

September 24, 2012

**ASSEMBLY BILL NO. 2395
(Second Reprint)**

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 2395 (Second Reprint) with my recommendations for reconsideration.

This bill revises the priorities for financial assistance from the Hazardous Discharge Site Remediation Fund ("Fund") by elevating in priority qualifying sites located in brownfield development areas ("BDAs").

I commend the sponsors' effort to improve the administration of the Fund. However, a broader, more holistic reform is needed to return the Fund to its core principles and ensure that contaminated sites throughout the State can benefit from this program.

Therefore, I return this bill with my recommendations for a comprehensive approach to Fund administration that allows more eligible, contaminated sites throughout the State to receive funding through the Fund. This proposal, crafted with advice from the Department of Environmental Protection and the Economic Development Authority, which co-administer the Fund, as well as input from the development community, will ensure the Fund's long-term financial viability and the continued investigation, remediation, and cleanup of contaminated sites throughout the State. Moreover, this proposal will ensure that contaminated sites across the State - and not just those in designated BDAs - equitably share in the Fund to more quickly investigate, remediate, cleanup, and redevelop contaminated sites, thereby improving our environment, returning more sites to beneficial uses, spurring economic growth, and creating jobs Statewide.

Accordingly, I herewith return Assembly Bill No. 2395

(Second Reprint) and recommend that it be amended as follows:

Page 2, Title, Line 2:

After "c.139" insert "and repealing section 8 of P.L.2005, c.223.

Page 8, Line 46:

Insert new sections 1 and 2:

"1. Section 27 of P.L.1993, c.139 (C.58:10B-5) is amended to read as follows:

27. a. (1) Except as provided in section 4 of P.L.2007, c.135 (C.52:27D-130.7), financial assistance from the remediation fund may only be rendered to persons who cannot establish a remediation funding source for the full amount of a remediation. Financial assistance pursuant to this act may be rendered only for that amount of the cost of a remediation for which the person cannot establish a remediation funding source. The limitations on receiving financial assistance established in this paragraph (1) shall not limit the ability of municipalities, counties, redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), [persons who are not required to establish a remediation funding source for the part of the remediation involving an innovative technology, an unrestricted use remedial action or a limited restricted use remedial action,] persons performing a remediation in an environmental opportunity zone, or persons who voluntarily perform a remediation, from receiving financial assistance from the fund.

(2) Financial assistance rendered to persons who voluntarily perform a remediation or perform a remediation in an environmental opportunity zone may only be made for that amount of the cost of the remediation that the person cannot otherwise fund

by any of the authorized methods to establish a remediation funding source.

(3) [Financial assistance rendered to persons who do not have to provide a remediation funding source for the part of the remediation that involves an innovative technology, an unrestricted use remedial action, or a limited restricted use remedial action may only be made for that amount of the cost of the remediation that the person cannot otherwise fund by any of the authorized methods to establish a remediation funding source.]
 (Deleted by amendment, P.L. c.) (pending before the Legislature as this bill)

b. Financial assistance may be rendered from the remediation fund to (1) owners or operators of industrial establishments who are required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), upon closing operations or prior to the transfer of ownership or operations of an industrial establishment, (2) persons who are liable for the cleanup and removal costs of a hazardous substance pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), and (3) persons who voluntarily perform a remediation of a discharge of a hazardous substance or hazardous waste.

c. Financial assistance and grants may be made from the remediation fund to a municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), for real property: (1) on which it holds a tax sale certificate; (2) that it has acquired through foreclosure or other similar means; or (3) that it has acquired, or in the case of a county governed by a board of chosen freeholders, has passed a resolution or, in the case of a municipality or a county operating under the "Optional County Charter

Law," P.L.1972, c.154 (C.40:41A-1 et seq.), has passed an ordinance or other appropriate document to acquire, by voluntary conveyance for the purpose of redevelopment, for renewable energy generation or for recreation and conservation purposes. Financial assistance and grants may only be awarded for real property on which there has been a discharge or on which there is a suspected discharge of a hazardous substance or hazardous waste. Grants may only be awarded for those activities and costs that have been approved in writing in advance by the department and authority.

d. Grants may be made from the remediation fund to persons who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant pursuant to section 28 of P.L.1993, c.139 (C.58:10B-6).

e. [Grants may be made from the remediation fund to qualifying persons who propose to perform a remedial action that uses an innovative technology or that would result in an unrestricted use remedial action or a limited restricted use remedial action.] (Deleted by amendment, P.L. c.)
(pending before the Legislature as this bill)

f. Grants may be made from the remediation fund to municipalities, counties, and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), for the preliminary assessment, site investigation, remedial investigation and remedial action [on contaminated real property] where there is a discharge or suspected discharge of a hazardous substance or hazardous waste within a brownfield development area. An ownership interest in the

contaminated property shall not be required in order for a municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) to receive a grant for a [remediation of] preliminary assessment, site investigation, remedial investigation, and remedial action workplan for real property where there is a discharge or suspected discharge of a hazardous substance or hazardous waste in a brownfield [redevelopment] development area. Notwithstanding the limitation on the total amount of financial assistance and grants that may be awarded in any one year pursuant to subsection b. of section 28 of P.L.1993, c.139 (C.58:10B-6), the authority may award [an additional amount of financial assistance and grants in any one year, of up to \$ 2,000,000] additional grants totaling up to \$1,000,000, to any one municipality, county, or redevelopment entity for [the remediation of] remedial action on contaminated property in a brownfield development area. [Any property on which a municipality, county, or redevelopment entity makes expenditures for a remedial action and the property is not owned by that entity shall be subject to the provisions of section 8 of P.L.2005, c.223 (C.58:10B-25.2).]

2. Section 28 of P.L.1993, c.139 (C.58:10B-6) is amended to read as follows:

28. a. Except for moneys deposited in the remediation fund for specific purposes, and as provided in section 4 of P.L.2007, c.135 (C.52:27D-130.7), financial assistance and grants from the remediation fund shall be rendered for the following purposes. A written report shall be sent to the Senate Environment Committee, and the Assembly Environment and Solid Waste Committee, or

their successors at the end of each calendar quarter detailing the allocation and expenditures related to the financial assistance and grants from the fund.

(1) Moneys shall be allocated for financial assistance to persons, for remediation of real property located in a qualifying municipality as defined in section 1 of P.L.1978, c.14 (C.52:27D-178);

(2) Moneys shall be allocated to: (a) municipalities, counties, or redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), for:

(i) projects in brownfield development areas pursuant to subsection f. of section 27 of P.L.1993, c.139 (C.58:10B-5),

(ii) matching grants up to a cumulative total amount from the fund of [\$ 5,000,000] \$1,000,000 per year of up to 75% of the costs of the remedial action for projects involving the redevelopment of contaminated property for recreation and conservation purposes, provided that the use of the property for recreation and conservation purposes is included in the comprehensive plan for the development or redevelopment of contaminated property, up to 75% of the costs of the remedial action for projects involving the redevelopment of contaminated property for renewable energy generation, or up to 50% of the costs of the remedial action for projects involving the redevelopment of contaminated property for affordable housing pursuant to P.L.1985, c.222 (C.52:27D-301 et al.),

(iii) grants for preliminary assessment, site investigation [or] remedial investigation, or remedial action workplans for [of] a contaminated site,

(iv) financial assistance for the

implementation of a remedial action, or

(v) financial assistance for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area; or

(b) persons for financial assistance for remediation activities at sites that have been contaminated by a discharge of a hazardous substance or hazardous waste, or at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and the discharge or threatened discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area.

Except as provided in subsection f. of section 27 of P.L.1993, c.139 (C.58:10B-5), financial assistance and grants to municipalities, counties, or redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) may be made for real property: (1) on which they hold a tax sale certificate; (2) that they have acquired through foreclosure or other similar means; or (3) that they have acquired, or, in the case of a county governed by a board of chosen freeholders, have passed a resolution or, in the case of a municipality or a county operating under the "Optional County Charter Law," P.L.1972, c.154 (C.40:41A-1 et seq.), have passed an ordinance or other

appropriate document to acquire, by voluntary conveyance for the purpose of redevelopment, or for recreation and conservation purposes. Financial assistance and grants may only be awarded for real property on which there has been or on which there is suspected of being a discharge of a hazardous substance or a hazardous waste. Grants and financial assistance provided pursuant to this paragraph shall be used for performing preliminary assessments, site investigations, remedial investigations, and remedial actions on real property in order to determine the existence or extent of any hazardous substance or hazardous waste contamination, and to remediate the site in compliance with the applicable health risk and environmental standards on those properties. No financial assistance or grants for a remedial action shall be awarded until the municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), actually owns the real property[, provided that a matching grant for 75% of the costs of a remedial action for a project involving the redevelopment of contaminated property for recreation and conservation purposes, or a matching grant for 50% of the costs of a remedial action for a project involving the redevelopment of contaminated property for affordable housing pursuant to P.L.1985, c.222 (C.52:27D-301 et al.) may be made to a municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) even if it does not own the real property and a grant may be made to a municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992,

c.79 (C.40A:12A-4) for a remediation in a brownfield development area pursuant to subsection f. of section 27 of P.L.1993, c.139 (C.58:10B-5) even if the entity does not own the real property.] No grant shall be awarded for a remedial action for a project involving the redevelopment of contaminated property for recreation or conservation purposes unless the use of the property is preserved for recreation and conservation purposes by conveyance of a development easement, conservation restriction or easement, or other restriction or easement permanently restricting development, which shall be recorded and indexed with the deed in the registry of deeds for the county. [A municipality that has performed, or on which there has been performed, a preliminary assessment, site investigation or remedial investigation on property may obtain a loan for the purpose of continuing the remediation on those properties as necessary to comply with the applicable remediation regulations adopted by the department]. No grant shall be awarded pursuant to this paragraph to a municipality, a county, or a redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) unless that entity has adopted by ordinance or resolution a comprehensive plan specifically for the development or redevelopment of contaminated or potentially contaminated real property in that municipality or the entity can demonstrate to the authority that a realistic opportunity exists that the subject real property will be developed or redeveloped within a three-year period from the completion of the remediation;

(3) Moneys shall be allocated for financial assistance to persons who voluntarily perform a remediation of a hazardous

substance or hazardous waste discharge;

(4) Moneys shall be allocated for grants to persons who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant. A person qualifies for an innocent party grant if that person acquired the property prior to December 31, 1983 and continues to own the property until such time as the authority approves the grant, the hazardous substance or hazardous waste that was discharged at the property was not used by the person at that site, and that person certifies that he did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered. A grant authorized pursuant to this paragraph may be for up to 50% of the remediation costs at the area of concern for which the person qualifies for an innocent party grant, except that no grant awarded pursuant to this paragraph to any person may exceed [\$1,000,000] \$100,000 in any calendar year for a total amount of \$500,000;

(5) Moneys shall be allocated for [(a)] financial assistance to persons who own and plan to remediate an environmental opportunity zone for which an exemption from real property taxes has been granted pursuant to section 5 of P.L.1995, c.413 (C.54:4-3.154)[, or (b) matching grants for up to 25% of the project costs to qualifying persons, municipalities, counties, and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), who propose to perform a remedial action that uses an innovative technology, or for the implementation of a limited restricted use remedial action or an unrestricted use remedial action except that no grant

awarded pursuant to this paragraph may exceed \$ 250,000]; and

(6) ~~Twenty~~ No less than forty percent of the moneys in the remediation fund shall be allocated for financial assistance or grants for any of the purposes enumerated in paragraph[s (1) through (5)] 2(a)(i) of this subsection and no less than thirty percent of the moneys in the remediation fund shall be allocated for financial assistance or grants for any of the purposes enumerated in paragraph 2(a)(iii) of this subsection.

[For the purposes of paragraph (5) of this subsection, "qualifying persons" means any person who has a net worth of not more than \$ 2,000,000 and "project costs" means that portion of the total costs of a remediation that is specifically for the use of an innovative technology or to implement an unrestricted use remedial action or a limited restricted use remedial action, as applicable.]

b. Loans issued from the remediation fund shall be for a term not to exceed ten years, except that upon the transfer of ownership of any real property for which the loan was made, the unpaid balance of the loan shall become immediately payable in full. The unpaid balance of a loan for the remediation of real property that is transferred by devise or succession shall not become immediately payable in full, and loan repayments shall be made by the person who acquires the property. Loans to municipalities, counties, and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), shall bear an interest rate equal to 2 points below the Federal Discount Rate at the time of approval or at the time of loan closing, whichever is lower, except that the rate

shall be no lower than 3 percent. All other loans shall bear an interest rate equal to the Federal Discount Rate at the time of approval or at the time of the loan closing, whichever is lower, except that the rate on such loans shall be no lower than five percent. Financial assistance and grants may be issued for up to 100% of the estimated applicable remediation cost, except that the cumulative maximum amount of financial assistance which may be issued to a person, in any calendar year, for one or more properties, shall be [\$ 1,000,000] \$500,000. Financial assistance and grants to any one municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) may not exceed [\$ 3,000,000] \$1,000,000 in any calendar year except as provided in subsection f. of section 27 of P.L.1993, c.139 (C.58:10B-5). Grants to a municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) may be for up to 100% of the total costs of the preliminary assessment, site investigation, [or] remedial investigation [regardless of when the application was received by the department] , and remedial action workplan. Grants to a municipality, a county, or a redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) may not exceed 75% of the total costs of the remedial action at any one site [for any application received by the department on or after September 15, 2005] in a brownfield development area. Repayments of principal and interest on the loans issued from the remediation fund shall be paid to the authority and shall be deposited into the remediation fund.

c. [No person, other than a qualified person

planning to use an innovative technology for the cost of that technology, a qualified person planning to use a limited restricted use remedial action or an unrestricted use remedial action for the cost of the remedial action, a person performing a remediation in an environmental opportunity zone, or a person voluntarily performing a remediation, shall be eligible for financial assistance from the remediation fund to the extent that person is capable of establishing a remediation funding source for the remediation as required pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3).] (Deleted by amendment, P.L. c.) (pending before the Legislature as this bill)

d. The authority may use a sum that represents up to 2% of the moneys issued as financial assistance or grants from the remediation fund each year for administrative expenses incurred in connection with the operation of the fund and the issuance of financial assistance and grants.

e. Prior to March 1 of each year, the authority shall submit to the Senate Environment Committee and the Assembly Environment and Solid Waste Committee, or their successors, a report detailing the amount of money that was available for financial assistance and grants from the remediation fund for the previous calendar year, the amount of money estimated to be available for financial assistance and grants for the current calendar year, the amount of financial assistance and grants issued for the previous calendar year and the category for which each financial assistance and grant was rendered, and any suggestions for legislative action the authority deems advisable to further the legislative intent to facilitate remediation and promote the

redevelopment and use of existing industrial sites.

Page 8, Section 1, Line 47:

Delete "1." and insert "3."

Page 9, Section 1, Line 20:

Before "in areas designated" insert "Sites"

Page 9, Section 1, Line 33:

After "from the applicant" insert "and shall be based on readiness to proceed with remediation as determined by the department and the authority"

Page 10, Line 11:

Insert new sections 4 and 5 to read:

4. Section 30 of P.L.1993, c.139 (C.58:10B-8) is amended to read as follows:

30. a. The authority shall, by rule or regulation:

(1) require a financial assistance or grant recipient to provide to the authority, as necessary or upon request, evidence that financial assistance or grant moneys are being spent for the purposes for which the financial assistance or grant was made, and that the applicant is adhering to all of the terms and conditions of the financial assistance or grant agreement;

(2) require the financial assistance or grant recipient to provide access at reasonable times to the subject property to determine compliance with the terms and conditions of the financial assistance or grant;

(3) establish a priority system for rendering financial assistance or grants for remediations identified by the department as involving an imminent and significant threat to a public water source, human health, or to a sensitive or significant ecological area pursuant to subsection a. of section 28 of P.L.1993, c.139 (C.58:10B-6);

(4) (Deleted by amendment, P.L.2009, c.60);

(5) provide that an applicant for financial assistance or a grant pay a reasonable fee for the application which

shall be used by the authority for the administration of the loan and grant program;

(6) provide that where financial assistance to a person other than a municipality, a county, or a redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), is for a portion of the remediation cost, that the proceeds thereof not be disbursed to the applicant until the costs of the remediation for which a remediation funding source has been established has been expended;

(7) provide that the amount of a grant for the costs of a remedial action shall not include the cost to remediate a site to meet residential soil remediation standards if the local zoning ordinances adopted pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) do not allow for residential use;

(8) adopt such other requirements as the authority shall deem necessary or appropriate in carrying out the purposes for which the Hazardous Discharge Site Remediation Fund was created.

b. An applicant for financial assistance or a grant shall be required to:

(1) provide proof, as determined sufficient by the authority, that the applicant, where applicable, cannot establish a remediation funding source for all or part of the remediation costs, as required by section 25 of P.L.1993, c.139 (C.58:10B-3). The provisions of this paragraph do not apply to grants to innocent persons, [grants for the use of innovative technologies, or grants for the implementation of unrestricted use remedial actions or limited restricted use remedial actions] or to financial assistance or grants to municipalities, counties, or redevelopment

entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4); and

(2) demonstrate the ability to repay the amount of the financial assistance and interest, and, if necessary, to provide adequate collateral to secure the financial assistance amount.

c. Information submitted as part of a loan or grant application or agreement shall be deemed a public record subject to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.).

d. In establishing requirements for financial assistance or grant applications and financial assistance or grant agreements, the authority:

(1) shall minimize the complexity and costs to applicants or recipients of complying with such requirements;

(2) may not require financial assistance or grant conditions that interfere with the everyday normal operations of the recipient's business activities, except to the extent necessary to ensure the recipient's ability to repay the financial assistance and to preserve the value of the loan collateral; and

(3) shall expeditiously process all financial assistance or grant applications in accordance with a schedule established by the authority for the review and the taking of final action on the application, which schedule shall reflect the degree of complexity of a financial assistance or grant application.

5. Section 8 of P.L.2005, c.223 (C.58:10B-25.2) is hereby repealed.

Page 10, Section 2, Line 15:

Delete "New Jersey Economic Development Authority" and insert "department"

Page 10, Section 2, Line 16:

After "act" insert ", but shall not apply to applications previously determined to be technically eligible and recommended for funding by the department pending before the authority on the effective date of this act"

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Charles B. McKenna

Chief Counsel to the Governor