

House Substitute for SENATE BILL No. 227

AN ACT concerning economic development of environmentally contaminated property; relating to liability for cleanup costs; enacting the contaminated property redevelopment act.

Be it enacted by the Legislature of the State of Kansas:

Section 1. The intent of this act is to provide a mechanism to allow real property with environmental contamination to be purchased without the purchaser becoming liable for cleanup costs. This act establishes the contaminated property redevelopment fund to help municipalities redevelop contaminated and potentially contaminated properties. This act shall be known and may be cited as the contaminated property redevelopment act.

Sec. 2. As used in this act:

(a) "Certificate of environmental liability release" or "CELR" means a certificate issued by the department that releases the purchaser from environmental liability for contamination existing at the time of issuance of the CELR on a property from actions taken by the bureau of environmental remediation under K.S.A. 65-159, 65-161 through 65-171z, 65-3401 et seq., 65-3430 et seq. and 65-3452a et seq., and amendments thereto.

(b) "Department" means the Kansas department of health and environment.

(c) "Owner" means any owner of record of property or authorized representative.

(d) "Person" means any individual, trust, firm, joint stock company, public or private corporation, limited liability company or partnership; the federal government or any agency or instrumentality thereof; any state, or any agency, instrumentality or political or taxing subdivision thereof; or any interstate body.

(e) "Property" means real property.

(f) "Purchaser" means any person who is acquiring property through purchase, foreclosure or default. For purposes of this act, "purchaser" does not include the federal government or a person who acquires property through gifts, bequests or inheritance.

(g) "Secretary" means the secretary of health and environment.

(h) "Site" means all areas and media to which environmental contamination or pollution has been released, transported or migrated.

Sec. 3. (a) A property shall be eligible for a CELR from the department if the purchaser submits a complete application to the department and the department finds that:

(1) The property is contaminated, not including contamination resulting from radon, lead-based paint or asbestos;

(2) the purchaser is not the party responsible for the contamination;

(3) the property is:

(A) Not currently owned by the purchaser;

(B) currently owned by the purchaser and was acquired through seizure, condemnation, foreclosure or default; or

(C) currently owned by the purchaser and the purchaser is the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof; or any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof;

(4) if the purchaser is a current owner, the purchaser could not have reasonably foreseen the threat of contamination and failed to take reasonable steps to prevent the contamination;

(5) there is no direct or indirect familial relationship or any contractual, corporate or financial relationship between the purchaser and the owner or the party responsible for the contamination, other than that by which such purchaser's interest in the property was conveyed or financed; and

(6) the property is not ineligible for a CELR pursuant to the provisions of section 4, and amendments thereto, and the purchaser has met the conditions required by section 4, and amendments thereto.

(b) It shall be the sole responsibility of the purchaser to provide the needed documentation to the department for the department to make an eligibility determination. These documents shall include:

(1) Phase I or Phase II environmental reports that are completed within industry standards;

(2) environmental assessment reports that are completed within industry standards; or

(3) other reports that will expedite the department's determination requested by the department.

(c) In making eligibility determinations, the department shall have authority to consider such additional factors as deemed relevant by the department, including the current and potential future use of the property.

(d) The department shall make a determination of eligibility or non-eligibility within 15 business days of receiving the application and all required information.

(e) Only property acquired after July 1, 2016, shall be eligible for a CELR.

Sec. 4. (a) In addition to the findings required for a determination of eligibility by the department pursuant to section 3, and amendments thereto, the department shall only grant a CELR upon the following conditions:

(1) The department determines that the purchaser has not caused or exacerbated and will not exacerbate the contamination on the property;

(2) the purchaser agrees to disclose the CELR to subsequent purchasers until the property can be used for unrestricted use;

(3) the purchaser agrees to reasonable access for future environmental investigation and remediation by the department or other party performing investigation and remediation under the oversight of the department; and

(4) the purchaser agrees to provide the department notification within 30 days of any transfer or sale of property that is subject to a CELR.

(b) Property shall not be eligible for a CELR if:

(1) The contamination on the property is subject to regulation under the nuclear energy development and radiation control act, K.S.A. 48-1601 et seq., and amendments thereto;

(2) the property is the source of the contamination and it is eligible for cleanup under the Kansas storage tank act, K.S.A. 65-34,100 et seq., or the Kansas drycleaner environmental response act, K.S.A. 65-34,141 et seq., and amendments thereto, unless the site has been enrolled into the appropriate cleanup program under such acts as applicable;

(3) the property is the source of the contamination and it is listed or proposed for listing on the national priorities list of superfund sites established under the comprehensive environmental response, compensation and liability act (CERCLA) (42 U.S.C.A. § 9601 et seq.);

(4) the purchaser has entered into or is the subject of one or more contracts, agreements or orders with the intended purpose of performing investigation or remediation of contamination at the property; or

(5) the purchaser has provided indemnification or release of environmental liability to any other party regarding contamination at the property.

(c) A CELR does not relieve the holder of requirements or duties of an applicable environmental use control agreement or risk management plan.

Sec. 5. The purchaser shall submit payment to the department of a fee with the CELR application. The fee for the CELR shall be determined by the department by rules and regulations, but shall not exceed \$2,000 and shall be based on the size and complexity of the site and property as determined by the department. If a CELR is not issued by the department, a refund shall be issued to the purchaser less the amount expended by the department to review and process the application.

Sec. 6. (a) A person may submit a request to the department for approval to modify a CELR. The department shall approve or deny the request within 30 business days after the department's receipt of the request. If the department denies the request, justification shall be provided with a written explanation of the denial. A denial by the department may include as a justification for denial that the person has not provided the necessary documentation to justify the modification as determined by the department.

(b) A CELR is not transferable.

(c) The department shall not acquire any liability by virtue of this act.

Sec. 7. (a) If the department determines that fraudulent information was provided by the purchaser to the department for the purpose of obtaining a CELR, the secretary may take such actions as necessary to protect human health or the environment and may take actions including, but not limited to:

- (1) Issuing an order directing the purchaser to take any emergency action necessary to protect human health and the environment;
- (2) issuing an order revoking the CELR;
- (3) issuing an order that will require the purchaser to implement a cleanup of the site to a standard that will allow for unrestricted use; or
- (4) assessing an administrative penalty of up to \$500 per day starting from the date of the application to the date the department determined false information was provided by the purchaser.

(b) Failure by a CELR recipient to grant reasonable access as required by this act or failure to otherwise comply with this act shall result in revocation of the CELR by the department.

(c) If an owner who has received a CELR exacerbates the contamination or interferes with a department-approved remedy on the property, the department shall revoke the CELR.

(d) If an owner who has received a CELR acquires liability for the contamination through contract, law or other mechanism, the CELR shall be null and void.

Sec. 8. (a) There is established in the state treasury the contaminated property redevelopment fund, which shall be administered by the secretary. Moneys collected by the secretary from the following sources shall be remitted to the state treasurer in accordance with K.S.A. 75-4215, and amendments thereto, and deposited in the state treasury to the credit of the fund:

- (1) Fees for CELR applications;
- (2) the federal brownfields program;
- (3) gifts, grants, reimbursements or appropriations from any source intended to be used for purposes of the fund;
- (4) interest attributable to the investment of moneys in the fund;
- (5) penalties collected pursuant to this act; and
- (6) repayment of any brownfields loan, including interest and fees.

(b) Expenditures from the contaminated property redevelopment fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or the secretary's designee for the following purposes:

- (1) Review and approval of CELR applications;
- (2) oversight and modifications of completed CELRs;
- (3) development, operation and maintenance of the CELR tracking system;
- (4) loans to municipalities for assessment and cleanup actions at brownfields redevelopment projects;
- (5) grants to municipalities for assessment and cleanup actions at brownfields redevelopment projects; and
- (6) administration and enforcement of the provisions of this act.

(c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the contaminated property redevelopment fund interest earnings based on:

- (1) The average daily balance of moneys in the contaminated property redevelopment fund for the preceding month; and
- (2) the net earnings rate of the pooled money investment portfolio for the preceding month.

Sec. 9. The secretary may adopt rules and regulations necessary to implement the provisions of this act.

Sec. 10. Any person adversely affected by any order or decision of the secretary under this act may, within 15 days of service of the order or decision, request a hearing in writing. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.