

Testimony Supporting SB125
Senate Judicial Proceedings
January 30, 2024

Position: Support

Dear Chair William C. Smith, Jr., and Members of the Committee,

As a resident of Mayland concerned with the general welfare of my fellow citizens I am writing in support of SB 125, Residential Property Sales – Contract Disclosures – Superfund Sites

This bill will increase transparency and fairness during sales of property in close proximity to highly contaminated areas, as designated by the EPA as being on the National Priorities List.

For most people the purchase of a home is the largest financial investment a person makes. It is imperative that at the time of sale an honest disclosure of the property is made. What to the seller or representative is a mundane procedure, the buyer experiences as a blur of paperwork and document signing. A checkbox, 20 pages into a one inch high document is not sufficient to provide the purchaser a fair assessment of what they are buying.

This is not an atmosphere in which a buyer suddenly asks, “Oh – is this property near an NPL Superfund Site?” How many people know that sites listed on EPA’s National Priorities List (NPL) are the nation’s highest priority for hazardous waste cleanup?

The nature of the contamination is such that these sites are most likely to leach contamination beyond the boundary of the superfund site, as has been proven at Ft. Detrick in Frederick County.

Current disclosure laws in Maryland are not adequate to account for this situation. They exclude “new builds”, estate sales, among other residential sales, and again only require disclosure for onsite contamination, not proximity to known contamination that can spread beyond the site to the property for sale. Thus, houses could be built, and families could be exposed to cancer causing contamination.

Even though the Maryland Board of Realtors Code of Ethics defines a Material Fact as something that may cause a buyer to reconsider a decision, there is no current, uniform protocol to disclose proximity to contamination so potentially harmful to health that it is declared a National Priority.

This bill would change that. It requires disclosure that a property is within one half mile of a contaminated NPL site, directs the buyer to a standard source to describing the specific site, and allows the buyer, after being presented with facts, to discern whether the information provided is reason to pause or move forward with the sale.

A separate addendum which is intended to stand out from the blur of paperwork, is given to the buyer. The buyer is given five days from their signature and date on the addendum, to void the sale and be refunded any money already paid or kept in earnest. A prescriptive sample of what the addendum should look like is included.

Why the notice of a 0.5 mi proximity to the NPL site is necessary

The Remedial Investigation begins early in the CERLA process. The starting point of known contamination expands as sampling directs further inquiry. Most sites linger here for more than a decade as data and known contamination boundaries expand.

In this decade or more of Remedial Investigation and gathering data, local planning commissions continue to approve land use for residential construction. By the time the Remedial Investigation and data has been quantified, land has been sold and homes have been built.

In order to protect the potential buyers, the Real Estate Agents, and the sellers, from future liability and potential health risks, we need legislation that gets in front of this situation and assumes that the known point of contamination has not remained in one place, especially in groundwater plume instances, and that as they test there is a likelihood that the data will expand the hot zone.

For this reason, research has been done to determine what defines proximity.

According to the US Department of Housing and Urban Development:

Proximity to Superfund Sites is the proportion of a neighborhood located within one kilometer or 0.62 miles of a superfund site. The higher the share of the neighborhood located close to a superfund site, the higher the negative impact on the neighborhood.

Superfund sites contain toxic pollutants. Living, working, or going to school near a superfund site may have negative health effects depending on toxins at the site. Superfund sites have been linked to adverse health effects including infant mortality, mental health, water and food-borne illness, and cancer. Sites that are listed on EPA's National Priorities List (NPL) are the nation's highest priority for hazardous waste cleanup."

Finally, this bill protects all parties: the agent, the seller, and the buyer. Lawsuits have been won over this premise in Florida, and New Jersey based on Negligence, Breach of Contract, Violation of the Consumer Fraud Protection Act. The court's interpretations have resulted in upholding that sellers must disclose any material facts that affect the value of the property and are not readily observable to the buyer, including offsite scenarios.

Thank you,

Elizabeth Law, Frederick MD