

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 952 Session of
1993

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ROONEY, STETLER AND CLARK, MARCH 25, 1993

REFERRED TO COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT,
MARCH 25, 1993

AN ACT

1 Providing a limitation on liability of certain economic
2 development agencies for the cleanup of releases of regulated
3 substances not caused by the agencies.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Economic
8 Development Agency Environmental Liability Protection Act.

9 Section 2. Declaration of policy.

10 The General Assembly finds and declares as follows:

11 (1) The Commonwealth has provided grant and loan funds
12 to a variety of economic development agencies, all for the
13 purpose of assisting these agencies in their efforts to
14 promote the general welfare of this Commonwealth by
15 encouraging economic development and industrial redevelopment

1 throughout this Commonwealth.

2 (2) Economic development agencies acquire title to
3 industrial property for financing purposes only and lease or
4 sell the same to industrial occupants who have sole
5 possession of the facilities for an amount of rent or
6 installment payments pursuant to an installment sale contract
7 which is determined solely on a basis of meeting the costs of
8 the financing and other costs associated with ownership
9 unrelated to profit.

10 (3) Economic development agencies acquire possession of
11 these industrial sites from time to time when the industrial
12 occupant defaults under its obligations to the agencies under
13 its lease or installment sales agreements.

14 (4) Economic development agencies also acquire
15 industrial property either for the purpose of financing or
16 redevelopment but without a motive for profit or to occupy
17 the property for their own industrial operations.

18 (5) Economic development agencies are reluctant to
19 acquire title to or other interests in property whether for
20 financing or redevelopment purposes or to secure repayment of
21 obligations unless the economic development agencies are
22 protected from liability for environmental contamination on
23 those sites they seek to assist to develop.

24 (6) The taking of legal title and any foreclosure or
25 retaking of possession of property by an industrial
26 development agency, area loan organization or industrial and
27 commercial development authority is pursuant to the following
28 acts:

29 (i) The act of May 17, 1956 (1955 P.L.1609, No.537),
30 known as the Pennsylvania Industrial Development

1 Authority Act, which expressly requires that the
2 Pennsylvania Industrial Development Authority loan money
3 to industrial development agencies secured by not less
4 than a second mortgage lien.

5 (ii) The act of August 23, 1967 (P.L.251, No.102),
6 known as the Industrial and Commercial Development
7 Authority Law, which provides for issuance of debt by
8 industrial and commercial development authorities and
9 authorizes these authorities to take title to real
10 property as security for the indebtedness.

11 (iii) The act of July 2, 1984 (P.L.545, No.109),
12 known as the Capital Loan Fund Act, which requires that
13 its loans be made to area loan organizations with
14 adequate collateral.

15 Section 3. Definitions.

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

19 "Department." The Department of Environmental Resources of
20 the Commonwealth.

21 "Economic development agencies." The term includes:

22 (1) Any redevelopment authority created under the act of
23 May 24, 1945 (P.L.991, No.385), known as the Urban
24 Redevelopment Law.

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

29 (3) Any industrial and commercial development authority
30 created under the act of August 23, 1967 (P.L.251, No.102),

known as the Industrial and Commercial Development Authority Law.

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

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

"Foreclosure." The term includes:

(1) Any purchase at foreclosure sale.

(2) Acquisition by or assignment of title in lieu of foreclosure.

(3) Termination of a lease or installment sale agreement or other action permitting possession by an economic development agency.

(4) Any other formal or informal means by which the economic development agency obtains title to or possession of the secured property.

"Industrial activity." Commercial, manufacturing or any other activity done to further either the development, manufacturing or distribution of goods and services, including, but not limited to, research and development, warehousing, shipping, transport, remanufacturing, repair and maintenance of commercial machinery and equipment.

"Industrial site." A site which now has or once had an industrial activity on it.

"Occupant." A party which occupies or has the right to occupy property owned by an economic development agency by any instrument, including, but not limited to, a lease, mortgage, installment sale contract, disposition agreement or trust agreement.

1 "Property." Real property and improvements, including:

2 (1) A "facility" as defined in the Comprehensive
3 Environmental Response, Compensation, and Liability Act of
4 1980 (Public Law 96-510, 94 Stat. 2767).

5 (2) A "site" as defined in the act of October 18, 1988
6 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act.

7 (3) A "tank" as defined in the act of July 6, 1989
8 (P.L.169, No.32), known as the Storage Tank and Spill
9 Prevention Act.

10 "Redevelopment." Undertakings and activities made under the
11 act of May 24, 1945 (P.L.991, No.385), known as the Urban
12 Redevelopment Law, including, but not limited to, planning,
13 acquisition, site preparation, demolition, rehabilitation,
14 renovation, conservation, reuse, renewal, improvement,
15 clearance, sale and lease of real property and improvements
16 thereon.

17 "Regulated substance." A substance, the discharge or release
18 or potential release of which is governed or regulated by the
19 act of June 22, 1937 (P.L.1987, No.394), known as The Clean
20 Streams Law, the act of July 7, 1980 (P.L.380, No.97), known as
21 the Solid Waste Management Act, the act of October 18, 1988
22 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act, and
23 the act of July 6, 1989 (P.L.169, No.32), known as the Storage
24 Tank and Spill Prevention Act.

25 "Release." A release as defined in the act of October 18,
26 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup
27 Act.

28 "Remedial response." An action taken to remediate, clean up,
29 mitigate, correct, abate, eliminate, prevent, study or assess a
30 release or potential release of a regulated substance into the

1 environment in order to protect the present or future public
2 health, safety, welfare or the environment.

3 "Remediate." To clean up, mitigate, correct, abate,
4 minimize, eliminate, prevent, study or assess a release of a
5 regulated substance into the environment in order to protect the
6 present or future public health, safety, welfare or the
7 environment.

8 Section 4. Conditions for economic development agency
9 eligibility.

10 An economic development agency, in order to be eligible for
11 the limitation of liability for releases provided in this act,
12 shall satisfy each of the following conditions:

13 (1) The economic development agency must have legal,
14 equitable or beneficial ownership of property or an interest
15 therein, including, but not limited to, a mortgage or other
16 lien, and have acquired the ownership of property or interest
17 therein for the purpose of developing or redeveloping the
18 property or to finance an economic development or
19 redevelopment activity thereon.

20 (2) The property must be or have been used for
21 industrial activities.

22 (3) The economic development agency has acquired an
23 interest in or possession of the property under its or their
24 lawful authority.

25 Section 5. Limitation to liability for remediation of releases
26 of regulated substances.

27 (a) Action by department.--An economic development agency
28 eligible under section 4 shall not be liable in an action by the
29 department as a responsible person, owner, operator or occupier
30 for remediating a release or a potential release of regulated

1 substances on the property, if the economic development agency
2 demonstrates that each of the following are true:

3 (1) The economic development agency at no time
4 participated in management with respect to the property.

5 (2) The economic development agency exercised reasonable
6 maintenance of the property whenever it had possession of the
7 property.

8 (b) Agency liability.--An economic development agency
9 operating under its lawful authority whose participation in
10 management with respect to a property is limited to those
11 activities normally associated with the development,
12 redevelopment and management of property, including, but not
13 limited to, site clearance and preparation, demolition of
14 existing structures, construction and installation improvements
15 or infrastructure and maintenance, shall be liable only to the
16 extent its actions or inactions have caused, worsened, or
17 increased a release or threat of a potential release and only
18 for the release or threat of release caused, worsened or
19 increased by the economic development agency.

20 (c) Other obligations.--Nothing in this act shall be
21 construed to relieve an economic development agency from all
22 other obligations it may have as an operator, owner, occupier or
23 responsible person under applicable environmental law,
24 including, but not limited to, requirements regarding
25 registration, maintenance, reporting and monitoring.

26 (d) Contribution action.--An economic development agency
27 which is eligible under section 4 with respect to a property and
28 which did not or does not participate in management shall not be
29 liable in a contribution action brought by responsible parties
30 for a release or potential release.

1 (e) Workout activities.--An economic development agency
2 which engages in workout activities prior to foreclosure or
3 retaking of possession will remain within the exemption from
4 liability under this section so long as the agency is not
5 participating in management. Workout activities include those
6 actions which are designed to prevent, cure or mitigate a
7 default by an occupant or obligor or those actions which are
8 designed to preserve, protect or prevent the diminution in value
9 of the property or other security. These actions include, but
10 are not limited to:

11 (1) Restructuring or renegotiating the terms of the
12 security interest.

13 (2) Requiring payment of additional or, as the case may
14 be, less rent or interest.

15 (3) Exercising forbearance either with respect to a
16 monetary or nonmonetary obligation.

17 (4) Requiring or exercising rights with respect to or
18 pursuant to an assignment of accounts or other collateral
19 assignment.

20 (5) Requiring or exercising rights pursuant to an escrow
21 agreement.

22 (6) Providing general or specific financial advice,
23 suggestions or counseling.

24 (7) Exercising any rights or remedies the economic
25 development agency is entitled to by law, or under any of its
26 agreements, leases, notes or other instruments entered into
27 between it and the occupant.

28 (f) Foreclosure.--An economic development agency which
29 forecloses on or assumes possession of a property will remain
30 within the exemption from liability under this section so long

1 as the agency is not participating in management and is
2 exercising reasonable maintenance.

3 Section 6. Participation in management of property.

4 (a) General rule.--An economic development agency shall be
5 deemed to have participated in management within the meaning of
6 this act if the economic development agency:

7 (1) exercises decisionmaking control over the
8 environmental compliance of a property or over the
9 environmental compliance of an occupant on the property; or

10 (2) exercises decisionmaking control over operational
11 aspects of the property or an occupant, other than financial
12 or administrative decisions that must be made as part of the
13 economic development agency's lawful authority.

14 (b) Exception.--An agency will not be considered to be
15 participating in the management of the property or the occupant
16 solely on the basis that it provided or is providing financing
17 or policing the financing of a property or an occupant.

18 Section 7. Actions that are not participation in management.

19 (a) List of actions.--No act or omission prior to the time
20 that an economic development agency acquires legal or equitable
21 title or some other indications of ownership primarily to secure
22 an interest in property as collateral for an obligation shall
23 constitute participation in management within the meaning of
24 this act. The actions or omissions to act referred to in this
25 section include, but are not limited to, the following measures
26 which do not constitute participation in management:

27 (1) Requiring a prospective occupant or other party to
28 undertake an environmental inspection of a site.

29 (2) Requiring a prospective occupant or other party to
30 remediate releases or potential releases on the property or

1 to otherwise come into compliance, whether before or after
2 the time that ownership is acquired by the economic
3 development agency, with any applicable law or regulation.

4 (3) Requiring a prospective occupant or other party to
5 undertake or refrain from undertaking any action which is
6 intended to protect the economic development agency's
7 interest in the property.

8 (b) Protection of security interest.--Actions or omissions
9 to act which are consistent with holding property primarily to
10 protect a security interest shall not constitute participation
11 in management for purposes of this act. The authority for an
12 economic development agency to take the actions may, but need
13 not be, contained in:

14 (1) The contractual or other loan, lease or sale
15 documents.

16 (2) The laws, regulations, statements of policy,
17 guidelines or other directives that govern the conduct of the
18 economic development agency or any other lawful authority
19 which would specify the requirements for financial,
20 environmental, economic development, redevelopment or any
21 other covenants, warranties, representations, promises or
22 conditions from the borrower, lessee, installment sale
23 purchaser or other occupant or beneficial owner of the
24 property.

25 (c) Actions to police property.--Actions or omissions by an
26 economic development agency which are intended to police the
27 occupant's activities prior to foreclosure or similar action
28 providing repossession of the property to the economic
29 development agency shall not constitute participation in
30 management. These actions include, but are not limited to, the

1 following:

2 (1) Requiring the industrial occupant or related party
3 to remediate releases or potential releases on the property
4 during the term of his occupancy.

5 (2) Requiring the occupant to comply or come into
6 compliance with applicable Federal, State and local laws,
7 regulations and rules.

8 (3) Securing or exercising authority to monitor or
9 inspect the property, including onsite inspections,
10 inspection of the occupant's financial and inspection of the
11 business conditions.

12 (4) Taking any other action to police adequately the
13 loan or security interest such as requiring the occupant to
14 comply with any warranties, covenants, conditions,
15 representations or promises of the occupant or related party.

16 Section 8. Remediation by economic development agency.

17 An economic development agency that meets the requirements of
18 section 4 and which conducts a remedial response in accordance
19 with a written agreement with the department shall not be liable
20 as a responsible party, owner, operator or occupier in an action
21 by the department for a release or potential release of
22 regulated substances.

23 Section 9. Cooperation with governmental agencies performing
24 remedial response activities.

25 (a) Cooperation with Federal Environmental Protection
26 Agency.--An economic development agency and any of its
27 successors and assigns shall take no action that would disturb
28 or be inconsistent with a remedial response that is proposed,
29 approved or implemented by the Federal Environmental Protection
30 Agency.

1 (b) Permit access to Federal and Commonwealth agencies.--An
2 economic development agency and any of its successors and
3 assigns shall permit access to Federal and Commonwealth agencies
4 and other parties acting under the direction of these agencies
5 to evaluate, perform or maintain a remedial response.

6 (c) Performance, operation and maintenance of remedial
7 response.--An economic development agency or any of its
8 successors and assigns shall perform, operate and maintain
9 remedial responses pursuant to State laws as directed by the
10 department.

11 Section 10. Loss of exemption.

12 An economic development agency that fails to comply with
13 section 9 or that no longer satisfies the requirements to be
14 eligible for the limitation of liability as established by this
15 act shall be liable under all applicable environmental statutes,
16 including, but not limited to, the act of June 22, 1937
17 (P.L.1987, No.394), known as The Clean Streams Law, the act of
18 July 7, 1980 (P.L.380, No.97), known as the Solid Waste
19 Management Act, the act of October 18, 1988 (P.L.756, No.108),
20 known as the Hazardous Sites Cleanup Act, and the act of July 6,
21 1989 (P.L.169, No.32), known as the Storage Tank and Spill
22 Prevention Act.

23 Section 11. Applicability.

24 This act applies to all actions, suits or claims against
25 economic development agencies not yet finally resolved by any
26 court having either the action, suit or claim pending before it
27 or an appeal from a lower court regardless of when the release
28 or interest in the subject property occurred.

29 Section 12. Effective date.

30 This act shall take effect immediately.