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Senate Bill 420 (as enrolled)
Sponsor: Senator Ken Sikkema
Committee: Natural Resources and Environmental Affairs

Date Completed: 4-7-99

RATIONALE

Under Part 201 of the Natural Resources and Environmental Protection Act, which regulates environmental response activities, a person who becomes the owner or operator of a contaminated site is liable for response activity (cleanup) costs unless a baseline environmental assessment (BEA) is conducted on the property before, or within 45 days after, the property is purchased, foreclosed, or occupied. A BEA is an evaluation of environmental conditions that exist at the time of purchase, occupancy, or foreclosure, that reasonably defines the existing conditions and circumstances at the facility so that, in the event of a subsequent release of contaminants, there is a means of distinguishing the new release from existing contamination. Within six months after a BEA is completed, a person may petition the Department of Environmental Quality (DEQ) for a determination of whether he or she meets (and how the applicant could meet) the criteria for an exemption from liability for cleanup costs. The Act also requires that a petition be accompanied by a fee of \$750. This fee provision is scheduled to expire on June 5, 1999. Some people believe that the fee should be extended.

CONTENT

The bill would amend Part 201 of the Natural Resources and Environmental Protection Act (NREPA) to extend for four years, until June 5, 2003, the requirement that a person pay a \$750 fee when submitting a petition to the DEQ for a determination about a baseline environmental assessment.

MCL 324.20129a

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

As part of a comprehensive revision of the NREPA's cleanup standards and remediation requirements, Public Act 71 of 1995 created the provisions pertaining to baseline environmental assessments and DEQ review of BEAs. When Public Act 71 was enacted on June 5, 1995, it was uncertain whether a significant number of people would avail themselves of the BEA review program or if the \$750 fee would cover or exceed the cost of doing reviews. A two-year sunset was placed on the fee, and that provision was extended for another two years by Public Act 61 of 1997.

According to the DEQ, as of March 1999, there had been 2,563 BEAs submitted since the program's inception. Of those, 1,458 included petitions for review and were subject to the \$750 fee. Thus, over half of the BEAs submitted requested a departmental review to determine whether they met the criteria for liability exemption. In addition to making that determination, the Department also provides important information to people not meeting the criteria, as to how the standard might be met.

The DEQ puts significant staff time into BEA reviews. Out of the 1,458 petitions received as of March 6, 1999, the DEQ had issued 1,325 determinations. (Thirteen had been withdrawn and 120 were still pending.) The DEQ reports that an average of 21 hours of staff time is applied to each determination and that the average response time is 15.3 days. In 1,018 petition determinations, however, response time was less than the 15 days required by the NREPA and averaged just 8.2 days. The cost of a review apparently is slightly more than the \$750 fee and, without the extension of the fee provision, the Department would not have the resources to continue to fund the program.

Public Act 71 essentially eliminated strict environmental liability for existing owners and operators of contaminated property, and enabled new potential buyers of contaminated property to obtain liability protection by preparing and filing a BEA. These reforms have helped enhance the likelihood that idle contaminated industrial sites will be redeveloped for productive use, since mere ownership is no longer sufficient to make a person liable for cleanup costs (*Michigan Lawyers Weekly*, McClure and Wackerman, 3-29-99). The popularity of the BEA review program, and the expediency of the DEQ's response, indicate that BEA review is a major facilitator in the redevelopment of Michigan's "brownfield" sites, and should be continued.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would maintain the receipt of approximately \$350,000 in annual revenue from baseline environmental assessment fees.

Fiscal Analyst: G. Cutler

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.