

APPLY SECTION 20107A OF NREPA TO THE CONSTRUCTION OR EXPANSION OF A SCHOOL BUILDING ON CONTAMINATED PROPERTY

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House Bill 5991

Sponsor: Rep. Rashida Tlaib

Committee: Great Lakes and Environment

Complete to 4-22-10

A SUMMARY OF HOUSE BILL 5991 AS INTRODUCED 3-24-10

Currently, school districts, intermediate school districts, and public school academies (charter schools) are sometimes exempt from a provision found in Part 201 (Environmental Remediation) of the Natural Resources and Environmental Protection Act (MCL 324.20107a) that imposes certain duties on the owner or operator of a property known to be contaminated with hazardous substances (called "a facility" in Part 201).

Under House Bill 5991, when constructing or expanding a school building after the bill's effective date, a school district, intermediate school district, or public school academy — even if otherwise exempt — would have to comply with these requirements ***if the preliminary environmental assessment required under House Bill 5271 indicated that the property was contaminated.*** House Bill 5991 is an amendment to NREPA and is tied to House Bill 5271.

(House Bill 5271 would amend the Revised School Code to prohibit the board of a school district, intermediate school district, or public school academy (charter school) from acquiring a site for a school building or constructing a school building without first conducting a preliminary environmental assessment.)

"School building" would mean "a building intended to be used to provide instruction for pupils or a recreational or athletic structure or field intended to be used by pupils."

Duties. Generally speaking, Section 20107a(1) (MCL 324.20107a(1)) requires a contaminated property's owner or operator (1) to take steps to prevent the exacerbation or worsening of the existing contamination; (2) to undertake the necessary "response activity" to mitigate exposure to the hazardous substances and the risk of a fire or explosion and to allow the property to be used as intended in a manner protecting public health and safety; and (3) to take precautions against the reasonably-foreseeable acts or omission of third-parties (and the reasonably-foreseeable consequences of those acts or omissions).

[Section 20107a(2) (MCL 324.20107a(2)) specifies the consequences of failing to meet these duties and Section 20107a(3) (MCL 324.20107a(3)) provides that these duties are in addition to other required response activities.]

Current exemptions. Under Section 20107a(4), the duties set forth in Section 20107(a)(1) do not apply to the state and to local units of government (including schools¹) unless the local unit of government was "liable under Section 20126(3)(a), (b), (c), or (e)."² Section 20107(a)(1) also does not apply to a local unit of government that acquired property before June 5, 1995, or to a person who is exempt from liability under Section 20126(4)(c).³ Under the bill, these exemptions would remain in place "except as provided in subsection (5)," as described below.

Applicability of Section 20107(a)(1) to schools. Under the bill, the duties set forth in Section 20107(a)(1) *would* apply to an otherwise exempt school district, intermediate school district, or public school academy as to "property where construction or expansion of school building occurs after the bill's effective date, if the environmental assessment required under Section 1264 of the Revised School Code, Public Act 451, MCL 380.1264, indicated the school was a facility." (This assessment requirement would be added to the Revised School Code by House Bill 5271, as mentioned earlier.)

MCL 324.20107a

FISCAL IMPACT:

A fiscal analysis is in process.

Legislative Analyst: Shannan Kane
Fiscal Analyst: Bethany Wicksall

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

¹ In Part 201, the phrase "local unit of government" means "a county, city, township, or village, an agency of a local unit of government, an authority or any other public body or entity created by or pursuant to state law," not including the state or federal government or a state or federal agency. MCL 324.20101

² Unless an exception applies, subsections 20126(3)(a), (b), and (c) impose liability under Part 201 on the owner or operator of "a facility" that (1) was responsible for an activity causing a release or threat of release, (2) that was the owner or operator at the time of the disposal of a hazardous substance if the owner or operator was responsible for an activity causing a release or threat of release, or (3) that became the owner or operator on or after June 5, 1995, unless the owner or operator complied with specified baseline environmental assessment requirements. Section 20126(3)(e) imposes liability on a person who accepts or accepted any hazardous substance for transport to a facility selected by that person.

³ Under Section 20126(4)(c), the owner or operator of a property onto which contamination has migrated is exempt from liability under Part 201 unless responsible for an activity causing the release that was the source of the contamination.