
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 650 Session of
1993

INTRODUCED BY STEWART, BRIGHTBILL, MUSTO, BELAN, SHAFFER, STOUT,
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MARCH 9, 1993

REFERRED TO COMMUNITY AND ECONOMIC DEVELOPMENT, MARCH 9, 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
16 throughout this Commonwealth.

17 (2) Economic development agencies acquire title to
18 industrial property for financing purposes only and lease or

1 sell the same to industrial occupants who have sole
2 possession of the facilities for an amount of rent or
3 installment payments pursuant to an installment sale contract
4 which is determined solely on a basis of meeting the costs of
5 the financing and other costs associated with ownership
6 unrelated to profit.

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

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

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

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

26 (i) The act of May 17, 1956 (1955 P.L.1609, No.537),
27 known as the Pennsylvania Industrial Development
28 Authority Act, which expressly requires that the
29 Pennsylvania Industrial Development Authority loan money
30 to industrial development agencies secured by not less

1 than a second mortgage lien.

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

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

12 Section 3. Definitions.

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

16 "Department." The Department of Environmental Resources of
17 the Commonwealth.

18 "Economic development agencies." The term includes:

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

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

26 (3) Any industrial and commercial development authority
27 created under the act of August 23, 1967 (P.L.251, No.102),
28 known as the Industrial and Commercial Development Authority
29 Law.

30 (4) Any area loan organization as that term is defined

1 in the act of July 2, 1984 (P.L.545, No.109), known as the
2 Capital Loan Fund Act.

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

5 "Foreclosure." The term includes:

6 (1) Any purchase at foreclosure sale.

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

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

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

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

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

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

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

29 (1) A "facility" as defined in the Comprehensive
30 Environmental Response, Compensation, and Liability Act of

1 1980 (Public Law 96-510, 94 Stat. 2767).

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

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

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

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

22 "Release." A release as defined in the act of October 18,
23 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup
24 Act.

25 "Remedial response." An action taken to remediate, clean up,
26 mitigate, correct, abate, eliminate, prevent, study or assess a
27 release or potential release of a regulated substance into the
28 environment in order to protect the present or future public
29 health, safety, welfare or the environment.

30 "Remediate." To clean up, mitigate, correct, abate,

1 minimize, eliminate, prevent, study or assess a release of a
2 regulated substance into the environment in order to protect the
3 present or future public health, safety, welfare or the
4 environment.

5 Section 4. Conditions for economic development agency
6 eligibility.

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

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

17 (2) The property must be or have been used for
18 industrial activities.

19 (3) The economic development agency has acquired an
20 interest in or possession of the property under its or their
21 lawful authority.

22 Section 5. Limitation to liability for remediation of releases
23 of regulated substances.

24 (a) Action by department.--An economic development agency
25 eligible under section 4 shall not be liable in an action by the
26 department as a responsible person, owner, operator or occupier
27 for remediating a release or a potential release of regulated
28 substances on the property, if the economic development agency
29 demonstrates that each of the following are true:

30 (1) The economic development agency at no time

1 participated in management with respect to the property.

2 (2) The economic development agency exercised reasonable
3 maintenance of the property whenever it had possession of the
4 property.

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

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

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

28 (e) Workout activities.--An economic development agency
29 which engages in workout activities prior to foreclosure or
30 retaking of possession will remain within the exemption from

1 liability under this section so long as the agency is not
2 participating in management. Workout activities include those
3 actions which are designed to prevent, cure or mitigate a
4 default by an occupant or obligor or those actions which are
5 designed to preserve, protect or prevent the diminution in value
6 of the property or other security. These actions include, but
7 are not limited to:

8 (1) Restructuring or renegotiating the terms of the
9 security interest.

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

12 (3) Exercising forbearance either with respect to a
13 monetary or nonmonetary obligation.

14 (4) Requiring or exercising rights with respect to or
15 pursuant to an assignment of accounts or other collateral
16 assignment.

17 (5) Requiring or exercising rights pursuant to an escrow
18 agreement.

19 (6) Providing general or specific financial advice,
20 suggestions or counseling.

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

25 (f) Foreclosure.--An economic development agency which
26 forecloses on or assumes possession of a property will remain
27 within the exemption from liability under this section so long
28 as the agency is not participating in management and is
29 exercising reasonable maintenance.

30 Section 6. Participation in management of property.

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

4 (1) exercises decisionmaking control over the
5 environmental compliance of a property or over the
6 environmental compliance of an occupant on the property; or

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

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

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

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

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

26 (2) Requiring a prospective occupant or other party to
27 remediate releases or potential releases on the property or
28 to otherwise come into compliance, whether before or after
29 the time that ownership is acquired by the economic
30 development agency, with any applicable law or regulation.

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

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

11 (1) The contractual or other loan, lease or sale
12 documents.

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

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

29 (1) Requiring the industrial occupant or related party
30 to remediate releases or potential releases on the property

1 during the term of his occupancy.

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

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

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

13 Section 8. Remediation by economic development agency.

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

20 Section 9. Cooperation with governmental agencies performing
21 remedial response activities.

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

28 (b) Permit access to Federal and Commonwealth agencies.--An
29 economic development agency and any of its successors and
30 assigns shall permit access to Federal and Commonwealth agencies

1 and other parties acting under the direction of these agencies
2 to evaluate, perform or maintain a remedial response.

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

8 Section 10. Loss of exemption.

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

20 Section 11. Applicability.

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

26 Section 12. Effective date.

27 This act shall take effect immediately.