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Senate Bill 653 (as reported without amendment)  
Sponsor: Senator Burton Leland  
Committee: Natural Resources and Environmental Affairs

Date Completed: 1-7-04

### **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. 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 the criteria for an exemption from liability for cleanup costs. Until June 5, 2003, the Act required a petition for liability exemption to be accompanied by a fee of \$750, which had to be deposited in the Cleanup and Redevelopment Fund established in Part 201. The fee covered a portion of the DEQ's costs in implementing the BEA program. It has been suggested that the fee should be restored in order to facilitate the program's continuation.

### **CONTENT**

**The bill would amend Part 201 (Environmental Response) of the Natural Resources and Environmental Protection Act to restore a fee exempting a person from liability after the completion of a baseline environmental assessment. The fee had sunsetted on June 5, 2003; the fee under the bill would expire on June 5, 2005.**

(Part 201 defines "baseline environmental assessment" as an evaluation of environmental conditions that exist at a facility at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstance 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. "Facility" means any area, place, or property where a hazardous substance in excess of concentrations that satisfy the requirements established by the DEQ for residential facilities, or the cleanup criteria for unrestricted residential use under Part 213 (Leaking Underground Storage Tanks), has been released, deposited, or disposed of, or otherwise comes to be located.)

Under Part 201, a person may petition the DEQ within six months after the completion of a BEA for a determination that he or she meets the requirements for exemption from liability under Section 20106(1)(c) and, in conjunction with that exemption, a determination that the proposed use of a facility satisfies his or her obligations under Section 20107a.

(Under Section 20106(1)(c), a person who becomes an owner or operator of a facility is liable under Part 201 unless both of the following are satisfied:

- A BEA is conducted within 45 days after the earliest of the date of purchase, occupancy, or foreclosure.
- The owner or operator discloses the results of the BEA to the DEQ and subsequent purchaser or transferee if the assessment confirms that the property is a facility.

Under Section 20107a, a person who owns or operates property that he or she knows is a facility must do all of the following with respect to hazardous substances at the facility:

- Undertake measures necessary to prevent exacerbation of the existing contamination.
- Exercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances, mitigate fire and explosion hazards due to hazardous substances, and allow for the intended use of the facility in a manner that protects the public health and safety.)

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**

Before the BEA program was enacted in 1995, developers who purchased contaminated property were strictly liable for cleanup costs for contamination that existed before they purchased the property. By enabling new buyers of contaminated sites to obtain liability protection, the BEA program encourages the purchase and redevelopment of brownfields so that they may be returned to productive use. In addition to determining whether property meets the criteria for an exemption from liability, the DEQ gives applicants valuable information as to how the standards may be met. The \$750 fee partially covers the DEQ's cost of administering this important part of the overall initiatives for brownfield redevelopment and managed land use. If the fee is not extended, the DEQ's ability to continue offering the BEA service might be impaired and contaminated land may appear less attractive to prospective developers.

Legislative Analyst: Julie Koval

## **FISCAL IMPACT**

According to the Department of Environmental Quality, it usually collects approximately \$230,000 in annual revenue from over 300 petitions for a determination of liability exemption. The fee expired on June 5, 2003, and the Department has not been collecting it since that date. The revenue is deposited into the Cleanup and Redevelopment Fund, which is used for pollution cleanup activities at environmental contamination sites.

Fiscal Analyst: Jessica Runnels

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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.