

House Bill 1406 (COMMITTEE SUBSTITUTE)

By: Representatives Shanahan of the 10<sup>th</sup>, Hanner of the 159<sup>th</sup>, Stokes of the 92<sup>nd</sup>, McCall of the 90<sup>th</sup>, Jackson of the 112<sup>th</sup> and others

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 change the amount of certain fees; to extend the period certain fees and  
3 surcharges shall be collected; to provide for certain powers and duties of the Director of the  
4 Environmental Protection Division of the Department of Natural Resources; to change the  
5 criteria for property qualifying for a limitation of liability to site contamination; to provide  
6 for liability for clean-up actions without notice if the identity of the responsible person  
7 cannot be determined or the situation poses a danger to persons or the environment; to define  
8 a certain term; to provide for certain fees; to provide for matters relative to the foregoing;  
9 to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 8 of Title 12 of the Official Code of Georgia Annotated, relating to waste  
13 management, is amended by striking in their entirety subsections (e) and (g) of Code Section  
14 12-8-39, relating to cost reimbursement fees and surcharges, and inserting in lieu thereof,  
15 respectively, the following:

16 "(e) After July 1, 1992, owners or operators of any solid waste disposal facility other than  
17 an inert waste landfill as defined in regulations promulgated by the board or a private  
18 industry solid waste disposal facility shall assess and collect on behalf of the division from  
19 each disposer of waste a surcharge of 50¢ per ton of solid waste disposed. From July 1,  
20 2003, through June 30, 2008, said surcharge shall be 65¢ per ton of solid waste disposed.  
21 After July 1, 2008, said surcharge shall be 75¢ per ton of solid waste disposed. Two  
22 percent of said surcharges collected may be retained by the owner or operator of any solid  
23 waste disposal facility collecting said surcharge to pay for costs associated with collecting  
24 said surcharge. Surcharges assessed and collected on behalf of the division shall be paid  
25 to the division on July 1, 1993, for the period July 1, 1992, through December 31, 1992.

1 All subsequent payments shall be due on the first day of July of each year for the preceding  
2 calendar year."

3 "(g) Unless the requirement for the surcharge required by subsection (e) of this Code  
4 section is reimposed by the General Assembly, no such surcharge shall be collected after  
5 July 1, 2003 2013."

## 6 SECTION 2.

7 Said chapter is further amended by striking in its entirety subsection (b) of Code Section  
8 12-8-91, relating to a declaration of policy and legislative intent, and inserting in lieu thereof  
9 the following:

10 "(b) The General Assembly declares its intent to fund the execution of the public policy  
11 set forth in subsection (a) of this Code section by and through the division with the fees  
12 established and collected by the division pursuant to subsection (e) of Code Section 12-2-2,  
13 subsection (e) of Code Section 12-8-39, subsection (d) of Code Section 12-8-68, and Code  
14 Section 12-8-95.1. The General Assembly further declares its intent to ensure that the  
15 funding provided by fees on hazardous waste management activities and hazardous  
16 substance reporting and by owners and operators of solid waste disposal facilities pursuant  
17 to those Code sections and through the collection of civil penalties will not be diverted for  
18 any purpose other than the administration of this article by the division, including  
19 reviewing and overseeing investigations, corrective action, and other actions by federal  
20 agencies required under this article and supporting the reduction of hazardous waste and  
21 pollution prevention activities by federal agencies; the prevention of pollution, including  
22 reduction of hazardous wastes generated; and the effectuation of corrective action at sites  
23 that may threaten human health or the environment where hazardous wastes, hazardous  
24 constituents, or hazardous substances have been disposed of or released. Appropriation of  
25 funds to the department for inclusion in the hazardous waste trust fund continued in  
26 existence by subsection (a) of Code Section 12-8-95 shall be deemed consistent with this  
27 declaration of legislative intent."

## 28 SECTION 3.

29 Said chapter is further amended by striking in their entirety paragraphs (3) and (4) of  
30 subsection (b) of Code Section 12-8-95, relating to the hazardous waste trust fund, and  
31 inserting in lieu thereof the following:

32 "(3) For activities of the division associated with the administration of this part, including  
33 reviewing and overseeing investigations, corrective action, and other actions by federal  
34 agencies required under this article and supporting the reduction of hazardous waste and  
35 pollution prevention activities by federal agencies;

(4) In accordance with rules promulgated by the board, for financing of the state and local share of the costs associated with the investigation, remediation, and postclosure care and maintenance of sites placed on the National Priority List pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or sites placed on the hazardous site inventory pursuant to Code Section 12-8-97; provided, however, that the director shall ensure that beginning July 1, 2003, and annually in each following year, an amount equal to at least one-half of the sum of annual collections made pursuant to subsection (e) of Code Section 12-8-39 and appropriated to the department in accordance with subsection (b) of Code Section 12-8-91 shall be available to be used for the purposes of this paragraph; provided, ~~however~~ further, that if a county or municipal corporation has been or is the owner of or operator of such site, not less than \$500,000.00 of such costs shall be paid from the hazardous waste trust fund;"

#### SECTION 4.

Said chapter is further amended by striking in its entirety Code Section 12-8-95.1, relating to hazardous waste management fees and hazardous substance reporting fees, and inserting in lieu thereof the following:

"12-8-95.1

(a) The division is authorized and directed to charge and collect the fees for hazardous waste management activities and hazardous substance reporting fees as provided in this subsection. As used in this Code section, the term "hazardous waste" shall not include any material excluded by 40 C.F.R. Part 261 of the Code of Federal Regulations. Every large quantity generator and every small quantity generator shall pay the greater of ~~\$100.00~~ \$115.00 per calendar year or the total of the hazardous waste management fees, and every person who is required to report pursuant to Section ~~312~~ or 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 shall pay the annual hazardous substance reporting fees, imposed as follows:

(1) Every large quantity generator of hazardous waste shall pay an annual fee of ~~\$20.00~~ \$23.00 per ton for hazardous waste shipped off site for disposal or incineration, ~~\$16.00~~ \$18.40 per ton for hazardous waste shipped off site for treatment or storage, ~~\$2.00 per ton for hazardous waste shipped off site for recycling or reuse, and, beginning January 1, 1995, \$9.00~~ and \$10.35 per ton for hazardous waste shipped off site for treatment by being burned for energy recovery in accordance with rules and regulations promulgated pursuant to Part 1 of this article; provided, however, that no large quantity generator shall be liable for off-site hazardous waste management fees exceeding \$75,000.00 in any calendar year. In no event shall any person be liable for an off-site hazardous waste

management fee on any hazardous waste for which an off-site hazardous waste management fee has previously been paid;

(2) Every large quantity generator of hazardous waste shall pay an annual fee of ~~\$10.00~~ \$11.50 per ton for hazardous waste disposed of or incinerated on site, ~~\$4.00~~ \$4.60 per ton for hazardous waste treated or stored on site, ~~\$1.00 per ton for hazardous waste reused or recycled on site, and, beginning January 1, 1995, \$2.50~~ and \$2.90 per ton for hazardous waste treated on site by being burned for energy recovery in accordance with rules and regulations promulgated pursuant to Part 1 of this article; provided, however, that no large quantity generator shall be liable for on-site hazardous waste management fees for disposal or incineration, treatment or storage, ~~recycling or reuse~~, or treatment by burning for energy recovery in any calendar year exceeding the following amounts and according to the following schedule:

(A) Twenty-five thousand dollars for such payments due on July 1, 1993, and on July 1, 1994;

(B) Fifty thousand dollars for such payments, excluding payments for the on-site treatment of waste water which is a hazardous waste, due on July 1, 1995, and on July 1, 1996;

(C) Seventy-five thousand dollars for such payments, excluding payments for the on-site treatment of waste water which is a hazardous waste, due on and after July 1, 1997;

(D) One thousand five hundred dollars for waste water which is a hazardous waste which is treated on site for payments due on July 1, 1995;

(E) Three thousand dollars for waste water which is a hazardous waste treated on site for payments due on July 1, 1996; and

(F) Seven thousand five hundred dollars for waste water which is a hazardous waste treated on site for payments due on and after July 1, 1997.

For the purposes of this paragraph, a generator who generates waste water which is a hazardous waste shall not be required to count such hazardous waste in determining its status as a large quantity generator, a small quantity generator, or a conditionally exempt small quantity generator. For the purposes of this paragraph, dilution of waste water that is a hazardous waste shall be considered treatment subject to the fees established by this paragraph. A large quantity generator which pays fees for the off-site management of hazardous waste under paragraph (1) of this subsection for a hazardous waste which was previously managed on site shall not pay the applicable on-site management fee for that hazardous waste;

(3) Every person who receives hazardous waste generated outside this state shall pay an annual fee of ~~\$20.00~~ \$23.00 per ton for hazardous waste disposed of or incinerated,

1 ~~\$16.00~~ \$18.40 per ton for hazardous waste treated or stored, ~~\$2.00 per ton for hazardous~~  
2 ~~waste that is recycled or reused, and, beginning January 1, 1995, \$9.00 and \$10.35 per~~  
3 ton for hazardous waste treated by being burned for energy recovery in accordance with  
4 rules and regulations promulgated pursuant to Part 1 of this article; provided, however,  
5 that no person shall be liable for importation fees exceeding \$75,000.00 per out-of-state  
6 generator in any calendar year. In no case shall any person who receives hazardous waste  
7 from any person outside this state and who pays an importation fee on such waste  
8 pursuant to this paragraph be liable for the off-site hazardous waste management fees  
9 required by paragraph (1) of this subsection. Persons who receive hazardous waste  
10 generated outside this state are not required to pay the fees required by this paragraph for  
11 those wastes generated by conditionally exempt small quantity generators which are  
12 located outside this state. For the purposes of this paragraph, a "conditionally exempt  
13 small quantity generator" means a generator who generates 220 pounds or less of  
14 hazardous waste in one month, as provided by rules promulgated by the board in  
15 accordance with this article; and

16 (4) Each person who is required to report pursuant to Section 313 of Title III of the  
17 federal Superfund Amendments and Reauthorization Act of 1986 shall pay to the division  
18 an annual hazardous substance reporting fee as follows:

19 (A) A facility with no reported release shall pay no fee;

20 (B) A facility with a reported release of less than 1,000 pounds during the calendar  
21 year shall pay a fee of ~~\$500.00~~ \$575.00 for that calendar year;

22 (C) A facility with a reported release equal to or greater than 1,000 pounds but less  
23 than 10,000 pounds during the calendar year shall pay a fee of ~~\$1,000.00~~ \$1,150.00 for  
24 that calendar year; and

25 (D) A facility with a reported release equal or greater than 10,000 pounds during the  
26 calendar year shall pay a fee of ~~\$1,500.00~~ \$1,725.00 for that calendar year.

27 (b) All hazardous waste and hazardous substance fees required by subsection (a) of this  
28 Code section shall be paid to the division for transfer into the state treasury to the credit of  
29 the general fund. The division shall collect such fees until the unencumbered principal  
30 balance of the hazardous waste trust fund equals or exceeds \$25 million, at which time no  
31 hazardous waste or hazardous substance fees shall be levied until the balance in that fund  
32 is less than or equal to an unencumbered balance of \$12.5 million, in which case the levy  
33 and collection of hazardous waste fees shall resume at the beginning of the next calendar  
34 year following the year in which such unencumbered balance occurs. The director shall  
35 provide written notice to all large quantity generators and hazardous waste treatment,  
36 storage, and disposal facilities and all persons who are required to report pursuant to  
37 ~~Sections 312 and~~ Section 313 of Title III of the federal Superfund Amendments and

1 Reauthorization Act of 1986 at such time as the director receives notice that the  
2 unencumbered principal balance of the fund equals or exceeds \$25 million or is equal to  
3 or less than \$12.5 million.

4 (c) All hazardous waste fees levied under this Code section shall be based on the amounts  
5 of hazardous waste managed or imported within the preceding calendar year. Such fees  
6 for the period July 1, 1992, through December 31, 1992, shall be paid to the division not  
7 later than July 1, 1993. All subsequent hazardous waste fees shall be paid not later than the  
8 first day of July of each year for the preceding calendar year.

9 (d) All hazardous substance fees levied under this Code section shall be based on the  
10 hazardous substances reported for the preceding calendar year. All hazardous substance  
11 fees shall be paid not later than the first day of July of each year for the preceding calendar  
12 year.

13 (e) Persons who make payments of fees levied by this Code section later than 30 days after  
14 the due date specified in subsection (c) of this Code section shall pay a penalty of 15  
15 percent of the balance due and shall pay interest on the unpaid balance at the rate imposed  
16 by law for delinquent taxes due to the state. Delinquent fees may be collected in a civil  
17 action instituted in the name of the director. In addition to the 15 percent penalty and the  
18 interest that may be collected along with the delinquent fees as provided in this subsection,  
19 the director shall be entitled to collect all costs, including administrative costs, and legal  
20 expenses incurred by the state in connection with its collection efforts.

21 (f) Hazardous waste which is generated by any of the following means is exempted from  
22 the fees required by this Code section:

23 (1) Corrective action required by an order, permit, or approved closure plan issued  
24 pursuant to Part 1 of this article;

25 (2) Voluntary corrective action required by any person in accordance with applicable  
26 laws and regulations; and

27 (3) Response actions required under the federal Comprehensive Environmental  
28 Response, Compensation, and Liability Act of 1980, as amended.

29 (g) The following persons shall not be required to pay the hazardous substance reporting  
30 fees required by this Code section:

31 (1) Persons who report pursuant to Section ~~312~~ or 313 of Title III of the federal  
32 Superfund Amendments and Reauthorization Act of 1986 only for substances not  
33 designated as regulated substances pursuant to rules and regulations of the board; and

34 (2) Persons who report pursuant to Section ~~312~~ or 313 of Title III of the federal  
35 Superfund Amendments and Reauthorization Act of 1986 only for petroleum fuels,  
36 lubricants, and hydraulic fluids and components thereof that are designated as regulated  
37 substances pursuant to rules and regulations of the board.

(h) Unless fee requirements established in this Code section are reimposed by the General Assembly, no such fees shall be levied after July 1, ~~2003~~ 2013.

(i) In accordance with rules promulgated by the board pursuant to paragraph (6) of Code Section 12-8-93, the director is authorized to grant a waiver of a portion of the hazardous waste management fees and hazardous substance reporting fees provided by subsection (a) of this Code section not to exceed a 25 percent reduction per year for a maximum of three years for any company as an incentive upon the recommendation of the director of the Pollution Prevention Assistance Division made in conjunction with programs and activities designed to encourage industries in the state to reduce their generation of wastes, including but not limited to programs established to recognize and reward pollution performance and environmental improvement.

(j) Beginning July 1, 2003, and continuing annually thereafter, federal agencies shall pay the hazardous waste management fees required by this Code section provided an amount not less than the sum of all fees collected from federal agencies is appropriated annually to the department and used in accordance with subsection (b) of Code Section 12-8-91 and used for the purposes set forth in paragraph (3) of subsection (b) of Code Section 12-8-95."

## SECTION 5.

Said chapter is further amended by striking in its entirety subsection (a) of Code Section 12-8-96.1, relating to liability for cleanup costs, punitive damages, actions for recovery of costs and damages, and claims for contribution, and inserting in lieu thereof the following:

"(a) Each and every person who contributed to a release of a hazardous waste, a hazardous constituent, or a hazardous substance shall be jointly, severally, and strictly liable to the State of Georgia for the reasonable costs of activities associated with the cleanup of environmental hazards, including legal expenses incurred by the state pursuant to subsection (a) of Code Section 12-8-96, as a result of the failure of such person to comply with an order issued by the director. Any such person shall be so liable notwithstanding the absence of the issuance of an order to such person pursuant to subsection (a) of Code Section 12-8-96 if the director is unable to identify such person prior to the commencement of clean-up action after making a reasonable effort to do so pursuant to such Code section, or if such person contributed to a release which resulted in an emergency action by the director and issuance of such an order would cause a delay in corrective action that could endanger human health and the environment. The person may, in addition, be liable for punitive damages in an amount at least equal to the costs incurred by the state and not more than three times the costs incurred by the state for activities associated with the cleanup of environmental hazards. Costs and damages incurred by the state may be recovered in a

civil action instituted in the name of the director. All costs recovered by the state pursuant to this Code section shall be deposited into the hazardous waste trust fund."

### SECTION 6.

Said chapter is further amended by striking in its entirety Article 9, the "Georgia Hazardous Site Reuse and Redevelopment Act", and inserting in lieu thereof the following:

#### "ARTICLE 9

12-8-200.

This article shall be known and may be cited as the "Georgia Hazardous Site Reuse and Redevelopment Act."

12-8-201.

(a) It is declared to be the public policy of the State of Georgia, in furtherance of its responsibility to protect the public health, safety, and well-being of its citizens and to protect and enhance the quality of its environment, to encourage the clean up, reuse, and redevelopment of properties where there have been releases of hazardous waste, hazardous constituents, and hazardous substances, into the environment.

(b) The General Assembly declares its intent to fund the execution of the public policy set forth in subsection (a) of this Code section by and through the division with application review fees established and collected by the division pursuant to Code Section 12-8-209. The General Assembly further declares its intent to ensure that the funding provided by the application review fees will not be diverted for any purpose other than the administration of this article by the division. Appropriation of funds to the Department of Natural Resources for inclusion in the hazardous waste trust fund continued in existence by subsection (a) of Code Section 12-8-95 shall be deemed consistent with this declaration of legislative intent.

12-8-202.

(a) Unless otherwise provided in this article, the definition of all terms included in Code Sections 12-8-62 and 12-8-92 shall be applicable to this article.

(b) As used in this article, the term:

(1) 'Certificate of compliance' means the certification of compliance with a corrective action plan required by Code Section ~~12-8-206~~ 12-8-207.

(2) 'Corrective action plan' means the corrective action plan required by Code Section ~~12-8-206~~ 12-8-207.

(3) 'Groundwater' means any subsurface water that is in a zone of saturation.



(3)(4) 'Hazardous site inventory' means the hazardous site inventory published by the division pursuant to Code Section 12-8-97.

(4) 'HSI site' means a property listed on the hazardous site inventory.

(5) 'Preexisting release' means a release, as such term is defined in paragraph (11) of Code Section 12-8-92, which occurred prior to the prospective purchaser's application for a limitation of liability pursuant to ~~Code Section 12-8-206~~ this article.

(6) 'Prospective purchaser' means a person who intends to purchase a property ~~which is part of a site listed on the hazardous site inventory~~ where there is a preexisting release.

(7) 'Qualifying property' means a property which meets the criteria of Code Section ~~12-8-204~~ 12-8-205 which a prospective purchaser intends to purchase and bring into compliance with the risk reduction standards.

(8) 'Risk reduction standards' means those standards promulgated by the board pursuant to Part 2 of Article 3 of this chapter.

(9) 'Soil' means any unconsolidated earth material, together with any unconsolidated plant or animal matter or foreign material that has been incorporated into it, that either consists of or remains within, or comes to be deposited on, native soil or regolith.

(10) 'Source material' means any hazardous waste, hazardous substance, or hazardous constituent that has been released or disposed of that requires notification in accordance with the rules promulgated by the board pursuant to Part 2 of Article 3 of Chapter 8 of Title 12, the 'Georgia Hazardous Site Response Act.'

~~12-8-202~~ 12-8-203.

(a) The board shall have the power to adopt, promulgate, modify, amend, and repeal rules and regulations to implement and enforce the provisions of this article as necessary to provide for the redevelopment and return to productive use certain ~~property or~~ qualifying properties ~~listed on the hazardous site inventory~~. Such rules and regulations may be applicable to the state as a whole or may vary from region to region, as may be appropriate to facilitate the accomplishment of the provisions, purposes, and policies of this article.

(b) The board's rules and regulations shall include, but shall not be limited to, the following:

(1) Rules and regulations governing the eligibility criteria of prospective purchasers seeking a limitation of liability;

(2) Rules and regulations governing procedures for application and approval of prospective purchasers seeking a limitation of liability; and

(3) Rules and regulations governing procedures and criteria for determining whether a prospective purchaser qualifies for a limitation of liability.

~~12-8-203~~12-8-204.

(a) The director shall have the power and duty:

(1) To make determinations, in accordance with procedures and criteria enumerated in this article and rules and regulations promulgated pursuant to this article, as to whether a prospective purchaser qualifies for a limitation of liability;

(2) To make determinations, in accordance with procedures and criteria enumerated in this article and rules and regulations promulgated pursuant to this article, as to whether a proposed corrective action plan is sufficient to bring the qualifying property into compliance with the risk reduction standards;

(3) To ensure that all actions in an approved corrective action plan are completed within the time specified, the corrective action requirements are implemented, and the risk reduction standards are achieved and certified for a qualifying property prior to concurrence with a certification of compliance;

(4) To approve corrective action plans; ~~and~~

(5) To concur with certifications of compliance; and

(6) To assess and collect application review fees from prospective purchasers.

(b) The powers and duties described in subsection (a) of this Code section may be exercised and performed by the director through such duly authorized agents and employees as the director deems necessary and proper.

~~12-8-204~~12-8-205.

In order to be considered a qualifying property for a limitation of liability as provided in Code Section ~~12-8-206~~ 12-8-207, a property must meet the following criteria:

(1) The property must ~~be part of a site listed on the hazardous site inventory~~ have a preexisting release;

(2) Any lien filed under subsection (e) of Code Section 12-8-96 against the property must be satisfied or settled and released by the director pursuant to Code Section 12-8-94;

(3) The property must not:

(A) Be listed on the federal National Priorities List pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq.;

(B) Be currently undergoing response activities required by an order of the regional administrator of the federal Environmental Protection Agency issued pursuant to the provisions of such act; or

(C) Be a hazardous waste facility as defined in Code Section 12-8-62; and

(4) The property shall meet other criteria as may be established by the board as provided in this article and Article 3 of this chapter.

1 ~~12-8-205~~12-8-206.

2 (a) To qualify for a limitation of liability as provided in Code Section ~~12-8-206~~ 12-8-207,  
3 a prospective purchaser must meet the following criteria:

4 (1) The prospective purchaser must not be a person who has contributed or who is  
5 contributing to a release of regulated substances, as defined in paragraph (9) of Code  
6 Section ~~12-8-92~~, at the HSI site of which at the qualifying property is a part;

7 (2) Where the prospective purchaser is an individual, the party must not: be a relative by  
8 blood within the third degree of consanguinity or by marriage; be an employee,  
9 shareholder, officer, or agent; or otherwise be affiliated with a current owner of the  
10 subject property HSI site or any person who has contributed or is contributing to a release  
11 of hazardous materials on at the subject property HSI site;

12 (3) Where the prospective purchaser is a corporation or other legal entity, the party must  
13 not: be a current or former subsidiary, division, parent company, or partner; be the  
14 employer or former employer; or otherwise have been affiliated with the current owner  
15 of the subject property HSI site or any person who has contributed or is contributing to  
16 a release of hazardous materials on at the subject property HSI site;

17 (4) The prospective purchaser must not be in violation of any order, judgment, statute,  
18 rule, or regulation subject to the enforcement authority of the director; and

19 (5) The prospective purchaser must meet such other criteria as may be established by the  
20 board pursuant to Code Section ~~12-8-202~~ 12-8-203.

21 (b) The director may grant a variance from the eligibility requirements contained in  
22 paragraphs (2), (3), (4), and (5) of subsection (a) of this Code section if the director finds  
23 that such criteria would render a prospective purchaser ineligible for a limitation of liability  
24 under this article, that no other qualified prospective purchaser has applied for a limitation  
25 of liability for the qualifying property, and that:

26 (1) Such ineligibility would result in the continuation of a condition which poses a threat  
27 to human health and the environment;

28 (2) The director would likely be required to perform the necessary corrective action  
29 using funds from the hazardous waste trust fund; and

30 (3) In all probability, the director would be unable to recover the cost of the corrective  
31 action as provided in Code Section 12-8-96.1.

32 The director may place such conditions upon the grant of a variance as he or she deems  
33 appropriate including, without limitation, a provision relating to the time all or a portion  
34 of the corrective action must be completed, and if the applicant fails to comply with such  
35 conditions the director may modify or withdraw such variance.

~~12-8-206~~12-8-207.

(a) Upon the director's approval of the prospective purchaser corrective action plan or concurrence with the certification of compliance described in this Code section, whichever first occurs, a prospective purchaser shall not be liable to the state or any third party for costs incurred in the remediation of, equitable relief relating to, or damages resultant from the preexisting release, nor shall the prospective purchaser be required to certify compliance with risk reduction standards for groundwater, perform corrective action, or otherwise be liable for any preexisting releases to groundwater associated with the qualifying property at the HSI site of which the qualifying property is part.

(b) (1) For ~~those HSI sites~~ qualifying properties which the director has designated as needing corrective action in accordance with paragraph (8) of subsection (a) of Code Section 12-8-97, any party desiring to qualify for a limitation of liability pursuant to this Code section shall submit a prospective purchaser corrective action plan to the division. The corrective action plan shall, at minimum, enumerate and describe in detail those actions planned and proposed to bring any source material or soil found on the qualifying property into compliance with all applicable rules and regulations adopted by the board governing the investigation, cleanup, and corrective action at properties listed on the hazardous site inventory. A corrective action plan submitted by a prospective purchaser under this subsection shall be in such form and meet such criteria as established by the board.

(2) The prospective purchaser shall submit proof of financial assurance, in such form as specified by the director, of his or her ability to implement the corrective action plan.

(3) Upon the director's approval of the prospective purchaser corrective action plan, it shall be the responsibility of the prospective purchaser to implement said plan. The director's approval of a prospective purchaser corrective action plan shall not in any way be construed as a guarantee, promise, or assurance that the director will concur with the prospective purchaser's certification of compliance ~~with the risk reduction standards for~~ source material and soil in accordance with the provisions of this Code section.

Compliance with the appropriate risk reduction standards for source material or soil in effect at the time the director's concurrence is sought is the sole responsibility of the prospective purchaser. The prospective purchaser shall not acquire a vested right to the director's concurrence regardless of the expenditure of money. The prospective purchaser shall implement the corrective action plan with the understanding that the requirements of corrective action necessary to obtain a limitation of liability are subject to change because of newly discovered facts or subsequent changes in state or federal laws, rules, or regulations.

1 (4) The director's approval of the prospective purchaser corrective action plan shall  
2 specify a time within which the prospective purchaser must certify the qualifying  
3 property to be in compliance with the risk reduction standards for source material or soil  
4 in order to maintain the limitation of liability provided for by subsection (a) of this Code  
5 section. The director may revoke the limitation of liability provided for by subsection (a)  
6 of this Code section if the prospective purchaser fails to ~~comply with~~ certify compliance  
7 within such time ~~requirement~~.

8 (5) If at any time the director determines that any element of an approved prospective  
9 purchaser corrective action plan must be modified in order to achieve compliance with  
10 the risk reduction standards for source material or soil or that the corrective action is not  
11 being implemented in accordance with the corrective action plan, the director may revoke  
12 his or her approval of the plan and the limitation of liability by providing the prospective  
13 purchaser with written notification specifying the basis for making such determination  
14 and requesting modification and resubmission of a modified plan or an opportunity to  
15 address any deficiencies in implementing the corrective action plan within a specified  
16 time. If at any time the prospective purchaser determines that any element of an approved  
17 prospective purchaser corrective action plan must be modified in order to achieve  
18 compliance with the risk reduction standards for source material or soil, the prospective  
19 purchaser shall notify the director and obtain approval of the proposed modification.

20 (6) A prospective purchaser shall, upon completion of those activities specified in the  
21 corrective action plan, submit to the director a compliance status report certifying the  
22 compliance of ~~the qualifying property~~ any source material or soil found on the qualifying  
23 property with the risk reduction standards for source material or soil and corrective action  
24 requirements. The qualifying property will be deemed in compliance with the source or  
25 soil contamination risk reduction standards upon the prospective purchaser's receipt of  
26 the director's written concurrence with the compliance status report.

27 (c) For those ~~sites listed on the hazardous site inventory~~ qualifying properties which the  
28 director has not yet designated as being in need of corrective action, any party desiring to  
29 qualify for a limitation of liability as provided in this Code section shall certify the  
30 qualifying property to be in compliance with the risk reduction standards for source  
31 material or soil by submitting a compliance status report to the division in such form as  
32 provided by rules and regulations adopted by the board. A compliance status report  
33 submitted by a prospective purchaser under this subsection shall be in such form and meet  
34 such criteria as established by the board. The qualifying property will be deemed in  
35 compliance with the risk reduction standards for source material or soil upon the  
36 prospective purchaser's receipt of the director's written concurrence with the compliance  
37 status report.

(d) A person who holds indicia of ownership executed by the prospective purchaser primarily to protect said person's security interest in the qualifying property or who acts in good faith solely in a fiduciary capacity and who did not actively participate in the management, disposal, or release of hazardous wastes, hazardous constituents, or hazardous substances on or from the qualifying property shall not be liable to the state or any third party for costs incurred in the remediation of, equitable relief relating to, or damages resultant from the preexisting release at the ~~HSI site of which the qualifying property is part~~ qualifying property.

(e) When a person who holds indicia of ownership executed by the prospective purchaser primarily to protect said person's security interest in the qualifying property takes title to the qualifying property from the prospective purchaser via foreclosure or a deed in lieu of foreclosure, such new titleholder shall maintain his or her limitation of liability under subsection (d) of this Code section if:

(1) The director is informed in writing of the transfer of title; and

(2) Within 180 days, or such other time period as specified by the director, of said transfer of title, the new titleholder:

(A) Presents the name of a new party who qualifies as a prospective purchaser for the qualifying property along with said new party's written assurance, including financial assurance, that the prospective purchaser corrective action plan will be fully implemented; or

(B) Submits a statement in writing that the new titleholder complies with the requirements applicable to prospective purchasers under this article.

~~12-8-207~~ 12-8-208.

(a) The limitation of liability provided by subsection (a) of Code Section ~~12-8-206~~ 12-8-207 shall be contingent upon the prospective purchaser's good faith implementation of the corrective action plan as approved by the director as well as the certification of compliance with the risk reduction standards and corrective action requirements. Such limitation of liability shall not be applicable to any activities conducted on the qualifying property before the director's approval of the corrective action plan or concurrence with a certification of compliance, whichever first occurs, or during any time the director's approval of the corrective action plan has been suspended or revoked.

(b) The limitation of liability provided by this article shall not affect any right of indemnification which any person has or may acquire by contract against any other person who is otherwise liable for creating an environmental hazard; apply to persons who intentionally, wantonly, or willfully violate federal or state regulations in the cleanup process; or apply to any release occurring or continuing after the date of the certification

1 of compliance unless any such continuing release is specifically addressed in the director's  
2 concurrence with the certification of compliance.

3 (c) The limitation of liability provided by this article shall be fully transferable to the heirs,  
4 assigns, and designees of the person to whom such limitation of liability is granted;  
5 provided, however, that in no event shall the director's approval of a corrective action plan  
6 or concurrence with a certification of compliance operate to absolve from liability any  
7 party deemed to be a person ~~responsible for~~ who has contributed or is contributing to a  
8 ~~release on at the HSI site from which the qualifying property originated~~ qualifying  
9 property. A transfer of the title to the qualifying property or any portion thereof from the  
10 prospective purchaser back to the owner of the ~~HSI site~~ property from which the ~~qualifying~~  
11 ~~subject~~ property was purchased, any other party deemed to be a person ~~responsible for who~~  
12 has contributed or is contributing to a release ~~on at the HSI site~~ property, or any person  
13 disqualified from obtaining a limitation of liability under Code Section ~~12-8-205~~ 12-8-206  
14 shall terminate any limitation of liability applicable to the transferor under this article.

15 (d) For the purpose of determining liability for continuing or future releases of regulated  
16 substances upon or from any qualifying property for which the director has concurred with  
17 a certification of compliance pursuant to Code Section ~~12-8-206~~ 12-8-207, the background  
18 or baseline concentration for any and all ~~regulated substances~~ releases for which corrective  
19 action was performed or compliance certified or both shall be equivalent to the risk  
20 reduction standard for which compliance was certified in order to invoke the limitation of  
21 liability.

22 (e) The limitation of liability provided by this article shall have no effect on liability for  
23 releases of hazardous waste, hazardous constituents, or hazardous substances not addressed  
24 in the corrective action plan or the certification of compliance. Any such release shall  
25 constitute a new, separate, and distinct release, subject to the provisions of Part 2 of Article  
26 3 of this chapter.

27 (f) Nothing in this article shall limit the authority of the director or the division to take  
28 action in response to any release or threat of release ~~of regulated substances~~. Except as  
29 provided in this article, nothing shall limit the authority of the director or the division to  
30 seek recovery of costs from persons liable under Part 2 of Article 3 of this chapter.

31 12-8-209.

32 The initial compliance status report or a corrective action plan submitted for any qualifying  
33 property under Code Section 12-8-207 shall be deemed to be an application to participate  
34 in the program described in this article and shall be submitted in such form as may be  
35 prescribed by the director. By making said initial submission, the prospective purchaser  
36 agrees to the provisions of this Code section. A nonrefundable application review fee of

1 \$3,000.00 shall be submitted with the application. Within 30 days of the receipt of the  
2 application, the director shall cause to be prepared and delivered to the applicant an  
3 estimate of the projected costs of the division to review the application. The director may,  
4 at any time during the application review process, invoice the applicant for any costs of the  
5 division in reviewing the application that exceed the initial application review fee. Failure  
6 to remit payment within 30 days of receipt of invoice may cause rejection of the  
7 application. The director may not issue a written concurrence with a certification of  
8 compliance if there is an outstanding fee to be paid by the prospective purchaser."

9 **SECTION 7.**

10 This Act shall become effective on July 1, 2002, except for Section 4, which shall become  
11 effective on July 1, 2003.

12 **SECTION 8.**

13 All laws and parts of laws in conflict with this Act are repealed.