

HOUSE BILL No. 6360

July 28, 2010, Introduced by Rep. Stanley and referred to the Committee on New Economy and Quality of Life.

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
8 substances, mitigate fire and explosion hazards due to hazardous

1 substances, and allow for the intended use of the facility in a
2 manner that protects the public health and safety.

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

6 (D) PROVIDE REASONABLE COOPERATION, ASSISTANCE, AND ACCESS TO
7 THE PERSONS THAT ARE AUTHORIZED TO CONDUCT RESPONSE ACTIVITIES AT
8 THE FACILITY, INCLUDING THE COOPERATION AND ACCESS NECESSARY FOR
9 THE INSTALLATION, INTEGRITY, OPERATION, AND MAINTENANCE OF ANY
10 COMPLETE OR PARTIAL RESPONSE ACTIVITY AT THE FACILITY. NOTHING IN
11 THIS SUBDIVISION SHALL BE INTERPRETED TO PROVIDE ANY RIGHT OF
12 ACCESS NOT EXPRESSLY AUTHORIZED BY LAW, INCLUDING ACCESS AUTHORIZED
13 PURSUANT TO A WARRANT OR A COURT ORDER, OR TO PRECLUDE ACCESS
14 ALLOWED PURSUANT TO A VOLUNTARY AGREEMENT.

15 (E) COMPLY WITH ANY LAND USE OR RESOURCE USE RESTRICTIONS
16 ESTABLISHED OR RELIED ON IN CONNECTION WITH THE RESPONSE ACTIVITIES
17 AT THE FACILITY.

18 (F) NOT IMPEDE THE EFFECTIVENESS OR INTEGRITY OF ANY LAND USE
19 OR RESOURCE USE RESTRICTION EMPLOYED AT THE FACILITY IN CONNECTION
20 WITH RESPONSE ACTIVITIES.

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

24 (3) ~~(2) Notwithstanding any other provision of this part, a~~
25 person who violates subsection (1) WHO IS NOT OTHERWISE LIABLE
26 UNDER THIS PART FOR THE RELEASE AT THE FACILITY is liable for
27 response activity costs and natural resource damages attributable

1 to any exacerbation ~~of existing contamination~~ and any fines or
2 penalties imposed under this part resulting from the violation of
3 subsection (1) but is not liable for performance of additional
4 response activities unless the person is otherwise liable under
5 this part for performance of additional response activities. The
6 burden of proof in a dispute as to what constitutes exacerbation
7 shall be borne by the party seeking relief.

8 (4) ~~(3)~~ Compliance with this section does not satisfy a
9 person's obligation to perform response activities as otherwise
10 required under this part.

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

1 BUILDING, OR MUNICIPAL PUBLIC WORKS OPERATION. EXPRESS PUBLIC
2 PURPOSE DOES NOT INCLUDE ACTIVITIES SURROUNDING THE ACQUISITION OR
3 COMPILATION OF PARCELS FOR THE PURPOSE OF FUTURE DEVELOPMENT.

4 (6) ~~(5)~~—Subsection ~~(1)~~—(1) (A) TO (C) does not apply to a
5 person who is exempt from liability under section 20126(3)(c) or
6 (d) except with regard to that person's activities at the facility.

7 Sec. 20108b. (1) The department shall create a revitalization
8 revolving loan program for the purpose of making loans to certain
9 local units of government to provide for eligible activities at
10 certain properties in order to promote economic redevelopment.

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

13 (a) The applicant is a county, city, township, or village, or
14 an authority established pursuant to the brownfield redevelopment
15 financing act, ~~provided that~~ **IF** the municipality ~~which~~ **THAT** created
16 the authority pursuant to the brownfield redevelopment financing
17 act commits to secure the loan with a pledge of the municipality's
18 full faith and credit.

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

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

24 (d) The application is received by the deadline established by
25 the department.

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

1 (3) Eligible activities are limited to evaluation and
2 demolition at the property or properties in an area-wide zone, and
3 interim response activities required to facilitate evaluation and
4 demolition conducted prior to redevelopment of a property or
5 properties in an area-wide zone. Eligible activities include only
6 those necessary to facilitate redevelopment. Eligible activities do
7 not include activities necessary only to design or complete a
8 remedial action that fully complies with the requirements of
9 section 20120a. All eligible activities must be consistent with a
10 work plan or ~~remedial action~~ **RESPONSE ACTIVITY** plan approved in
11 advance by the department under this part or pursuant to section 15
12 of the brownfield redevelopment financing act, **MCL 125.2665**. Unless
13 otherwise approved by the director, only activities carried out and
14 costs incurred after execution of a loan agreement are eligible.

15 (4) The department shall provide for at least 1 application
16 cycle per fiscal year. Prior to each application cycle, the
17 department shall develop written instructions for prospective
18 applicants including the criteria that will be used in application
19 review and approval.

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

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

- 23 (a) A description of the proposed eligible activities.
24 (b) An itemized budget for the proposed eligible activities.
25 (c) A schedule for the completion of the proposed eligible
26 activities.
27 (d) Location of the property.

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

2 (f) Current use of the property.

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

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

5 (i) If the property is not owned by the applicant, a draft of
6 an enforceable agreement between the property owner and the
7 applicant that commits the property owner to cooperate with the
8 applicant, including a commitment to allow access to the property
9 to complete at a minimum the proposed activities.

10 (j) A description of the property's economic redevelopment
11 potential.

12 (k) A resolution from the local governing body of the
13 applicant committing to repayment of the loan according to the
14 terms of this section.

15 (l) Other information as specified by the department in its
16 written instructions.

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

20 (a) The approved eligible activities to be undertaken with
21 loan funds.

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

24 (c) A commitment that the loan is secured by a full faith and
25 credit pledge of the applicant, or if the applicant is an authority
26 established pursuant to the brownfield redevelopment financing act,
27 the commitment shall be from the municipality that created the

1 authority pursuant to that act.

2 (d) An implementation schedule.

3 (e) Reporting requirements, including at a minimum the
4 following:

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

7 (ii) The recipient shall provide a final report within 3 months
8 of completion of the loan funded activities that includes
9 documentation of project costs and expenditures, including invoices
10 and proof of payment.

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

14 (g) Other provisions as considered appropriate by the
15 department.

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

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

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

27 (a) A loan interest rate of not more than 50% of the prime

1 rate as determined by the department as of the date of approval of
2 the loan.

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

8 (11) **UPON REQUEST OF A LOAN RECIPIENT AND A SHOWING OF**
9 **FINANCIAL HARDSHIP RELATED TO THE PROJECT THAT WAS FINANCED IN**
10 **WHOLE OR IN PART BY THE LOAN, THE DEPARTMENT MAY RENEGOTIATE THE**
11 **TERMS OF ANY OUTSTANDING LOAN, INCLUDING THE LENGTH OF THE LOAN,**
12 **THE INTEREST RATE, AND THE REPAYMENT TERMS.**

13 (12) ~~(11)~~ Loan payments and interest shall be deposited back
14 into the revitalization revolving loan fund created in section
15 20108a.

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

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

26 Enacting section 1. This amendatory act does not take effect
27 unless all of the following bills of the 95th Legislature are

1 enacted into law:

2 (a) Senate Bill No. 1345.

3 (b) Senate Bill No. 1346.

4 (c) Senate Bill No. 1348.

5 (d) House Bill No. 6363 (request no. H06271'10 *).

6 (e) Senate Bill No. _____ or House Bill No. 6359 (request no.
7 07378'10).