

IN THE SENATE

SENATE BILL NO. 1264

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

1 RELATING TO LAND REMEDIATION; AMENDING SECTION 39-7202, IDAHO CODE, TO  
2 REVISE PROVISIONS REGARDING LEGISLATIVE FINDINGS; AMENDING SECTION  
3 39-7203, IDAHO CODE, TO REVISE A DEFINITION AND TO MAKE TECHNICAL COR-  
4 RECTIONS; AMENDING SECTION 39-7208, IDAHO CODE, TO REVISE PROVISIONS  
5 REGARDING RESCISSION; AMENDING SECTION 39-7211, IDAHO CODE, TO REVISE  
6 TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMER-  
7 GENCY AND PROVIDING AN EFFECTIVE DATE.  
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Section 39-7202, Idaho Code, be, and the same is hereby  
11 amended to read as follows:

12 39-7202. LEGISLATIVE FINDINGS. The legislature hereby finds and de-  
13 clares:

14 (1) That it is the policy of the state of Idaho to provide for the pro-  
15 tection of the public health, welfare, safety, and environment; and to fos-  
16 ter the remediation, transfer, reuse, or redevelopment of sites or groups of  
17 sites based on the risk to human health and the environment where releases or  
18 threatened release of hazardous substances or petroleum exists. The mini-  
19 mization of risk to public health and the environment on a ~~commercial and in-~~  
20 ~~ustrial~~ site offers significant potential economic benefit to local commu-  
21 nities and is vital to their use and reuse as sources of employment, housing,  
22 recreation and open-space areas.

23 (2) That establishing a voluntary program for the investigation or re-  
24 mediation, or both, of hazardous-substance or petroleum-contaminated sites  
25 or sites with perceived contamination will encourage innovation and cooper-  
26 ation between the state, local communities, and interested persons and will  
27 promote the economic revitalization of property. It is intended that this  
28 program will provide for an expedited remediation process by eliminating the  
29 need for many adversarial enforcement actions and delays in remediation plan  
30 approvals.

31 (3) ~~That providing financial assistance to eligible property owners~~  
32 Those who conduct voluntary cleanups will promote the economic revital-  
33 ization of property, particularly in rural communities, and will reduce or  
34 eliminate the need for many adversarial enforcement actions and delays in  
35 remediation plan approvals for the community benefit.

36 SECTION 2. That Section 39-7203, Idaho Code, be, and the same is hereby  
37 amended to read as follows:

38 39-7203. GENERAL DEFINITIONS. As used in this chapter:

39 (1) "Board" means the board of environmental quality.

40 (2) "Department" means the department of environmental quality.

1           (3) "Eligible property owner participant" means any individual, ~~as-~~  
 2 ~~sociation, partnership, firm, joint stock company, trust, estate, private~~  
 3 ~~corporation, or any other nonpublic entity that is the current owner of a~~  
 4 ~~contaminated property, but that did not cause, contribute, or consent to the~~  
 5 ~~release that led to the contamination or own the property at the time of the~~  
 6 ~~release that led to the contamination. An eligible property owner shall not~~  
 7 ~~include any individual, association, partnership, firm, joint stock com-~~  
 8 ~~pany, trust, estate, private corporation, or any other nonpublic entity that~~  
 9 ~~is:~~

10           ~~(a) Affiliated with any individual or entity that caused, contributed,~~  
 11 ~~or consented to the release that led to the contamination, or owned~~  
 12 ~~the property at the time of the release that led to the contamination,~~  
 13 ~~whether directly or through a direct or indirect familial relationship,~~  
 14 ~~or any contractual, corporate, or financial relationship, excluding~~  
 15 ~~such relationships created by a contract for the sale of the property at~~  
 16 ~~issue; or~~

17           ~~(b) The owner as a result of a reorganization of an entity that caused,~~  
 18 ~~contributed, or consented to the release that led to the contamination,~~  
 19 ~~or that owned the property at the time of the release that led to the con-~~  
 20 ~~tamination person interested in the assessment or remediation, or both,~~  
 21 ~~of a site.~~

22           (4) "Hazardous substance" has the meaning set forth in section 101(14)  
 23 of the comprehensive environmental, response, compensation, and liability  
 24 act (CERCLA), 42 U.S.C. 9601(14), as amended.

25           (5) "Person" means any individual, association, partnership, firm,  
 26 joint stock company, trust, estate, political subdivision, public or pri-  
 27 vate corporation, state or federal governmental department, agency or  
 28 instrumentality, or any other legal entity ~~which is~~ recognized by law as the  
 29 subject of rights and duties.

30           (6) "Petroleum" includes petroleum asphalt and crude oil or any part of  
 31 petroleum asphalt or crude oil that is liquid at standard conditions of tem-  
 32 perature and pressure (sixty (60) degrees Fahrenheit and fourteen and seven-  
 33 tenths (14.7) pounds per square inch absolute).

34           (7) "Qualifying remediation costs" means reasonable costs incurred  
 35 performing remediation activities integral to achieving the cleanup goals  
 36 identified in a remediation work plan approved by the department.

37           (8) "Release" means any spilling, leaking, pumping, pouring, emitting,  
 38 emptying, discharging, injecting, escaping, leaching, dumping, or dispos-  
 39 ing into the environment, including the abandonment or discarding of bar-  
 40 rels, containers, or other closed receptacles containing any hazardous sub-  
 41 stance or petroleum.

42           (9) "Remediation" means any of the following:

43           (a) Actions necessary to prevent, minimize, or mitigate damages to the  
 44 public health or welfare or to the environment, ~~which that~~ may otherwise  
 45 result from a release or threat of a release; or

46           (b) Actions consistent with a permanent remedy taken instead of, or in  
 47 addition to, removal actions in the event of a release or threatened  
 48 release of a hazardous substance or petroleum into the environment to  
 49 eliminate the release of hazardous substances or petroleum so that the  
 50 hazardous substances or petroleum do not migrate to cause substantial

1 danger to present or future public health or welfare or the environment;  
2 or

3 (c) The cleanup or removal of released hazardous substances or petro-  
4 leum from the environment.

5 (10) "Site" means a parcel of real estate for which an application has  
6 been submitted under section 39-7204, Idaho Code.

7 (11) "Technical professional" means a professional geologist or pro-  
8 fessional engineer registered in the state of Idaho.

9 SECTION 3. That Section 39-7208, Idaho Code, be, and the same is hereby  
10 amended to read as follows:

11 39-7208. ~~RECISION~~ RESCISSION. (1) This chapter does not prohibit or  
12 limit the department's ~~recision rescission~~ of the voluntary remediation  
13 agreement, certificate of completion, or the covenant not to sue at any time  
14 if:

15 (a) ~~The person implementing the work plan~~ eligible participant fails  
16 substantially to comply with the terms and conditions of:

17 (i) ~~a~~ A voluntary remediation agreement, ~~or~~;

18 (ii) An approved work plan; or

19 (iii) A covenant not to sue;

20 (b) A hazardous substance or petroleum release becomes an imminent and  
21 substantial threat to human health or the environment; or

22 (c) A false statement, representation, or certification in any appli-  
23 cation, record, report, plan, or other document is submitted to the de-  
24 partment.

25 (2) The department shall also notify the county in which the said site  
26 exists of ~~recision rescission~~ of the certificate of completion and covenant  
27 not to sue for the purposes of determining property exemptions provided un-  
28 der section 63-602BB, Idaho Code.

29 SECTION 4. That Section 39-7211, Idaho Code, be, and the same is hereby  
30 amended to read as follows:

31 39-7211. IDAHO COMMUNITY REINVESTMENT PILOT INITIATIVE. (1) There is  
32 hereby established in the state treasury a fund to be known as the Idaho com-  
33 munity reinvestment pilot initiative fund, which shall consist of moneys ap-  
34 propriated to the fund, donations, gifts and grants from any source and any  
35 other moneys ~~which~~ that may hereafter be provided by law. The state trea-  
36 surer shall be the custodian of the fund and shall invest said moneys in ac-  
37 cordance with law. Any interest earned on the moneys in the fund shall be de-  
38 posited in the fund. Moneys in the fund shall be disbursed in accordance with  
39 the directions of the director of the department of environmental quality.  
40 All moneys in the fund are perpetually appropriated to the director for ex-  
41 penditure in accordance with the provisions of this section.

42 (2) The state of Idaho hereby authorizes financial assistance to el-  
43 igible ~~property owners~~ participants conducting voluntary cleanup actions  
44 pursuant to this chapter. The financial assistance authorized by this sec-  
45 tion shall not exceed one hundred fifty thousand dollars (\$150,000) per  
46 project and shall be limited to, subject to the one-hundred-fifty-thou-  
47 sand-dollars (\$150,000) maximum, ~~seventy-percent~~ seventy percent (70%) of a

1 project's qualifying remediation costs certified by the department pursuant  
2 to this section.

3 (3) Pursuant to general fund appropriation, the maximum overall fi-  
4 nancial assistance authorized by this section is one million five hundred  
5 thousand dollars (\$1,500,000) in qualified remediation cost expenditures.  
6 A maximum of ten (10) projects may participate in the initiative.

7 (4) The department shall establish an annual priority list for commu-  
8 nity revitalization projects. The priority list shall be used as the method  
9 for allocating funds under this initiative.

10 (a) On an annual basis, the department shall establish, at a minimum,  
11 a continuous three (3) month calendar period in which eligible ~~property~~  
12 ~~owners~~ participants may submit a written request, on a standard form de-  
13 veloped by the department, to participate.

14 (b) On an annual basis, the department shall develop a priority list  
15 based on a weighted numerical points system established by the depart-  
16 ment. The rating system shall consider the following criteria wherein  
17 the department shall weigh each succeeding criteria less heavily than  
18 the preceding criteria:

19 (i) Whether the project is located in a city with a population of  
20 ~~under~~ fewer than twenty thousand (20,000) residents;

21 (ii) The level of social and economic benefit expected from the  
22 proposed reuse plan;

23 (iii) Whether contamination is preventing or complicating rede-  
24 velopment;

25 (iv) Whether a reuse plan meets local planning and reuse goals, is  
26 compatible with long-term plans, and is ready to proceed;

27 (v) The level of human health risks the cleanup will remedy;

28 (vi) Current property conditions, including building safety con-  
29 cerns, vacancy rates and the level of negative visual impact the  
30 property has on the community.

31 (c) The department shall maintain annual priority lists of the twenty-  
32 five (25) highest priority projects.

33 (d) After finalizing the priority list, the department shall contact,  
34 in writing, the eligible ~~property owners~~ participants that submitted  
35 the ten (10) highest ranked priority projects and ~~will~~ set a target date  
36 for the eligible ~~property owners~~ participants to enter into a volun-  
37 tary remediation agreement as described in ~~subsection (1) of section~~  
38 39-7205 (1), Idaho Code.

39 (e) The department may bypass a project, and submit in its place the  
40 next highest priority project on the project list, for any of the fol-  
41 lowing reasons:

42 (i) The eligible ~~property owner~~ participant fails to enter into a  
43 voluntary remediation agreement by the target date established by  
44 the department;

45 (ii) The eligible ~~property owner~~ participant, in writing, with-  
46 draws ~~its~~ a request to participate; or

47 (iii) The voluntary remediation agreement is terminated or re-  
48 scinded by the department prior to commencement of remediation as  
49 described in the voluntary remediation agreement approved by the  
50 department.

1 The department shall notify the bypassed eligible ~~property owner~~  
2 participant of the reason or reasons for the bypass.

3 (5) Eligible ~~property owners~~ participants may request a community in-  
4 vestment rebate by submitting documentation and certifications enumerated  
5 in paragraphs (a) through (c) of this subsection to the department. Eligi-  
6 ble ~~property owners~~ participants shall submit this information no more than  
7 sixty (60) days after the department issues a certificate of completion for  
8 the project. Eligible ~~property owners~~ participants must receive a written  
9 certificate of completion from the department before the department may cer-  
10 tify qualifying remediation costs or provide a community reinvestment re-  
11 bate. Information to be submitted includes:

12 (a) Copies of contracts and documentation of contract negotiations,  
13 accounts, invoices, sales tickets, or other payment records from pur-  
14 chases, sales, leases, or other transactions involving actual costs  
15 incurred completing remediation activities in accordance with the work  
16 plan approved by the department;

17 (b) Notarized documentation completed and signed by the participant  
18 certifying that all information contained in the application, includ-  
19 ing all records of claims, costs incurred, and costs paid, are true and  
20 correct and constitute qualifying remediation costs;

21 (c) Notarized documentation completed and signed by a technical pro-  
22 fessional certifying that a technical professional oversaw all remedi-  
23 ation work plan activities and that all costs associated with documents  
24 submitted pursuant to this subsection constitute qualifying remedia-  
25 tion costs.

26 (6) Community reinvestment rebate requests shall be reviewed and cer-  
27 tified as follows:

28 (a) The department shall review each community reinvestment rebate  
29 request and determine whether the request is complete. If the depart-  
30 ment determines the request is incomplete, the department shall return  
31 the request, with the deficiencies indicated, to the eligible ~~property~~  
32 owner participant by certified mail;

33 (b) Once a community reinvestment rebate request is deemed complete,  
34 the department shall review the request and determine the project's  
35 qualifying remediation costs. The department shall then issue a certi-  
36 fication of the qualifying remediation costs for all those costs found  
37 to be reasonable by the department;

38 (c) The department shall issue the eligible ~~property owner~~ participant  
39 a community reinvestment rebate in the amount it certified as qualified  
40 remediation costs no more than thirty (30) days after department certi-  
41 fication;

42 (d) Any eligible ~~property owner~~ participant or technical professional  
43 determined in a ~~civil an~~ enforcement action to have submitted a false  
44 statement, representation or certification in any application, record,  
45 report, plan or other document submitted to the department, shall reim-  
46 burse the state of Idaho for moneys wrongfully rebated and shall be li-  
47 able for civil penalties and expenses incurred by the department in ac-  
48 cordance with chapter 1, title 39, Idaho Code.

1           (7) Eligible ~~property owners~~ participants that receive a community in-  
2 vestment rebate are not eligible to receive the property tax exemption es-  
3 tablished under section 63-602BB, Idaho Code.

4           SECTION 5. An emergency existing therefor, which emergency is hereby  
5 declared to exist, this act shall be in full force and effect on and after  
6 July 1, 2022.