counties and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) to receive financial assistance and grants from the fund. Currently, private parties, municipal governmental entities and the New Jersey Redevelopment Authority are eligible to receive financial assistance and grants from the fund. With regard to the New Jersey Redevelopment Authority (NJRA), because that agency is no longer receiving State funding, the bill would delete all reference of that authority from the law.

The bill allows the Department of Environmental Protection (DEP) to establish brownfield development areas in which grant monies may be awarded to municipalities, counties and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79, for the performance of a remedial action. The bill would allow grants to a municipality, county or a redevelopment entity for a remedial action in a brownfield development area even if the entity does not own the property. In that circumstance, a lien would attach to the property. The bill would provide that in addition to the \$3 million limitation on the total amount of financial assistance and grants that may be awarded in any one year pursuant to subsection b. of section 28 of P.L.1993, c.139 (C.58:10B-6), the authority may award an additional amount of financial assistance and grants in any one year, up to \$2 million, to any one municipality, county, or redevelopment entity for the remediation of property in a brownfield development area.

The bill requires DEP to establish guidelines that establish a

procedure for the designation of brownfield development areas. In establishing criteria for the establishment of a brownfield development area, the DEP must require that a brownfield development area include at least two brownfield sites within a contiguous area, that the boundaries are consistent with the boundaries of a distinct neighborhood, that there is broad community support for the establishment of a brownfield development area, and that the establishment of a brownfield development area will result in a benefit to the public health and safety, and the environment. A brownfield development area may be designated by the DEP, in writing, upon application by a person proposing to remediate a site or sites within the area, or upon the department's initiative.

The bill would also authorize matching grants to municipalities, counties, and redevelopment entities for up to 50% of the cost of a remedial action for a project that involves the redevelopment of property for affordable housing. The bill would also authorize matching grants to municipalities, counties, and redevelopment entities for up to 75% of the cost of a remedial action for a project that involves the redevelopment of property for recreation and conservation purposes.

The bill would change the funding categories governing the allocation of the use of monies in the fund. The bill eliminates the fixed percentages for funding categories. The bill would allocate moneys for financial assistance to persons who perform remediations in qualifying municipalities. The bill would also allocate monies to:

(1) municipalities, counties, or redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79, for:

- (a) projects in brownfield development areas;
 - (b) matching grants of up to 75% of the costs of the remedial action for projects involving the redevelopment of contaminated property for recreation and conservation purposes;
 - (c) matching grants of up to 50% of the costs of the remedial action for projects involving the redevelopment of contaminated property for affordable housing pursuant to P.L.1985, c.222 (C.52:27D-301 et seq.);
 - (d) grants for preliminary assessment, site investigation or remedial investigation of a contaminated site;
 - (e) financial assistance for the implementation of a remedial action;
- or

(f) financial assistance for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area; or

(2) persons for financial assistance for remediation activities at

sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area.

The bill would allocate moneys for financial assistance to persons who voluntarily perform a remediation of a hazardous substance or hazardous waste discharge and grants to persons who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant.

Moneys would be allocated for (a) financial assistance to persons who own and plan to remediate an environmental opportunity zone for which an exemption from real property taxes has been granted pursuant to section 5 of P.L.1995, c.413 (C.54:4-3.154), or (b) matching grants for up to 25% of the project costs to qualifying persons, municipalities, counties, and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79, who propose to perform a remedial action that uses an innovative technology, or for the implementation of a limited restricted use remedial action or an unrestricted use remedial action.

Moneys in the remediation fund shall be allocated for financial assistance or grants for any of the above purposes.

The bill would establish that the authority give funding priority first to sites on which there has been a discharge and the discharge poses and imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area and second, to sites in areas designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or designated centers or areas receiving plan endorsement, pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.), to sites that the Brownfields Redevelopment Task Force has determined to be of immediate economic development potential, and sites in brownfield development areas.

The bill would eliminate the funding allocation for financial assistance to persons required to perform a remediation at an industrial establishment pursuant to P.L.1983, c.330 (C.13:1K-9 et seq.). Further, the bill would allow local government entities to use financial assistance and grant money for a remediation on the entity's place of business.

The bill would establish that grants to municipalities, counties and redevelopment entities may not exceed 75% of the total costs of remediation at any one site, and the total financial assistance and grants to any one of those entities may not exceed \$3 million in any one year.

Finally, the bill would require the Department of Environmental Protection, in consultation with the New Jersey Economic

Development Authority, to develop a pilot program to award grants from the Hazardous Discharge Site Remediation Fund to nonprofit organizations described in section 501(c)(3) of the federal Internal Revenue Code, 26 U.S.C. s.501(c)(3), that are exempt from taxation pursuant to section 501(a) of the federal Internal Revenue Code, for the preliminary assessment, site investigation, and remedial investigation of real property that has been contaminated or is suspected of being contaminated by the discharge of a hazardous substance. All of the limitations and conditions for the award of financial assistance and grants applicable to municipalities pursuant to the provisions of the "Brownfield and Contaminated Site Remediation Act" would apply to the award of grants to a nonprofit organization pursuant to this section. The total amount awarded pursuant to this pilot program shall not exceed \$5,000,000.

The department would be required to prepare, prior to March 1 of each year, an annual report on the pilot program, that provides a description of the projects for which grants have been awarded, the grant recipients for each project, the owner of the property being remediated, the amount of each grant, and the location of the property being remediated.

As reported by the committee, Senate Bill No. 277 (1R) is identical to Assembly Bill No. 2815 as amended and reported by the committee.

COMMITTEE AMENDMENTS

Committee amendments to the bill:

- 1) provide matching grants of up to 75% of the costs of the remedial action for projects involving the redevelopment of contaminated property for recreation and conservation purposes; and
- 2) delete the language that establishes a limit on the total amount in grants that may be awarded in any one year at 70% of total amount of grants and loans awarded in that year.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[Second Reprint]

SENATE, No. 277

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 22, 2005

The Assembly Budget Committee reports favorably Senate Bill No. 277 (2R), with committee amendments.

Senate Bill No. 277 (2R), as amended, makes various changes to the laws governing financial assistance from the Hazardous Discharge Site Remediation Fund.

This bill allows counties and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) to receive financial assistance and grants from the Hazardous Discharge Site Remediation Fund. Currently, private parties, municipal governmental entities and the New Jersey Redevelopment Authority are eligible to receive financial assistance and grants from the fund. The bill deletes all references to the New Jersey Redevelopment Authority from the law because that agency is no longer receiving State funding.

The bill allows the Department of Environmental Protection (DEP) to establish brownfield development areas in which grant monies may be awarded to municipalities, counties and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79, for the performance of a remedial action. The bill would allow grants to a municipality, county or a redevelopment entity for a remedial action in a brownfield development area even if the entity does not own the property. In that circumstance, a lien will attach to the property. The bill provides that in addition to \$3 million, the limit on the total amount of financial assistance and grants that may be awarded in any one year pursuant to subsection b. of section 28 of P.L.1993, c.139 (C.58:10B-6), the New Jersey Economic Development Authority (EDA) may award an additional amount of financial assistance and grants in any one year, up to \$2 million, to any one municipality, county, or redevelopment entity for the remediation of property in a brownfield development area.

The bill requires DEP to establish guidelines for the designation of brownfield development areas. In establishing criteria for the establishment of a brownfield development area, the DEP must require

that a brownfield development area include at least two brownfield sites within a contiguous area, that the boundaries are consistent with the boundaries of a distinct neighborhood, that there is broad community support for the establishment of a brownfield development area, and that the establishment of a brownfield development area will result in a benefit to the public health and safety, and the environment. A brownfield development area may be designated by the DEP, in writing, upon application by a person proposing to remediate a site or sites within the area, or upon the department's initiative.

The bill also authorizes matching grants to municipalities, counties, and redevelopment entities for up to 50% of the cost of a remedial action for a project that involves the redevelopment of property for affordable housing or for up to 75% of the cost of a remedial action for a project that involves the redevelopment of property for recreation and conservation purposes.

The bill changes the funding categories governing the allocation of the use of monies in the fund. The bill eliminates the fixed percentages for funding categories. The bill allocates monies for financial assistance to persons who perform remediations in qualifying municipalities. The bill also allocate monies to:

(1) municipalities, counties, or redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79, for:

- (a) projects in brownfield development areas;
 - (b) matching grants of up to 75% of the costs of the remedial action for projects involving the redevelopment of contaminated property for recreation and conservation purposes;
 - (c) matching grants of up to 50% of the costs of the remedial action for projects involving the redevelopment of contaminated property for affordable housing pursuant to P.L.1985, c.222 (C.52:27D-301 et seq.);
 - (d) grants for preliminary assessment, site investigation or remedial investigation of a contaminated site;
 - (e) financial assistance for the implementation of a remedial action;
- or

(f) financial assistance for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area; or

(2) persons for financial assistance for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area.

The bill allocates monies for financial assistance to persons who voluntarily perform a remediation of a hazardous substance or hazardous waste discharge and grants to persons who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant.

Monies would be allocated for (a) financial assistance to persons who own and plan to remediate an environmental opportunity zone for which an exemption from real property taxes has been granted pursuant to section 5 of P.L.1995, c.413 (C.54:4-3.154), or (b) matching grants for up to 25% of the project costs to qualifying persons, municipalities, counties, and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79, who propose to perform a remedial action that uses an innovative technology, or for the implementation of a limited restricted use remedial action or an unrestricted use remedial action.

Monies in the remediation fund shall be allocated for financial assistance or grants for any of the above purposes.

The bill requires the EDA to give funding priority: first, to sites on which there has been a discharge and the discharge poses and imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area; and second, to sites in areas designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or designated centers or areas receiving plan endorsement, pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.), to sites that the Brownfields Redevelopment Task Force has determined to be of immediate economic development potential, or sites in brownfield development areas.

The bill eliminates the funding allocation for financial assistance to persons required to perform a remediation at an industrial establishment pursuant to P.L.1983, c.330 (C.13:1K-9 et seq.). Further, the bill allows local government entities to use financial assistance and grant money for a remediation on the entity's place of business.

The bill establishes that grants to municipalities, counties and redevelopment entities may not exceed 75% of the total costs of remediation at any one site, and the total financial assistance and grants to any one of those entities may not exceed \$3 million in any one year.

Finally, the bill requires DEP, in consultation with the EDA, to develop a pilot program to award grants from the Hazardous Discharge Site Remediation Fund to nonprofit charitable organizations, for the preliminary assessment, site investigation, and remedial investigation of real property that has been contaminated or is suspected of being contaminated by the discharge of a hazardous substance. All of the limitations and conditions for the award of financial assistance and grants applicable to municipalities pursuant to the provisions of the "Brownfield and Contaminated Site Remediation

Act" will apply to the award of grants to a nonprofit organization pursuant to this pilot program. The total amount awarded pursuant to the pilot program may not exceed \$5,000,000.

The bill requires the DEP to prepare, prior to March 1 of each year, an annual report on the pilot program, that provides a description of the projects for which grants have been awarded, the grant recipients for each project, the owner of the property being remediated, the amount of each grant, and the location of the property being remediated.

As amended and reported by the committee, this bill is identical to Assembly Bill No. 2815 (1R) as also amended and reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services estimates that the bill will have no fiscal impact on State funds because it is primarily concerned with the redistribution and reallocation of monies available for brownfields redevelopment projects from the Hazardous Discharge Site Remediation Fund. The fund, a revolving account managed by the EDA, was supported in the past from bond funds and is now funded by annual allocations from constitutionally dedicated corporation business tax revenues; no General Fund monies are used for this program.

COMMITTEE AMENDMENTS:

The amendments reinsert a previously deleted provision that limits the total amount in grants that may be awarded in any one year to 70% of total amount of grants and loans awarded in that year.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 277

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 15, 2004

The Senate Environment Committee favorably reports Senate Bill No. 277 with committee amendments.

This bill makes various changes to the laws governing financial assistance from the Hazardous Discharge Site Remediation Fund.

This bill would allow counties and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) to receive financial assistance and grants from the fund. Currently, private parties, municipal governmental entities and the New Jersey Redevelopment Authority are eligible to receive financial assistance and grants from the fund. With regard to the New Jersey Redevelopment Authority (NJRA), because that agency is no longer receiving State funding, the bill would delete all reference of that authority from the law.

The bill allows the Department of Environmental Protection (DEP) to establish brownfield development areas in which grant monies may be awarded to municipalities, counties and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79, for the performance of a remedial action. The bill would allow grants to a municipality, county or a redevelopment entity for a remedial action in a brownfield development area even if the entity does not own the property. In that circumstance, a lien would attach to the property. The bill, as amended, would provide that in addition to the \$3 million limitation on the total amount of financial assistance and grants that may be awarded in any one year pursuant to subsection b. of section 28 of P.L.1993, c.139 (C.58:10B-6), the authority may award an additional amount of financial assistance and grants in any one year, up to \$2 million, to any one municipality, county, or redevelopment entity for the remediation of property in a brownfield development area.

The bill requires DEP to establish guidelines that establish a procedure for the designation of brownfield development areas. In establishing criteria for the establishment of a brownfield development area, the DEP must require that a brownfield development area include at least two brownfield sites within a contiguous area, that the

boundaries are consistent with the boundaries of a distinct neighborhood, that there is broad community support for the establishment of a brownfield development area, and that the establishment of a brownfield development area will result in a benefit to the public health and safety, and the environment. A brownfield development area may be designated by the DEP, in writing, upon application by a person proposing to remediate a site or sites within the area, or upon the department's initiative.

The bill, as amended, would also authorize matching grants to municipalities, counties, and redevelopment entities for up to 50% of the cost of a remedial action for a project that involves the redevelopment of property for affordable housing or for recreation and conservation purposes.

The bill would change the funding categories governing the allocation of the use of monies in the fund. The bill, as amended, eliminates the fixed percentages for funding categories. The bill would allocate moneys for financial assistance to persons who perform remediations in qualifying municipalities. The bill would also allocate monies to:

(1) municipalities, counties, or redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79, for:

(a) projects in brownfield development areas;
 (b) matching grants of up to 50% of the costs of the remedial action for projects involving the redevelopment of contaminated property for recreation and conservation purposes, or for affordable housing pursuant to P.L.1985, c.222 (C.52:27D-301 et seq.);

(c) grants for preliminary assessment, site investigation or remedial investigation of a contaminated site;

(d) financial assistance for the implementation of a remedial action;
 or

(e) financial assistance for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area; or

(2) persons for financial assistance for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area.

As amended, the bill would allocate moneys for financial assistance to persons who voluntarily perform a remediation of a hazardous substance or hazardous waste discharge and grants to persons who

own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant.

Moneys would be allocated for (a) financial assistance to persons who own and plan to remediate an environmental opportunity zone for which an exemption from real property taxes has been granted pursuant to section 5 of P.L.1995, c.413 (C.54:4-3.154), or (b) matching grants for up to 25% of the project costs to qualifying persons, municipalities, counties, and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79, who propose to perform a remedial action that uses an innovative technology, or for the implementation of a limited restricted use remedial action or an unrestricted use remedial action.

Moneys in the remediation fund shall be allocated for financial assistance or grants for any of the above purposes.

The bill would establish that the authority give funding priority first to sites on which there has been a discharge and the discharge poses and imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area and second, to sites in areas designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or designated centers or areas receiving plan endorsement, pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.), to sites that the Brownfields Redevelopment Task Force has determined to be of immediate economic development potential, and sites in brownfield development areas.

The bill would eliminate the funding allocation for financial assistance to persons required to perform a remediation at an industrial establishment pursuant to P.L.1983, c.330 (C.13:1K-9 et seq.). Further, the bill would allow local government entities to use financial assistance and grant money for a remediation on the entity's place of business.

The bill would establish that grants to municipalities, counties and redevelopment entities may not exceed 75% of the total costs of remediation at any one site, and the total financial assistance and grants to any one of those entities may not exceed \$3 million in any one year. Finally, the bill establishes a new limit on the total amount in grants that may be awarded in any one year at 70% of total amount of grants and loans awarded in that year.

Finally, the bill, as amended, would require the Department of Environmental Protection, in consultation with the New Jersey Economic Development Authority, to develop a pilot program to award grants from the Hazardous Discharge Site Remediation Fund to nonprofit organizations described in section 501(c)(3) of the federal Internal Revenue Code, 26 U.S.C. s.501(c)(3), that are exempt from taxation pursuant to section 501(a) of the federal Internal Revenue Code, for the preliminary assessment, site investigation, and remedial investigation of real property that has been contaminated or is

suspected of being contaminated by the discharge of a hazardous substance. All of the limitations and conditions for the award of financial assistance and grants applicable to municipalities pursuant to the provisions of the "Brownfield and Contaminated Site Remediation Act" would apply to the award of grants to a nonprofit organization pursuant to this section. The total amount awarded pursuant to this pilot program shall not exceed \$5,000,000.

The department would be required to prepare, prior to March 1 of each year, an annual report on the pilot program, that provides of description of the projects for which grants have been awarded, the grant recipients for each project, the owner of the property being remediated, the amount of each grant, and the location of the property being remediated.

The committee amendments would:

(1) allow municipalities, counties and redevelopment entities to be awarded a grant for remedial investigation, for a remedial action in a brownfield development area, or for a remedial action on property that will be redeveloped for recreation and conservation purposes, or for affordable housing, and would allow those grants to be provided even if the entity does not own the property, as long as the entity holds a tax sale certificate, or has passed an ordinance or resolution to acquire the property;

(2) authorize grants to municipalities, counties and redevelopment entities for up to 50% of the costs of a remedial action on property that will be redeveloped for recreation and conservation purposes, or for affordable housing, provided that the total cumulative annual amount for grants from the fund for remedial action on properties redeveloped for recreation and conservation purposes may not exceed \$5 million per year;

(3) require the conveyance of a development restriction on property for which a municipality, county or and redevelopment entity is awarded a grant for remedial action on property redeveloped for recreation and conservation purposes;

(4) raise the cumulative amount of financial assistance and grants to a municipality, county or redevelopment entity in any one year from \$2 million to \$3 million, and allow an additional \$2 million per year for projects in a brownfield development area;

(5) raise the per project grant limit for to municipalities, counties and redevelopment entities from 50% of remediation costs to 75% of remediation costs;

(6) eliminate the allocation percentages for each category of funding, eliminate the requirement for DEP and the New Jersey Economic Development Authority (EDA) to make a written determination to change funding allocations, and require a written report to the Senate Environment Committee and the Assembly Environment and Solid Waste Committee detailing the allocation and expenditures of moneys from the fund;

(7) delete section 9 of the bill which is no longer necessary due to

the enactment of section 1 of P.L.2003, c.121;

(8) allow the DEP, in consultation with the EDA, to establish a pilot program to award grants from the fund to nonprofit organizations for preliminary assessment, site investigation and remedial investigation.

This bill was pre-filed for introduction in the 2004-2005 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 277

STATE OF NEW JERSEY

DATED: FEBRUARY 7, 2005

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 277 (1R).

This bill makes various changes to the laws governing financial assistance from the Hazardous Discharge Site Remediation Fund.

This bill would allow counties and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) to receive financial assistance and grants from the fund. Currently, private parties, municipal governmental entities and the New Jersey Redevelopment Authority are eligible to receive financial assistance and grants from the fund. With regard to the New Jersey Redevelopment Authority (NJRA), because that agency is no longer receiving State funding, the bill would delete all reference of that authority from the law.

The bill allows the Department of Environmental Protection (DEP) to establish brownfield development areas in which grant monies may be awarded to municipalities, counties and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79, for the performance of a remedial action. The bill would allow grants to a municipality, county or a redevelopment entity for a remedial action in a brownfield development area even if the entity does not own the property. In that circumstance, a lien would attach to the property. The bill would provide that in addition to the \$3 million limitation on the total amount of financial assistance and grants that may be awarded in any one year pursuant to subsection b. of section 28 of P.L.1993, c.139 (C.58:10B-6), the authority may award an additional amount of financial assistance and grants in any one year, up to \$2 million, to any one municipality, county, or redevelopment entity for the remediation of property in a brownfield development area.

The bill requires DEP to establish guidelines that establish a procedure for the designation of brownfield development areas. In establishing criteria for the establishment of a brownfield development area, the DEP must require that a brownfield development area include at least two brownfield sites within a contiguous area, that the boundaries are consistent with the boundaries of a distinct

neighborhood, that there is broad community support for the establishment of a brownfield development area, and that the establishment of a brownfield development area will result in a benefit to the public health and safety, and the environment. A brownfield development area may be designated by the DEP, in writing, upon application by a person proposing to remediate a site or sites within the area, or upon the department's initiative.

The bill would also authorize matching grants to municipalities, counties, and redevelopment entities for up to 50% of the cost of a remedial action for a project that involves the redevelopment of property for affordable housing or for recreation and conservation purposes.

The bill would change the funding categories governing the allocation of the use of monies in the fund. The bill eliminates the fixed percentages for funding categories. The bill would allocate moneys for financial assistance to persons who perform remediations in qualifying municipalities. The bill would also allocate monies to:

(1) municipalities, counties, or redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79, for:

(a) projects in brownfield development areas;

(b) matching grants of up to 50% of the costs of the remedial action for projects involving the redevelopment of contaminated property for recreation and conservation purposes, or for affordable housing pursuant to P.L.1985, c.222 (C.52:27D-301 et seq.);

(c) grants for preliminary assessment, site investigation or remedial investigation of a contaminated site;

(d) financial assistance for the implementation of a remedial action;

or

(e) financial assistance for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area; or

(2) persons for financial assistance for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area.

The bill would allocate moneys for financial assistance to persons who voluntarily perform a remediation of a hazardous substance or hazardous waste discharge and grants to persons who own real property on which there has been a discharge of a hazardous substance

or a hazardous waste and that person qualifies for an innocent party grant.

Moneys would be allocated for (a) financial assistance to persons who own and plan to remediate an environmental opportunity zone for which an exemption from real property taxes has been granted pursuant to section 5 of P.L.1995, c.413 (C.54:4-3.154), or (b) matching grants for up to 25% of the project costs to qualifying persons, municipalities, counties, and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79, who propose to perform a remedial action that uses an innovative technology, or for the implementation of a limited restricted use remedial action or an unrestricted use remedial action.

Moneys in the remediation fund shall be allocated for financial assistance or grants for any of the above purposes.

The bill would establish that the authority give funding priority first to sites on which there has been a discharge and the discharge poses and imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area and second, to sites in areas designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or designated centers or areas receiving plan endorsement, pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.), to sites that the Brownfields Redevelopment Task Force has determined to be of immediate economic development potential, and sites in brownfield development areas.

The bill would eliminate the funding allocation for financial assistance to persons required to perform a remediation at an industrial establishment pursuant to P.L.1983, c.330 (C.13:1K-9 et seq.). Further, the bill would allow local government entities to use financial assistance and grant money for a remediation on the entity's place of business.

The bill would establish that grants to municipalities, counties and redevelopment entities may not exceed 75% of the total costs of remediation at any one site, and the total financial assistance and grants to any one of those entities may not exceed \$3 million in any one year. It establishes a new limit on the total amount in grants that may be awarded in any one year at 70% of total amount of grants and loans awarded in that year.

Finally, the bill would require the Department of Environmental Protection, in consultation with the New Jersey Economic Development Authority, to develop a pilot program to award grants from the Hazardous Discharge Site Remediation Fund to nonprofit organizations described in section 501(c)(3) of the federal Internal Revenue Code, 26 U.S.C. s.501(c)(3), that are exempt from taxation pursuant to section 501(a) of the federal Internal Revenue Code, for the preliminary assessment, site investigation, and remedial investigation of real property that has been contaminated or is suspected of being contaminated by the discharge of a hazardous

substance. All of the limitations and conditions for the award of financial assistance and grants applicable to municipalities pursuant to the provisions of the "Brownfield and Contaminated Site Remediation Act" would apply to the award of grants to a nonprofit organization pursuant to this section. The total amount awarded pursuant to this pilot program shall not exceed \$5,000,000.

The department would be required to prepare, prior to March 1 of each year, an annual report on the pilot program, that provides of description of the projects for which grants have been awarded, the grant recipients for each project, the owner of the property being remediated, the amount of each grant, and the location of the property being remediated.

FISCAL IMPACT

This bill has not been certified as having a fiscal impact.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 277

STATE OF NEW JERSEY

211th LEGISLATURE

DATED: JUNE 14, 2005

SUMMARY

- Synopsis:** Revises laws concerning financial assistance for contaminated site remediation.
- Type of Impact:** Redistribution of authorized expenditures from the Hazardous Discharge Site Remediation Fund.
- Agencies Affected:** Department of Environmental Protection (DEP), N.J. Economic Development Authority, participating counties and municipalities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	No Impact-See Comments Below		
Local Revenue	Indeterminate-See Comments Below		

- ! The bill allows counties and eligible redevelopment agencies to receive financial assistance for brownfields redevelopment projects from the Hazardous Discharge Site Remediation Fund. Currently, only private parties and municipalities are eligible for this assistance.
- ! The Hazardous Discharge Site Remediation Fund was established by P.L.1993, c.139 and is managed by the N.J. Economic Development Authority (EDA). It is primarily supported by annual allocations from constitutionally dedicated Corporation Business Tax revenues.
- ! The bill increases the \$3 million limitation on financial assistance that may be awarded in any one year by an additional \$2 million, and offers incentives to develop affordable housing and recreational or conservation areas.
- ! The Office of Legislative Services estimates that the bill will have no effect on State funds. It will benefit current and new recipients of brownfields project aid through the expanded distribution of financial assistance as provided under the bill.

BILL DESCRIPTION

Senate Bill No. 277 (2R) of 2004 makes various changes to the laws governing financial

assistance for brownfields redevelopment from the Hazardous Discharge Site Remediation Fund. The bill would allow counties and authorized redevelopment entities to receive financial assistance from the fund. Currently, private parties and municipal governmental entities are eligible to receive such financial assistance. The bill would also increase the \$3 million limitation on the total amount of financial assistance that may be awarded in any one year by an additional \$2 million.

The bill requires the DEP to establish guidelines that establish a procedure for the designation of brownfield development areas. The bill would also authorize matching grants to municipalities, counties, and redevelopment entities for up to 50 percent of the cost of a remedial action that involves the redevelopment of property for affordable housing, and up to 75 percent of the cost of a remedial action that involves the redevelopment of property for recreation and conservation purposes.

The bill would change the funding categories governing the allocation of the use of monies in the fund and would eliminate the fixed percentages for funding categories. It would allocate monies for financial assistance to persons who perform remediations in qualifying municipalities and for other various purposes.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services estimates that the bill will have no fiscal impact on State funds because it is primarily concerned with the redistribution and reallocation of monies available for brownfields redevelopment projects from the Hazardous Discharge Site Remediation Fund. The fund, a revolving account managed by the N.J. EDA, was supported in the past from bond funds and is now funded by annual allocations from constitutionally dedicated Corporation Business Tax revenues. Thus, no General Fund monies are used for this particular program.

The bill should benefit counties, authorized redevelopment agencies and nonprofit organizations because they would now be eligible for financial assistance from the fund. Municipalities would also benefit due to the increase in funding award limits afforded under the bill. Any costs associated with additional responsibilities given to the DEP or the EDA under the bill should be covered by assessments to the fund and financial aid applicant fees.

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. 2815

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED MAY 13, 2004

Sponsored by:

Assemblyman LOUIS MANZO

District 31 (Hudson)

Assemblyman ANTHONY CHIAPPONE

District 31 (Hudson)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

Assemblyman JOSEPH VAS

District 19 (Middlesex)

Assemblyman PETER C. EAGLER

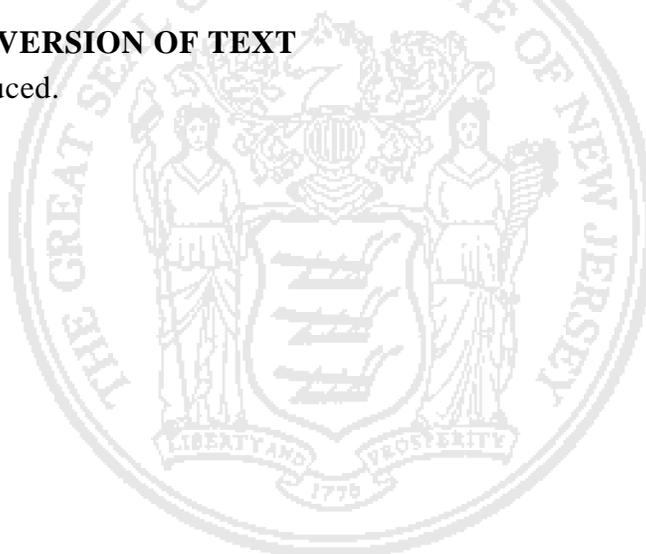
District 34 (Essex and Passaic)

SYNOPSIS

Revises laws concerning financial assistance for contaminated site remediation.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/16/2004)

1 AN ACT concerning the remediation of contaminated sites, and
2 amending and supplementing P.L.1993, c.139.

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

6
7 1. Section 23 of P.L.1993, c.139 (C.58:10B-1) is amended to read
8 as follows:

9 23. As used in sections 23 through 43 and section 45 of P.L.1993,
10 c.139 (C.58:10B-1 et seq.), as may be amended and supplemented:

11 "Area of concern" means any location where contaminants are or
12 were known or suspected to have been discharged, generated,
13 manufactured, refined, transported, stored, handled, treated, or
14 disposed, or where contaminants have or may have migrated;

15 "Authority" means the New Jersey Economic Development
16 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);

17 "Brownfield development area" means an area that has been so
18 designated by the department, in writing, pursuant to the provisions of
19 section 7 of P.L. , c. (C.) (now in the Legislature as this bill);

20 "Brownfield site" means any former or current commercial or
21 industrial site that is currently vacant or underutilized and on which
22 there has been, or there is suspected to have been, a discharge of a
23 contaminant;

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

29 "Department" means the Department of Environmental Protection;

30 "Discharge" means an intentional or unintentional action or
31 omission resulting in the releasing, spilling, leaking, pumping, pouring,
32 emitting, emptying, or dumping of a contaminant onto the land or into
33 the waters of the State;

34 "Engineering controls" means any mechanism to contain or stabilize
35 contamination or ensure the effectiveness of a remedial action.
36 Engineering controls may include, without limitation, caps, covers,
37 dikes, trenches, leachate collection systems, signs, fences and physical
38 access controls;

39 "Environmental opportunity zone" has the meaning given that term
40 pursuant to section 3 of P.L.1995, c.413 (C.54:4-3.152);

41 "Financial assistance" means loans or loan guarantees;

42 "Institutional controls" means a mechanism used to limit human
43 activities at or near a contaminated site, or to ensure the effectiveness

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

Matter underlined thus is new matter.

1 of the remedial action over time, when contaminants remain at a
2 contaminated site in levels or concentrations above the applicable
3 remediation standard that would allow unrestricted use of that
4 property. Institutional controls may include, without limitation,
5 structure, land, and natural resource use restrictions, well restriction
6 areas, and deed notices;

7 "Limited restricted use remedial action" means any remedial action
8 that requires the continued use of institutional controls but does not
9 require the use of an engineering control;

10 "No further action letter" means a written determination by the
11 department that based upon an evaluation of the historical use of a
12 particular site, or of an area of concern or areas of concern at that site,
13 as applicable, and any other investigation or action the department
14 deems necessary, there are no discharged contaminants present at the
15 site, at the area of concern or areas of concern, at any other site to
16 which a discharge originating at the site has migrated, or that any
17 discharged contaminants present at the site or that have migrated from
18 the site have been remediated in accordance with applicable
19 remediation regulations;

20 "Person" means an individual, corporation, company, partnership,
21 firm, or other private business entity;

22 "Preliminary assessment" means the first phase in the process of
23 identifying areas of concern and determining whether contaminants are
24 or were present at a site or have migrated or are migrating from a site,
25 and shall include the initial search for and evaluation of, existing site
26 specific operational and environmental information, both current and
27 historic, to determine if further investigation concerning the
28 documented, alleged, suspected or latent discharge of any contaminant
29 is required. The evaluation of historic information shall be conducted
30 from 1932 to the present, except that the department may require the
31 search for and evaluation of additional information relating to
32 ownership and use of the site prior to 1932 if such information is
33 available through diligent inquiry of the public records;

34 "Recreation and conservation purposes" means the use of lands for
35 beaches, biological or ecological study, boating, camping, fishing,
36 forests, greenways, hunting, natural areas, parks, playgrounds,
37 protecting historic properties, water reserves, watershed protection,
38 wildlife preserves, active sports, or a similar use for either public
39 outdoor recreation or conservation of natural resources, or both;

40 "Remedial action" means those actions taken at a site or offsite if
41 a contaminant has migrated or is migrating therefrom, as may be
42 required by the department, including the removal, treatment,
43 containment, transportation, securing, or other engineering or
44 treatment measures, whether to an unrestricted use or otherwise,
45 designed to ensure that any discharged contaminant at the site or that
46 has migrated or is migrating from the site, is remediated in compliance

1 with the applicable health risk or environmental standards;

2 "Remedial action workplan" means a plan for the remedial action to
3 be undertaken at a site, or at any area to which a discharge originating
4 at a site is migrating or has migrated; a description of the remedial
5 action to be used to remediate a site; a time schedule and cost estimate
6 of the implementation of the remedial action; and any other
7 information the department deems necessary;

8 "Remedial investigation" means a process to determine the nature
9 and extent of a discharge of a contaminant at a site or a discharge of
10 a contaminant that has migrated or is migrating from the site and the
11 problems presented by a discharge, and may include data collected,
12 site characterization, sampling, monitoring, and the gathering of any
13 other sufficient and relevant information necessary to determine the
14 necessity for remedial action and to support the evaluation of remedial
15 actions if necessary;

16 "Remediation" or "remediate" means all necessary actions to
17 investigate and clean up or respond to any known, suspected, or
18 threatened discharge of contaminants, including, as necessary, the
19 preliminary assessment, site investigation, remedial investigation, and
20 remedial action, provided, however, that "remediation" or "remediate"
21 shall not include the payment of compensation for damage to, or loss
22 of, natural resources;

23 "Remediation fund" means the Hazardous Discharge Site
24 Remediation Fund established pursuant to section 26 of P.L.1993,
25 c.139 (C.58:10B-4);

26 "Remediation funding source" means the methods of financing the
27 remediation of a discharge required to be established by a person
28 performing the remediation pursuant to section 25 of P.L.1993, c.139
29 (C.58:10B-3);

30 "Remediation standards" means the combination of numeric
31 standards that establish a level or concentration, and narrative
32 standards to which contaminants must be treated, removed, or
33 otherwise cleaned for soil, groundwater, or surface water, as provided
34 by the department pursuant to section 35 of P.L.1993, c.139
35 (C.58:10B-12) in order to meet the health risk or environmental
36 standards;

37 "Restricted use remedial action" means any remedial action that
38 requires the continued use of engineering and institutional controls in
39 order to meet the established health risk or environmental standards;

40 "Site investigation" means the collection and evaluation of data
41 adequate to determine whether or not discharged contaminants exist
42 at a site or have migrated or are migrating from the site at levels in
43 excess of the applicable remediation standards. A site investigation
44 shall be developed based upon the information collected pursuant to
45 the preliminary assessment;

46 "Unrestricted use remedial action" means any remedial action that

1 does not require the continued use of engineering or institutional
2 controls in order to meet the established health risk or environmental
3 standards;

4 "Voluntarily perform a remediation" means performing a
5 remediation without having been ordered or directed to do so by the
6 department or by a court and without being compelled to perform a
7 remediation pursuant to the provisions of P.L.1983, c.330 (C.13:1K-6
8 et al.).

9 (cf: P.L.2001, c.154, s.3)

10

11 2. Section 26 of P.L.1993, c.139 (C.58:10B-4) is amended to read
12 as follows:

13 26. a. There is established in the New Jersey Economic
14 Development Authority a special, revolving fund to be known as the
15 Hazardous Discharge Site Remediation Fund. Moneys in the
16 remediation fund shall be dedicated for the provision of financial
17 assistance or grants to [municipal governmental entities, the New
18 Jersey Redevelopment Authority, individuals, corporations,
19 partnerships, and other private business entities] municipalities,
20 counties, redevelopment entities authorized to exercise redevelopment
21 powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), and
22 persons , for the purpose of financing remediation activities at sites at
23 which there is, or is suspected of being, a discharge of hazardous
24 substances or hazardous wastes.

25 b. The remediation fund shall be credited with:

26 (1) moneys as are appropriated by the Legislature;

27 (2) moneys deposited into the fund as repayment of principal and
28 interest on outstanding loans made from the fund;

29 (3) any return on investment of moneys deposited in the fund;

30 (4) remediation funding source surcharges imposed pursuant to
31 section 33 of P.L.1993, c.139 (C.58:10B-11);

32 (5) moneys deposited in the fund as repayment of recoverable
33 grants made by the New Jersey Redevelopment Authority for
34 brownfield redevelopment;

35 ~~(6)~~ moneys deposited into the fund from cost recovery subrogation
36 actions; and

37 ~~[(6)]~~ ~~(7)~~ moneys made available to the authority for the purposes
38 of the fund.

39 (cf: P.L.1997, c.278, s.12)

40

41 3. Section 27 of P.L.1993, c.139 (C.58:10B-5) is amended to read
42 as follows:

43 27. a. (1) Financial assistance from the remediation fund may only
44 be rendered to persons who cannot establish a remediation funding
45 source for the full amount of a remediation. Financial assistance
46 pursuant to this act may be rendered only for that amount of the cost

1 of a remediation for which the person cannot establish a remediation
2 funding source. The limitations on receiving financial assistance
3 established in this paragraph (1) shall not limit the ability of [municipal
4 governmental entities, the New Jersey Redevelopment Authority,]
5 municipalities, counties, redevelopment entities authorized to exercise
6 redevelopment powers pursuant to section 4 of P.L.1992, c.79
7 (C.40A:12A-4), persons who are not required to establish a
8 remediation funding source for the part of the remediation involving
9 an innovative technology, an unrestricted use remedial action or a
10 limited restricted use remedial action, persons performing a
11 remediation in an environmental opportunity zone, or persons who
12 voluntarily perform a remediation, from receiving financial assistance
13 from the fund.

14 (2) Financial assistance rendered to persons who voluntarily
15 perform a remediation or perform a remediation in an environmental
16 opportunity zone may only be made for that amount of the cost of the
17 remediation that the person cannot otherwise fund by any of the
18 authorized methods to establish a remediation funding source.

19 (3) Financial assistance rendered to persons who do not have to
20 provide a remediation funding source for the part of the remediation
21 that involves an innovative technology, an unrestricted use remedial
22 action, or a limited restricted use remedial action may only be made
23 for that amount of the cost of the remediation that the person cannot
24 otherwise fund by any of the authorized methods to establish a
25 remediation funding source.

26 b. Financial assistance may be rendered from the remediation fund
27 to (1) owners or operators of industrial establishments who are
28 required to perform remediation activities pursuant to P.L.1983, c.330
29 (C.13:1K-6 et al.), upon closing operations or prior to the transfer of
30 ownership or operations of an industrial establishment, (2) persons
31 who are liable for the cleanup and removal costs of a hazardous
32 substance pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), and
33 (3) persons who voluntarily perform a remediation of a discharge of
34 a hazardous substance or hazardous waste.

35 c. Financial assistance and grants may be made from the
36 remediation fund to a [municipal governmental entity or the New
37 Jersey Redevelopment Authority] municipality, county, or
38 redevelopment entity authorized to exercise redevelopment powers
39 pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), for real
40 property: (1) on which it holds a tax sale certificate; (2) that it has
41 acquired through foreclosure or other similar means; or (3) that it has
42 acquired, or in the case of a county governed by a board of chosen
43 freeholders, has passed a resolution or , in the case of a municipality
44 or a county operating under the "Optional County Charter Law,"
45 P.L.1972, c.154 (C.40:41A-1 et seq.), has passed an ordinance or
46 other appropriate document to acquire, by voluntary conveyance for

1 the purpose of redevelopment, or for recreation and conservation
2 purposes. Financial assistance and grants may only be awarded for
3 real property on which there has been a discharge or on which there
4 is a suspected discharge of a hazardous substance or hazardous waste.
5 [Financial assistance and grants may not be made to any entity listed
6 in this subsection for any real property used by that entity for the
7 conduct of its official business.]

8 d. Grants may be made from the remediation fund to persons [and
9 the New Jersey Redevelopment Authority,] who own real property on
10 which there has been a discharge of a hazardous substance or a
11 hazardous waste and that person [or the authority] qualifies for an
12 innocent party grant pursuant to section 28 of P.L.1993, c.139
13 (C.58:10B-6).

14 e. Grants may be made from the remediation fund to qualifying
15 persons who propose to perform a remedial action that uses an
16 innovative technology or that would result in an unrestricted use
17 remedial action or a limited restricted use remedial action.

18 f. Grants may be made from the remediation fund to municipalities,
19 counties, and redevelopment entities authorized to exercise
20 redevelopment powers pursuant to section 4 of P.L.1992, c.79
21 (C.40A:12A-4), for the preliminary assessment, site investigation,
22 remedial investigation and remedial action on contaminated real
23 property within a brownfield development area. An ownership interest
24 in the contaminated property shall not be required in order for a
25 municipality, county, or redevelopment entity authorized to exercise
26 redevelopment powers pursuant to section 4 of P.L.1992, c.79
27 (C.40A:12A-4) to receive a grant for a remediation of property in a
28 brownfield redevelopment area. Any property on which a
29 municipality, county, or redevelopment entity makes expenditures for
30 a remedial action and the property is not owned by that entity shall be
31 subject to the provisions of section 8 of P.L. , c. (C.) (now in the
32 Legislature as this bill).

33 [For the purposes of this section, "person" shall not include any
34 governmental entity.]

35 (cf: P.L.1999, c.214, s.1)

36
37 4. Section 28 of P.L.1993, c.139 (58:10B-6) is amended to read as
38 follows:

39 28. a. Except for moneys deposited in the remediation fund for
40 specific purposes, financial assistance and grants from the remediation
41 fund shall be rendered for the following purposes and, on an annual
42 basis, obligated in the percentages as provided in this subsection.
43 Upon a written joint determination by the authority and the department
44 that the demand for financial assistance or grants for moneys allocated
45 in any paragraph exceeds the percentage of funds allocated for that
46 paragraph, financial assistance and grants dedicated for the purposes

1 and in the percentages set forth in any other paragraph of this
2 subsection, may, for any particular year, if the demand for financial
3 assistance or grants for moneys allocated in that paragraph is less than
4 the percentage of funds allocated for that paragraph, be obligated to
5 the purposes set forth in the over allocated paragraph. The written
6 determination shall be sent to the Senate Environment Committee, and
7 the Assembly [Agriculture and Waste Management] Environment and
8 Solid Waste Committee, or their successors. [For the purposes of this
9 section, "person" shall not include any governmental entity.]

10 (1) At least [15%] 10% of the moneys shall be allocated for
11 financial assistance to persons, [and the New Jersey Redevelopment
12 Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.),]
13 for remediation of real property located in a qualifying municipality as
14 defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

15 (2) At least [10%] 35% of the moneys shall be allocated [for
16 financial assistance and grants] to: (a) [municipal governmental
17 entities and the New Jersey Redevelopment Authority] municipalities,
18 counties, or redevelopment entities authorized to exercise
19 redevelopment powers pursuant to section 4 of P.L.1992, c.79
20 (C.40A:12A-4), for:

21 (i) projects in brownfield development areas pursuant to subsection
22 f. of section 27 of P.L.1993, c.139 (C.58:10B-5),

23 (ii) matching grants of up to 25% of the costs of the remedial
24 action for projects involving the redevelopment of contaminated
25 property for recreation and conservation purposes, or for affordable
26 housing pursuant to P.L.1985, c.222 (C.52:27D-301 et seq.),

27 (iii) grants for preliminary assessment, site investigation or
28 remedial investigation of a contaminated site,

29 (iv) financial assistance for the implementation of a remedial
30 action, or

31 (v) financial assistance for remediation activities at sites that have
32 been contaminated by a discharge of a hazardous substance or
33 hazardous waste, or at which there is an imminent and significant
34 threat of a discharge of a hazardous substance or hazardous waste, and
35 the discharge or threatened discharge poses or would pose an
36 imminent and significant threat to a drinking water source, to human
37 health, or to a sensitive or significant ecological area; or

38 (b) persons for financial assistance for remediation activities at
39 sites that have been contaminated by a discharge of a hazardous
40 substance or hazardous waste, or at which there is an imminent and
41 significant threat of a discharge of a hazardous substance or hazardous
42 waste, and the discharge or threatened discharge poses or would pose
43 an imminent and significant threat to a drinking water source, to
44 human health, or to a sensitive or significant ecological area.

45 Except as provided in subsection f. of section 27 of P.L.1993, c.139

1 (C.58:10B-5), financial assistance and grants to municipalities,
2 counties, or redevelopment entities authorized to exercise
3 redevelopment powers pursuant to section 4 of P.L.1992, c.79
4 (C.40A:12A-4) may be made for real property: (1) on which they hold
5 a tax sale certificate; (2) that they have acquired through foreclosure
6 or other similar means; or (3) that they have acquired, or ,in the case
7 of a county governed by a board of chosen freeholders, have passed a
8 resolution or, in the case of a municipality or a county operating under
9 the "Optional County Charter Law," P.L.1972, c.154 (C.40:41A-1 et
10 seq.), have passed an ordinance or other appropriate document to
11 acquire, by voluntary conveyance for the purpose of redevelopment,
12 or for recreation and conservation purposes. Financial assistance and
13 grants may only be awarded for real property on which there has been
14 or on which there is suspected of being a discharge of a hazardous
15 substance or a hazardous waste. Grants and financial assistance
16 provided pursuant to this paragraph shall be used for performing
17 preliminary assessments, site investigations, [and] remedial
18 investigations, and remedial actions on real property in order to
19 determine the existence or extent of any hazardous substance or
20 hazardous waste contamination, and to remediate the site in
21 compliance with the applicable health risk and environmental standards
22 on those properties. No grant shall be awarded pursuant to this
23 paragraph (2) for the purposes of a remedial investigation and no
24 financial assistance for a remedial action shall be awarded until the
25 [municipal government entity or the New Jersey Redevelopment
26 Authority] municipality, county, or redevelopment entity authorized
27 to exercise redevelopment powers pursuant to section 4 of P.L.1992,
28 c.79 (C.40A:12A-4), actually owns the real property, provided that a
29 matching grant for 25% of the costs of a remedial action for a project
30 involving the redevelopment of contaminated property for recreation
31 and conservation purposes, or for affordable housing pursuant to
32 P.L.1985, c.222 (C.52:27D-301 et seq.) may be made to a
33 municipality, county, or redevelopment entity authorized to exercise
34 redevelopment powers pursuant to section 4 of P.L.1992, c.79 even
35 if it does not own the real property and a grant may be made to a
36 municipality, county, or redevelopment entity authorized to exercise
37 redevelopment powers pursuant to section 4 of P.L.1992, c.79
38 (C.40A:12A-4) for a remediation in a brownfield development area
39 pursuant to subsection f. of section 27 of P.L.1993, c.139 (C.58: 10B-
40 5) even if the entity does not own the real property. A [municipal
41 governmental entity or the New Jersey Redevelopment Authority]
42 municipality that has performed, or on which there has been
43 performed, a preliminary assessment, site investigation or remedial
44 investigation on property may obtain a loan for the purpose of
45 continuing the remediation on those properties as necessary to comply
46 with the applicable remediation regulations adopted by the department.

1 No grant shall be awarded pursuant to this paragraph to a [municipal
2 government entity] municipality, a county, or a redevelopment entity
3 authorized to exercise redevelopment powers pursuant to section 4 of
4 P.L.1992, c.79 (C.40A:12A-4) unless that entity has adopted by
5 ordinance or resolution a comprehensive plan specifically for the
6 development or redevelopment of contaminated or potentially
7 contaminated real property in that municipality or the entity can
8 demonstrate to the authority that a realistic opportunity exists that the
9 subject real property will be developed or redeveloped within a
10 three-year period from the completion of the remediation;

11 (3) [At least 15% of the moneys shall be allocated for financial
12 assistance to persons, the New Jersey Redevelopment Authority, or
13 municipal governmental entities for remediation activities at sites that
14 have been contaminated by a discharge of a hazardous substance or
15 hazardous waste, or at which there is an imminent and significant
16 threat of a discharge of a hazardous substance or hazardous waste, and
17 the discharge or threatened discharge poses or would pose an
18 imminent and significant threat to a drinking water source, to human
19 health, or to a sensitive or significant ecological area;

20 (4)] At least 10% of the moneys shall be allocated for financial
21 assistance to persons who voluntarily perform a remediation of a
22 hazardous substance or hazardous waste discharge;

23 [(5) At least 10% of the moneys shall be allocated for financial
24 assistance to persons who are required to perform remediation
25 activities at an industrial establishment pursuant to P.L.1983, c.330
26 (C.13:1K-6 et al.), as a condition of the closure, transfer, or
27 termination of operations at that industrial establishment;

28 (6)] (4) At least 15% of the moneys shall be allocated for grants
29 to persons who own real property on which there has been a discharge
30 of a hazardous substance or a hazardous waste and that person
31 qualifies for an innocent party grant. A person qualifies for an
32 innocent party grant if that person acquired the property prior to
33 December 31, 1983, [except as provided hereunder,] the hazardous
34 substance or hazardous waste that was discharged at the property was
35 not used by the person at that site, and that person certifies that he did
36 not discharge any hazardous substance or hazardous waste at an area
37 where a discharge is discovered[; provided, however, that
38 notwithstanding any other provision of this section the New Jersey
39 Redevelopment Authority established pursuant to P.L.1996, c.62
40 (C.55:19-20 et al.), shall qualify for an innocent party grant pursuant
41 to this paragraph where the immediate predecessor in title to the
42 authority would have qualified for but failed to apply for or receive
43 such grant]. A grant authorized pursuant to this paragraph may be for
44 up to 50% of the remediation costs at the area of concern for which
45 the person qualifies for an innocent party grant, except that no grant

1 awarded pursuant to this paragraph to any person [or the New Jersey
2 Redevelopment Authority] may exceed \$1,000,000;

3 [(7)] (5) At least [5%] 10% of the moneys shall be allocated for
4 (a) financial assistance to persons who own and plan to remediate an
5 environmental opportunity zone for which an exemption from real
6 property taxes has been granted pursuant to section 5 of P.L.1995,
7 c.413 (C.54:4-3.154)[;

8 (8) At least 5% of the moneys shall be allocated for], or (b)
9 matching grants for up to 25% of the project costs to qualifying
10 persons , municipalities, counties, and redevelopment entities
11 authorized to exercise redevelopment powers pursuant to section 4 of
12 P.L.1992, c.79 (C.40A:12A-4), who propose to perform a remedial
13 action that uses an innovative technology, or for the implementation
14 of a limited restricted use remedial action or an unrestricted use
15 remedial action except that no grant awarded pursuant to this
16 paragraph [to any qualifying person] may exceed [\$100,000]
17 \$250,000;

18 [(9) At least 5% of the moneys shall be allocated for matching
19 grants for up to 25% of the project costs to qualifying persons for the
20 implementation of a limited restricted use remedial action or an
21 unrestricted use remedial action except that no grant awarded pursuant
22 to this paragraph to any qualifying person may exceed \$100,000. The
23 authority may use money allocated pursuant to this paragraph to
24 provide loan guarantees to encourage financial institutions to provide
25 loans to any person who may receive financial assistance from the fund
26 who plans to implement a limited restricted use remedial action or an
27 unrestricted use remedial action;

28 (10) At least 5% of the moneys shall be allocated for grants to
29 persons who own real property on which there has been a discharge of
30 a hazardous substance or a hazardous waste from an underground
31 storage tank and that person qualifies for an underground storage tank
32 grant. A person qualifies for an underground storage tank grant if that
33 person acquired the property prior to December 31, 1986, the person
34 complied with all laws, rules and regulations regarding the
35 underground storage tank, the underground storage tank was closed
36 or removed prior to December 31, 1990, and there is a discovery of
37 contamination that originated from the underground storage tank and
38 that discovery is made more than five years after closure or removal
39 of the underground storage tank. A grant authorized pursuant to this
40 paragraph may be for up to 50% of the remediation costs at the area
41 of concern for which the person qualifies for an underground storage
42 tank grant, except that no grant awarded pursuant to this paragraph to
43 any person may exceed \$1,000,000]; and

44 [(11) Five] (6) Twenty percent of the moneys in the remediation
45 fund shall be allocated for financial assistance or grants for any of the

1 purposes enumerated in paragraphs (1) through [(10)] (5) of this
2 subsection[, except that where moneys in the fund are insufficient to
3 fund all the applications in any calendar year that would otherwise
4 qualify for financial assistance or a grant pursuant to this paragraph,
5 the authority shall give priority to financial assistance applications that
6 meet the criteria enumerated in paragraph (3) of this subsection].

7 For the purposes of [paragraphs (8) and (9)] paragraph (5) of this
8 subsection, "qualifying persons" means any person who has a net
9 worth of not more than \$2,000,000 and "project costs" means that
10 portion of the total costs of a remediation that is specifically for the
11 use of an innovative technology or to implement an unrestricted use
12 remedial action or a limited restricted use remedial action, as
13 applicable.

14 b. Loans issued from the remediation fund shall be for a term not
15 to exceed ten years, except that upon the transfer of ownership of any
16 real property for which the loan was made, the unpaid balance of the
17 loan shall become immediately payable in full. The unpaid balance of
18 a loan for the remediation of real property that is transferred by devise
19 or succession shall not become immediately payable in full, and loan
20 repayments shall be made by the person who acquires the property.

21 Loans to [municipal governmental entities and the New Jersey
22 Redevelopment Authority established pursuant to P.L.1996, c.62
23 (C.55:19-20 et al.),] municipalities, counties, and redevelopment
24 entities authorized to exercise redevelopment powers pursuant to
25 section 4 of P.L.1992, c.79 (C.40A:12A-4) , shall bear an interest rate
26 equal to 2 points below the Federal Discount Rate at the time of
27 approval or at the time of loan closing, whichever is lower, except that
28 the rate shall be no lower than 3 percent. All other loans shall bear an
29 interest rate equal to the Federal Discount Rate at the time of approval
30 or at the time of the loan closing, whichever is lower, except that the
31 rate on such loans shall be no lower than five percent. Financial
32 assistance and grants may be issued for up to 100% of the estimated
33 applicable remediation cost, except that the cumulative maximum
34 amount of financial assistance which may be issued to a person, in any
35 calendar year, for one or more properties, shall be \$1,000,000.
36 Financial assistance and grants to any one [municipal governmental
37 entity or the New Jersey Redevelopment Authority] municipality,
38 county, or redevelopment entity authorized to exercise redevelopment
39 powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) may
40 not exceed \$2,000,000 in any calendar year. Grants to a municipality,
41 a county, or a redevelopment entity authorized to exercise
42 redevelopment powers pursuant to section 4 of P.L.1992, c.79
43 (C.40A:12A-4) may not exceed 50% of the total costs of the
44 remediation at any one site. Repayments of principal and interest on
45 the loans issued from the remediation fund shall be paid to the
46 authority and shall be deposited into the remediation fund.

1 The total amount of grant monies awarded in any one year may not
2 exceed 70 percent of the total amount of financial assistance and
3 grants awarded in that year.

4 c. No person, other than a qualified person planning to use an
5 innovative technology for the cost of that technology, a qualified
6 person planning to use a limited restricted use remedial action or an
7 unrestricted use remedial action for the cost of the remedial action, a
8 person performing a remediation in an environmental opportunity
9 zone, or a person voluntarily performing a remediation, shall be
10 eligible for financial assistance from the remediation fund to the extent
11 that person is capable of establishing a remediation funding source for
12 the remediation as required pursuant to section 25 of P.L.1993, c.139
13 (C.58:10B-3).

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

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

32 (cf: P.L.2001, c.70, s.1).

33
34 5. Section 29 of P.L.1993, c.139 (C.58:10B-7) is amended to read
35 as follows:

36 29. a. A qualified applicant for financial assistance or a grant from
37 the remediation fund shall be awarded financial assistance or a grant
38 by the authority upon the availability of sufficient moneys in the
39 remediation fund for the purpose of the financial assistance or grant.
40 The authority shall award financial assistance and grants in the
41 following order of priority:

42 (1) Sites on which there has been a discharge and the discharge
43 poses and imminent and significant threat to a drinking water source,
44 to human health, or to a sensitive or significant ecological area shall
45 be given first priority; and

46 (2) Sites in areas designated as Planning Area 1 (Metropolitan),

1 Planning Area 2 (Suburban), designated centers, or areas receiving
2 plan endorsement as designated pursuant to the "State Planning Act,"
3 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.), and
4 sites in brownfield development areas, shall be given second priority.
5 **[Priority]** The priority ranking of applicants within any priority
6 category enumerated in this section for awarding financial assistance
7 and grants from the remediation fund shall be based upon the date of
8 receipt by the authority of **[a complete]** an application from the
9 applicant. If an application is determined to be incomplete by the
10 authority, an applicant shall have 30 days from receipt of written
11 notice of incompleteness to file any additional information as may be
12 required by the authority for a completed application. If an applicant
13 fails to file the additional information within those 30 days, the filing
14 date for that application for financial assistance or a grant for a site
15 that is not within a priority category enumerated in this section, shall
16 be the date that the additional information is received by the authority.
17 An application shall be deemed complete when all the information
18 required by the authority has been received in the required form.
19 **[Notwithstanding that the New Jersey Redevelopment Authority is**
20 **eligible for grants and financial assistance from the fund, the authority**
21 **shall be awarded a grant or financial assistance based upon the priority**
22 **system for such awards as provided in this subsection.]**

23 b. Within 90 days, for a private entity, or 180 days for a **[municipal**
24 **governmental entity or the New Jersey Redevelopment Authority]**
25 municipality, county, or a redevelopment entity authorized to exercise
26 redevelopment powers pursuant to section 4 of P.L.1992, c.79
27 (C.40A:12A-4), of notice of approval of a financial assistance or grant
28 application, an applicant shall submit to the authority an executed
29 contract for the remediation activities for which the financial assistance
30 or grant application was made. The contract shall be consistent with
31 the terms and conditions for which the financial assistance or grant
32 was rendered. Failure to submit an executed contract within the time
33 provided, without good cause, shall constitute grounds for the
34 alteration of an applicant's priority ranking for the awarding of
35 financial assistance or a grant.
36 (cf: P.L.1996, c.62, s.66)

37
38 6. Section 30 of P.L.1993, c.139 (C.58:10B-8) is amended to read
39 as follows:

40 30. a. The authority shall, by rule or regulation:

41 (1) require a financial assistance or grant recipient to provide to
42 the authority, as necessary or upon request, evidence that financial
43 assistance or grant moneys are being spent for the purposes for which
44 the financial assistance or grant was made, and that the applicant is
45 adhering to all of the terms and conditions of the financial assistance
46 or grant agreement;

- 1 (2) require the financial assistance or grant recipient to provide
2 access at reasonable times to the subject property to determine
3 compliance with the terms and conditions of the financial assistance or
4 grant;
- 5 (3) establish a priority system for rendering financial assistance or
6 grants for remediations identified by the department as involving an
7 imminent and significant threat to a public water source, human health,
8 or to a sensitive or significant ecological area pursuant to [paragraph
9 (3) of] subsection a. of section 28 of P.L.1993, c.139 (C.58:10B-6);
- 10 (4) provide that payment of a grant shall be conditioned upon the
11 subrogation to the department of all rights of the recipient to recover
12 remediation costs from the discharger or other liable parties. All
13 moneys collected in a cost recovery subrogation action shall be
14 deposited into the remediation fund;
- 15 (5) provide that an applicant for financial assistance or a grant pay
16 a reasonable fee for the application which shall be used by the
17 authority for the administration of the loan and grant program;
- 18 (6) provide that where financial assistance to a person other than
19 a [municipal governmental entity or the New Jersey Redevelopment
20 Authority] municipality, a county, or a redevelopment entity
21 authorized to exercise redevelopment powers pursuant to section 4 of
22 P.L.1992, c.79 (C.40A:12A-4), is for a portion of the remediation
23 cost, that the proceeds thereof not be disbursed to the applicant until
24 the costs of the remediation for which a remediation funding source
25 has been established has been expended;
- 26 (7) provide that the amount of a grant for the costs of a remedial
27 action shall not include the cost to remediate a site to meet residential
28 soil remediation standards if the local zoning ordinances adopted
29 pursuant to the "Municipal Land Use Law," P.L.1975, c.291
30 (C.40:55D-1 et seq.) does not allow for residential use;
- 31 (8) adopt such other requirements as the authority shall deem
32 necessary or appropriate in carrying out the purposes for which the
33 Hazardous Discharge Site Remediation Fund was created.
- 34 b. An applicant for financial assistance or a grant shall be required
35 to:
- 36 (1) provide proof, as determined sufficient by the authority, that
37 the applicant, where applicable, cannot establish a remediation funding
38 source for all or part of the remediation costs, as required by section
39 25 of P.L.1993, c.139 (C.58:10B-3). The provisions of this paragraph
40 do not apply to grants to innocent persons, grants for the use of
41 innovative technologies, or grants for the implementation of
42 unrestricted use remedial actions or limited restricted use remedial
43 actions or to financial assistance or grants to [municipal governmental
44 entities or the New Jersey Redevelopment Authority] municipalities,
45 counties, or redevelopment entities authorized to exercise
46 redevelopment powers pursuant to section 4 of P.L.1992, c.79
47 (C.40A:12A-4); and

1 (2) demonstrate the ability to repay the amount of the financial
2 assistance and interest, and, if necessary, to provide adequate
3 collateral to secure the financial assistance amount.

4 c. Information submitted as part of a loan or grant application or
5 agreement shall be deemed a public record subject to the provisions of
6 P.L.1963, c.73 (C.47:1A-1 et seq.).

7 d. In establishing requirements for financial assistance or grant
8 applications and financial assistance or grant agreements, the
9 authority:

10 (1) shall minimize the complexity and costs to applicants or
11 recipients of complying with such requirements;

12 (2) may not require financial assistance or grant conditions that
13 interfere with the everyday normal operations of the recipient's
14 business activities, except to the extent necessary to ensure the
15 recipient's ability to repay the financial assistance and to preserve the
16 value of the loan collateral; and

17 (3) shall expeditiously process all financial assistance or grant
18 applications in accordance with a schedule established by the authority
19 for the review and the taking of final action on the application, which
20 schedule shall reflect the degree of complexity of a financial assistance
21 or grant application.

22 (cf: P.L.1997, c.278, s.15)

23

24 7. (New section) The Department of Environmental Protection
25 shall establish guidelines to establish a procedure for the designation
26 of brownfield development areas. In establishing criteria for the
27 establishment of a brownfield development area, the department shall
28 require:

29 (1) that a brownfield development area includes at least two
30 brownfield sites within a contiguous area;

31 (2) that the boundaries are consistent with the boundaries of a
32 distinct neighborhood;

33 (3) broad community support for the establishment of a brownfield
34 development area; and

35 (4) that the establishment of a brownfield development area will
36 result in a benefit to the public health and safety, and the environment.

37 A brownfield development area shall be designated by the
38 department, in writing, upon application by a person proposing to
39 remediate a site or sites within the area, or upon the department's
40 initiative.

41 The guidelines, and any subsequent revisions thereto, and a list of
42 the brownfield development areas, and any subsequent revisions
43 thereto, and shall be published in the New Jersey Register. The
44 adoption of the guidelines or of the revisions thereto, shall not be
45 subject to the requirements of the "Administrative Procedure Act,"
46 P.L.1968, c.410 (C.52:14B-1 et seq.).

1 8. (New section) Any expenditure of grant monies for a remedial
2 action in a brownfield development area by a municipality, county, or
3 redevelopment entity on property in which the municipality, county,
4 or redevelopment entity does not have an ownership interest, shall
5 constitute a debt of the property owner to the fund. The debt shall
6 constitute a lien on the real property at which the remedial action is
7 performed. The lien shall be in the amount of the grant awarded for
8 the remedial action on that property. The lien shall attach when a
9 notice of lien, incorporating the name of the property owner, a
10 description of the property subject to the remedial action and an
11 identification of the amount of the grant awarded from the fund, is
12 duly filed with the county recording officer in the county in which the
13 property is located. The lien filed pursuant to this section which
14 affects the property subject to the remedial action shall create a lien
15 with priority over all other claims or liens which are or have been filed
16 against the property, except if the property comprises six dwelling
17 units or less and is used exclusively for residential purposes, this notice
18 of lien shall not affect any valid lien, right or interest in the property
19 filed in accordance with established procedure prior to the filing of this
20 notice of lien. A lien that is filed on real property pursuant to this
21 section shall be removed upon transfer of ownership of the property
22 to the municipality, county, or redevelopment entity that expended
23 grant monies for a remedial action on that property.

24

25 9. This act shall take effect immediately.

26

27

28

STATEMENT

29

30 This bill makes various changes to the laws governing financial
31 assistance from the Hazardous Discharge Site Remediation Fund.

32 This bill would allow counties and redevelopment entities
33 authorized to exercise redevelopment powers pursuant to section 4 of
34 P.L.1992, c.79 (C.40A:12A-4) to receive financial assistance and
35 grants from the fund. Currently, private parties, municipal
36 governmental entities and the New Jersey Redevelopment Authority
37 are eligible to receive financial assistance and grants from the fund.
38 With regard to the New Jersey Redevelopment Authority (NJRA),
39 because that agency is no longer receiving State funding, the bill
40 would delete all reference of that authority from the law.

41 The bill allows the Department of Environmental Protection (DEP)
42 to establish brownfield development areas in which grant monies may
43 be awarded to municipalities, counties and redevelopment entities
44 authorized to exercise redevelopment powers pursuant to section 4 of
45 P.L.1992, c.79 for the performance of a remedial action. The bill
46 would allow grants to a municipality, county or a redevelopment entity
47 for a remedial action in a brownfield development area even if the

1 entity does not own the property. In that circumstance, a lien would
2 attach to the property.

3 The bill requires DEP to establish guidelines that establish a
4 procedure for the designation of brownfield development areas. In
5 establishing criteria for the establishment of a brownfield development
6 area, the DEP must require that a brownfield development area include
7 at least two brownfield sites within a contiguous area, that the
8 boundaries are consistent with the boundaries of a distinct
9 neighborhood, broad community support for the establishment of a
10 brownfield development area, and that the establishment of a
11 brownfield development area will result in a benefit to the public
12 health and safety, and the environment. A brownfield development
13 area may be designated by the DEP, in writing, upon application by a
14 person proposing to remediate a site or sites within the area, or upon
15 the department's initiative.

16 The bill would also authorize matching grants to municipalities,
17 counties, and redevelopment entities for up to 25% of the cost of a
18 remedial action for a project that involves the redevelopment of
19 property for affordable housing or for recreation and conservation
20 purposes.

21 The bill would change the funding categories governing the
22 allocation of the use of monies in the fund. The bill would continue
23 the allocation of 10% of the moneys for financial assistance to persons
24 who perform remediations in qualifying municipalities. The bill would
25 require 35% of the monies to be allocated to:

26 (1) municipalities, counties, or redevelopment entities authorized
27 to exercise redevelopment powers pursuant to section 4 of P.L.1992,
28 c.79, for:

29 (a) projects in brownfield development areas;

30 (b) matching grants of up to 25% of the costs of the remedial
31 action for projects involving the redevelopment of contaminated
32 property for recreation and conservation purposes, or for affordable
33 housing pursuant to P.L.1985, c.222 (C.52:27D-301 et seq.);

34 (c) grants for preliminary assessment, site investigation or remedial
35 investigation of a contaminated site;

36 (d) financial assistance for the implementation of a remedial action;
37 or

38 (e) financial assistance for remediation activities at sites that have
39 been contaminated by a discharge of a hazardous substance or
40 hazardous waste, or at which there is an imminent and significant
41 threat of a discharge of a hazardous substance or hazardous waste, and
42 the discharge or threatened discharge poses or would pose an
43 imminent and significant threat to a drinking water source, to human
44 health, or to a sensitive or significant ecological area; or

45 (2) persons for financial assistance for remediation activities at
46 sites that have been contaminated by a discharge of a hazardous
47 substance or hazardous waste, or at which there is an imminent and

1 significant threat of a discharge of a hazardous substance or hazardous
2 waste, and the discharge or threatened discharge poses or would pose
3 an imminent and significant threat to a drinking water source, to
4 human health, or to a sensitive or significant ecological area.

5 At least 10% of the moneys shall be allocated for financial
6 assistance to persons who voluntarily perform a remediation of a
7 hazardous substance or hazardous waste discharge;

8 At least 15% of the moneys shall be allocated for grants to persons
9 who own real property on which there has been a discharge of a
10 hazardous substance or a hazardous waste and that person qualifies for
11 an innocent party grant.

12 At least 10% of the moneys shall be allocated for (a) financial
13 assistance to persons who own and plan to remediate an environmental
14 opportunity zone for which an exemption from real property taxes has
15 been granted pursuant to section 5 of P.L.1995, c.413 (C.54:4-3.154),
16 or (b) matching grants for up to 25% of the project costs to qualifying
17 persons, municipalities, counties, and redevelopment entities
18 authorized to exercise redevelopment powers pursuant to section 4 of
19 P.L.1992, c.79, who propose to perform a remedial action that uses an
20 innovative technology, or for the implementation of a limited restricted
21 use remedial action or an unrestricted use remedial action.

22 Twenty percent of the moneys in the remediation fund shall be
23 allocated for financial assistance or grants for any of the above
24 purposes.

25 The bill would establish that the authority give funding priority first
26 to sites on which there has been a discharge and the discharge poses
27 and imminent and significant threat to a drinking water source, to
28 human health, or to a sensitive or significant ecological area and
29 second, to sites in areas designated as Planning Area 1 (Metropolitan),
30 Planning Area 2 (Suburban), or designated centers or areas receiving
31 plan endorsement, pursuant to the "State Planning Act," P.L.1985,
32 c.398 (C.52:18A-196 et seq.), and sites in brownfield development
33 areas.

34 The bill would eliminate the funding allocation for financial
35 assistance to persons required to perform a remediation at an industrial
36 establishment pursuant to P.L.1983, c.330 (C.13:1K-9 et seq.).
37 Further, the bill would allow local government entities to use financial
38 assistance and grant money for a remediation on the entity's place of
39 business.

40 The bill would establish that grants to municipalities, counties and
41 redevelopment entities may not exceed 50% of the total costs of
42 remediation at any one site, and the total financial assistance and
43 grants to any one of those entities may not exceed \$2 million in any
44 one year. Finally, the bill establishes a new limit on the total amount
45 in grants that may be awarded in any one year at 70% of total amount
46 of grants and loans awarded in that year.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2815

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 19, 2005

The Assembly Environment and Solid Waste Committee reports favorably Assembly Bill No. 2815 with committee amendments.

As amended, this bill makes various changes to the laws governing financial assistance from the Hazardous Discharge Site Remediation Fund.

This bill would allow counties and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) to receive financial assistance and grants from the fund. Currently, private parties, municipal governmental entities and the New Jersey Redevelopment Authority are eligible to receive financial assistance and grants from the fund. With regard to the New Jersey Redevelopment Authority (NJRA), because that agency is no longer receiving State funding, the bill would delete all reference of that authority from the law.

The bill allows the Department of Environmental Protection (DEP) to establish brownfield development areas in which grant monies may be awarded to municipalities, counties and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79, for the performance of a remedial action. The bill would allow grants to a municipality, county or a redevelopment entity for a remedial action in a brownfield development area even if the entity does not own the property. In that circumstance, a lien would attach to the property. The bill would provide that in addition to the \$3 million limitation on the total amount of financial assistance and grants that may be awarded in any one year pursuant to subsection b. of section 28 of P.L.1993, c.139 (C.58:10B-6), the authority may award an additional amount of financial assistance and grants in any one year, up to \$2 million, to any one municipality, county, or redevelopment entity for the remediation of property in a brownfield development area.

The bill requires DEP to establish guidelines that establish a procedure for the designation of brownfield development areas. In establishing criteria for the establishment of a brownfield development

area, the DEP must require that a brownfield development area include at least two brownfield sites within a contiguous area, that the boundaries are consistent with the boundaries of a distinct neighborhood, that there is broad community support for the establishment of a brownfield development area, and that the establishment of a brownfield development area will result in a benefit to the public health and safety, and the environment. A brownfield development area may be designated by the DEP, in writing, upon application by a person proposing to remediate a site or sites within the area, or upon the department's initiative.

The bill would also authorize matching grants to municipalities, counties, and redevelopment entities for up to 50% of the cost of a remedial action for a project that involves the redevelopment of property for affordable housing or for up to 75% of the cost of a remedial action for a project that involves the redevelopment of property for recreation and conservation purposes.

The bill would change the funding categories governing the allocation of the use of monies in the fund. The bill eliminates the fixed percentages for funding categories. The bill would allocate moneys for financial assistance to persons who perform remediations in qualifying municipalities. The bill would also allocate monies to:

(1) municipalities, counties, or redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79, for:

(a) projects in brownfield development areas;

(b) matching grants of up to 75% of the costs of the remedial action for projects involving the redevelopment of contaminated property for recreation and conservation purposes;

(c) matching grants of up to 50% of the costs of the remedial action for projects involving the redevelopment of contaminated property for affordable housing pursuant to P.L.1985, c.222 (C.52:27D-301 et seq.);

(d) grants for preliminary assessment, site investigation or remedial investigation of a contaminated site;

(e) financial assistance for the implementation of a remedial action;
or

(f) financial assistance for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area; or

(2) persons for financial assistance for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose

an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area.

The bill would allocate moneys for financial assistance to persons who voluntarily perform a remediation of a hazardous substance or hazardous waste discharge and grants to persons who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant.

Moneys would be allocated for (a) financial assistance to persons who own and plan to remediate an environmental opportunity zone for which an exemption from real property taxes has been granted pursuant to section 5 of P.L.1995, c.413 (C.54:4-3.154), or (b) matching grants for up to 25% of the project costs to qualifying persons, municipalities, counties, and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79, who propose to perform a remedial action that uses an innovative technology, or for the implementation of a limited restricted use remedial action or an unrestricted use remedial action.

Moneys in the remediation fund shall be allocated for financial assistance or grants for any of the above purposes.

The bill would establish that the authority give funding priority first to sites on which there has been a discharge and the discharge poses an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area and second, to sites in areas designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or designated centers or areas receiving plan endorsement, pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.), to sites that the Brownfields Redevelopment Task Force has determined to be of immediate economic development potential, and sites in brownfield development areas.

The bill would eliminate the funding allocation for financial assistance to persons required to perform a remediation at an industrial establishment pursuant to P.L.1983, c.330 (C.13:1K-9 et seq.). Further, the bill would allow local government entities to use financial assistance and grant money for a remediation on the entity's place of business.

The bill would establish that grants to municipalities, counties and redevelopment entities may not exceed 75% of the total costs of remediation at any one site, and the total financial assistance and grants to any one of those entities may not exceed \$3 million in any one year.

Finally, the bill would require the Department of Environmental Protection, in consultation with the New Jersey Economic Development Authority (EDA), to develop a pilot program to award grants from the Hazardous Discharge Site Remediation Fund to nonprofit organizations described in section 501(c)(3) of the federal Internal Revenue Code, 26 U.S.C. s.501(c)(3), that are exempt from

taxation pursuant to section 501(a) of the federal Internal Revenue Code, for the preliminary assessment, site investigation, and remedial investigation of real property that has been contaminated or is suspected of being contaminated by the discharge of a hazardous substance. All of the limitations and conditions for the award of financial assistance and grants applicable to municipalities pursuant to the provisions of the "Brownfield and Contaminated Site Remediation Act" would apply to the award of grants to a nonprofit organization pursuant to this section. The total amount awarded pursuant to this pilot program shall not exceed \$5,000,000.

The department would be required to prepare, prior to March 1 of each year, an annual report on the pilot program, that provides a description of the projects for which grants have been awarded, the grant recipients for each project, the owner of the property being remediated, the amount of each grant, and the location of the property being remediated.

As amended and reported by the committee, this bill is identical to Senate Bill No. 277 (1R) as also amended and reported by the committee.

COMMITTEE AMENDMENTS

Committee amendments to the bill:

(1) allow municipalities, counties and redevelopment entities to be awarded a grant for remedial investigation, for a remedial action in a brownfield development area, or for a remedial action on property that will be redeveloped for recreation and conservation purposes, or for affordable housing, and would allow those grants to be provided even if the entity does not own the property, as long as the entity holds a tax sale certificate, or has passed an ordinance or resolution to acquire the property;

(2) authorize grants to municipalities, counties and redevelopment entities, up to a cumulative total amount from the fund of \$5,000,000 per year, for up to 75% of the costs of a remedial action on property that will be redeveloped for recreation and conservation purposes, and up to 50% of the costs of a remedial action on property that will be redeveloped for affordable housing;

(3) require the conveyance of a development restriction on property for which a municipality, county or and redevelopment entity is awarded a grant for remedial action on property redeveloped for recreation and conservation purposes;

(4) raise the cumulative amount of financial assistance and grants to a municipality, county or redevelopment entity in any one year from \$2 million to \$3 million, and allow an additional \$2 million per year for projects in a brownfield development area;

(5) raise the per project grant limit for municipalities, counties and redevelopment entities from 50% of remediation costs to 75% of remediation costs;

(6) delete the provision that limited the total amount in grants that may be awarded in any one year at 70% of total amount of grants and loans awarded in that year;

(7) eliminate the allocation percentages for each category of funding, eliminate the requirement for DEP and the EDA to make a written determination to change funding allocations, and require a written report to the Senate Environment Committee and the Assembly Environment and Solid Waste Committee detailing the allocation and expenditures of moneys from the fund; and

(8) requires the DEP, in consultation with the EDA, to establish a pilot program to award grants from the fund to nonprofit organizations for preliminary assessment, site investigation and remedial investigation.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2815

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 22, 2005

The Assembly Budget Committee reports favorably Assembly Bill No. 2815 (1R), with committee amendments.

Assembly Bill No. 2815 (1R), as amended, makes various changes to the laws governing financial assistance from the Hazardous Discharge Site Remediation Fund.

This bill allows counties and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) to receive financial assistance and grants from the Hazardous Discharge Site Remediation Fund. Currently, private parties, municipal governmental entities and the New Jersey Redevelopment Authority are eligible to receive financial assistance and grants from the fund. The bill deletes all references to the New Jersey Redevelopment Authority from the law because that agency is no longer receiving State funding.

The bill allows the Department of Environmental Protection (DEP) to establish brownfield development areas in which grant monies may be awarded to municipalities, counties and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79, for the performance of a remedial action. The bill would allow grants to a municipality, county or a redevelopment entity for a remedial action in a brownfield development area even if the entity does not own the property. In that circumstance, a lien will attach to the property. The bill provides that in addition to \$3 million, the limit on the total amount of financial assistance and grants that may be awarded in any one year pursuant to subsection b. of section 28 of P.L.1993, c.139 (C.58:10B-6), the New Jersey Economic Development Authority (EDA) may award an additional amount of financial assistance and grants in any one year, up to \$2 million, to any one municipality, county, or redevelopment entity for the remediation of property in a brownfield development area.

The bill requires DEP to establish guidelines for the designation of brownfield development areas. In establishing criteria for the establishment of a brownfield development area, the DEP must require

that a brownfield development area include at least two brownfield sites within a contiguous area, that the boundaries are consistent with the boundaries of a distinct neighborhood, that there is broad community support for the establishment of a brownfield development area, and that the establishment of a brownfield development area will result in a benefit to the public health and safety, and the environment. A brownfield development area may be designated by the DEP, in writing, upon application by a person proposing to remediate a site or sites within the area, or upon the department's initiative.

The bill also authorizes matching grants to municipalities, counties, and redevelopment entities for up to 50% of the cost of a remedial action for a project that involves the redevelopment of property for affordable housing or for up to 75% of the cost of a remedial action for a project that involves the redevelopment of property for recreation and conservation purposes.

The bill changes the funding categories governing the allocation of the use of monies in the fund. The bill eliminates the fixed percentages for funding categories. The bill allocates monies for financial assistance to persons who perform remediations in qualifying municipalities. The bill also allocate monies to:

(1) municipalities, counties, or redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79, for:

- (a) projects in brownfield development areas;
 - (b) matching grants of up to 75% of the costs of the remedial action for projects involving the redevelopment of contaminated property for recreation and conservation purposes;
 - (c) matching grants of up to 50% of the costs of the remedial action for projects involving the redevelopment of contaminated property for affordable housing pursuant to P.L.1985, c.222 (C.52:27D-301 et seq.);
 - (d) grants for preliminary assessment, site investigation or remedial investigation of a contaminated site;
 - (e) financial assistance for the implementation of a remedial action;
- or

(f) financial assistance for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area; or

(2) persons for financial assistance for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area.

The bill allocates monies for financial assistance to persons who voluntarily perform a remediation of a hazardous substance or hazardous waste discharge and grants to persons who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant.

Monies would be allocated for (a) financial assistance to persons who own and plan to remediate an environmental opportunity zone for which an exemption from real property taxes has been granted pursuant to section 5 of P.L.1995, c.413 (C.54:4-3.154), or (b) matching grants for up to 25% of the project costs to qualifying persons, municipalities, counties, and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79, who propose to perform a remedial action that uses an innovative technology, or for the implementation of a limited restricted use remedial action or an unrestricted use remedial action.

Monies in the remediation fund shall be allocated for financial assistance or grants for any of the above purposes.

The bill requires the EDA to give funding priority: first, to sites on which there has been a discharge and the discharge poses and imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area; and second, to sites in areas designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or designated centers or areas receiving plan endorsement, pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.), to sites that the Brownfields Redevelopment Task Force has determined to be of immediate economic development potential, or sites in brownfield development areas.

The bill eliminates the funding allocation for financial assistance to persons required to perform a remediation at an industrial establishment pursuant to P.L.1983, c.330 (C.13:1K-9 et seq.). Further, the bill allows local government entities to use financial assistance and grant money for a remediation on the entity's place of business.

The bill establishes that grants to municipalities, counties and redevelopment entities may not exceed 75% of the total costs of remediation at any one site, and the total financial assistance and grants to any one of those entities may not exceed \$3 million in any one year.

Finally, the bill requires DEP, in consultation with the EDA, to develop a pilot program to award grants from the Hazardous Discharge Site Remediation Fund to nonprofit charitable organizations, for the preliminary assessment, site investigation, and remedial investigation of real property that has been contaminated or is suspected of being contaminated by the discharge of a hazardous substance. All of the limitations and conditions for the award of financial assistance and grants applicable to municipalities pursuant to the provisions of the "Brownfield and Contaminated Site Remediation

Act" will apply to the award of grants to a nonprofit organization pursuant to this pilot program. The total amount awarded pursuant to the pilot program may not exceed \$5,000,000.

The bill requires the DEP to prepare, prior to March 1 of each year, an annual report on the pilot program, that provides a description of the projects for which grants have been awarded, the grant recipients for each project, the owner of the property being remediated, the amount of each grant, and the location of the property being remediated.

As amended and reported by the committee, this bill is identical to Senate Bill No. 277 (2R) as also amended and reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services estimates that the bill will have no fiscal impact on State funds because it is primarily concerned with the redistribution and reallocation of monies available for brownfields redevelopment projects from the Hazardous Discharge Site Remediation Fund. The fund, a revolving account managed by the EDA, was supported in the past from bond funds and is now funded by annual allocations from constitutionally dedicated corporation business tax revenues; no General Fund monies are used for this program.

COMMITTEE AMENDMENTS:

The amendments reinsert a previously deleted provision that limits the total amount in grants that may be awarded in any one year to 70% of total amount of grants and loans awarded in that year.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 2815

STATE OF NEW JERSEY

211th LEGISLATURE

DATED: JUNE 21, 2005

SUMMARY

- Synopsis:** Revises laws concerning financial assistance for contaminated site remediation.
- Type of Impact:** Redistribution of authorized expenditures from the Hazardous Discharge Site Remediation Fund.
- Agencies Affected:** Department of Environmental Protection (DEP), N.J. Economic Development Authority, participating counties and municipalities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	No Impact-See Comments Below		
Local Revenue	Indeterminate-See Comments Below		

- ! The bill allows counties and eligible redevelopment agencies to receive financial assistance for brownfields redevelopment projects from the Hazardous Discharge Site Remediation Fund. Currently, only private parties and municipalities are eligible for this assistance.
- ! The Hazardous Discharge Site Remediation Fund was established by P.L.1993, c.139 and is managed by the N.J. Economic Development Authority (EDA). It is primarily supported by annual allocations from constitutionally dedicated Corporation Business Tax revenues.
- ! The bill increases the \$3 million limitation on financial assistance that may be awarded in any one year by an additional \$2 million, and offers incentives to develop affordable housing and recreational or conservation areas.
- ! The Office of Legislative Services estimates that the bill will have no effect on State funds. It will benefit current and new recipients of brownfields project aid through the expanded distribution of financial assistance as provided under the bill.

BILL DESCRIPTION

Assembly Bill No. 2815 (1R) of 2004 makes various changes to the laws governing financial assistance for brownfields redevelopment from the Hazardous Discharge Site Remediation Fund. The bill would allow counties and authorized redevelopment entities to receive financial assistance from the fund. Currently, private parties and municipal governmental entities are eligible to receive such financial assistance. The bill would also increase the \$3 million limitation on the total amount of financial assistance that may be awarded in any one year by an additional \$2 million.

The bill requires the DEP to establish guidelines that establish a procedure for the designation of brownfield development areas. The bill would also authorize matching grants to municipalities, counties, and redevelopment entities for up to 50 percent of the cost of a remedial action that involves the redevelopment of property for affordable housing, and up to 75 percent of the cost of a remedial action that involves the redevelopment of property for recreation and conservation purposes.

The bill would change the funding categories governing the allocation of the use of monies in the fund and would eliminate the fixed percentages for funding categories. It would allocate monies for financial assistance to persons who perform remediations in qualifying municipalities and for other various purposes.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services estimates that the bill will have no fiscal impact on State funds because it is primarily concerned with the redistribution and reallocation of monies available for brownfields redevelopment projects from the Hazardous Discharge Site Remediation Fund. The fund, a revolving account managed by the N.J. EDA, was supported in the past from bond funds and is now funded by annual allocations from constitutionally dedicated Corporation Business Tax revenues. Thus, no General Fund monies are used for this particular program.

The bill should benefit counties, authorized redevelopment agencies and nonprofit organizations because they would now be eligible for financial assistance from the fund. Municipalities would also benefit due to the increase in funding award limits afforded under the bill. Any costs associated with additional responsibilities given to the DEP or the EDA under the bill should be covered by assessments to the fund and financial aid applicant fees.

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.