
OLR Bill Analysis

sHB 5573 (as amended by House "A")*

AN ACT CONCERNING BROWNFIELD REMEDIATION AND DEVELOPMENT.

SUMMARY:

This bill gives property owners investigating and remediating contaminated property more options for complying with the Department of Energy and Environmental Protection's (DEEP) requirements for completing such tasks. It allows those participating in DEEP's voluntary cleanup program to submit interim verifications, signifying that a site was remediated according to DEEP standards, except for groundwater undergoing long-term remediation and monitoring. It also allows participants to submit interim or final verifications for part of a site instead of waiting until the entire site is remediated.

By law, property owners may begin to investigate and remediate a site under the voluntary program before they must do so under the Transfer Act, which sets deadlines for completing these actions. The bill allows the party responsible for certifying the site's investigation and remediation under the program to submit an interim instead of a final verification. It also provides a narrow window during which it may delay recording in the land records restrictions on how the remediated site may be used.

The bill exempts more property from the Transfer Act. By law, a property owner must comply with the act if the property generated more than 100 kilograms (220 pounds) of hazardous waste in any month. Current law exempts property if the waste was generated by soil, groundwater, or sediment remediation. The bill also exempts property if the waste consists of removed or abated building materials, such as asbestos.

The bill also exempts sites municipalities take by eminent domain under any statute, not just those authorizing takings for redevelopment purpose, and further exempts these sites from the act when a municipality conveys the site to another party, as current law allows for sites taken under the redevelopment statutes.

Lastly, the bill allows the Department of Economic and Community Development (DECD) commissioner to forgive or delay repayments of brownfield loans made to private developers, not just municipalities and regional entities, as current law allows.

*House Amendment "A":

1. specifies the conditions a licensed environmental professional (LEP) must meet to submit an interim verification under the voluntary program,
2. drops a provision allowing interim verification under DEEP's voluntary program for remediating sites where the groundwater is unsuitable for human consumption,
3. adds a provision for submitting interim verification under the Transfer Act,
4. exempts from the act property where building materials are being removed or abated,
5. adds the provision allowing the DECD commissioner to forgive brownfield loans made to private developers, and
6. makes technical changes.

EFFECTIVE DATE: Upon Passage

INTERIM AND PARTIAL SITE VERIFICATIONS

Voluntary Remediation Program

The bill gives the parties responsible for certifying a site's environmental status and its remediation (certifying parties) more latitude for remediating sites under DEEP's Voluntary Remediation

Program, which allows them to undertake these tasks before they must do so under the Transfer Act. The program also requires them to retain an LEP to verify that these tasks were completed according to DEEP standards, unless DEEP notifies the property owner that it will perform the tasks.

Under current law, the LEP can verify that the entire site or the release area was investigated according to those standards. (The release area is that part of a site where hazardous waste was discharged, spilled, or released.) The bill allows (1) the site to be investigated and remediated in sections and (2) for the LEP to verify that each section was investigated and remediated according to DEEP standards, instead of waiting for the entire site to be investigated and remediated.

The bill also allows the LEP to verify that the site, part of the site, or the release area was investigated and remediated except for contaminated groundwater undergoing long-term remediation and monitoring (interim verification). The LEP may do so by submitting his or her written opinion on a DEEP form indicating that:

1. the investigation was performed according to the prevailing DEEP standards and guidelines;
2. remediation was completed according to DEEP's remediation standards, except for the groundwater;
3. the groundwater is undergoing remediation, but has not been remediated according to the applicable groundwater remediation standards; and
4. exposed pathways to the groundwater area meet DEEP's remediation standards.

The bill authorizes the commissioner to audit interim verifications under the same conditions he may audit final verifications under current law.

Conveyance Under the Transfer Act

The bill also gives property owners who did not participate in the voluntary program latitude when investigating and remediating sites under the Transfer Act. Current law allows them to convey or transfer all or part of a site only after the certifying party verifies that the site or part of the site was investigated and completely remediated (final verification).

The bill allows property owners to convey or transfer all or part of the site after completing an interim verification. It allows them do so regardless of the date on the forms they submitted under the act indicating the site's environmental status and remediation plan or certifying that the remediation was completed according to DEEP standards.

In allowing certifying parties to submit interim verifications, the bill tacitly requires them to record an environmental land use restriction (ELUR) in the local land records when they submit such verifications to DEEP. (ELURs restrict how a remediated property can be redeveloped.) But it also creates a narrow window under which an owner may delay recording an ELUR.

Under the bill, a certifying party that submits the interim verification for a site on or before December 31, 2014 does not have to record an ELUR until September 1, 2015. When the certifying party records the ELUR, it must do so as existing law requires. If the certifying party fails to meet the September 1 recording deadline, the interim verification is invalid and the DEEP commissioner cannot recognize interim verification.

MODIFYING BROWNFIELD LOAN REPAYMENT TERMS

The bill allows the DECD commissioner to modify the terms and conditions of brownfield remediation loans made to private developers, not just those made to municipalities, economic development agencies, regional development agencies, and regional planning organizations, as current law allows. Under current law, she may modify the terms and conditions by delaying or forgiving principal, interest, or principal and interest payments if she determines

that it is in the state's best interest to do so. Under the bill, she may do these things if she determines that it is in the state's best interest from an economic or community development perspective, which the bill does not define.

BACKGROUND

Related Bill

HB 5544 (File 449) allows interim verification under the Transfer Act for a portion of a site.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/20/2014)