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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 135 Session of 2009

INTRODUCED BY ERICKSON, PIPPY, ORIE, TOMLINSON, BROWNE, FERLO, RAFFERTY, BAKER, BRUBAKER, O'PAKE AND WONDERLING, JANUARY 30, 2009

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, JANUARY 30, 2009

AN ACT

Establishing a program for the purchase of certain types of environmental liability insurance and for subsidies for the costs of premiums; and providing for powers and duties of the Department of Environmental Protection.

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

Section 1. Short title.

This act shall be known and may be cited as the Environmental Insurance Program Act.

Section 2. Definitions.

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

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

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

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

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

"Damages." Any of the following:

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

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

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

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

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

"Eligible borrower." A borrower that has:

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

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

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

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

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

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

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

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

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

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

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

(1) A minimum policy period of three years.

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

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

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

"Program." The Environmental Insurance Program.

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

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

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

"Site." The term includes:

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

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

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

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

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

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

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

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

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

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

buffer layer or self-insured retention.

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

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

Section 3. Environmental Insurance Program Subsidies Account.

(a) Establishment of account.--The Environmental Insurance Program Subsidies Account is established in the General Fund to be utilized by the department for the creation, development, administration, management and implementation of the program.

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

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

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

(c) Continuous appropriation.--

(1) Except as provided in paragraph (2), notwithstanding any other provision of law to the contrary, the money in the account is appropriated on a continuing basis, without regard to fiscal years, to the department for the implementation and administration of the program.

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

Section 4. Environmental Insurance Program.

(a) Establishment.--The Environmental Insurance Program is established within the department.

(b) Purpose.--The program shall provide subsidies for environmental insurance premiums in order to facilitate the remediation of contaminated real property as part of a plan for redevelopment of a site.

Section 5. Selection of insurance companies.

(a) Solicitation of proposals.--

(1) The department shall solicit proposals for a package of environmental insurance products from insurance companies. The request for proposal prepared by the department, in conjunction with the program manager, shall identify the objectives of this act and the specific types and coverage limits of the insurance products desired.

(2) The department shall require interested parties to submit proposals for environmental insurance that meet those objectives in the most effective and efficient manner.

(3) The request for proposal shall require that proposals allow purchasers of the environmental insurance the ability to obtain additional coverage necessary to address the specific needs of an individual insured and require that the proposal allow a purchaser the opportunity to pay for additional coverage without losing the lower transaction costs structure of the prenegotiated environmental insurance policy.

(b) Evaluation of proposals.--

(1) The department shall select one insurance company that has submitted a proposal pursuant to subsection (a) to be the exclusive State-designated provider of environmental insurance under this act for a period of three years.

(2) The department, in conjunction with the program manager, shall select the insurance company that has submitted a proposal that best meets the requirements of this section and the objectives stated in the request for proposal.

(3) The insurance company selected by the department must have substantial experience in environmental insurance underwriting and providing insurance for State environmental insurance programs.

(c) Prenegotiated package.--

(1) The insurance company selected pursuant to subsection (b) shall offer a prenegotiated package of environmental insurance products to any eligible borrower under any commercial real estate loan to fund remediation costs and redevelopment with a maximum subsidy of $500,000 per site.

(2) The insurance company may also provide to any person an unsubsidized environmental insurance similar to that made available under this program.

Section 6. Implementation of program.

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

(1) Pay the fee of the project manager.

(2) Within the limits of appropriations or Federal grants and loans, provide a subsidy up to 50% of the cost of environmental insurance offered pursuant to this section when

purchased by an eligible borrower and provide a subsidy up to 80% of the self-insured retention amount.

(b) Method of awarding subsidies.--

(1) Eligible borrowers shall receive subsidies under the program in the order in which their applications are received by the program manager.

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

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

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

(1) The program.

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

(3) The availability and costs of environmental insurance.

(4) Environmental risk management issues.

(5) Available economic development programs.

(6) Other related information.

Section 7. Application for subsidies.

All applicants for the program must provide the program

manager all information necessary to demonstrate that the applicant is an eligible borrower, and a detailed estimate of the cost of implementing any and all interim remedial measure work plans, remedial action work plans, postremedial construction operation, monitoring and maintenance work plans necessary for the remediation of the site or costs incurred to remove asbestos or lead paint from buildings and structures to be demolished, repaired or renovated.

Section 8. Coordination.

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

Section 9. Rules and regulations.

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

Section 10. Effective date.

This act shall take effect in 60 days.