ASSEMBLY, No. 3844



STATE OF NEW JERSEY

220th LEGISLATURE



INTRODUCED MAY 9, 2022

Sponsored by:

Assemblyman STERLEY S. STANLEY

District 18 (Middlesex)

SYNOPSIS

Provides economic development incentives for remediating and redeveloping legacy landfills, brownfields, and contaminated sites.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning economic development incentives for remediating and redeveloping legacy landfills, brownfields, and contaminated sites, and supplementing P.L.1974, c.80 (C.34:1B-1 et seq.).

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. P.L. , c. (C. ) (pending before the Legislature as this bill) shall be known and may be cited as the “Landfills, Brownfields, and Contaminated Sites Redevelopment Incentive Program Act.”

2. As used in P.L. , c. (C. ) (pending before the Legislature as this bill):

"Authority" means the New Jersey Economic Development Authority established by section 4 of P.L.1974, c.80 (C.34:1B-4).

"Benefit" or "benefits" mean any tax benefit or benefits provided pursuant to sections 7 through 9 of P.L. , c. (C. ) (pending before the Legislature as this bill) to which a developer becomes eligible by entering into a redevelopment agreement.

"Board" means the Board of the New Jersey Economic Development Authority, established pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).

"Brownfield site" means the same as that term is defined in section 23 of P.L.1993, c.139 (C.58:10B-1).

"Building services" means any cleaning or routine building maintenance work, including but not limited to sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, securing, patrolling, or other work in connection with the care or securing of an existing building, including services typically provided by a door-attendant or concierge. “Building services” shall not include any skilled maintenance work, professional services, or other public work for which a contractor is required to pay the “prevailing wage” as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).

"Contaminated site" means any real property on which there is contamination.

"Contamination" or "contaminant" mean the same as those terms are defined in section 23 of P.L.1993, c.139 (C.58:10B-1).

“Closure” means all activities associated with the design, purchase, construction, or maintenance of all measures required by the department, pursuant to law, in order to prevent, minimize, or monitor pollution or health hazards resulting from a legacy landfill subsequent to the termination of operations at any portion thereof, including, but not necessarily limited to, the placement of final earthen or vegetative cover, the installation of methane gas vents or monitors and leachate monitoring wells or collection systems, and long-term operations and maintenance, at the site of any legacy landfill that is not listed on the National Priorities List pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 42 U.S.C. s.9605.

"Department" means the Department of Environmental Protection.

"Developer" means any person that enters or proposes to enter into a redevelopment agreement with the authority pursuant to the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill).

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

“Legacy landfill” means the same as that term is defined in section 1 of P.L.2013, c.69 (C.13:1E-125.1).

"Program" means the Landfills, Brownfields, and Contaminated Sites Redevelopment Incentive Program established by section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill).

"Redevelopment agreement" means an agreement entered into between the authority and a developer pursuant to P.L.    , c.   (C.        ) (pending before the Legislature as this bill) under which the developer agrees to perform any work or undertaking necessary for the closure and remediation of a legacy landfill, or for the remediation of a brownfield site or contaminated site, and for the completion of a redevelopment project on the area of land whereon the legacy landfill, brownfield site, or contaminated site is located.

"Redevelopment project" means a specific construction project or improvement that is undertaken, pursuant to the terms of a redevelopment agreement, by a developer within an area of land whereon a legacy landfill, brownfield site, or contaminated site is located, and that is appropriate and safe for the site and complies with the provisions of P.L.1993, c.139 (C.58:10B-1 et al.). A redevelopment project may involve construction or improvement upon lands, buildings, improvements, or real and personal property, or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved.

“Redevelopment zone” means an area determined to be in need of redevelopment on or before the effective date of this act pursuant to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6), as made pursuant to the authority of Article VIII, Section III, paragraph 1 of the Constitution. A redevelopment zone may include lands, buildings, or improvements which of themselves are not detrimental to the public health, safety or welfare, but the inclusion of which is found necessary, with or without change in their condition, for the effective redevelopment of the area of which they are a part.

"Remediation" or "remediate" means the same as those terms are defined in section 23 of P.L.1993, c.139 (C.58:10B-1).

"Remediation costs" means all reasonable costs associated with the remediation of a contaminated site, except any costs incurred in financing the remediation.

3. The Landfills, Brownfields, and Contaminated Sites Redevelopment Incentive Program is established as a program under the jurisdiction of the New Jersey Economic Development Authority. The purpose of the program is to provide economic incentives for developers who remediate and properly close a legacy landfill, or remediate a brownfield site or contaminated site, as appropriate, and undertake a redevelopment project on the premises of a closed landfill, brownfield site, or contaminated site within a redevelopment zone. As provided in section 7 of P.L.    , c.    (C.        ) (pending before the Legislature as this bill), developers that are approved to participate in the program are entitled to an exemption to the extent of 50 percent from the tax imposed under the “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.). In addition, as provided in section 8 of P.L.    , c. (C. ) (pending before the Legislature as this bill), receipts from retail sales of certain tangible personal property and sales of certain services to developers for the exclusive use or consumption of the developers are exempt from the taxes imposed under the “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.). As provided in section 9 of P.L. , c. (C. ) (pending before the Legislature as this bill), retail sales of energy and utility service to a developer or group of developers who meet certain requirements are exempt from the taxes imposed under the “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.).

4. a. The authority shall develop an application, review, and approval process for a developer to participate in the program. The authority shall review and approve up to five applications for participation in the program over a period of not more than five years. Following approval of an application by the board, but prior to the start of any remediation or redevelopment at the site of the redevelopment project, the authority shall enter into a redevelopment agreement with the developer. The chief executive officer of the authority shall negotiate the terms and conditions of the redevelopment agreement on behalf of the State.

b. The developer shall complete the remediation and redevelopment of the proposed site by a date no later than seven years after the date on which the authority and the developer execute the redevelopment agreement. The authority may grant a developer one additional period of not more than three years to complete the redevelopment project if the developer demonstrates, and the authority finds, that the benefits received under the program are continuing to assist in the redevelopment of the site, and that, if the benefits are no longer provided, the developer will be unable to continue making progress in the redevelopment of the site. The developer shall submit a progress report to the authority and to the department every six months pursuant to section 10 of P.L.    , c.    (C.        ) (pending before the Legislature as this bill).

c. The authority shall not enter into a redevelopment agreement with a developer unless:

(1) the redevelopment project complies with standards established by the authority in accordance with the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction;

(2) the redevelopment project complies with the authority’s affirmative action requirements, adopted pursuant to section 4 of P.L.1979, c.303 (C.34:1B-5.4);

(3) the developer pays each worker employed to perform remediation work or construction work at the redevelopment project not less than the prevailing wage rate for the worker’s craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.);

(4) each worker employed to perform building services work at the redevelopment project, for 10 years following completion of the remediation work at the redevelopment project, shall be paid not less than the prevailing wage rate for the worker’s craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.); and

(5) the developer complies with all applicable laws, rules, and regulations for the closure and remediation of a legacy landfill or for the remediation of a brownfield or contaminated site.

d. The authority shall not enter into a redevelopment agreement with a developer who is the owner or operator of an industrial establishment subject to the provisions of P.L.1983, c.330 (C.13:1K-6 et al.), the discharger of a hazardous substance or a person in any way responsible for a hazardous substance pursuant to the provisions of subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), or the owner or operator of an underground storage tank regulated pursuant to the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), that has discharged a hazardous substance at the closed landfill, brownfield site, or contaminated site proposed to be in the redevelopment agreement.

e. The redevelopment agreement shall provide that issuance of any benefit under the program shall be conditioned upon the subrogation to the department of all rights of the developer to recover remediation costs from any other person who discharged a hazardous substance or is in any way responsible, pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g), for a hazardous substance that was discharged at the legacy landfill, brownfield site, or contaminated site.

f. Nothing in P.L. , c. (C. ) (pending before the Legislature as this bill) shall be construed to alter any remediation requirement or timeframe established pursuant to P.L.1993, c.139 (C.58:10B-1 et al.), P.L.1976, c.141 (C.58:10-23.11 et seq.), P.L.2009, c.60 (C.58:10C-1 et seq.), or any other law.

5. The redevelopment agreement shall include, but shall not be limited to, the following:

a. A detailed description of the redevelopment project;

b. The economic and other benefits to be received by the developer, the State, and the local community in which the redevelopment project is located, from entering into the redevelopment agreement;

c. A requirement that the developer submit a progress report to the authority and to the department every six months;

d. A requirement that the developer report to the authority and the division quarterly any sales tax paid by the developer during the fiscal quarter;

e. A provision which permits the authority to amend the redevelopment agreement;

f. A requirement that the developer enter into a memorandum of agreement or oversight document with the department to perform and complete a closure and remediation, as appropriate, and the date on which the developer shall complete the closure, remediation, and redevelopment, which shall be no later than seven years after the date on which the authority and the developer execute the redevelopment agreement, unless this time frame is extended by the authority pursuant to subsection b. of section 4 of P.L. , c. (C. ) (pending before the Legislature as this bill);

g. A provision which permits the authority to recapture all or part of the value of any benefits awarded, at its discretion, if the developer does not comply with any of provisions of the redevelopment agreement; and

h. A provision requiring the developer to certify the truth of the information provided to the authority and the division, under penalty of perjury, and establishing the conditions under which the redevelopment agreement may be terminated.

6. To qualify for a benefit under the program, a developer, after executing a redevelopment agreement with the authority, shall enter into a memorandum of agreement or oversight document with the Commissioner of Environmental Protection for the proper closure and remediation of the legacy landfill, or the remediation of the brownfield site or contaminated site, as appropriate. Under the memorandum of agreement or oversight document, the developer shall agree to perform and complete any action necessary for the closure and remediation of the legacy landfill, or for the remediation of the brownfield site or contaminated site, as may be required by the department pursuant to law, rule, or regulation.

7. A developer that undertakes a redevelopment project in a redevelopment zone pursuant to a redevelopment agreement shall be entitled to an exemption to the extent of 50 percent from the tax imposed under the “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.). The exemption granted pursuant to this section shall be effective for the duration of the remediation and redevelopment project, as specified in the redevelopment agreement, as may be extended by the authority.

8. a. Receipts from retail sales of tangible personal property, except motor vehicles and energy, and sales of services, except telecommunications services and utility services, to a developer that undertakes a redevelopment project in a redevelopment zone pursuant to a redevelopment agreement for the exclusive use or consumption of the developer for the purposes of the redevelopment project are exempt from the taxes imposed under the “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.).

b. (1) Notwithstanding the provisions of section 20 of P.L.1966, c.30 (C.54:32B-20) and the provisions of R.S.54:49-14, the director shall refund to a developer the amount of any sales tax or any use tax paid by the developer in connection with that developer’s purchase of tangible personal property or services that are exempt, pursuant to subsection a. of this section, from the taxes imposed by P.L.1966, c.30 (C.54:32B-1 et seq.) if the developer makes and files a claim for refund with the director within one year of the date the payment of tax for purchase is made.

(2) A developer shall make and file a claim for refund, accompanied by auditable receipts and other necessary documentation, as the director may prescribe.

c. The exemption granted pursuant to this section shall be effective for the duration of the remediation and redevelopment project, as specified in the redevelopment agreement, as may be extended by the authority.

9. a. Retail sales of energy and utility service to:

(1) a developer that undertakes a redevelopment project in a redevelopment zone pursuant to a redevelopment agreement and that employs at least 250 people within the redevelopment zone, at least 50 percent of whom are directly employed in a manufacturing process, for the exclusive use or consumption of the developer within the redevelopment zone, or

(2) a group of two or more persons: (a) each of whom is a developer that undertakes a redevelopment project in a redevelopment zone pursuant to a redevelopment agreement; (b) that collectively employ at least 250 people within a redevelopment zone, at least 50 percent of whom are directly employed in a manufacturing process; (c) that are each engaged in a vertically integrated business, evidenced by the manufacture and distribution of a product or family of products that, when taken together, are primarily used, packaged, and sold as a single product; and (d) that collectively use the energy and utility service within the redevelopment zone; are exempt from the taxes imposed under the “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.).

A developer will continue to be subject to applicable Board of Public Utilities tariff regulations except that the developer’s bills from utility companies and third party suppliers for energy and utility service shall not include chargers for sales and use tax.

b. A developer that meets the requirements of subsection a. of this section shall not be allowed the exemption granted pursuant to this section until it has complied with the requirements for obtaining the exemption as may be provided pursuant to P.L.    , c.    (C.        ) (pending before the Legislature as this bill) and P.L.1966, c.30 (C.54:32B-1 et seq.). The authority shall provide prompt notice to the President of the Board of Public Utilities and to the Director of the Division of Taxation in the Department of the Treasury, of a developer that has qualified for the exemption under this subsection, and shall provide the president and the director an annual list of all developers that qualify.

c. The exemption granted pursuant to this section shall be effective for the duration of the remediation and redevelopment project, as specified in the redevelopment agreement, as may be extended by the authority.

10. a. No later than six months after the date on which the authority and a developer execute a redevelopment agreement, and every six months thereafter until completion of the redevelopment project, the developer shall submit an update on the status of the redevelopment project to the authority and to the department, including the remediation and closure costs incurred by the developer for the remediation and closure of the legacy landfill, or for the remediation of the brownfield site or contaminated site, as applicable. Unless the authority determines that extenuating circumstances exist, the authority's approval of any benefit under the program shall expire if the authority, the department, or both, do not timely receive the status update required under this subsection. The authority may rescind an award of any benefit under the program if a redevelopment project fails to advance in accordance with the redevelopment agreement.

b. The director may require a developer to submit any information that the director deems necessary to effectuate the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill).

c. The authority may audit, or cause to be audited, at any time, any developer receiving benefits under the program.

d. No later than one year after the effective date of this act, and every year thereafter, the authority shall prepare a report on the implementation, use, and benefits of the program, and submit the report to the Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

11. a. The chief executive officer of the authority, in consultation with the Commissioner of Environmental Protection, shall promulgate rules and regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as the chief executive officer deems necessary to administer the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill). The rules and regulations shall include provisions as necessary to implement the Landfills, Brownfields, and Contaminated Sites Redevelopment Incentive Program, including requirements for the retention, collection, and determination of taxes and tax withholdings by developers and for the regular reporting of information by developers to the authority and the division. The rules may provide for the recipients of benefits under the program to be charged an initial application fee, and ongoing service fees, to cover the administrative costs related to the program.

b. The Director of the Division of Taxation in the Department of the Treasury shall promulgate rules and regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as the director deems necessary to administer the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill). The rules and regulations shall include provisions as necessary to collect and analyze information from each developer that receives benefits under the program, to allow the division to reconcile any sales tax savings incurred by the developer from participation in the program with data on New Jersey sales tax expenditures. The Director of the Division of Taxation is also authorized to promulgate any additional rules necessary to effectuate the tax related provisions of the Landfills, Brownfields, and Contaminated Sites Redevelopment Incentive Program.

12. This act shall take effect immediately.

STATEMENT

This bill establishes the Landfills, Brownfields, and Contaminated Sites Redevelopment Incentive Program (program), to be administered by the New Jersey Economic Development Authority (EDA), in consultation with the Department of Environmental Protection (DEP). The program is to provide economic incentives for developers who undertake redevelopment projects on the premises of legacy landfills, brownfield sites, or contaminated sites within redevelopment zones.

As provided in the bill, developers that are approved to participate in the program are entitled to an exemption to the extent of 50 percent from the tax imposed under the “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.). In addition, receipts from retail sales of certain tangible personal property and sales of certain services to a developer for the exclusive use or consumption of the developer is to be exempt from the taxes imposed under the “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.). As provided in the bill, retail sales of energy and utility service to a developer or group of developers who meet certain requirements is to be exempt from the taxes imposed under the “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.).

The EDA is required to develop an application, review, and approval process for a developer to participate in the program. The EDA is to review and approve up to five applications for participation in the program over a period of not more than five years. Following approval of an application by the board of the EDA, but prior to the start of any remediation or redevelopment at the site of the redevelopment project, the EDA is to enter into a redevelopment agreement with the developer. The chief executive officer of the EDA is required to negotiate the terms and conditions of the redevelopment agreement on behalf of the State.

The developer is required to complete the remediation and redevelopment by a date no later than seven years after the date on which the EDA and the developer execute the redevelopment agreement. The developer may be eligible for an additional period of not more than three years to complete the redevelopment project if the developer demonstrates, and the EDA finds, that the benefits received under the program are continuing to assist in the redevelopment of the site, and that if the benefits are no longer provided the developer would be unable to continue making progress in the redevelopment of the site.

Under the bill, a developer that enters into a redevelopment agreement with the EDA is required to comply with certain environmental standards, green building standards, and labor and workforce requirements.

No later than six months after the date the EDA and a developer execute a redevelopment agreement, and every six months thereafter until completion of the project, the developer is required to submit an update of the status of the redevelopment project to the EDA and to the DEP, including the closure and remediation costs incurred by the developer. Unless the EDA determines that extenuating circumstances exist, the EDA's approval of any benefit under the program are required to expire if the EDA, the DEP, or both, do not timely receive this status update. The EDA may rescind an award of any benefit under the program if a redevelopment project fails to advance in accordance with the redevelopment agreement.

Under the bill, the EDA may audit, or cause to be audited, at any time, any developer receiving benefits under the program. In addition, the EDA, in consultation with the Director of the Division of Taxation in the Department of the Treasury, may, until the completion of the redevelopment project, require a developer to provide additional information relevant to the administration of the program and to analyze and report on the program’s use and benefits.

Beginning one year after the effective date of the bill, and every year thereafter, the EDA is required to prepare a report on the implementation, use, and benefits of the program, and submit the report to the Governor and the Legislature.