

By Mr. Larkin of Pittsfield, petition of Peter J. Larkin, Shaun P. Kelly and Andrea F. Nuciforo, Jr., relative to the Pittsfield Economic Development Authority. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Nine.

AN ACT MODIFYING THE PITTSFIELD ECONOMIC DEVELOPMENT AUTHORITY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 268 of Chapter 194 of the Acts of 1998 is
2 hereby amended by inserting after Section 3 the following new
3 section: —

4 Section 3A. (a) Notwithstanding any other provisions of this
5 Act, the Authority is authorized, in its reasonable discretion, to
6 offer limited indemnification to any industrial corporation that
7 was the owner of any real property that is located in the city of
8 Pittsfield that was conveyed to the Authority by said industrial
9 corporation. Any decision by the Authority to offer such indem-
10 nity, and the terms of any such indemnity agreement, shall be lim-
11 ited by the provisions of this and the following four subsections.
12 Pursuant to this subsection, with respect to any claim that arises
13 from or is associated with the past ownership, use and/or occu-
14 pancy of the property by such industrial corporation, the
15 Authority may indemnify said industrial corporation from and
16 against (i) liability pursuant to chapter twenty-one E of the
17 General Laws; the Comprehensive Environmental Response,
18 Compensation, and Liability Act of 1980, 42 U. S.C. §§ 9601 et
19 seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§
20 6901 et seq.; the Toxic Substances Control Act of 1976, 15 U.S.C.
21 §§ 2601 et seq.; the Federal Water Pollution Control Act, 33
22 U.S.C. §§ 1251 et seq.; and the Clean Air Act, 42 U.S.C. §§ 7401
23 et seq.; (ii) liability for property damage or personal injury under

24 the common law; and/or (iii) any other claims for recovery of
25 environmental remediation or response costs. The Authority may
26 not, however, indemnify or offer to indemnify any such industrial
27 corporation from any penalties that may be assessed by any
28 agency of state or federal government or by any regulatory
29 authority, nor from any costs or liability such industrial corpora-
30 tion may incur in connection with any hazardous or other material
31 at any property other than property that the Authority has
32 acquired.

33 (b) Nothing in this section shall be interpreted as (i) authorizing
34 any immunity from suit or any defense from liability in connec-
35 tion with any claim raised by any third party, (ii) limiting or
36 altering the provisions of section 5(f) of chapter twenty-one E of
37 the General Laws, or (iii) limiting the right of any party to bring
38 any claim against such industrial corporation. Nothing in this
39 section shall be interpreted as giving rise to any liability or indem-
40 nification obligation of the Commonwealth or any agency or polit-
41 ical subdivision of the Commonwealth, including, without
42 limitation, the city of Pittsfield, but excluding the Authority to the
43 extent the Authority enters into any indemnification agreements
44 authorized by this section.

45 (c) The Authority is also authorized, in its reasonable discre-
46 tion, to indemnify any such industrial corporation from claims for
47 property damage, personal injury, and/or reimbursement for envi-
48 ronmental remediation or response costs, where such damages,
49 injuries or costs are caused by an act or failure to act of a subse-
50 quent owner, operator or tenant of the property that results in a
51 release or threat of release of oil or hazardous material that is first
52 discovered subsequent to the transfer of property to the Authority;
53 provided, however, that the Authority shall (i) obtain insurance
54 coverage, in such amounts that it deems appropriate and commer-
55 cially available, to carry out or otherwise support any indemnifi-
56 cation obligations it assumes and (ii) determine that the public
57 interest in the economic development of the city of Pittsfield will
58 best be served by entering into such indemnification agreement.

59 (d) Prior to indemnifying or agreeing to indemnify any indus-
60 trial corporation as set forth in subsection (a), the Authority must
61 first determine: (i) that such industrial corporation has remediated,
62 or has entered into enforceable agreements to remediate with state

63 and federal agencies having regulatory authority over remediation
64 plans and activities, the property in question so as to presently
65 comply, or be legally obligated to comply within a reasonable
66 time, with the provisions of the federal and state laws referenced
67 in subsection (a); (ii) that the Authority can obtain insurance cov-
68 erage in amounts adequate to carry out or otherwise support any
69 indemnification obligations it assumes, at a cost which, in its rea-
70 sonable opinion, will not unduly burden or interfere with the oper-
71 ations of the Authority; and (iii) that the public interest in the
72 economic development of the city of Pittsfield will best be served
73 by entering into such indemnification agreement.

74 (e) Pursuant to this section, the Authority may not enter into
75 any indemnification agreement that would have the effect of
76 indemnifying an industrial corporation for acts or failures to act of
77 which said industrial corporation was aware or should have been
78 aware, in the exercise of due diligence, at the time of the indemni-
79 fication agreement and which it was under any statutory, regula-
80 tory or contractual obligation to disclose, but which it failed to
81 disclose to the Authority or to a state or federal agency with juris-
82 diction over environmental matters prior to entering into such
83 agreement. Any provision of any agreement that the Authority
84 enters into that is contrary to the requirements of the preceding
85 sentence shall be declared null and void and shall be severed from
86 the agreement as a violation of the public policy of the
87 Commonwealth, but the remainder of said agreement, to the
88 extent not contrary with this section, shall remain in full force and
89 effect.

1 SECTION 2. Section 14 of Section 268 of Chapter 194 of the
2 Acts of 1998 is hereby amended by striking out the word "five,"
3 as appearing in the first sentence of said section, and inserting the
4 following word: — seven.

1 SECTION 3. Section 14 of Section 268 of Chapter 194 of the
2 Acts of 1998 is hereby further amended by striking out the words
3 "one member," as appearing following the words "one member
4 who lives in or will represent the interest of the neighborhoods
5 which will be most directly affected by the activities of the
6 Authority, such member to be appointed for a term of one year

7 and” in the last clause of the first sentence of the second para-
8 graph of said section, and inserting the following words: — three
9 members.

1 SECTION 4. Section 14 of Section 268 of Chapter 194 of the
2 Acts of 1998 is hereby further amended by adding to the end of
3 the first sentence of the second paragraph of said section the
4 following word: — each.

1 SECTION 5. Section 268 of Chapter 194 of the Acts of 1998 is
2 hereby further amended by inserting the following new section:—
3 Section 21. The Authority is authorized in its reasonable discre-
4 tion to enter into a binding agreement with federal and state nat-
5 ural resource trustees, representatives and other parties, including,
6 without limitation, the National Oceanic and Atmospheric
7 Administration, the United States Department of the Interior, the
8 Massachusetts Executive Office of Environmental Affairs and the
9 Connecticut Department of Environmental Protection, in which
10 agreement the Authority agrees to pay a portion of its net rev-
11 enues as compensation for natural resource damages resulting
12 from releases of polychlorinated biphenyls to the Housatonic
13 River and environs.