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Senate Bill 653 (as introduced 8-13-03)
Sponsor: Senator Burton Leland
Committee: Natural Resources and Environmental Affairs

Date Completed: 12-9-03

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, 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 Department of Environmental Quality (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 baseline environmental assessment 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.

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 Section 20108 of the Act. The bill would require the fee until June 5, 2005.

(Under Section 20106(1)(c), a facility owner or operator who becomes an owner or operator on or after June 5, 1995, is liable under Part 201 unless both of the following are satisfied:

- A baseline environmental assessment 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 assessment 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.

-- Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions.

A person who does not do all of these things is liable for response activity costs and natural resource damages attributable to any exacerbation of existing contamination and any fines or penalties imposed for the violation, but is not liable for performance of additional response activities unless he or she is otherwise liable under the Act for those activities. "Response activity" means evaluation, interim response activity, remedial action, demolition, or the taking of other actions necessary to protect the public health, safety, or welfare, the environment, or the natural resources.)

MCL 324.20129a

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.