

SENATE BILL No. 1349

May 25, 2010, Introduced by Senator THOMAS and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 20107a and 20108b (MCL 324.20107a and
324.20108b), section 20107a as amended and section 20108b as added
by 1996 PA 383.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20107a. (1) A person who owns or operates property that
2 he or she has knowledge is a facility shall do all of the following
3 with respect to hazardous substances at the facility:

4 (a) Undertake measures as are necessary to prevent
5 exacerbation of the existing contamination.

6 (b) Exercise due care by undertaking response activity
7 necessary to mitigate unacceptable exposure to hazardous

1 substances, mitigate fire and explosion hazards due to hazardous
2 substances, and allow for the intended use of the facility in a
3 manner that protects the public health and safety.

4 (c) Take reasonable precautions against the reasonably
5 foreseeable acts or omissions of a third party and the consequences
6 that foreseeably could result from those acts or omissions.

7 (D) PROVIDE FULL COOPERATION, ASSISTANCE, AND ACCESS TO THE
8 PERSONS THAT ARE AUTHORIZED TO CONDUCT RESPONSE ACTIVITIES AT THE
9 FACILITY, INCLUDING THE COOPERATION AND ACCESS NECESSARY FOR THE
10 INSTALLATION, INTEGRITY, OPERATION, AND MAINTENANCE OF ANY COMPLETE
11 OR PARTIAL RESPONSE ACTIVITY AT THE FACILITY.

12 (E) COMPLY WITH ANY LAND USE OR RESOURCE USE RESTRICTIONS
13 ESTABLISHED OR RELIED ON IN CONNECTION WITH THE RESPONSE ACTIVITIES
14 AT THE FACILITY.

15 (F) NOT IMPEDE THE EFFECTIVENESS OR INTEGRITY OF ANY
16 INSTITUTIONAL CONTROL EMPLOYED AT THE FACILITY IN CONNECTION WITH
17 RESPONSE ACTIVITIES.

18 (2) THE OWNER'S OR OPERATOR'S OBLIGATIONS UNDER THIS SECTION
19 SHALL BE BASED UPON THE CURRENT NUMERIC CLEANUP CRITERIA UNDER
20 SECTION 20120A(1).

21 (3) ~~(2) Notwithstanding any other provision of this part, a~~ A
22 person who violates subsection (1) WHO IS NOT OTHERWISE LIABLE
23 UNDER THIS PART FOR THE RELEASE AT THE FACILITY is liable for
24 response activity costs and natural resource damages attributable
25 to any exacerbation of existing contamination and any fines or
26 penalties imposed under this part resulting from the violation of
27 subsection (1) but is not liable for performance of additional

1 response activities unless the person is otherwise liable under
2 this part for performance of additional response activities. The
3 burden of proof in a dispute as to what constitutes exacerbation
4 shall be borne by the party seeking relief.

5 (4) ~~(3)~~—Compliance with this section does not satisfy a
6 person's obligation to perform response activities as otherwise
7 required under this part.

8 (5) ~~(4)~~—Subsection ~~(1)~~ **(1) (A) TO (C)** does not apply to the
9 state or to a local unit of government that is not liable under
10 section 20126(3)(a), (b), (c), or (e) or to **THE STATE OR** a local
11 unit of government that acquired property by purchase, gift,
12 transfer, or condemnation prior to ~~the effective date of this~~
13 ~~section~~ **JUNE 5, 1995** or to a person who is exempt from liability
14 under section 20126(4)(c). **HOWEVER, IF THE STATE OR LOCAL UNIT OF**
15 **GOVERNMENT, ACTING AS THE OPERATOR OF A PARCEL OF PROPERTY THAT THE**
16 **STATE OR LOCAL UNIT OF GOVERNMENT HAS KNOWLEDGE IS A FACILITY,**
17 **OFFERS ACCESS TO THAT PARCEL ON A REGULAR OR CONTINUOUS BASIS**
18 **PURSUANT TO AN EXPRESS PUBLIC PURPOSE AND INVITES THE GENERAL**
19 **PUBLIC TO USE THAT PROPERTY FOR THE EXPRESS PUBLIC PURPOSE, THE**
20 **STATE OR LOCAL UNIT OF GOVERNMENT IS SUBJECT TO THIS SECTION. THE**
21 **PROPERTY THAT WOULD BE SUBJECT TO THIS SECTION IS THAT PORTION OF**
22 **THE FACILITY THAT IS OPENED TO AND USED BY THE GENERAL PUBLIC FOR**
23 **AN EXPRESS PURPOSE, AND NOT THE ENTIRE FACILITY.**

24 (6) ~~(5)~~—Subsection ~~(1)~~ **(1) (A) TO (C)** does not apply to a
25 person who is exempt from liability under section 20126(3)(c) or
26 (d) except with regard to that person's activities at the facility.

27 Sec. 20108b. (1) The department shall create a revitalization

1 revolving loan program for the purpose of making loans to certain
2 local units of government to provide for eligible activities at
3 certain properties in order to promote economic redevelopment.

4 (2) To be eligible for a loan, applications must meet the
5 following requirements:

6 (a) The applicant is a county, city, township, or village, or
7 an authority established pursuant to the brownfield redevelopment
8 financing act, ~~provided that~~ **IF** the municipality ~~which~~ **THAT** created
9 the authority pursuant to the brownfield redevelopment financing
10 act commits to secure the loan with a pledge of the municipality's
11 full faith and credit.

12 (b) The application is for eligible activities at a property
13 within the applicant's jurisdiction that is a facility or is
14 suspected to be a facility based on current or historic use.

15 (c) The application is complete and submitted on a form
16 provided by the department.

17 (d) The application is received by the deadline established by
18 the department.

19 (e) The application is for eligible activities only as
20 provided for in subsection (3).

21 (3) Eligible activities are limited to evaluation and
22 demolition at the property or properties in an area-wide zone, and
23 interim response activities required to facilitate evaluation and
24 demolition conducted prior to redevelopment of a property or
25 properties in an area-wide zone. Eligible activities include only
26 those necessary to facilitate redevelopment. Eligible activities do
27 not include activities necessary only to design or complete a

1 remedial action that fully complies with the requirements of
2 section 20120a. All eligible activities must be consistent with a
3 ~~work plan or remedial action~~ **RESPONSE ACTIVITY** plan approved in
4 advance by the department under this part or pursuant to section 15
5 of the brownfield redevelopment financing act, **MCL 125.2665**. Unless
6 otherwise approved by the director, only activities carried out and
7 costs incurred after execution of a loan agreement are eligible.

8 (4) The department shall provide for at least 1 application
9 cycle per fiscal year. Prior to each application cycle, the
10 department shall develop written instructions for prospective
11 applicants including the criteria that will be used in application
12 review and approval.

13 (5) Final application decisions shall be made by the
14 department within 4 months of the application deadline.

15 (6) A complete application shall include the following:

16 (a) A description of the proposed eligible activities.

17 (b) An itemized budget for the proposed eligible activities.

18 (c) A schedule for the completion of the proposed eligible
19 activities.

20 (d) Location of the property.

21 (e) Current ownership and ownership history of the property.

22 (f) Current use of the property.

23 (g) A detailed history of the use of the property.

24 (h) Existing and proposed future zoning of the property.

25 (i) If the property is not owned by the applicant, a draft of
26 an enforceable agreement between the property owner and the
27 applicant that commits the property owner to cooperate with the

1 applicant, including a commitment to allow access to the property
2 to complete at a minimum the proposed activities.

3 (j) A description of the property's economic redevelopment
4 potential.

5 (k) A resolution from the local governing body of the
6 applicant committing to repayment of the loan according to the
7 terms of this section.

8 (l) Other information as specified by the department in its
9 written instructions.

10 (7) To receive loan funds, approved applicants ~~must~~ **SHALL**
11 enter into a loan agreement with the department. At a minimum, the
12 loan agreement shall contain all of the following:

13 (a) The approved eligible activities to be undertaken with
14 loan funds.

15 (b) The loan interest rate, terms, and repayment schedule as
16 determined by the department pursuant to subsection (10).

17 (c) A commitment that the loan is secured by a full faith and
18 credit pledge of the applicant, or if the applicant is an authority
19 established pursuant to the brownfield redevelopment financing act,
20 the commitment shall be from the municipality that created the
21 authority pursuant to that act.

22 (d) An implementation schedule.

23 (e) Reporting requirements, including at a minimum the
24 following:

25 (i) The recipient shall submit a progress status report to the
26 department every 6 months during the implementation schedule.

27 (ii) The recipient shall provide a final report within 3 months

1 of completion of the loan funded activities that includes
2 documentation of project costs and expenditures, including invoices
3 and proof of payment.

4 (f) If the property is not owned by the recipient, an executed
5 agreement that has been approved by the department that meets the
6 requirements of subsection (6)(i).

7 (g) Other provisions as considered appropriate by the
8 department.

9 (8) If an approved applicant fails to sign a loan agreement
10 within 90 days of a written loan offer by the department, the
11 department may cancel the loan offer. The applicant may not appeal
12 or contest a cancellation pursuant to this subsection.

13 (9) The department may terminate a loan agreement and require
14 immediate repayment of the loan if the recipient uses loan funds
15 for any purpose other than for the approved eligible activities
16 specified in the loan agreement. The department shall provide
17 written notice 30 days prior to the termination.

18 (10) ~~Loans~~ **SUBJECT TO SUBSECTION (11), LOANS** shall have the
19 following terms:

20 (a) A loan interest rate of not more than 50% of the prime
21 rate as determined by the department as of the date of approval of
22 the loan.

23 (b) Loan recipients shall repay loans in equal annual
24 installments of principal and interest beginning not later than 5
25 years after ~~execution of a loan agreement~~ **THE FIRST DRAW OF THE**
26 **LOAN** and concluding not later than 15 years after ~~execution of a~~
27 **THE FIRST DRAW OF THE** loan. ~~agreement.~~

1 (11) UPON REQUEST OF A LOAN RECIPIENT AND A SHOWING OF
2 FINANCIAL HARDSHIP, THE DEPARTMENT MAY RENEGOTIATE THE TERMS OF ANY
3 OUTSTANDING LOAN, INCLUDING THE LENGTH OF THE LOAN, THE INTEREST
4 RATE, AND THE REPAYMENT TERMS. AS USED IN THIS SUBSECTION,
5 "FINANCIAL HARDSHIP" MEANS, WITH RESPECT TO A PROPERTY SUBJECT TO A
6 LOAN, THAT THE PROPERTY IS NOT GENERATING THE ANTICIPATED TAX
7 INCREMENT, AND THE LOAN RECIPIENT'S ECONOMIC STATUS IS
8 SIGNIFICANTLY WORSE THAN WHEN THE LOAN APPLICATION WAS ORIGINALLY
9 SUBMITTED.

10 (12) ~~(11)~~—Loan payments and interest shall be deposited back
11 into the revitalization revolving loan fund created in section
12 20108a.

13 (13) ~~(12)~~—Upon default of a loan, as determined by the
14 department, or upon the request of the loan recipient as a method
15 to repay the loan, the department of treasury shall withhold state
16 payments from the loan recipient in amounts consistent with the
17 repayment schedule in the loan agreement until the loan is repaid.
18 The department of treasury shall deposit these withheld funds into
19 the revitalization revolving loan fund created in section 20108a
20 until the loan is repaid.

21 (14) AS USED IN THIS SECTION, "BROWNFIELD REDEVELOPMENT
22 FINANCING ACT" MEANS 1996 PA 381, MCL 125.2651 TO 125.2672.

23 Enacting section 1. This amendatory act does not take effect
24 unless all of the following bills of the 95th Legislature are
25 enacted into law:

26 (a) Senate Bill No. 437 or House Bill No. 4903.

27 (b) Senate Bill No. 1345.

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2 (c) Senate Bill No. 1346.

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4 (d) Senate Bill No. 1347.

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6 (e) Senate Bill No. 1348.

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