

AMENDED IN SENATE JANUARY 5, 2004

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 Chapter ~~6.9.1 (commencing with Section 25400.1)~~ 6.82 (commencing with Section 25395.60) 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~~ *California Land Reuse and Revitalization Act of 2003* 2004, which would provide that *for the transfer of property concluded on or after January 1, 2005*, an innocent ~~purchaser~~ landowner or a bona fide prospective purchaser, as defined, is not liable *for response cost or damage claims* under specified state laws 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 of a hazardous material 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 prohibit an agency, as defined, from requiring an innocent landowner or bona fide prospective purchaser to take certain response actions under those state laws, except as specified. The bill would also prohibit an agency from requiring an owner of contiguous property, who also owns a site, from requiring additional response action, except under specified conditions. The bill would provide that a person is not liable under those specified state laws for response costs or other damages 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 contaminated by a release from real property not owned by that person and the person's real property is contiguous to, or otherwise similarly situated with respect to, that site other property 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.~~

This bill would authorize a court to require a nongovernment entity to pay reasonable attorneys' and experts' fees to any party that establishes that it is an innocent landowner, bona fide prospective purchaser, or contiguous landowner, as defined in the act or a specified federal act, in an action in which a claim is made that the party is liable for response costs or other damages.

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.—Chapter 6.9.1 (commencing with Section~~
 2



1 SECTION 1. Chapter 6.82 (commencing with Section
2 25395.60) is added to Division 20 of the Health and Safety Code,
3 to read:

4
5 CHAPTER 6.82. CALIFORNIA LAND REUSE AND REVITALIZATION ACT
6 OF 2004
7

8 Article 1. Legislative Findings and Intent
9

10 25395.60. The Legislature finds and declares all of the
11 following:

12 (a) There are thousands of properties in the state where
13 redevelopment has been stymied due to real or perceived
14 hazardous materials contamination. Cleaning up these sites and
15 returning them to productive use will benefit the communities in
16 which they are located and the state as a whole.

17 (b) Contamination of property in the state has hampered
18 redevelopment, which in turn has limited job creation, economic
19 revitalization, and the full and productive use of the land.

20 (c) Private developers, local governments, and schools are
21 reluctant to acquire or redevelop these properties due, at least in
22 part, to concerns regarding liability associated with historic
23 contamination. Instead, they focus new development on clean
24 areas that present less complications and liability.

25 (d) This has resulted in a multitude of problems, including
26 urban sprawl, decaying inner-city neighborhoods and schools,
27 public health and environmental risks stemming from
28 contaminated properties, lack of development at former
29 manufacturing sites and rural areas in need of economic
30 investment, and reduced tax bases.

31 25395.61. It is the intent of the Legislature, in enacting this
32 chapter, to do all of the following:

33 (a) Establish the cleanup and reuse of these sites as a priority
34 of the state.

35 (b) Relieve innocent purchasers, bona fide prospective
36 purchasers, and owners of property adjacent to contaminated sites
37 of liabilities and responsibilities that should be borne by those who
38 caused or contributed to the contamination.

39 (c) Encourage process efficiencies that continue to ensure
40 cleanups are protective of public health.

1 (d) Encourage the development and redevelopment of unused
2 or underused properties.

3 25395.62. This chapter shall be known, and may be cited as,
4 the “California Land Reuse and Revitalization Act of 2004.”

5

6 Article 2. Definitions

7

8 25395.63. The definitions set forth in this article shall govern
9 the interpretation of this chapter. Unless the context requires
10 otherwise and except as provided in this article, the definitions
11 contained in Article 2 (commencing with Section 25310) of
12 Chapter 6.8 shall apply to the terms used in this chapter.

13 25395.64. “Agency” means any city, county, district,
14 commission, the state, or any department, agency, or political
15 subdivision thereof, that has jurisdiction under an applicable
16 statute to require, oversee, or approve a response action at a
17 hazardous materials release site.

18 25395.65. “All appropriate inquiries” means reasonable
19 efforts, in accordance with generally accepted good commercial
20 and customary standards and practices, to determine, through
21 investigations into the previous ownership and uses of the facility,
22 whether a release of a hazardous material or discharge of a waste
23 has occurred. One or more of the following activities shall be
24 deemed to meet the standard of ‘all appropriate inquiries’:

25 (a) Compliance with the procedures of the American Society
26 for Testing and Materials, including the document known as
27 “Standard E1527-001,” entitled “Standard Practice for
28 Environmental Site Assessment: Phase I Environmental Site
29 Assessment Process,” in the form of the document current at the
30 time of the inquiry.

31 (b) Compliance with the standards and practices established by
32 the Administrator of the United States Environmental Protection
33 Agency pursuant to Section 101(35)(B)(ii) of the federal act (42
34 U.S.C. Sec. 9601(35)(B)(ii)).

35 (c) For property in residential use or other similar use at the
36 time of purchase by a nongovernmental or noncommercial entity,
37 a site inspection and title search does not reveal a basis for further
38 investigation.

39 25395.66. “Applicable statute” means all of the following
40 state laws, but includes only those provisions in each state law that



1 *impose liability on an owner or occupant of property for pollution*
2 *conditions caused by a release of hazardous material on, under, or*
3 *adjacent to the property:*

4 (a) *Title 1 (commencing with Section 3479) of, Title 2*
5 *(commencing with Section 3490) of, and Title 3 (commencing with*
6 *Section 3501) of, Part 3 of Division 4 of the Civil Code.*

7 (b) *Chapter 3 (commencing with Section 731) of Title 10 of Part*
8 *2 of the Code of Civil Procedure.*

9 (c) *Section 5650 of the Fish and Game Code.*

10 (d) *Chapter 6.7 (commencing with Section 25280), Chapter*
11 *6.75 (commencing with Section 25299.10), Chapter 6.8*
12 *(commencing with Section 25300), and Chapter 6.10*
13 *(commencing with Section 25401) of this division.*

14 (e) *Division 7 (commencing with Section 13000) of the Water*
15 *Code.*

16 25395.67. (a) *“Appropriate care” means the performance of*
17 *a response action, with respect to hazardous materials found at a*
18 *site, that meets all of the following conditions:*

19 (1) *The response action is determined by the department or*
20 *regional board, or a local health agency or certified unified*
21 *program agency with authority delegated by the state to oversee*
22 *investigation and remediation of hazardous materials, to be*
23 *necessary to address an endangerment to human health or the*
24 *environment.*

25 (2) *The response action is performed in accordance with a*
26 *written plan approved by the department, regional board, local*
27 *health agency, or certified unified program agency.*

28 (3) *The approved plan includes a provision for oversight of the*
29 *response action by the department, regional board, local health*
30 *agency, or certified unified program agency.*

31 (4) *The response action is required to prevent an endangerment*
32 *to human health or the environment.*

33 (b) *“Appropriate care” does not include or require the same*
34 *type or extent of response action that would be required of a*
35 *responsible party.*

36 (c) *Upon the request of any party, the department, regional*
37 *board, local health agency, or certified unified program agency*
38 *shall acknowledge, in writing and within 60 days of the date of the*
39 *request, that proper completion of the approved plan specified in*



1 paragraph (2) of subdivision (a) constitutes “appropriate care”
2 within the meaning of this chapter.

3 25395.68. “Board” means the State Water Resources Control
4 Board.

5 25395.69. “Bona fide prospective purchaser” means a
6 person, or a tenant of a person, who acquires ownership of a site
7 on or after January 1, 2005, and who establishes all of the
8 following by a preponderance of the evidence:

9 (a) All releases of the hazardous materials at issue at the site
10 occurred before the person acquired the site.

11 (b) The person made all appropriate inquiries into the previous
12 ownership and uses of the site.

13 (c) The person provides all legally required notices with respect
14 to the discovery or release of hazardous materials at the site.

15 (d) The person exercises appropriate care with respect to the
16 release of the hazardous materials at the site.

17 (e) The person provides full cooperation, assistance, and
18 access to persons who are authorized to conduct response actions
19 or natural resource restoration at the site, including the
20 cooperation, and any access necessary for the installation,
21 integrity, operation, and maintenance of complete or partial
22 response actions or natural resource restoration at the site.

23 (f) The person is in compliance with land use controls
24 established or relied on in connection with an approved response
25 action at the site and does not impede the effectiveness or integrity
26 of any aspect of any remedy employed at the site in connection with
27 a response action.

28 (g) The person complies with all requests for information or
29 administrative subpoena concerning the release of hazardous
30 materials by any agency with jurisdiction under any applicable
31 statute.

32 (h) The person is not potentially liable, or affiliated with any
33 other person who is potentially liable, for the release at issue
34 through any of the following circumstances:

35 (1) Any direct or indirect familial relationship.

36 (2) Any contractual, corporate, or financial relationship,
37 unless the contractual, corporate, or financial relationship is
38 created by the instrument by which title or possession to the site is
39 conveyed or financed or a contract for the sale of goods or
40 services.



1 (3) *The result of a reorganization of a business entity that was*
2 *potentially liable for the hazardous materials at issue.*

3 25395.71. (a) *“Site” means real property for which the*
4 *expansion, redevelopment, or reuse may be complicated by the*
5 *presence or perceived presence of hazardous materials.*

6 (b) *“Site” does not include either of the following:*

7 (1) *A facility that is listed or proposed for listing on the*
8 *National Priorities List established under Section 105 of the*
9 *Comprehensive Environmental Response, Compensation and*
10 *Liability Act of 1980, as amended (42 U.S.C. Sec. 9605).*

11 (2) *A site on the list maintained by the department pursuant to*
12 *Section 25356.*

13 25395.72. *“Department” means the Department of Toxic*
14 *Substances Control.*

15 25395.73. *“Endangerment” means conditions at a site that*
16 *do either of the following:*

17 (a) *Pose an existing and significant risk to human health.*

18 (b) *Require an immediate response action to prevent serious*
19 *environmental damage.*

20 25395.74. *“Hazardous material” has the same meaning as*
21 *defined in subdivision (d) of Section 25260.*

22 25395.75. (a) *“Innocent landowner” means a person who*
23 *takes the actions specified in subdivision (b) and meets both of the*
24 *following conditions:*

25 (1) *The person is any one of the following:*

26 (A) *A person who made all appropriate inquiries into the*
27 *previous ownership and uses of the site and, at the time the person*
28 *acquired the property did not know and had no reason to know of*
29 *the release at issue.*

30 (B) *A government entity that acquired property by escheat, or*
31 *through any other involuntary transfer acquisition, or through the*
32 *exercise of eminent domain authority by purchase or*
33 *condemnation.*

34 (C) *A person who acquired the property by inheritance or*
35 *bequest.*

36 (2) *The person is not potentially liable, or affiliated with any*
37 *other person who is potentially liable, for the release at issue*
38 *through any of the following circumstances:*

39 (A) *Any direct or indirect familial relationship.*



1 (B) Any contractual, corporate, or financial relationship,
2 unless the contractual, corporate, or financial relationship is
3 created by the instrument by which title or possession to the site is
4 conveyed or financed or a contract for the sale of goods or
5 services.

6 (C) The result of a reorganization of a business entity that was
7 potentially liable for the hazardous materials at issue.

8 (b) The person takes all of the following actions:

9 (1) Exercises appropriate care with respect to the release of the
10 hazardous materials at the site.

11 (2) Provides full cooperation, assistance, and access to a
12 person who is authorized to conduct response actions or natural
13 resource restoration at the site, including the cooperation and any
14 access necessary for the installation, integrity, operation, and
15 maintenance of complete or partial response actions or natural
16 resource restoration at the site.

17 (3) Complies with land use controls established or relied on, in
18 connection with an approved response action at the site, and does
19 not impede the effectiveness or integrity of any aspect of any
20 remedy employed at the site in connection with a response action.

21 (4) Complies with all requests for information or
22 administrative subpoena concerning the release of hazardous
23 materials by any agency with jurisdiction under an applicable
24 statute.

25 25395.76. "Land use control" means a recorded instrument
26 that restricts or imposes obligations on the present and future uses
27 or activities on a site, including, but not limited to, a recorded
28 easement, covenant, restriction, or servitude, or any combination
29 thereof, as appropriate.

30 25395.77. "Regional board" means a California regional
31 water quality control board.

32 25395.78. "Release" has the same meaning as defined in
33 Section 25320.

34 25395.79. "Response," "respond," or "response action"
35 have the same meaning as defined in Section 25323.3, except that
36 "response," "respond," and "response action" under this chapter
37 apply to hazardous material, as defined in Section 25395.74.
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Article 3. Liability

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25395.80. (a) Except as provided in Section 25395.85, an innocent landowner who did not cause or contribute to the release at issue, is subject to the following immunities:

(1) The innocent landowner is not liable under any applicable statute for a claim made by any party that is not a government agency for response costs or other damages associated with a release or threatened release of a hazardous material at the site.

(2) Except as provided in subdivision (b), an agency may not take any action under any applicable statute to require the innocent landowner to conduct any response action with respect to a hazardous materials release at a site owned by the innocent landowner unless both of the following conditions apply:

(A) The agency does either of the following:

(i) Makes all reasonable attempts to compel any necessary response action from all other potentially responsible parties, and those efforts have been unsuccessful.

(ii) Reasonably determines that no viable potentially responsible party exists to perform the required response action at the site.

(B) The conditions on the property pose an endangerment to human health.

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

(c) The immunities described in this section shall attach upon approval of the written plan described in paragraph (2) of subdivision (a) of Section 25395.67 and shall continue as long as the innocent landowner substantially complies with the provisions of the approved plan. An innocent landowner shall be deemed to be out of substantial compliance with the approved plan only when it has received written notice from the appropriate agency of an unexcused and material failure to comply with the approved plan. Written confirmation from the appropriate agency that the innocent landowner has satisfactorily implemented the approved plan conclusively presumes substantial compliance.

(d) Any potentially responsible party that is found to have committed fraud, intentional nondisclosure, or misrepresentation



1 to any state or local agency with authority over cleanup or
2 remediation at a site, is not an innocent landowner and is not
3 entitled to immunity against costs of response imposed by the
4 department, board, regional board, local health agency, or
5 certified unified program agency.

6 25395.81. (a) Except as provided in Section 25395.85, a
7 bona fide prospective purchaser who did not cause or contribute
8 to the release at issue is subject to the following immunities:

9 (1) The bona fide prospective purchaser is not liable under any
10 applicable statute for a claim made by any party that is not a
11 government agency for response costs or other damages
12 associated with a release or threatened release of a hazardous
13 material at the site.

14 (2) Notwithstanding any other provision of law or authority
15 under which a bona fide prospective purchaser has exercised
16 appropriate care with respect to a hazardous materials release,
17 and except as provided in subdivision (b), an agency may not take
18 any action under any applicable statute to require the bona fide
19 prospective purchaser or a subsequent property owner to conduct
20 any additional response action with respect to a hazardous
21 materials release at a site unless both of the following conditions
22 are met:

23 (A) The agency does one of the following:

24 (i) Makes all reasonable attempts to compel any necessary
25 response action from all other potentially responsible parties, and
26 those efforts have been unsuccessful.

27 (ii) Reasonably determines that no viable potentially
28 responsible party exists to perform the required response action at
29 the site.

30 (B) The conditions on the property pose an endangerment to
31 human health.

32 (b) The immunities described in this section shall attach upon
33 approval of the written plan described in paragraph (2) of
34 subdivision (a) of Section 25395.67 and shall continue as long as
35 the bona fide prospective purchaser substantially complies with
36 the provisions of the approved plan. A bona fide prospective
37 purchaser shall be deemed to be out of substantial compliance with
38 the approved plan only when it has received written notice from the
39 appropriate agency of an unexcused and material failure to
40 comply with the approved plan. Written confirmation from the



1 *appropriate agency that the bona fide prospective purchaser has*
2 *satisfactorily implemented the approved plan conclusively*
3 *presumes substantial compliance.*

4 (c) *Any potentially responsible party that is found to have*
5 *committed fraud, intentional nondisclosure, or misrepresentation*
6 *to any state or local agency with authority over cleanup or*
7 *remediation at a site, is not a bona fide prospective purchaser and*
8 *is not entitled to immunity against costs of response imposed by the*
9 *department, board, regional board, local health agency, or*
10 *certified unified program agency.*

11 (d) *This section does not modify or limit the existing authority*
12 *of a state or local agency to impose a condition on the issuance of*
13 *a discretionary permit relating to the development, use, or*
14 *occupancy of any site.*

15 25395.82. (a) *Except as provided in Section 25395.85, an*
16 *agency may not take any action under any applicable statute to*
17 *compel an owner of contiguous property to conduct additional*
18 *response action, with respect to a hazardous materials release at*
19 *a site owned by the owner of the contiguous property, unless the*
20 *owner meets all of the requirements of subdivision (c) and both of*
21 *the following conditions are met:*

22 (1) *The agency does one of the following:*

23 (A) *Makes all reasonable attempts to compel any necessary*
24 *response action from all other potentially responsible parties, and*
25 *those efforts have been unsuccessful.*

26 (B) *Reasonably determines that no viable potentially*
27 *responsible party exists to perform the required response action at*
28 *the site.*

29 (2) *The conditions on the property pose an endangerment to*
30 *human health.*

31 (b) *A person who owns real property that is contiguous to, or*
32 *otherwise similarly situated with respect to, and that is or may be,*
33 *contaminated by a release or threatened release of a hazardous*
34 *material from real property that is not owned by that person, is not*
35 *liable under any applicable statute for response costs or other*
36 *damages associated with the release or threatened release if the*
37 *person demonstrates, by a preponderance of the evidence, all of*
38 *the following:*

39 (1) *The person did not cause, contribute, or consent to the*
40 *release or threatened release.*



- 1 (2) *The person is not potentially liable, or affiliated with any*
2 *other person who is potentially liable, for the release at issue*
3 *through any of the following circumstances:*
- 4 (A) *Any direct or indirect familial relationship.*
- 5 (B) *Any contractual, corporate, or financial relationship,*
6 *unless the contractual, corporate, or financial relationship is*
7 *created by the instruments by which title or possession to the site*
8 *is conveyed or financed or a contract for the sale of goods or*
9 *services.*
- 10 (C) *The result of a reorganization of a business entity that was*
11 *potentially liable for the hazardous materials at issue.*
- 12 (c) *To qualify for the release from liability described in*
13 *subdivisions (a) and (b), the owner of the contiguous property shall*
14 *do all of the following:*
- 15 (1) *Except as provided in subdivision (d), exercise appropriate*
16 *care with respect to the release of any hazardous materials at the*
17 *site.*
- 18 (2) *Provide full cooperation, assistance, and access to persons*
19 *who are authorized to conduct response actions or natural*
20 *resource restoration at the site from which there has been a release*
21 *or threatened release, including the cooperation and access*
22 *necessary for the installation, integrity, operation, and*
23 *maintenance of a complete or partial response action or natural*
24 *resource restoration at the site.*
- 25 (3) *Comply with any land use control established or relied on*
26 *in connection with the response action at the site, and does not*
27 *impede the effectiveness or integrity of any aspect of any remedy*
28 *employed in connection with a response action at the site.*
- 29 (4) *Comply with any request for information or administrative*
30 *subpoena issued by an agency with jurisdiction under an*
31 *applicable statute.*
- 32 (5) *Provide all legally required notices with respect to the*
33 *discovery or release of hazardous materials at the site.*
- 34 (6) *Have conducted all appropriate inquiry into the previous*
35 *uses and ownership of the site and, at the time of acquisition not*
36 *know or have reason to know that the site was or could be*
37 *contaminated by the release of hazardous materials from other real*
38 *property not owned or operated by the person.*
- 39 (d) *Paragraph (1) of subdivision (c) does not require a person*
40 *to conduct groundwater investigations or to install groundwater*



1 remediation systems with respect to hazardous materials from a
2 source that is not on the property of the person who is a contiguous
3 property owner and that enters groundwater beneath the property
4 of the person solely as a result of subsurface migration.

5 (e) The immunities described in this section shall attach upon
6 approval of the written plan described in paragraph (2) of
7 subdivision (a) of Section 25395.67 and shall continue as long as
8 the owner of contiguous property substantially complies with the
9 provisions of the approved plan. An owner of contiguous property
10 shall be deemed to be out of substantial compliance with the
11 approved plan only when it has received written notice from the
12 appropriate agency of an unexcused and material failure to
13 comply with the approved plan. Written confirmation from the
14 appropriate agency that the owner of contiguous property has
15 satisfactorily implemented the approved plan conclusively
16 presumes substantial compliance.

17 (f) Any potentially responsible party that is found to have
18 committed fraud, intentional nondisclosure, or misrepresentation
19 to any state or local agency with authority over cleanup or
20 remediation at a site, is not entitled to immunity against costs of
21 response imposed by the department, board, regional board, local
22 health agency, or certified unified program agency.

23 (g) This section does not limit a defense to liability that may be
24 available to the person under any other provision of state law, and
25 this section does not impose liability on the person that is not
26 otherwise imposed by an applicable statute.

27 (h) This section does not modify or limit the existing authority
28 of a state or local agency to impose a condition on the issuance of
29 a discretionary permit relating to the development, use, or
30 occupancy of a site.

31 25395.83. (a) The immunities and prohibitions imposed by
32 Sections 25395.80, 25395.81, and 25395.82 shall become
33 operative on January 1, 2005, and do not apply to any transfer of
34 property concluded before January 1, 2005.

35 (b) The immunities and prohibitions imposed by Sections
36 25395.80, 25395.81, and 25395.82 are in addition to, and do not
37 otherwise affect, any other protection provided under state law.

38 25395.84. If there are unrecovered costs incurred by a lead
39 agency at a site for which an owner of the site is not liable as a bona
40 fide prospective purchaser, the lead agency shall have a lien on the



1 site, or may, by agreement with the owner, obtain from the owner
2 a lien on other property or other assurance of payment for the
3 unrecovered response costs, subject to all of the following
4 requirements:

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

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

10 (c) The lien arises at the time at which costs are first incurred
11 by the agency with respect to a response action at the site.

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

15 (e) The lien shall continue until the earlier of satisfaction of the
16 lien by sale or other means, or recovery of all response costs
17 incurred by the agency at the site.

18 (f) (1) The lien shall be subject to the rights of a purchaser,
19 holder of a security interest, or judgment lien creditor whose
20 interest is perfected under applicable state law before notice of the
21 lien has been filed in the appropriate office within the state or
22 county or other governmental subdivision, as designated by state
23 law.

24 (2) The purchaser, holder of a security interest, or judgment
25 lien creditor has the same protections against the lien as the
26 protection provided by state law against a judgment lien that arises
27 out of an unsecured obligation and that arises as of the time of the
28 filing of the notice of the lien.

29 (3) The notice of the lien shall be recorded in the official records
30 of the County Recorder's office for the county in which the real
31 property is located.

32 (4) For purposes of this subdivision, the "purchaser" and
33 "security interest" have the same meaning as defined in subsection
34 (h) of Section 6323 of Title 26 of the United States Code.

35 25395.85. This chapter does not exempt any of the following:

36 (a) A person from liability for bodily injury or wrongful death.

37 (b) A person from any requirement imposed under Chapter 6.5
38 (commencing with Section 25100), including, but not limited to,
39 corrective action and closure and postclosure requirements.



1 25395.86. A court of competent jurisdiction may require any
2 nongovernment entity to pay reasonable attorneys' fees and
3 experts' fees to any party that establishes that it is an innocent
4 landowner, bona fide prospective purchaser, or contiguous
5 landowner, as those terms are defined in this chapter or used in the
6 Comprehensive Environmental Response, Compensation, and
7 Liability Act (42 U.S.C. Sec. 9601 et seq.). A court may award such
8 fees in any action in which a claim is made that the innocent
9 landowner, bona fide prospective purchaser, or contiguous
10 landowner is liable for response costs or other damages associated
11 with a release or threatened release of the hazardous materials at
12 issue at the site. The award of fees shall be made upon notice and
13 motion by the innocent purchaser, bona fide prospective purchaser,
14 or contiguous landowner and shall be an element of the costs of
15 suit.

16 25395.87. (a) This chapter does not limit any defense to
17 liability that may be available to a person under any other
18 provision of law or impose liability on a person that is not
19 otherwise imposed by this chapter or an applicable statute.

20 (b) This chapter does not limit the authority of an agency to
21 conduct any response action it determines is necessary to contain
22 or eliminate an endangerment that requires action to protect
23 public health and safety or the environment pursuant to an
24 applicable statute. 25400.1) is added to Division 20 of the Health
25 and Safety Code, to read:

26
27 CHAPTER 6.9.1. — BROWNFIELDS REVITALIZATION ACT OF 2003

28
29 25400.1. (a) The Legislature finds and declares all of the
30 following:

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

34 (2) The state can promote and encourage more orderly and
35 efficient growth patterns by making urban and downtown areas
36 more attractive for private development and redevelopment,
37 thereby relieving some of those stresses on natural resources and
38 making better use of existing infrastructure.

39 (3) There are thousands of so-called brownfields and similar
40 tracts of land in California's urban areas that lie dormant, as



1 previous industrial and other uses have left them contaminated and
2 unusable.

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

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

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

16 (7) It is the intent of this chapter to encourage acquisition of
17 these urban sites for purposes of development and redevelopment
18 by limiting the liability of innocent purchasers and bona fide
19 prospective purchasers for response actions when the innocent
20 purchasers and bona fide prospective purchasers have met the
21 requirements specified in this chapter.

22 (8) It is not the intent of this chapter to change or modify
23 existing state or local authority to require necessary and
24 appropriate response actions at the sites' subject to this chapter
25 based on the sites future intended land use, as a condition of issuing
26 discretionary permits relating to development, use, or occupancy.

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

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

32 25400.5.— For purposes of this chapter, the following terms
33 have the following meanings:

34 (a) "Applicable statute" means all of the following state laws;
35 to the extent that the state law imposes liability for response costs
36 on an owner or occupant of property acquired on or after January
37 1, 2004, for cleanup of preexisting pollution conditions caused by
38 a release of hazardous material on, under, or adjacent to the
39 property:



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

4 ~~(2) Chapter 3 (commencing with Section 731) of Title 10 of~~
5 ~~Part 2 of the Code of Civil Procedure.~~

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

7 ~~(4) Chapter 6.5 (commencing with Section 25100), Chapter~~
8 ~~6.67 (commencing with Section 25270), Chapter 6.7~~
9 ~~(commencing with Section 25280), Chapter 6.75 (commencing~~
10 ~~with Section 25299.10), Chapter 6.8 (commencing with Section~~
11 ~~25300) and Chapter 6.10 (commencing with Section 25401).~~

12 ~~(5) Article 12.5 (commencing with Section 33459) of Chapter~~
13 ~~4 of Part 1 of Division 24 of the Health and Safety Code.~~

14 ~~(6) Division 7 (commencing with Section 13000) of the Water~~
15 ~~Code.~~

16 ~~(b) “Bona fide prospective purchaser” means a person or a~~
17 ~~tenant of a person who acquires ownership of a site on or after~~
18 ~~January 1, 2004, and that establishes all of the following by a~~
19 ~~preponderance of the evidence:~~

20 ~~(1) All disposal of hazardous materials at the site occurred~~
21 ~~before the person acquired the site.~~

22 ~~(2) The person made all appropriate inquiries into the previous~~
23 ~~ownership and uses of the site in accordance with generally~~
24 ~~accepted good commercial and customary standards and practices.~~
25 ~~One or more of the following shall satisfy the “all appropriate~~
26 ~~inquiries” requirement:~~

27 ~~(A) Compliance with the procedures of the American Society~~
28 ~~for Testing and Materials, including the document known as~~
29 ~~“Standard E1527-001,” entitled “Standard Practice for~~
30 ~~Environmental Site Assessment: Phase I Environmental Site~~
31 ~~Assessment Process,” in the form of the document current at the~~
32 ~~time of the inquiry.~~

33 ~~(B) Compliance with the standards and practices established by~~
34 ~~the Administrator of the United States Environmental Protection~~
35 ~~Agency pursuant to Section 9601(35)(B)(ii) of Title 42 of the~~
36 ~~United States Code.~~

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



1 ~~(3) The person provides all legally required notices with~~
2 ~~respect to the discovery or release of hazardous materials at the~~
3 ~~site.~~

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

9 ~~(5) The person provides full cooperation, assistance, and~~
10 ~~access to persons who are authorized to conduct response actions~~
11 ~~or natural resource restoration at a site, including the cooperation~~
12 ~~and access necessary for the installation, integrity, operation, and~~
13 ~~maintenance of complete or partial response actions or natural~~
14 ~~resource restoration at the site.~~

15 ~~(6) The person is in compliance with land use restrictions~~
16 ~~established or relied on in connection with the response action at~~
17 ~~a site and does not impede the effectiveness or integrity of~~
18 ~~institutional control employed at the site in connection with a~~
19 ~~response action.~~

20 ~~(7) The person complies with all requests for information or~~
21 ~~administrative subpoena issued by the lead agency under this~~
22 ~~chapter.~~

23 ~~(8) The person is not potentially liable, or affiliated with any~~
24 ~~other person who is potentially liable, for response costs at a site~~
25 ~~through direct or indirect familial relationship, or contractual,~~
26 ~~corporate, or financial relationship, other than a contractual,~~
27 ~~corporate, or financial relationship that is created by the~~
28 ~~instruments by which title to the site is conveyed or financed or by~~
29 ~~a contract for the sale of goods or services, or the result of a~~
30 ~~reorganization of a business entity that was potentially liable.~~

31 ~~(e) (1) “Contractual relationship” includes, but is not limited~~
32 ~~to, a relationship based on a land contract, deed, easement, lease,~~
33 ~~or other instrument transferring title or possession, unless the site~~
34 ~~was acquired by an innocent purchaser after the disposal or~~
35 ~~placement of the hazardous material on, in, or at the site, and the~~
36 ~~person meets the conditions specified in paragraph (2) and~~
37 ~~establishes one or more of following by a preponderance of the~~
38 ~~evidence:~~

39 ~~(A) At the time the person acquired the site, the person did not~~
40 ~~know and did not have reason to know, that hazardous material that~~



1 is the subject of the release or threatened release was disposed of
2 on, in, or at the site, as provided in paragraph (3).

3 (B) The person is a government entity that acquired the site by
4 escheat, or through any other involuntary transfer or acquisition,
5 or through the exercise of eminent domain authority by purchase
6 or condemnation.

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

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

9 (A) The person is an innocent purchaser.

10 (B) The person provides full cooperation, assistance, and site
11 access to the persons that are authorized to conduct response
12 actions at the site, including the cooperation and access necessary
13 for the installation, integrity, operation, and maintenance of a
14 complete or partial response action at the site.

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

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

21 (3) To establish that, at the time the person acquired the site, the
22 person did not know and did not have reason to know that
23 hazardous material that is the subject of the release or threatened
24 release was disposed of on, in, or at the site, the person shall
25 demonstrate all of the following by a preponderance of the
26 evidence:

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

31 (B) The person took reasonable steps to stop continuing
32 release, prevent threatened future release, and prevent or limit
33 human, environmental, or natural resource exposure to previously
34 released hazardous material.

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

39 (4) Nothing in this section diminishes the liability of a previous
40 owner or operator of a site who would otherwise be liable for the



1 ~~release of hazardous materials. Notwithstanding this paragraph, if~~
2 ~~the person obtains actual knowledge of the release or threatened~~
3 ~~release of hazardous materials at a site when the person owned the~~
4 ~~real property and then subsequently transferred ownership of the~~
5 ~~property to another person without disclosing that knowledge, the~~
6 ~~person who fails to make that disclosure is not entitled to a defense~~
7 ~~under Section 25400.6.~~

8 ~~(5) Nothing in this section affects the liability of a person who,~~
9 ~~by an act or omission, causes or contributes to the release or~~
10 ~~threatened release of a hazardous material that is the subject of the~~
11 ~~action relating to the site.~~

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

14 ~~(1) The release or threatened release of a hazardous material~~
15 ~~and the damages resulting therefrom were caused solely by an act~~
16 ~~or omission of a third party, other than an employee or agent of the~~
17 ~~person, other than one whose act or omission occurs in connection~~
18 ~~with a contractual relationship, existing directly or indirectly, with~~
19 ~~the person, except where the sole contractual arrangement arises~~
20 ~~from a published tariff and acceptance for carriage by a common~~
21 ~~carrier by rail.~~

22 ~~(2) He or she exercised due care with respect to the hazardous~~
23 ~~material concerned, taking into consideration the characteristics of~~
24 ~~the hazardous material, in light of all relevant facts and~~
25 ~~circumstances.~~

26 ~~(3) He or she took precautions against foreseeable acts or~~
27 ~~omissions of a third party and the consequences that could~~
28 ~~foreseeably result from those acts or omissions.~~

29 ~~(e) “Hazardous material” has the same meaning as defined in~~
30 ~~paragraph (8) of subdivision (a) of Section 25395.20.~~

31 ~~(f) “Lead agency” means the agency that exercises primary~~
32 ~~environmental oversight authority over remediation of a site and~~
33 ~~incurs response costs for the site. If there is more than one potential~~
34 ~~lead agency, an agency may request and be designated as the~~
35 ~~administering agency by the Site Designation Committee applying~~
36 ~~the factors set forth in subdivision (e) of Section 25262, and that~~
37 ~~administering agency shall be deemed to be the lead agency for~~
38 ~~purposes of this chapter.~~

39 ~~(g) “Response” includes a response action as defined in~~
40 ~~Section 25323.3, or a response under any other applicable statute.~~



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

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

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

7 ~~(2) “Site” does not include any of the following:~~

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

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

14 ~~(C) Property that will be the site of a contiguous expansion or~~
15 ~~improvement of an operating industrial or commercial facility,~~
16 ~~unless one of the following applies:~~

17 ~~(i) It is a small business, as defined in paragraph (15) of~~
18 ~~subdivision (a) of Section 25395.20.~~

19 ~~(ii) It is a nonprofit corporation formed under the Nonprofit~~
20 ~~Public Benefit Corporation Law (Part 2 (commencing with~~
21 ~~Section 5110) of Division 2 of Title 1 of the Corporations Code)~~
22 ~~or the Nonprofit Religious Corporation Law (Part 4 (commencing~~
23 ~~with Section 9110) of Division 2 of Title 1 of the Corporations~~
24 ~~Code).~~

25 ~~(iii) It is a small business incubator that is undertaking the~~
26 ~~expansion with the assistance of a grant authorized by Section~~
27 ~~15339.3 of the Government Code or a loan guarantee provided~~
28 ~~pursuant to Section 14090 of the Corporations Code.~~

29 ~~(3) For purposes of paragraph (1), “urban area” means either~~
30 ~~of the following:~~

31 ~~(A) The central portion of a city or a group of contiguous cities~~
32 ~~with a population of 50,000 or more, together with adjacent~~
33 ~~densely populated areas having a population density of at least~~
34 ~~1,000 persons per square mile.~~

35 ~~(B) An urbanized area as defined in subdivision (a) of, or~~
36 ~~subparagraph (A) of paragraph (1) of subdivision (b) of, Section~~
37 ~~21071 of the Public Resources Code.~~

38 ~~25400.6. (a) An innocent purchaser or a bona fide~~
39 ~~prospective purchaser is not liable under an applicable statute for~~



1 ~~response costs associated with a release or threatened release of a~~
2 ~~hazardous material at a site.~~

3 ~~(b) This section does not modify or limit the existing authority~~
4 ~~of a state or local agency to impose a condition on the issuance of~~
5 ~~a discretionary permit relating to the development, use, or~~
6 ~~occupancy of any site.~~

7 ~~25400.7.—(a) A person is not liable under an applicable statute~~
8 ~~for response costs associated with a release or threatened release~~
9 ~~of a hazardous material from a site that is not owned by that person;~~
10 ~~if the person demonstrates, by a preponderance of the evidence,~~
11 ~~that both of the following apply:~~

12 ~~(1) The person owns real property that is contiguous to, or~~
13 ~~otherwise similarly situated with respect to, the site, and the real~~
14 ~~property owned by that person is, or may be, contaminated by a~~
15 ~~release or threatened release from the site.~~

16 ~~(2) The person demonstrates by a preponderance of the~~
17 ~~evidence all of the following:~~

18 ~~(A) The person did not cause, contribute, or consent to the~~
19 ~~release or threatened release.~~

20 ~~(B) The person is not potentially liable, or affiliated with a~~
21 ~~person who is potentially liable, for response costs at a site through~~
22 ~~one or more of the following:~~

23 ~~(i) A direct or indirect familial relationship.~~

24 ~~(ii) A contractual, corporate, or financial relationship, other~~
25 ~~than a contractual, corporate, or financial relationship that is~~
26 ~~created by a contract for the sale of goods or services.~~

27 ~~(iii) A reorganization of a business entity that was potentially~~
28 ~~liable.~~

29 ~~(C) The person takes reasonable steps to stop a continuing~~
30 ~~release, prevent threatened future release, and prevent or limit~~
31 ~~human, environmental, or natural resource exposure to hazardous~~
32 ~~material released on or from property owned by that person.~~

33 ~~(D) The person provides full cooperation, assistance, and~~
34 ~~access to persons who are authorized to conduct response actions~~
35 ~~or natural resource restoration at the site from which there has been~~
36 ~~a release or threatened release, including the cooperation and~~
37 ~~access necessary for the installation, integrity, operation, and~~
38 ~~maintenance of a complete or partial response action or natural~~
39 ~~resource restoration at the site.~~



1 ~~(E) The person is in compliance with land use restrictions~~
2 ~~established or relied on in connection with the response action at~~
3 ~~the site, and does not impede the effectiveness or integrity of~~
4 ~~institutional control employed in connection with a response~~
5 ~~action.~~

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

8 ~~(G) The person provides all legally required notices with~~
9 ~~respect to the discovery or release of hazardous materials at the~~
10 ~~site.~~

11 ~~(H) At the time the person acquired the property, the person~~
12 ~~conducted all appropriate inquiry with respect to the property and~~
13 ~~did not know or have reason to know that the property was or could~~
14 ~~be contaminated by a release or threatened release of hazardous~~
15 ~~material from other real property not owned or operated by the~~
16 ~~person.~~

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

23 ~~(b) With respect to a hazardous material from one or more~~
24 ~~sources that are not on the property of a person who is a contiguous~~
25 ~~property owner that enters groundwater beneath the property of~~
26 ~~the person solely as a result of subsurface migration in an aquifer,~~
27 ~~subparagraph (C) of paragraph (2) of subdivision (a) does not~~
28 ~~require the person to conduct groundwater investigations or to~~
29 ~~install groundwater remediation systems, except in accordance~~
30 ~~with Management Memo #90-11 issued by the Department of~~
31 ~~Toxic Substances Control titled "RP-Ownership of Property Over~~
32 ~~Contaminated Groundwater."~~

33 ~~(c) This section does not limit a defense to liability that may be~~
34 ~~available to the person under any other provision of state law, and~~
35 ~~this section does not impose liability on the person that is not~~
36 ~~otherwise imposed by an applicable statute.~~

37 ~~(d) This section does not modify or limit the existing authority~~
38 ~~of a state or local agency to impose a condition on the issuance of~~
39 ~~a discretionary permit relating to the development, use, or~~
40 ~~occupancy of a site.~~



1 ~~25400.8.—The protections provided in Sections 25400.6 and~~
2 ~~25400.7 are in addition to, and do not otherwise affect, other~~
3 ~~protections provided under state law.~~

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

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

12 ~~(b) The response action increases the fair market value of the~~
13 ~~site above the fair market value of the site that existed before the~~
14 ~~response action was initiated.~~

15 ~~(c) The lien shall arise at the time at which costs are first~~
16 ~~incurred by the lead agency with respect to a response action at the~~
17 ~~site.~~

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

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

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

39 ~~25400.10.—Sections 24500.6 and 25400.7 do not exempt a~~
40 ~~person from liability for bodily injury or wrongful death, and do~~



1 ~~not exempt a permitted past, present, or future owner or operator~~
2 ~~of a hazardous waste facility, as defined in Section 25117.1, from~~
3 ~~what is required to obtain a hazardous waste facilities permit~~
4 ~~pursuant to Chapter 20 (commencing with Section 66270.1) of~~
5 ~~Division 4.5 of Title 22 of the California Code of Regulations, or~~
6 ~~from the corrective action, closure, and postclosure requirements~~
7 ~~set forth in Chapter 6.5 (commencing with Section 25100).~~
8 ~~25400.11.— Sections 25400.6 and 25400.7 are not intended to,~~
9 ~~and may not be interpreted to, limit the state's authority, to the~~
10 ~~extent that Chapter 6.5 (commencing with Section 25100) would~~
11 ~~not comply with the requirements for obtaining approval and~~
12 ~~authorization under Part 271 (commencing with Section 271.1) of~~
13 ~~Title 40 of the Code of Federal Regulations.~~

