

40:55D-8.6

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2011 **CHAPTER:** 122

NJSA: 40:55D-8.6 (Extends moratorium on the imposition of Statewide non-residential development fees; requires return of fees paid subsequent to June 30, 2010)

BILL NO: S2974 (Substituted for A4221)

SPONSOR(S) Lesniak and others

DATE INTRODUCED: June 27, 2011

COMMITTEE: **ASSEMBLY:** ---

SENATE: Budget and Appropriations

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 29, 2011

SENATE: June 29, 2011

DATE OF APPROVAL: August 24, 2011

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Introduced version of bill enacted)

S2974

SPONSOR'S STATEMENT: (Begins on page 6 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

A4221

SPONSOR'S STATEMENT: (Begins on page 6 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Acting Gov. Guadagno signs bill suspending 2.5 percent fee on non-housing construction," NewJerseyNewsroom.com, 8-25-11

"Commercial-development fee suspended," The Star-Ledger, 8-25-11

"Commercial-development fee suspended in New Jersey," The Times, 8-25-11

"New Jersey suspends developers fee that funded affordable housing," Burlington County Times, 8-25-11

LAW/RWH

P.L.2011, CHAPTER 122, *approved August 24, 2011*

Senate, No. 2974

1 AN ACT extending the moratorium on the imposition of Statewide
2 non-residential development fees, amending P.L.2008, c.46 and
3 P.L.2009, c.90.

4

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

7

8 1. Section 37 of P.L.2008, c.46 (C.40:55D-8.6) is amended to
9 read as follows:

10 37. a. The provisions of this subsection shall not apply to a
11 financial or other contribution that a developer made or committed
12 itself to make prior to the effective date of sections 32 through 38 of
13 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7). The
14 provisions of P.L.2008, c.46 that would permit the imposition of a
15 fee upon a developer of non-residential property shall not apply to:

16 (1) Non-residential property for which a site plan has received
17 either preliminary approval, pursuant to section 34 of P.L.1975,
18 c.291 (C.40:55D-46), or final approval, pursuant to section 38 of
19 P.L.1975, c.291 (C.40:55D-50), prior to July 1, **[2010]** 2013;
20 provided that a permit for the construction of the building has been
21 issued by the local enforcing agency having jurisdiction, in
22 accordance with section 13 of P.L.1975, c.217 (C.52:27D-131),
23 prior to January 1, **[2013]** 2015;

24 (2) A non-residential planned development which has received
25 approval of a general development plan pursuant to section 5 of
26 P.L.1987, c.129 (C.40:55D-45.3), or a nonresidential development
27 for which the developer has entered into a developer's agreement
28 pursuant to a development approval granted pursuant to P.L.1975,
29 c.291 (C.40:55D-1 et seq.) or for which the redeveloper has entered
30 into a redevelopment agreement pursuant to P.L.1992, c.79
31 (C.40A:12A-1 et al.) prior to the effective date of P.L.2008, c.46
32 (C.52:27D-329.1 et al.); provided, however, that the general
33 development plan, developer's agreement, redevelopment
34 agreement, or any development agreement pursuant to the
35 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
36 provides that the developer or redeveloper pay a fee for affordable
37 housing of at least one percent of the equalized assessed value of
38 the improvements which are the subject of the development plan,
39 developer's agreement, or redevelopment agreement;

40 (3) A non-residential project that, prior to July 1, **[2010]** 2013,
41 has been referred to a planning board by the State, a governing
42 body, or other public agency for review pursuant to section 22 of

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

Matter underlined thus is new matter.

1 P.L.1975, c.291 (C.40:55D-31); provided that a permit for the
2 construction of the building has been issued by the local enforcing
3 agency having jurisdiction, in accordance with section 13 of
4 P.L.1975, c.217 (C.52:27D-131), prior to January 1, **[2013]** 2015;

5 (4) A non-residential property for which a site plan application
6 has received approval by the New Jersey Meadowlands
7 Commission, pursuant to section 13 of P.L.1968, c.404 (C.13:17-
8 14) prior to July 1, **[2010]** 2013; provided that a permit for the
9 construction of the building has been issued by the local enforcing
10 agency having jurisdiction, in accordance with section 13 of
11 P.L.1975, c.217 (C.52:27D-131), prior to January 1, **[2013]** 2015;

12 (5) Individual buildings within a nonresidential phased
13 development that received either preliminary or final approval prior
14 to July 1, **[2010]** 2013, provided that a permit for the construction
15 of the building has been issued prior to January 1, **[2013]** 2015.

16 b. A developer may challenge non-residential development fees
17 imposed pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) by
18 filing a challenge with the Director of the Division of Taxation.
19 Pending a review and determination by the director, which shall be
20 made within 45 days of receipt of the challenge, collected fees shall
21 be placed in an interest bearing escrow account by the municipality
22 or by the State, as the case may be. Appeals from a determination
23 of the director may be made to the tax court in accordance with the
24 provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et
25 seq., within 90 days after the date of such determination. Interest
26 earned on amounts escrowed shall be credited to the prevailing
27 party.

28 c. Whenever non-residential development is situated on real
29 property that has been previously developed with a building,
30 structure, or other improvement, the non-residential development
31 fee shall be equal to two and a half (2.5) percent of the equalized
32 assessed value of the land and improvements on the property where
33 the non-residential development is situated at the time the final
34 certificate of occupancy is issued, less the equalized assessed value
35 of the land and improvements on the property where the non-
36 residential development is situated, as determined by the tax
37 assessor of the municipality at the time the developer or owner,
38 including any previous owners, first sought approval for a
39 construction permit, including, but not limited to, demolition
40 permits, pursuant to the State Uniform Construction Code, or
41 approval under the "Municipal Land Use Law," P.L.1975, c.291
42 (C.40:55D-1 et seq.). If the calculation required under this section
43 results in a negative number, the non-residential development fee
44 shall be zero.

45 Whenever the developer of a non-residential development has
46 made or committed itself to make a financial or other contribution
47 relating to the provision of housing affordable to low and moderate

1 income households prior to the enactment of P.L.2008, c.46
2 (C.52:27D-329.1 et al.), the non-residential development fee shall
3 be reduced by the amount of the financial contribution and the fair
4 market value of any other contribution made by or committed to be
5 made by the developer. For purposes of this section, a developer is
6 considered to have made or committed itself to make a financial or
7 other contribution, if and only if: (1) the contribution has been
8 transferred, including but not limited to when the funds have
9 already been received by the municipality; (2) the developer has
10 obligated itself to make a contribution as set forth in a written
11 agreement with the municipality, such as a developer's agreement;
12 or (3) the developer's obligation to make a contribution is set forth
13 as a condition in a land use approval issued by a municipal land use
14 agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291
15 (C.40:55D-1 et seq.).

16 d. Unless otherwise provided for by law, no municipality shall
17 be required to return a financial or any other contribution made by
18 or committed to be made by the developer of a non-residential
19 development prior to the enactment of P.L.2008, c.46 (C.52:27D-
20 329.1 et al.) relating to the provision of housing affordable to low
21 and moderate income households, provided that the developer does
22 not obtain an amended, modified, or new municipal land use
23 approval with a substantial change in the non-residential
24 development. If the developer obtains an amended, modified, or
25 new land use approval for non-residential development, the
26 municipality, person, or entity shall be required to return to the
27 developer any funds or other contribution provided by the developer
28 for the provision of housing affordable to low and moderate income
29 households and the developer shall not be entitled to a reduction in
30 the affordable housing development fee based upon that
31 contribution.

32 e. The provisions of sections 32 through 38 of P.L.2008, c.46
33 (C.40:55D-8.1 through C.40:55D-8.7) shall not be construed in any
34 manner as affecting the method or timing of assessing real property
35 for property taxation purposes. The payment of a non-residential
36 development fee shall not increase the equalized assessed value of
37 any property.

38 (cf: P.L.2009, c.90, s.37)

39

40 2. Section 39 of P.L. 2009, c.90 (40:55D-8.8) is amended to
41 read as follows:

42 39. The provisions of this section shall apply only to those
43 developments for which a fee was imposed pursuant to sections 32
44 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7),
45 known as the "Statewide Non-residential Development Fee Act."

46 a. A developer of a property that received preliminary site plan
47 approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46),
48 or final approval, pursuant to section 38 of P.L.1975, c.291

1 (C.40:55D-50) prior to July 17, 2008 and that was subject to the
2 payment of a nonresidential development fee prior to the enactment
3 of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to a
4 return of any moneys paid that represent the difference between
5 moneys committed prior to July 17, 2008 and monies paid on or
6 after that date.

7 b. A developer of a non-residential project that, prior to July
8 17, 2008, has been referred to a planning board by the State, a
9 governing body, or other public agency for review pursuant to
10 section 22 of P.L.1975, c.291 (C. 40:55D-31) and that was subject
11 to the payment of a nonresidential development fee prior to the
12 enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be
13 entitled to a return of any moneys paid that represent the difference
14 between monies committed prior to July 17, 2008 and moneys paid
15 on or after that date.

16 c. If moneys are required to be returned under subsection a., b.
17 or d. of this section, a claim shall be submitted, in writing, to the
18 same entity to which the moneys were paid, within 120 days of the
19 effective date of P.L.2009, c.90 (C.52:27D-489a et al.). The entity
20 to whom the funds were paid shall promptly review all requests for
21 returns, and the fees paid shall be returned to the claimant within 30
22 days of receipt of the claim for return.

23 d. A developer of a non-residential project that paid a fee
24 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
25 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to July 17, 2008
26 but prior to the effective date of P.L.2009, c.90 (C.52:27D-489a et
27 al.), shall be entitled to the return of those monies paid, provided
28 that the provisions of section 37 of P.L.2008, c.46 (C.40:55D-8.6),
29 as amended by P.L.2009, c.90 do not permit the imposition of a fee
30 upon the developer of that non-residential property.

31 e. Notwithstanding the provisions of subsections a., b., c., and
32 d. of this section, if, on the effective date of P.L.2009, c.90
33 (C.52:27D-489a et al.), a municipality that has returned all or a
34 portion of non-residential fees in accordance with subsection a. or
35 b. of this section shall be reimbursed from the funds available
36 through the appropriation made into the "New Jersey Affordable
37 Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90
38 (C.52:27D-320.1) within 30 days of the municipality providing
39 written notice to the Council on Affordable Housing.

40 f. A developer of a non-residential project that paid a fee
41 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
42 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to June 30, 2010
43 but prior to the effective date of P.L. _____, c. (C. _____) (pending
44 before the Legislature as this bill), shall be entitled to the return of
45 those monies paid, provided that said monies have not already been
46 expended by the municipality on affordable housing projects, and
47 provided that the provisions of section 37 of P.L.2008, c.46
48 (C.40:55D-8.6), as amended by P.L. _____, c. (C. _____) (pending before

1 the Legislature as this bill) do not permit the imposition of a fee
2 upon the developer of that non-residential property. If moneys are
3 eligible to be returned under this subsection, a claim shall be
4 submitted, in writing, to the same entity to which the moneys were
5 paid, within 120 days of the effective date of P.L. , c. (C.)
6 (pending before the Legislature as this bill). The entity to whom
7 the funds were paid shall promptly review all requests for returns,
8 to ensure applicability of section 37 of P.L.2008, c.46 (C.40:55D-
9 8.6) and the fees paid shall be returned to the claimant within 30
10 days of receipt of the claim for return.

11 (cf: P.L.2009, c.90, s.39)

12

13 3. Section 40 of P.L.2009, c.90 (C.52:27D-311.3) is amended
14 to read as follows:

15 40. The portion, if any, of the affordable housing obligation of a
16 municipality attributable to a particular non-residential development
17 shall be reduced or eliminated if:

18 a. the collection of fees under sections 32 through 38 of
19 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) is effectively
20 suspended for a period of time pursuant to that law; and

21 b. the Council on Affordable Housing, in consultation with the
22 Department of Community Affairs, has made a determination
23 within two years of the effective date of P.L.2009, c.90 (C.52:27D-
24 489a et al.), that there are insufficient funds in the "New Jersey
25 Affordable Housing Trust Fund," or through other State or federal
26 housing subsidies available to a municipality to assist in the
27 production of such housing units, in the same amount as would have
28 been collected if not for the suspension thereof, pursuant to sections
29 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-
30 8.7) by the date of the determination.

31 c. Nothing in P.L.2009, c.90 (C.52:27D-489a et al.) shall be
32 construed to affect the municipal obligation to provide a realistic
33 opportunity for its projected fair share of the regional housing need
34 as determined by the Council on Affordable Housing in accordance
35 with the provisions of the "Fair Housing Act," P.L.1985, c.222
36 (C.52:27D-301 et al.).

37 (cf: P.L.2009, c.90, s.40)

38

39 4. This act shall take effect immediately.

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41

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STATEMENT

43

44 This bill extends for two years, until July 1, 2013, the
45 moratorium on the imposition of fees on non-residential
46 construction projects. The fees, known as Statewide non-residential
47 development fees, were enacted as part of a revision of the "Fair
48 Housing Act," pursuant to P.L.2008, c.46. A moratorium was

1 placed on the imposition of the fees until July 1, 2010, pursuant to
2 the “Economic Stimulus Act of 2009,” P.L.2009, c.90.

3 This bill extends the moratorium placed in effect in 2009 until
4 July 1, 2013. The bill requires the return of any monies paid during
5 the period since July 1, 2010 and the present, as a result of the
6 previous expiration of the moratorium. The bill also clarifies that
7 any affordable housing obligation imposed under the “Fair Housing
8 Act” as a result of non-residential construction is suspended
9 whenever the imposition of Statewide non-residential fees is
10 suspended.

11

12

13

14

15 Extends moratorium on the imposition of Statewide non-
16 residential development fees; requires return of fees paid
17 subsequent to June 30, 2010.

SENATE, No. 2974

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 27, 2011

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Assemblyman ALBERT COUTINHO

District 29 (Essex and Union)

Assemblyman ANTHONY M. BUCCO

District 25 (Morris)

Co-Sponsored by:

Senators Addiego, Oroho, Assemblymen Rudder and Delany

SYNOPSIS

Extends moratorium on the imposition of Statewide non-residential development fees; requires return of fees paid subsequent to June 30, 2010.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/30/2011)

1 AN ACT extending the moratorium on the imposition of Statewide
2 non-residential development fees, amending P.L.2008, c.46 and
3 P.L.2009, c.90.

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

7
8 1. Section 37 of P.L.2008, c.46 (C.40:55D-8.6) is amended to
9 read as follows:

10 37. a. The provisions of this subsection shall not apply to a
11 financial or other contribution that a developer made or committed
12 itself to make prior to the effective date of sections 32 through 38 of
13 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7). The
14 provisions of P.L.2008, c.46 that would permit the imposition of a
15 fee upon a developer of non-residential property shall not apply to:

16 (1) Non-residential property for which a site plan has received
17 either preliminary approval, pursuant to section 34 of P.L.1975,
18 c.291 (C.40:55D-46), or final approval, pursuant to section 38 of
19 P.L.1975, c.291 (C.40:55D-50), prior to July 1, **[2010]** 2013;
20 provided that a permit for the construction of the building has been
21 issued by the local enforcing agency having jurisdiction, in
22 accordance with section 13 of P.L.1975, c.217 (C.52:27D-131),
23 prior to January 1, **[2013]** 2015;

24 (2) A non-residential planned development which has received
25 approval of a general development plan pursuant to section 5 of
26 P.L.1987, c.129 (C.40:55D-45.3), or a nonresidential development
27 for which the developer has entered into a developer's agreement
28 pursuant to a development approval granted pursuant to P.L.1975,
29 c.291 (C.40:55D-1 et seq.) or for which the redeveloper has entered
30 into a redevelopment agreement pursuant to P.L.1992, c.79
31 (C.40A:12A-1 et al.) prior to the effective date of P.L.2008, c.46
32 (C.52:27D-329.1 et al.); provided, however, that the general
33 development plan, developer's agreement, redevelopment
34 agreement, or any development agreement pursuant to the
35 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
36 provides that the developer or redeveloper pay a fee for affordable
37 housing of at least one percent of the equalized assessed value of
38 the improvements which are the subject of the development plan,
39 developer's agreement, or redevelopment agreement;

40 (3) A non-residential project that, prior to July 1, **[2010]** 2013,
41 has been referred to a planning board by the State, a governing
42 body, or other public agency for review pursuant to section 22 of
43 P.L.1975, c.291 (C.40:55D-31); provided that a permit for the
44 construction of the building has been issued by the local enforcing

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

Matter underlined thus is new matter.

1 agency having jurisdiction, in accordance with section 13 of
2 P.L.1975, c.217 (C.52:27D-131), prior to January 1, **[2013]** 2015;

3 (4) A non-residential property for which a site plan application
4 has received approval by the New Jersey Meadowlands
5 Commission, pursuant to section 13 of P.L.1968, c.404 (C.13:17-
6 14) prior to July 1, **[2010]** 2013; provided that a permit for the
7 construction of the building has been issued by the local enforcing
8 agency having jurisdiction, in accordance with section 13 of
9 P.L.1975, c.217 (C.52:27D-131), prior to January 1, **[2013]** 2015;

10 (5) Individual buildings within a nonresidential phased
11 development that received either preliminary or final approval prior
12 to July 1, **[2010]** 2013, provided that a permit for the construction
13 of the building has been issued prior to January 1, **[2013]** 2015.

14 b. A developer may challenge non-residential development fees
15 imposed pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) by
16 filing a challenge with the Director of the Division of Taxation.
17 Pending a review and determination by the director, which shall be
18 made within 45 days of receipt of the challenge, collected fees shall
19 be placed in an interest bearing escrow account by the municipality
20 or by the State, as the case may be. Appeals from a determination
21 of the director may be made to the tax court in accordance with the
22 provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et
23 seq., within 90 days after the date of such determination. Interest
24 earned on amounts escrowed shall be credited to the prevailing
25 party.

26 c. Whenever non-residential development is situated on real
27 property that has been previously developed with a building,
28 structure, or other improvement, the non-residential development
29 fee shall be equal to two and a half (2.5) percent of the equalized
30 assessed value of the land and improvements on the property where
31 the non-residential development is situated at the time the final
32 certificate of occupancy is issued, less the equalized assessed value
33 of the land and improvements on the property where the non-
34 residential development is situated, as determined by the tax
35 assessor of the municipality at the time the developer or owner,
36 including any previous owners, first sought approval for a
37 construction permit, including, but not limited to, demolition
38 permits, pursuant to the State Uniform Construction Code, or
39 approval under the "Municipal Land Use Law," P.L.1975, c.291
40 (C.40:55D-1 et seq.). If the calculation required under this section
41 results in a negative number, the non-residential development fee
42 shall be zero.

43 Whenever the developer of a non-residential development has
44 made or committed itself to make a financial or other contribution
45 relating to the provision of housing affordable to low and moderate
46 income households prior to the enactment of P.L.2008, c.46
47 (C.52:27D-329.1 et al.), the non-residential development fee shall

1 be reduced by the amount of the financial contribution and the fair
2 market value of any other contribution made by or committed to be
3 made by the developer. For purposes of this section, a developer is
4 considered to have made or committed itself to make a financial or
5 other contribution, if and only if: (1) the contribution has been
6 transferred, including but not limited to when the funds have
7 already been received by the municipality; (2) the developer has
8 obligated itself to make a contribution as set forth in a written
9 agreement with the municipality, such as a developer's agreement;
10 or (3) the developer's obligation to make a contribution is set forth
11 as a condition in a land use approval issued by a municipal land use
12 agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291
13 (C.40:55D-1 et seq.).

14 d. Unless otherwise provided for by law, no municipality shall
15 be required to return a financial or any other contribution made by
16 or committed to be made by the developer of a non-residential
17 development prior to the enactment of P.L.2008, c.46 (C.52:27D-
18 329.1 et al.) relating to the provision of housing affordable to low
19 and moderate income households, provided that the developer does
20 not obtain an amended, modified, or new municipal land use
21 approval with a substantial change in the non-residential
22 development. If the developer obtains an amended, modified, or
23 new land use approval for non-residential development, the
24 municipality, person, or entity shall be required to return to the
25 developer any funds or other contribution provided by the developer
26 for the provision of housing affordable to low and moderate income
27 households and the developer shall not be entitled to a reduction in
28 the affordable housing development fee based upon that
29 contribution.

30 e. The provisions of sections 32 through 38 of P.L.2008, c.46
31 (C.40:55D-8.1 through C.40:55D-8.7) shall not be construed in any
32 manner as affecting the method or timing of assessing real property
33 for property taxation purposes. The payment of a non-residential
34 development fee shall not increase the equalized assessed value of
35 any property.

36 (cf: P.L.2009, c.90, s.37)

37

38 2. Section 39 of P.L. 2009, c.90 (40:55D-8.8) is amended to
39 read as follows:

40 39. The provisions of this section shall apply only to those
41 developments for which a fee was imposed pursuant to sections 32
42 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7),
43 known as the "Statewide Non-residential Development Fee Act."

44 a. A developer of a property that received preliminary site plan
45 approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46),
46 or final approval, pursuant to section 38 of P.L.1975, c.291
47 (C.40:55D-50) prior to July 17, 2008 and that was subject to the
48 payment of a nonresidential development fee prior to the enactment

1 of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to a
2 return of any moneys paid that represent the difference between
3 moneys committed prior to July 17, 2008 and monies paid on or
4 after that date.

5 b. A developer of a non-residential project that, prior to July
6 17, 2008, has been referred to a planning board by the State, a
7 governing body, or other public agency for review pursuant to
8 section 22 of P.L.1975, c.291 (C. 40:55D-31) and that was subject
9 to the payment of a nonresidential development fee prior to the
10 enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be
11 entitled to a return of any moneys paid that represent the difference
12 between monies committed prior to July 17, 2008 and moneys paid
13 on or after that date.

14 c. If moneys are required to be returned under subsection a., b.
15 or d. of this section, a claim shall be submitted, in writing, to the
16 same entity to which the moneys were paid, within 120 days of the
17 effective date of P.L.2009, c.90 (C.52:27D-489a et al.). The entity
18 to whom the funds were paid shall promptly review all requests for
19 returns, and the fees paid shall be returned to the claimant within 30
20 days of receipt of the claim for return.

21 d. A developer of a non-residential project that paid a fee
22 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
23 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to July 17, 2008
24 but prior to the effective date of P.L.2009, c.90 (C.52:27D-489a et
25 al.), shall be entitled to the return of those monies paid, provided
26 that the provisions of section 37 of P.L.2008, c.46 (C.40:55D-8.6),
27 as amended by P.L.2009, c.90 do not permit the imposition of a fee
28 upon the developer of that non-residential property.

29 e. Notwithstanding the provisions of subsections a., b., c., and
30 d. of this section, if, on the effective date of P.L.2009, c.90
31 (C.52:27D-489a et al.), a municipality that has returned all or a
32 portion of non-residential fees in accordance with subsection a. or
33 b. of this section shall be reimbursed from the funds available
34 through the appropriation made into the "New Jersey Affordable
35 Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90
36 (C.52:27D-320.1) within 30 days of the municipality providing
37 written notice to the Council on Affordable Housing.

38 f. A developer of a non-residential project that paid a fee
39 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
40 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to June 30, 2010
41 but prior to the effective date of P.L. , c. (C.) (pending
42 before the Legislature as this bill), shall be entitled to the return of
43 those monies paid, provided that said monies have not already been
44 expended by the municipality on affordable housing projects, and
45 provided that the provisions of section 37 of P.L.2008, c.46
46 (C.40:55D-8.6), as amended by P.L. , c. (C.) (pending before
47 the Legislature as this bill) do not permit the imposition of a fee
48 upon the developer of that non-residential property. If moneys are

1 eligible to be returned under this subsection, a claim shall be
2 submitted, in writing, to the same entity to which the moneys were
3 paid, within 120 days of the effective date of P.L. , c. (C.)
4 (pending before the Legislature as this bill). The entity to whom
5 the funds were paid shall promptly review all requests for returns,
6 to ensure applicability of section 37 of P.L.2008, c.46 (C.40:55D-
7 8.6) and the fees paid shall be returned to the claimant within 30
8 days of receipt of the claim for return.

9 (cf: P.L.2009, c.90, s.39)

10

11 3. Section 40 of P.L.2009, c.90 (C.52:27D-311.3) is amended
12 to read as follows:

13 40. The portion, if any, of the affordable housing obligation of a
14 municipality attributable to a particular non-residential development
15 shall be reduced or eliminated if:

16 a. the collection of fees under sections 32 through 38 of
17 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) is effectively
18 suspended for a period of time pursuant to that law; and

19 b. the Council on Affordable Housing, in consultation with the
20 Department of Community Affairs, has made a determination
21 within two years of the effective date of P.L.2009, c.90 (C.52:27D-
22 489a et al.), that there are insufficient funds in the "New Jersey
23 Affordable Housing Trust Fund," or through other State or federal
24 housing subsidies available to a municipality to assist in the
25 production of such housing units, in the same amount as would have
26 been collected if not for the suspension thereof, pursuant to sections
27 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-
28 8.7) by the date of the determination.

29 c. Nothing in P.L.2009, c.90 (C.52:27D-489a et al.) shall be
30 construed to affect the municipal obligation to provide a realistic
31 opportunity for its projected fair share of the regional housing need
32 as determined by the Council on Affordable Housing in accordance
33 with the provisions of the "Fair Housing Act," P.L.1985, c.222
34 (C.52:27D-301 et al.).

35 (cf: P.L.2009, c.90, s.40)

36

37 4. This act shall take effect immediately.

38

39

40 STATEMENT

41

42 This bill extends for two years, until July 1, 2013, the
43 moratorium on the imposition of fees on non-residential
44 construction projects. The fees, known as Statewide non-residential
45 development fees, were enacted as part of a revision of the "Fair
46 Housing Act," pursuant to P.L.2008, c.46. A moratorium was
47 placed on the imposition of the fees until July 1, 2010, pursuant to
48 the "Economic Stimulus Act of 2009," P.L.2009, c.90.

S2974 LESNIAK, SWEENEY

7

1 This bill extends the moratorium placed in effect in 2009 until
2 July 1, 2013. The bill requires the return of any monies paid during
3 the period since July 1, 2010 and the present, as a result of the
4 previous expiration of the moratorium. The bill also clarifies that
5 any affordable housing obligation imposed under the “Fair Housing
6 Act” as a result of non-residential construction is suspended
7 whenever the imposition of Statewide non-residential fees is
8 suspended.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2974

STATE OF NEW JERSEY

DATED: JUNE 27, 2011

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2974.

This bill extends for two years, until July 1, 2013, the imposition of fees on non-residential construction projects.

The fees, known as Statewide non-residential development fees were enacted as part of a revision of the "Fair Housing Act," pursuant to P.L.2008, c.46. A moratorium was placed on the imposition of the fees until July 1, 2010, pursuant to the "Economic Stimulus Act of 2009," P.L.2009, c.90. This bill extends the moratorium placed in effect in 2009 until July 1, 2013. The bill requires the return of any monies paid during the period from July 1, 2010 to the present, as a result of the previous expiration of the moratorium. Municipalities that are eligible to collect non-residential development fees would not be required to refund monies that have been spent on affordable housing projects.

The bill also clarifies that the "Fair Housing Act" does not require the imposition of an affordable housing obligation as a result of non-residential construction, but rather provides that, should the court rule in that manner, or should regulations be adopted to that effect, any obligation so imposed is suspended whenever the imposition of Statewide non-residential fees is suspended.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 2974
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: JULY 6, 2011

SUMMARY

- Synopsis:** Extends moratorium on the imposition of Statewide non-residential development fees; requires return of fees paid subsequent to June 30, 2010.
- Type of Impact:** Indeterminate revenue loss to the State and municipal governments.
- Agencies Affected:** Department of Community Affairs; municipalities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	Indeterminate Revenue Loss – See comments below		
Local Revenue	Indeterminate Revenue Loss – See comments below		

- The Office of Legislative Services (OLS) has determined that the renewal of the moratorium on the payment of the non-residential development fee proposed would result in indeterminate revenue losses to the State and municipal governments.
- No specific estimate is feasible due to the unpredictable nature of the basis for the fee, i.e., the extent and location of new construction subject to the fee.
- Those municipalities that have received substantive certification from the Council on Affordable Housing would experience a revenue loss in their municipal affordable housing trust funds, if they have elected to impose a non-residential development fee, because they are currently permitted to charge and collect non-residential development fees for deposit in those funds.

BILL DESCRIPTION

Senate Bill No. 2974 of 2011 extends, for two years, until July 1, 2013, the moratorium on the imposition of fees on non-residential construction projects. The fees, known as Statewide non-residential development fees, were enacted as part of a revision of the “Fair Housing Act,” pursuant to P.L.2008, c.46. A moratorium was placed on the imposition of the fees until July 1,

2010, pursuant to the “Economic Stimulus Act of 2009,” P.L.2009, c.90. This bill has the effect of retroactively extending the moratorium placed in effect in 2009 until July 1, 2013. The bill requires the return of any monies paid during the period from July 1, 2010 to the present, as result of the previous expiration of the moratorium. Municipalities that are eligible to collect non-residential development fees would not be required to refund monies that have been spent on affordable housing projects.

The bill modifies the “Statewide Non-Residential Development Fee Act” (N.J.S.A.40:55D-8.1 through N.J.S.A.40:55D-8.7) to exempt property that receives site plan approval from a municipality or from the New Jersey Meadowlands Commission before July 1, 2013, from the fee imposed by the act, provided that a permit for the construction of the building is issued by the local enforcing agency prior to January 1, 2015. The bill also amends the act so that the fee would not apply to projects that have been referred to a planning board by the State or by another public agency prior to July 1, 2013, provided that a permit for the construction of the building is issued by the local enforcing agency prior to January 1, 2015. Individual buildings within a non-residential phased development that receive either preliminary or final approval prior to July 1, 2013, provided that a permit for the construction of the building is issued prior to January 1, 2015, are also exempt from the fee.

The developer of a non-residential project that paid the non-residential development fee subsequent to June 30, 2010, but prior to the effective date of the bill, is entitled to a refund of any moneys paid if the renewal of the moratorium is applicable to the project. The OLS notes that a developer must submit a claim, in writing, for the return of any non-residential development fees within 120 days of the effective date of the bill. Municipalities that are eligible to collect non-residential development fees would not be required to refund monies that have been spent on affordable housing projects.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS has determined that the renewal and extension of the moratorium on the payment of the non-residential development fee proposed would result in indeterminate revenue losses to the New Jersey Affordable Housing Trust Fund, Urban Housing Assistance Fund, and to municipal governments. No specific revenue estimate is feasible to due the unpredictable nature of the basis for the fee, i.e., the extent and location of new construction subject to the fee. This will vary from year to year according to such factors as national and regional economic conditions, local planning and zoning decisions, and the impact of government development subsidies. Those municipalities that have received substantive certification from the Council on Affordable Housing would experience a revenue loss because they would no longer be permitted to charge and collect non-residential development fees during the moratorium period.

The Statewide non-residential development fee was intended to raise revenue for the construction and rehabilitation of affordable housing. Subsection a. of N.J.S.A.52:27D-329.8 requires the first \$20 million from the State portion of fee revenues to be deposited in the Urban Housing Assistance Fund for the purpose of assisting urban aid municipalities in the

rehabilitation and production of housing. The OLS notes that subsection b. of N.J.S.A.52:27D-329.8 may require a transfer of \$20 million from the General Fund to the Urban Housing Assistance Fund.

Section: Local Government

*Analyst: Scott A. Brodsky
Senior Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 4221

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 27, 2011

Sponsored by:

Assemblyman ALBERT COUTINHO

District 29 (Essex and Union)

Assemblyman ANTHONY M. BUCCO

District 25 (Morris)

Co-Sponsored by:

Assemblymen Rudder and Delany

SYNOPSIS

Extends moratorium on the imposition of Statewide non-residential development fees; requires return of fees paid subsequent to June 30, 2010.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/30/2011)

1 AN ACT extending the moratorium on the imposition of Statewide
2 non-residential development fees, amending P.L.2008, c.46 and
3 P.L.2009, c.90.

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

7
8 1. Section 37 of P.L.2008, c.46 (C.40:55D-8.6) is amended to
9 read as follows:

10 37. a. The provisions of this subsection shall not apply to
11 a financial or other contribution that a developer made or
12 committed itself to make prior to the effective date of sections 32
13 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7).
14 The provisions of P.L.2008, c.46 that would permit the imposition
15 of a fee upon a developer of non-residential property shall not apply
16 to:

17 (1) Non-residential property for which a site plan has received
18 either preliminary approval, pursuant to section 34 of P.L.1975,
19 c.291 (C.40:55D-46), or final approval, pursuant to section 38 of
20 P.L.1975, c.291 (C.40:55D-50), prior to July 1, **[2010]** 2013;
21 provided that a permit for the construction of the building has been
22 issued by the local enforcing agency having jurisdiction, in
23 accordance with section 13 of P.L.1975, c.217 (C.52:27D-131),
24 prior to January 1, **[2013]** 2015;

25 (2) A non-residential planned development which has received
26 approval of a general development plan pursuant to section 5 of
27 P.L.1987, c.129 (C.40:55D-45.3), or a nonresidential development
28 for which the developer has entered into a developer's agreement
29 pursuant to a development approval granted pursuant to P.L.1975,
30 c.291 (C.40:55D-1 et seq.) or for which the redeveloper has entered
31 into a redevelopment agreement pursuant to P.L.1992, c.79
32 (C.40A:12A-1 et al.) prior to the effective date of P.L.2008, c.46
33 (C.52:27D-329.1 et al.); provided, however, that the general
34 development plan, developer's agreement, redevelopment
35 agreement, or any development agreement pursuant to the
36 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
37 provides that the developer or redeveloper pay a fee for affordable
38 housing of at least one percent of the equalized assessed value of
39 the improvements which are the subject of the development plan,
40 developer's agreement, or redevelopment agreement;

41 (3) A non-residential project that, prior to July 1, **[2010]** 2013,
42 has been referred to a planning board by the State, a governing
43 body, or other public agency for review pursuant to section 22 of
44 P.L.1975, c.291 (C.40:55D-31); provided that a permit for the
45 construction of the building has been issued by the local enforcing

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

Matter underlined thus is new matter.

1 agency having jurisdiction, in accordance with section 13 of
2 P.L.1975, c.217 (C.52:27D-131), prior to January 1, **[2013]** 2015;

3 (4) A non-residential property for which a site plan application
4 has received approval by the New Jersey Meadowlands
5 Commission, pursuant to section 13 of P.L.1968, c.404 (C.13:17-
6 14) prior to July 1, **[2010]** 2013; provided that a permit for the
7 construction of the building has been issued by the local enforcing
8 agency having jurisdiction, in accordance with section 13 of
9 P.L.1975, c.217 (C.52:27D-131), prior to January 1, **[2013]** 2015;

10 (5) Individual buildings within a nonresidential phased
11 development that received either preliminary or final approval prior
12 to July 1, **[2010]** 2013, provided that a permit for the construction
13 of the building has been issued prior to January 1, **[2013]** 2015.

14 b. A developer may challenge non-residential development fees
15 imposed pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) by
16 filing a challenge with the Director of the Division of Taxation.
17 Pending a review and determination by the director, which shall be
18 made within 45 days of receipt of the challenge, collected fees shall
19 be placed in an interest bearing escrow account by the municipality
20 or by the State, as the case may be. Appeals from a determination
21 of the director may be made to the tax court in accordance with the
22 provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et
23 seq., within 90 days after the date of such determination. Interest
24 earned on amounts escrowed shall be credited to the prevailing
25 party.

26 c. Whenever non-residential development is situated on real
27 property that has been previously developed with a building,
28 structure, or other improvement, the non-residential development
29 fee shall be equal to two and a half (2.5) percent of the equalized
30 assessed value of the land and improvements on the property where
31 the non-residential development is situated at the time the final
32 certificate of occupancy is issued, less the equalized assessed value
33 of the land and improvements on the property where the non-
34 residential development is situated, as determined by the tax
35 assessor of the municipality at the time the developer or owner,
36 including any previous owners, first sought approval for a
37 construction permit, including, but not limited to, demolition
38 permits, pursuant to the State Uniform Construction Code, or
39 approval under the "Municipal Land Use Law," P.L.1975, c.291
40 (C.40:55D-1 et seq.). If the calculation required under this section
41 results in a negative number, the non-residential development fee
42 shall be zero.

43 Whenever the developer of a non-residential development has
44 made or committed itself to make a financial or other contribution
45 relating to the provision of housing affordable to low and moderate
46 income households prior to the enactment of P.L.2008, c.46
47 (C.52:27D-329.1 et al.), the non-residential development fee shall

1 be reduced by the amount of the financial contribution and the fair
2 market value of any other contribution made by or committed to be
3 made by the developer. For purposes of this section, a developer is
4 considered to have made or committed itself to make a financial or
5 other contribution, if and only if: (1) the contribution has been
6 transferred, including but not limited to when the funds have
7 already been received by the municipality; (2) the developer has
8 obligated itself to make a contribution as set forth in a written
9 agreement with the municipality, such as a developer's agreement;
10 or (3) the developer's obligation to make a contribution is set forth
11 as a condition in a land use approval issued by a municipal land use
12 agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291
13 (C.40:55D-1 et seq.).

14 d. Unless otherwise provided for by law, no municipality shall
15 be required to return a financial or any other contribution made by
16 or committed to be made by the developer of a non-residential
17 development prior to the enactment of P.L.2008, c.46 (C.52:27D-
18 329.1 et al.) relating to the provision of housing affordable to low
19 and moderate income households, provided that the developer does
20 not obtain an amended, modified, or new municipal land use
21 approval with a substantial change in the non-residential
22 development. If the developer obtains an amended, modified, or
23 new land use approval for non-residential development, the
24 municipality, person, or entity shall be required to return to the
25 developer any funds or other contribution provided by the developer
26 for the provision of housing affordable to low and moderate income
27 households and the developer shall not be entitled to a reduction in
28 the affordable housing development fee based upon that
29 contribution.

30 e. The provisions of sections 32 through 38 of P.L.2008, c.46
31 (C.40:55D-8.1 through C.40:55D-8.7) shall not be construed in any
32 manner as affecting the method or timing of assessing real property
33 for property taxation purposes. The payment of a non-residential
34 development fee shall not increase the equalized assessed value of
35 any property.

36 (cf: P.L.2009, c.90, s.37)

37

38 2. Section 39 of P.L. 2009, c.90 (40:55D-8.8) is amended to
39 read as follows:

40 39. The provisions of this section shall apply only to those
41 developments for which a fee was imposed pursuant to sections 32
42 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7),
43 known as the "Statewide Non-residential Development Fee Act."

44 a. A developer of a property that received preliminary site plan
45 approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46),
46 or final approval, pursuant to section 38 of P.L.1975, c.291
47 (C.40:55D-50) prior to July 17, 2008 and that was subject to the
48 payment of a nonresidential development fee prior to the enactment

1 of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to a
2 return of any moneys paid that represent the difference between
3 moneys committed prior to July 17, 2008 and monies paid on or
4 after that date.

5 b. A developer of a non-residential project that, prior to July
6 17, 2008, has been referred to a planning board by the State, a
7 governing body, or other public agency for review pursuant to
8 section 22 of P.L.1975, c.291 (C. 40:55D-31) and that was subject
9 to the payment of a nonresidential development fee prior to the
10 enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be
11 entitled to a return of any moneys paid that represent the difference
12 between monies committed prior to July 17, 2008 and moneys paid
13 on or after that date.

14 c. If moneys are required to be returned under subsection a., b.
15 or d. of this section, a claim shall be submitted, in writing, to the
16 same entity to which the moneys were paid, within 120 days of the
17 effective date of P.L.2009, c.90 (C.52:27D-489a et al.). The entity
18 to whom the funds were paid shall promptly review all requests for
19 returns, and the fees paid shall be returned to the claimant within 30
20 days of receipt of the claim for return.

21 d. A developer of a non-residential project that paid a fee
22 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
23 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to July 17, 2008
24 but prior to the effective date of P.L.2009, c.90 (C.52:27D-489a et
25 al.), shall be entitled to the return of those monies paid, provided
26 that the provisions of section 37 of P.L.2008, c.46 (C.40:55D-8.6),
27 as amended by P.L.2009, c.90 do not permit the imposition of a fee
28 upon the developer of that non-residential property.

29 e. Notwithstanding the provisions of subsections a., b., c., and
30 d. of this section, if, on the effective date of P.L.2009, c.90
31 (C.52:27D-489a et al.), a municipality that has returned all or a
32 portion of non-residential fees in accordance with subsection a. or
33 b. of this section shall be reimbursed from the funds available
34 through the appropriation made into the "New Jersey Affordable
35 Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90
36 (C.52:27D-320.1) within 30 days of the municipality providing
37 written notice to the Council on Affordable Housing.

38 f. A developer of a non-residential project that paid a fee
39 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
40 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to June 30, 2010
41 but prior to the effective date of P.L. , c. (C.) (pending before
42 the Legislature as this bill), shall be entitled to the return of those
43 monies paid, provided that said monies have not already been
44 expended by the municipality on affordable housing projects, and
45 provided that the provisions of section 37 of P.L.2008, c.46
46 (C.40:55D-8.6), as amended by P.L. , c. (C.) (pending before
47 the Legislature as this bill) do not permit the imposition of a fee
48 upon the developer of that non-residential property. If moneys are

1 eligible to be returned under this subsection, a claim shall be
2 submitted, in writing, to the same entity to which the moneys were
3 paid, within 120 days of the effective date of P.L. , c. (C.)
4 (pending before the Legislature as this bill). The entity to whom
5 the funds were paid shall promptly review all requests for returns,
6 to ensure applicability of section 37 of P.L.2008, c.46 (C.40:55D-
7 8.6) and the fees paid shall be returned to the claimant within 30
8 days of receipt of the claim for return.

9 (cf: P.L.2009, c.90, s.39)

10

11 3. Section 40 of P.L.2009, c.90 (C.52:27D-311.3) is amended
12 to read as follows:

13 40. The portion, if any, of the affordable housing obligation of a
14 municipality attributable to a particular non-residential development
15 shall be reduced or eliminated if:

16 a. the collection of fees under sections 32 through 38 of
17 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) is effectively
18 suspended for a period of time pursuant to that law; and

19 b. the Council on Affordable Housing, in consultation with the
20 Department of Community Affairs, has made a determination
21 within two years of the effective date of P.L.2009, c.90 (C.52:27D-
22 489a et al.), that there are insufficient funds in the "New Jersey
23 Affordable Housing Trust Fund," or through other State or federal
24 housing subsidies available to a municipality to assist in the
25 production of such housing units, in the same amount as would have
26 been collected if not for the suspension thereof, pursuant to sections
27 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-
28 8.7) by the date of the determination.

29 c. Nothing in P.L.2009, c.90 (C.52:27D-489a et al.) shall be
30 construed to affect the municipal obligation to provide a realistic
31 opportunity for its projected fair share of the regional housing need
32 as determined by the Council on Affordable Housing in accordance
33 with the provisions of the "Fair Housing Act," P.L.1985, c.222
34 (C.52:27D-301 et al.).

35 (cf: P.L.2009, c.90, s.40)

36

37 4. This act shall take effect immediately.

38

39

40 STATEMENT

41

42 This bill extends for two years, until July 1, 2013, the
43 moratorium on the imposition of fees on non-residential
44 construction projects. The fees, known as Statewide non-residential
45 development fees, were enacted as part of a revision of the "Fair
46 Housing Act," pursuant to P.L.2008, c.46. A moratorium was
47 placed on the imposition of the fees until July 1, 2010, pursuant to
48 the "Economic Stimulus Act of 2009," P.L.2009, c.90.

1 This bill extends the moratorium placed in effect in 2009 until
2 July 1, 2013. The bill requires the return of any monies paid during
3 the period since July 1, 2010 and the present, as a result of the
4 previous expiration of the moratorium. The bill also clarifies that
5 any affordable housing obligation imposed under the “Fair Housing
6 Act” as a result of non-residential construction is suspended
7 whenever the imposition of Statewide non-residential fees is
8 suspended.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4221

STATE OF NEW JERSEY

DATED: JUNE 27, 2011

The Assembly Budget Committee reports favorably Assembly Bill No. 4221.

This bill extends for two years, until July 1, 2013, the moratorium on the imposition of fees on non-residential construction projects.

The fees, known as Statewide non-residential development fees were enacted as part of a revision of the "Fair Housing Act," pursuant to P.L.2008, c.46. A moratorium was placed on the imposition of the fees until July 1, 2010, pursuant to the "Economic Stimulus Act of 2009," P.L.2009, c.90. This bill extends the moratorium placed in effect in 2009 until July 1, 2013. The bill requires the return of any monies paid during the period from July 1, 2010 to the present, as a result of the expiration of the previous moratorium. This bill does not require municipalities that are eligible to collect non-residential development fees to refund monies that have been spent on affordable housing projects.

The bill modifies the "Statewide Non-Residential Development Fee Act" (N.J.S.A.40:55D-8.1 through 40:55D-8.7) to exempt property that receives site plan approval from a municipality or from the New Jersey Meadowlands Commission before July 1, 2013, from the fee imposed by the act, provided that a permit for the construction of the building is issued by the local enforcing agency prior to January 1, 2015. The bill also amends the act so that the fee would not apply to projects that have been referred to a planning board by the State or by another public agency prior to July 1, 2013, provided that a permit for the construction of the building is issued by the local enforcing agency prior to January 1, 2015. Individual buildings within a nonresidential phased development that receive either preliminary or final approval prior to July 1, 2013, provided that a permit for the construction of the building is issued prior to January 1, 2015, are also exempt from the fee.

The developer of a non-residential project that paid the non-residential development fee subsequent to June 30, 2010, but prior to the effective date of Assembly Bill No. 4221, is entitled to a refund of any moneys paid if the renewal of the moratorium is applicable to the project. A developer must submit a claim, in writing, for the return of any non-residential development fees within 120 days of the effective date of the bill. Municipalities that are eligible to collect non-

residential development fees are not required to refund monies that have been spent on affordable housing projects.

The bill also clarifies that the “Fair Housing Act” does not require the imposition of an affordable housing obligation as a result of non-residential construction, but rather provides that, should the court rule in that manner, or should regulations be adopted to that effect, any obligation so imposed is suspended whenever the imposition of Statewide non-residential fees is suspended.

FISCAL IMPACT:

The Office of Legislative Services (OLS) has determined that the renewal of the moratorium on the payment of the non-residential development fee proposed by Assembly Bill No. 4221 will result in indeterminate revenue losses to the State’s New Jersey Affordable Housing Trust Fund, Urban Housing Assistance Fund, and to municipal governments. No specific revenue estimate is feasible due to the unpredictable nature of the basis for the fee, i.e., the extent and location of new construction subject to the fee.

Subsection a. of N.J.S.A.52:27D-329.8 requires the first \$20 million from the State portion of the non-residential development fee to be deposited in the Urban Housing Assistance Fund for the purpose of assisting urban aid municipalities in the rehabilitation and production of housing. The OLS notes that subsection b. of N.J.S.A.52:527D-329.8 could necessitate a transfer of \$20 million from the General Fund to the Urban Housing Assistance Fund.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 4221
STATE OF NEW JERSEY
214th LEGISLATURE

DATED: JULY 6, 2011

SUMMARY

- Synopsis:** Extends moratorium on the imposition of Statewide non-residential development fees; requires return of fees paid subsequent to June 30, 2010.
- Type of Impact:** Indeterminate revenue loss to the State from municipal governments.
- Agencies Affected:** Department of Community Affairs; municipalities

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	Indeterminate Revenue Loss – See comments below		
Local Revenue	Indeterminate Revenue Loss – See comments below		

- The Office of Legislative Services (OLS) has determined that the renewal of the moratorium on the payment of the non-residential development fee proposed would result in indeterminate revenue losses to the State and municipal governments.
- No specific estimate is feasible due to the unpredictable nature of the basis of the fee, i.e., the extent and location of the new construction subject to the fee.
- Those municipalities that have received substantive certification from the Council on Affordable Housing would experience a revenue loss in their municipal affordable housing trust funds, if they have elected to impose a non-residential development fee, because they are currently permitted to charge and collect non-residential development fees for deposit in those funds.

BILL DESCRIPTION

Assembly Bill No. 4221 of 2011 extends, for two years, until July 1, 2013, the moratorium on the imposition of fees on non-residential construction projects. The fees, known as Statewide non-residential development fees, were enacted as part of a revision of the “Fair Housing Act,” pursuant to P.L.2008, c.46. A moratorium was placed on the imposition of the fees until July 1,

2010, pursuant to the “Economic Stimulus Act of 2009,” P.L.2009, c.90. This bill has the effect of retroactively extending the moratorium placed in effect in 2009 until July 1, 2013. The bill requires the return of any monies paid during the period from July 1, 2010 to the present, as result of the previous expiration of the moratorium. Municipalities that are eligible to collect non-residential development fees would not be required to refund monies that have been spent on affordable housing projects.

The bill modifies the “Statewide Non-Residential Development Fee Act” (N.J.S.A.40:55D-8.1 through N.J.S.A.40:55D-8.7) to exempt property that receives site plan approval from a municipality or from the New Jersey Meadowlands Commission before July 1, 2013, from the fee imposed by the act, provided that a permit for the construction of the building is issued by the local enforcing agency prior to January 1, 2015. The bill also amends the act so that the fee would not apply to projects that have been referred to a planning board by the State or by another public agency prior to July 1, 2013, provided that a permit for the construction of the building is issued by the local enforcing agency prior to January 1, 2015. Individual buildings within a non-residential phased development that receive either preliminary or final approval prior to July 1, 2013, provided that a permit for the construction of the building is issued prior to January 1, 2015, are also exempt from the fee.

The developer of a non-residential project that paid the non-residential development fee subsequent to June 30, 2010, but prior to the effective date of the bill, is entitled to a refund of any moneys paid if the renewal of the moratorium is applicable to the project. The OLS notes that a developer must submit a claim, in writing, for the return of any non-residential development fees within 120 days of the effective date of the bill. Municipalities that are eligible to collect non-residential development fees would not be required to refund monies that have been spent on affordable housing projects.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS has determined that the renewal and extension of the moratorium on the payment of the non-residential development fee proposed would result in indeterminate revenue losses to the New Jersey Affordable Housing Trust Fund, Urban Housing Assistance Fund, and to municipal governments. No specific revenue estimate is feasible to due the unpredictable nature of the basis for the fee, i.e., the extent and location of new construction subject to the fee. This will vary from year to year according to such factors as national and regional economic conditions, local planning and zoning decisions, and the impact of government development subsidies. Those municipalities that have received substantive certification from the Council on Affordable Housing would experience a revenue loss because they would no longer be permitted to charge and collect non-residential development fees during the moratorium period.

The Statewide non-residential development fee was intended to raise revenue for the construction and rehabilitation of affordable housing. Subsection a. of N.J.S.A.52:27D-329.8 requires the first \$20 million from the State portion of fee revenues to be deposited in the Urban Housing Assistance Fund for the purpose of assisting urban aid municipalities in the rehabilitation and production of housing. The OLS notes that subsection b. of N.J.S.A.52:27D-

329.8 may require a transfer of \$20 million from the General Fund to the Urban Housing Assistance Fund.

Section: Local Government

*Analyst: Scott A. Brodsky
Senior Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Acting Governor Kim Guadagno Signs Bipartisan Legislation Suspending 2.5 Percent Development Fee to Help Spur More Job Creation

Wednesday, August 24, 2011 Tags: [Jobs and the Economy](#)

Trenton, NJ – Reinforcing the Christie Administration’s commitment to foster economic development and create jobs, Acting Governor Kim Guadagno today signed legislation that extends the moratorium on the imposition of fees on non-residential construction projects until July 1, 2013. This moratorium sends another clear signal to businesses seeking to invest in New Jersey that the Christie Administration is aggressively working to create a positive, pro-growth environment and restore predictability to the commercial real estate industry.

“Suspending this onerous and arbitrary fee is yet another example of how this Administration is focused on creating meaningful and sustainable jobs and giving a much needed boost to the state’s economy,” said Acting Governor Guadagno. “By taking action today, we are making it easier for commercial developers to invest in New Jersey, create jobs and help us build on the positive, early progress we’ve made in returning our state to prosperity and affordability.”

The statewide non-residential development fees were enacted as part of revisions to the Fair Housing Act and Municipal Land Use Law pursuant to P.L. 2008, c.46. The 2.5 percent fee was charged to office, commercial and industrial real estate developers to help municipalities meet affordable housing obligations. A moratorium of the non-residential fee requirement was initially placed on the imposition of fees until July 1, 2010, pursuant to the “Economic Stimulus Act of 2009,” P.L. 2009, c.90.

“With the economy still very much in flux, the suspension of the non-residential development fee will assist New Jersey’s non-residential real estate to get back on track, produce the jobs, taxable revenue and ratables this state desperately needs,” said New Jersey Department of Community Affairs Commissioner Lori Grifa, who oversees the State’s affordable housing development efforts.

“Because it would inflate the costs of construction, this fee would make it more costly to build all types of projects,” said Dr. Charles Steindel, chief economist for the Department of Treasury. “An additional drag on our construction sector is bad policy when New Jersey is doing everything possible to reduce unemployment and encourage economic growth.”

Since Governor Christie took office, through the Partnership for Action, the Administration has continued to advance policies that will improve New Jersey’s business climate, which has led to the creation of nearly 50,000 private sector jobs, including nearly 8,000 jobs per month from January through July of this year. Governor Christie sunset the corporate business tax surcharge, signed new, robust business attraction legislation including five pro-growth tax cuts, and protected businesses from an average \$400 per employee, or 52%, increase in the unemployment insurance payroll tax. Those policies coupled with recent activities like the Governor’s ‘Creating Jersey Jobs Summit,’ the Lt. Governor’s ‘100 Businesses’ initiative, and the ongoing work of the Red Tape Review Commission all demonstrate that New Jersey is well-positioned for business expansion, economic growth and job creation as our economy recovers.

Sponsors of S-2974 include Senators Raymond J. Lesniak (D-Union) and Stephen M. Sweeney (D- Salem, Cumberland and Gloucester). Sponsors of A- 4221 include Assembly members Albert Coutinho (D-Essex and Union) and Anthony Bucco (R-Morris).

A copy of the bill is attached to the release.

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