STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010

Introduced by Rep. Stanley

ENROLLED HOUSE BILL No. 6360

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," 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:

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

(a) Undertake measures as are necessary to prevent exacerbation.

(b) Exercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances, mitigate fire and explosion hazards due to hazardous substances, and allow for the intended use of the facility in a manner that protects the public health and safety.

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

(d) Provide reasonable cooperation, assistance, and access to the persons that are authorized to conduct response activities at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response activity at the facility. Nothing in this subdivision shall be interpreted to provide any right of access not expressly authorized by law, including access authorized pursuant to a warrant or a court order, or to preclude access allowed pursuant to a voluntary agreement.

(e) Comply with any land use or resource use restrictions established or relied on in connection with the response activities at the facility.

(f) Not impede the effectiveness or integrity of any land use or resource use restriction employed at the facility in connection with response activities.

(2) The owner's or operator's obligations under this section shall be based upon the current numeric cleanup criteria under section 20120a(1).

(3) A person who violates subsection (1) who is not otherwise liable under this part for the release at the facility is liable for response activity costs and natural resource damages attributable to any exacerbation and any fines or penalties imposed under this part resulting from the violation of subsection (1) but is not liable for performance of additional response activities unless the person is otherwise liable under this part for performance of additional response activities. The burden of proof in a dispute as to what constitutes exacerbation shall be borne by the party seeking relief.

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

(5) Subsection (1)(a) to (c) does not apply to the state or to a local unit of government that is not liable under section 20126(1)(c) or (3)(a), (b), (c), or (e) or to the state or a local unit of government that acquired property by purchase, gift, transfer, or condemnation prior to June 5, 1995 or to a person who is exempt from liability under section 20126(4)(c). However, if the state or local unit of government, acting as the operator of a parcel of property that the state or local unit of government has knowledge is a facility, offers access to that parcel on a regular or continuous basis pursuant to an express public purpose and invites the general public to use that property for the express public purpose, the state or local unit of government is subject to this section but only with respect to that portion of the facility that is opened to and used by the general public for that express purpose, and not the entire facility. Express public purpose includes, but is not limited to, activities such as a public park, municipal office building, or municipal public works operation. Express public purpose does not include activities surrounding the acquisition or compilation of parcels for the purpose of future development.

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

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

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

(a) The applicant is a county, city, township, or village, or an authority established pursuant to the brownfield redevelopment financing act, if the municipality that created the authority pursuant to the brownfield redevelopment financing act commits to secure the loan with a pledge of the municipality's full faith and credit.

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

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

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

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

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

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

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

(6) A complete application shall include the following:

(a) A description of the proposed eligible activities.

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

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

(d) Location of the property.

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

(f) Current use of the property.

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

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

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

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

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

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

(7) To receive loan funds, approved applicants shall enter into a loan agreement with the department. At a minimum, the loan agreement shall contain all of the following:

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

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

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

(d) An implementation schedule.

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

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

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

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

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

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

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

(10) Subject to subsection (11), loans shall have the following terms:

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

(b) Loan recipients shall repay loans in equal annual installments of principal and interest beginning not later than 5 years after the first draw of the loan and concluding not later than 15 years after the first draw of the loan.

(11) Upon request of a loan recipient and a showing of financial hardship related to the project that was financed in whole or in part by the loan, the department may renegotiate the terms of any outstanding loan, including the length of the loan, the interest rate, and the repayment terms.

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

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

(14) As used in this section, "brownfield redevelopment financing act" means 1996 PA 381, MCL 125.2651 to 125.2672.

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

(a) Senate Bill No. 1345.

(b) Senate Bill No. 1346.

(c) Senate Bill No. 1348.

(d) House Bill No. 6359.

(e) House Bill No. 6363.

This act is ordered to take immediate effect.

Richard J. Brown

Clerk of the House of Representatives

Carol Morey Viventi

Secretary of the Senate

Approved .....

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Governor