

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 880 Session of
2009

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BROWNE AND WAUGH, MAY 27, 2009

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, MAY 27, 2009

AN ACT

1 Providing for reimbursement to developers of brownfield sites;
2 authorizing the Secretary of Environmental Protection to
3 enter into redevelopment agreements; and establishing the
4 Brownfield Site Reimbursement Fund.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Brownfields
9 Redevelopment Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall
12 have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Brownfield" or "brownfield site." Real property, the
15 expansion, redevelopment or reuse of which may be complicated by
16 the presence or potential presence of a hazardous substance,
17 pollutant or contaminant. The term includes properties impacted
18 by mining activities conducted prior to the effective date of

1 this section.

2 "Contaminant." An element, substance, compound or mixture
3 which is defined as a pollutant or contaminant pursuant to the
4 Comprehensive Environmental Response, Compensation, and
5 Liability Act of 1980 (Public Law 96-510, 94 Stat. 2767). The
6 term shall not include an element, substance, compound or
7 mixture from a coal mining operation under the jurisdiction of
8 the Department of Environmental Protection or from a site
9 eligible for funding under Title IV of the Surface Mining
10 Control and Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C.
11 § 1201 et seq.); nor shall the term include natural gas, natural
12 gas liquids, liquefied natural gas or synthetic gas usable for
13 fuel or mixtures of natural gas and synthetic gas usable for
14 fuel, except for the purposes of an emergency response. The term
15 shall also not include the following wastes generated primarily
16 from the combustion of coal or other fossil fuels for the
17 production of electricity: slag waste; flue gas emission control
18 waste; and fly ash waste and bottom ash waste which are disposed
19 of or beneficially used in accordance with the act of July 7,
20 1980 (P.L.380, No.97), known as the Solid Waste Management Act,
21 and the regulations promulgated thereto or which have been
22 disposed of under a valid permit issued pursuant to any other
23 environmental statute.

24 "Developer." An individual, corporation, partnership, sole
25 proprietorship, firm, enterprise, franchise, association,
26 organization, holding company, joint stock company,
27 receivership, trust or any legal entity organized for profit
28 that is engaged in a redevelopment project under this act.

29 "Fund." The Brownfield Site Reimbursement Fund established
30 in section 7.

1 "Land Recycling and Environmental Remediation Standards Act."

2 The act of May 19, 1995 (P.L.4, No.2), known as the Land
3 Recycling and Environmental Remediation Standards Act.

4 "Person." An individual, firm, corporation, association,
5 partnership, consortium, joint venture, commercial entity,
6 authority, nonprofit corporation, interstate body or other legal
7 entity which is recognized by law as the subject of rights and
8 duties. The term includes the Federal Government, State
9 government, political subdivisions and Commonwealth
10 instrumentalities.

11 "Redevelopment agreement." An agreement between the
12 Commonwealth and a developer under which the developer agrees to
13 perform any work or undertaking necessary for the remediation of
14 a brownfield site located at the site of a redevelopment project
15 and for the clearance, development or redevelopment,
16 construction or rehabilitation of any structure or improvement
17 of commercial, industrial or public structures or improvements
18 within an area of land whereon a brownfield site is located and
19 the Commonwealth agrees that the developer shall be eligible for
20 the reimbursement of up to 75% of the remediation costs of the
21 brownfield site from the Commonwealth.

22 "Redevelopment project." The term shall have the same
23 meaning given to it under section 3 of the act of May 24, 1945
24 (P.L.991, No.385), known as the Urban Redevelopment Law.

25 "Regulated substance." The term shall include hazardous
26 substances and contaminants regulated under the act of October
27 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup
28 Act, and substances covered by the act of June 22, 1937
29 (P.L.1987, No.394), known as The Clean Streams Law, the act of
30 January 8, 1960 (1959 P.L.2119, No.787), known as the Air

1 Pollution Control Act, the act of July 7, 1980 (P.L.380, No.97),
2 known as the Solid Waste Management Act, the act of July 13,
3 1988 (P.L.525, No.93), referred to as the Infectious and
4 Chemotherapeutic Waste Law, and the act of July 6, 1989
5 (P.L.169, No.32), known as the Storage Tank and Spill Prevention
6 Act.

7 "Release." Spilling, leaking, pumping, pouring, emitting,
8 emptying, discharging, injecting, escaping, leaching, dumping or
9 disposing of a regulated substance into the environment in a
10 manner not authorized by the Department of Environmental
11 Protection. The term includes the abandonment or discarding of
12 barrels, containers, vessels and other receptacles containing a
13 regulated substance.

14 "Remediation" or "remediate." Any necessary action to
15 investigate and clean up or respond to a known, suspected or
16 threatened discharge of contaminants, including, as necessary,
17 the preliminary assessment, site investigation, remedial
18 investigation and remedial action. The term shall also include
19 postconstruction measures that address storm water mitigation
20 caused by preexisting activities at the brownfield site.

21 "Remediation costs." All reasonable costs associated with
22 the remediation of a brownfield site regardless of when
23 remediation occurs. The term does not include any costs incurred
24 in financing a remediation.

25 "Remediation standards." The remediation standards available
26 under the act of May 19, 1995 (P.L.4, No.2), known as the Land
27 Recycling and Environmental Remediation Standards Act.

28 "Responsible person." The term shall have the same meaning
29 given to it in the act of October 18, 1988 (P.L.756, No.108),
30 known as the Hazardous Sites Cleanup Act, and shall include a

1 person subject to enforcement actions for substances covered by
2 the act of June 22, 1937 (P.L.1987, No.394), known as The Clean
3 Streams Law, the act of January 8, 1960 (1959 P.L.2119, No.787),
4 known as the Air Pollution Control Act, the act of July 7, 1980
5 (P.L.380, No.97), known as the Solid Waste Management Act, the
6 act of July 13, 1988 (P.L.525, No.93), referred to as the
7 Infectious and Chemotherapeutic Waste Law, and the act of July
8 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill
9 Prevention Act.

10 "Secretary." The Secretary of Environmental Protection of
11 the Commonwealth.

12 "Site." The extent of contamination originating within the
13 property boundaries and all areas in close proximity to the
14 contamination necessary for the implementation of remediation
15 activities to be conducted under this act.

16 "Treatment." The term shall have the same meaning as given
17 to it in the act of October 18, 1988 (P.L.756, No.108), known as
18 the Hazardous Sites Cleanup Act.

19 Section 3. Terms and conditions of agreements.

20 (a) Authorization.--

21 (1) Notwithstanding any other provision of law, or rule
22 or regulation adopted pursuant thereto, to the contrary, a
23 developer may enter into a redevelopment agreement with the
24 secretary pursuant to the provisions of this section.

25 (2) The secretary may not enter into a redevelopment
26 agreement with a developer who has caused or contributed to
27 the release of contaminants at the site proposed to be in the
28 redevelopment agreement.

29 (3) The decision whether or not to enter into a
30 redevelopment agreement is solely within the discretion of

1 the chief executive officer of the developer and the
2 secretary.

3 (b) Negotiation and contents of agreement.--

4 (1) The secretary and the Secretary of Community and
5 Economic Development, in consultation with the Department of
6 Revenue, shall negotiate the terms and conditions of any
7 redevelopment agreement on behalf of the Commonwealth.

8 (2) The redevelopment agreement shall specify the amount
9 of the reimbursement to be awarded the developer, the
10 frequency of payments and the length of time in which that
11 reimbursement shall be granted.

12 (3) In no event shall the amount of the reimbursement,
13 when taken together with any property tax exemption received,
14 less any payment in lieu of taxes made pursuant to any
15 Federal, State, local tax incentive or grant to remediate a
16 site, exceed 75% of the total cost of the remediation.

17 (c) Standard for approval of agreement.--The secretary may
18 only enter into a redevelopment agreement if the secretary finds
19 that the State tax revenues to be realized from the
20 redevelopment project will be in excess of the amount necessary
21 to reimburse the developer. This finding may be made by an
22 estimation based upon the professional judgment of the
23 secretary, in consultation with the Department of Revenue.

24 (d) Condition for and amount of reimbursement.--

25 (1) The percentage of each payment to be made to the
26 developer pursuant to a redevelopment agreement shall be
27 conditioned on the occupancy rate of the residential dwelling
28 units, buildings or other work areas located on the
29 brownfield site.

30 (2) The redevelopment agreement shall provide for the

1 payments made in order to reimburse the developer to be in
2 the same percentages as the occupancy rate at the brownfield
3 site, except that upon the attainment of a 90% occupancy
4 rate, the developer shall be entitled to the entire amount of
5 each payment toward the reimbursement as set forth in the
6 redevelopment agreement.

7 (3) If the redevelopment of the property is performed in
8 phases, then the redevelopment agreement shall provide for
9 the payments to reimburse the developer to commence prior to
10 the completion of the redevelopment at the entire site.

11 (4) The redevelopment agreement shall provide that
12 payments to reimburse the developer be in the same
13 percentages as the occupancy rate of that portion of the
14 brownfield site for which the developer has demonstrated
15 achievement of one or a combination of remediation standards
16 under the Land Recycling and Environmental Remediation
17 Standards Act for regulated substances present at the
18 brownfield site, and on which new residential construction is
19 completed or a place of business is located that has
20 generated new tax revenues.

21 (5) The redevelopment agreement shall provide for the
22 frequency of the secretary's finding of the occupancy rate
23 during the payment schedule. If a redevelopment project is
24 completed in phases, where a portion of the property subject
25 to the redevelopment agreement is generating new tax
26 revenues, then the redevelopment agreement shall provide for
27 the frequency of the secretary's finding of the occupancy
28 rate for each phase of the redevelopment.

29 Section 4. Factors to be considered by secretary.

30 In deciding whether to enter into a redevelopment agreement

1 and in negotiating a redevelopment agreement with a developer,
2 the secretary shall consider the following factors:

3 (1) The economic feasibility of the redevelopment
4 project.

5 (2) The extent of economic and related social distress
6 in the municipality and the area to be affected by the
7 redevelopment project.

8 (3) The degree to which the redevelopment project will
9 advance State, regional and local development and planning
10 strategies.

11 (4) The likelihood that the redevelopment project shall,
12 upon completion, be capable of generating new tax revenue in
13 an amount in excess of the amount necessary to reimburse the
14 developer for the remediation costs incurred as provided in
15 the redevelopment agreement.

16 (5) The relationship of the redevelopment project to a
17 comprehensive local development strategy, including other
18 major projects undertaken within the municipality.

19 (6) The need of the redevelopment agreement to the
20 viability of the redevelopment project.

21 (7) The degree to which the redevelopment project
22 enhances and promotes job creation and economic development.

23 (8) The extent to which the developer's proposed cleanup
24 plan will achieve one or a combination of remediation
25 standards under the Land Recycling and Environmental
26 Remediation Standards Act.

27 (9) The cost of environmental infrastructure
28 improvements as they relate to the overall remediation of the
29 brownfield property.

30 Section 5. Eligibility for reimbursement.

1 (a) General rule.--Notwithstanding any other provision of
2 law, or rule or regulation adopted pursuant thereto, to the
3 contrary, any developer that enters into a redevelopment
4 agreement may be eligible for reimbursement of up to 75% of the
5 costs of the remediation of the subject brownfield site pursuant
6 to the provisions of this section upon the commencement of a
7 business operation or the completion of the construction of one
8 or more new residences within a redevelopment project.

9 (b) Application.--To be eligible for reimbursement of the
10 costs of remediation, a developer must submit an application, in
11 writing, to the secretary for review and certification of the
12 reimbursement.

13 (c) Review of application by secretary.--

14 (1) The secretary shall review the request for the
15 reimbursement upon receipt of an application therefor and
16 shall approve or deny the application for certification on a
17 timely basis.

18 (2) The secretary shall also make a finding of the
19 occupancy rate of the property subject to the redevelopment
20 agreement in the frequency set forth in the redevelopment
21 agreement.

22 (d) Required findings for certification of developer.--The
23 secretary shall certify a developer to be eligible for the
24 reimbursement if the secretary finds that:

25 (1) Residential construction is complete or a place of
26 business is located in the area subject to the redevelopment
27 agreement that has generated new tax revenues.

28 (2) The developer is diligently performing remediation
29 of contamination located on the site of the redevelopment
30 project and the developer is in compliance with the

requirements of the redevelopment agreement, the Land Recycling and Environmental Remediation Standards Act and other applicable environmental laws.

(3) The costs of the remediation were actually and reasonably incurred.

(e) Developer certification of total remediation costs.--

When filing an application for certification for a reimbursement pursuant to this section, the developer shall submit to the secretary a certification of the total remediation costs incurred by the developer for the remediation of the brownfield site of the redevelopment project as provided in the redevelopment agreement, information concerning the occupancy rate of the buildings or other work areas located on the property subject to the redevelopment agreement and such other information as the secretary deems necessary in order to make the certifications and findings pursuant to this section.

Section 6. Qualification for certification of reimbursement of remediation costs.

(a) General rule.--To qualify for the certification of reimbursement of the remediation costs under this act, a developer must enter the brownfield site into the Land Recycling and Environmental Remediation Standards Act. The remediation costs must be incurred in accordance with a department-approved cleanup plan under the Land Recycling and Environmental Remediation Standards Act, or in the case of lands mined prior to the effective date of this section, a department-approved clean-up plan.

(b) Duty required by developer.--Under the memorandum of agreement or other oversight document, the developer shall agree to perform and complete any remediation activity as may be

1 required by the secretary to ensure the remediation is conducted
2 pursuant to law.

3 (c) Copies of memorandum of understanding to be provided.--
4 After the developer has entered into a memorandum of agreement
5 or other oversight document with the secretary, the secretary
6 shall submit a copy thereof to the developer and the
7 municipality in which the subject property is located.

8 Section 7. Brownfield Site Reimbursement Fund.

9 (a) Establishment.--

10 (1) The Brownfield Site Reimbursement Fund is hereby
11 established as a fund in the Department of Community and
12 Economic Development. The moneys in the fund are hereby
13 appropriated, upon approval by the Governor, on a continuing
14 basis to the Department of Environmental Protection for the
15 purpose of reimbursing developers who enter into a
16 redevelopment agreement and are certified for reimbursement
17 pursuant to this act.

18 (2) The State Treasurer shall establish a special
19 account within the fund for each developer upon approval of a
20 certification pursuant to this act.

21 (b) Source of funding.--(Reserved).

22 Section 8. Reimbursement of remediation costs.

23 (a) Reimbursement.--The secretary shall reimburse the
24 developer, from the special account established in the fund, the
25 amount of the remediation costs agreed upon in the redevelopment
26 agreement upon issuance of the certification by the secretary.

27 (b) Periodic payments.--The developer shall be entitled to
28 periodic payments from the fund in an amount, in the frequency
29 and over the time period as provided in the redevelopment
30 agreement.

1 Section 9. Updated remediation costs to be provided to
2 secretary.

3 (a) General rule.--A developer shall submit to the secretary
4 updated remediation costs actually incurred by the developer for
5 the remediation of the brownfield site of the redevelopment
6 project as provided in the redevelopment agreement. The
7 reimbursement authorized pursuant to this act shall continue
8 until such time as the aggregate dollar amount of the agreed-
9 upon reimbursement is reached. To remain entitled to the
10 reimbursement authorized pursuant to this section, the developer
11 shall perform and complete all remediation activities as may be
12 required pursuant to the memorandum of agreement or other
13 oversight agreement entered into with the secretary. The
14 secretary may review the remediation costs incurred by the
15 developer to determine if they are reasonable.

16 (b) Costs eligible for reimbursement.--Reimbursable
17 remediation costs shall include costs that are incurred in
18 preparing the area of land on which the brownfield site is
19 located for remediation and may include costs of dynamic
20 compaction of soil necessary for the remediation.

21 (c) Taxes eligible for reimbursement.--Reimbursable
22 remediation costs shall also include the following taxes:

23 (1) The corporate net income tax as established in
24 section 402 of the act of March 4, 1971 (P.L.6, No.2), known
25 as the Tax Reform Code of 1971.

26 (2) The capital stock and franchise tax as established
27 in section 602 of the Tax Reform Code of 1971.

28 Section 10. Effective date.

29 This act shall take effect in 60 days.