

House Bill 1423

By: Representatives Drenner of the 66th, McCall of the 90th, Shanahan of the 10th and Broome of the 160th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 12 of the Official Code of Georgia Annotated, relating to waste
2 management, so as to define certain terms; to provide that the Environmental Protection
3 Division of the Department of Natural Resources may enter into brownfields agreements
4 with prospective developers of certain contaminated property; to provide that a prospective
5 developer shall provide certain information relating to the property to be developed; to
6 provide for remediation standards; to provide for a description of the property and other
7 information; to provide for an immunity from liability under certain conditions; to provide
8 for liability for remediation under certain conditions; to provide for notification to the public
9 of a prospective redevelopment of a brownfields property; to provide for requirements for
10 such notice; to provide for publication of the notice; to provide for public hearing and public
11 comment; to provide for filing of certain information in the land records; to provide for
12 appeal; to provide for matters related to the foregoing; to repeal conflicting laws; and for
13 other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Chapter 8 of Title 12 of the Official Code of Georgia Annotated, relating to waste
17 management, is amended by inserting at the end thereof the following:

18 "ARTICLE 10

19 12-8-230.

20 As used in this article, the term:

21 (1) 'Affiliate' means a person who directly or indirectly owns or controls, is owned or
22 controlled by, or is under common ownership or control with another person. Solely for
23 purposes of this definition, the terms 'owns,' 'is owned,' and 'ownership' mean ownership
24 of an equity interest, or the equivalent thereof of 10 percent or more, and the term 'person'

1 means an individual, partnership, committee, association, corporation, or any other
2 organization or group of persons.

3 (2) 'Brownfields agreement' means an agreement between the division and a prospective
4 developer that meets the requirements of Code Section 12-8-231.

5 (3) 'Brownfields property' or 'brownfields site' means abandoned, idled, or underused
6 property at which expansion or redevelopment is hindered by actual environmental
7 contamination or the possibility of environmental contamination and that is or may be
8 subject to remediation under any state remedial program or under the federal
9 Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42
10 U.S.C. Section 9601, et seq., as amended.

11 (4) 'Contaminant' means a regulated substance released into the environment.

12 (5) 'Current standards,' when used in connection with the term 'cleanup,' 'remediated,' or
13 'remediation,' means that cleanup or remediation of contamination complies with
14 generally applicable standards, guidance, or methods governing the contaminants that are
15 established by statute or adopted, published, or implemented by the division.

16 (6) 'Director' means the director of the Environmental Protection Division of the
17 Department of Natural Resources.

18 (7) 'Division' means the Environmental Protection Division of the Department of Natural
19 Resources.

20 (8) 'Environmental contamination' means contaminants at a brownfields property
21 requiring remediation and that are to be remediated under a brownfields agreement
22 including, at a minimum, a hazardous waste, as defined in Code Section 12-8-62; a
23 hazardous substance, as defined in Code Section 12-8-92; or oil, as defined in Code
24 Section 12-5-500.

25 (9) 'Local government' means the governing authority of a town, city, or county.

26 (10) 'Parent' has the same meaning as in 17 C.F.R. Section 240.12b-2 (1 April 1996
27 Edition).

28 (11) 'Potentially responsible party' means a person who is or may be liable for
29 remediation under a remedial program.

30 (12) 'Prospective developer' means any person who desires either to buy or sell a
31 brownfields property for the purpose of developing or redeveloping such brownfields
32 property and who did not cause or contribute to the contamination at such brownfields
33 property.

34 (13) 'Regulated substance' means a hazardous waste, as defined in Code Section 12-5-62;
35 a hazardous substance, as defined in Code Section 12-8-92; oil, as defined in Code
36 Section 12-5-500; or other substance regulated under any remedial program implemented
37 by the division.

1 (14) 'Remedial program' means a program, including the 'Georgia Hazardous Site
2 Response Act' as provided in Part 2 of Article 3 of this chapter, implemented by the
3 division for the remediation of any contaminant.

4 (15) 'Remediation' means action to clean up, mitigate, correct, abate, minimize, eliminate,
5 control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling,
6 transport, or further release of a contaminant into the environment in order to protect
7 public health or the environment.

8 (16) 'Subsidiary' means a corporation that is controlled by a financial institution which
9 owns at least a majority of its voting shares.

10 12-8-231.

11 (a) The division may, in its discretion, enter into a brownfields agreement with a
12 prospective developer who satisfies the requirements of this Code section. A prospective
13 developer shall provide the division with any information necessary to demonstrate that:

14 (1) The prospective developer, and any parent, subsidiary, or other affiliate of the
15 prospective developer, has substantially complied with:

16 (A) The terms of any brownfields agreement or similar agreement to which the
17 prospective developer or any parent, subsidiary, or other affiliate of the prospective
18 developer has been a party;

19 (B) The requirements applicable to any remediation in which the prospective
20 developer has previously engaged; and

21 (C) Federal and state laws, regulations, and rules for the protection of the environment;

22 (2) As a result of the implementation of the brownfields agreement, the brownfields
23 property will be suitable for the uses specified in the agreement while fully protecting
24 public health and the environment, instead of being remediated to current standards;

25 (3) There is a public benefit commensurate with the liability protection provided under
26 this article;

27 (4) The prospective developer has or can obtain the financial, managerial, and technical
28 means to implement fully the brownfields agreement and assure the safe use of the
29 brownfields property; and

30 (5) The prospective developer has complied or will comply with all applicable
31 procedural requirements.

32 (b) In negotiating a brownfields agreement, parties may rely on land use restrictions that
33 will be included in a notice of brownfields property required under Code Section 12-5-235.
34 A brownfields agreement may provide for remediation standards that are based on those
35 land use restrictions.

1 (c) A brownfields agreement shall contain a description of the brownfields property that
2 would be sufficient as a description of the property in an instrument of conveyance and, if
3 applicable, a statement of:

4 (1) Any remediation to be conducted on the property, including:

5 (A) A description of specific areas where remediation is to be conducted;

6 (B) The remediation method or methods to be employed;

7 (C) The resources that the prospective developer will make available;

8 (D) A schedule of remediation activities;

9 (E) Applicable remediation standards; and

10 (F) A schedule of and the method or methods for evaluating the remediation;

11 (2) Any land use restrictions that will apply to the brownfields property;

12 (3) The desired results of any remediation or land use restrictions with respect to the
13 brownfields property;

14 (4) The guidelines, including parameters, principles, and policies, within which the
15 desired results are to be accomplished; and

16 (5) The consequences of achieving or not achieving the desired results.

17 (d) Any failure of the prospective developer or the prospective developer's agents and
18 employees to comply with the brownfields agreement constitutes a violation of this article
19 by the prospective developer.

20 12-8-232.

21 (a) A prospective developer who enters into a brownfields agreement with the division and
22 who is complying with the brownfields agreement shall not be held liable for remediation
23 of areas of contaminants identified in the brownfields agreement except as specified in the
24 brownfields agreement, so long as the activities conducted on the brownfields property by
25 or under the control or direction of the prospective developer do not increase the risk of
26 harm to public health or the environment and the prospective developer is not required to
27 undertake additional remediation to current standards pursuant to subsection (c) of this
28 Code section. The liability protection provided under this article applies to all of the
29 following persons to the same extent as to a prospective developer, so long as these persons
30 are not otherwise potentially responsible parties, or parents, subsidiaries, or affiliates of
31 potentially responsible parties, and are not required to undertake additional remediation to
32 current standards pursuant to subsection (c) of this Code section:

33 (1) Any person under the direction or control of the prospective developer who directs
34 or contracts for remediation or redevelopment of the brownfields property;

35 (2) Any future owner of the brownfields property;

36 (3) Any person who develops or occupies the brownfields property;

1 (4) Any successor or assign of any person to whom the liability protection provided
2 under this article applies; and

3 (5) Any lender or fiduciary that provides financing for remediation or redevelopment of
4 the brownfields property.

5 (b) A person who conducts an environmental assessment or transaction screen on a
6 brownfields property and who is not otherwise a potentially responsible party is not a
7 potentially responsible party as a result of conducting the environmental assessment or
8 transaction screen unless that person increases the risk of harm to public health or the
9 environment by failing to exercise due diligence and reasonable care in performing the
10 environmental assessment or transaction screen.

11 (c) If a land use restriction set out in the notice of brownfields property required under
12 Code Section 12-8-235 is violated, then the owner of the brownfields property at the time
13 the land use restriction is violated, the owner's successors and assigns, and the owner's
14 agents who direct or contract for alteration of the brownfields property in violation of a
15 land use restriction shall be liable for remediation to current standards. A prospective
16 developer who completes the remediation or redevelopment required under a brownfields
17 agreement or any other person who receives liability protection under this article shall not
18 be required to undertake additional remediation at the brownfields property unless:

19 (1) The prospective developer knowingly or recklessly:

20 (A) Provides false information that forms a basis for the brownfields agreement or that
21 demonstrates compliance with the brownfields agreement; or

22 (B) Fails to disclose relevant information about contamination at the brownfields
23 property;

24 (2) New information indicates the existence of previously unreported contaminants or
25 an area of previously unreported contamination on or associated with the brownfields
26 property that has not been remediated to current standards, unless the brownfields
27 agreement is amended to include any previously unreported contaminants or any
28 additional areas of contamination. If the brownfields agreement sets maximum
29 concentrations for contaminants and new information indicates the existence of
30 previously unreported areas of these contaminants, then further remediation shall be
31 required only if the areas of previously unreported contaminants raise the risk of the
32 contamination to public health or the environment to a level less protective of public
33 health and the environment than that required by the brownfields agreement;

34 (3) The level of risk to public health or the environment from contaminants is
35 unacceptable on or in the vicinity of the brownfields property due to changes in exposure
36 conditions, including:

1 (A) A change in land use that increases the probability of exposure to contaminants on
2 or in the vicinity of the brownfields property; or

3 (B) The failure of remediation to mitigate risks to the extent required to make the
4 brownfields property fully protective of public health and the environment as planned
5 in the brownfields agreement;

6 (4) The division obtains new information about a contaminant associated with the
7 brownfields property or exposures on or in the vicinity of the brownfields property that
8 raises the risk to public health or the environment associated with the brownfields
9 property beyond an acceptable range and in a manner or to a degree not anticipated in the
10 brownfields agreement. Any person whose use, including any change in use, of the
11 brownfields property causes an unacceptable risk to public health or the environment may
12 be required by the division to undertake additional remediation measures under the
13 provisions of this article; or

14 (5) A prospective developer fails to file a timely and proper notice of brownfields
15 property under this article.

16 12-8-234.

17 (a) A prospective developer who desires to enter into a brownfields agreement shall notify
18 the public and the community in which the brownfields property is located of planned
19 remediation and redevelopment activities. The prospective developer shall submit a notice
20 of intent to redevelop a brownfields property and a summary of the notice of intent to the
21 division. The notice of intent shall provide, to the extent known, a legal description of the
22 location of the brownfields property, a map showing the location of the brownfields
23 property, a description of the contaminants involved and their concentrations in the media
24 of the brownfields property, a description of the intended future use of the brownfields
25 property, any proposed investigation and remediation, and a proposed notice of brownfields
26 property prepared in accordance with Code Section 12-8-235. Both the notice of intent and
27 the summary of the notice of intent shall state the time period and means for submitting
28 written comment and for requesting a public meeting on the proposed brownfields
29 agreement. The summary of the notice of intent shall include a statement as to the public
30 availability of the full notice of intent. After approval of the notice of intent and summary
31 of the notice of intent by the division, the prospective developer shall provide a copy of the
32 notice of intent to all local governments having jurisdiction over the brownfields property.
33 The prospective developer shall publish the summary of the notice of intent in the legal
34 organ of each county in which the brownfields property is located. The prospective
35 developer shall also conspicuously post a copy of the summary of the notice of intent at the
36 brownfields site.

1 (b) Publication of the approved summary of the notice of intent as provided in subsection
2 (a) of this Code section shall begin a public comment period of at least 60 days from the
3 later date of publication. During the public comment period, members of the public,
4 residents of the community in which the brownfields property is located, and local
5 governments having jurisdiction over the brownfields property may submit comment on
6 the proposed brownfields agreement, including methods and degree of remediation, future
7 land uses, and impact on local employment.

8 (c) Any person who desires a public meeting on a proposed brownfields agreement shall
9 submit a written request for a public meeting to the division within 30 days after the public
10 comment period begins. The division shall consider all requests for a public meeting and
11 shall hold a public meeting if the division determines that there is significant public interest
12 in the proposed brownfields agreement. If the division decides to hold a public meeting,
13 the division shall, at least 30 days prior to the public meeting, mail written notice of the
14 public meeting to all persons who requested the public meeting and to any other person
15 who had previously requested notice. The division shall also direct the prospective
16 developer to publish, at least 30 days prior to the date of the public meeting, a notice of the
17 public meeting at least once in a newspaper having general circulation in such county or
18 counties where the brownfields property is located. In any county in which there is more
19 than one newspaper having general circulation, the division shall direct the prospective
20 developer to publish a copy of the notice in as many newspapers having general circulation
21 in the county as the division in its discretion determines to be necessary to assure that the
22 notice is generally available throughout the county. The division shall prescribe the form
23 and content of the notice to be published. The division shall prescribe the procedures to be
24 followed in the public meeting. The division shall take detailed minutes of the meeting.
25 The minutes shall include any written comments, exhibits, or documents presented at the
26 meeting.

27 (d) Prior to entering into a brownfields agreement, the division shall take into account the
28 comments received during the comment period and at the public meeting, if one is held.
29 The division shall incorporate into the brownfields agreement provisions that reflect the
30 comments received during the comment period and at the public meeting to the extent
31 practical. The division shall give particular consideration to any written comment that is
32 supported by valid scientific and technical information and analysis and to any written
33 comment from the units of local government that have taxing jurisdiction over the
34 brownfields property.

1 12-8-235.

2 (a) In order to reduce or eliminate the danger to public health or the environment posed
3 by a brownfields property, a prospective developer who desires to enter into a brownfields
4 agreement with the division shall submit to the division a proposed notice of brownfields
5 property. A notice of brownfields property shall be entitled 'Notice of Brownfields
6 Property,' shall include a survey plat of areas designated by the division that has been
7 prepared and certified by a registered land surveyor and that meets the requirements of
8 Code Section 12-8-231, shall include a legal description of the brownfields property that
9 would be sufficient as a description of the property in an instrument of conveyance, and
10 shall identify:

11 (1) The location and dimensions of the areas of potential environmental concern with
12 respect to permanently surveyed benchmarks;

13 (2) The type, location, and quantity of regulated substances and contaminants known to
14 exist on the brownfields property; and

15 (3) Any restrictions on the current or future use of the brownfields property or, with the
16 owner's permission, other property that are necessary or useful to maintain the level of
17 protection appropriate for the designated current or future use of the brownfields property
18 and that are designated in the brownfields agreement. These land use restrictions may
19 apply to activities on, over, or under the land, including, but not limited to, use of ground
20 water, building, filling, grading, excavating, and mining. Where a brownfields property
21 encompasses more than one parcel or tract of land, a composite map or plat showing all
22 parcels or tracts may be recorded.

23 (b) After the division approves and certifies the notice of brownfields property under
24 subsection (a) of this Code section, a prospective developer who enters into a brownfields
25 agreement with the division shall file a certified copy of the notice of brownfields property
26 with the clerk of the superior court in each county in which the land is located. The
27 prospective developer shall file the notice of brownfields property within 15 days of the
28 prospective developer's receipt of the division's approval of the notice or the prospective
29 developer's entry into the brownfields agreement, whichever is later.

30 (c) The clerk of the superior court shall record the certified copy of the notice and index
31 it in the grantor index under the name of the owner of the land, and, if different, also under
32 the name of the prospective developer conducting the redevelopment of the brownfields
33 property.

34 (d) When a brownfields property is sold, leased, conveyed, or transferred, the deed or other
35 instrument of transfer shall contain in the description section, in no smaller type than that

1 used in the body of the deed or instrument, a statement that the brownfields property has
2 been classified and, if appropriate, cleaned up as a brownfields property under this article.

3 (e) A notice of brownfields property filed pursuant to this Code section may, at the request
4 of the owner of the land, be canceled by the director after the hazards have been eliminated.

5 If requested in writing by the owner of the land and if the director concurs with the request,
6 the director shall send to the clerk of the superior court of each county where the notice is
7 recorded a statement that the hazards have been eliminated and request that the notice be
8 canceled of record. The director's statement shall contain the name of the owner of the land
9 as shown in the notice and reference the plat book and page where the notice is recorded.

10 The clerk of the superior court shall record the director's statement in the deed books and
11 index it on the grantor index in the name of the owner of the land as shown in the notice
12 of brownfields property and on the grantee index in the name 'Director of the
13 Environmental Protection Division of the Department of Natural Resources.' The clerk of
14 the superior court shall make a marginal entry on the notice of brownfields property
15 showing the date of cancellation and the book and page where the director's statement is
16 recorded, and the clerk of the superior court shall sign the entry. If a marginal entry is
17 impracticable because of the method used to record maps and plats, the clerk of the
18 superior court shall not be required to make a marginal entry.

19 (f) Any land use restriction filed pursuant to this Code section shall be enforced by any
20 owner of the land. Any land use restriction may also be enforced by the division through
21 any remedies provided by law, including a civil action. The division may enforce any land
22 use restriction without first having exhausted any available administrative remedies. A land
23 use restriction may also be forced by any unit of local government having jurisdiction
24 over any part of the brownfields property by means of a civil action without the unit of
25 local government having first exhausted any available administrative remedy. A land use
26 restriction may also be enforced by any person eligible for liability protection under this
27 article who will lose liability protection if the land use restriction is violated. A land use
28 restriction shall not be declared unenforceable due to lack of privity of estate or contract,
29 due to lack of benefit to particular land, or due to lack of any property interest in particular
30 land. Any person who owns or leases a property subject to a land use restriction under this
31 Code section shall abide by the land use restriction.

32 (g) This Code section shall apply in lieu of the provisions of Article 9 of this chapter for
33 brownfields properties remediated under this article.

1 12-8-236.
2 A decision by the division as to whether or not to enter into a brownfields agreement,
3 including the terms of any brownfields agreement, is reviewable as provided in Chapter 13
4 of Title 50, the 'Georgia Administrative Procedure Act.'"

5 **SECTION 2.**
6 All laws and parts of laws in conflict with this Act are repealed.