

AMENDED IN SENATE JANUARY 22, 2004

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**

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**Introduced by Senator Cedillo**

February 20, 2003

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An act to add *and repeal* Chapter 6.82 (commencing with Section 25395.60) ~~to~~ *of, and to add Chapter 6.83 (commencing with Section 25395.91) 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 California Land Reuse and Revitalization Act of 2004, which would provide that ~~for the transfer of property concluded on or after January 1, 2005,~~ an innocent landowner ~~or~~, a bona

bona fide prospective purchaser, or a contiguous property owner, as defined, is not liable for response cost or damage claims under specified state laws that impose liability upon an owner or occupant of property, for pollution conditions caused by a release of a hazardous material on, under, or adjacent to that property, if the innocent purchaser or, bona fide prospective purchaser or contiguous property owner meets specified conditions. The bill would prohibit an agency, as defined, from requiring an innocent landowner or, bona fide prospective purchaser, or contiguous property owner 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 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 other property and the person complies with additional specified requirements.~~ The bill would, if there are unrecovered response costs incurred by a ~~lead~~ an 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 *in an action for contribution or recovery of response costs at a site* to ~~require a nongovernment entity to pay~~ award 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 ~~as specified~~.

*The bill would require the California Environmental Protection Agency, by January 1, 2005, to develop a form containing specified information that a bona fide prospective purchaser, innocent landowner, or contiguous property owner who is subject to immunity would be required to complete and submit to the agency. The bill would require the agency, by July 1, 2005, and annually thereafter, to submit a report to the Legislature compiling this data and comparing brownfield*



response action completed by agencies under the act with other similar response actions.

The bill would repeal the act on January 1, 2010, but would provide that a person who is subject to immunity pursuant to the act before January 1, 2010, would continue after that date to have that immunity, if the person continues to be in compliance with the requirements of the act.

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 6.82 (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  
6 ACT 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



1 manufacturing sites and rural areas in need of economic  
2 investment, and reduced tax bases.

3 25395.61. It is the intent of the Legislature, in enacting this  
4 chapter, to do all of the following:

5 (a) Establish the cleanup and reuse of these sites *in a manner*  
6 *protective of public health and the environment* as a priority of the  
7 state.

8 (b) Relieve innocent ~~purchasers~~ *owners*, bona fide prospective  
9 purchasers, and owners of property adjacent to contaminated sites  
10 of liabilities and responsibilities that should be borne by those who  
11 caused or contributed to the contamination.

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

14 (d) Encourage the development and redevelopment of unused  
15 or underused properties.

16 25395.62. This chapter shall be known, and may be cited as,  
17 the “California Land Reuse and Revitalization Act of 2004.”

18

19 Article 2. Definitions

20

21 25395.63. The definitions set forth in this article shall govern  
22 the interpretation of this chapter. ~~Unless the context requires~~  
23 ~~otherwise and except as provided in this article, the definitions~~  
24 ~~contained in Article 2 (commencing with Section 25310) of~~  
25 ~~Chapter 6.8 shall apply to the terms used in this chapter. If a term~~  
26 ~~is not otherwise defined in this chapter, the definition contained in~~  
27 ~~Chapter 6.8 (commencing with Section 25300) shall apply to that~~  
28 ~~term.~~

29 25395.64. “Agency” means ~~any city, county, district,~~  
30 ~~commission, the state, or any department, agency, or political~~  
31 ~~subdivision thereof, that has jurisdiction under an applicable~~  
32 ~~statute to require, oversee, or approve a response action at a~~  
33 ~~hazardous materials release site: the department, a regional board,~~  
34 ~~or a state or local agency that has been delegated authority to~~  
35 ~~oversee a response action by the department or the board.~~

36 25395.65. ~~“All appropriate inquiries” means reasonable~~  
37 ~~efforts, in accordance with generally accepted good commercial~~  
38 ~~and customary standards and practices, to determine, through~~  
39 ~~investigations into the previous ownership and uses of the facility,~~  
40 ~~whether a release of a hazardous material or discharge of a waste~~



1 ~~has occurred. One or more of the following activities shall be~~  
2 ~~deemed to meet the standard of “all appropriate inquiries”:~~

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

9 ~~(b) Compliance with the standards and practices established by~~  
10 ~~the Administrator of the United States Environmental Protection~~  
11 ~~Agency pursuant to Section 101(35)(B)(ii) of the federal act (42~~  
12 ~~U.S.C. Sec. 9601(35)(B)(ii)).~~

13 ~~(c) For property in residential use or other similar use at the~~  
14 ~~25395.65. “All appropriate inquiries” has the following~~  
15 ~~meanings:~~

16 ~~(a) Except as provided in subdivision (c), until the standards~~  
17 ~~and practices established by the Administrator of the United States~~  
18 ~~Environmental Protection Agency pursuant to Section~~  
19 ~~101(35)(B)(ii) of the federal act (42 U.S.C. Sec. 9601(35)(B)(ii))~~  
20 ~~are adopted and take effect, “all appropriate inquiries” means~~  
21 ~~compliance with the procedures of the American Society for~~  
22 ~~Testing and Materials, including the document known as~~  
23 ~~“Standard E1527-001,” entitled “Standard Practice for~~  
24 ~~Environmental Site Assessment: Phase I Environmental Site~~  
25 ~~Assessment Process,” as that document existed on January 1,~~  
26 ~~2004.~~

27 ~~(b) Except as provided in subdivision (c), after the standards~~  
28 ~~and practices established by the Administrator of the United States~~  
29 ~~Environmental Protection Agency pursuant to Section~~  
30 ~~101(35)(B)(ii) of the federal act (42 U.S.C. Sec. 9601(35)(B)(ii))~~  
31 ~~are adopted and take effect, “all appropriate inquiries” means~~  
32 ~~compliance with those standards.~~

33 ~~(c) If the property is in residential use at the time of purchase~~  
34 ~~by a nongovernmental or noncommercial entity, “all appropriate~~  
35 ~~inquiries” means that a site inspection and title search does not~~  
36 ~~reveal a basis for further investigation.~~

37 ~~25395.66. “Applicable statute” means all of the following~~  
38 ~~state laws, but includes only those provisions in each state law that~~  
39 ~~impose liability on an owner or occupant of property for pollution~~



1 conditions caused by a release of hazardous material on, under, or  
2 adjacent to the property:

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

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

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

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

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

15 25395.67. (a) “Appropriate care” means the performance of  
16 a response action, with respect to hazardous materials found at a  
17 site, that meets all of the following conditions:

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

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

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

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

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



1 (b) On or before 60 days after the date an agency receives a  
2 written request by a bona fide prospective purchaser, innocent  
3 landowner, or contiguous landowner, the agency shall determine  
4 in writing whether proper completion of the approved plan  
5 specified in paragraph (2) of subdivision (a) constitutes  
6 “appropriate care” within the meaning of this chapter.

7 25395.68. “Board” means the State Water Resources Control  
8 Board.

9 25395.69. “Bona fide prospective purchaser” means a  
10 person, or a tenant of a person, who acquires ownership of a site  
11 on or after January 1, 2005, and who establishes all of the  
12 following by a preponderance of the evidence:

13 (a) All *discharges or* releases of the hazardous materials at  
14 issue at the site occurred before the person acquired the site.

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

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

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

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

28 (f) The person is in compliance with land use controls  
29 established or relied on in connection with an approved response  
30 action at the site and does not impede the effectiveness or integrity  
31 of any aspect of any remedy employed at the site in connection  
32 with a response action.

33 (g) The person complies with all requests for information or  
34 administrative subpoena concerning the release of hazardous  
35 materials by any agency with jurisdiction under any applicable  
36 statute.

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

40 (1) Any direct or indirect familial relationship.



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

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

7 25395.71. (a) “Site” means real property for which the  
8 expansion, redevelopment, or reuse may be complicated by the  
9 presence or perceived presence of hazardous materials.

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

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

15 (2) A site on the list maintained by the department pursuant to  
16 Section 25356.

17 25395.72. *“Contiguous property owner” means a person*  
18 *who owns a site that is contiguous to another site that is, or may*  
19 *be, contaminated by a release or threatened release of a hazardous*  
20 *material and that is not owned by that person, and who*  
21 *demonstrates, by a preponderance of the evidence, all of the*  
22 *following:*

23 (a) *The person did not cause, contribute, or consent to the*  
24 *release or threatened release.*

25 (b) *The person is not potentially liable, or affiliated with any*  
26 *other person who is potentially liable, for the release at issue*  
27 *through any of the following circumstances:*

28 (1) *Any direct or indirect familial relationship.*

29 (2) *Any contractual, corporate, or financial relationship,*  
30 *unless the contractual, corporate, or financial relationship is*  
31 *created by the instruments by which title or possession to the site*  
32 *is conveyed or financed or a contract for the sale of goods or*  
33 *services.*

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

36 (c) *Except as provided in subdivision (i), the person exercises*  
37 *appropriate care with respect to the release of any hazardous*  
38 *materials at the site.*

39 (d) *The person provides full cooperation, assistance, and*  
40 *access to persons who are authorized to conduct response actions*



1 or natural resource restoration at the site from which there has  
2 been a release or threatened release, including the cooperation  
3 and access necessary for the installation, integrity, operation, and  
4 maintenance of a complete or partial response action or natural  
5 resource restoration at the site.

6 (e) The person complies with any land use controls established  
7 or relied on in connection with the response action at the site, and  
8 does not impede the effectiveness or integrity of any aspect of any  
9 remedy employed in connection with a response action at the site.

10 (f) The person complies with any request for information or  
11 administrative subpoena issued by an agency with jurisdiction  
12 under an applicable statute.

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

16 (h) The person has conducted all appropriate inquiry into the  
17 previous uses and ownership of the site and, at the time of  
18 acquisition not know or have reason to know that the site was or  
19 could be contaminated by the release of hazardous materials from  
20 other real property not owned or operated by the person.

21 (i) Subdivision (c) does not require a contiguous property  
22 owner to conduct groundwater investigations or to install  
23 groundwater remediation systems with respect to hazardous  
24 materials from a source that is not on the property of the  
25 contiguous property owner and that enters groundwater beneath  
26 the property of the contiguous property owner solely as a result of  
27 subsurface migration.

28 25395.73. “Department” means the Department of Toxic  
29 Substances Control.

30 ~~25395.73. “Endangerment” means conditions at a site that do~~  
31 ~~either of the following:~~

32 ~~(a) Pose an existing and significant risk to human health.~~

33 ~~(b) Require an immediate response action to prevent serious~~  
34 ~~environmental damage.~~

35 25395.74. “Hazardous material” has the same meaning as  
36 defined in subdivision (d) of Section 25260.

37 25395.75. (a) “Innocent landowner” means a person who  
38 owns a site, who did not cause or contribute to a release at the site,  
39 takes the actions specified in subdivision (b) ~~and~~, and who meets  
40 both of the following conditions:



- 1 (1) The person is any one of the following:
- 2 (A) A person who made all appropriate inquiries into the
- 3 previous ownership and uses of the site and, at the time the person
- 4 acquired the property did not know and had no reason to know of
- 5 the release at issue.
- 6 (B) A government entity that acquired property by escheat, or
- 7 through any other involuntary transfer acquisition, or through the
- 8 exercise of eminent domain authority by purchase or
- 9 condemnation.
- 10 (C) A person who acquired the property by inheritance or
- 11 bequest.
- 12 (2) The person is not potentially liable, or affiliated with any
- 13 other person who is potentially liable, for the release at issue
- 14 through any of the following circumstances:
- 15 (A) Any direct or indirect familial relationship.
- 16 (B) Any contractual, corporate, or financial relationship,
- 17 unless the contractual, corporate, or financial relationship is
- 18 created by the instrument by which title or possession to the site
- 19 is conveyed or financed or a contract for the sale of goods or
- 20 services.
- 21 (C) The result of a reorganization of a business entity that was
- 22 potentially liable for the hazardous materials at issue.
- 23 (b) The person takes all of the following actions:
- 24 (1) Exercises appropriate care with respect to the release of the
- 25 hazardous materials at the site.
- 26 (2) Provides full cooperation, assistance, and access to a person
- 27 who is authorized to conduct response actions or natural resource
- 28 restoration at the site, including the cooperation and any access
- 29 necessary for the installation, integrity, operation, and
- 30 maintenance of complete or partial response actions or natural
- 31 resource restoration at the site.
- 32 (3) Complies with land use controls established or relied on, in
- 33 connection with an approved response action at the site, and does
- 34 not impede the effectiveness or integrity of any aspect of any
- 35 remedy employed at the site in connection with a response action.
- 36 (4) Complies with all requests for information or
- 37 administrative subpoena concerning the release of hazardous
- 38 materials by any agency with jurisdiction under an applicable
- 39 statute.



1 (5) Provides all notices required by state or federal law with  
2 respect to the discovery or release of hazardous materials at the  
3 site.

4 25395.76. “Land use control” means a recorded instrument  
5 ~~that restricts or imposes obligations on the present and future uses~~  
6 ~~or activities on a site, including, but not limited to, a recorded~~  
7 ~~easement, covenant, restriction, or servitude, or any combination~~  
8 ~~thereof, as appropriate.~~ *executed pursuant to Section 1471 of the*  
9 *Civil Code that restricts or imposes obligations on the present and*  
10 *future uses or activities on a site, including but not limited to,*  
11 *recorded easements, covenants, restrictions or servitudes, or any*  
12 *combination thereof.*

13 25395.77. “Regional board” means a California regional  
14 water quality control board.

15 25395.78. “Release” has the same meaning as defined in  
16 Section 25320.

17 25395.79. “Response,” “respond,” or “response action”  
18 have the same meaning as defined in Section 25323.3, except that  
19 “response,” “respond,” and “response action” under this chapter  
20 apply to hazardous material, as defined in Section 25395.74.

21 25395.79.1. (a) “Unreasonable risk” means conditions at a  
22 site pose a significant risk to human health or the environment.

23 (b) *When adequate land use controls exist to prevent other uses*  
24 *of a site without any further reviews or determinations by the*  
25 *agency that approved the response action, an agency may*  
26 *determine if there is unreasonable risk at the site based on the*  
27 *intended land use.*

28

29

Article 3. Liability

30

31 25395.80. (a) Except as provided in Section 25395.85, and  
32 *except as otherwise provided under this section,* an innocent  
33 landowner who did not cause or contribute to the release at issue,  
34 is subject to the following immunities:

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

39 (2) Except as provided in subdivision (b), an agency may not  
40 take any action under any applicable statute to require the innocent



1 landowner to conduct any response action with respect to a  
2 hazardous materials release at a *the* site owned by the innocent  
3 landowner unless both of the following conditions apply:

4 (A) The agency does either of the following:

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

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

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

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

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

28 (c) (1) *The immunities described in this section shall attach  
29 upon approval of the written plan described in paragraph (2) of  
30 subdivision (a) of Section 25395.67 and shall remain in effect  
31 unless the innocent landowner receives a written notice of  
32 noncompliance from the agency.*

33 (2) *An agency may issue a written notice of noncompliance  
34 upon making both of the following findings:*

35 (A) *There is an unapproved failure to comply with the approved  
36 written plan or any response action undertaken pursuant to a  
37 response plan.*

38 (B) *The unapproved failure is a material deviation from the  
39 response plan or any response action undertaken pursuant to a  
40 response plan.*



1 (d) Any ~~potentially responsible party~~ *person* that is found to  
2 have committed fraud, intentional nondisclosure, or  
3 misrepresentation to any state or local agency with authority over  
4 cleanup or remediation at a site, is not an innocent landowner and  
5 is not entitled to immunity against costs of response imposed by  
6 the ~~department, board, regional board, local health agency, or~~  
7 ~~certified unified program agency.~~ *agency or for any claim brought*  
8 *by a party other than the agency under an applicable statute.*

9 25395.81. (a) Except as provided in Section 25395.85, *and*  
10 *except as otherwise provided under this section*, a bona fide  
11 prospective purchaser who did not cause or contribute to the  
12 release at issue is subject to the following immunities:

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

18 ~~(2) Notwithstanding any other provision of law or authority~~  
19 ~~under which a bona fide prospective purchaser has exercised~~  
20 ~~appropriate care with respect to a hazardous materials release, and~~  
21 ~~except~~

22 (2) *Except* as provided in subdivision (b), an agency may not  
23 take any action under any applicable statute to require the bona  
24 fide prospective purchaser or a subsequent property owner to  
25 conduct any additional response action with respect to a hazardous  
26 materials release at a site unless both of the following conditions  
27 are met:

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

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

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

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

37 (b) (1) The immunities described in this section shall attach  
38 upon ~~approval of the written plan described in paragraph (2) of~~  
39 ~~subdivision (a) of Section 25395.67 and shall continue as long as~~  
40 ~~the bona fide prospective purchaser substantially complies with~~



1 ~~the provisions of the approved plan. A bona fide prospective~~  
2 ~~purchaser shall be deemed to be out of substantial compliance with~~  
3 ~~the approved plan only when it has received written notice from~~  
4 ~~the appropriate agency of an unexcused and material failure to~~  
5 ~~comply with the approved plan. Written confirmation from the~~  
6 ~~appropriate agency that the bona fide prospective purchaser has~~  
7 ~~satisfactorily implemented the approved plan conclusively~~  
8 ~~presumes substantial compliance. approval of the written plan~~  
9 ~~described in paragraph (2) of subdivision (a) of Section 25395.67~~  
10 ~~and shall remain in effect unless the bona fide prospective~~  
11 ~~purchaser receives a written notice of noncompliance from the~~  
12 ~~agency.~~

13 (2) An agency may issue a written notice of noncompliance  
14 upon making both of the following findings:

15 (A) There is an unapproved failure to comply with the response  
16 plan or any response action undertaken pursuant to a response  
17 plan.

18 (B) The unapproved failure is a material deviation from the  
19 response plan or any response action undertaken pursuant to a  
20 response plan.

21 (c) Any ~~potentially responsible party~~ person that is found to  
22 have committed fraud, intentional nondisclosure, or  
23 misrepresentation to any state or local agency with authority over  
24 cleanup or remediation at a site, is not a bona fide prospective  
25 purchaser and is not entitled to immunity against costs of response  
26 imposed by the ~~department, board, regional board, local health~~  
27 ~~agency, or certified unified program agency.~~ agency or for any  
28 claim brought by a party other than the agency under an  
29 applicable statute.

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

34 ~~25395.82. (a) Except as provided in Section 25395.85, an~~  
35 ~~agency may not take any action under any applicable statute to~~  
36 ~~compel an owner of contiguous property to conduct additional~~  
37 ~~response action, with respect to a hazardous materials release at a~~  
38 ~~site owned by the owner of the contiguous property, unless the~~  
39 ~~owner meets all of the requirements of subdivision (c) and both of~~  
40 ~~the following conditions are met:~~



1 ~~(1) The agency does one of the following:~~

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

5 ~~(B) Reasonably determines that no viable potentially~~  
6 ~~responsible party exists to perform the required response action at~~  
7 ~~the site.~~

8 ~~(2) The conditions on the property pose an endangerment to~~  
9 ~~human health.~~

10 ~~(b) A person who owns real property that is contiguous to, or~~  
11 ~~otherwise similarly situated with respect to, and that is or may be,~~  
12 ~~contaminated by a release or threatened release of a hazardous~~  
13 ~~material from real property that is not owned by that person, is not~~  
14 ~~liable under any applicable statute for response costs or other~~  
15 ~~damages associated with the release or threatened release if the~~  
16 ~~person demonstrates, by a preponderance of the evidence, all of the~~  
17 ~~following:~~

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

20 ~~(2) The person is not potentially liable, or affiliated with any~~  
21 ~~other person who is potentially liable, for the release at issue~~  
22 ~~through any of the following circumstances:~~

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

24 ~~(B) Any contractual, corporate, or financial relationship,~~  
25 ~~unless the contractual, corporate, or financial relationship is~~  
26 ~~created by the instruments by which title or possession to the site~~  
27 ~~is conveyed or financed or a contract for the sale of goods or~~  
28 ~~services.~~

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

31 ~~(e) To qualify for the release from liability described in~~  
32 ~~subdivisions (a) and (b), the owner of the contiguous property shall~~  
33 ~~do all of the following:~~

34 ~~(1) Except as provided in subdivision (d), exercise appropriate~~  
35 ~~care with respect to the release of any hazardous materials at the~~  
36 ~~site.~~

37 ~~(2) Provide full cooperation, assistance, and access to persons~~  
38 ~~who are authorized to conduct response actions or natural resource~~  
39 ~~restoration at the site from which there has been a release or~~  
40 ~~threatened release, including the cooperation and access necessary~~



1 for the installation, integrity, operation, and maintenance of a  
2 complete or partial response action or natural resource restoration  
3 at the site.

4 (3) Comply with any land use control established or relied on  
5 in connection with the response action at the site, and does not  
6 impede the effectiveness or integrity of any aspect of any remedy  
7 employed in connection with a response action at the site.

8 (4) Comply with any request for information or administrative  
9 subpoena issued by an agency with jurisdiction under an  
10 applicable statute.

11 (5) Provide all legally required notices with respect to the  
12 discovery or release of hazardous materials at the site.

13 (6) Have conducted all appropriate inquiry into the previous  
14 uses and ownership of the site and, at the time of acquisition not  
15 know or have reason to know that the site was or could be  
16 contaminated by the release of hazardous materials from other real  
17 property not owned or operated by the person.

18 (d) Paragraph (1) of subdivision (c) does not require a person  
19 to conduct groundwater investigations or to install groundwater  
20 remediation systems with respect to hazardous materials from a  
21 source that is not on the property of the person who is a contiguous  
22 property owner and that enters groundwater beneath the property  
23 of the person solely as a result of subsurface migration.

24 (e) The immunities described in this section shall attach upon  
25 approval of the written plan described in paragraph (2) of  
26 subdivision (a) of Section 25395.67 and shall continue as long as  
27 the owner of contiguous property substantially complies with the  
28 provisions of the approved plan. An owner of contiguous property  
29 shall be deemed to be out of substantial compliance with the  
30 approved plan only when it has received written notice from the  
31 appropriate agency of an unexcused and material failure to comply  
32 with the approved plan. Written confirmation from the appropriate  
33 agency that the owner of contiguous property has satisfactorily  
34 implemented the approved plan conclusively presumes substantial  
35 compliance.

36 (f) Any potentially responsible party that is found to have  
37 25395.82. (a) Except as provided in Section 25395.85, and  
38 except as otherwise provided in this section, a contiguous property  
39 owner who did not cause or contribute to a release at a site is  
40 subject to the following immunities:



1 (1) *The contiguous property owner is not liable under any*  
2 *applicable statute for a claim made by a party that is not a*  
3 *government agency for response costs or other damages*  
4 *associated with a release or threatened release of a hazardous*  
5 *material at the site.*

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

11 (A) *The agency does either of the following:*

12 (i) *Makes all reasonable attempts to compel any necessary*  
13 *response action from all other potentially responsible parties and*  
14 *those efforts has been unsuccessful.*

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

18 (B) *The conditions on the property pose an endangerment.*

19 (b) (1) *The immunities described in this section shall attach*  
20 *upon approval of the written plan described in paragraph (2) of*  
21 *subdivision (a) of Section 25395.67 and shall remain in effect*  
22 *unless the person receives written notice of noncompliance from*  
23 *the agency.*

24 (2) *The agency may issue a written notice for noncompliance*  
25 *upon making both of the following findings:*

26 (A) *There is an unapproved failure to comply with the response*  
27 *plan or any response action undertaken pursuant to a response*  
28 *plan.*

29 (B) *The unapproved failure is a material deviation from the*  
30 *response plan or any response action undertaken pursuant to a*  
31 *response plan.*

32 (c) *An owner of contiguous property who is found to have*  
33 *committed fraud, intentional nondisclosure, or misrepresentation*  
34 *to any state or local agency with authority over cleanup or*  
35 *remediation at a site, is not entitled to immunity against costs of*  
36 *response imposed by the department, board, regional board, local*  
37 *health agency, or certified unified program agency.*

38 ~~(g) This section does not limit a defense to liability that may be~~  
39 ~~available to the person under any other provision of state law, and~~



1 ~~this section does not impose liability on the person that is not~~  
2 ~~otherwise imposed by an applicable statute.~~

3 ~~(h) response imposed by the agency or for any claim brought~~  
4 ~~by a party other than the agency under an applicable statute.~~

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

9 ~~25395.83. (a) The immunities and prohibitions imposed by~~  
10 ~~Sections 25395.80, 25395.81, and 25395.82 shall become~~  
11 ~~operative on January 1, 2005, and do not apply to any transfer of~~  
12 ~~property concluded before January 1, 2005.~~

13 ~~(b) The immunities and prohibitions imposed by Sections~~  
14 ~~25395.80, 25395.81, and 25395.82 are in addition to, and do not~~  
15 ~~otherwise affect, any other protection provided under state law.~~

16 25395.84. If there are unrecovered costs incurred by a ~~lead~~ *an*  
17 agency at a site for which an owner of the site is not liable as a bona  
18 fide prospective purchaser, ~~the lead~~ *an* agency shall have a lien on  
19 the site, or may, by agreement with the owner, obtain from the  
20 owner a lien on other property or other assurance of payment for  
21 the unrecovered response costs, subject to all of the following  
22 requirements:

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

25 (b) The response action increases the fair market value of the  
26 site above the fair market value of the site that existed before the  
27 response action was initiated.

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

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

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

36 (f) (1) The lien shall be subject to the rights of a purchaser,  
37 holder of a security interest, or judgment lien creditor whose  
38 interest is perfected under applicable state law before notice of the  
39 lien has been filed in the appropriate office within the state or



1 county or other governmental subdivision, as designated by state  
2 law.

3 (2) The purchaser, holder of a security interest, or judgment  
4 lien creditor has the same protections against the lien as the  
5 protection provided by state law against a judgment lien that arises  
6 out of an unsecured obligation and that arises as of the time of the  
7 filing of the notice of the lien.

8 (3) The notice of the lien shall be recorded in the official  
9 records of the county recorder's office for the county in which the  
10 real property is located.

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

15 25395.85. This chapter does not exempt any of the following:

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

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

20 ~~25395.86.—A court of competent jurisdiction may require any~~  
21 ~~nongovernment entity to pay reasonable attorneys' fees and~~  
22 ~~experts' fees to any party that establishes that it is an innocent~~  
23 ~~landowner, bona fide prospective purchaser, or contiguous~~  
24 ~~landowner, as those terms are defined in this chapter or used in the~~  
25 ~~Comprehensive Environmental Response, Compensation, and~~  
26 ~~Liability Act (42 U.S.C. Sec. 9601 et seq.). A court may award~~  
27 ~~such fees in any action in which a claim is made that the innocent~~  
28 ~~landowner, bona fide prospective purchaser, or contiguous~~  
29 ~~landowner is liable for response costs or other damages associated~~  
30 ~~with a release or threatened release of the hazardous materials at~~  
31 ~~issue at the site. The award of fees shall be made upon notice and~~  
32 ~~motion by the innocent purchaser, bona fide prospective~~  
33 ~~purchaser, or contiguous landowner and shall be an element of the~~  
34 ~~costs of suit.~~

35 ~~25395.87.—(a) This chapter does not limit any defense to~~  
36 ~~liability that may be available to a person under any other~~  
37 ~~provision of law or impose liability on a person that is not~~  
38 ~~otherwise imposed by this chapter or an applicable statute.~~

39 ~~(b)—~~



1 25395.86. A court of competent jurisdiction may award  
2 reasonable attorneys' fees to a person who initiates an action  
3 under an applicable statute for contribution for, or recovery of,  
4 response costs incurred for a response action, or for any other  
5 response costs incurred at a site, if the person meets all of the  
6 following criteria:

7 (a) The person is a bona fide prospective purchaser, an  
8 innocent landowner, or a contiguous property owner and is subject  
9 to immunity pursuant to this chapter.

10 (b) The person has completed a response plan for a site, or is  
11 in compliance with an approved response plan and any approved  
12 response actions undertaken pursuant to a response plan for a site.

13 (c) The person is the prevailing party.

14 25395.87. This chapter does not limit the authority of an  
15 agency to conduct any response action it determines is necessary  
16 to contain or eliminate an ~~endangerment~~ unreasonable risk that  
17 requires action to protect public health and safety or the  
18 environment pursuant to an applicable statute.

19 25395.88. (a) On or before January 1, 2005, the California  
20 Environmental Protection Agency shall develop a form that shall  
21 be completed and submitted to the agency by a bona fide  
22 prospective purchaser, innocent landowner, or contiguous  
23 property owner who is subject to immunity pursuant to this chapter.  
24 The form shall include, but not be limited to, all of the following  
25 information:

26 (1) A description of the site, including its address and location.

27 (2) A description of the type and extent of hazardous materials  
28 contaminants and discharges identified for response action plan  
29 at the site pursuant to a response action plan.

30 (3) An estimate of the cost of the response action to be  
31 undertaken pursuant to a response action.

32 (4) A description of the present and proposed use of the site.

33 (5) A description of any land use restrictions, covenants, deed  
34 restrictions or other conditions imposed on the site owned by a  
35 party who is subject to immunity pursuant to this chapter.

36 (6) A description and the amounts of those contaminants or  
37 discharges specified in paragraph (2) that will not be remediated  
38 pursuant to the response action.

39 (b) On or before July 1, 2005, and annually thereafter, the  
40 California Environmental Protection Agency shall submit to the



1 Legislature a report compiling the data collected pursuant to  
2 subdivision (a) and compare that data, where feasible, to similar  
3 data collected from January 1, 2001, to January 1, 2005.

4 (c) The report submitted pursuant to subdivision (b) shall  
5 compare the number and quality of brownfield response actions  
6 completed by agencies pursuant to this chapter with similar  
7 response actions completed prior to its enactment, and shall  
8 evaluate the impact of granting this chapter's immunities to  
9 developers of brownfield properties.

10 25395.90. (a) This chapter shall remain in effect only until  
11 January 1, 2010, and as of that date is repealed, unless a later  
12 enacted statute, that is enacted before January 1, 2010, deletes or  
13 extends that date.

14 SEC. 2. Chapter 6.83 (commencing with Section 25395.91) is  
15 added to Division 20 of the Health and Safety Code, to read:

16  
17 CHAPTER 6.83. IMMUNITY CONTINUATION  
18

19 25395.91. (a) A person who, before January 1, 2010, is  
20 subject to an immunity pursuant to Chapter 6.82 (commencing  
21 with Section 25395.60), as that chapter read on December 31,  
22 2009, shall continue to have that immunity on and after January  
23 1, 2010, if the person continues to be in compliance with the  
24 requirements of former Chapter, 6.82 (commencing with Section  
25 25395.60) including, but not limited to, compliance with any  
26 approved response action subject to that chapter, and of any other  
27 applicable law.

28 (b) This chapter shall become operative January 1, 2010.

