

CHAPTER 87

AN ACT concerning the reimbursement of remediation costs for contaminated sites, and amending P.L.1997, c.278.

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

1. Section 35 of P.L.1997, c.278 (C.58:10B-27) is amended to read as follows:

C.58:10B-27 Terms and conditions of agreements.

35. a. The provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary notwithstanding, any developer may enter into a redevelopment agreement with the State pursuant to the provisions of this section. The State may not enter into a redevelopment agreement with a developer who is liable, pursuant to paragraph (1) of subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), for the contamination at the site proposed to be in the redevelopment agreement.

The decision whether or not to enter into a redevelopment agreement is solely within the discretion of the Commissioner of Commerce and Economic Development and the State Treasurer and both must agree to enter into the redevelopment agreement. Nothing in P.L.1997, c.278 (C.58:10B-1.1 et al.) may be construed to compel the commissioner and the State Treasurer to enter into any redevelopment agreement.

The Commissioner of Commerce and Economic Development in consultation with the State Treasurer shall negotiate the terms and conditions of any redevelopment agreement on behalf of the State. The redevelopment agreement shall specify the amount of the reimbursement to be awarded the developer, the frequency of payments and the length of time in which that reimbursement shall be granted. In no event shall the amount of the reimbursement, when taken together with the property tax exemption received pursuant to the "Environmental Opportunity Zone Act," P.L.1995, c.413 (C.54:4-3.151), less any in lieu of tax payments made pursuant to that act, or any other State, local, or federal tax incentive or grant to remediate a site, exceed 75% of the total cost of the remediation.

The commissioner and the State Treasurer may only enter into a redevelopment agreement if they make a finding that the State tax revenues to be realized from the redevelopment project will be in excess of the amount necessary to reimburse the developer. This finding may be made by an estimation based upon the professional judgment of the commissioner and the State Treasurer.

The percentage of each payment to be made to the developer pursuant to the redevelopment agreement shall be conditioned on the occupancy rate of the residential dwelling units, buildings, or other work areas located on the property. The redevelopment agreement shall provide for the payments made in order to reimburse the developer to be in the same percentages as the occupancy rate at the site except that upon the attainment of a 90% occupancy rate, the developer shall be entitled to the entire amount of each payment toward the reimbursement as set forth in the redevelopment agreement. The redevelopment agreement shall provide for the frequency of the director's finding of the occupancy rate during the payment schedule.

b. In deciding whether or not to enter into a redevelopment agreement and in negotiating a redevelopment agreement with a developer, the commissioner shall consider the following factors:

- (1) the economic feasibility of the redevelopment project;
- (2) the extent of economic and related social distress in the municipality and the area to be affected by the redevelopment project;
- (3) the degree to which the redevelopment project will advance State, regional and local development and planning strategies;
- (4) the likelihood that the redevelopment project shall, upon completion, be capable of generating new tax revenue in an amount in excess of the amount necessary to reimburse the developer for the remediation costs incurred as provided in the redevelopment agreement;
- (5) the relationship of the redevelopment project to a comprehensive local development strategy, including other major projects undertaken within the municipality;
- (6) the need of the redevelopment agreement to the viability of the redevelopment project; and
- (7) the degree to which the redevelopment project enhances and promotes job

creation and economic development.

2. Section 36 of P.L.1997, c.278 (C.58:10B-28) is amended to read as follows:

C.58:10B-28 Eligibility for reimbursement; certification.

36. a. The provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary notwithstanding, any developer that enters into a redevelopment agreement pursuant to section 35 of P.L.1997, c.278 (C.58:10B-27), may be eligible for reimbursement of up to 75% of the costs of the remediation of the subject real property pursuant to the provisions of this section upon the commencement of a business operation, or the completion of the construction of one or more new residences, within a redevelopment project.

b. To be eligible for reimbursement of the costs of remediation, a developer shall submit an application, in writing, to the director for review and certification of the reimbursement. The director shall review the request for the reimbursement upon receipt of an application therefor, and shall approve or deny the application for certification on a timely basis. The director shall also make a finding of the occupancy rate of the property subject to the redevelopment agreement in the frequency set forth in the redevelopment agreement as provided in section 35 of P.L.1997, c.278 (C.58:10B-27).

The director shall certify a developer to be eligible for the reimbursement if the director finds that:

(1) residential construction is complete, or a place of business is located, in the area subject to the redevelopment agreement that has generated new tax revenues;

(2) the developer had entered into a memorandum of agreement with the Commissioner of Environmental Protection, after the developer entered into the redevelopment agreement, for the remediation of contamination located on the site of the redevelopment project pursuant to section 37 of P.L.1997, c.278 (C.58:10B-29) and the developer is in compliance with the memorandum of agreement; and

(3) the costs of the remediation were actually and reasonably incurred. In making this finding the director may consult with the Department of Environment Protection.

c. When filing an application for certification for a reimbursement pursuant to this section, the developer shall submit to the director a certification of the total remediation costs incurred by the developer for the remediation of the subject property located at the site of the redevelopment project as provided in the redevelopment agreement, information concerning the occupancy rate of the buildings or other work areas located on the property subject to the redevelopment agreement, and such other information as the director deems necessary in order to make the certifications and findings pursuant to this section.

3. Section 38 of P.L.1997, c.278 (C.58:10B-30) is amended to read as follows:

C.58:10B-30 Brownfield Site Reimbursement Fund.

38. a. There is created in the Department of the Treasury a special fund to be known as the Brownfield Site Reimbursement Fund. Moneys in the fund shall be dedicated to the purpose of reimbursing a developer who enters into a redevelopment agreement pursuant to section 35 of P.L.1997, c.278 (C.58:10B-27) and is certified for reimbursement pursuant to section 36 of P.L.1997, c.278 (C.58:10B-28). A special account within the fund shall be created for each developer upon approval of a certification pursuant to section 36 of P.L.1997, c.278 (C.58:10B-28). The Legislature shall annually appropriate the entire balance of the fund for the purposes of reimbursement of remediation costs as provided in section 39 of P.L.1997, c.278 (C.58:10B-31).

b. The fund shall be credited with an amount from the General Fund, determined sufficient by the Commissioner of Commerce and Economic Development, to provide the negotiated reimbursement to the developer. Moneys credited to the fund shall be an amount that equals the percent of the remediation costs expected to be reimbursed pursuant to the redevelopment agreement. In estimating the amount of new State taxes that is anticipated to be derived from a redevelopment project pursuant to section 35 of P.L.1997, c.278 (C.58:10B-27), the

Commissioner of Commerce and Economic Development and the State Treasurer shall consider taxes from the following: the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), "The Savings Institution Tax Act," P.L.1973, c.31 (C.54:10D-1 et seq.), the tax imposed on marine insurance companies pursuant to R.S.54:16-1 et seq., the tax imposed on fire insurance companies pursuant to R.S.54:17-4 et al., the tax imposed on insurers generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), the public utility franchise tax, public utilities gross receipts tax and public utility excise tax imposed pursuant to P.L.1940, c.4, and P.L.1940, c.5 (C.54:30A-16 et seq. and C.54:30A-49 et seq.), the tax derived from net profits from business, a distributive share of partnership income, or a prorata share of S corporation income under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., the tax derived from a business at the site of a redevelopment project that is required to collect the tax pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), the tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) from the purchase of materials used for the construction of new residences at the site of a redevelopment project, or the portion of the fee imposed pursuant to section 3 of P.L.1968, c.49 (C.46:15-7) derived from the sale of real property at the site of the redevelopment project and paid to the State Treasurer for use by the State, that is not credited to the "Shore Protection Fund" or the "Neighborhood Preservation Nonlapsing Revolving Fund" pursuant to section 4 of P.L.1968, c.49 (C.46:15-8).

4. This act shall take effect immediately.

Approved October 22, 2002.