

CHAPTER 96
SB 62 - FINAL VERSION

2023 SESSION

23-0877
05/08

SENATE BILL

62

AN ACT relative to landowner liability under RSA 147-B, the hazardous waste cleanup fund.

SPONSORS: Sen. Avar, Dist 12; Sen. Watters, Dist 4; Sen. Murphy, Dist 16

COMMITTEE: Energy and Natural Resources

ANALYSIS

This bill clarifies landowner liability provisions relative to the hazardous waste cleanup fund and updates references to the term hazardous wastes and hazardous substances. The bill is a request of the department of environmental services.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struck through.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to landowner liability under RSA 147-B, the hazardous waste cleanup fund.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 96:1 Hazardous Waste Cleanup Fund; Defenses; Liability of Landowners Limited. Amend RSA 147-
2 B:10-a to read as follows:

3 147-B:10-a Defenses; Liability of Landowners Limited.

4 I. There shall be no liability under RSA 147-B:10, I for a person otherwise liable who can
5 establish by a preponderance of the evidence that the release or threat of release of hazardous wastes or
6 hazardous materials, and the resulting damages were caused solely by:

7 (a) An act of God;

8 (b) An act of war; or

9 (c) An act or omission of a third party other than an employee, agent, or independent
10 contractor of the defendant, if the defendant establishes by a preponderance of the evidence that ~~[he]~~ **the**
11 **defendant** exercised due care with respect to the ~~[hazardous substance]~~ **hazardous wastes or hazardous**
12 **materials** concerned, taking into consideration the characteristics of such ~~[hazardous substance]~~
13 **hazardous wastes or hazardous materials**, in light of all relevant facts and circumstances, and that ~~[he]~~
14 **the defendant** took precautions against foreseeable acts or omissions of any such third party and the
15 consequences that could foreseeably result from such acts or omissions.

16 II. Notwithstanding any other provision of law, an owner or former owner of property shall not be
17 held strictly liable **solely on the basis of such property ownership** for the treatment or cleanup of
18 hazardous waste or hazardous materials discovered on ~~[his]~~ **such** property if:

19 (a) ~~[He]~~ **The owner or former owner** did not, in any way, cause, ~~[or]~~ materially contribute to, **or**
20 **impede remediation of** the hazardous ~~[substance problem]~~ **wastes or hazardous materials contamination**.

21 (b) ~~[He]~~ **The owner or former owner** reported the existence of the hazardous ~~[substance]~~
22 **wastes or hazardous materials** to the appropriate authorities within a reasonable time of discovery.

23 (c) ~~[He]~~ **The owner or former owner** can prove that ~~[he]~~ **the owner or former owner** had no
24 knowledge or reason to know of the hazardous ~~[substance problem]~~ **wastes or hazardous materials on the**
25 **property** prior to ~~[his]~~ **their** purchase of the property. To establish that the ~~[defendant]~~ **owner or former**
26 **owner** had no reason to know, as provided in this subparagraph, the ~~[defendant]~~ **owner or former owner**
27 must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and
28 uses of the property consistent with good commercial or customary practice in an effort to minimize
29 liability.

30 III. Notwithstanding any other provision of law, an owner or former owner of property shall not be
31 held strictly liable for the treatment or cleanup of hazardous waste, hazardous material, oil as defined in

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1 RSA 146-A:2, III, or hazardous substance as defined in RSA 146-C:1, VII-a that are discovered on the
2 property if:

3 (a) The owner *or former owner* did not, in any way, cause or materially contribute to the
4 contamination of the property; and

5 (b) The contamination migrated onto the property from a source that, at the time of discovery
6 of the contamination, was located on another property.

96:2 Effective Date. This act shall take effect upon its passage.

Approved: June 20, 2023

Effective Date: June 20, 2023