

1 H.356

2 Introduced by Representative LaClair of Barre Town

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; hazardous materials; brownfields

6 Statement of purpose of bill as introduced: This bill proposes to amend
7 requirements for participation in the brownfields management program. The
8 bill would repeal the requirement that a municipality must have acquired a
9 brownfields property through bankruptcy, tax delinquency, or abandonment in
10 order to qualify to not be liable as an owner of a brownfields site. The bill
11 would also make technical amendments to the requirements for participation in
12 the brownfields program.

13 An act relating to management of brownfields

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 Sec. 1. 10 V.S.A. § 6615 is amended to read:

16 § 6615. LIABILITY

17 (a) Subject only to the defenses set forth in subsections (d) and (e) of this
18 section:

19 (1) the owner or operator of a facility, or both;

1 (2) any person who at the time of release or threatened release of any
2 hazardous material owned or operated any facility at which such hazardous
3 materials were disposed of;

4 (3) any person who by contract, agreement, or otherwise arranged for
5 disposal or treatment, or arranged with a transporter for transport for disposal
6 or treatment, of hazardous materials owned or possessed by such person, by
7 any other person or entity, at any facility owned or operated by another person
8 or entity and containing such hazardous materials; and

9 (4) any person who accepts or accepted any hazardous materials for
10 transport to disposal or treatment facilities selected by such persons, from
11 which there is a release, or a threatened release of hazardous materials shall be
12 liable for:

13 (A) abating such release or threatened release; and

14 (B) costs of investigation, removal, and remedial actions incurred by
15 the State ~~which~~ that are necessary to protect the public health or the
16 environment.

17 * * *

18 (d)(1) There shall be no liability under this section for a person otherwise
19 liable who can establish by a preponderance of the evidence that the release or
20 threat of release of hazardous material and the resulting damages were caused
21 solely by any of the following:

1 (A) An act of God.

2 (B) An act of war.

3 (C) An act or omission of a third party other than an employee or
4 agent of the defendant, or other than one whose act or omission occurs in
5 connection with a contractual relationship, existing directly or indirectly, with
6 the defendant. If the sole contractual arrangement arises from a published
7 tariff and acceptance for carriage by a common carrier by rail, for purposes of
8 this section, there shall be considered to be no contractual relationship at all.

9 This subdivision (d)(1)(C) shall only serve as a defense if the defendant
10 establishes by a preponderance of the evidence:

11 (i) that the defendant exercised due care with respect to the
12 hazardous material concerned, taking into consideration the characteristics of
13 that hazardous material, in light of all relevant facts and circumstances; and

14 (ii) that the defendant took precautions against foreseeable acts or
15 omissions of any such third party and the consequences that could foreseeably
16 result from those acts or omissions.

17 (D) Any combination of subdivisions (A)–(C) of this subdivision (1).

18 * * *

19 (3) A municipality shall not be liable under subdivision (a)(1) of this
20 section as an owner provided that the municipality can show all the following:

1 (A) ~~The property was acquired by virtue of its function as sovereign~~
2 ~~through bankruptcy, tax delinquency, abandonment, or other similar~~
3 ~~circumstances. [Repealed.]~~

4 (B) The municipality did not cause, contribute to, or worsen a release
5 or threatened release of a hazardous material at the property.

6 (C)(i) The municipality has entered into an agreement with the
7 Secretary, prior to the acquisition of the property, requiring the municipality to
8 conduct a site investigation with respect to any release or threatened release of
9 a hazardous material and an agreement for the municipality's marketing of the
10 property acquired.

11 (ii) The Secretary shall consult with the Secretary of Commerce
12 and Community Development on the plan related to the marketing of the
13 property.

14 (iii) The municipality may assert a defense to liability only after
15 implementing a site investigation at the property acquired and taking
16 reasonable steps defined by the agreement with the Secretary to market the
17 property.

18 (iv) In developing an agreement regarding site investigation, the
19 Secretary shall consider: the degree and extent of the known releases of
20 hazardous materials at the property; the financial ability of the municipality;

1 and the availability of State and federal funding when determining what is
2 required by the agreement for the investigation of the site.

3 * * *

4 (i) In an action brought by the Secretary under this section, a responsible
5 person may implead, or in a separate action a responsible person may sue,
6 another responsible person or persons and may obtain contribution or
7 indemnification. A responsible person who has resolved its liability to the
8 State under this section through a judicially approved settlement ~~and a secured~~
9 ~~lender or fiduciary with whom the Secretary has entered into an agreement~~
10 ~~under subsection (h) of this section~~ shall not be liable for claims for
11 contribution or indemnification regarding matters addressed in the judicially
12 approved settlement or in the agreement. An applicant, prior to acquiring an
13 ownership interest in a brownfield site, who participated in the brownfield
14 property cleanup program under subchapter 3 of this chapter, who is not
15 otherwise liable under this section, and who is working in good faith toward
16 meeting the obligations required by subchapter 3 of this chapter shall not be
17 liable for claims for contribution or indemnification regarding release or
18 threatened releases at the brownfield site. Likewise, a person who has
19 obtained a certificate of completion pursuant to subchapter 3 of this chapter
20 shall not be liable for claims for contribution or indemnification regarding
21 releases or threatened releases described in the approved corrective action plan,

1 as amended. Such a settlement ~~or agreement, unless its terms so provide, or~~
2 participation or certificate of completion does not discharge any other
3 potentially responsible person ~~unless its terms so provide, but it~~ reduces the
4 potential liability of other potentially responsible persons by the relief agreed
5 upon. ~~A secured lender or fiduciary with whom the Secretary has entered into~~
6 ~~an agreement under subsection (h) of this section may not seek contribution or~~
7 ~~indemnification on the basis of such agreement from any other potentially~~
8 ~~responsible person.~~ In any action for contribution or indemnification, the
9 rights of any person who has resolved its liability to the State shall be
10 subordinate to the rights of the State.

11 Sec. 2. EFFECTIVE DATE

12 This act shall take effect on passage.