

**SENATE, No. 2355**

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**STATE OF NEW JERSEY**

**213th LEGISLATURE**

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INTRODUCED NOVEMBER 24, 2008

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Salem, Cumberland and Gloucester)**

**Senator PAUL A. SARLO**

**District 36 (Bergen, Essex and Passaic)**

**SYNOPSIS**

“Municipal Solid Waste Landfill Financial Assurance Act.”

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning the closure, remediation and redevelopment of  
2 municipal landfill sites, and supplementing P.L.1970, c.39  
3 (C.13:1E-1 et seq.).  
4

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

8 1. This act shall be known and may be cited as the "Municipal  
9 Solid Waste Landfill Financial Assurance Act."  
10

11 2. As used in this act:

12 "Closure" means all activities associated with the design,  
13 purchase, construction or maintenance of all measures required by  
14 the department, pursuant to law, in order to prevent, minimize or  
15 monitor pollution or health hazards resulting from municipal solid  
16 waste landfills subsequent to the termination of operations at any  
17 portion thereof, including, but not necessarily limited to, the  
18 placement of final earthen or vegetative cover, the installation of  
19 methane gas vents or monitors and leachate monitoring wells or  
20 collection systems, and long-term operations and maintenance, at  
21 the site of any municipal solid waste landfill that is not listed on the  
22 National Priorities List pursuant to the "Comprehensive  
23 Environmental Response, Compensation, and Liability Act of  
24 1980," 42 U.S.C. s.9605.

25 "Closure and remediation costs" means all reasonable costs  
26 associated with the closure and remediation of a municipal solid  
27 waste landfill except that "closure and remediation costs" shall not  
28 include any costs incurred in financing the closure or remediation.

29 "Commercial solid waste" means any nonhazardous solid waste  
30 derived from wholesale, retail or service establishments, including  
31 stores, markets, theaters, offices, restaurants, warehouses, or from  
32 other non-manufacturing commercial activities.

33 "Department" means the Department of Environmental  
34 Protection.

35 "Household solid waste" means any solid waste derived from  
36 households, including but not limited to single and multiple  
37 residences, hotels and motels, bunkhouses, ranger stations, crew  
38 quarters, campgrounds, picnic grounds and day use recreation areas,  
39 except that "household solid waste" shall not include septic waste as  
40 defined in section 3 of P.L.1970, c.40 (C.48:13A-3).

41 "Industrial solid waste" means any solid waste derived from  
42 manufacturing, industrial and research and development processes  
43 and operations that is not a hazardous waste as defined in section 1  
44 of P.L.1976, c.99 (C.13:1E-38), except that "industrial solid waste"  
45 shall not include mining waste, oil waste, gas waste, or cement kiln  
46 dust waste.

47 "Municipal solid waste landfill" means a landfill that ceased  
48 operations prior to January 1, 1982 and received for disposal

1 household solid waste and at least one of the following: (1)  
2 commercial solid waste; (2) industrial solid waste; or (3) waste  
3 material that was received for disposal prior to October 21, 1976  
4 and that is included within the definition of hazardous waste  
5 adopted by the federal government pursuant to the "Resource  
6 Conservation and Recovery Act," 42 U.S.C. s.6921 et seq. A  
7 "municipal solid waste landfill" shall not include any landfill that is  
8 approved for disposal of hazardous waste and regulated pursuant to  
9 Subchapter III of the "Resource Conservation and Recovery Act,"  
10 42 U.S.C. s.6921 et seq. A "municipal solid waste landfill" shall  
11 include any "Pinelands municipal landfill" regardless of the date the  
12 landfill ceased operations.

13 "Pinelands municipal landfill" means a municipal solid waste  
14 landfill that is located in a rural municipality within a non-growth  
15 area in the Pinelands area as defined in section 3 of P.L.1979, c.111  
16 (C.13:18A-3) and the rural Pinelands municipality within which the  
17 landfill is located has participated in the pilot program for rural  
18 economic development developed by the Pinelands Commission  
19 pursuant to section 2 of P.L.1997, c.233 (C.13:18A-57).

20 "Redevelopment project" means a specific work or improvement,  
21 including lands, buildings, improvements, real and personal  
22 property or any interest therein, including lands under water,  
23 riparian rights, space rights and air rights, acquired, owned,  
24 developed or redeveloped, constructed, reconstructed, rehabilitated  
25 or improved, undertaken by a developer within an area of land  
26 whereon a municipal solid waste landfill is or has been located.  
27 Any redevelopment project to be undertaken by a developer within  
28 an area of land whereon a Pinelands municipal landfill is or has  
29 been located shall be consistent with the recommendations of the  
30 pilot program for rural economic development developed by the  
31 Pinelands Commission pursuant to section 2 of P.L.1997, c.233  
32 (C.13:18A-57) and the report thereon submitted to the Governor  
33 and the Legislature pursuant to section 3 of P.L.1997, c.233  
34 (C.13:18A-58).

35 "Remediation" or "remediate" means all necessary actions to  
36 investigate and clean up any known, suspected, or threatened  
37 discharge of contaminants, including, as necessary, the preliminary  
38 assessment, site investigation, remedial investigation, and remedial  
39 action, as those terms are defined in section 23 of P.L.1993, c.139  
40 (C.58:10B-1).

41

42 3. a. The provisions of any other law, or rule or regulation  
43 adopted pursuant thereto, to the contrary notwithstanding, and in  
44 addition to all other standards, conditions and procedures required  
45 pursuant to law for the environmentally sound and proper closure or  
46 remediation of a municipal solid waste landfill, any developer that  
47 proposes a redevelopment project shall provide financial assurance  
48 for the closure and remediation costs associated with the closure

1 and remediation of the municipal solid waste landfill located at the  
2 site of the redevelopment project.

3 b. (1) The developer shall submit a cost estimate to the  
4 department for the estimated closure and remediation costs. The  
5 developer shall provide financial assurance in the amount of 25% of  
6 the estimated closure and remediation costs associated with the  
7 closure and remediation of the municipal solid waste landfill  
8 located at the site of the redevelopment project, including for the  
9 duration of the post-closure period.

10 (2) The developer shall agree to perform any work or  
11 undertaking necessary for the environmentally sound and proper  
12 closure and remediation of the municipal solid waste landfill  
13 located at the site of the redevelopment project, and for the  
14 clearance, development or redevelopment, construction or  
15 rehabilitation of any structure or improvement of commercial,  
16 industrial or public structures or improvements within an area of  
17 land whereon the municipal solid waste landfill is or has been  
18 located. The developer shall perform and complete all closure and  
19 remediation activities during the closure and post-closure periods as  
20 may be required by the department.

21 c. The developer shall pay an annual surcharge to the  
22 department equal to 5% of the face value of the financial assurance  
23 provided pursuant to subsection b. of this section.

24

25 4. a. The developer shall establish and maintain a remediation  
26 funding source in the amount necessary to pay the estimated closure  
27 and remediation costs of the required remediation. The developer  
28 shall provide to the department satisfactory documentation that the  
29 requirement has been met.

30 The remediation funding source shall be established in an  
31 amount equal to or greater than the cost estimate of the  
32 implementation of the closure and remediation as approved by the  
33 department, and shall be in effect for a term not less than the actual  
34 time necessary to perform the closure and remediation at the site.  
35 Whenever the closure and remediation cost estimate increases, the  
36 person required to establish the remediation funding source shall  
37 cause the amount of the remediation funding source to be increased  
38 to an amount at least equal to the new estimate. Whenever the  
39 closure and remediation cost estimate decreases, the person required  
40 to obtain the remediation funding source may file a written request  
41 to the department to decrease the amount in the remediation funding  
42 source. The remediation funding source may be decreased to the  
43 amount of the new estimate upon written approval by the  
44 department delivered to the person who established the remediation  
45 funding source and to the trustee or the person or institution  
46 providing the remediation trust, the environmental insurance policy,  
47 or the line of credit, as applicable. The department shall approve the  
48 request upon a finding that the closure and remediation cost

1 estimate decreased by the requested amount. The department shall  
2 review and respond to the request to decrease the remediation  
3 funding source within 45 days of receipt of the request.

4 b. The person responsible for performing the closure and  
5 remediation and who established the remediation funding source  
6 may use the remediation funding source to pay for the actual cost of  
7 the remediation. The department may not require any other  
8 financial assurance by the person responsible for performing the  
9 remediation other than that required in this section. The remediation  
10 funding source shall be evidenced by the establishment and  
11 maintenance of (1) a remediation trust fund, (2) an environmental  
12 insurance policy, issued by an entity licensed by the Department of  
13 Banking and Insurance to transact business in the State of New  
14 Jersey, to fund the remediation, (3) a line of credit from a person or  
15 institution satisfactory to the department authorizing the person  
16 responsible for performing the remediation to borrow money, or (4)  
17 a self-guarantee, or by any combination thereof.

18 c. A remediation trust fund shall be established pursuant to the  
19 provisions of this subsection. An originally signed duplicate of the  
20 trust agreement shall be delivered to the department by certified  
21 mail within 14 days of receipt of notice from the department that  
22 the remedial action workplan or remediation agreement is approved.  
23 The remediation trust fund agreement shall conform to a model trust  
24 fund agreement as established by the department and shall be  
25 accompanied by a certification of acknowledgment that conforms to  
26 a model established by the department. The trustee shall be an  
27 entity which has the authority to act as a trustee and whose trust  
28 operations are regulated and examined by a federal or New Jersey  
29 agency.

30 The trust fund agreement shall provide that the remediation trust  
31 fund may not be revoked or terminated by the person required to  
32 establish the remediation funding source or by the trustee without  
33 the written consent of the department. The trustee shall release to  
34 the person required to establish the remediation funding source, or  
35 to the department, as appropriate, only those moneys as the  
36 department authorizes, in writing, to be released. The person  
37 entitled to receive money from the remediation trust fund shall  
38 submit documentation to the department detailing the costs incurred  
39 or to be incurred as part of the remediation. Upon a determination  
40 by the department that the costs are consistent with the remediation  
41 of the site, the department shall, in writing, authorize a  
42 disbursement of moneys from the remediation trust fund in the  
43 amount of the documented costs.

44 The department shall return the original remediation trust fund  
45 agreement to the trustee for termination after the person required to  
46 establish the remediation funding source substitutes an alternative  
47 remediation funding source as specified in this section or the  
48 department notifies the person that that person is no longer required

1 to maintain a remediation funding source for remediation of the  
2 municipal solid waste landfill located at the site of the  
3 redevelopment project.

4 d. An environmental insurance policy shall be established  
5 pursuant to the provisions of this subsection. An originally signed  
6 duplicate of the insurance policy shall be delivered to the  
7 department by certified mail, overnight delivery, or personal service  
8 within 30 days of receipt of notice from the department that the  
9 remedial action workplan or remediation agreement is approved.  
10 The environmental insurance policy may not be revoked or  
11 terminated without the written consent of the department. The  
12 insurance company shall release to the person required to establish  
13 the remediation funding source, or to the department, as  
14 appropriate, only those moneys as the department authorizes, in  
15 writing, to be released. The person entitled to receive money from  
16 the environmental insurance policy shall submit documentation to  
17 the department detailing the costs incurred or to be incurred as part  
18 of the remediation.

19 e. A line of credit shall be established pursuant to the  
20 provisions of this subsection. A line of credit shall allow the person  
21 establishing it to borrow money up to a limit established in a written  
22 agreement in order to pay for the cost of the remediation for which  
23 the line of credit was established. An originally signed duplicate of  
24 the line of credit agreement shall be delivered to the department by  
25 certified mail, overnight delivery, or personal service within 14  
26 days of receipt of notice from the department that the remedial  
27 action workplan or remediation agreement is approved. The line of  
28 credit agreement shall conform to a model agreement as established  
29 by the department and shall be accompanied by a certification of  
30 acknowledgment that conforms to a model established by the  
31 department.

32 A line of credit agreement shall provide that the line of credit  
33 may not be revoked or terminated by the person required to obtain  
34 the remediation funding source or the person or institution  
35 providing the line of credit without the written consent of the  
36 department. The person or institution providing the line of credit  
37 shall release to the person required to establish the remediation  
38 funding source, or to the department, as appropriate, only those  
39 moneys as the department authorizes, in writing, to be released.  
40 The person entitled to draw upon the line of credit shall submit  
41 documentation to the department detailing the costs incurred or to  
42 be incurred as part of the remediation. Upon a determination that  
43 the costs are consistent with the remediation of the site, the  
44 department shall, in writing, authorize a disbursement from the line  
45 of credit in the amount of the documented costs.

46 The department shall return the original line of credit agreement  
47 to the person or institution providing the line of credit for  
48 termination after the person required to establish the remediation

1 funding source substitutes an alternative remediation funding source  
2 as specified in this section, or after the department notifies the  
3 person that that person is no longer required to maintain a  
4 remediation funding source for remediation of the municipal solid  
5 waste landfill located at the site of the redevelopment project.

6 f. A person may self-guarantee a remediation funding source  
7 upon the submittal of documentation to the department  
8 demonstrating that the cost of the remediation as estimated in the  
9 remedial action workplan or remediation agreement would not  
10 exceed one-third of the tangible net worth of the person required to  
11 establish the remediation funding source, and that the person has a  
12 cash flow sufficient to assure the availability of sufficient moneys  
13 for the remediation during the time necessary for the remediation.  
14 Satisfactory documentation of a person's capacity to self-guarantee  
15 a remediation funding source shall consist of a statement of income  
16 and expenses or similar statement of that person and the balance  
17 sheet or similar statement of assets and liabilities as used by that  
18 person for the fiscal year of the person making the application that  
19 ended closest in time to the date of the self-guarantee application,  
20 or in the case of a special purpose entity established specifically for  
21 the purpose of acquiring and redeveloping a contaminated site, and  
22 for which a statement of income and expenses is not available, a  
23 statement of assets and liabilities certified by a certified public  
24 accountant. The self-guarantee application shall be certified as true  
25 to the best of the applicant's information, knowledge, and belief, by  
26 the chief financial, or similar officer or employee, or general  
27 partner, or principal of the person making the self-guarantee  
28 application. A person shall be deemed by the department to possess  
29 the required cash flow pursuant to this section if that person's gross  
30 receipts exceed its gross payments in that fiscal year in an amount  
31 at least equal to the estimated costs of completing the remedial  
32 action workplan schedule to be performed in the 12-month period  
33 following the date on which the application for self-guarantee is  
34 made. In the event that a self-guarantee is required for a period of  
35 more than one year, applications for a self-guarantee shall be  
36 renewed annually pursuant to this subsection for each successive  
37 year. The department may establish requirements and reporting  
38 obligations to ensure that the person proposing to self-guarantee a  
39 remediation funding source meets the criteria for self-guaranteeing  
40 prior to the initiation of remedial action and until completion of the  
41 remediation.

42 g. (1) If the person required to establish the remediation  
43 funding source fails to perform the remediation as required, the  
44 department shall make a written determination of this fact. A copy  
45 of the determination by the department shall be delivered to the  
46 person required to establish the remediation funding source.  
47 Following this written determination, the department may perform  
48 the remediation in place of the person required to establish the

1 remediation funding source. In order to finance the cost of the  
2 remediation the department may make disbursements from the  
3 remediation trust fund or the line of credit or claims upon the  
4 environmental insurance policy, as appropriate.

5 (2) After the department has begun to perform the remediation  
6 in the place of the person required to establish the remediation  
7 funding source, the person required to establish the remediation  
8 funding source shall not be permitted by the department to continue  
9 its performance obligations except upon the agreement of the  
10 department.

11  
12 5. The department shall adopt, pursuant to the "Administrative  
13 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and  
14 regulations as it deems necessary for the implementation,  
15 administration, and enforcement of the act.

16  
17 6. This act shall take effect immediately.  
18  
19

20 STATEMENT  
21

22 This bill would require any developer that proposes a  
23 redevelopment project at the site of a former municipal solid waste  
24 landfill to provide financial assurance to the Department of  
25 Environmental Protection (DEP) for the closure and remediation  
26 costs associated with the closure, remediation and post-closure  
27 monitoring of the site.

28 The developer must submit a cost estimate to the DEP for the  
29 estimated closure and remediation costs. Thereupon, the developer  
30 must provide financial assurance in the amount of 25% of the  
31 estimated closure and remediation costs associated with the closure  
32 and remediation of the municipal solid waste landfill located at the  
33 site of the redevelopment project, including for the duration of the  
34 post-closure period.

35 The developer must agree to perform any work or undertaking  
36 necessary for the environmentally sound and proper closure and  
37 remediation of the municipal solid waste landfill located at the site  
38 of the redevelopment project, and for the clearance, development or  
39 redevelopment, construction or rehabilitation of any structure or  
40 improvement of commercial, industrial or public structures or  
41 improvements within an area of land whereon the municipal solid  
42 waste landfill is or has been located. The developer must perform  
43 and complete all closure and remediation activities during the  
44 closure and post-closure periods as may be required by the DEP.

45 In addition, the developer must pay an annual surcharge to the  
46 DEP equal to 5% of the face value of the financial assurance.

47 The developer must establish and maintain a remediation funding  
48 source in the amount necessary to pay the estimated closure and



1 remediation costs of the required remediation. The developer shall  
2 provide to the DEP satisfactory documentation that the requirement  
3 has been met.

4 The remediation funding source must be established in an  
5 amount equal to or greater than the cost estimate of the  
6 implementation of the closure and remediation as approved by the  
7 DEP, and shall be in effect for a term not less than the actual time  
8 necessary to perform the closure and remediation at the site.

9 The person responsible for performing the remediation and who  
10 established the remediation funding source may use the remediation  
11 funding source to pay for the actual cost of the remediation. The  
12 remediation funding source shall be evidenced by the establishment  
13 and maintenance of (1) a remediation trust fund, (2) an  
14 environmental insurance policy, issued by an entity licensed by the  
15 Department of Banking and Insurance to transact business in the  
16 State of New Jersey, to fund the remediation, (3) a line of credit  
17 from a person or institution satisfactory to the DEP authorizing the  
18 person responsible for performing the remediation to borrow  
19 money, or (4) a self-guarantee, or by any combination thereof.