

SENATE BILL No. 365

By Committee on Commerce

1-26

1 AN ACT concerning economic development of environmentally
2 contaminated property; relating to liability for cleanup costs; enacting
3 the contaminated property redevelopment act.
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5 *Be it enacted by the Legislature of the State of Kansas:*

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

13 Sec. 2. As used in this act:

14 (a) "Certificate of environmental liability release" or "CELR" means
15 a certificate issued by the department that releases the purchaser from
16 environmental liability for contamination existing at the time of issuance
17 of the CELR on a property from actions taken by the bureau of
18 environmental remediation under K.S.A. 65-159, 65-161 through 65-171z,
19 65-3401 et seq., 65-3430 et seq. and 65-3452a et seq., and amendments
20 thereto.

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

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

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

30 (e) "Property" means real property.

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

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

36 (h) "Site" means all areas and media to which environmental

1 contamination or pollution has been released, transported or migrated.

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

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

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

8 (3) the property is:

9 (A) Not currently owned by the purchaser;

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

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

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

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

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

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

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

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

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

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

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

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

1 CELR.

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

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

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

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

13 (4) the purchaser agrees to provide the department notification within
14 30 days of any transfer or sale of property that is subject to a CELR.

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

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

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

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

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

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

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

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

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

9 (b) A CELR is not transferable.

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

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

16 (1) Issuing an order directing the purchaser to take any emergency
17 action necessary to protect human health and the environment;

18 (2) issuing an order revoking the CELR;

19 (3) issuing an order that will require the purchaser to implement a
20 cleanup of the site to a standard that will allow for unrestricted use; or

21 (4) assessing an administrative penalty of up to \$500 per day starting
22 from the date of the application to the date the department determined
23 false information was provided by the purchaser.

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

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

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

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

39 (1) Fees for CELR applications;

40 (2) the federal brownfields program;

41 (3) gifts, grants, reimbursements or appropriations from any source
42 intended to be used for purposes of the fund;

43 (4) interest attributable to the investment of moneys in the fund;

1 (5) penalties collected pursuant to this act; and

2 (6) repayment of any brownfields loan, including interest and fees.

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

7 (1) Review and approval of CELR applications;

8 (2) oversight and modifications of completed CELRs;

9 (3) development, operation and maintenance of the CELR tracking
10 system;

11 (4) loans to municipalities for *assessment and cleanup actions at*
12 *brownfields* redevelopment projects;

13 (5) grants to municipalities for *assessment and cleanup actions at*
14 *brownfields* redevelopment projects; and

15 (6) administration and enforcement of the provisions of this act.

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

19 (1) The average daily balance of moneys in the contaminated
20 property redevelopment fund for the preceding month; and

21 (2) the net earnings rate of the pooled money investment portfolio for
22 the preceding month.

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

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

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