

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 84 Session of 2009

INTRODUCED BY GREENLEAF, EICHELBERGER, ERICKSON, MUSTO,
RAFFERTY, BROWNE, COSTA, EARLL, WAUGH, O'PAKE AND WONDERLING,
JANUARY 29, 2009

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, JANUARY 29, 2009

AN ACT

1 Amending the act of May 19, 1995 (P.L.33, No.3), entitled "An
2 act limiting environmental liability for economic development
3 agencies, financiers and fiduciaries," further providing for
4 definitions, for limitation of economic development agency
5 environmental liability and for defenses to liability.

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

8 Section 1. The definitions of "department," "economic
9 development agencies," "environmental acts" and "indicia of
10 ownership" in section 3 of the act of May 19, 1995 (P.L.33, No.
11 3), known as the Economic Development Agency, Fiduciary and
12 Lender Environmental Liability Protection Act, are amended to
13 read:

14 Section 3. Definitions.

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

18 * * *

19 "Department." The Department of Environmental [Resources]

1 Protection of the Commonwealth.

2 "Economic development agencies." The term includes:

3 (1) Any redevelopment authority created under the act of
4 May 24, 1945 (P.L.991, No.385), known as the Urban
5 Redevelopment Law and any nonprofit corporation created and
6 controlled by a redevelopment authority to carry out its
7 statutory purpose.

8 (2) Any industrial development agency as that term is
9 defined in the act of May 17, 1956 (1955 P.L.1609, No.537),
10 known as the Pennsylvania Industrial Development Authority
11 Act.

12 (3) Any industrial and commercial development authority
13 created under the act of August 23, 1967 (P.L.251, No.102),
14 known as the Economic Development Financing Law.

15 (4) Any area loan organization as that term is defined
16 in the act of July 2, 1984 (P.L.545, No.109), known as the
17 Capital Loan Fund Act.

18 (5) Any other Commonwealth or municipal authority which
19 acquires title or an interest in property.

20 (6) Municipalities or municipal industrial development
21 or community development departments organized by ordinance
22 under a home rule charter which buy and sell land for
23 community development purposes.

24 (7) Tourist promotion agencies or their local community-
25 based nonprofit sponsor which engage in the acquisition of
26 former industrial sites as part of an "Industrial Heritage"
27 or similar program.

28 (8) Conservancies engaged in the renewal or reclamation
29 of an industrial site.

30 "Environmental acts." Collectively and separately, the act

1 of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams
2 Law, the act of January 8, 1960 (1959 P.L.2119, No.787), known
3 as the Air Pollution Control Act, the act of July 7, 1980 (P.L.
4 380, No.97), known as the Solid Waste Management Act, the act of
5 October 5, 1984 (P.L.734, No.159), known as the Worker and
6 Community Right-to-Know Act, the act of July 13, 1988 (P.L.525,
7 No.93), referred to as the Infectious and Chemotherapeutic Waste
8 Law, the act of October 18, 1988 (P.L.756, No.108), known as the
9 Hazardous Sites Cleanup Act, the act of July 6, 1989 (P.L.169,
10 No.32), known as the Storage Tank and Spill Prevention Act, the
11 act of December 7, 1990 (P.L.639, No.165), known as the
12 Hazardous Material Emergency Planning and Response Act, and the
13 act of June 11, 1992 (P.L.303, No.52), known as the Oil Spill
14 Responder Liability Act, and all such acts as they may be
15 amended from time to time, and any Federal, State or local law,
16 statute, regulation, rule, ordinance, court or administrative
17 order or decree, common law, interpretation or guidance, now or
18 hereafter in existence pertaining to employees, occupational
19 health and safety, public health or safety, natural resources or
20 the environment.

21 * * *

22 "Indicia of ownership." Any legal or equitable interest in
23 property, including fee title, acquired directly or indirectly:

24 (1) for securing payment of a loan or indebtedness, a
25 right of reimbursement or subrogation under a guaranty or the
26 performance of another obligation;

27 (2) evidencing ownership under a lease financing
28 transaction where the lessor does not initially select or
29 ordinarily control the daily operation or maintenance of the
30 property; [or]

1 (3) in the course of creating, protecting or enforcing a
2 security interest or right of reimbursement of subrogation
3 under a guaranty[.]; or

4 (4) to secure public funding for the environmental
5 investigation, remediation or redevelopment of or
6 implementation of infrastructure improvements at the property
7 for, among other purposes, the transfer of title to the
8 property to a third party after rehabilitation.

9 The term includes evidence of interest in mortgages, deeds of
10 trust, liens, surety bonds, guaranties, lease financing
11 transactions where the lessor does not initially select or
12 ordinarily control the daily operation or maintenance of the
13 property, other forms of encumbrances against property
14 recognized under applicable law as vesting the holder of the
15 security interest with some indicia of title.

16 * * *

17 Section 2. Sections 4 and 7 of the act are amended to read:

18 Section 4. Limitation of economic development agency
19 environmental liability.

20 (a) General rule.--An economic development agency that holds
21 an indicia of ownership in property:

22 (1) as a security interest for the purpose of developing
23 or redeveloping the property; [or]

24 (2) to finance an economic development or redevelopment
25 activity; or

26 (3) to secure public funding for the environmental
27 investigation, remediation or redevelopment of or
28 implementation of infrastructure improvements at the property
29 for, among other purposes, the transfer of title to the
30 property to a third party after rehabilitation

1 shall not be liable under the environmental acts to the
2 department or to any other person in accordance with [the
3 following:] this section.

4 (b) Scope of limited liability.--

5 (1) An economic development agency shall not be liable
6 in an action by the department, as a responsible person,
7 unless the economic development agency, its employees or
8 agents directly cause an immediate release or directly
9 exacerbate a release of a regulated substance on or from the
10 property.

11 (1.1) An economic development agency, its officers,
12 directors, agents, members, employees and its professional
13 consultants shall not be liable, including, but not limited
14 to, for property damages, diminution of property value,
15 stigma damages, natural resource damages, economic loss,
16 bodily injury or death relating to any regulated substance
17 currently or previously released on or from the property, in
18 any action by a person alleging liability of any kind
19 pursuant to the environmental acts, unless the economic
20 development agency, its officers, directors, agents, members,
21 employees or its professional consultants directly cause an
22 immediate release or directly exacerbate a release of any
23 regulated substance on or from the property.

24 (2) An economic development agency which forecloses on
25 or assumes possession of a property shall remain within the
26 exemption from liability under [this section] subsection (a).

27 (3) An economic development agency that conducts a
28 remedial action in accordance with a written agreement with
29 the department shall not be liable as a responsible party,
30 owner, operator or occupier in any action by the department

1 for a release or potential release of any regulated
2 substance.

3 (4) There is cooperation with governmental agencies
4 performing a remedial action, as follows:

5 (i) An economic development agency and any of its
6 successors and assigns may take no action that would
7 disturb or be inconsistent with remedial response that is
8 proposed, approved or implemented by the Federal
9 Environmental Protection Agency.

10 (ii) An economic development agency and any of its
11 successors and assigns shall permit access to Federal and
12 Commonwealth agencies and other parties acting under the
13 direction of these agencies to evaluate, perform or
14 maintain a remedial action.

15 (iii) An economic development agency or any of its
16 successors and assigns shall perform, operate and
17 maintain remedial actions pursuant to State laws as
18 directed by the department.

19 Section 7. Defenses to liability.

20 A lender, fiduciary or economic development agency can avoid
21 liability under the environmental acts [or the common-law
22 equivalents] by showing evidence that a release or threatened
23 release of regulated substances for which the lender [or],
24 fiduciary or economic development agency otherwise is
25 responsible under sections 4, 5 and 6 was caused by any of the
26 following:

27 (1) An act of God.

28 (2) An intervening act of a public agency.

29 (3) Migration from property owned by a third party.

30 (4) Actions taken or omitted in the course of rendering

1 care, assistance or advice in accordance with the
2 environmental acts or at the direction of the department.

3 (5) An act of a third party who was not an agent or
4 employee of the lender, fiduciary or economic development
5 agency.

6 (6) If the alleged liability for a lender or economic
7 development agency arises after foreclosure and the lender or
8 economic development agency exercised due care with respect
9 to the lender's or economic development agency's knowledge
10 about the regulated substances and took reasonable
11 precautions based upon such knowledge against foreseeable
12 actions of third parties and the consequences arising
13 therefrom. A lender, fiduciary or economic development agency
14 can avoid liability by proving any other defense which may be
15 available to it under the environmental acts or common law.

16 Section 3. This act shall take effect in 60 days.