

No. 2009-26

AN ACT

SB 84

Amending the act of May 19, 1995 (P.L.33, No.3), entitled "An act limiting environmental liability for economic development agencies, financiers and fiduciaries," further providing for definitions, for limitation of economic development agency environmental liability and for defenses to liability.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The definitions of "department," "economic development agencies," "environmental acts" and "indicia of ownership" in section 3 of the act of May 19, 1995 (P.L.33, No.3), known as the Economic Development Agency, Fiduciary and Lender Environmental Liability Protection Act, are amended to read:

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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"Department." The Department of Environmental **[Resources]** *Protection* of the Commonwealth.

"Economic development agencies." The term includes:

(1) Any redevelopment authority created under the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law, **and any nonprofit corporation created and controlled by a redevelopment authority to carry out its statutory purpose.**

(2) Any industrial development agency as that term is defined in the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act.

(3) Any industrial and commercial development authority created under the act of August 23, 1967 (P.L.251, No.102), known as the Economic Development Financing Law.

(4) Any area loan organization as that term is defined in the act of July 2, 1984 (P.L.545, No.109), known as the Capital Loan Fund Act.

(5) Any other Commonwealth or municipal authority which acquires title or an interest in property.

(6) Municipalities or municipal industrial development or community development departments organized by ordinance under a home rule charter which buy and sell land for community development purposes.

(7) Tourist promotion agencies or their local community-based nonprofit sponsor which engage in the acquisition of former industrial sites as part of an "Industrial Heritage" or similar program.

(8) Conservancies engaged in the renewal or reclamation of an industrial site.

“Environmental acts.” Collectively and separately, the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act, the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, the act of October 5, 1984 (P.L.734, No.159), known as the Worker and Community Right-to-Know Act, the act of July 13, 1988 (P.L.525, No.93), referred to as the Infectious and Chemotherapeutic Waste Law, the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act, the act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill Prevention Act, the act of December 7, 1990 (P.L.639, No.165), known as the Hazardous Material Emergency Planning and Response Act, and the act of June 11, 1992 (P.L.303, No.52), known as the Oil Spill Responder Liability Act, and all such acts as they may be amended from time to time, and any Federal, State or local law, statute, regulation, rule, ordinance, court or administrative order or decree, **common law**, interpretation or guidance, now or hereafter in existence pertaining to employees, occupational health and safety, public health or safety, natural resources or the environment.

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“Indicia of ownership.” Any legal or equitable interest in property, **including fee title**, acquired directly or indirectly:

- (1) for securing payment of a loan or indebtedness, a right of reimbursement or subrogation under a guaranty or the performance of another obligation;
- (2) evidencing ownership under a lease financing transaction where the lessor does not initially select or ordinarily control the daily operation or maintenance of the property; **[or]**
- (3) in the course of creating, protecting or enforcing a security interest or right of reimbursement of subrogation under a guaranty[.]; **or**
- (4) **to secure public funding for the environmental investigation, remediation or redevelopment of or implementation of infrastructure improvements at the property for, among other purposes, the transfer of title to the property to a third party after rehabilitation.**

The term includes evidence of interest in mortgages, deeds of trust, liens, surety bonds, guaranties, lease financing transactions where the lessor does not initially select or ordinarily control the daily operation or maintenance of the property, other forms of encumbrances against property recognized under applicable law as vesting the holder of the security interest with some indicia of title.

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Section 2. Sections 4 and 7 of the act are amended to read:

Section 4. Limitation of economic development agency environmental liability.

(a) General rule.—An economic development agency that holds an indicia of ownership in property:

(1) as a security interest for the purpose of developing or redeveloping the property; **[or]**

(2) to finance an economic development or redevelopment activity; *or*

(3) *to secure public funding for the environmental investigation, remediation or redevelopment of or implementation of infrastructure improvements at the property for, among other purposes, the transfer of title to the property to a third party after rehabilitation*

shall not be liable under the environmental acts to the department or to any other person in accordance with **[the following:] this section.**

(b) Scope of limited liability.—

(1) An economic development agency shall not be liable in an action by the department, as a responsible person, unless the economic development agency, its employees or agents directly cause an immediate release or directly exacerbate a release of a regulated substance on or from the property.

(1.1) An economic development agency, its officers, directors, agents, members, employees and its professional consultants shall not be liable, including, but not limited to, for property damages, diminution of property value, stigma damages, natural resource damages, economic loss, bodily injury or death relating to any regulated substance currently or previously released on or from the property, in any action by a person alleging liability of any kind pursuant to the environmental acts, unless the economic development agency, its officers, directors, agents, members, employees or its professional consultants directly cause an immediate release or directly exacerbate a release of any regulated substance on or from the property.

(2) An economic development agency which forecloses on or assumes possession of a property shall remain within the exemption from liability under **[this section] subsection (a).**

(3) An economic development agency that conducts a remedial action in accordance with a written agreement with the department shall not be liable as a responsible party, owner, operator or occupier in any action by the department for a release or potential release of any regulated substance.

(4) There is cooperation with governmental agencies performing a remedial action, as follows:

(i) An economic development agency and any of its successors and assigns may take no action that would disturb or be inconsistent with remedial response that is proposed, approved or implemented by the Federal Environmental Protection Agency.

(ii) An economic development agency and any of its successors and assigns shall permit access to Federal and Commonwealth agencies and

other parties acting under the direction of these agencies to evaluate, perform or maintain a remedial action.

(iii) An economic development agency or any of its successors and assigns shall perform, operate and maintain remedial actions pursuant to State laws as directed by the department.

Section 7. Defenses to liability.

A lender, fiduciary or economic development agency can avoid liability under the environmental acts [**or the common-law equivalents**] by showing evidence that a release or threatened release of regulated substances for which the lender [**or**], fiduciary *or economic development agency* otherwise is responsible under sections 4, 5 and 6 was caused by any of the following:

- (1) An act of God.
- (2) An intervening act of a public agency.
- (3) Migration from property owned by a third party.
- (4) Actions taken or omitted in the course of rendering care, assistance or advice in accordance with the environmental acts or at the direction of the department.
- (5) An act of a third party who was not an agent or employee of the lender, fiduciary or economic development agency.
- (6) If the alleged liability for a lender or economic development agency arises after foreclosure and the lender or economic development agency exercised due care with respect to the lender's or economic development agency's knowledge about the regulated substances and took reasonable precautions based upon such knowledge against foreseeable actions of third parties and the consequences arising therefrom. A lender, fiduciary or economic development agency can avoid liability by proving any other defense which may be available to it under the environmental acts or common law.

Section 3. This act shall take effect in 60 days.

APPROVED—The 27th day of July, A.D. 2009.

EDWARD G. RENDELL