

1 S.160

2 Introduced by Senator Doyle

3 Referred to Committee on

4 Date:

5 Subject: Conservation; waste management; liability

6 Statement of purpose: This bill proposes to clarify when a landowner is not  
7 liable after acquisition of a property on which a hazardous material has been  
8 released. In addition, the bill proposes to provide that when certain  
9 governmental regulatory programs reduce the value of real property to less  
10 than 50 percent of its value on acquisition or as of January 1, 2012, whichever  
11 is later, governmental action shall be considered a taking, and the owner of that  
12 property shall be entitled to just compensation. The bill also requires listers to  
13 reduce the grand list of taxpayers whose real property has decreased in fair  
14 market value because of regulatory action.

15 An act relating to liability of an innocent landowner for the release of a  
16 hazardous material

17 It is hereby enacted by the General Assembly of the State of Vermont:

1 Sec. 1. 10 V.S.A. § 6615 is amended to read:

2 § 6615. LIABILITY

3 (a) Subject only to the defenses set forth in subsections (d) and (e) of this  
4 section:

5 (1) the owner or operator of a facility, or both;

6 (2) any person who at the time of release or threatened release of any  
7 hazardous material owned or operated any facility at which such hazardous  
8 materials were disposed of;

9 (3) any person who by contract, agreement, or otherwise arranged for  
10 disposal or treatment, or arranged with a transporter for transport for disposal  
11 or treatment, of hazardous materials owned or possessed by such person, by  
12 any other person or entity, at any facility owned or operated by another person  
13 or entity and containing such hazardous materials; and

14 (4) any person who accepts or accepted any hazardous materials for  
15 transport to disposal or treatment facilities selected by such persons, from  
16 which there is a release, or a threatened release of hazardous materials shall be  
17 liable for:

18 (A) abating such release or threatened release; and

19 (B) costs of investigation, removal, and remedial actions incurred by  
20 the state which are necessary to protect the public health or the environment.

21 \* \* \*

1           (d)(1) There shall be no liability under this section for a person otherwise  
2           liable who can establish by a preponderance of the evidence that the release or  
3           threat of release of hazardous material and the damages resulting therefrom  
4           were caused solely by any of the following:

5                   (A) an act of God;

6                   (B) an act of war;

7                   (C) an act or omission of a third party other than an employee or  
8           agent of the defendant, or other than one whose act or omission occurs in  
9           connection with a contractual relationship, existing directly or indirectly, with  
10          the defendant. If the sole contractual arrangement arises from a published  
11          tariff and acceptance for carriage by a common carrier by rail, for purposes of  
12          this section, there shall be considered to be no contractual relationship at all.

13          This subdivision (d)(1)(C) shall only serve as a defense if the defendant  
14          establishes by a preponderance of the evidence:

15                   (i) that the defendant exercised due care with respect to the  
16          hazardous material concerned, taking into consideration the characteristics of  
17          that hazardous material, in light of all relevant facts and circumstances; and

18                   (ii) that the defendant took precautions against foreseeable acts or  
19          omissions of any such third party and the consequences that could foreseeably  
20          result from those acts or omissions; or

21                   (D) any combination of the above.

1           (2) There shall be no liability under subdivision (a)(1) of this section,  
2 regarding a particular facility, for a person otherwise liable who can establish  
3 all of the following by a preponderance of the evidence:

4           (A) the release or threat of release of hazardous material on, under, or  
5 from that person's property and the resulting damages were caused solely by  
6 the migration of a release of hazardous materials that did not originate on that  
7 person's property;

8           (B) the release or threat of release of hazardous material and the  
9 resulting damages were caused solely by a third party who is not an employee  
10 or agent of the person, and whose action was not associated with a contractual  
11 relationship with the person;

12           (C) the hazardous substance was not deposited, intentionally  
13 contained, or disposed of on a facility while the facility was owned or operated  
14 by the person;

15           (D) the person, at the time of any transfer of the property from the  
16 person, disclosed any knowledge or information the person had, concerning the  
17 nature and extent of any such release;

18           (E) the person has not caused or contributed to a release, such as  
19 through activities that knowingly exacerbated the existing contamination, and  
20 has not knowingly affected the release in such a way as to require additional  
21 remediation;

1 (F) the owner or operator of the facility provides access for, and does  
2 not interfere with, remediation activities.

3 (3) A municipality shall not be liable under this section provided that the  
4 municipality can show all the following:

5 (A) The property was acquired by virtue of its function as sovereign  
6 through bankruptcy, tax delinquency, abandonment, or other similar  
7 circumstances.

8 (B) The municipality did not cause or contribute to the contamination  
9 of the property.

10 (C) The municipality has entered into an agreement with the  
11 secretary regarding sale of the property acquired or has undertaken abatement,  
12 investigation, remediation, or removal activities as required by subchapter 3 of  
13 this chapter.

14 ~~(e) Any person who is the owner or operator of a facility where a release or~~  
15 ~~threatened release existed at the time that person became owner or operator~~  
16 ~~shall be liable unless he or she can establish by a preponderance of the~~  
17 ~~evidence that after making diligent and appropriate investigation of the facility,~~  
18 ~~he or she had no knowledge or reason to know that said release or threatened~~  
19 ~~release was located on the facility~~ A person who is an innocent landowner  
20 shall not be liable under subsection (a) of this section. An innocent landowner  
21 is a person who:



1        § 1451. PROTECTION FOR PRIVATE PROPERTY OWNERS

2            (a) Whenever implementation by the state or any of its political  
3        subdivisions of a land use planning, zoning, or other regulatory program (other  
4        than an exercise of the police power to prevent noxious use or tangible harm to  
5        the health or safety of the public) results in the reduction of the use or  
6        exchange value of real property to less than 50 percent of its value for the uses  
7        permitted at the time the owner acquired title, or January 1, 2012, whichever is  
8        later, the property shall be deemed to have been taken for the use of the public.  
9        The owner of that real property shall have the right to require condemnation by  
10       and just compensation from the governmental unit imposing the regulations, or  
11       to receive compensation for the reduction in value caused by the government  
12       action, and in either case to have such compensation determined by a jury.

13           (b) If the governmental unit of which inverse condemnation is successfully  
14       required under subsection (a) of this section is unwilling or unable to pay the  
15       costs awarded, it may instead relax the land use planning, zoning, or other  
16       regulatory program as it affects the plaintiff's land and all similarly situated  
17       land in the jurisdiction in which the regulatory program is in effect, to the level  
18       of regulation in place as of the time the owner acquired title, or January 1,  
19       2012, whichever is later. In such event, the governmental unit shall be liable to  
20       the plaintiff landowner for the reasonable and necessary costs of the inverse  
21       condemnation action, plus any actual and demonstrable economic losses

1 caused the plaintiff by the regulation during the period in which it was in  
2 effect.

3 (c) Nothing in this section shall preclude legal challenges by property  
4 owners in instances where the regulatory diminution of value does not exceed  
5 50 percent of the fair market value for the uses permitted at the time the owner  
6 acquired title, or January 1, 2012, whichever is later, nor shall anything in this  
7 section be construed to create an exclusive remedy or to diminish the rights of  
8 property owners under existing statutory, constitutional, or common law.

9 (d) Whenever, after January 1, 2012, the state or any of its political  
10 subdivisions impose, change, or implement any land use planning, zoning, or  
11 other regulatory program (other than an exercise of the police power to prevent  
12 noxious use or demonstrable harm to the health and safety of the public) in  
13 such a way as to reduce the previous fair market value of a taxpayer's property,  
14 the listers of a municipality shall, on or before the ensuing April 1, adjust the  
15 taxpayer's grand list downward by an amount equal to the difference between  
16 the fair market value of the property under the new regulatory program and the  
17 previous fair market value.

18 Sec. 3. EFFECTIVE DATE

19 This act shall take effect on passage.