



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 653 (as enrolled)

Sponsor: Senator Burton Leland

Senate Committee: Natural Resources and Environmental Affairs

House Committee: Government Operations

PUBLIC ACT 114 of 2004

Date Completed: 7-23-04

RATIONALE

Under Part 201 of the Natural Resources and Environmental Protection Act (NREPA), 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 was suggested that the fee be restored in order to facilitate the program's continuation.

In an unrelated matter, under Part 31 of NREPA, the DEQ issues groundwater discharge permits to entities such as municipalities, housing developments, industrial facilities, and farming operations that discharge waste water into the ground or groundwater. Public Act 90 of 2004 was enacted to allow the DEQ to levy and collect an annual permit fee according to a schedule, and create the Groundwater Discharge Permit Fund into which all the permit fees and penalties must be deposited. Under Public Act 90, money from the Fund may be spent only upon appropriation for the purpose of

implementing the DEQ's groundwater discharge program. The DEQ is prohibited from spending more than \$2,000,000 from the Fund in any State fiscal year. In light of the spending cap, it was suggested that, if the DEQ collects more than \$2,000,000 from the fees in any fiscal year, each permittee should receive a share of the excess as a credit against the permit fee for the next fiscal year.

CONTENT

The bill amended 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 will expire on June 5, 2005. The bill also amended Part 31 (Water Resources Protection) of the Act to require the DEQ to credit in the next fiscal year each groundwater discharge permittee who pays a discharge permit fee if the DEQ collects more than \$2,000,000 in annual discharge permit fees in any State fiscal year. The bill took effect on May 21, 2004.

Contamination Liability Exemption

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 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. "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 the 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.)

Groundwater Discharge Permit Fee Credit

Under the bill, if the DEQ collects more than \$2,000,000 in annual groundwater discharge

permit fees in any State fiscal year, the Department must credit in the next fiscal year each permittee who paid a permit fee a proportional amount of the fees collected in excess of \$2,000,000. If a permit is no longer required by the permittee in the next fiscal year, the DEQ must provide a refund to the permittee for the credited amount, if that amount is at least \$50. If the credited amount is less than \$50, the DEQ must provide a credit for an annual groundwater discharge permit fee that may be required in a subsequent year.

MCL 324.3122a & 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 had not been extended, the DEQ's ability to continue offering the BEA service might have been impaired and contaminated land could have become less attractive to prospective developers.

Supporting Argument

Under Public Act 90, the DEQ may not spend more than \$2,000,000 from the Groundwater Discharge Permit Fund in any fiscal year. If the DEQ collects more money from the fees than it may spend on its groundwater discharge program, it is appropriate to require the Department to use the excess as a credit against permit holders' fees for the following year.

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 had 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.

The limitation of \$2,000,000 on the collection of annual groundwater discharge fees should have little effect on the State. The recently enacted fees were set to generate \$1,700,000 annually, so the cap created in this bill should not be reached.

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.