

AMENDED IN SENATE MAY 15, 2003

AMENDED IN SENATE MAY 6, 2003

AMENDED IN SENATE MARCH 24, 2003

SENATE BILL

No. 493

Introduced by Senator Cedillo

February 20, 2003

An act to add ~~Sections 25400.5, 25400.6, 25400.7, 25400.8, 25400.9, 25400.10, and 25400.11~~ to the Health and Safety Chapter 6.9.1 (commencing with Section 25400.1) to Division 20 of the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 493, as amended, Cedillo. Hazardous materials: liability.

Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, imposes liability for hazardous substances removal or remedial actions.

Existing law, including the Porter-Cologne Water Quality Control Act and the provisions regulating hazardous waste and releases from underground storage tanks, impose various requirements with regard to corrective action and cleanup and abatement, upon persons subject to those acts.

This bill would *enact the Brownfields Revitalization Act of 2003, which would* provide that an innocent purchaser or a bona fide prospective purchaser, as defined, is not liable for response costs under specified state ~~or local~~ laws ~~associated with that impose liability for response costs upon an owner or occupant of property acquired on or after January 1, 2004, for cleanup of preexisting pollution conditions caused by a release or threatened release of a hazardous material at a site~~

on, under, or adjacent to that property. The bill would immunize an innocent purchaser or bona fide prospective purchaser for response costs associated with a release or threatened release of a hazardous material at a site, as defined, if the innocent purchaser or bona fide prospective purchaser meets specified conditions. The bill would also provide that a person is not liable *under those specified state laws* for response costs associated with a release or threatened release of a hazardous material from a site that is not owned by that person, if the person owns real property that is contiguous to, or otherwise similarly situated with respect to, that site and the person complies with additional specified requirements. The bill would, if there are unrecovered response costs incurred by a lead agency, as defined, at a site for which an owner of the site is not liable as a bona fide prospective purchaser, require the lead agency to have a lien on the site, or authorize the lead agency to obtain from the owner a lien on other property or other assurance of payment for the unrecovered response costs, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 25400.5 is added to the Health and~~
 2 ~~Safety Code, to read:~~
 3 ~~25400.5. For purposes of this chapter, the following terms~~
 4 ~~have the following meaning:~~
 5 ~~(a) “Applicable statute” means a state or local law that imposes~~
 6 ~~liability for response costs on an owner or occupant of property~~
 7 ~~acquired January 1, 2004, for cleanup of preexisting pollution~~
 8 ~~conditions caused by a release of hazardous material on, under, or~~
 9 ~~adjacent to the property, including, but not limited to, all of the~~
 10 ~~following:~~
 11 ~~(1) Division 7 (commencing with Section 13000) of the Water~~
 12 ~~Code.~~
 13 ~~(2) Chapter 6.5 (commencing with Section 25100), Chapter~~
 14 ~~6.7 (commencing with Section 25280), Chapter 6.75~~
 15 ~~(commencing with Section 25299.10), and Chapter 6.8~~
 16 ~~(commencing with Section 25300).~~



1 SECTION 1. Chapter 6.9.1 (commencing with Section
2 25400.1) is added to Division 20 of the Health and Safety Code,
3 to read:

4
5 CHAPTER 6.9.1. BROWNFIELDS REVITALIZATION ACT OF 2003
6 25400.1. (a) The Legislature finds and declares all of the
7 following:

8 (1) California's exploding population growth is putting stress
9 on the state's natural resources, infrastructure, and supply of
10 useable land.

11 (2) The state can promote and encourage more orderly and
12 efficient growth patterns by making urban and downtown areas
13 more attractive for private development and redevelopment,
14 thereby relieving some of those stresses on natural resources and
15 making better use of existing infrastructure.

16 (3) There are thousands of so-called brownfields and similar
17 tracts of land in California's urban areas that lie dormant, as
18 previous industrial and other uses have left them contaminated
19 and unusable.

20 (4) State law impedes the redevelopment of these properties by
21 imposing on innocent purchasers and bona fide prospective
22 purchasers, who are willing to invest in these properties to put
23 them to productive use, the same liability that state law imposes on
24 the original polluters.

25 (5) This liability, that is created simply by virtue of ownership
26 or occupancy, chills interest in acquiring and redeveloping these
27 properties, leaving private investors to pursue lower-risk
28 properties on the urban fringe.

29 (6) The result of this liability is increasingly abandoned urban
30 neighborhoods, lost tax revenue, and outward development
31 patterns that leads to further development of greenfield sites, while
32 contaminated urban sites lie unused or underused.

33 (7) It is the intent of this chapter to encourage acquisition of
34 these urban sites for purposes of development and redevelopment
35 by limiting the liability of innocent purchasers and bona fide
36 prospective purchasers for response actions when the innocent
37 purchasers and bona fide prospective purchasers have met the
38 requirements specified in this chapter.

39 (8) It is not the intent of this chapter to change or modify
40 existing state or local authority to require necessary and



1 appropriate response actions at the sites' subject to this chapter
2 based on the sites future intended land use, as a condition of
3 issuing discretionary permits relating to development, use, or
4 occupancy.

5 (9) Further, it is not the intent of this chapter to impair a cause
6 of action against a polluter responsible for creating a spill,
7 discharge, or presence of a hazardous material.

8 (b) This chapter shall be known, and may be cited as, the
9 "Brownfields Revitalization Act of 2003."

10 25400.5. For purposes of this chapter, the following terms
11 have the following meanings:

12 (a) "Applicable statute" means all of the following state laws,
13 to the extent that the state law imposes liability for response costs
14 on an owner or occupant of property acquired on or after January
15 1, 2004, for cleanup of preexisting pollution conditions caused by
16 a release of hazardous material on, under, or adjacent to the
17 property:

18 (1) Title 1 (commencing with Section 3479) of, Title 2
19 (commencing with Section 3490) of, and Title 3 (commencing with
20 Section 3501) of, Part 3 of Division 4 of the Civil Code.

21 (2) Chapter 3 (commencing with Section 731) of Title 10 of Part
22 2 of the Code of Civil Procedure.

23 (3) Section 5650 of the Fish and Game Code.

24 (4) Chapter 6.5 (commencing with Section 25100), Chapter
25 6.67 (commencing with Section 25270), Chapter 6.7 (commencing
26 with Section 25280), Chapter 6.75 (commencing with Section
27 25299.10), Chapter 6.8 (commencing with Section 25300) and
28 Chapter 6.10 (commencing with Section 25401).

29 (5) Article 12.5 (commencing with Section 33459) of Chapter
30 4 of Part 1 of Division 24 of the Health and Safety Code.

31 (6) Division 7 (commencing with Section 13000) of the Water
32 Code.

33 (b) "Bona fide prospective purchaser" means a person or a
34 tenant of a person who acquires ownership of a site on or after
35 January 1, 2004, and that establishes all of the following by a
36 preponderance of the evidence:

37 (1) All disposal of hazardous materials at the site occurred
38 before the person acquired the site.

39 (2) The person made all appropriate inquiries into the previous
40 ownership and uses of the site in accordance with generally



1 accepted good commercial and customary standards and practices.
2 One or more of the following shall satisfy the “all appropriate
3 inquiries” requirement:

4 (A) Compliance with the procedures of the American Society
5 for Testing and Materials, including the document known as
6 “Standard E1527-001,” entitled “Standard Practice for
7 Environmental Site Assessment: Phase I Environmental Site
8 Assessment Process,” in the form of the document current at the
9 time of the inquiry.

10 (B) Compliance with the standards and practices established by
11 the Administrator of the United States Environmental Protection
12 Agency pursuant to Section 9601(35)(B)(ii) of Title 42 of the
13 United States Code.

14 (C) In the case of property in residential or other similar use at
15 the time of purchase by a nongovernmental or noncommercial
16 entity, a site inspection and title search that does not reveal a basis
17 for further investigation.

18 (3) The person provides all legally required notices with
19 respect to the discovery or release of hazardous materials at the
20 site.

21 (4) The person exercises appropriate care with respect to
22 hazardous materials found at the site by taking reasonable steps to
23 stop continuing release, prevent threatened future release, and
24 prevent or limit human, environmental, or natural resource
25 exposure to previously released hazardous material.

26 (5) The person provides full cooperation, assistance, and
27 access to persons who are authorized to conduct response actions
28 or natural resource restoration at a site, including the cooperation
29 and access necessary for the installation, integrity, operation, and
30 maintenance of complete or partial response actions or natural
31 resource restoration at the site.

32 (6) The person is in compliance with land use restrictions
33 established or relied on in connection with the response action at
34 a site and does not impede the effectiveness or integrity of
35 institutional control employed at the site in connection with a
36 response action.

37 (7) The person complies with all requests for information or
38 administrative subpoena issued by the lead agency under this
39 chapter.



1 (8) The person is not potentially liable, or affiliated with any
2 other person who is potentially liable, for response costs at a site
3 through direct or indirect familial relationship, or contractual,
4 corporate, or financial relationship, other than a contractual,
5 corporate, or financial relationship that is created by the
6 instruments by which title to the site is conveyed or financed or by
7 a contract for the sale of goods or services, or the result of a
8 reorganization of a business entity that was potentially liable.

9 (c) (1) “Contractual relationship” includes, but is not limited
10 to, a relationship based on a land contract, deed, easement, lease,
11 or other instrument transferring title or possession, unless the site
12 was acquired by an innocent purchaser after the disposal or
13 placement of the hazardous material on, in, or at the site, and the
14 person meets the conditions specified in paragraph (2) and
15 establishes one or more of following by a preponderance of the
16 evidence:

17 (A) At the time the person acquired the site, the person did not
18 know and did not have reason to know, that hazardous material that
19 is the subject of the release or threatened release was disposed of
20 on, in, or at the site, as provided in paragraph (3).

21 (B) The person is a government entity that acquired the site by
22 escheat, or through any other involuntary transfer or acquisition,
23 or through the exercise of eminent domain authority by purchase
24 or condemnation.

25 (C) The person acquired the site by inheritance or bequest.

26 (2) The person establishes all of the following:

27 (A) The person is an innocent purchaser.

28 (B) The person provides full cooperation, assistance, and site
29 access to the persons that are authorized to conduct response
30 actions at the site, including the cooperation and access necessary
31 for the installation, integrity, operation, and maintenance of a
32 complete or partial response action at the site.

33 (C) The person is in compliance with land use restrictions
34 established or relied on in connection with the response action at
35 a site.

36 (D) The person does not impede the effectiveness or integrity
37 of institutional control employed at the site in connection with a
38 response action.

39 (3) To establish that, at the time the person acquired the site, the
40 person did not know and did not have reason to know that



1 hazardous material that is the subject of the release or threatened
2 release was disposed of on, in, or at the site, the person shall
3 demonstrate all of the following by a preponderance of the
4 evidence:

5 (A) On or before the date on which the person acquired the site,
6 the person carried out all appropriate inquiries into the previous
7 ownership and uses of the site in accordance with generally
8 accepted good commercial and customary standards and practices.

9 (B) The person took reasonable steps to stop continuing
10 release, prevent threatened future release, and prevent or limit
11 human, environmental, or natural resource exposure to previously
12 released hazardous material.

13 (C) In the case of property for residential use or other similar
14 use purchased by a nongovernmental or noncommercial entity, a
15 site inspection and title search that did not reveal a basis for further
16 investigation shall satisfy the requirements of this paragraph.

17 (4) Nothing in this section diminishes the liability of a previous
18 owner or operator of a site who would otherwise be liable for the
19 release of hazardous materials. Notwithstanding this paragraph, if
20 the person obtains actual knowledge of the release or threatened
21 release of hazardous materials at a site when the person owned the
22 real property and then subsequently transferred ownership of the
23 property to another person without disclosing that knowledge, the
24 person who fails to make that disclosure is not entitled to a defense
25 under Section 25400.6.

26 (5) Nothing in this section affects the liability of a person who,
27 by an act or omission, causes or contributes to the release or
28 threatened release of a hazardous material that is the subject of the
29 action relating to the site.

30 (d) “Innocent purchaser” means a person who can establish all
31 of the following by a preponderance of the evidence:

32 (1) The release or threatened release of a hazardous material
33 and the damages resulting therefrom were caused solely by an act
34 or omission of a third party, other than an employee or agent of the
35 person, other than one whose act or omission occurs in connection
36 with a contractual relationship, existing directly or indirectly, with
37 the person, except where the sole contractual arrangement arises
38 from a published tariff and acceptance for carriage by a common
39 carrier by rail.



1 (2) He or she exercised due care with respect to the hazardous
2 material concerned, taking into consideration the characteristics of
3 the hazardous material, in light of all relevant facts and
4 circumstances.

5 (3) He or she took precautions against foreseeable acts or
6 omissions of a third party and the consequences that could
7 foreseeably result from those acts or omissions.

8 (e) "Hazardous material" has the same meaning as defined in
9 paragraph (8) of subdivision (a) of Section 25395.20.

10 (f) "Lead agency" means the agency that exercises primary
11 environmental oversight authority over remediation of a site and
12 incurs response costs for the site. If there is more than one potential
13 lead agency, an agency may request and be designated as the
14 administering agency by the Site Designation Committee applying
15 the factors set forth in subdivision (c) of Section 25262, and that
16 administering agency shall be deemed to be the lead agency for
17 purposes of this chapter.

18 (g) "Response" includes a response action as defined in
19 Section 25323.3, or a response under any other applicable statute.

20 ~~(h) "Site" means an area, location, or site where a hazardous
21 material has been released or threatens to be released into the
22 environment.~~

23 ~~SEC. 2. Section 25400.6 is added to the Health and Safety
24 Code, to read:~~

25 ~~25400.6. Notwithstanding any other provision of state law,
26 including, but not limited to, Section 25323.5, an innocent~~

27 ~~(h) (1) Subject to paragraph (2), "site" means an area that
28 meets both of the following conditions:~~

29 ~~(A) It is located in an urban area, as defined in paragraph (3).~~

30 ~~(B) It was previously the site of an economic activity that is no
31 longer in operation at that location as defined in paragraph (12)
32 of subdivision (a) of Section 25395.20.~~

33 ~~(2) "Site" does not include any of the following:~~

34 ~~(A) Property listed, or proposed for listing, on the National
35 Priorities List pursuant to the Comprehensive Environmental
36 Response, Compensation, and Liability Act of 1980 (42 U.S.C.
37 Sec. 9605(a)(8)(B)).~~

38 ~~(B) Property that is, or was, owned or operated by a
39 department, agency, or instrumentality of the United States.~~



1 (C) Property that will be the site of a contiguous expansion or
2 improvement of an operating industrial or commercial facility,
3 unless one of the following applies:

4 (i) It is a small business, as defined in paragraph (15) of
5 subdivision (a) of Section 25395.20.

6 (ii) It is a nonprofit corporation formed under the Nonprofit
7 Public Benefit Corporation Law (Part 2 (commencing with
8 Section 5110) of Division 2 of Title 1 of the Corporations Code) or
9 the Nonprofit Religious Corporation Law (Part 4 (commencing
10 with Section 9110) of Division 2 of Title 1 of the Corporations
11 Code).

12 (iii) It is a small business incubator that is undertaking the
13 expansion with the assistance of a grant authorized by Section
14 15339.3 of the Government Code or a loan guarantee provided
15 pursuant to Section 14090 of the Corporations Code.

16 (3) For purposes of paragraph (1), "urban area" means either
17 of the following:

18 (A) The central portion of a city or a group of contiguous cities
19 with a population of 50,000 or more, together with adjacent
20 densely populated areas having a population density of at least
21 1,000 persons per square mile.

22 (B) An urbanized area as defined in subdivision (a) of, or
23 subparagraph (A) of paragraph (1) of subdivision (b) of, Section
24 21071 of the Public Resources Code.

25 25400.6. (a) An innocent purchaser or a bona fide
26 prospective purchaser is not liable under an applicable statute for
27 response costs associated with a release or threatened release of a
28 hazardous material at a site.

29 ~~SEC. 3. Section 25400.7 is added to the Health and Safety~~
30 ~~Code, to read:~~

31 ~~25400.7. (a) Notwithstanding any other provision of state~~
32 ~~law, including, but not limited to, Section 25323.5, a person is not~~

33 (b) This section does not modify or limit the existing authority
34 of a state or local agency to impose a condition on the issuance of
35 a discretionary permit relating to the development, use, or
36 occupancy of any site.

37 25400.7. (a) A person is not liable under an applicable statute
38 for response costs associated with a release or threatened release
39 of a hazardous material from a site that is not owned by that person,



1 if the person demonstrates, by a preponderance of the evidence,
2 that both of the following apply:

3 (1) The person owns real property that is contiguous to, or
4 otherwise similarly situated with respect to, the site, and the real
5 property owned by that person is, or may be, contaminated by a
6 release or threatened release from the site.

7 (2) The person demonstrates by a preponderance of the
8 evidence all of the following:

9 (A) The person did not cause, contribute, or consent to the
10 release or threatened release.

11 (B) The person is not potentially liable, or affiliated with a
12 person who is potentially liable, for response costs at a site through
13 one or more of the following:

14 (i) A direct or indirect familial relationship.

15 (ii) A contractual, corporate, or financial relationship, other
16 than a contractual, corporate, or financial relationship that is
17 created by a contract for the sale of goods or services.

18 (iii) A reorganization of a business entity that was potentially
19 liable.

20 (C) The person takes reasonable steps to stop a continuing
21 release, prevent threatened future release, and prevent or limit
22 human, environmental, or natural resource exposure to hazardous
23 material released on or from property owned by that person.

24 (D) The person provides full cooperation, assistance, and
25 access to persons who are authorized to conduct response actions
26 or natural resource restoration at the site from which there has been
27 a release or threatened release, including the cooperation and
28 access necessary for the installation, integrity, operation, and
29 maintenance of a complete or partial response action or natural
30 resource restoration at the site.

31 (E) The person is in compliance with land use restrictions
32 established or relied on in connection with the response action at
33 the site, and does not impede the effectiveness or integrity of
34 institutional control employed in connection with a response
35 action.

36 (F) The person is in compliance with any request for
37 information or administrative subpoena issued by the lead agency.

38 (G) The person provides all legally required notices with
39 respect to the discovery or release of hazardous materials at the
40 site.



1 (H) At the time the person acquired the property, the person
2 conducted all appropriate inquiry with respect to the property and
3 did not know or have reason to know that the property was or could
4 be contaminated by a release or threatened release of hazardous
5 material from other real property not owned or operated by the
6 person.

7 A person who knew or had reason to know at the time of
8 acquisition that the property was or could be contaminated by a
9 release or threatened release of a hazardous material from other
10 real property not owned or operated by the person may
11 nevertheless qualify as a bona fide prospective purchaser if he or
12 she meets the requirements of subdivision (b) of Section 25400.5.

13 ~~With~~

14 (b) *With* respect to a hazardous material from one or more
15 sources that are not on the property of a person who is a contiguous
16 property owner that enters groundwater beneath the property of
17 the person solely as a result of subsurface migration in an aquifer,
18 subparagraph (C) of paragraph (2) of subdivision (a) does not
19 require the person to conduct groundwater investigations or to
20 install groundwater remediation systems, except in accordance
21 with Management Memo #90-11 issued by the Department of
22 Toxic Substances Control titled “RP-Ownership of Property Over
23 Contaminated Groundwater.”

24 ~~Nothing in this section limits~~

25 (c) *This section does not limit* a defense to liability that may be
26 available to the person under any other provision of state law, and
27 ~~nothing in this section imposes~~ *this section does not impose*
28 liability on the person that is not otherwise imposed by an
29 applicable statute.

30 ~~SEC. 4. Section 25400.8 is added to the Health and Safety~~
31 ~~Code, to read:~~

32 (d) *This section does not modify or limit the existing authority*
33 *of a state or local agency to impose a condition on the issuance of*
34 *a discretionary permit relating to the development, use, or*
35 *occupancy of a site.*

36 25400.8. The protections provided in Sections 25400.6 and
37 25400.7 are in addition to, and do not otherwise affect, other
38 protections provided under state law.

39 ~~SEC. 5. Section 25400.9 is added to the Health and Safety~~
40 ~~Code, to read:~~



1 25400.9. If there are unrecovered response costs incurred by
2 a lead agency at a site for which an owner of the site is not liable
3 as a bona fide prospective purchaser, the lead agency shall have a
4 lien on the site, or may by agreement with the owner, obtain from
5 the owner a lien on other property or other assurance of payment
6 for the unrecovered response costs, subject to all of the following:

7 (a) A response action for which there are unrecovered costs of
8 the lead agency is carried out at the site.

9 (b) The response action increases the fair market value of the
10 site above the fair market value of the site that existed before the
11 response action was initiated.

12 (c) The lien shall arise at the time at which costs are first
13 incurred by the lead agency with respect to a response action at the
14 site.

15 (d) The lien amount may not exceed the increase in fair market
16 value of the property attributable to the response action at the time
17 of a sale or other disposition of the property.

18 (e) The lien shall continue until the earlier of satisfaction of the
19 lien by sale or other means, or recovery of all response costs
20 incurred by the lead agency at the site.

21 (f) The lien shall be subject to the rights of a purchaser, holder
22 of a security interest, or judgment lien creditor whose interest is
23 perfected under applicable state law before notice of the lien has
24 been filed in the appropriate office within the state or county or
25 other governmental subdivision, as designated by state law. That
26 purchaser, holder of a security interest, or judgment lien creditor
27 shall be afforded the same protections against the lien as are
28 afforded under state law against a judgment lien that arises out of
29 an unsecured obligation and that arises as of the time of the filing
30 of the notice of the lien. The notice shall be recorded in the official
31 records of the County Recorder's office for the county in which the
32 real property is located. For purposes of this subdivision, the terms
33 "purchaser" and "security interest" shall have the definitions
34 provided under Section 6323(h) of Title 26 of the United States
35 Code.

36 ~~SEC. 6. Section 25400.10 is added to the Health and Safety~~
37 ~~Code, to read:~~

38 25400.10. Sections 24500.6 and 25400.7 do not exempt a
39 person from liability for bodily injury or wrongful death, and do
40 not exempt a permitted past, present, or future owner or operator



1 of a hazardous waste facility, as defined in Section 25117.1, from
2 what is required to obtain a hazardous waste facilities permit
3 pursuant to Chapter 20 (commencing with Section 66270.1) of
4 Division 4.5 of Title 22 of the California Code of Regulations, or
5 from the corrective action, closure, and postclosure requirements
6 set forth in Chapter 6.5 (commencing with Section 25100).

7 ~~SEC. 7. Section 25400.11 is added to the Health and Safety~~
8 ~~Code, to read:~~

9 25400.11. Sections 25400.6 and 25400.7 are not intended to,
10 and may not be interpreted to, limit the state's authority, to the
11 extent that Chapter 6.5 (commencing with Section 25100) would
12 not comply with the requirements for obtaining approval and
13 authorization under Part 271 (commencing with Section 271.1) of
14 Title 40 of the Code of Federal Regulations.

