

HOUSE BILL 1051

Unofficial Copy
M3

2003 Regular Session
(3r2110)

ENROLLED BILL

-- *Environmental Matters/Education, Health, and Environmental Affairs* --

Introduced by **Delegate McIntosh**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Environment - Brownfields - Environmental Restoration and Development**

3 FOR the purpose of providing that certain owners of certain real property that is
4 contiguous to certain contaminated or potentially contaminated property are not
5 considered owners or operators of certain contaminated property under certain
6 circumstances; authorizing the Department of the Environment to impose a
7 lesser application fee on certain applications to the Voluntary Cleanup Program;
8 establishing a process for certain incomplete applications to the Program;
9 authorizing a certain determination by the Department to be transferred to a
10 subsequent purchaser under certain circumstances; requiring that a certain
11 determination that is conditioned on certain uses of the property or on
12 maintenance of certain conditions be recorded by the participant in the
13 appropriate land records; establishing the Environmental Restoration and
14 Development Task Force; specifying the membership and duties of the Task
15 Force; providing for the designation of the Task Force chairman; requiring the
16 Department of the Environment and the Department of Business and Economic
17 Development to provide certain staffing; prohibiting a Task Force member from

1 receiving certain compensation and authorizing the receipt of certain
 2 reimbursement; requiring the Task Force to report to certain persons by a
 3 certain date; altering a certain definition; providing for the termination of
 4 certain provisions of this Act; and generally relating to environmental
 5 restoration and development.

6 BY repealing and reenacting, without amendments,
 7 Article - Environment
 8 Section 7-201(a) and (x)(1)
 9 Annotated Code of Maryland
 10 (1996 Replacement Volume and 2002 Supplement)

11 BY adding to
 12 Article - Environment
 13 Section 7-201(x)(7) and 7-506(f) and (g)
 14 Annotated Code of Maryland
 15 (1996 Replacement Volume and 2002 Supplement)

16 BY repealing and reenacting, with amendments,
 17 Article - Environment
 18 Section 7-201(k) and 7-506(a)(2), (b), and (d)
 19 Annotated Code of Maryland
 20 (1996 Replacement Volume and 2002 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article - Environment**

24 7-201.

25 (a) In this subtitle the following words have the meanings indicated.

26 (k) "Federal act" means the Comprehensive Environmental Response,
 27 Compensation, and Liability Act of 1980, as amended through January 1, [1990]
 28 2003.

29 (x) (1) "Responsible person" means any person who:

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

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

34 (iii) By contract, agreement, or otherwise, arranged for disposal or
 35 treatment, or arranged with a transporter for transport for disposal or treatment, of a

1 hazardous substance owned or possessed by such person, by any other party or entity,
2 at any site owned or operated by another party or entity and containing such
3 hazardous substances; or

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

6 (7) A PERSON WHO OWNS REAL PROPERTY IS NOT CONSIDERED AN
7 OWNER OR OPERATOR OF A VEHICLE OR SITE CONTAINING A HAZARDOUS
8 SUBSTANCE UNDER SUBPARAGRAPH (1)(I) OF THIS SUBSECTION SOLELY BY REASON
9 OF CONTAMINATION FROM A CONTIGUOUS OR OTHERWISE SIMILARLY SITUATED
10 REAL PROPERTY IF:

11 (I) THE PERSON DOES NOT OWN THE CONTIGUOUS OR OTHERWISE
12 SIMILARLY SITUATED REAL PROPERTY;

13 (II) THE PERSON'S REAL PROPERTY IS OR MAY BE CONTAMINATED
14 BY A RELEASE OR THREATENED RELEASE OF A HAZARDOUS SUBSTANCE FROM THE
15 CONTIGUOUS TO OR OTHERWISE SIMILARLY SITUATED REAL PROPERTY; AND

16 (III) THE PERSON MEETS THE REQUIREMENTS OF SECTION 107(Q)
17 OF THE FEDERAL ACT AND ANY REGULATIONS ADOPTED BY THE DEPARTMENT
18 IMPLEMENTING OR INTERPRETING THE REQUIREMENTS OF THAT SECTION.

19 7-506.

20 (a) To participate in the Program, an applicant shall:

21 (2) Pay to the Department an application fee of \$6,000, UNLESS THE
22 DEPARTMENT DETERMINES THAT A LESSER FEE WOULD BE SUFFICIENT TO COVER
23 THE COSTS DESCRIBED IN SUBSECTION (D) OF THIS SECTION.

24 (b) (1) (i) The Department shall notify the applicant in writing, within 60
25 days after receipt of the application, whether:

26 1. The application, including the applicant's status as a
27 responsible person or an inculpable person, is approved;

28 2. The application is denied OR INCOMPLETE; or

29 3. The Department has no further requirements related to
30 the investigation of controlled hazardous substances at the eligible property as
31 provided in paragraph (3) of this subsection.

32 (ii) If the Department denies the application OR DETERMINES THAT
33 THE APPLICATION IS INCOMPLETE, the Department shall provide to the applicant the
34 reasons for its decision in writing.

1 (2) (i) An applicant may resubmit an application within 60 days after
2 receipt of notice of the Department's decision to deny the initial application OR
3 DETERMINATION THAT THE APPLICATION IS INCOMPLETE.

4 (ii) The Department shall approve or deny a resubmitted OR
5 REVISED application within 30 days after receipt.

6 (3) If the Department notifies the applicant that the Department has no
7 further requirements at the eligible property in accordance with paragraph (1)(i)3 of
8 this subsection, the Department shall include a statement that this notice does not:

9 (i) Subject to the provisions of § 7-505 of this subtitle, prevent the
10 Department from taking action against any person to prevent or abate an imminent
11 and substantial endangerment to the public health or the environment at the eligible
12 property;

13 (ii) Remain in effect if the notice of no further requirements is
14 obtained through fraud or a material misrepresentation;

15 (iii) Affect the authority of the Department to take any action
16 against a responsible person concerning previously undiscovered contamination at an
17 eligible property after a no further requirements notice has been issued by the
18 Department; or

19 (iv) Affect the authority of the Department to require additional
20 cleanup for future activities at the site that result in contamination by hazardous
21 substances.

22 (d) (1) If the direct costs of review of the application and administration and
23 oversight of the response action plan exceed [\$6,000] THE APPLICATION FEE, the
24 Department shall require an applicant or participant to pay to the Department the
25 additional costs incurred by the Department.

26 (2) If the direct costs of review of the application and administration and
27 oversight of the response action plan are less than [\$6,000] THE APPLICATION FEE,
28 the Department shall refund to the applicant or participant the difference between
29 the costs incurred and the application fee.

30 (F) A DETERMINATION BY THE DEPARTMENT THAT IT HAS NO FURTHER
31 REQUIREMENTS MAY BE TRANSFERRED TO A SUBSEQUENT PURCHASER OF THE
32 PROPERTY PROVIDED THAT THE SUBSEQUENT PURCHASER DID NOT CAUSE OR
33 CONTRIBUTE TO THE CONTAMINATION.

34 (G) (1) IF A DETERMINATION BY THE DEPARTMENT THAT IT HAS NO
35 FURTHER REQUIREMENTS IS CONDITIONED ON CERTAIN USES OF THE PROPERTY OR
36 ON THE MAINTENANCE OF CERTAIN CONDITIONS, THE PARTICIPANT SHALL RECORD
37 THE DETERMINATION IN THE LAND RECORDS OF THE LOCAL JURISDICTION WITHIN
38 30 DAYS AFTER RECEIVING THE DETERMINATION.

1 (2) IF THE DETERMINATION BY THE DEPARTMENT THAT IT HAS NO
 2 FURTHER REQUIREMENTS IS CONDITIONED ON CERTAIN USES OF THE PROPERTY OR
 3 ON THE MAINTENANCE OF CERTAIN CONDITIONS AND THE PARTICIPANT FAILS TO
 4 RECORD THE DETERMINATION IN THE LAND RECORDS IN ACCORDANCE WITH
 5 PARAGRAPH (1) OF THIS SUBSECTION, THE DETERMINATION SHALL BE VOID.

6 SECTION 2. AND BE IT FURTHER ENACTED, That:

7 (a) There is an Environmental Restoration and Development Task Force.

8 (b) The Task Force consists of the following members:

9 (1) three members of the Senate of Maryland, appointed by the President
 10 of the Senate;

11 (2) three members of the House of Delegates, appointed by the Speaker
 12 of the House;

13 (3) the Secretary of the Environment, or the Secretary's designee;

14 (4) the Secretary of Business and Economic Development, or the
 15 Secretary's designee;

16 (5) the Secretary of Planning, or the Secretary's designee;

17 (6) ~~one representative~~ the following representatives from the University
 18 System of Maryland ~~with expertise in the area of brownfields remediation or~~
 19 ~~environmental science~~, appointed by the Chancellor:

20 (i) one representative with expertise in the area of brownfields
 21 remediation or environmental science;

22 (ii) one representative with expertise in the area of brownfields law;
 23 and

24 (iii) one representative with expertise in public health; and

25 (7) the following members, appointed by the Governor:

26 (i) one representative of the Cleanup Coalition;

27 (7) (ii) one representative of the Chesapeake Bay Foundation;

28 (8) (iii) two representatives of the business community with experience
 29 in brownfields development; and

30 (9) (iv) one representative of the Baltimore Development Corporation;
 31 and

1 (10) ~~one representative from the University System of Maryland with~~
2 ~~expertise in the area of brownfields remediation or environmental science, appointed~~
3 ~~by the Chancellor.~~

4 (c) The President of the Senate and the Speaker of the House shall jointly
5 designate the chairman of the Task Force.

6 (d) The Department of the Environment and the Department of Business and
7 Economic Development shall provide staff for the Task Force.

8 (e) A member of the Task Force:

9 (1) may not receive compensation; but

10 (2) is entitled to reimbursement for expenses under the Standard State
11 Travel Regulations, as provided in the State budget.

12 (f) The Task Force shall:

13 (1) review the recent amendments to the federal Comprehensive
14 Environmental Response, Compensation, and Liability Act as they relate to
15 brownfields, including:

16 (i) the definition of a "bona fide prospective purchaser";

17 (ii) the classification of a bona fide prospective purchaser as not an
18 owner or operator for purposes of "responsible person" status; and

19 (iii) the imposition of a windfall lien on a bona fide prospective
20 purchaser.

21 (2) examine the consequences of enacting State brownfields legislation
22 similar to the amendments discussed in paragraph (1) of this subsection;

23 (3) examine the consequences of including properties under active
24 enforcement as eligible properties under the State Voluntary Cleanup Program;

25 (4) examine the consequences of providing liability protections to
26 economic development corporations and counties that take ownership of
27 contaminated or potentially contaminated sites;

28 (5) examine methods by which a Program participant that received a no
29 further requirements determination conditioned on certain uses of the property could
30 apply for and receive a revised no further requirements determination based on
31 different uses of the property;

32 (6) examine the consequences of providing for focused site cleanups,
33 including limited liability protection for such cleanups, that are limited to specific
34 types of contamination or specific portions of the property;

1 (7) examine the consequences of authorizing economic development
2 corporations to act as a lender under the Maryland Clean Water Revolving Loan
3 Fund; ~~and~~

4 (8) examine potential sources of increased funding for State brownfields
5 programs; and

6 (9) study any other issues related to the State's brownfields programs
7 that the members of the Task Force consider appropriate.

8 (g) The Task Force shall report its findings and recommendations to the
9 Governor and, subject to § 2-1246 of the State Government Article, the General
10 Assembly on or before December 31, 2003.

11 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 June 1, 2003. Section 2 of this Act shall remain effective for a period of eight months
13 and, at the end of January 31, 2004, with no further action required by the General
14 Assembly, Section 2 of this Act shall be abrogated and of no further force and effect.