

BY: Economic and Environmental Affairs Committee

AMENDMENTS TO SENATE BILL NO. 205

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 15, after “circumstances;” insert “authorizing the transfer of a certain letter to certain persons;”; in line 19, strike “or certain persons”; in line 21, after the first “Department” insert “of Business and Economic Development”; in lines 21 and 22, strike “Business and Economic Development” and substitute “the Environment”; in line 25, after “Program;” insert “establishing a certain fund for certain purposes;”; and in line 32, after “Section” insert “7-201 (x) and”.

On page 2, in line 4, strike “and 7-223.2” and substitute “, 7-223.2, and 7-223.3”.

AMENDMENT NO. 2

On page 2, after line 14, insert:

“7-201.

(x) (1) “Responsible person” means any person who:

(i) Is the owner or operator of a vehicle or a site containing a hazardous substance;

(ii) At the time of disposal of any hazardous substance, was the owner or operator of any site at which the hazardous substance was disposed;

(iii) By contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by such person, by any other party or entity, at any site owned or operated by another party or entity and containing such hazardous substances; or

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(iv) Accepts or accepted any hazardous substance for transport to a disposal or treatment facility or any sites selected by the person.

(2) “Responsible person” does not include:

(i) A person who can establish by a preponderance of the evidence that at the time the person acquired an interest in a site containing a hazardous substance the person did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the site; however, any person claiming an exemption from liability under this subparagraph must establish that the person had no reason to know, in accordance with § 101(35)(B) of the federal act, and that the person satisfied the requirements of § 107(b)(3)(a) of the federal act;

(ii) A person who acquired a property containing a hazardous substance by inheritance or bequest at the death of the transferor;

(iii) A person who, without participating in the day-to-day management of a site containing a hazardous substance, holds indicia of ownership in the site or in property located on the site primarily to protect a valid and enforceable lien unless that person directly causes the discharge of a hazardous substance on or from the site;

(iv) A holder of a mortgage or deed of trust on a site containing a hazardous substance or a holder of a security interest in property located on the site who does not participate in the day-to-day management of the site unless that holder directly causes the discharge of a hazardous substance on or from the site;

(v) A fiduciary who has legal title to a site containing a hazardous substance or to property located on the site containing a hazardous substance for purpose of administering an estate or trust of which the site or property located on the site is a part unless the fiduciary:

1. Participates in the day-to-day management of the site or property; or  
2. Directly causes the discharge of a hazardous substance on or from the site;

(vi) A holder of a mortgage or deed of trust who acquires title to a site containing a hazardous substance through foreclosure or deed in lieu of foreclosure who:

1. Does not participate in the day-to-day management of the site; and

2. Does not directly cause the discharge of a hazardous substance on or from the site; [or]

(vii) Except in the case of gross negligence or willful misconduct, an owner or operator who is:

1. A state, county, or municipal government;

2. Any other political subdivision of the State; or

3. Any unit of a state, county, or municipal government or any other political subdivision;

(VIII) A HOLDER OF A MORTGAGE OR DEED OF TRUST WHO ACQUIRES TITLE TO A SITE SUBJECT TO A BROWNFIELDS RESPONSE ACTION PLAN, A VOLUNTARY RESPONSE ACTION PLAN, OR A VOLUNTARY REMEDIATION AGREEMENT UNDER THIS SUBTITLE, PROVIDED THAT THE HOLDER COMPLIES WITH THE REQUIREMENTS, PROHIBITIONS, AND CONDITIONS OF THE PLAN OR AGREEMENT IN THE SAME MANNER AS THE APPLICANT WHO SUBMITTED THE PLAN OR AGREEMENT; OR

(IX) A LENDER WHO:

1. EXTENDS CREDIT FOR THE PERFORMANCE OF REMOVAL OR REMEDIAL ACTIONS CONDUCTED IN ACCORDANCE WITH REQUIREMENTS IMPOSED UNDER THIS TITLE; OR

2. TAKES ACTION TO PROTECT OR PRESERVE A SECURITY INTEREST IN A SITE AT WHICH A RELEASE OR THREATENED RELEASE OF A HAZARDOUS SUBSTANCE HAS OCCURRED, BY STABILIZING, CONTAINING, REMOVING, OR PREVENTING THE RELEASE OF A HAZARDOUS SUBSTANCE IN A MANNER THAT DOES NOT CAUSE OR CONTRIBUTE TO ONGOING RELEASES OF A

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HAZARDOUS SUBSTANCE AT THE SITE.

(3) (i) Paragraph (2)(i) of this subsection does not affect the liability of a previous owner or previous operator of a site containing a hazardous substance if the previous owner or previous operator is a responsible person under paragraph (1)(ii) of this subsection.

(ii) Notwithstanding paragraph (2)(i) of this subsection, a person shall be treated as a responsible person if the person:

1. Obtained actual knowledge of the release or threatened release of a hazardous substance at a site when the person owned the real property; and

2. Transferred ownership of the property after June 30, 1991 without disclosing this knowledge to the transferee.

(iii) Nothing in paragraph (2)(i) of this subsection shall affect the liability under this subtitle of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at a site which is the subject of the action relating to the site if at the time of the act or omission the person knew or had reason to know that the act or omission would cause or contribute to the release or threatened release of a hazardous substance.

(4) Notwithstanding paragraph (2)(ii) of this subsection, a person shall be treated as a responsible person if the person:

(i) Knew or had reason to know of the release or threatened release of a hazardous substance at the site; and

(ii) Transferred ownership of the property after June 30, 1991 without disclosing this knowledge to the transferee.

(5) (i) For purposes of paragraph (2)(iii), (iv), (v), and (vi) of this subsection, “management” means directing or controlling operations, production or treatment of a hazardous substance, storage or disposal of a hazardous substance, or remediation of a hazardous substance release.

(ii) “Management” does not include rendering advice on financial matters, rendering financial assistance, or actions taken to protect or secure the site or property located on the site if the advice, assistance, or actions do not involve the treatment, storage, or disposal of a hazardous substance or remediation of a hazardous substance release.”.

AMENDMENT NO. 3

On page 3, in line 11, after “(G) (1)” insert:

“(I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, “;

after line 17, insert:

“(II) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH DO NOT APPLY TO A RESPONSIBLE PERSON FOR ANY RELEASE OR THREATENED RELEASE OF A HAZARDOUS SUBSTANCE THAT IS AT A SITE COVERED BY AN APPLICATION SUBMITTED AND ACCEPTED UNDER § 7-223.2 OF THIS SUBTITLE IF THE RESPONSIBLE PERSON IMPLEMENTS AND COMPLETES THE RESPONSE ACTION PLAN AND COMPLIES WITH THE VOLUNTARY REMEDIATION AGREEMENT FOR THE SITE.”;

in line 19, strike “OR BY AN ELIGIBLE PERSON”; and strike in their entirety lines 28 through 32, inclusive.

AMENDMENT NO. 4

On page 3 after line 35, and on page 10 after line 29, in each instance, insert:

“(2) “BACKGROUND LEVEL” MEANS THE LEVEL OF A SUBSTANCE OCCURRING NATURALLY AT THE SITE PRIOR TO ANY MAN-MADE SPILL OR RELEASE.”.

On page 3, in line 36, strike “(2)” and substitute “(3)”.

On page 10, in line 38, after “(II)” insert “EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH.”.

On page 4, in lines 3 and 12, strike “(3)” and “(4)”, respectively, and substitute “(4)” and “(6)”, respectively.

On page 4 in line 9, and on page 11 in line 4, in each instance, strike “OR”.

On page 4, in line 11, after “SUBTITLE” insert:

“;OR”

4. CONTAMINATED BY A RELEASE OR THREATENED RELEASE CAUSED BY THE DISPOSAL OF HAZARDOUS SUBSTANCES AFTER OCTOBER 1, 1996.

(5) “IMMINENT OR SUBSTANTIAL THREAT” MEANS A RELEASE OR THREATENED RELEASE OF A HAZARDOUS SUBSTANCE THAT MAY POSE A RISK OF SIGNIFICANT HARM TO THE PUBLIC HEALTH OR WELFARE AND THE ENVIRONMENT AT SOME FORESEEABLE TIME IN THE FUTURE AND IS NOT LIMITED TO AN EMERGENCY SITUATION”.

On page 11, in line 6, after “SUBTITLE” insert:

“;OR”

4. CONTAMINATED BY A RELEASE OR THREATENED RELEASE CAUSED BY THE DISPOSAL OF HAZARDOUS SUBSTANCES AFTER OCTOBER 1, 1996.

(III) “ELIGIBLE SITE” INCLUDES A SITE DETERMINED BY THE DEPARTMENT TO BE ELIGIBLE UNDER SUBSECTION (C)(7) OF THIS SECTION.

(5) “IMMINENT OR SUBSTANTIAL THREAT” MEANS A RELEASE OR THREATENED RELEASE OF A HAZARDOUS SUBSTANCE THAT MAY POSE A RISK OF

SIGNIFICANT HARM TO THE PUBLIC HEALTH OR WELFARE AND THE ENVIRONMENT AT SOME FORESEEABLE TIME IN THE FUTURE AND IS NOT LIMITED TO AN EMERGENCY SITUATION".

AMENDMENT NO. 5

On page 4, in line 20, after "AREAS" insert "AND ECONOMICALLY DISTRESSED AREAS".

On page 4, in line 31, after "DEPARTMENT" insert "OF BUSINESS AND ECONOMIC DEVELOPMENT"; and in line 32, strike "OF BUSINESS AND ECONOMIC DEVELOPMENT".

On page 10, in line 18, after the first "DEPARTMENT" insert "OF BUSINESS AND ECONOMIC DEVELOPMENT"; and in lines 18 and 19, strike "OF BUSINESS AND ECONOMIC DEVELOPMENT".

On page 5, in line 7, after "ENTITY" insert "AND THE RETENTION OF EXISTING JOBS IN AREAS OF ECONOMIC DISTRESS".

AMENDMENT NO. 6

On page 6, in line 33, after "APPLICANT" insert "THAT PORTION OF"; and in the same line, after "FEE" insert "THAT IS NOT REQUIRED TO REIMBURSE THE DEPARTMENT FOR THE COSTS OF PROCESSING THE APPLICATION".

On page 12, in line 5, after "APPLICANT" insert "THAT PORTION OF"; and in the same line, after "FEE" insert "THAT IS NOT REQUIRED TO REIMBURSE THE DEPARTMENT FOR THE COSTS OF PROCESSING THE APPLICATION".

(7) IN ITS SOLE DISCRETION, THE DEPARTMENT MAY DETERMINE THAT A PART OF AN OPERATING FACILITY IS AN ELIGIBLE SITE FOR THE PURPOSES OF THE VOLUNTARY REMEDIATION PROGRAM IF THE PART OF THE OPERATING FACILITY IS NOT:

(I) A REGULATED UNIT UNDER A CONTROLLED HAZARDOUS

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SUBSTANCE PERMIT ISSUED UNDER THIS SUBTITLE; OR

(II) SUBJECT TO A PERMIT UNDER TITLE 9, SUBTITLE 3 OF THIS ARTICLE".

AMENDMENT NO. 7

On page 7 in line 30, and on page 12 in line 38, in each instance, strike "CLEANUP STANDARDS SHALL BE BASED ON" and substitute "SELECTION OF REMEDIAL ACTION SHALL BE BASED ON ONE OR MORE OF THE FOLLOWING CLEANUP STANDARDS AS MAY BE APPROPRIATE AND RELEVANT".

On page 7 in line 35, and on page 13 in line 5, in each instance, strike the second "AND" and substitute:

"(IV) UNIFORM NUMERIC CLEANUP STANDARDS DETERMINED BY THE DEPARTMENT;

(V) BACKGROUND LEVELS; AND".

On page 7 in line 36, and on page 13 in line 6, in each instance, strike "(IV)" and substitute "(VI)".

On page 7 in lines 36 and 37, and on page 13 in lines 6 and 7, in each instance, strike "THAT MAY BE APPROPRIATE AND RELEVANT".

On page 8, strike beginning with "MAY" in line 2 down through "ON" in line 5 and substitute "SHALL CONSIDER"; and in lines 7, 9, and 11, strike "1.", "2.", and "3.", respectively, and substitute "(I)", "(II)", and "(III)", respectively.

On page 13, strike beginning with "MAY" in line 9 down through "ON" in line 12 and substitute "SHALL CONSIDER"; and in lines 14, 16, and 18, strike "1.", "2.", and "3.", respectively, and substitute "(I)", "(II)", and "(III)", respectively.

AMENDMENT NO. 8



On page 8 in line 18, and on page 13 in line 25, in each instance, after “SHALL” insert “REQUIRE THE APPLICANT TO”.

On page 8 in line 30, and on page 14 in line 1, in each instance, strike “HEARING” and substitute “INFORMATIONAL MEETING”.

On page 8 in line 31, and on page 14 in line 2, in each instance, strike “WHEN” and substitute “IF AT LEAST 5 RESIDENTS FROM SEPARATE HOUSEHOLDS IN COMMUNITIES ADJACENT TO THE SITE AND POTENTIALLY AFFECTED BY THE REMOVAL OR REMEDIAL ACTION PROPOSED AT THE SITE FILE”.

On page 8 in line 32, and on page 14 in line 3, in each instance, strike “HEARING IS MADE” and substitute “INFORMATIONAL MEETING”.

AMENDMENT NO. 9

On page 9 in line 20, and on page 14 in line 27, in each instance, strike the second “AND”.

On page 9 in line 21, and on page 14 in line 28, in each instance, after “ACHIEVED” insert:

“; AND”

(III) CONTAIN ANY OTHER PROVISIONS THAT THE DEPARTMENT DETERMINES TO BE NECESSARY TO PROTECT PUBLIC HEALTH, THE ENVIRONMENT, OR THE INTERESTS OF THE STATE, OR TO ENHANCE THE EFFICIENT OPERATION OF THE PROGRAM “.

AMENDMENT NO. 10

On page 9 in line 38 and on page 15 in line 7, in each instance, after “(3)” insert “(I)”.

On pages 9 and 10, strike beginning with “ATTACH” in line 39 on page 9 through “ON” in line 1 on page 10 and substitute “RECORD THE LETTER IN THE LAND RECORDS OF THE LOCAL JURISDICTION IN”.

On page 15, strike beginning with “ATTACH” in line 8 down through “ON” in line 9 and

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substitute “RECORD THE LETTER IN THE LAND RECORDS OF THE LOCAL JURISDICTION IN”.

On page 10 after line 2, and on page 15 after line 10, in each instance, insert:

“(II) A NO FURTHER ACTION LETTER MAY BE TRANSFERRED TO ANY PERSON WHOSE ACTIONS DID NOT CAUSE THE CONTAMINATION.”.

AMENDMENT NO. 11

On page 10, strike beginning with “SUBSEQUENT” in line 6 down through “WELFARE” in line 8 and substitute “THERE IS AN IMMINENT OR SUBSTANTIAL THREAT TO PUBLIC HEALTH”.

On page 15, strike beginning with “SUBSEQUENT” in line 14 down through “WELFARE” in line 16 and substitute “THERE IS AN IMMINENT OR SUBSTANTIAL THREAT TO PUBLIC HEALTH”.

On page 10 in line 9, and on page 15 in line 17, in each instance, after “(II)” insert “THE LETTER OF NO FURTHER ACTION WAS OBTAINED THROUGH”.

On page 10 in line 9, and on page 15 in line 17, in each instance, after “OR” insert “MATERIAL”.

On page 10 strike beginning with “IS” in line 9 down through “OR” in line 11.

On page 15 strike beginning with “IS” in line 17 down through “OR” in line 19.

On page 10 in line 12, and on page 15 in line 20, in each instance, strike “FURTHER” and substitute “NEW”.

On page 10 in line 12, and on page 15 in line 20, in each instance, strike “DISCOVERED” and substitute “FOUND”;

(IV) PREVIOUSLY UNDISCOVERED CONTAMINATION IS FOUND;

(V) THE ELIGIBLE SITE FAILS TO MEET THE APPLICABLE CLEANUP CRITERIA SET FORTH IN THE RESPONSE ACTION PLAN APPROVED BY THE DEPARTMENT;

(VI) THE PERSON DOES NOT COMPLY WITH CONDITIONS ON THE PERMISSIBLE USES OF THE PROPERTY; OR

(VII) THE LONG-TERM OPERATION AND MAINTENANCE SET FORTH IN THE APPROVED RESPONSE ACTION PLAN HAS NOT BEEN PERFORMED”.

AMENDMENT NO. 12

On page 10, in line 30, strike “(2)” and substitute “(3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH,”; in lines 32, 33, 34, and 35, strike “(I)”, “(II)”, “(III)”, and “(IV)”, respectively, and substitute “1.”, “2.”, “3.”, and “4.”, respectively; after line 35, insert:

“(II) “ELIGIBLE PERSON” INCLUDES A RESPONSIBLE PERSON DESCRIBED IN § 7-201 (X) (1) OF THIS SUBTITLE WHO DID NOT CAUSE A RELEASE OR THREATENED RELEASE BY NEGLIGENTLY, KNOWINGLY, OR WILFULLY VIOLATING ANY REQUIREMENT OR PROHIBITION IMPOSED UNDER THIS TITLE.”;

and in line 36, strike “(3)” and substitute “(4)”.

AMENDMENT NO. 13

On page 15, after line 27, insert:

“7-223.3.

(A) THERE IS A BROWNFIELDS REVITALIZATION AND VOLUNTARY REMEDIATION FUND.

(B) ALL APPLICATION FEES AND OTHER MONEYS COLLECTED BY THE DEPARTMENT IN CONNECTION WITH THE BROWNFIELDS REVITALIZATION AND

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VOLUNTARY REMEDIATION PROGRAMS UNDER §§ 7-223.1 AND 7-223.2 OF THIS SUBTITLE SHALL BE PAID TO THE FUND.

(C) ALL MONEYS APPROPRIATED, GRANTED, LOANED, OR OTHERWISE PROVIDED TO THE DEPARTMENT FOR THE SUPPORT OF THE BROWNFIELDS REVITALIZATION AND VOLUNTARY REMEDIATION PROGRAMS SHALL BE PAID TO THE FUND.

(D) THE DEPARTMENT SHALL USE THE MONEYS IN THE FUND FOR:

(1) ALL COSTS ASSOCIATED WITH THE ADMINISTRATION OF THE PROGRAMS;

(2) THE DEVELOPMENT AND IMPLEMENTATION OF THE PROGRAMS;

(3) LEGAL EXPENSES; AND

(4) OTHER INDIRECT AND DIRECT COSTS ASSOCIATED WITH THE INVESTIGATION, CLEANUP, AND RELATED ACTIVITIES AT BROWNFIELDS REVITALIZATION AND VOLUNTARY REMEDIATION PROJECTS THAT HAVE NOT BEEN COMPLETED BY THE APPLICANT.”.