

ASSEMBLY, No. 4457

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED NOVEMBER 18, 2013

Sponsored by:

Assemblyman JOHN J. BURZICHELLI
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District 6 (Burlington and Camden)
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District 35 (Bergen and Passaic)

Co-Sponsored by:

Assemblywomen Watson Coleman, Handlin, McHose, Assemblyman P.Barnes, III, Assemblywoman Pintor Marin and Assemblyman Space

SYNOPSIS

Reinstates moratorium on imposition of Statewide non-residential development fees until January 2015.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/20/2013)

1 AN ACT concerning the Statewide non-residential development fee,
2 amending P.L.2008, c. 46 and P.L.2009, c.90.

3

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

6

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

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

15 (1) Non-residential property for which a site plan has received
16 either preliminary approval, pursuant to section 34 of P.L.1975,
17 c.291 (C.40:55D-46), or final approval, pursuant to section 38 of
18 P.L.1975, c.291 (C.40:55D-50), prior to **[July] January 1, [2013]**
19 2015 including, but not limited to, the time period commencing on
20 July 1, 2013 through the effective date of P.L. , c. (pending
21 before the Legislature as this bill); provided that a permit for the
22 construction of the building has been issued by the local enforcing
23 agency having jurisdiction, in accordance with section 13 of
24 P.L.1975, c.217 (C.52:27D-131), prior to **[January] July 1, [2015]**
25 2016;

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

42 (3) A non-residential project that, prior to **[July] January 1,**
43 **[2013] 2015 including, but not limited to, the time period**
44 commencing on July 1, 2013 through the effective date of P.L. ,
45 c. (pending before the Legislature as this bill), has been referred

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 to a planning board by the State, a governing body, or other public
2 agency for review pursuant to section 22 of P.L.1975, c.291
3 (C.40:55D-31); provided that a permit for the construction of the
4 building has been issued by the local enforcing agency having
5 jurisdiction, in accordance with section 13 of P.L.1975, c.217
6 (C.52:27D-131), prior to **[January]** July 1, [2015] 2016;

7 (4) A non-residential property for which a site plan application
8 has received approval by the New Jersey Meadowlands
9 Commission, pursuant to section 13 of P.L.1968, c.404 (C.13:17-
10 14) prior to **[July]** January 1, [2013] 2015 including, but not
11 limited to, the time period commencing on July 1, 2013 through the
12 effective date of P.L. , c. (pending before the Legislature as this
13 bill); provided that a permit for the construction of the building has
14 been issued by the local enforcing agency having jurisdiction, in
15 accordance with section 13 of P.L.1975, c.217 (C.52:27D-131),
16 prior to **[January]** July 1, [2015] 2016;

17 (5) Individual buildings within a nonresidential phased
18 development that received either preliminary or final approval prior
19 to **[July]** January 1, [2013] 2015 including, but not limited to, the
20 time period commencing on July 1, 2013 through the effective date
21 of P.L. , c. (pending before the Legislature as this bill),
22 provided that a permit for the construction of the building has been
23 issued prior to **[January]** July 1, [2015] 2016.

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

36 c. Whenever non-residential development is situated on real
37 property that has been previously developed with a building,
38 structure, or other improvement, the non-residential development
39 fee shall be equal to two and a half (2.5) percent of the equalized
40 assessed value of the land and improvements on the property where
41 the non-residential development is situated at the time the final
42 certificate of occupancy is issued, less the equalized assessed value
43 of the land and improvements on the property where the non-
44 residential development is situated, as determined by the tax
45 assessor of the municipality at the time the developer or owner,
46 including any previous owners, first sought approval for a
47 construction permit, including, but not limited to, demolition
48 permits, pursuant to the State Uniform Construction Code, or

1 approval under the "Municipal Land Use Law," P.L.1975, c.291
2 (C.40:55D-1 et seq.). If the calculation required under this section
3 results in a negative number, the non-residential development fee
4 shall be zero.

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

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

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

45 (cf: P.L.2011, c.122, s.1)

46

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

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

5 a. A developer of a property that received preliminary site plan
6 approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46),
7 or final approval, pursuant to section 38 of P.L.1975, c.291
8 (C.40:55D-50) prior to July 17, 2008 and that was subject to the
9 payment of a nonresidential development fee prior to the enactment
10 of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to a
11 return of any moneys paid that represent the difference between
12 moneys committed prior to July 17, 2008 and monies paid on or
13 after that date.

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

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

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

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

47 f. A developer of a non-residential project that paid a fee
48 imposed pursuant to sections 32 through 38 of P.L.2008, c.46

1 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to June 30, 2010
2 but prior to the effective date of P.L.2011, c.122, shall be entitled to
3 the return of those monies paid, provided that said monies have not
4 already been expended by the municipality on affordable housing
5 projects, and provided that the provisions of section 37 of P.L.2008,
6 c.46 (C.40:55D-8.6), as amended by P.L.2011, c.122 do not permit
7 the imposition of a fee upon the developer of that non-residential
8 property. If moneys are eligible to be returned under this
9 subsection, a claim shall be submitted, in writing, to the same entity
10 to which the moneys were paid, within 120 days of the effective
11 date of P.L.2011, c.122. The entity to whom the funds were paid
12 shall promptly review all requests for returns, to ensure
13 applicability of section 37 of P.L.2008, c.46 (C.40:55D-8.6) and the
14 fees paid shall be returned to the claimant within 30 days of receipt
15 of the claim for return.

16 g. A developer of a non-residential project that paid a fee
17 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
18 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to June 30, 2013
19 but prior to the effective date of P.L. , c. (pending before the
20 Legislature as this bill) shall be entitled to the return of those
21 monies paid, provided that said monies have not already been
22 expended by the municipality on affordable housing projects, and
23 provided that the provisions of section 37 of P.L.2008, c.46
24 (C.40:55D-8.6), as amended by P.L. , c. (pending before the
25 Legislature as this bill) do not permit the imposition of a fee upon
26 the developer of that non-residential property. If moneys are
27 eligible to be returned under this subsection, a claim shall be
28 submitted, in writing, to the same entity to which the moneys were
29 paid, within 120 days of the effective date of P.L. , c. (pending
30 before the Legislature as this bill). The entity to whom the funds
31 were paid shall promptly review all requests for returns, to ensure
32 applicability of section 37 of P.L.2008, c.46 (C.40:55D-8.6), as
33 amended by P.L. , c. (pending before the Legislature as this
34 bill), and the fees paid shall be returned to the claimant within 30
35 days of receipt of the claim for return.

36 (cf: P.L.2011, c.122, s.2)

37

38 3. This act shall take effect immediately.

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STATEMENT

42

43 This bill re-instates the moratorium on the imposition of fees on
44 non-residential construction projects that expired on July 1, 2013,
45 and continues the moratorium through December 31, 2014.

46 Under the provisions of the bill municipalities are required to
47 return any monies paid during the time period commencing on July
48 1, 2013 through the effective date of the bill due to the previous

1 expiration of the moratorium. However, municipalities that are
2 eligible to collect non-residential development fees would not be
3 required to refund monies that have already been expended by the
4 municipality on affordable housing projects.