

**SUBSTITUTE FOR
HOUSE BILL NO. 5991**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 20107a (MCL 324.20107a), as amended 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
8 substances, mitigate fire and explosion hazards due to hazardous
9 substances, and allow for the intended use of the facility in a
10 manner that protects the public health and safety.

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

4 (2) Notwithstanding any other provision of this part, a person
5 who violates subsection (1) is liable for response activity costs
6 and natural resource damages attributable to any exacerbation of
7 existing contamination and any fines or penalties imposed under
8 this part resulting from the violation of subsection (1) but is not
9 liable for performance of additional response activities unless the
10 person is otherwise liable under this part for performance of
11 additional response activities. The burden of proof in a dispute as
12 to what constitutes exacerbation shall be borne by the party
13 seeking relief.

14 (3) Compliance with this section does not satisfy a person's
15 obligation to perform response activities as otherwise required
16 under this part.

17 (4) ~~Subsection~~ **EXCEPT AS PROVIDED IN SUBSECTION (5),**
18 **SUBSECTION** (1) does not apply to the state or to a local unit of
19 government that is not liable under section 20126(3)(a), (b), (c),
20 or (e) or to a local unit of government that acquired property by
21 purchase, gift, transfer, or condemnation prior to ~~the effective~~
22 ~~date of this section~~ **JUNE 5, 1995** or to a person who is exempt from
23 liability under section 20126(4)(c).

24 **(5) SUBSECTION (1) APPLIES TO THE BOARD OF A SCHOOL DISTRICT**
25 **OR INTERMEDIATE SCHOOL DISTRICT OR BOARD OF DIRECTORS OF A PUBLIC**
26 **SCHOOL ACADEMY THAT WOULD OTHERWISE BE EXEMPT UNDER SUBSECTION (4)**
27 **WITH REGARD TO PROPERTY WHERE CONSTRUCTION OR EXPANSION OF A SCHOOL**

1 BUILDING OCCURS AFTER THE EFFECTIVE DATE OF THE 2010 AMENDATORY ACT
2 THAT ADDED THIS SUBSECTION IF THE ENVIRONMENTAL ASSESSMENT REQUIRED
3 UNDER SECTION 1264 OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL
4 380.1264, INDICATES THAT THE PROPERTY IS A FACILITY.

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

8 (7) AS USED IN THIS SECTION, "SCHOOL BUILDING" MEANS ANY OF
9 THE FOLLOWING:

10 (A) A BUILDING INTENDED TO BE USED TO PROVIDE INSTRUCTION FOR
11 PUPILS, INCLUDING AN ADDITION TO AN EXISTING BUILDING.

12 (B) A RECREATIONAL OR ATHLETIC STRUCTURE OR FIELD INTENDED TO
13 BE USED BY PUPILS. SCHOOL BUILDING DOES NOT INCLUDE PLAYGROUND OR
14 EXERCISE EQUIPMENT.

15 Enacting section 1. This amendatory act does not take effect
16 unless House Bill No. 5271 of the 95th Legislature is enacted into
17 law.