

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2677 Session of
2008

INTRODUCED BY R. TAYLOR, FRANKEL, HERSHEY, KULA, LONGIETTI,
MELIO, MILNE, SAYLOR, SCHRODER, SIPTROTH, SONNEY, STABACK,
WAGNER AND WANSACZ, JUNE 27, 2008

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
JUNE 27, 2008

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,
11 No.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 * * *

1 "Department." The Department of Environmental [Resources]
2 Protection of the Commonwealth.

3 "Economic development agencies." The term includes:

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

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

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

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

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

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

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

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

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

22 * * *

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

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

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

property; [or]

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

(4) to secure public funding for the environmental investigation, remediation or redevelopment of, or implementation of infrastructure improvements at the property (hereinafter "rehabilitation"), for, among other purposes, the postrehabilitation transfer of title to the property to a third person.

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

* * *

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

Section 4. Limitation of economic development agency environmental liability.

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

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

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

(3) to secure public funding for the environmental investigation, remediation or redevelopment of or implementation of infrastructure improvements at the property

1 for, among other purposes, the postrehabilitation transfer of
2 title to the property to a third party
3 shall not be liable under the environmental acts to the
4 department or to any other person in accordance with [the
5 following:] this section.

6 (b) Scope of limited liability.--

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

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

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

29 (3) An economic development agency that conducts a
30 remedial action in accordance with a written agreement with

1 the department shall not be liable as a responsible party,
2 owner, operator or occupier in any action by the department
3 for a release or potential release of any regulated
4 substance.

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

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

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

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

21 Section 7. Defenses to liability.

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

29 (1) An act of God.

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

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

2 (4) Actions taken or omitted in the course of rendering
3 care, assistance or advice in accordance with the
4 environmental acts or at the direction of the department.

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

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

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