



2015-2016 General Assembly

# HOUSE BILL 765: Regulatory Reform Act of 2015, Sec. 4.10: Amend the Definition for "Prospective Developer" Under the Law Governing Brownfields Development

**Committee:**  
**Introduced by:**  
**Analysis of:** Sec. 4.10 of S.L. 2015-286

**Date:**  
**Prepared by:** Jennifer McGinnis  
Staff Attorney

**SUMMARY:** *Sec. 4.10 of S.L. 2015-286 amends the definition of "prospective developer" included in the statutes under the Brownfields Property Reuse Act (Act) of 1997, by eliminating a requirement that a prospective developer have a demonstrable intent to "buy or sell" a property.*

*This section became effective December 1, 2015, and applies to notices of Intent to Redevelop a Brownfields Property filed on or after that date.*

## BACKGROUND:

A Brownfields site is any real property that is abandoned, idled, or underutilized where environmental contamination, or perceived environmental contamination, hinders redevelopment. This program was enacted to encourage and facilitate redevelopment of these sites by removing barriers to redevelopment posed by a prospective developer's (PDs) potential liability for clean-up costs. To be eligible for participation in the Brownfields Program (Program), a PD must not have caused or contributed to contamination at a site. The Act does not obviate practical or necessary remediation of properties under any State or federal cleanup program, but it does authorize the Department of Environmental Quality ((DEQ), formerly the Department of Environment and Natural Resources) to work with PDs toward the safe redevelopment of sites, and to provide PDs regulatory flexibility and liability protection that would not be available to parties who actually caused or contributed to contamination at a site. DEQ will enter into an agreement with the developer that is in effect a covenant not-to-sue contingent on the developer making the site suitable for the reuse proposed. Additionally, a Brownfields agreement obtained from the Program entitles the developer to a property tax exclusion on the improvements made to the property for a period of five years, which can more than pay for assessment and cleanup activities on many projects. Site remedies (cleanup requirements) under the Program are also less costly and time consuming than they would be for a party who caused or contributed to the contamination, as site remedies under the Brownfields Program are designed to prevent exposure and make the site suitable for reuse, rather than meet environmental standards required under the traditional cleanup programs.

## BILL ANALYSIS:

Under current law "prospective developer" means any person with a bona fide, demonstrable desire to **either buy or sell** a Brownfields property for the purpose of developing or redeveloping that brownfields property and who did not cause or contribute to the contamination at the brownfields property. **the requirement that a prospective developer have a demonstrable intent to "buy or sell" a property.**

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## **EFFECTIVE DATE:**

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