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AMENDED IN SENATE MARCH 24, 2003

**SENATE BILL**

**No. 493**

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**Introduced by Senator Cedillo**

*(Coauthors: Assembly Members Calderon and Firebaugh)*

February 20, 2003

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~~An act to add and repeal Chapter 6.82 (commencing with Section 25395.60) 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. An act to add Chapter 6.83 (commencing with Section 25395.91) and Chapter 6.84 (commencing with Section 25395.92) to, and to add and repeal Chapter 6.82 (commencing with Section 25395.60) of, 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 an innocent landowner, a bona fide ~~prospective~~ purchaser, or a contiguous property owner, as defined, ~~is not liable~~ *qualifies for immunity from liability* for response cost or damage claims under specified state *statutory and common* laws that impose liability upon an owner or occupant of property, for pollution conditions caused by a release *or threatened release* of a hazardous material on, under, or adjacent to that property, if the innocent purchaser, bona fide prospective purchaser, or contiguous property owner meets specified conditions. The bill would prohibit an agency, as defined, from requiring an innocent landowner, bona fide ~~prospective~~ purchaser, or contiguous property owner to take ~~certain a~~ *response-action actions* under those state laws, ~~except as specified~~ *other than a response action, required in an approved response plan*. The bill would, if there are unrecovered response costs incurred by an agency, at a site for which an owner of the site is not liable as a bona fide ~~prospective~~ purchaser, require the agency to have a lien on the site, or authorize the 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 *incurred* at a site, to award reasonable attorneys' fees *and experts' fees* to an innocent landowner, bona fide ~~prospective~~ purchaser, or contiguous landowner, as specified.

~~The bill would require an innocent landowner, bona fide prospective purchaser, or contiguous landowner to reimburse an agency for its reasonable oversight costs incurred while reviewing a response plan or overseeing the implementation of a response plan.~~

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 actions 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.

*The bill would require a bona fide purchaser, innocent landowner or contiguous property owner who seeks to qualify for the immunity provided by the act to enter into an agreement with an agency that includes the performance of a site assessment, and if the agency determines that a response plan is necessary, the preparation and implementation of a response plan. The bill would require a person who enters into an agreement to reimburse the agency that enters into the agreement for all agency costs.*

*The bill would require a person who enters into an agreement with an agency for oversight of a site assessment to submit a site assessment plan to the agency. The bill would require the agency to evaluate the adequacy of the site assessment plan to ensure that it contains all necessary information and, after evaluating the site assessment plan, if the agency finds that the plan is adequate, the agency would be required to approve the plan and provide notification to appropriate persons.*

*The bill would require a person, after implementing the site assessment plan, to submit a report of its findings to the agency. The bill would require the agency, based upon a review of this information, to determine whether a response action is necessary to address any unreasonable risk from hazardous materials at the site. If the agency determines that a response action is necessary to prevent, control, or eliminate an unreasonable risk, the bill would require the bona fide purchaser, innocent landowner, or contiguous property owner to submit a response plan to the agency to conduct a response action at the site. The bill would require the agency to evaluate the adequacy of the response plan and to approve the plan if the agency makes specified findings.*

*The bill would authorize a response plan to require the use of a land use control that imposes appropriate conditions, restrictions, and obligations on land use or activities if, after completion of the removal and remedial actions specified in the response plan, hazardous substances materials remain at the site at a level that is not suitable for the unrestricted use of the site, pursuant to a specified procedure. The*



bill would authorize the Department of Toxic Substances Control to exclude any portion of a response action conducted entirely onsite from certain hazardous waste facilities permit requirements.

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

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

8  
9 *Article 1. Legislative Findings and Intent*

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

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

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

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

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



1 25395.61. *It is the intent of the Legislature, in enacting this*  
2 *chapter, to do all of the following:*

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

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

10 (c) *Encourage process efficiencies that continue to ensure that*  
11 *cleanups are protective of public health and safety and the*  
12 *environment.*

13 (d) *Encourage the development and redevelopment of unused*  
14 *or underused properties in urban areas.*

15 (e) *Establish a voluntary process for bona fide purchasers,*  
16 *innocent landowners and contiguous property owners to make*  
17 *certain the extent of their liability, if any, under state law for*  
18 *hazardous materials contamination caused by other persons,*  
19 *without otherwise altering existing state law regarding liability for*  
20 *hazardous materials releases.*

21 25395.62. *This chapter shall be known, and may be cited as,*  
22 *the “California Land Reuse and Revitalization Act of 2004.”*

23

24 *Article 2. Definitions*

25 25395.63. *The definitions set forth in this article shall govern*  
26 *the interpretation of this chapter. If a term is not otherwise defined*  
27 *in this chapter, the definition contained in Chapter 6.8*  
28 *(commencing with Section 25300) shall apply to that term.*

29 25395.64. *“Agency” means the department, the board, or a*  
30 *regional board.*

31 25395.65. *“All appropriate inquiries” has the following*  
32 *meanings:*

33 (a) *Except as provided in subdivision (c), until the date when*  
34 *the standards and practices established by the Administrator of the*  
35 *United States Environmental Protection Agency pursuant to*  
36 *Section 101(35)(B)(ii) of the federal act (42 U.S.C. Sec.*  
37 *9601(35)(B)(ii)) are adopted and take effect, “all appropriate*  
38 *inquiries” means:*

39 (1) *For property acquired before December 1, 2000,*  
40 *compliance with American Society for Testing and Materials*



1 *Standard E1 527-97 entitled “Standard Practice for*  
2 *Environmental Site Assessment”: Phase 1 Environmental Site*  
3 *Assessment Process.*

4 (2) *For property acquired after December 1, 2000, compliance*  
5 *with American Society for Testing and Materials Standard*  
6 *E1527-00.*

7 (b) *Except as provided in subdivision (c), on and after the date*  
8 *when the standards and practices established by the Administrator*  
9 *of the United States Environmental Protection Agency pursuant to*  
10 *Section 101 (35)(B)(ii) of the federal act (42 U.S.C. Sec.*  
11 *9601(35)(B)(ii)) are adopted and take effect, “all appropriate*  
12 *inquiries” means compliance with those standards, except that*  
13 *any portion of the inquiry that includes the practice of engineering*  
14 *shall be carried out in conformance with applicable state law.*

15 (c) *If the property is used solely for residential use and has four*  
16 *or fewer units at the time of acquisition by a nongovernmental or*  
17 *noncommercial entity, “all appropriate inquiries” means that a*  
18 *site inspection and title search does not reveal a basis for further*  
19 *investigation.*

20 25395.66. *“Applicable law” means all of the provisions of the*  
21 *following state statutory and common laws that impose liability on*  
22 *an owner or occupant of property for pollution conditions caused*  
23 *by a release or threatened release of hazardous material on, under,*  
24 *or adjacent to the property:*

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

28 (b) *Chapter 2 (commencing with Section 731) of Title 10 of Part*  
29 *2 of the Code of Civil Procedure, but not including Section 736 of*  
30 *the Code of Civil Procedure.*

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

32 (d) *Chapter 6.7 (commencing with Section, 25280), Chapter*  
33 *6.75 (commencing with Section 25299.10), and Chapter 6.8*  
34 *(commencing with Section 25300), of this division.*

35 (e) *Chapter 1 (commencing with Section 13000) to Chapter 5*  
36 *(commencing with Section 13300), inclusive, of Division 7 of the*  
37 *Water Code.*

38 (f) *State common law regarding contribution, nuisance,*  
39 *trespass and equitable indemnity.*

40 25395.67. *“Appropriate care” means either of the following:*



1 (a) *The performance of a response action, with respect to*  
2 *hazardous materials found at a site, for which the agency makes*  
3 *the determination specified in paragraph (1) of subdivision (c) of*  
4 *Section 25395.98 and that meets all of the following conditions:*

5 (1) *The response action is determined by an agency to be*  
6 *necessary to prevent an unreasonable risk to human health or the*  
7 *environment.*

8 (2) *The response action is performed in accordance with a*  
9 *response plan approved by the agency pursuant to Chapter 6.84*  
10 *(commencing with Section 25295.92).*

11 (3) *The approved response plan includes a provision for*  
12 *oversight and verification of the response action by the agency*  
13 *pursuant to Chapter 6.84 (commencing with Section 25295.92).*

14 (b) *A determination that no further action is required pursuant*  
15 *to Section 25395.97.*

16 25395.68. *“Board” means the State Water Resources Control*  
17 *Board.*

18 25395.69. (a) *“Bona fide purchaser” means a person, or a*  
19 *tenant of a person, who acquires ownership of a site on or after*  
20 *January 1, 2005, and who establishes all of the following by a*  
21 *preponderance of the evidence:*

22 (1) *All releases of the hazardous materials at issue at the site*  
23 *occurred before the person acquired the site, except as described*  
24 *in paragraph (2).*

25 (2) *A person shall remain eligible to qualify as a bona fide*  
26 *purchaser, notwithstanding a release of hazardous materials at the*  
27 *site following acquisition of the site by that person, if the release*  
28 *is either of the following:*

29 (A) *Of a type, nature or amount that does not require reporting*  
30 *pursuant to applicable statutory and regulatory reporting*  
31 *requirements.*

32 (B) *Has been appropriately resolved to the satisfaction of the*  
33 *agency.*

34 (3) *All of the conditions of Section 25395.79.1 to qualify as a*  
35 *bona fide purchaser have been met.*

36 (4) *The person is not potentially liable, or affiliated with any*  
37 *other person who is potentially liable, for the release or threatened*  
38 *release at the site 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 release or threatened release of hazardous  
8 materials at the site.

9 (b) For purposes of this section, “release” does not include  
10 passive migration.

11 25395.69.5. (a) “Contiguous property owner” means a  
12 person who owns a site that is adjacent to or otherwise similarly  
13 situated with respect to another site that is, or may be,  
14 contaminated by a release or threatened release of a hazardous  
15 material and that is not owned by that person, and who  
16 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) At the time the person acquired the property, the person  
21 made all appropriate inquiries and did not know and had no  
22 reason to know of the release or threatened release at the site.

23 (3) All of the conditions of Section 25395.79.1 to qualify as a  
24 contiguous property owner have been met.

25 (4) A person shall remain eligible to qualify as a contiguous  
26 landowner notwithstanding a release of hazardous materials at the  
27 site following acquisition by that person, if the release is either of  
28 the following:

29 (A) Of a type, nature or amount that does not require reporting  
30 pursuant to applicable statutory and regulatory reporting  
31 requirements.

32 (B) Has been appropriately resolved to the satisfaction of the  
33 agency.

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

37 (A) Any direct or indirect familial relationship.

38 (B) Any contractual, corporate, or financial relationship,  
39 unless the contractual, corporate, or financial relationship is  
40 created by the instruments by which title or possession to the site



1 *is conveyed or financed or a contract for the sale of goods or*  
2 *services.*

3 *(C) The result of a reorganization of a business entity that was*  
4 *potentially liable for the hazardous materials.*

5 *(b) For purposes of this section, “release” does not include*  
6 *passive migration.*

7 25395.70. *“Department means” the Department of Toxic*  
8 *Substances Control.*

9 25395.71. *“Endangerment” means a condition that poses an*  
10 *actual and unreasonable risk to human health and safety arising*  
11 *from actual or threatened exposure to hazardous materials.*

12 25395.72. *“Fair market value” means the price a seller is*  
13 *willing to accept and a buyer willing to pay on the open market and*  
14 *in an arm’s length transaction.*

15 25395.73. *“Hazardous material” has the same meaning as*  
16 *defined in subdivision (d) of Section 25260.*

17 25395.74. (a) *“Innocent landowner” means a person who*  
18 *owns a site, did not cause or contribute to a release or threatened*  
19 *release at the site, meets the conditions to qualify as an “innocent*  
20 *landowner” specified in Section 25395.79.1, and is any one of the*  
21 *following:*

22 *(1) A person who, at the time the person acquired the property*  
23 *made all appropriate inquiries and did not know and had no*  
24 *reason to know of the release or threatened release at the site.*

25 *(2) A government entity that acquired property by escheat, or*  
26 *through any another involuntary transfer acquisition, or through*  
27 *the exercise of eminent domain authority by purchase or*  
28 *condemnation.*

29 *(3) A person who acquired the property by inheritance or*  
30 *bequest.*

31 *(4) A person who qualifies for the defense from liability under*  
32 *Section 107(b) of the federal act (42 U.S.C. Sec. 9607(b)).*

33 *(b) A person shall remain eligible to qualify as an innocent*  
34 *landowner notwithstanding a release of hazardous materials at the*  
35 *site following acquisition by that person if the release is either of*  
36 *the following:*

37 *(1) Of a type, nature or amount that does not require reporting*  
38 *pursuant to applicable statutory and regulatory reporting*  
39 *requirements.*



1 (2) *Has been appropriately resolved to the satisfaction of the*  
2 *agency.*

3 (c) *For purposes of this section, “release” does not include*  
4 *passive migration.*

5 25395.75. *“Land use control” means a recorded instrument*  
6 *executed pursuant to Section 1471 of the Civil Code that restricts*  
7 *or imposes obligations on the present or future uses or activities*  
8 *on a site, including but not limited to, recorded easements,*  
9 *covenants, restrictions or servitudes, or any combination thereof.*

10 25395.76. *“Passive migration” means the leaking, leaching*  
11 *or movement of a hazardous material into or through the*  
12 *environment, for which no human activity by the bona fide*  
13 *purchaser, innocent landowner, or contiguous property owner*  
14 *preceeded the initial entry of that substance into the environment.*

15 25395.77. *“Regional board” means a California regional*  
16 *water quality control board.*

17 25395.78. *“Release” has the same meaning as defined in*  
18 *Section 25320.*

19 25395.78.1. *“Response plan” means a written plan submitted*  
20 *to an agency pursuant to Section 25395.98.*

21 25395.79. (a) *“Site” means real property located in an*  
22 *urban infill area for which the expansion, redevelopment, or reuse*  
23 *may be complicated by the presence or perceived presence of*  
24 *hazardous materials.*

25 (b) *“Site” does not include any of the following:*

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

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

32 (3) *A site that is solely impacted by a petroleum release from an*  
33 *underground storage tank eligible for reimbursement from the*  
34 *California Underground Storage Tank Cleanup Fund.*

35 (c) *For purposes of this section, the following definitions shall*  
36 *apply:*

37 (1) *“Infill area” means a vacant or underutilized lot of land*  
38 *within an urban area served by existing physical installations,*  
39 *including, but not limited to, roads, power lines, and other*  
40 *infrastructure that is zoned for commercial, industrial, or mixed*



1 use and has not been zoned exclusively for open space agricultural  
2 use, or residential use within the five years prior to the date an  
3 agreement is entered into pursuant to Chapter 6.84 (commencing  
4 with Section 25395.60).

5 (2) “Urban area” means either of the following:

6 (A) An incorporated city.

7 (B) An unincorporated area that is completely surrounded by  
8 one or more incorporated cities that meets both of the following  
9 criteria:

10 (i) The population of the unincorporated area and the  
11 population of the surrounding incorporated cities is equal to a  
12 population of 100,000 or more.

13 (ii) The population density of the unincorporated area is equal  
14 to, or greater than, the population density of the surrounding  
15 cities.

16

17

Article 3. Liability

18

19 25395.79.1. For purposes of this chapter, to qualify as a bona  
20 fide purchaser, innocent landowner, or contiguous property owner  
21 a person shall establish, by a preponderance of the evidence, all  
22 of the following conditions:

23 (a) On or before the date on which the person acquired the site,  
24 the person made all appropriate inquiries into the previous  
25 ownership and uses of the site.

26 (b) The person exercises appropriate care with respect to the  
27 release or threatened release of hazardous materials at the site.

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

34 (d) The person complies with land use controls established or  
35 relied on, in connection with an approved response action at the  
36 site, and does not impede the effectiveness or integrity of any  
37 aspect of any remedy employed at the site in connection with a  
38 response action.

39 (e) The person complies with all requests for information or  
40 administrative subpoena concerning the release or threatened



1 release of hazardous substances by any agency with jurisdiction  
2 under an applicable statute.

3 (f) The person provides all notices and satisfies reporting  
4 requirements required by state or federal law with respect to the  
5 discovery or release of hazardous substances at the site.

6 25395.80. (a) Except as provided in Section 25395.84, and  
7 except as otherwise provided under this section, a bona fide  
8 purchaser, innocent landowner, or contiguous property owner who  
9 did not cause or contribute to the release at the site, qualifies for  
10 the following immunities:

11 (1) The bona fide purchaser, innocent landowner, or  
12 contiguous property owner is not liable under any applicable  
13 statute for a claim made by any person, other than an agency, for  
14 response costs or other damages associated with a release or  
15 threatened release of a hazardous material at the site  
16 characterized in the site assessment conducted pursuant to, or a  
17 response plan approved pursuant to, Chapter 6.84 (commencing  
18 with Section 25395.92).

19 (2) An agency shall not take an action under an applicable  
20 statute to require a bona fide purchaser, innocent landowner, or  
21 contiguous property owner to take a response action, other than a  
22 response action required in an approved response plan, with  
23 respect to a hazardous material release at a site that is  
24 characterized in the site assessment conducted pursuant to, or a  
25 response plan approved pursuant to Chapter 6.84 (commencing  
26 with Section 25395.92), unless both of the following conditions  
27 apply:

28 (A) The conditions on the property pose an endangerment.

29 (B) The agency does one of the following:

30 (i) Makes all reasonable efforts, including taking appropriate  
31 administrative enforcement actions, to compel any necessary  
32 response action from other potentially responsible parties, and  
33 those efforts have been unsuccessful.

34 (ii) Reasonably determines, after the exercise of reasonable  
35 inquiry, that no potentially responsible party exists with sufficient  
36 financial resources to perform the required response action at the  
37 site.

38 (b) A person shall remain eligible to qualify as an innocent  
39 landowner, contiguous landowner, or bona fide purchaser,  
40 notwithstanding a release of hazardous materials at the site



1 following acquisition by that person, if the release is either of the  
2 following:

3 (1) Of a type, nature, or amount that does not require reporting  
4 pursuant to applicable statutory and regulatory reporting  
5 requirements.

6 (2) Has been appropriately resolved to the satisfaction of the  
7 agency.

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

12 (d) The immunities described in this section shall attach when  
13 the bona fide purchaser, innocent landowner or contiguous  
14 property owner enters into an agreement with an agency pursuant  
15 to Section 25395.94 and shall remain in effect unless one of the  
16 following occur:

17 (1) The bona fide purchaser, innocent landowner, or  
18 contiguous property owner receives a written notice of an  
19 unapproved, material deviation from the agreement from the  
20 agency.

21 (2) The bona fide purchaser, innocent landowner, or  
22 contiguous property owner terminates the agreement before  
23 obtaining a no further action determination pursuant to Section  
24 25395.97 or a certificate of completion pursuant to Section  
25 25395.99.

26 (e) A person who otherwise qualifies for immunity under this  
27 chapter and who commits fraud, intentional nondisclosure, or  
28 misrepresentation to an agency with respect to disclosures  
29 required under this chapter does not qualify as a bona fide  
30 purchaser, innocent landowner, or contiguous property owner.

31 (f) For purposes of this section, “release” does not include  
32 passive migration.

33 25395.81. (a) If there are unrecovered costs incurred by an  
34 agency at a site for which an owner of the site is not liable as an  
35 innocent landowner, bona fide purchaser or contiguous property  
36 owner, an agency shall have a lien on the site, or may, by agreement  
37 with the owner, obtain from the owner a lien on other property or  
38 other assurance of payment for the unrecovered response costs,  
39 subject to all of the following requirements:



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

3 (2) The response action increased the fair market value of the  
4 site above the fair market value of the site that existed before the  
5 response action was initiated.

6 (b) The lien shall arise at the time at which costs are first  
7 incurred by the agency with respect to a response action at the site.

8 (c) The lien amount shall not exceed the increase in fair market  
9 value of the property attributable to the response action at the time  
10 of a sale or other disposition of the property, and shall not exceed  
11 the unrecovered response costs actually incurred by the agency.

12 (d) The lien shall continue until the earlier of satisfaction of the  
13 lien by sale or other means, or recovery of all response costs  
14 incurred by the agency at the site.

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

21 (2) For purposes of paragraph (1), “purchaser” and “security  
22 interest” have the same meaning as defined in subsection (h) of  
23 Section 6323 of Title 26 of the United States Code.

24 (f) The notice of the lien shall be recorded in the official records  
25 of the county recorder’s office for the county in which the real  
26 property is located.

27 (g) A lien imposed under this section shall have the force and  
28 effect of, and the priority of, a judgment lien upon its recordation  
29 in the county in which the property subject to the lien is located.

30 25395.82. (a) A court of competent jurisdiction may award  
31 reasonable attorneys’ fees and experts’ fees to a person who  
32 initiates a claim under an applicable statute for contribution for,  
33 or recovery of, response costs incurred for a response action, or for  
34 any other response costs incurred at a site, if the person meets all  
35 of the following criteria:

36 (1) The person is a bona fide purchaser, an innocent landowner,  
37 or a contiguous property owner and qualifies for immunity  
38 pursuant to this chapter.

39 (2) The person is a prevailing party.



1 (3) *On or before 20 calendar days prior to the date of the trial*  
2 *on issues relating to the response costs at issue, the person serves*  
3 *on the defendant both of the following:*

4 (A) *If a response plan has been approved for that site pursuant*  
5 *to Chapter 6.84 (commencing with Section 25395.92), a copy of*  
6 *the approved response plan.*

7 (B) *A written demand for compensation setting forth the*  
8 *specific sum demanded from the defendant, including a statement*  
9 *of the reasoning supporting the demand. The amount of written*  
10 *demand shall include all response costs sought from the defendant*  
11 *at issue, including all interest, but shall not include litigation*  
12 *expenses, attorneys' fees, and experts' fees. The amount of the*  
13 *demand may include any alleged consequential damages.*

14 (b) *In determining whether to award reasonable attorneys' fees*  
15 *and experts' fees pursuant to this section, a court shall consider the*  
16 *relationship of the amount of the written demand described in*  
17 *subparagraph (B) of paragraph (3) of subdivision (a) to the total*  
18 *sum of the response costs and, if appropriate and included in the*  
19 *demand, the consequential damages in the written demand, to the*  
20 *final determination of the costs and damages by the trier of fact.*

21 (c) *A court may award reasonable attorneys' fees and experts'*  
22 *fees to an agency that is the prevailing party in an action arising*  
23 *out this chapter.*

24 25395.83. *An innocent landowner, bona fide purchaser, or*  
25 *contiguous landowner may seek contribution from any person who*  
26 *is responsible for a discharge or release of hazardous materials for*  
27 *which the innocent landowner, bona fide purchaser, or contiguous*  
28 *landowner incurs agency oversight costs for the review of a*  
29 *response plan or oversight of the implementation of a response*  
30 *plan subject to this chapter.*

31 25395.84. (a) *This chapter does not provide immunity from*  
32 *any of the following:*

33 (1) *Liability for bodily injury or wrongful death.*

34 (2) *Any requirement imposed under Chapter 6.5 (commencing*  
35 *with Section 25100), including, but not limited to, corrective*  
36 *action and closure and post closure requirements.*

37 (3) *Criminal acts.*

38 (4) *Permit violations.*

39 (5) *Contractual indemnity agreements between purchasers and*  
40 *sellers of real property.*



1 (b) This chapter shall not apply as a defense or immunity to any  
2 action taken by a redevelopment agency pursuant to Article 12.5  
3 (commencing with Section 33459) of Chapter 4 of Part 1 of  
4 Division 24.

5 (c) This chapter does not limit the authority of an agency to  
6 conduct a response action it determines is necessary to protect  
7 public health and safety or the environment pursuant to an  
8 applicable statute.

9 (d) This chapter does not preclude a state or local agency that  
10 is taking property by eminent domain, negotiating to acquire  
11 property in lieu of taking it by eminent domain, or considering the  
12 taking of property through the exercise of eminent domain  
13 authority, from evaluating the impact on the value of the property  
14 resulting from a release or threatened release of any hazardous  
15 material, from incorporating that evaluation into any offer of  
16 compensation for that property, or from presenting that evaluation  
17 at a trial or other proceeding to establish the value of the property.

18 (e) This chapter does not do either of the following:

19 (1) Limit a defense to liability that may be available to a person  
20 under any other provision of law.

21 (2) Impose any new obligation on an owner of real property  
22 other than those specifically assumed by the owner under an  
23 agreement entered into pursuant to Chapter 6.84 (commencing  
24 with Section 25395.92).

25 25395.85. (a) On or before January 1, 2005, the California  
26 Environmental Protection Agency shall develop a form that, upon  
27 approval of a response plan, shall be completed and submitted to  
28 the agency by a bona fide purchaser or innocent landowner who  
29 qualifies for immunity pursuant to this chapter. The form shall  
30 include, but is not required to be limited to, all of the following  
31 information:

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

33 (2) A description of the type and extent of hazardous materials  
34 releases and threatened releases identified for response at the site  
35 pursuant to a response plan.

36 (3) An estimate of the cost of the response action to be  
37 undertaken pursuant to a response plan.

38 (4) A description of the present and proposed use of the site,  
39 including current and potential future zoning and land use  
40 designations.



1 (5) A description of any land use restrictions, covenants, deed  
2 restrictions or other conditions imposed on the site owned by a  
3 party who qualifies for immunity pursuant to this chapter.

4 (6) A description and the concentrations of those hazardous  
5 materials or discharges specified in paragraph (2) that will not be  
6 remediated pursuant to the response plan.

7 (b) On or before January 1, 2006, and annually thereafter, the  
8 California Environmental Protection Agency shall, to the extent  
9 that resources are available, compile the information submitted  
10 pursuant to this section and post a report of its findings on its web  
11 site. The posted report shall compare the data collected pursuant  
12 to this section with information collected prior to January 1, 2005,  
13 to the extent that this information is available.

14 (c) The report posted pursuant to subdivision (b) shall, to the  
15 extent practicable, compare the number and quality of response  
16 actions completed pursuant to this chapter with similar response  
17 actions completed prior to its enactment, and shall evaluate the  
18 impact of the benefit of this chapter's immunities on the acquisition  
19 and development of properties.

20 25395.86. This chapter shall remain in effect only until  
21 January 1, 2010, and as of that date is repealed, unless a later  
22 enacted statute, that is enacted before January 1, 2010, deletes or  
23 extends that date.

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

26  
27 CHAPTER 6.83. IMMUNITY CONTINUATION  
28

29 25395.91. (a) A person who, before January 1, 2010,  
30 qualifies for immunity pursuant to Chapter 6.82 (commencing  
31 with Section 25395.60), as that chapter read on December 31,  
32 2009, shall continue to have that immunity on and after January  
33 1, 2010, if the person continues to be in compliance with the  
34 requirements of former Chapter, 6.82 (commencing with Section  
35 25395.60) including, but not limited to, compliance with all  
36 response plans approved pursuant to Chapter 6.84 (commencing  
37 with Section 25395.92), and compliance with all other applicable  
38 laws.

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

1 SEC. 3. Chapter 6.84 (commencing with Section 25395.92) is  
2 added to Division 20 of the Health and Safety Code, to read:

3

4 CHAPTER 6.84. STREAMLINED SITE INVESTIGATION AND PROCESS

5

6

Article 1. Definitions

7

8 25395.92. (a) Except as otherwise provided in this chapter,  
9 the definitions in Chapter 6.82 (commencing with Section  
10 25395.60) apply to the terms used in this chapter.

11 (b) "Action level" has the same meaning as defined in  
12 paragraph (1) of subdivision (c) of Section 116455.

13 (c) "Host jurisdiction" means the city or county in which the  
14 site is located and which has the authority to take action regarding  
15 the site pursuant to Title 7 (commencing with Section 65000) of the  
16 Government Code.

17 (d) (1) "Significant threat to the environment" means that an  
18 existing source of hazardous materials at a site is causing any of  
19 the following:

20 (A) A significant release of hazardous materials to a hydrologic  
21 unit or groundwater basin that has been designated by a regional  
22 board as having a beneficial use of municipal or domestic use.

23 (B) Imminent harm to exposed, biologic, nonhuman receptors.

24 (C) A discharge into surface water that is above the applicable  
25 action level.

26 (2) The existence of a significant threat to human health shall  
27 be determined pursuant to the methods specified in subdivisions  
28 (b), (c), and (d) of Section 25356.1.5.

29 (e) "Unreasonable risk" at a site means that a condition at a  
30 site poses a significant threat to human health or a significant  
31 threat to the environment.

32

33 Article 2. Site Assessment and Response Plan Agreements

34

35 25395.93. (a) Only a bona fide purchaser, innocent  
36 landowner, or contiguous property owner who meets the  
37 requirements specified in Section 25395.79.1 is eligible to enter  
38 into an agreement pursuant to this chapter.

39 (b) An agreement entered under this chapter is not subject to  
40 Chapter 2 (commencing with Section 10290) of Part 2 of Division



1 2 of the Public Contract Code, including, but not limited to,  
2 Section 10295 of the Public Contract Code.

3 25395.94. (a) A bona fide purchaser, innocent landowner, or  
4 contiguous property owner who seeks to qualify for the immunity  
5 provided by Chapter 6.82 (commencing with Section 25395.60)  
6 shall enter into an agreement with an agency pursuant to this  
7 chapter that includes the performance of a site assessment, and, if  
8 the agency determines that a response plan is necessary pursuant  
9 to Section 25395.98, the preparation and implementation of a  
10 response plan.

11 (b) Before finalizing the agreement, the requested agency shall  
12 notify other appropriate agencies, including the host jurisdiction.

13 (c) A person who enters into an agreement with an agency  
14 pursuant to this section shall submit sufficient information to the  
15 agency for the agency to determine whether the site is an eligible  
16 site, whether the person meets the conditions to qualify as a bona  
17 fide purchaser, innocent landowner or contiguous property owner  
18 pursuant to Chapter 6.82 (commencing with Section 25395.60),  
19 and to prepare an agreement pursuant to this section.

20 (d) (1) A person who enters into an agreement pursuant to this  
21 section shall agree to take all actions that are necessary to prevent  
22 or eliminate an unreasonable risk at the site. These actions may  
23 include actions necessary to prevent an unreasonable risk before  
24 the approval of a response plan.

25 (2) In determining whether there is unreasonable risk at a site  
26 for purposes of this subdivision, the agency shall take into account  
27 the intended use of the property, in accordance with any changed  
28 use of the property, as specified in subdivision (d) of Section  
29 25395.98.

30 25395.95. (a) A person may withdraw from an agreement  
31 entered into pursuant to this chapter by providing a 30-day written  
32 notice to the agency and doing both of the following:

33 (1) Reimbursing the agency for all costs incurred by the agency  
34 pursuant to the agreement.

35 (2) Demonstrating to the satisfaction of the agency, that  
36 conditions at the site to which the agreement applies do not pose  
37 an endangerment to public health and safety or the environment.  
38 If the agency determines that conditions at the site pose an  
39 endangerment to public health, safety or the environment, this  
40 chapter does not prevent the agency from exercising its authority



1 to take appropriate response actions or to cause the person or  
2 persons responsible for the endangerment to take appropriate  
3 response actions.

4 (b) A person who enters into an agreement with an agency  
5 pursuant to this chapter shall reimburse the agency for all agency  
6 costs, including, but not limited to, costs incurred while reviewing  
7 a site assessment plan or a response plan or overseeing the  
8 implementation of a site assessment or response plan by the person  
9 pursuant to this chapter, except that the department's costs shall  
10 be reimbursed pursuant to Chapter 6.66 (commencing with  
11 Section 25269) and shall be recoverable pursuant to Section  
12 25360.

13 (c) The entry into an agreement pursuant to this chapter shall  
14 not constitute an admission of fact or liability or conclusion of law  
15 for any purpose or proceeding and no person who enters into an  
16 agreement under this chapter shall be deemed liable under any  
17 other provision of law solely by reason of entering into that  
18 agreement.

19 25395.96. (a) (1) A person who enters into an agreement  
20 pursuant to this chapter with an agency for the oversight of a site  
21 assessment shall submit a site assessment plan to the agency to  
22 conduct a site assessment of the site in accordance with the  
23 requirements of this section.

24 (2) If the agency requires a health risk assessment as part of  
25 that agreement, the health assessment shall be prepared in  
26 accordance with subdivisions (b), (c), and (d) of Section  
27 25356.1.5.

28 (b) The site assessment plan shall provide for the evaluation of  
29 all of the following:

30 (1) Whether a release of hazardous materials has occurred at  
31 the site, a threat of a release of hazardous materials exists at the  
32 site, or there is a threat of a release of hazardous materials from  
33 the site.

34 (2) If a release or threatened release of hazardous materials  
35 exists at the site or there is a release or a threatened release from  
36 the site, whether the release or threatened release poses an  
37 unreasonable risk to public health and safety or the environment.

38 (c) The site assessment plan shall also include all of the  
39 following:



1     (1) Adequate characterization of the hazardous materials  
2 released or threatened to be released at, or from, the site and  
3 documentation of the findings.

4     (2) Reasonably available information about the site, including,  
5 where appropriate, a risk assessment that evaluates the risk posed  
6 by any hazardous materials released or threatened to be released  
7 at, or from, the site, and information regarding reasonably  
8 anticipated foreseeable uses of the site based on current and  
9 projected land use and zoning designations.

10    (3) If the release has impacted groundwater, reasonable  
11 characterization of underlying groundwater, including present  
12 and anticipated beneficial uses of that water.

13    (d) A person shall submit the site assessment plan to the agency  
14 for review and approval.

15    (e) The agency shall evaluate the adequacy of the site  
16 assessment plan to ensure that it contains all necessary  
17 information.

18    (f) After evaluating the site assessment plan, if the agency finds  
19 that the site assessment plan is adequate, the agency shall approve  
20 the site assessment plan and provide notification to appropriate  
21 persons.

22    25395.97. (a) After implementation of the site assessment  
23 plan, the person shall submit a report of the findings made  
24 pursuant to the plan to the agency. Based upon a review of this  
25 information, the agency shall determine whether a response action  
26 is necessary to address any unreasonable risk from hazardous  
27 materials at the site.

28    (b) If the agency determines, that there is no unreasonable risk  
29 at the site and that there are no hazardous materials at the site at  
30 levels that are not suitable for unrestricted use of the site, the  
31 agency shall make a finding that no further action is necessary at  
32 the site. On or before 15 days after the date when the agency  
33 determines that no further action is necessary, the agency shall  
34 state in writing that this determination constitutes “appropriate  
35 care” for purposes of Section 25395.67. The agency shall provide  
36 the host jurisdiction with this determination.

37    (c) If the agency determines that there are hazardous materials  
38 at the site at levels that are not suitable for unrestricted use, but  
39 that are suitable for the reasonably anticipated foreseeable use of  
40 the site based on current and projected land use and zoning



1 *designations, the agency shall find that no further action is*  
2 *necessary at the site except, that a land use control that imposes*  
3 *appropriate restrictions pursuant to Section 25395.100 shall be*  
4 *executed and recorded. On or before 15 days after the date when*  
5 *the agency determines that no further action is necessary, the*  
6 *agency shall state in writing that this determination constitutes*  
7 *“appropriate care” for purposes of Section 25395.67. The agency*  
8 *shall provide the host jurisdiction with this determination.*

9 25395.98. (a) *If, upon review of the site assessment prepared*  
10 *pursuant to this chapter, the agency determines that a response*  
11 *action is necessary to prevent, control, or eliminate an*  
12 *unreasonable risk, the bona fide purchaser, innocent landowner, or*  
13 *contiguous property owner shall submit a response plan to the*  
14 *agency to conduct a response action at the site, in conformance*  
15 *with the agreement entered into pursuant to Section 25395.94. The*  
16 *response plan shall include all of the following:*

17 (1) (A) *An opportunity for the public, other agencies, and the*  
18 *host jurisdiction to participate in decisions regarding the response*  
19 *action, taking into consideration of the nature of the community*  
20 *interest.*

21 (B) *The methods for public participation proposed in the*  
22 *response plan may include, but are not limited to, the use of*  
23 *factsheets, public notices, direct notification of interested parties,*  
24 *public meetings, and an opportunity to comment on the proposed*  
25 *response plan prior to agency approval.*

26 (C) *To the extent possible, the agency shall coordinate its*  
27 *public participation activities with those undertaken by the host*  
28 *jurisdiction and other agencies associated with the development*  
29 *of the property, to avoid duplication to the extent feasible.*

30 (2) *Identification of the release or threatened release that is the*  
31 *subject of the response plan and documentation that the plan is*  
32 *based on an adequate characterization of the site.*

33 (3) *An identification of the response plan objectives and the*  
34 *proposed remedy, and an identification of the reasonably*  
35 *anticipated future land uses of the site and of the current and*  
36 *projected land use and zoning designations. This identification*  
37 *shall include confirmation by the host jurisdiction that the*  
38 *anticipated future land uses and current and projected land uses*  
39 *and zoning designations are accurate.*



1 (4) A description of activities that will be implemented to  
2 control any endangerment that may occur during the response  
3 action at the site.

4 (5) A description of any land use control that is part of the  
5 response action.

6 (6) A description of wastes other than hazardous materials at  
7 the site and how they will be managed in conjunction with the  
8 response action.

9 (7) Provisions for the removal of containment or storage  
10 vessels and other sources of contamination, including soils and  
11 free product, that cause an unreasonable risk.

12 (8) Any other information that the agency determines is  
13 necessary.

14 (b) The agency shall evaluate the adequacy of the plan  
15 submitted pursuant to subdivision (a) and shall approve the plan  
16 if the agency makes all of the following findings:

17 (1) The plan contains the information required by subdivision  
18 (a).

19 (2) When implemented, the plan will place the site in condition  
20 that allows it to be used for its reasonably anticipated future land  
21 use without unreasonable risk to human health and safety and the  
22 environment.

23 (3) The plan addresses any public comments.

24 (4) If applicable, the plan provides for long-term operation and  
25 maintenance, including land use and engineering controls, that  
26 are part of the remedy contained in the response plan.

27 (c) (1) On or before 60 days after the date an agency receives  
28 a response plan, the agency shall make a written determination  
29 that proper completion of the response plan constitutes  
30 “appropriate care” for purposes of subdivision (a) of Section  
31 25395.67.

32 (2) Upon approval of the response plan by the agency, the  
33 agency shall notify all appropriate persons, including the host  
34 jurisdiction.

35 (d) If the use of the property changes, after a response plan is  
36 approved, to a use that requires a higher level of protection, the  
37 agency may require the preparation and implementation of a new  
38 response plan pursuant to this chapter.

39 (e) Before the owner of a site makes any change in use of a site  
40 inconsistent with any land use control recorded for the site, the



1 owner shall notify the agency in accordance with the land use  
2 control.

3 25395.99. (a) Except as provided in Section 25395.100, the  
4 agency shall issue a certificate of completion upon determining  
5 that all response actions have been satisfactorily completed in  
6 accordance with an approved response plan.

7 (b) Notwithstanding subdivision (a), the agency shall issue a  
8 certificate of completion when a response action plan includes  
9 long-term obligations that have not been completed, including  
10 operation and maintenance requirements or monitoring, only if the  
11 agency makes all of the following determinations:

12 (1) All response actions, other than long-term operation and  
13 maintenance at the site, have been completed.

14 (2) The person has submitted an adequate long-term operation  
15 and maintenance plan and has demonstrated initial compliance.

16 (c) If the agency determines that long-term operation and  
17 maintenance is required at a site, the agency may, as a condition  
18 of issuing a certificate of completion, enter into an operation and  
19 maintenance agreement with the person that governs the  
20 long-term operation and maintenance activities and that provides  
21 for adequate financial assurance.

22 25395.99.1. A person who acquires a property from an  
23 innocent landowner, bona fide purchaser, or contiguous property  
24 owner, and the property was previously issued a certificate of  
25 completion or no further action determination, may qualify as a  
26 bona fide prospective purchaser or contiguous property owner by  
27 demonstrating to the agency that the person meets all of the  
28 qualifying conditions of Section 25395.79.1.

29 25395.100. (a) A response plan may require the use of a land  
30 use control that imposes appropriate conditions, restrictions, and  
31 obligations on land use or activities, if, after completion of the  
32 removal and remedial actions specified in the response plan,  
33 hazardous materials remain at the site at a level that is not suitable  
34 for the unrestricted use of the site.

35 (b) Except as provided in subdivision (c), if the agency  
36 approves a response plan that requires the use of a land use  
37 control, the land use control shall be executed by the land owner  
38 and recorded by the land owner in the office of the county recorder  
39 in each county in which all, or a portion of, the land is located  
40 within 10 days of the date of execution.



1 (c) An agency shall not issue a certificate of completion to a  
2 person who submits a response plan that is approved by the agency  
3 and that requires the use of a land use control, until the agency  
4 receives a certified copy of the recorded land use control. If the site  
5 that requires the land use control does not have an owner, or the  
6 agency determines the owner is incapable of executing a land use  
7 control in accordance with this section, the agency may record in  
8 the county records a “Notice of Land Use Restriction” that has the  
9 same effect as any other land use control executed pursuant to this  
10 section, and that is subject to the variance and termination  
11 procedures specified in subdivision (f).

12 (d) Notwithstanding any other provision of law, a land use  
13 control that is executed pursuant to this section and that is  
14 recorded so as to provide constructive notice shall run with the  
15 land from the date of recordation, is binding upon all of the owners  
16 of the land, and their heirs, successors and assignees and the  
17 agents, employees, or lessees of the owners, heirs, successors and  
18 assignees, and is enforceable pursuant to to Article 8 (commencing  
19 with Section 25180) of Chapter 6.5.

20 (e) Notwithstanding an other provision of law, a land use  
21 control executed pursuant to this section is subject to Section  
22 57012.

23 (f) A land use control imposed pursuant to this section is subject  
24 to the variance and removal procedures specified in Sections  
25 25233 and 25234.

26 25395.101. (a) To the extent consistent with the Resource  
27 Conservation and Recovery Act of 1976, as amended, (42 U.S.C.  
28 Sec. 6901 et seq.), the department may exclude any portion of a  
29 response action conducted entirely onsite from the hazardous  
30 waste facilities permit requirements of Sections 25200.3, 25201,  
31 and 25201.6, if both of the following apply:

32 (1) The response action is carried out pursuant to an approved  
33 response plan.

34 (2) The response plan specifies that the response action will be  
35 conducted in compliance with the standards, requirements,  
36 criteria, or limitations applicable to the construction, operation,  
37 and closure of the type of facility at the site and with any other  
38 condition imposed by the department, as necessary to prevent an  
39 unreasonable risk to public health and safety or the environment.



1 25395.102. (a) Except as expressly provided in this chapter,  
2 this chapter does not affect the authority of an agency to issue an  
3 order or take any other action under any provision of law to protect  
4 public health and safety or the environment.

5 (b) Except as otherwise expressly provided in this chapter, this  
6 chapter does not affect the authority of the agency or any other  
7 public agency to pursue any existing legal, equitable, or  
8 administrative remedies pursuant to state or federal law.

9 (c) Except as otherwise expressly provided in this chapter,  
10 Chapter 6.8 (commencing with Section 25300) does not apply to  
11 this chapter.

12 ~~25395.60) is added to Division 20 of the Health and Safety Code,  
13 to read:~~

14

15 ~~CHAPTER 6.82.— CALIFORNIA LAND REUSE AND REVITALIZATION~~  
16 ~~ACT OF 2004~~

17

18 ~~Article 1.— Legislative Findings and Intent~~

19

20 ~~25395.60.— The Legislature finds and declares all of the~~  
21 ~~following:~~

22 ~~(a) There are thousands of properties in the state where~~  
23 ~~redevelopment has been stymied due to real or perceived~~  
24 ~~hazardous materials contamination. Cleaning up these sites and~~  
25 ~~returning them to productive use will benefit the communities in~~  
26 ~~which they are located and the state as a whole.~~

27 ~~(b) Contamination of property in the state has hampered~~  
28 ~~redevelopment, which in turn has limited job creation, economic~~  
29 ~~revitalization, and the full and productive use of the land.~~

30 ~~(c) Private developers, local governments, and schools are~~  
31 ~~reluctant to acquire or redevelop these properties due, at least in~~  
32 ~~part, to concerns regarding liability associated with historic~~  
33 ~~contamination. Instead, they focus new development on clean~~  
34 ~~areas that present less complications and liability.~~

35 ~~(d) This has resulted in a multitude of problems, including~~  
36 ~~urban sprawl, decaying inner-city neighborhoods and schools,~~  
37 ~~public health and environmental risks stemming from~~  
38 ~~contaminated properties, lack of development at former~~  
39 ~~manufacturing sites and rural areas in need of economic~~  
40 ~~investment, and reduced tax bases.~~



1 ~~25395.61.— It is the intent of the Legislature, in enacting this~~  
2 ~~chapter, to do all of the following:~~

3 ~~(a) Establish the cleanup and reuse of these sites in a manner~~  
4 ~~protective of public health and the environment as a priority of the~~  
5 ~~state.~~

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

10 ~~(c) Encourage process efficiencies that continue to ensure~~  
11 ~~cleanups are protective of public health.~~

12 ~~(d) Encourage the development and redevelopment of unused~~  
13 ~~or underused properties.~~

14 ~~25395.62.— This chapter shall be known, and may be cited as,~~  
15 ~~the “California Land Reuse and Revitalization Act of 2004.”~~

16  
17 ~~Article 2.— Definitions~~

18  
19 ~~25395.63.— The definitions set forth in this article shall govern~~  
20 ~~the interpretation of this chapter. If a term is not otherwise defined~~  
21 ~~in this chapter, the definition contained in Chapter 6.8~~  
22 ~~(commencing with Section 25300) shall apply to that term.~~

23 ~~25395.64.— “Agency” means the department, a regional~~  
24 ~~board, or a state or local agency that has been delegated authority~~  
25 ~~to oversee a response action by the department or the board.~~

26 ~~25395.65.— “All appropriate inquiries” has the following~~  
27 ~~meanings:~~

28 ~~(a) Except as provided in subdivision (c), until the standards~~  
29 ~~and practices established by the Administrator of the United States~~  
30 ~~Environmental Protection Agency pursuant to Section~~  
31 ~~101(35)(B)(ii) of the federal act (42 U.S.C. Sec. 9601(35)(B)(ii))~~  
32 ~~are adopted and take effect, “all appropriate inquiries” means~~  
33 ~~compliance with the procedures of the American Society for~~  
34 ~~Testing and Materials, including the document known as~~  
35 ~~“Standard E1527-001,” entitled “Standard Practice for~~  
36 ~~Environmental Site Assessment: Phase I Environmental Site~~  
37 ~~Assessment Process,” as that document existed on January 1,~~  
38 ~~2004.~~

39 ~~(b) Except as provided in subdivision (c), after the standards~~  
40 ~~and practices established by the Administrator of the United States~~



1 Environmental Protection Agency pursuant to Section  
2 101(35)(B)(ii) of the federal act (42 U.S.C. Sec. 9601(35)(B)(ii))  
3 are adopted and take effect, “all appropriate inquiries” means  
4 compliance with those standards.

5 (e) If the property is in residential use at the time of purchase  
6 by a nongovernmental or nonecommercial entity, “all appropriate  
7 inquiries” means that a site inspection and title search does not  
8 reveal a basis for further investigation.

9 25395.66. “Applicable statute” means all of the following  
10 state laws, but includes only those provisions in each state law that  
11 impose liability on an owner or occupant of property for pollution  
12 conditions caused by a release of hazardous material on, under, or  
13 adjacent to the property:

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

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

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

20 (d) Chapter 6.7 (commencing with Section 25280), Chapter  
21 6.75 (commencing with Section 25299.10), Chapter 6.8  
22 (commencing with Section 25300), and Chapter 6.10  
23 (commencing with Section 25401) of this division.

24 (e) Division 7 (commencing with Section 13000) of the Water  
25 Code.

26 25395.67. (a) “Appropriate care” means the performance of  
27 a response action, with respect to hazardous materials found at a  
28 site, that meets all of the following conditions:

29 (1) The response action is determined by an agency to be  
30 necessary to prevent an unreasonable risk to human health or the  
31 environment.

32 (2) The response action is performed in accordance with a  
33 written plan approved by the agency.

34 (3) The approved plan includes a provision for oversight and  
35 verification of the response action by the agency.

36 (b) On or before 60 days after the date an agency receives a  
37 written request by a bona fide prospective purchaser, innocent  
38 landowner, or contiguous landowner, the agency shall determine  
39 in writing whether proper completion of the approved plan



1 ~~specified in paragraph (2) of subdivision (a) constitutes~~  
2 ~~“appropriate care” 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 discharges or releases of the hazardous materials at issue~~  
10 ~~at the site 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~~  
14 ~~respect to the discovery or release of hazardous materials at the~~  
15 ~~site.~~

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

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

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

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

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

36 ~~(1) Any direct or indirect familial relationship.~~

37 ~~(2) Any contractual, corporate, or financial relationship, unless~~  
38 ~~the contractual, corporate, or financial relationship is created by~~  
39 ~~the instrument by which title or possession to the site is conveyed~~  
40 ~~or financed or a contract for the sale of goods or 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. “Contiguous property owner” means a person~~  
14 ~~who owns a site that is contiguous to another site that is, or may~~  
15 ~~be, contaminated by a release or threatened release of a hazardous~~  
16 ~~material and that is not owned by that person, and who~~  
17 ~~demonstrates, by a preponderance of the evidence, all of the~~  
18 ~~following:~~  
19 ~~(a) The person did not cause, contribute, or consent to the~~  
20 ~~release or threatened release.~~  
21 ~~(b) The person is not potentially liable, or affiliated with any~~  
22 ~~other person who is potentially liable, for the release at issue~~  
23 ~~through any of the following circumstances:~~  
24 ~~(1) Any direct or indirect familial relationship.~~  
25 ~~(2) Any contractual, corporate, or financial relationship, unless~~  
26 ~~the contractual, corporate, or financial relationship is created by~~  
27 ~~the instruments by which title or possession to the site is conveyed~~  
28 ~~or financed or a contract for the sale of goods or services.~~  
29 ~~(3) The result of a reorganization of a business entity that was~~  
30 ~~potentially liable for the hazardous materials at issue.~~  
31 ~~(e) Except as provided in subdivision (i), the person exercises~~  
32 ~~appropriate care with respect to the release of any hazardous~~  
33 ~~materials at the site.~~  
34 ~~(d) The person provides full cooperation, assistance, and~~  
35 ~~access to persons who are authorized to conduct response actions~~  
36 ~~or natural resource restoration at the site from which there has been~~  
37 ~~a release or threatened release, including the cooperation and~~  
38 ~~access necessary for the installation, integrity, operation, and~~  
39 ~~maintenance of a complete or partial response action or natural~~  
40 ~~resource restoration at the site.~~



1 ~~(c) The person complies with any land use controls established~~  
2 ~~or relied on in connection with the response action at the site, and~~  
3 ~~does not impede the effectiveness or integrity of any aspect of any~~  
4 ~~remedy employed in connection with a response action at the site.~~

5 ~~(f) The person complies with any request for information or~~  
6 ~~administrative subpoena issued by an agency with jurisdiction~~  
7 ~~under an applicable statute.~~

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

16 ~~(i) Subdivision (c) does not require a contiguous property~~  
17 ~~owner to conduct groundwater investigations or to install~~  
18 ~~groundwater remediation systems with respect to hazardous~~  
19 ~~materials from a source that is not on the property of the~~  
20 ~~contiguous property owner and that enters groundwater beneath~~  
21 ~~the property of the contiguous property owner solely as a result of~~  
22 ~~subsurface migration.~~

23 ~~25395.73. “Department” means the Department of Toxic~~  
24 ~~Substances Control.~~

25 ~~25395.74. “Hazardous material” has the same meaning as~~  
26 ~~defined in subdivision (d) of Section 25260.~~

27 ~~25395.75. (a) “Innocent landowner” means a person who~~  
28 ~~owns a site, who did not cause or contribute to a release at the site,~~  
29 ~~takes the actions specified in subdivision (b), and who meets both~~  
30 ~~of the following conditions:~~

31 ~~(1) The person is any one of the following:~~

32 ~~(A) A person who made all appropriate inquiries into the~~  
33 ~~previous ownership and uses of the site and, at the time the person~~  
34 ~~acquired the property did not know and had no reason to know of~~  
35 ~~the release at issue.~~

36 ~~(B) A government entity that acquired property by escheat, or~~  
37 ~~through any other involuntary transfer acquisition, or through the~~  
38 ~~exercise of eminent domain authority by purchase or~~  
39 ~~condemnation.~~



1 ~~(C) A person who acquired the property by inheritance or~~  
2 ~~bequest.~~  
3 ~~(2) The person is not potentially liable, or affiliated with any~~  
4 ~~other person who is potentially liable, for the release at issue~~  
5 ~~through any of the following circumstances:~~  
6 ~~(A) Any direct or indirect familial relationship.~~  
7 ~~(B) Any contractual, corporate, or financial relationship,~~  
8 ~~unless the contractual, corporate, or financial relationship is~~  
9 ~~created by the instrument by which title or possession to the site~~  
10 ~~is conveyed or financed or a contract for the sale of goods or~~  
11 ~~services.~~  
12 ~~(C) The result of a reorganization of a business entity that was~~  
13 ~~potentially liable for the hazardous materials at issue.~~  
14 ~~(b) The person takes all of the following actions:~~  
15 ~~(1) Exercises appropriate care with respect to the release of the~~  
16 ~~hazardous materials at the site.~~  
17 ~~(2) Provides full cooperation, assistance, and access to a person~~  
18 ~~who is authorized to conduct response actions or natural resource~~  
19 ~~restoration at the site, including the cooperation and any access~~  
20 ~~necessary for the installation, integrity, operation, and~~  
21 ~~maintenance of complete or partial response actions or natural~~  
22 ~~resource restoration at the site.~~  
23 ~~(3) Complies with land use controls established or relied on, in~~  
24 ~~connection with an approved response action at the site, and does~~  
25 ~~not impede the effectiveness or integrity of any aspect of any~~  
26 ~~remedy employed at the site in connection with a response action.~~  
27 ~~(4) Complies with all requests for information or~~  
28 ~~administrative subpoena concerning the release of hazardous~~  
29 ~~materials by any agency with jurisdiction under an applicable~~  
30 ~~statute.~~  
31 ~~(5) Provides all notices required by state or federal law with~~  
32 ~~respect to the discovery or release of hazardous materials at the~~  
33 ~~site.~~  
34 ~~25395.76. “Land use control” means a recorded instrument~~  
35 ~~executed pursuant to Section 1471 of the Civil Code that restricts~~  
36 ~~or imposes obligations on the present and future uses or activities~~  
37 ~~on a site, including but not limited to, recorded easements,~~  
38 ~~covenants, restrictions or servitudes, or any combination thereof.~~  
39 ~~25395.77. “Regional board” means a California regional~~  
40 ~~water quality control board.~~



1 ~~25395.78. “Release” has the same meaning as defined in~~  
2 ~~Section 25320.~~

3 ~~25395.79. (a) “Response,” “respond,” or “response~~  
4 ~~action” have the same meaning as defined in Section 25323.3,~~  
5 ~~except that “response,” “respond,” and “response action” under~~  
6 ~~this chapter apply to hazardous material, as defined in Section~~  
7 ~~25395.74.~~

8 ~~(b) “Response plan” means the written plan described in~~  
9 ~~paragraph (2) of subdivision (a) of Section 25395.67.~~

10 ~~25395.79.1. (a) “Unreasonable risk” means conditions at a~~  
11 ~~site pose a significant risk to human health or the environment.~~

12 ~~(b) When adequate land use controls exist to prevent other uses~~  
13 ~~of a site without any further reviews or determinations by the~~  
14 ~~agency that approved the response action, an agency may~~  
15 ~~determine if there is unreasonable risk at the site based on the~~  
16 ~~intended land use.~~

17  
18 ~~Article 3. Liability~~  
19

20 ~~25395.80. (a) Except as provided in Section 25395.85, and~~  
21 ~~except as otherwise provided under this section, an innocent~~  
22 ~~landowner who did not cause or contribute to the release at issue,~~  
23 ~~is subject to the following immunities:~~

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

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

33 ~~(A) The agency does either of the following:~~

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

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

40 ~~(B) The conditions on the property pose an endangerment.~~



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

5 ~~(e) (1) The immunities described in this section shall attach~~  
6 ~~upon approval of the written plan described in paragraph (2) of~~  
7 ~~subdivision (a) of Section 25395.67 and shall remain in effect~~  
8 ~~unless the innocent landowner receives a written notice of~~  
9 ~~noncompliance from the agency.~~

10 ~~(2) An agency may issue a written notice of noncompliance~~  
11 ~~upon making both of the following findings:~~

12 ~~(A) There is an unapproved failure to comply with the~~  
13 ~~approved written plan or any response action undertaken pursuant~~  
14 ~~to a response plan.~~

15 ~~(B) The unapproved failure is a material deviation from the~~  
16 ~~response plan or any response action undertaken pursuant to a~~  
17 ~~response plan.~~

18 ~~(d) Any person that is found to have committed fraud,~~  
19 ~~intentional nondisclosure, or misrepresentation to any state or~~  
20 ~~local agency with authority over cleanup or remediation at a site,~~  
21 ~~is not an innocent landowner and is not entitled to immunity~~  
22 ~~against costs of response imposed by the agency or for any claim~~  
23 ~~brought by a party other than the agency under an applicable~~  
24 ~~statute.~~

25 ~~25395.81. (a) Except as provided in Section 25395.85, and~~  
26 ~~except as otherwise provided under this section, a bona fide~~  
27 ~~prospective purchaser who did not cause or contribute to the~~  
28 ~~release at issue is subject to the following immunities:~~

29 ~~(1) The bona fide prospective purchaser is not liable under any~~  
30 ~~applicable statute for a claim made by any party that is not a~~  
31 ~~government agency for response costs or other damages associated~~  
32 ~~with a release or threatened release of a hazardous material at the~~  
33 ~~site.~~

34 ~~(2) Except as provided in subdivision (b), an agency may not~~  
35 ~~take any action under any applicable statute to require the bona~~  
36 ~~fide prospective purchaser or a subsequent property owner to~~  
37 ~~conduct any additional response action with respect to a hazardous~~  
38 ~~materials release at a site unless both of the following conditions~~  
39 ~~are met:~~

40 ~~(A) The agency does one of the following:~~



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

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

7 ~~(B) The conditions on the property pose an endangerment.~~

8 ~~(b) (1) The immunities described in this section shall attach~~  
9 ~~upon approval of the written plan described in paragraph (2) of~~  
10 ~~subdivision (a) of Section 25395.67 and shall remain in effect~~  
11 ~~unless the bona fide prospective purchaser receives a written~~  
12 ~~notice of noncompliance from the 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 person that is found to have committed fraud;~~  
22 ~~intentional nondisclosure, or misrepresentation to any state or~~  
23 ~~local agency with authority over cleanup or remediation at a site;~~  
24 ~~is not a bona fide prospective purchaser and is not entitled to~~  
25 ~~immunity against costs of response imposed by the agency or for~~  
26 ~~any claim brought by a party other than the agency under an~~  
27 ~~applicable statute.~~

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

32 ~~25395.82. (a) Except as provided in Section 25395.85, and~~  
33 ~~except as otherwise provided in this section, a contiguous property~~  
34 ~~owner who did not cause or contribute to a release at a site is~~  
35 ~~subject to the following immunities:~~

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



1 ~~(2) Except as provided in subdivision (b), an agency may not~~  
2 ~~take an action under any applicable statute to require a contiguous~~  
3 ~~landowner to conduct a response action with respect to a hazardous~~  
4 ~~materials release at a site owned by that contiguous landowner~~  
5 ~~unless both of the following conditions apply:~~  
6 ~~(A) The agency does either of the following:~~  
7 ~~(i) Makes all reasonable attempts to compel any necessary~~  
8 ~~response action from all other potentially responsible parties and~~  
9 ~~those efforts has been unsuccessful.~~  
10 ~~(ii) Reasonably determines that no viable potentially~~  
11 ~~responsible party exists to perform the required response action at~~  
12 ~~the site.~~  
13 ~~(B) The conditions on the property pose an endangerment.~~  
14 ~~(b) (1) The immunities described in this section shall attach~~  
15 ~~upon approval of the written plan described in paragraph (2) of~~  
16 ~~subdivision (a) of Section 25395.67 and shall remain in effect~~  
17 ~~unless the person receives written notice of noncompliance from~~  
18 ~~the agency.~~  
19 ~~(2) The agency may issue a written notice for noncompliance~~  
20 ~~upon making both of the following findings:~~  
21 ~~(A) There is an unapproved failure to comply with the response~~  
22 ~~plan or any response action undertaken pursuant to a response~~  
23 ~~plan.~~  
24 ~~(B) The unapproved failure is a material deviation from the~~  
25 ~~response plan or any response action undertaken pursuant to a~~  
26 ~~response plan.~~  
27 ~~(c) An owner of contiguous property who is found to have~~  
28 ~~committed fraud, intentional nondisclosure, or misrepresentation~~  
29 ~~to any state or local agency with authority over cleanup or~~  
30 ~~remediation at a site, is not entitled to immunity against costs of~~  
31 ~~response imposed by the agency or for any claim brought by a~~  
32 ~~party other than the agency under an applicable statute.~~  
33 ~~(d) This section does not modify or limit the existing authority~~  
34 ~~of a state or local agency to impose a condition on the issuance of~~  
35 ~~a discretionary permit relating to the development, use, or~~  
36 ~~occupancy of a site.~~  
37 ~~25395.84. If there are unrecovered costs incurred by an~~  
38 ~~agency at a site for which an owner of the site is not liable as a bona~~  
39 ~~fide prospective purchaser, an agency shall have a lien on the site,~~  
40 ~~or may, by agreement with the owner, obtain from the owner a lien~~



1 ~~on other property or other assurance of payment for the~~  
2 ~~unrecovered response costs, subject to all of the following~~  
3 ~~requirements:~~

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

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

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

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

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

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

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

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

31 ~~(4) For purposes of this subdivision, the "purchaser" and~~  
32 ~~"security interest" have the same meaning as defined in~~  
33 ~~subsection (h) of Section 6323 of Title 26 of the United States~~  
34 ~~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 award~~  
2 ~~reasonable attorneys' fees to a person who initiates an action under~~  
3 ~~an applicable statute for contribution for, or recovery of, response~~  
4 ~~costs incurred for a response action, or for any other response costs~~  
5 ~~incurred at a site, if the person meets all of the following criteria:~~

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

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

12 ~~(c) The person is the prevailing party.~~

13 ~~25395.87.—This chapter does not limit the authority of an~~  
14 ~~agency to conduct any response action it determines is necessary~~  
15 ~~to contain or eliminate an unreasonable risk that requires action to~~  
16 ~~protect public health and safety or the environment pursuant to an~~  
17 ~~applicable statute.~~

18 ~~25395.88.—(a) On or before January 1, 2005, the California~~  
19 ~~Environmental Protection Agency shall develop a form that shall~~  
20 ~~be completed and submitted to the agency by a bona fide~~  
21 ~~prospective purchaser, innocent landowner, or contiguous~~  
22 ~~property owner who is subject to immunity pursuant to this~~  
23 ~~chapter. The form shall include, but not be limited to, all of the~~  
24 ~~following information:~~

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

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

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

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

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

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

38 ~~(b) On or before July 1, 2005, and annually thereafter, the~~  
39 ~~California Environmental Protection Agency shall submit to the~~  
40 ~~Legislature a report compiling the data collected pursuant to~~



1 subdivision (a) and compare that data, where feasible, to similar  
2 data collected from January 1, 2001, to January 1, 2005.

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

9 25395.89. An innocent landowner, bona fide prospective  
10 purchaser, or contiguous landowner shall reimburse an agency for  
11 its reasonable oversight costs incurred while reviewing a response  
12 plan or overseeing the implementation of a response plan by the  
13 innocent landowner, bona fide prospective purchaser, or  
14 contiguous landowner pursuant to this chapter.

15 25395.90. (a) This chapter shall remain in effect only until  
16 January 1, 2010, and as of that date is repealed, unless a later  
17 enacted statute, that is enacted before January 1, 2010, deletes or  
18 extends that date.

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

21  
22 CHAPTER 6.83. IMMUNITY CONTINUATION  
23

24 25395.91. (a) A person who, before January 1, 2010, is  
25 subject to an immunity pursuant to Chapter 6.82 (commencing  
26 with Section 25395.60), as that chapter read on December 31,  
27 2009, shall continue to have that immunity on and after January 1,  
28 2010, if the person continues to be in compliance with the  
29 requirements of former Chapter, 6.82 (commencing with Section  
30 25395.60) including, but not limited to, compliance with any  
31 approved response action subject to that chapter, and with any  
32 other applicable law.

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

