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Synopsis of Senate Committee Amendments

(This synopsis does not address amendments that may have been adopted on the Senate Floor.)

H.B. 168 of the 133rd General Assembly

Senate Agriculture

Helena Volzer, Attorney

As Reported by S. Agriculture on February 12, 2020

Covenant not to sue under Voluntary Action Program

(R.C. 3746.05)

Eliminates a provision of law that automatically voids a covenant not to sue under the Voluntary Action Program (VAP) when a property subject to institutional controls or activity and use limitations is not in compliance with those controls or limitations. (The VAP is a voluntary brownfield cleanup program.)

Instead, authorizes, but does not require, the Director of Environmental Protection to issue an order voiding the covenant in that circumstance.

Specifies that the order voiding the covenant not to sue is an appealable action.

As Re-Reported by S. Agriculture on May 5, 2020

Retroactivity

(R.C. 3746.122)

Clarifies that a bona fide prospective purchaser (BFPP) must meet all of the requirements of 42 U.S.C. 9601, including acquiring ownership of a facility after January 11, 2002.

Specifies that the affirmative defense established by the bill may be asserted by a BFPP in any pending civil action as of the bill's effective date or any new civil action initiated thereafter.

Declares the intent of the General Assembly that the affirmative defense is remedial and that the General Assembly's purpose is to adopt the federal definition of a BFPP and to extend the affirmative defense retroactively to civil actions pending on the bill's effective date that were initiated prior to that date.