
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 58

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REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, FEBRUARY 8, 2007

AN ACT

1 Providing for a program for the purchase of certain types of
2 environmental liability insurance and for subsidies for the
3 costs of premiums.

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 Environmental
8 Insurance Program Act.

9 Section 2. Definitions.

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

13 "Account." The Environmental Insurance Program Subsidies
14 Account consisting of funds appropriated from the General
15 Assembly or received from Federal grants and loans.

16 "Borrower." Any individual, trust, firm, joint stock
17 company, corporation, partnership, limited liability corporation

1 or partnership, or association that has applied for and in due
2 course will receive the proceeds of a commercial real estate
3 loan, which proceeds will be used exclusively to pay the costs
4 of remedial program activities for a site and site
5 redevelopment.

6 "Commercial real estate loan." Loan documents evidencing an
7 obligation that is secured by real property that is subject to
8 the Environmental Insurance Program and in which the lender
9 relies upon the property as security for the loan and in due
10 course will obtain a perfected mortgage or other security
11 interest in the property.

12 "Damages." Any of the following:

13 (1) Property damage incurred at a site as an unforeseen,
14 unanticipated or unexpected result of a pollution condition.

15 (2) Unforeseen, unanticipated or unexpected remedial
16 program costs incurred at a site for actions taken in
17 implementing a department-approved interim remedial measure
18 work plan, remedial action work plan or postremedial
19 construction operation, monitoring and maintenance work plan.

20 (3) Bodily injury, property damage or remedial program
21 costs sustained or incurred by a third party as a result of a
22 pollution condition at a site.

23 "Default." The failure of a borrower to make any part of a
24 scheduled, periodic or final payment by the due date under a
25 commercial real estate loan or the occurrence of a designated
26 cause or event of default under the terms of a commercial real
27 estate loan.

28 "Department." The Department of Environmental Protection of
29 the Commonwealth.

30 "Eligible borrower." A borrower that has:

1 (1) Entered into a voluntary agreement with the
2 Department of Environmental Protection for the implementation
3 of an interim remedial measure work plan, a remedial action
4 work plan, or a postremedial construction operation,
5 monitoring and maintenance work plan.

6 (2) Been conditionally approved to receive a commercial
7 real estate loan from a lender the proceeds of which will be
8 used for the remediation of a site in order to allow the site
9 to be redeveloped, subject to obtaining environmental
10 insurance under the program.

11 (3) Committed to the initiation of the redevelopment of
12 the real property within six months of the completion of
13 remedial construction activities.

14 "Environmental insurance." Unanticipated environmental costs
15 insurance or pollution legal liability insurance required by a
16 lender in conjunction with the objectives of the Environmental
17 Insurance Program.

18 "Hazardous waste." A substance or waste that, because of its
19 physical, chemical or other characteristics, may pose a risk of
20 endangering human health or safety or of degrading the
21 environment. The term does not include undisturbed naturally
22 occurring hazardous material unless it will adversely affect the
23 reasonable use of a property after response action is completed.

24 "Insurance company." An insurance company authorized in this
25 Commonwealth to offer environmental insurance and that has an
26 A.M. Best Financial Strength Rating of A+ or better and an A.M.
27 Best Financial Size Category of FSC X or larger, or the
28 equivalent of both as determined by the Insurance Department.

29 "Lender." Any State bank, State banking association, State
30 savings and loan association or State savings bank, any Federal

1 bank, national banking association, Federal Savings and Loan
2 Association or Federal savings bank or any other institutional
3 lender authorized in this Commonwealth to make commercial real
4 estate loans.

5 "Pollutants." Any solid, liquid, gaseous or thermal irritant
6 or contaminant, including smoke, vapors, soot, fumes, acids,
7 alkalis or toxic chemicals and including waste, hazardous waste,
8 oil, hazardous material and solid waste.

9 "Pollution condition." The discharge, dispersal, release or
10 escape of pollutants into or upon land, the atmosphere or any
11 watercourse or body of water, including groundwater, resulting
12 in the presence of pollutants in concentrations or amounts
13 exceeding maximum levels allowed by applicable environmental
14 laws or by court order, provided such conditions are not
15 naturally present in the environment.

16 "Pollution legal liability insurance." Insurance that covers
17 damages caused by a pollution condition from or at a site that
18 is preexisting and unknown, or was otherwise unknown at the time
19 the insurance is first obtained and at a minimum provides for
20 all of the following:

21 (1) A minimum policy period of three years.

22 (2) A duty to defend and pay for defense costs in an
23 amount at least up to the amount of coverage available under
24 the policy, irrespective of whether an administrative or
25 judicial order requires the insured to compensate any party
26 or pay for the damages, so long as there already exists a
27 legal obligation to pay those damages.

28 For purposes of this definition, "damages" means either property
29 damage incurred at a site as an unforeseen and unexpected result
30 of a pollution condition or bodily injury, property damage and

1 response action costs sustained or incurred by a third party as
2 a result of a pollution condition at a site. Damages includes
3 the property damage, bodily injury and response costs specified
4 in the preceding sentence, irrespective of whether an
5 administrative or judicial order requires the insured to
6 compensate any party or pay for the property damage, bodily
7 injury or response costs, so long as there exists a reasonably
8 quantifiable legal obligation to pay for those damages.

9 "Program." The Environmental Insurance Program.

10 "Program manager." The person appointed, designated or
11 contracted by the Department of Environmental Protection as
12 manager of the Environmental Insurance Program.

13 "Secured creditor." A lender that originates a commercial
14 real estate loan to an eligible borrower, the proceeds of which
15 will be used within this Commonwealth exclusively to pay the
16 costs of remedial program activities and redevelopment at the
17 site.

18 "Self-insured retention amount." Costs that are in excess of
19 the estimated costs, as accepted and approved by the insurer, of
20 implementing a voluntary agreement and work plan that the
21 borrower is obligated to pay before being eligible to make a
22 claim under an unanticipated environmental cost insurance
23 policy.

24 "Site." The term includes:

25 (1) Property that meets both of the following
26 conditions:

27 (i) The property was previously the site of an
28 economic activity that is no longer in operation at that
29 location.

30 (ii) The property has been vacant or has had no

1 occupant engaged in year-round economically productive
2 activities for a period of not less than the 12 months
3 previous to the date of application for a loan pursuant
4 to this act.

5 (2) Notwithstanding the foregoing, the term does not
6 include any of the following:

7 (i) Property listed or proposed for listing on the
8 National Priorities List pursuant to section 105(a)(8)(B)
9 of the Comprehensive Environmental Response,
10 Compensation, and Liability Act of 1980 (Public Law 96-
11 510, 94 Stat. 2767).

12 (ii) Property that is or was owned or operated by a
13 department, agency or instrumentality of the United
14 States.

15 (iii) Property that will be the site of a contiguous
16 expansion or improvement of an operating industrial or
17 commercial facility.

18 "Unanticipated environmental cost insurance." Insurance that
19 reimburses a borrower for some or all of the unanticipated
20 environmental costs and shall, at a minimum, provide for all of
21 the following:

22 (1) The costs of remedial program activities required by
23 the Department of Environmental Protection for the site in
24 excess of the estimated cost, as accepted and approved by the
25 insurer, of implementing an approved work plan based on the
26 information available to the insurance company providing the
27 environmental insurance at the time that the insurance is
28 obtained, including the information contained or referenced
29 in the work plan or plans attached to the commitment document
30 or agreement with the department, and minus any prenegotiated

1 buffer layer or self-insured retention.

2 (2) A policy period of sufficient length to cover the
3 duration of the remedial program activities.

4 "Unanticipated environmental costs." State-required costs
5 that exceed the estimated costs, as accepted and approved by the
6 insurer, of implementing a voluntary agreement and work plan
7 approved by the Department of Environmental Protection based on
8 information available to the carrier at the time the insurance
9 is first obtained or any costs related to the presence of
10 hazardous waste at an affected site that were unknown to the
11 borrower and the department at the time such agreement was
12 approved.

13 Section 3. Account.

14 (a) Establishment of account.--The Environmental Insurance
15 Program Subsidies Account is hereby established in the General
16 Fund to be utilized by the department for the creation,
17 development, administration, management and implementation of
18 the Environmental Insurance Program established under this act.

19 (b) Moneys deposited in account.--All of the following
20 moneys shall be deposited into the account:

21 (1) Federal or State funds or both appropriated by the
22 General Assembly for the purposes of this act.

23 (2) Notwithstanding any other provision of law to the
24 contrary, any interest earned upon money deposited into the
25 account.

26 (c) Continuous appropriation.--

27 (1) Except as provided in paragraph (2), notwithstanding
28 any other provision of law to the contrary, the money in the
29 account is continuously appropriated without regard to fiscal
30 years to the department for the implementation and

1 administration of the program.

2 (2) The money in the account may be expended by the
3 department for the implementation and administration of the
4 program only upon appropriation by the General Assembly.

5 Section 4. Environmental Insurance Program established.

6 (a) Establishment.--There is established within the
7 department the Environmental Insurance Program.

8 (b) Purpose.--The program shall provide for the creation,
9 development, administration, management and implementation of a
10 program to provide subsidies for environmental insurance
11 premiums in order to facilitate the remediation of contaminated
12 real property as part of a plan for redevelopment of a site.

13 Section 5. Selection of insurance companies.

14 (a) Solicitation of proposals.--The department shall solicit
15 proposals for a package of environmental insurance products from
16 insurance companies. The request for proposal prepared by the
17 department, in conjunction with the program manager, shall
18 identify the objectives of this act and the specific types and
19 coverage limits of the insurance products desired. The
20 department shall require interested parties to submit proposals
21 for environmental insurance that meet those objectives in the
22 most effective and efficient manner. The request for proposal
23 shall require that proposals allow purchasers of the
24 environmental insurance the ability to obtain additional
25 coverage necessary to address the specific needs of an
26 individual insured, and require that the proposal allow a
27 purchaser the opportunity to pay for additional coverage without
28 losing the lower transaction costs structure of the
29 prenegotiated environmental insurance policy.

30 (b) Evaluation of proposals.--The department shall select

1 one insurance company that has submitted a proposal pursuant to
2 subsection (a) to be the exclusive State-designated provider of
3 environmental insurance under this act for a period of three
4 years. The department, in conjunction with the program manager,
5 shall select the insurance company that has submitted a proposal
6 that best meets the requirements of this section and the
7 objectives stated in the request for proposal. In addition, the
8 insurance company selected by the department shall have
9 substantial experience in environmental insurance underwriting
10 and providing insurance for State environmental insurance
11 programs.

12 (c) Prenegotiated package.--The insurance company selected
13 pursuant to subsection (b) shall offer a prenegotiated package
14 of environmental insurance products to any eligible borrower
15 under any commercial real estate loan to fund remediation costs
16 and redevelopment with a maximum subsidy of \$500,000 per site.
17 The insurance company may also provide to any person an
18 unsubsidized environmental insurance similar to that made
19 available under this program.

20 Section 6. Implementation of program.

21 (a) Subsidies.--The department shall use moneys from the
22 account to:

23 (1) Pay the fee of the project manager.

24 (2) Within the limits of appropriations or Federal
25 grants and loans, provide a subsidy up to 50% of the cost of
26 environmental insurance offered pursuant to this section when
27 purchased by an eligible borrower and provide a subsidy up to
28 80% of the self-insured retention amount.

29 Eligible borrowers shall receive subsidies under the program in
30 the order in which their applications are received by the

1 program manager. In the event that an application is received
2 from an eligible borrower before the department has given final
3 approval to an earlier application, the department may provide a
4 subsidy to the subsequent applicant, provided that it has
5 reserved sufficient funds to provide the subsidy to all eligible
6 borrowers in the order in which their applications are received.

7 (b) Marketing.--The department shall assist the program
8 manager in the marketing of the program to lenders, developers
9 and other potential program participants.

10 (c) Access to information.--The department shall assist the
11 program manager in providing developers and other potential
12 program participants with access to information regarding:

13 (1) The program.

14 (2) Lenders whose borrowers have previously participated
15 in the program or that have expressed interest in
16 participating in the program.

17 (3) The availability and costs of environmental
18 insurance.

19 (4) Environmental risk management issues.

20 (5) Available economic development programs.

21 (6) Other related information.

22 Section 7. Application for subsidies.

23 All applicants for the program shall provide the program
24 manager all information necessary to demonstrate that the
25 applicant is an eligible borrower, and a detailed estimate of
26 the cost of implementing any and all interim remedial measure
27 work plans, remedial action work plans, postremedial
28 construction operation, monitoring and maintenance work plans
29 necessary for the remediation of the site or costs incurred to
30 remove asbestos or lead paint from buildings and structures to

1 be demolished, repaired or renovated.

2 Section 8. Coordination.

3 The department shall implement this act in consultation with
4 representatives of other appropriate State agencies.

5 Section 9. Rules and regulations.

6 The department may promulgate rules and regulations to
7 administer and enforce this act.

8 Section 10. Effective date.

9 This act shall take effect in 60 days.