

SENATE, No. 2974

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 27, 2011

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Assemblyman ALBERT COUTINHO

District 29 (Essex and Union)

Assemblyman ANTHONY M. BUCCO

District 25 (Morris)

Co-Sponsored by:

Senators Addiego, Oroho, Assemblymen Rudder and Delany

SYNOPSIS

Extends moratorium on the imposition of Statewide non-residential development fees; requires return of fees paid subsequent to June 30, 2010.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/30/2011)

1 AN ACT extending the moratorium on the imposition of Statewide
2 non-residential development fees, amending P.L.2008, c.46 and
3 P.L.2009, c.90.

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

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

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

16 (1) Non-residential property for which a site plan has received
17 either preliminary approval, pursuant to section 34 of P.L.1975,
18 c.291 (C.40:55D-46), or final approval, pursuant to section 38 of
19 P.L.1975, c.291 (C.40:55D-50), prior to July 1, **[2010]** 2013;
20 provided that a permit for the construction of the building has been
21 issued by the local enforcing agency having jurisdiction, in
22 accordance with section 13 of P.L.1975, c.217 (C.52:27D-131),
23 prior to January 1, **[2013]** 2015;

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

40 (3) A non-residential project that, prior to July 1, **[2010]** 2013,
41 has been referred to a planning board by the State, a governing
42 body, or other public agency for review pursuant to section 22 of
43 P.L.1975, c.291 (C.40:55D-31); provided that a permit for the
44 construction of the building has been issued by the local enforcing

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 agency having jurisdiction, in accordance with section 13 of
2 P.L.1975, c.217 (C.52:27D-131), prior to January 1, **[2013]** 2015;

3 (4) A non-residential property for which a site plan application
4 has received approval by the New Jersey Meadowlands
5 Commission, pursuant to section 13 of P.L.1968, c.404 (C.13:17-
6 14) prior to July 1, **[2010]** 2013; provided that a permit for the
7 construction of the building has been issued by the local enforcing
8 agency having jurisdiction, in accordance with section 13 of
9 P.L.1975, c.217 (C.52:27D-131), prior to January 1, **[2013]** 2015;

10 (5) Individual buildings within a nonresidential phased
11 development that received either preliminary or final approval prior
12 to July 1, **[2010]** 2013, provided that a permit for the construction
13 of the building has been issued prior to January 1, **[2013]** 2015.

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

26 c. Whenever non-residential development is situated on real
27 property that has been previously developed with a building,
28 structure, or other improvement, the non-residential development
29 fee shall be equal to two and a half (2.5) percent of the equalized
30 assessed value of the land and improvements on the property where
31 the non-residential development is situated at the time the final
32 certificate of occupancy is issued, less the equalized assessed value
33 of the land and improvements on the property where the non-
34 residential development is situated, as determined by the tax
35 assessor of the municipality at the time the developer or owner,
36 including any previous owners, first sought approval for a
37 construction permit, including, but not limited to, demolition
38 permits, pursuant to the State Uniform Construction Code, or
39 approval under the "Municipal Land Use Law," P.L.1975, c.291
40 (C.40:55D-1 et seq.). If the calculation required under this section
41 results in a negative number, the non-residential development fee
42 shall be zero.

43 Whenever the developer of a non-residential development has
44 made or committed itself to make a financial or other contribution
45 relating to the provision of housing affordable to low and moderate
46 income households prior to the enactment of P.L.2008, c.46
47 (C.52:27D-329.1 et al.), the non-residential development fee shall

1 be reduced by the amount of the financial contribution and the fair
2 market value of any other contribution made by or committed to be
3 made by the developer. For purposes of this section, a developer is
4 considered to have made or committed itself to make a financial or
5 other contribution, if and only if: (1) the contribution has been
6 transferred, including but not limited to when the funds have
7 already been received by the municipality; (2) the developer has
8 obligated itself to make a contribution as set forth in a written
9 agreement with the municipality, such as a developer's agreement;
10 or (3) the developer's obligation to make a contribution is set forth
11 as a condition in a land use approval issued by a municipal land use
12 agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291
13 (C.40:55D-1 et seq.).

14 d. Unless otherwise provided for by law, no municipality shall
15 be required to return a financial or any other contribution made by
16 or committed to be made by the developer of a non-residential
17 development prior to the enactment of P.L.2008, c.46 (C.52:27D-
18 329.1 et al.) relating to the provision of housing affordable to low
19 and moderate income households, provided that the developer does
20 not obtain an amended, modified, or new municipal land use
21 approval with a substantial change in the non-residential
22 development. If the developer obtains an amended, modified, or
23 new land use approval for non-residential development, the
24 municipality, person, or entity shall be required to return to the
25 developer any funds or other contribution provided by the developer
26 for the provision of housing affordable to low and moderate income
27 households and the developer shall not be entitled to a reduction in
28 the affordable housing development fee based upon that
29 contribution.

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

36 (cf: P.L.2009, c.90, s.37)

37

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

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

44 a. A developer of a property that received preliminary site plan
45 approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46),
46 or final approval, pursuant to section 38 of P.L.1975, c.291
47 (C.40:55D-50) prior to July 17, 2008 and that was subject to the
48 payment of a nonresidential development fee prior to the enactment

1 of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to a
2 return of any moneys paid that represent the difference between
3 moneys committed prior to July 17, 2008 and monies paid on or
4 after that date.

5 b. A developer of a non-residential project that, prior to July
6 17, 2008, has been referred to a planning board by the State, a
7 governing body, or other public agency for review pursuant to
8 section 22 of P.L.1975, c.291 (C. 40:55D-31) and that was subject
9 to the payment of a nonresidential development fee prior to the
10 enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be
11 entitled to a return of any moneys paid that represent the difference
12 between monies committed prior to July 17, 2008 and moneys paid
13 on or after that date.

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

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

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

38 f. A developer of a non-residential project that paid a fee
39 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
40 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to June 30, 2010
41 but prior to the effective date of P.L. , c. (C.) (pending
42 before the Legislature as this bill), shall be entitled to the return of
43 those monies paid, provided that said monies have not already been
44 expended by the municipality on affordable housing projects, and
45 provided that the provisions of section 37 of P.L.2008, c.46
46 (C.40:55D-8.6), as amended by P.L. , c. (C.) (pending before
47 the Legislature as this bill) do not permit the imposition of a fee
48 upon the developer of that non-residential property. If moneys are

1 eligible to be returned under this subsection, a claim shall be
2 submitted, in writing, to the same entity to which the moneys were
3 paid, within 120 days of the effective date of P.L. , c. (C.)
4 (pending before the Legislature as this bill). The entity to whom
5 the funds were paid shall promptly review all requests for returns,
6 to ensure applicability of section 37 of P.L.2008, c.46 (C.40:55D-
7 8.6) and the fees paid shall be returned to the claimant within 30
8 days of receipt of the claim for return.

9 (cf: P.L.2009, c.90, s.39)

10

11 3. Section 40 of P.L.2009, c.90 (C.52:27D-311.3) is amended
12 to read as follows:

13 40. The portion, if any, of the affordable housing obligation of a
14 municipality attributable to a particular non-residential development
15 shall be reduced or eliminated if:

16 a. the collection of fees under sections 32 through 38 of
17 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) is effectively
18 suspended for a period of time pursuant to that law; and

19 b. the Council on Affordable Housing, in consultation with the
20 Department of Community Affairs, has made a determination
21 within two years of the effective date of P.L.2009, c.90 (C.52:27D-
22 489a et al.), that there are insufficient funds in the "New Jersey
23 Affordable Housing Trust Fund," or through other State or federal
24 housing subsidies available to a municipality to assist in the
25 production of such housing units, in the same amount as would have
26 been collected if not for the suspension thereof, pursuant to sections
27 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-
28 8.7) by the date of the determination.

29 c. Nothing in P.L.2009, c.90 (C.52:27D-489a et al.) shall be
30 construed to affect the municipal obligation to provide a realistic
31 opportunity for its projected fair share of the regional housing need
32 as determined by the Council on Affordable Housing in accordance
33 with the provisions of the "Fair Housing Act," P.L.1985, c.222
34 (C.52:27D-301 et al.).

35 (cf: P.L.2009, c.90, s.40)

36

37 4. This act shall take effect immediately.

38

39

40 STATEMENT

41

42 This bill extends for two years, until July 1, 2013, the
43 moratorium on the imposition of fees on non-residential
44 construction projects. The fees, known as Statewide non-residential
45 development fees, were enacted as part of a revision of the "Fair
46 Housing Act," pursuant to P.L.2008, c.46. A moratorium was
47 placed on the imposition of the fees until July 1, 2010, pursuant to
48 the "Economic Stimulus Act of 2009," P.L.2009, c.90.

S2974 LESNIAK, SWEENEY

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1 This bill extends the moratorium placed in effect in 2009 until
2 July 1, 2013. The bill requires the return of any monies paid during
3 the period since July 1, 2010 and the present, as a result of the
4 previous expiration of the moratorium. The bill also clarifies that
5 any affordable housing obligation imposed under the “Fair Housing
6 Act” as a result of non-residential construction is suspended
7 whenever the imposition of Statewide non-residential fees is
8 suspended.