

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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SENATE BILL 1222\*

Short Title: Limit Liability for Environmental Cleanups. (Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO PROMOTE ECONOMIC DEVELOPMENT BY FACILITATING THE REUSE OF CONTAMINATED REAL PROPERTY BY LIMITING THE LIABILITY OF PURCHASERS OF CONTAMINATED PROPERTY IN CIRCUMSTANCES WHERE THE SELLER OF THE PROPERTY OR ANOTHER PARTY ASSUMES RESPONSIBILITY FOR RESPONSE, REMEDIATION, AND NATURAL RESOURCES RESTORATION OF THE PROPERTY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 130A-310 is amended by adding a new subdivision to

read:

"(1a) 'Contiguous property owner' means a person who owns real property that touches along a boundary or at a point real property that is contaminated by a release of a hazardous substance."

**SECTION 2.** G.S. 143-215.77 is amended by adding a new subdivision to

read:

"(2a) 'Contiguous property owner' means a person who owns real property that touches along a boundary or at a point real property that is contaminated by a release of a hazardous substance."

**SECTION 3.** G.S. 130A-310.3 is amended by adding a new subsection to

read:

"(b1) A responsible party who satisfies the Secretary that the responsible party has completed a remedial action for hazardous substances at an inactive hazardous substance or waste disposal site pursuant to this Part shall not be required to perform any remedial action for the same release pursuant to Article 21 or Article 21A of Chapter 143 of the General Statutes."

**SECTION 4.** G.S. 130A-310.7 reads as rewritten:

"§ 130A-310.7. **Action for reimbursement; liability of responsible parties; notification of completed remedial action.**

1 (a) ~~Notwithstanding any other provision or rule of law, and subject~~ Subject only  
2 to the defenses set forth in this subsection, any person who: ~~section, a responsible party~~  
3 is a person who causes or contributes to the existence of an inactive hazardous  
4 substance or waste disposal site by any of the following:

- 5 (1) ~~Discharges or deposits; or~~ Discharging, releasing, or depositing any  
6 hazardous substance.  
7 (2) ~~Contracts or arranges for any discharge or deposit; or~~ Contracting or  
8 arranging for a discharge, release, or deposit of any hazardous  
9 substance.  
10 (3) ~~Accepts for discharge or deposit; or~~ Accepting any hazardous  
11 substance.  
12 (4) ~~Transports or arranges for transport for the purpose of discharge or~~  
13 ~~deposit~~ Transporting or arranging for the transport of any hazardous  
14 substance for the purpose of discharging, releasing, or depositing any  
15 hazardous substance.  
16 (5) Owning or operating a site that contains any hazardous substance.  
17 (6) Owning or operating a site at the time of discharge, release, or deposit  
18 of any hazardous substance.

19 ~~any hazardous substance, the result of which discharge or deposit is the existence of an~~  
20 ~~inactive hazardous substance or waste disposal site, shall be considered a responsible~~  
21 ~~party.~~

22 (a1) Neither an innocent landowner who is a bona fide purchaser of the any real  
23 property comprising an inactive hazardous substance or waste disposal site without  
24 knowledge or without a reasonable basis for knowing that a hazardous substance or  
25 waste disposal discharge, release, deposit, or disposal had occurred nor a contiguous  
26 property owner shall not be considered a responsible party if the landowner or  
27 contiguous property owner establishes all of the following to the satisfaction of the  
28 Secretary:

- 29 (1) All of the discharge, release, deposit, or disposal of hazardous  
30 substances or waste at the site occurred before the owner acquired the  
31 site; or the disposal was solely the result of:  
32 a. An act of God; or  
33 b. An act of war; or  
34 c. An intentional act or omission of a third party who is not an  
35 employee or agent of the owner or who does not have a  
36 contractual relationship with the owner.  
37 (2) On or before the date of purchase, the owner made all appropriate  
38 inquiries into the previous ownership and uses of the property in  
39 accordance with generally accepted and customary commercial  
40 standards and practices. The Secretary shall take into account any  
41 specialized knowledge or experience on the part of the owner, the  
42 relationship of the purchase price to the value of the property if the  
43 property were not contaminated, commonly known or reasonably  
44 ascertainable information about the property, and whether the

1           contamination is detectable by appropriate inspection. In the case of  
2           property that is used for residential or similar purposes at the time of  
3           its purchase by an entity that is neither governmental nor commercial,  
4           a site inspection and title search that does not reveal information that  
5           would cause a reasonable person to make further investigation shall  
6           satisfy the requirements of this subdivision.

7           (3)   The owner has provided all legally required notices with respect to the  
8           discovery of a discharge, release, deposit, or disposal of any hazardous  
9           substance or waste at the property.

10          (4)   The owner has exercised appropriate care with respect to hazardous  
11          substances found at the property by taking reasonable steps to do all of  
12          the following:

13           a.    Stopping any continuing discharge, release, deposit, or disposal.

14           b.    Preventing any threatened future discharge, release, deposit, or  
15           disposal.

16           c.    Conducting remedial measures approved by the Secretary that  
17           prevent or limit human, environmental, or natural resources  
18           exposure to any hazardous substance or waste discharged,  
19           released, deposited, or disposed of at the property and make the  
20           property safe for its intended use. Measures may include the  
21           application of institutional controls and other means of  
22           preventing exposure.

23          (5)   The owner has provided and continues to provide full cooperation,  
24          assistance, and access to persons who are authorized to conduct any  
25          response, remedial action, or natural resources restoration at the  
26          property, including any cooperation and access necessary to install,  
27          operate, maintain, or secure any completed or partial response,  
28          remedial action, or natural resources restoration at the property.

29          (6)   The owner has complied and continues to comply with any land-use  
30          restrictions established or relied on in connection with the response,  
31          remedial action, or natural resources restoration at the property.

32          (7)   The owner has not impeded and continues to not impede the  
33          effectiveness or integrity of any institutional control employed at the  
34          property in connection with a response, remedial action, or natural  
35          resources restoration.

36          (8)   The owner has complied or has agreed to comply with any requirement  
37          to record any land-use restrictions that may be required by the  
38          Secretary.

39          (9)   The owner has complied and continues to comply with any request for  
40          information or administrative subpoena issued by the Secretary.

41          (10) The owner is not liable, potentially liable, or affiliated with any other  
42          person who is liable or potentially liable for any cost associated with  
43          the response, remedial action, or natural resources restoration at the  
44          property through any of the following:

- 1           a.     Any direct or indirect familial relationship.
- 2           b.     Any contractual, corporate, or financial relations, other than a  
3                 contractual, corporate, or financial relationship that is created  
4                 by an instrument through which title to the property is  
5                 conveyed, an instrument through which sale or purchase of the  
6                 property is financed, or by a contract for the sale of goods or  
7                 services.
- 8           c.     A reorganization in bankruptcy of a business entity that is liable  
9                 or potentially liable.

10       (a2) A bona fide purchaser of any real property comprising an inactive hazardous  
11 substance or waste disposal site with knowledge or with a reasonable basis for knowing  
12 that a hazardous substance or waste discharge, release, deposit, or disposal had occurred  
13 shall not be considered a responsible party if the purchaser establishes all of the  
14 following to the satisfaction of the Secretary:

15           (1) All of the discharge, release, deposit, or disposal of hazardous  
16 substances or waste at the site occurred before the purchaser acquired  
17 the site; or the disposal was solely the result of:

- 18           a.     An act of God; or
- 19           b.     An act of war; or
- 20           c.     An intentional act or omission of a third party who is not an  
21                 employee or agent of the purchaser or who does not have a  
22                 contractual relationship with the purchaser.

23           (2) On or before the date of purchase, the purchaser made all appropriate  
24 inquiries into the previous ownership and uses of the property in  
25 accordance with generally accepted and customary commercial  
26 standards and practices. The Secretary shall take into account any  
27 specialized knowledge or experience on the part of the purchaser, the  
28 relationship of the purchase price to the value of the property if the  
29 property were not contaminated, commonly known or reasonably  
30 ascertainable information about the property, and whether the  
31 contamination is detectable by appropriate inspection. In the case of  
32 property that is used for residential or similar purposes at the time of  
33 its purchase by an entity that is neither governmental nor commercial,  
34 a site inspection and title search that does not reveal information that  
35 would cause a reasonable person to make further investigation shall  
36 satisfy the requirements of this subdivision.

37           (3) The purchaser has provided all legally required notices with respect to  
38 the discovery of a discharge, release, deposit, or disposal of any  
39 hazardous substance or waste at the property.

40           (4) The purchaser has exercised appropriate care with respect to hazardous  
41 substances found at the property by taking reasonable steps to do all of  
42 the following:

- 43           a.     Stopping any continuing discharge, release, deposit, or disposal.

- 1           b.     Preventing any threatened future discharge, release, deposit, or  
2           disposal.
- 3           c.     Conducting remedial measures approved by the Secretary that  
4           prevent or limit human, environmental, or natural resources  
5           exposure to any hazardous substance or waste discharged,  
6           released, deposited, or disposed of at the property and make the  
7           property safe for its intended use. Measures may include the  
8           application of institutional controls and other means of  
9           preventing exposure. Measures need not include soil or  
10          groundwater remediation by the purchaser other than those  
11          measures necessary to make the property safe for its intended  
12          use.
- 13          (5)    The purchaser has demonstrated that the seller or another responsible  
14          party has provided financial assurance equivalent to the full cost of  
15          implementation of the response, remedial action, or natural resources  
16          restoration at the property to unrestricted use standards, as defined in  
17          G.S. 130A-310.31. Financial assurance mechanisms may include,  
18          under terms and conditions approved by the Secretary, letters of credit,  
19          insurance, surety bonds, and trust funds.
- 20          (6)    The purchaser has provided and continues to provide full cooperation,  
21          assistance, and access to persons who are authorized to conduct any  
22          response, remedial action, or natural resources restoration at the  
23          property, including any cooperation and access necessary to install,  
24          operate, maintain, or secure any completed or partial response,  
25          remedial action, or natural resources restoration at the property. To the  
26          extent practical, response, remedial action, and natural resources  
27          restoration activities will be undertaken so as not to interfere with use  
28          of the property and structures on the property. The purchaser shall not  
29          erect any new structure that would interfere with any required  
30          response, remedial action, or natural resources restoration activity until  
31          the activity has been completed.
- 32          (7)    The purchaser has complied and continues to comply with any  
33          land-use restrictions established or relied on in connection with the  
34          response, remedial action, or natural resources restoration at the  
35          property.
- 36          (8)    The purchaser has not impeded and continues to not impede the  
37          effectiveness or integrity of any institutional control employed at the  
38          property in connection with a response, remedial action, or natural  
39          resources restoration.
- 40          (9)    The purchaser has complied or has agreed to comply with any  
41          requirement to record any land-use restrictions that may be required by  
42          the Secretary.
- 43          (10)   The purchaser has complied and continues to comply with any request  
44          for information or administrative subpoena issued by the Secretary.

1           (11) The purchaser is not liable, potentially liable, or affiliated with any  
2           other person who is liable or potentially liable for any cost associated  
3           with the response, remedial action, or natural resources restoration at  
4           the property through any of the following:

5           a. Any direct or indirect familial relationship.

6           b. Any contractual, corporate, or financial relations, other than a  
7           contractual, corporate, or financial relationship that is created  
8           by an instrument through which title to the property is  
9           conveyed, an instrument through which sale or purchase of the  
10           property is financed, or by a contract for the sale of goods or  
11           services.

12           c. A reorganization in bankruptcy of a business entity that is liable  
13           or potentially liable.

14           (a3) A purchaser of any real property comprising an inactive hazardous substance  
15           or waste disposal site may submit a written request to the Secretary for a determination  
16           that the purchaser has met all the conditions set out in subsection (a2) of this section. A  
17           determination may be made subject to the purchaser meeting all the conditions in  
18           subsection (a2) of this section on or after closing that cannot reasonably be met prior to  
19           closing. A request for a determination that a purchaser has met all the conditions set out  
20           in subsection (a2) of this section must be accompanied by a fee of one thousand dollars  
21           (\$1,000) to defray administrative costs of making the determination. The Secretary shall  
22           develop and implement procedures to provide expeditious review of requests for  
23           determinations so as to expedite real estate transactions involving contaminated  
24           properties.

25           (a4) A person whose interest or ownership in ~~the~~ real property comprising an  
26           inactive hazardous substance or waste disposal site is solely based on or derived from a  
27           security interest in the property shall not be considered a responsible party unless the  
28           person at any time manages, operates, or participates in the management or operation of,  
29           any facility located on the real property. A responsible party shall be directly liable to  
30           the State for any or all of the reasonably necessary expenses of developing and  
31           implementing a remedial action program for ~~such site, the~~ property. The Secretary shall  
32           bring an action for reimbursement of the Inactive Hazardous Sites Cleanup Fund in the  
33           name of the State in the superior court of Wake County, the county in which the site is  
34           ~~located~~ located, or in an appropriate federal court to recover such sum and the cost of  
35           bringing the action. The State must show that a danger to the public health or the  
36           environment existed and that the State complied with the provisions of this Part.

37           (b) ~~There shall be no liability under this section for a person who can establish by~~  
38           ~~a preponderance of the evidence that the danger to the public health or the environment~~  
39           ~~caused by the site was caused solely by:~~

40           (1) ~~An act of God; or~~

41           (2) ~~An act of war; or~~

42           (3) ~~An intentional act or omission of a third party (but this defense shall~~  
43           ~~not be available if the act or omission is that of an employee or agent~~

1 of the defendant, or if the act or omission occurs in connection with a  
2 contractual relationship with the defendant); or

3 (4) Any combination of the above causes.

4 The State shall have a lien on any property with respect to which the State has  
5 unrecovered costs for a response, remedial action, or natural resources restoration. The  
6 amount of the lien shall be the amount of the unrecovered costs. A lien under this  
7 subsection shall be superior to all other liens on the property.

8 (c) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any  
9 person may submit a written request to the Department for a determination that a site  
10 that is subject to this Part has been remediated to unrestricted use standards as provided  
11 in Part 5 of Article 9 of Chapter 130A of the General Statutes. A request for a  
12 determination that a site has been remediated to unrestricted use standards shall be  
13 accompanied by a fee required by G.S. 130A-310.39(a)(2). If the Department  
14 determines that the site has been remediated to unrestricted use standards, the  
15 Department shall issue a written notification that no further remediation will be required  
16 at the site. The notification shall state that no further remediation will be required at the  
17 site unless the Department later determines, based on new information or information  
18 not previously provided to the Department, that the site has not been remediated to  
19 unrestricted use standards or that the Department was provided with false or incomplete  
20 information. Under any of those circumstances, the Department may withdraw the  
21 notification and require responsible parties to remediate the site to unrestricted use  
22 standards."

23 **SECTION 5.** G.S. 143-215.3 is amended by adding a new subsection to  
24 read:

25 "(g) The provisions of subsections (a), (a1), (a2), (a3), (a4), and (b) of  
26 G.S. 130A-310.7 govern responsibility for a release, discharge, deposit, or disposal of  
27 oil, hazardous substances, waste, or other contaminants regulated under this Article or  
28 under Article 21A of this Chapter, including any release or discharge of petroleum from  
29 an underground storage tank or an aboveground storage tank."

30 **SECTION 6.** G.S. 130A-310.31(b)(3) reads as rewritten:

31 "(3) 'Brownfields property' or 'brownfields site' means abandoned, idled, or  
32 underused property at which expansion or redevelopment is hindered  
33 by actual environmental contamination or the possibility of  
34 environmental contamination and that is or may be subject to  
35 remediation ~~under any~~ under:

36 a. ~~Any State remedial program other than Part 2A of Article 21A~~  
37 ~~of Chapter 143 of the General Statutes or that is or may be~~  
38 ~~subject to remediation under the program or~~

39 b. The Comprehensive Environmental Response, Compensation  
40 and Liability Act of 1980, as amended (42 U.S.C. § 9601 et  
41 seq.)-amended, (42 U.S.C. § 9601 et seq.) except for property  
42 listed on the National Priorities List pursuant to 42 U.S.C. §  
43 9605."

44 **SECTION 7.** G.S. 130A-310.31(b)(10) reads as rewritten:

1           "(10) 'Prospective developer' means any person ~~who desires~~ with a bona  
2           fide, demonstrable desire to either buy or sell a brownfields property  
3           for the purpose of developing or redeveloping that brownfields  
4           property and who did not cause or contribute to the contamination at  
5           the brownfields property."

6           **SECTION 8.** G.S. 130A-310.34(b) reads as rewritten:

7           "(b) Publication of the approved summary of the Notice of Intent in the North  
8           Carolina Register and publication in a newspaper of general circulation shall begin a  
9           public comment period of at least ~~60~~ 30 days from the later date of publication. During  
10          the public comment period, members of the public, residents of the community in which  
11          the brownfields property is located, and local governments having jurisdiction over the  
12          brownfields property may submit comment on the proposed brownfields agreement,  
13          including methods and degree of remediation, future land uses, and impact on local  
14          employment."

15          **SECTION 9.** G.S. 130A-310.34(c) reads as rewritten:

16          "(c) Any person who desires a public meeting on a proposed brownfields  
17          agreement shall submit a written request for a public meeting to the Department within  
18          ~~30~~21 days after the public comment period begins. The Department shall consider all  
19          requests for a public meeting and shall hold a public meeting if the Department  
20          determines that there is significant public interest in the proposed brownfields  
21          agreement. If the Department decides to hold a public meeting, the Department shall, at  
22          least ~~30~~15 days prior to the public meeting, mail written notice of the public meeting to  
23          all persons who requested the public meeting and to any other person who had  
24          previously requested notice. The Department shall also direct the prospective developer  
25          to publish, at least ~~30~~15 days prior to the date of the public meeting, a notice of the  
26          public meeting at least one time in a newspaper having general circulation in such  
27          county where the brownfields property is located. In any county in which there is more  
28          than one newspaper having general circulation, the Department shall direct the  
29          prospective developer to publish a copy of the notice in as many newspapers having  
30          general circulation in the county as the Department in its discretion determines to be  
31          necessary to assure that the notice is generally available throughout the county. The  
32          Department shall prescribe the form and content of the notice to be published. The  
33          Department shall prescribe the procedures to be followed in the public meeting. The  
34          Department shall take detailed minutes of the meeting. The minutes shall include any  
35          written comments, exhibits, or documents presented at the meeting."

36          **SECTION 10.** G.S. 130A-310.37(c) reads as rewritten:

37          "(c) The Department shall not enter into a brownfields agreement for a  
38          ~~brownfields site that is identified by the United States Environmental Protection Agency~~  
39          ~~as a federal Superfund site pursuant to 40 Code of Federal Regulations, Part 300 (1 July~~  
40          ~~1996 Edition); any site listed on the National Priorities List pursuant to~~  
41          CERCLA/SARA."

42          **SECTION 11.** G.S. 105-277.13(a) reads as rewritten:

43          "(a) Qualifying improvements on brownfields properties are designated a special  
44          class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall



1 be appraised, assessed, and taxed in accordance with this section. ~~An~~ Except as  
2 provided in this subsection, an owner of land who is protected from liability for  
3 remediation pursuant to G.S. 130A-310.33(a) is entitled to the partial exclusion  
4 provided by this section for the first five taxable years beginning after completion of  
5 qualifying improvements made after the later of July 1, 2000, or the date of the  
6 brownfields agreement. If a person who caused or contributed to contamination at a  
7 brownfields property holds any ownership interest in the property, that person is not  
8 eligible for the partial exclusion. After property has qualified for the exclusion provided  
9 by this section, the assessor for the county in which the property is located shall  
10 annually appraise the improvements made to the property during the period of time that  
11 the owner is entitled to the exclusion."  
12

**SECTION 12:** This act becomes effective 1 July 2004.