

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1603*

Short Title: Limit Liability for Environmental Cleanups. (Public)

Sponsors: Representative McComas.

Referred to: Environment and Natural Resources, if favorable, Finance.

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO PROMOTE ECONOMIC DEVELOPMENT BY FACILITATING THE REUSE OF CONTAMINATED REAL PROPERTY BY LIMITING THE LIABILITY OF PURCHASERS OF CONTAMINATED PROPERTY IN CIRCUMSTANCES WHERE THE SELLER OF THE PROPERTY OR ANOTHER PARTY ASSUMES RESPONSIBILITY FOR RESPONSE, REMEDIATION, AND NATURAL RESOURCES RESTORATION OF THE PROPERTY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-310 is amended by adding a new subdivision to

read:

"(1a) 'Contiguous property owner' means a person who owns real property that touches along a boundary or at a point real property that is contaminated by a release of a hazardous substance."

SECTION 2. G.S. 143-215.77 is amended by adding a new subdivision to

read:

"(2a) 'Contiguous property owner' means a person who owns real property that touches along a boundary or at a point real property that is contaminated by a release of a hazardous substance."

SECTION 3. G.S. 130A-310.3 is amended by adding a new subsection to

read:

"(b1) A responsible party who satisfies the Secretary that the responsible party has completed a remedial action for hazardous substances at an inactive hazardous substance or waste disposal site pursuant to this Part shall not be required to perform any remedial action for the same release pursuant to Article 21 or Article 21A of Chapter 143 of the General Statutes."

SECTION 4. G.S. 130A-310.7 reads as rewritten:

"§ 130A-310.7. **Action for reimbursement; liability of responsible parties; notification of completed remedial action.**"

1 (a) ~~Notwithstanding any other provision or rule of law, and subject~~ Subject only
2 to the defenses set forth in this subsection, any person who: ~~section, a responsible party~~
3 is a person who causes or contributes to the existence of an inactive hazardous
4 substance or waste disposal site by any of the following:

- 5 (1) ~~Discharges or deposits; or~~ Discharging, releasing, or depositing any
6 hazardous substance.
7 (2) ~~Contracts or arranges for any discharge or deposit; or~~ Contracting or
8 arranging for a discharge, release, or deposit of any hazardous
9 substance.
10 (3) ~~Accepts for discharge or deposit; or~~ Accepting any hazardous
11 substance.
12 (4) ~~Transports or arranges for transport for the purpose of discharge or~~
13 ~~deposit~~ Transporting or arranging for the transport of any hazardous
14 substance for the purpose of discharging, releasing, or depositing any
15 hazardous substance.
16 (5) Owning or operating a site that contains any hazardous substance.
17 (6) Owning or operating a site at the time of discharge, release, or deposit
18 of any hazardous substance.

19 ~~any hazardous substance, the result of which discharge or deposit is the existence of an~~
20 ~~inactive hazardous substance or waste disposal site, shall be considered a responsible~~
21 ~~party.~~

22 (a1) Neither an innocent landowner who is a bona fide purchaser of the any real
23 property comprising an inactive hazardous substance or waste disposal site without
24 knowledge or without a reasonable basis for knowing that a hazardous substance or
25 waste disposal discharge, release, deposit, or disposal had occurred nor a contiguous
26 property owner shall not be considered a responsible party if the landowner or
27 contiguous property owner establishes all of the following to the satisfaction of the
28 Secretary:

- 29 (1) All of the discharge, release, deposit, or disposal of hazardous
30 substances or waste at the site occurred before the owner acquired the
31 site; or the disposal was solely the result of:
32 a. An act of God; or
33 b. An act of war; or
34 c. An intentional act or omission of a third party who is not an
35 employee or agent of the owner or who does not have a
36 contractual relationship with the owner.
37 (2) On or before the date of purchase, the owner made all appropriate
38 inquiries into the previous ownership and uses of the property in
39 accordance with generally accepted and customary commercial
40 standards and practices. The Secretary shall take into account any
41 specialized knowledge or experience on the part of the owner, the
42 relationship of the purchase price to the value of the property if the
43 property were not contaminated, commonly known or reasonably
44 ascertainable information about the property, and whether the

1 contamination is detectable by appropriate inspection. In the case of
2 property that is used for residential or similar purposes at the time of
3 its purchase by an entity that is neither governmental nor commercial,
4 a site inspection and title search that does not reveal information that
5 would cause a reasonable person to make further investigation shall
6 satisfy the requirements of this subdivision.

7 (3) The owner has provided all legally required notices with respect to the
8 discovery of a discharge, release, deposit, or disposal of any hazardous
9 substance or waste at the property.

10 (4) The owner has exercised appropriate care with respect to hazardous
11 substances found at the property by taking reasonable steps to do all of
12 the following:

13 a. Stopping any continuing discharge, release, deposit, or disposal.

14 b. Preventing any threatened future discharge, release, deposit, or
15 disposal.

16 c. Conducting remedial measures approved by the Secretary that
17 prevent or limit human, environmental, or natural resources
18 exposure to any hazardous substance or waste discharged,
19 released, deposited, or disposed of at the property and make the
20 property safe for its intended use. Measures may include the
21 application of institutional controls and other means of
22 preventing exposure.

23 (5) The owner has provided and continues to provide full cooperation,
24 assistance, and access to persons who are authorized to conduct any
25 response, remedial action, or natural resources restoration at the
26 property, including any cooperation and access necessary to install,
27 operate, maintain, or secure any completed or partial response,
28 remedial action, or natural resources restoration at the property.

29 (6) The owner has complied and continues to comply with any land-use
30 restrictions established or relied on in connection with the response,
31 remedial action, or natural resources restoration at the property.

32 (7) The owner has not impeded and continues to not impede the
33 effectiveness or integrity of any institutional control employed at the
34 property in connection with a response, remedial action, or natural
35 resources restoration.

36 (8) The owner has complied or has agreed to comply with any requirement
37 to record any land-use restrictions that may be required by the
38 Secretary.

39 (9) The owner has complied and continues to comply with any request for
40 information or administrative subpoena issued by the Secretary.

41 (10) The owner is not liable, potentially liable, or affiliated with any other
42 person who is liable or potentially liable for any cost associated with
43 the response, remedial action, or natural resources restoration at the
44 property through any of the following:

- 1 a. Any direct or indirect familial relationship.
2 b. Any contractual, corporate, or financial relations, other than a
3 contractual, corporate, or financial relationship that is created
4 by an instrument through which title to the property is
5 conveyed, an instrument through which sale or purchase of the
6 property is financed, or by a contract for the sale of goods or
7 services.
8 c. A reorganization in bankruptcy of a business entity that is liable
9 or potentially liable.

10 (a2) A bona fide purchaser of any real property comprising an inactive hazardous
11 substance or waste disposal site with knowledge or with a reasonable basis for knowing
12 that a hazardous substance or waste discharge, release, deposit, or disposal had occurred
13 shall not be considered a responsible party if the purchaser establishes all of the
14 following to the satisfaction of the Secretary:

15 (1) All of the discharge, release, deposit, or disposal of hazardous
16 substances or waste at the site occurred before the purchaser acquired
17 the site; or the disposal was solely the result of:

- 18 a. An act of God; or
19 b. An act of war; or
20 c. An intentional act or omission of a third party who is not an
21 employee or agent of the purchaser or who does not have a
22 contractual relationship with the purchaser.

23 (2) On or before the date of purchase, the purchaser made all appropriate
24 inquiries into the previous ownership and uses of the property in
25 accordance with generally accepted and customary commercial
26 standards and practices. The Secretary shall take into account any
27 specialized knowledge or experience on the part of the purchaser, the
28 relationship of the purchase price to the value of the property if the
29 property were not contaminated, commonly known or reasonably
30 ascertainable information about the property, and whether the
31 contamination is detectable by appropriate inspection. In the case of
32 property that is used for residential or similar purposes at the time of
33 its purchase by an entity that is neither governmental nor commercial,
34 a site inspection and title search that does not reveal information that
35 would cause a reasonable person to make further investigation shall
36 satisfy the requirements of this subdivision.

37 (3) The purchaser has provided all legally required notices with respect to
38 the discovery of a discharge, release, deposit, or disposal of any
39 hazardous substance or waste at the property.

40 (4) The purchaser has exercised appropriate care with respect to hazardous
41 substances found at the property by taking reasonable steps to do all of
42 the following:

- 43 a. Stopping any continuing discharge, release, deposit, or disposal.

- 1 b. Preventing any threatened future discharge, release, deposit, or
2 disposal.
- 3 c. Conducting remedial measures approved by the Secretary that
4 prevent or limit human, environmental, or natural resources
5 exposure to any hazardous substance or waste discharged,
6 released, deposited, or disposed of at the property and make the
7 property safe for its intended use. Measures may include the
8 application of institutional controls and other means of
9 preventing exposure. Measures need not include soil or
10 groundwater remediation by the purchaser other than those
11 measures necessary to make the property safe for its intended
12 use.
- 13 (5) The purchaser has demonstrated that the seller or another responsible
14 party has provided financial assurance equivalent to the full cost of
15 implementation of the response, remedial action, or natural resources
16 restoration at the property to unrestricted use standards, as defined in
17 G.S. 130A-310.31. Financial assurance mechanisms may include,
18 under terms and conditions approved by the Secretary, letters of credit,
19 insurance, surety bonds, and trust funds.
- 20 (6) The purchaser has provided and continues to provide full cooperation,
21 assistance, and access to persons who are authorized to conduct any
22 response, remedial action, or natural resources restoration at the
23 property, including any cooperation and access necessary to install,
24 operate, maintain, or secure any completed or partial response,
25 remedial action, or natural resources restoration at the property. To the
26 extent practical, response, remedial action, and natural resources
27 restoration activities will be undertaken so as not to interfere with use
28 of the property and structures on the property. The purchaser shall not
29 erect any new structure that would interfere with any required
30 response, remedial action, or natural resources restoration activity until
31 the activity has been completed.
- 32 (7) The purchaser has complied and continues to comply with any
33 land-use restrictions established or relied on in connection with the
34 response, remedial action, or natural resources restoration at the
35 property.
- 36 (8) The purchaser has not impeded and continues to not impede the
37 effectiveness or integrity of any institutional control employed at the
38 property in connection with a response, remedial action, or natural
39 resources restoration.
- 40 (9) The purchaser has complied or has agreed to comply with any
41 requirement to record any land-use restrictions that may be required by
42 the Secretary.
- 43 (10) The purchaser has complied and continues to comply with any request
44 for information or administrative subpoena issued by the Secretary.

1 (11) The purchaser is not liable, potentially liable, or affiliated with any
2 other person who is liable or potentially liable for any cost associated
3 with the response, remedial action, or natural resources restoration at
4 the property through any of the following:

5 a. Any direct or indirect familial relationship.

6 b. Any contractual, corporate, or financial relations, other than a
7 contractual, corporate, or financial relationship that is created
8 by an instrument through which title to the property is
9 conveyed, an instrument through which sale or purchase of the
10 property is financed, or by a contract for the sale of goods or
11 services.

12 c. A reorganization in bankruptcy of a business entity that is liable
13 or potentially liable.

14 (a3) A purchaser of any real property comprising an inactive hazardous substance
15 or waste disposal site may submit a written request to the Secretary for a determination
16 that the purchaser has met all the conditions set out in subsection (a2) of this section. A
17 determination may be made subject to the purchaser meeting all the conditions in
18 subsection (a2) of this section on or after closing that cannot reasonably be met prior to
19 closing. A request for a determination that a purchaser has met all the conditions set out
20 in subsection (a2) of this section must be accompanied by a fee of one thousand dollars
21 (\$1,000) to defray administrative costs of making the determination. The Secretary shall
22 develop and implement procedures to provide expeditious review of requests for
23 determinations so as to expedite real estate transactions involving contaminated
24 properties.

25 (a4) A person whose interest or ownership in ~~the~~ real property comprising an
26 inactive hazardous substance or waste disposal site is solely based on or derived from a
27 security interest in the property shall not be considered a responsible party unless the
28 person at any time manages, operates, or participates in the management or operation of,
29 any facility located on the real property. A responsible party shall be directly liable to
30 the State for any or all of the reasonably necessary expenses of developing and
31 implementing a remedial action program for ~~such site, the~~ property. The Secretary shall
32 bring an action for reimbursement of the Inactive Hazardous Sites Cleanup Fund in the
33 name of the State in the superior court of Wake County, the county in which the site is
34 ~~located~~ located, or in an appropriate federal court to recover such sum and the cost of
35 bringing the action. The State must show that a danger to the public health or the
36 environment existed and that the State complied with the provisions of this Part.

37 (b) ~~There shall be no liability under this section for a person who can establish by~~
38 ~~a preponderance of the evidence that the danger to the public health or the environment~~
39 ~~caused by the site was caused solely by:~~

40 (1) ~~An act of God; or~~

41 (2) ~~An act of war; or~~

42 (3) ~~An intentional act or omission of a third party (but this defense shall~~
43 ~~not be available if the act or omission is that of an employee or agent~~

1 of the defendant, or if the act or omission occurs in connection with a
2 contractual relationship with the defendant); or

3 (4) Any combination of the above causes.

4 The State shall have a lien on any property with respect to which the State has
5 unrecovered costs for a response, remedial action, or natural resources restoration. The
6 amount of the lien shall be the amount of the unrecovered costs. A lien under this
7 subsection shall be superior to all other liens on the property.

8 (c) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any
9 person may submit a written request to the Department for a determination that a site
10 that is subject to this Part has been remediated to unrestricted use standards as provided
11 in Part 5 of Article 9 of Chapter 130A of the General Statutes. A request for a
12 determination that a site has been remediated to unrestricted use standards shall be
13 accompanied by a fee required by G.S. 130A-310.39(a)(2). If the Department
14 determines that the site has been remediated to unrestricted use standards, the
15 Department shall issue a written notification that no further remediation will be required
16 at the site. The notification shall state that no further remediation will be required at the
17 site unless the Department later determines, based on new information or information
18 not previously provided to the Department, that the site has not been remediated to
19 unrestricted use standards or that the Department was provided with false or incomplete
20 information. Under any of those circumstances, the Department may withdraw the
21 notification and require responsible parties to remediate the site to unrestricted use
22 standards."

23 **SECTION 5.** G.S. 143-215.3 is amended by adding a new subsection to
24 read:

25 "(g) The provisions of subsections (a), (a1), (a2), (a3), (a4), and (b) of
26 G.S. 130A-310.7 govern responsibility for a release, discharge, deposit, or disposal of
27 oil, hazardous substances, waste, or other contaminants regulated under this Article or
28 under Article 21A of this Chapter, including any release or discharge of petroleum from
29 an underground storage tank or an aboveground storage tank."

30 **SECTION 6.** G.S. 130A-310.31(b)(3) reads as rewritten:

31 "(3) 'Brownfields property' or 'brownfields site' means abandoned, idled, or
32 underused property at which expansion or redevelopment is hindered
33 by actual environmental contamination or the possibility of
34 environmental contamination and that is or may be subject to
35 remediation ~~under any~~ under:

36 a. Any State remedial program other than Part 2A of Article 21A
37 of Chapter 143 of the General Statutes or that is or may be
38 subject to remediation under the program or

39 b. The Comprehensive Environmental Response, Compensation
40 and Liability Act of 1980, as amended (42 U.S.C. § 9601 et
41 seq.)-amended, (42 U.S.C. § 9601 et seq.) except for property
42 listed on the National Priorities List pursuant to 42 U.S.C. §
43 9605."

44 **SECTION 7.** G.S. 130A-310.31(b)(10) reads as rewritten:

1 "(10) 'Prospective developer' means any person ~~who desires~~ with a bona
2 fide, demonstrable desire to either buy or sell a brownfields property
3 for the purpose of developing or redeveloping that brownfields
4 property and who did not cause or contribute to the contamination at
5 the brownfields property."

6 **SECTION 8.** G.S. 130A-310.34(b) reads as rewritten:

7 "(b) Publication of the approved summary of the Notice of Intent in the North
8 Carolina Register and publication in a newspaper of general circulation shall begin a
9 public comment period of at least ~~60~~ 30 days from the later date of publication. During
10 the public comment period, members of the public, residents of the community in which
11 the brownfields property is located, and local governments having jurisdiction over the
12 brownfields property may submit comment on the proposed brownfields agreement,
13 including methods and degree of remediation, future land uses, and impact on local
14 employment."

15 **SECTION 9.** G.S. 130A-310.34(c) reads as rewritten:

16 "(c) Any person who desires a public meeting on a proposed brownfields
17 agreement shall submit a written request for a public meeting to the Department within
18 ~~30~~21 days after the public comment period begins. The Department shall consider all
19 requests for a public meeting and shall hold a public meeting if the Department
20 determines that there is significant public interest in the proposed brownfields
21 agreement. If the Department decides to hold a public meeting, the Department shall, at
22 least ~~30~~15 days prior to the public meeting, mail written notice of the public meeting to
23 all persons who requested the public meeting and to any other person who had
24 previously requested notice. The Department shall also direct the prospective developer
25 to publish, at least ~~30~~15 days prior to the date of the public meeting, a notice of the
26 public meeting at least one time in a newspaper having general circulation in such
27 county where the brownfields property is located. In any county in which there is more
28 than one newspaper having general circulation, the Department shall direct the
29 prospective developer to publish a copy of the notice in as many newspapers having
30 general circulation in the county as the Department in its discretion determines to be
31 necessary to assure that the notice is generally available throughout the county. The
32 Department shall prescribe the form and content of the notice to be published. The
33 Department shall prescribe the procedures to be followed in the public meeting. The
34 Department shall take detailed minutes of the meeting. The minutes shall include any
35 written comments, exhibits, or documents presented at the meeting."

36 **SECTION 10.** G.S. 130A-310.37(c) reads as rewritten:

37 "(c) The Department shall not enter into a brownfields agreement for a
38 ~~brownfields site that is identified by the United States Environmental Protection Agency~~
39 ~~as a federal Superfund site pursuant to 40 Code of Federal Regulations, Part 300 (1 July~~
40 ~~1996 Edition); any site listed on the National Priorities List pursuant to~~
41 CERCLA/SARA."

42 **SECTION 11.** G.S. 105-277.13(a) reads as rewritten:

43 "(a) Qualifying improvements on brownfields properties are designated a special
44 class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall

1 be appraised, assessed, and taxed in accordance with this section. ~~An~~ Except as
2 provided in this subsection, an owner of land who is protected from liability for
3 remediation pursuant to G.S. 130A-310.33(a) is entitled to the partial exclusion
4 provided by this section for the first five taxable years beginning after completion of
5 qualifying improvements made after the later of July 1, 2000, or the date of the
6 brownfields agreement. If a person who caused or contributed to contamination at a
7 brownfields property holds any ownership interest in the property, that person is not
8 eligible for the partial exclusion. After property has qualified for the exclusion provided
9 by this section, the assessor for the county in which the property is located shall
10 annually appraise the improvements made to the property during the period of time that
11 the owner is entitled to the exclusion."
12

SECTION 12: This act becomes effective 1 July 2004.