

1 AN ACT concerning environmental safety.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Response Action Contractor  
5 Indemnification Act is amended by changing Sections 4 and 5  
6 as follows:

7 (415 ILCS 100/4) (from Ch. 111 1/2, par. 7204)

8 Sec. 4. (a) In the event that any civil proceeding  
9 arising out of a State response action contract is commenced  
10 against any response action contractor, the Attorney General  
11 shall, upon timely and appropriate notice to him by such  
12 contractor, appear on behalf of such contractor and defend  
13 the action. Any such notice shall be in writing, shall be  
14 mailed within 15 days after the date of receipt by the  
15 contractor of service of process, and shall authorize the  
16 Attorney General to represent and defend the contractor in  
17 the proceeding. The giving of this notice to the Attorney  
18 General shall constitute an agreement by the contractor to  
19 cooperate with the Attorney General in his defense of the  
20 action and a consent that the Attorney General shall conduct  
21 the defense as he deems advisable and in the best interests  
22 of the contractor and the State, including settlement in the  
23 Attorney General's discretion. In any such proceeding, the  
24 State shall pay the court costs and litigation expenses of  
25 defending such action, to the extent approved by the Attorney  
26 General as reasonable, as they are incurred.

27 In the event that the Attorney General determines either  
28 (1) that so appearing and defending a contractor involves an  
29 actual or potential conflict of interest, or (2) that the act  
30 or omission which gave rise to the claim was not within the  
31 scope of the State response action contract, or was

1 intentional, willful or wanton misconduct, the Attorney  
2 General shall decline in writing to appear or defend or shall  
3 promptly take appropriate action to withdraw as attorney for  
4 such contractor. Upon receipt of such declination or  
5 withdrawal by the Attorney General on the basis of an actual  
6 or potential conflict of interest, the contractor may employ  
7 his own attorney to appear and defend, in which event the  
8 State shall pay the contractor's court costs, litigation  
9 expenses and attorneys' fees to the extent approved by the  
10 Attorney General as reasonable, as they are incurred.

11 (b) In any civil proceeding arising out of a State  
12 response action contract in which notice was given to the  
13 Attorney General under subsection (a), if the court or jury  
14 finds that the act or omission of the response action  
15 contractor was within the scope of the State response action  
16 contract and was not intentional, willful or wanton  
17 misconduct, the court shall so state in its judgement, and  
18 the State shall indemnify the contractor for any damages  
19 awarded and court costs and attorneys' fees assessed as part  
20 of the final and unreversed judgment. In such event, if the  
21 Attorney General declined to appear or withdrew on the  
22 grounds that the act or omission was not within the scope of  
23 the State response action contract, or was intentional,  
24 willful or wanton misconduct, the State shall also pay the  
25 contractor's court costs, litigation expenses and attorneys  
26 fees to the extent approved by the Attorney General as  
27 reasonable.

28 (c) Unless the Attorney General determines that the  
29 conduct or inaction which gave rise to the claim or cause of  
30 action was not within the scope of the State response action  
31 contract, or was intentional, willful or wanton misconduct,  
32 any case in which notice was given pursuant to subsection (a)  
33 may be settled, in the Attorney General's discretion, and the  
34 State shall indemnify the contractor for any damages, court

1 costs and attorneys' fees agreed to as part of the  
 2 settlement. If the contractor is represented by private  
 3 counsel, any settlement which obligates the State to  
 4 indemnify the contractor must be approved by the Attorney  
 5 General and the court having jurisdiction.

6 (d) Court costs and litigation expenses and other costs  
 7 of providing a defense, including attorneys' fees, paid or  
 8 obligated under this Section, and the costs of  
 9 indemnification, including the payment of any final judgment  
 10 or final settlement under this Section, shall be paid by  
 11 warrant from the Response Contractors Indemnification Fund  
 12 pursuant to vouchers certified by the Attorney General.

13 (e) Nothing contained or implied in this Section shall  
 14 operate, or be construed or applied, to deprive the State, or  
 15 any response action contractor, of any defense otherwise  
 16 available.

17 (f) Any judgment subject to State indemnification under  
 18 this Section shall not be enforceable against the response  
 19 action contractor, but shall be paid by the State in the  
 20 following manner. Upon receipt of a certified copy of the  
 21 judgment, the Attorney General shall review it to determine  
 22 if the judgment is (1) final, unreversed and no longer  
 23 subject to appeal, and (2) subject to indemnification under  
 24 this Section. If he determines that it is, he shall submit a  
 25 voucher for the amount of the judgment and any interest  
 26 thereon to the State Comptroller, and the amount shall be  
 27 paid by warrant to the judgment creditor solely out of funds  
 28 available in the Response Contractors Indemnification Fund.  
 29 ~~If the balance in such Fund is insufficient to pay any~~  
 30 ~~properly certified voucher for a warrant drawn thereon, the~~  
 31 ~~Comptroller shall transfer the necessary amount to the Fund~~  
 32 ~~from the General Revenue Fund.~~ In no event will the amount  
 33 paid for a single occurrence surpass \$100,000 \$2,000,000,  
 34 provided that this limitation shall not render any portion of

1 the judgment enforceable against the response action  
2 contractor.

3 (Source: P.A. 84-1445.)

4 (415 ILCS 100/5) (from Ch. 111 1/2, par. 7205)

5 Sec. 5. Response Contractors Indemnification Fund.

6 (a) There is hereby created the Response Contractors  
7 Indemnification Fund. The State Treasurer, ex officio, shall  
8 be custodian of the Fund, and the Comptroller shall direct  
9 payments from the Fund upon vouchers properly certified by  
10 the Attorney General in accordance with Section 4. The  
11 Treasurer shall credit interest on the Fund to the Fund.

12 (b) Every State response action contract shall provide  
13 that 5% of each payment to be made by the State under the  
14 contract shall be paid by the State directly into the  
15 Response Contractors Indemnification Fund rather than to the  
16 contractor, except that when there is at least \$100,000 more  
17 than ~~\$2,000,000~~ in the Fund at the beginning of a State  
18 fiscal year, State response action contracts during that  
19 fiscal year need not provide that 5% of each payment made  
20 under the contract be paid into the Fund. When only a  
21 portion of a contract relates to a remedial or response  
22 action, or to the identification, handling, storage,  
23 treatment or disposal of a pollutant, the contract shall  
24 provide that only that portion is subject to this subsection.

25 (c) Within 30 days after the effective date of this  
26 amendatory Act of 1997, the Comptroller shall order  
27 transferred and the Treasurer shall transfer \$1,200,000 from  
28 the Response Contractors Indemnification Fund to the  
29 Brownfields Redevelopment Fund. The Comptroller shall order  
30 transferred and the Treasurer shall transfer \$1,200,000 from  
31 the Response Contractors Indemnification Fund to the  
32 Brownfields Redevelopment Fund on the first day of fiscal  
33 years 1999, 2000, 2001, 2002, and 2003~~7-20047-and-2005~~.

1 (d) Within 30 days after the effective date of this  
2 amendatory Act of the 91st General Assembly, the Comptroller  
3 shall order transferred and the Treasurer shall transfer  
4 \$2,000,000 from the Response Contractors Indemnification Fund  
5 to the Asbestos Abatement Fund.

6 (e) Within 30 days after the effective date of this  
7 amendatory Act of the 93rd General Assembly, the Comptroller  
8 shall order transferred and the Treasurer shall transfer all  
9 monies in the Response Action Contractor Indemnification Fund  
10 in excess of \$100,000 from the Response Action Contractor  
11 Indemnification Fund to the Brownfields Redevelopment Fund.

12 (Source: P.A. 91-704, eff. 7-1-00; 92-486, eff. 1-1-02.)

13 Section 99. Effective date. This Act takes effect upon  
14 becoming law.