

## **Economic Development of Environmentally Contaminated Property; House Sub. for SB 227**

**House Sub. for SB 227** establishes the Contaminated Property Redevelopment Act, which allows a purchaser of real property acquired after July 1, 2016, to be released from environmental liability for pre-existing contamination. The bill also creates a redevelopment program for municipalities.

A purchaser, as defined by the bill, is allowed to apply to the Kansas Department of Health and Environment (KDHE) for a Certificate of Environmental Liability Release (CELR) by providing the following documentation:

- Phase I or Phase II environmental reports completed within industry standards;
- Environmental assessment reports completed within industry standards; or
- Other reports requested by KDHE.

Within 15 business days after receiving the purchaser's documentation, KDHE will be required to make the following findings:

- The property is contaminated, not including radon, lead-based paint, or asbestos;
- The purchaser is not responsible for the contamination;
- The property is:
  - Not owned by the purchaser;
  - Owned by the purchaser and was acquired through seizure, condemnation, foreclosure, or default; or
  - Owned by the State or any political or taxing subdivision;
- If the purchaser is a current owner, the purchaser could not have foreseen the threat of contamination and failed to take steps to prevent the contamination;
- There is no relationship between the purchaser and the party responsible for the contamination, other than the real property transaction; and
- The property has met the following conditions:
  - The purchaser has not caused or exacerbated, and will not exacerbate, the contamination;
  - The purchaser agrees to disclose the CELR to subsequent purchasers until the property may be used for any use;

- The purchaser agrees to grant access for future environmental investigation and remediation by KDHE; and
- The purchaser agrees to provide KDHE with notice within 30 days of any transfer or sale of the property covered by the CELR.

If KDHE makes those findings, the property will be eligible.

Property will not be eligible for a CELR if:

- The contamination is subject to regulation under the Kansas Nuclear Energy Development and Radiation Control Act;
- The property is the source of contamination and eligible for cleanup under the Kansas Storage Tank Act or the Kansas Drycleaner Environmental Response Act, unless the site has been enrolled in the applicable cleanup program;
- The property is the source of contamination and is either on the list of federal Superfund sites or proposed to be listed;
- The purchaser agrees for the contaminated property to be investigated or remediated; or
- The purchaser has provided indemnification or release of environmental liability to another party.

A CELR, which will not be transferable, will not relieve the purchaser of the requirements or duties of an applicable environmental use control agreement or risk management plan. A person may request KDHE to modify a CELR. If KDHE denies a request, a written justification will be sent to the person within 30 days.

A CELR will be revoked or made void if the purchaser:

- Failed to grant access to the property, as required by the bill;
- Exacerbated the contamination or interfered with KDHE's approved remedy for the property; or
- Acquired liability for the contamination through contract, law, or other mechanism.

If fraudulent information is provided to KDHE, the Secretary will be permitted to modify or revoke a CELR, including an order to clean up the site and an administrative penalty of up to \$500 per day. A purchaser will be required to pay a fee, which will not exceed \$2,000 and will be set by KDHE by rules and regulations. A refund will be issued, less the amount expended to process the application, if KDHE did not issue a CELR. Persons adversely affected by any decision will have 15 days to request a hearing, which will be conducted in accordance with the

Kansas Administrative Procedure Act. KDHE will not acquire liability under the provisions of the bill.

The bill establishes the Contaminated Property Redevelopment Fund, which will be administered by the Secretary of Health and Environment. The Fund will receive moneys from fees for CELR applications; the federal Brownfields Program; gifts, grants, reimbursements, or appropriations; interest; penalties; and repayment of brownfields loans. The Fund, pursuant to appropriation acts, will be used for the administration of the bill and grants and loans to municipalities for brownfields projects.

The bill states the Secretary of Health and Environment may adopt rules and regulations to implement the provisions of the Act.