

## ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda-underwritten by global corporations-includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

## ALEC's Corporate Board --in recent past or present

- AT&T Services, Inc.
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- UPS
- Bayer Corporation
- GlaxoSmithKline
- Energy Future Holdings
- Johnson & Johnson
- Coca-Cola Company
- PhRMA
- Kraft Foods, Inc.
- Coca-Cola Co.
- Pfizer Inc.
- Reed Elsevier, Inc.
- DIAGEO
- Peabody Energy
- Intuit, Inc.
- Koch Industries, Inc.
- ExxonMobil
- Verizon
- Reynolds American Inc.
- Wal-Mart Stores, Inc.
- Salt River Project
- Altria Client Services, Inc.
- American Bail Coalition
- State Farm Insurance

For more on these corporations, search at [www.SourceWatch.org](http://www.SourceWatch.org).

**DID YOU KNOW?** Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

[Home](#) → [Model Legislation](#) → Energy, Environment, and Agriculture

### The Environmental Good Samaritan Act

Did you know the trade group for the gas industry was a corporate co-chair in 2011?

#### Summary

This bill would establish the Environmental Good Samaritan Act. The purpose of this legislation is to encourage the voluntary reclamation of land and water adversely affected by mining (including limestone, dolomite, sand, gravel, slate, argillite, diabase, gneiss, micaceous sandstone known as bluestone, rock, stone, earth, fill, slag, iron ore, zinc ore, vermiculite, clay and coal) or oil or gas extraction, and for which no person has a continuing reclamation or water pollution abatement obligation. This act would limit the potential legal liability of both landowners and participants who, voluntarily and under no legal obligation, engage in such cleanup projects.

#### Model Legislation

AN ACT

Providing immunity for certain persons who reclaim certain abandoned lands or abate certain water pollution.

The General Assembly of the State of \_\_\_\_\_ hereby enacts as follows:

**Section 1. {Short title.}** This act shall be known and may be cited as the Environmental Good Samaritan Act.

**Section 2. {Findings.}** The General Assembly finds and declares as follows:

(1) This Commonwealth's long history of mining and the extraction of oil and gas have left some lands and waters unreclaimed and polluted.

(2) These abandoned lands and polluted waters are unproductive, erode the tax base and are serious impediments to the economic welfare and growth of this State.

(3) These abandoned lands and polluted waters present a danger to the health, safety and welfare of the people and the environment.

(4) This State does not possess sufficient resources to reclaim all the abandoned lands and to abate the water pollution.

(5) Numerous landowners, citizens, watershed associations, environmental organizations and governmental entities that do not have a legal responsibility to reclaim the abandoned lands or to abate the water pollution are interested in addressing these

problems but are reluctant to engage in such reclamation and abatement activities because of potential liabilities associated with the reclamation and abatement activities.

(6) It is in the best interest of the health, safety and welfare of the people of this State and the environment to encourage reclamation of the abandoned lands and abatement of water pollution.

**Section 3. {Purpose.}** This act is intended to encourage the improvement of land and water adversely affected by mining and oil and gas extraction, to aid in the protection of wildlife, to decrease soil erosion, to aid in the prevention and abatement of the pollution of rivers and streams, to protect and improve the environmental values of this State and to eliminate or abate hazards to health and safety. It is the intent of the General Assembly to encourage voluntary reclamation of lands adversely affected by mining or oil or gas extraction. The purpose of this act is to improve water quality and to control and eliminate water pollution resulting from mining, oil, gas extraction, or exploration by limiting the liability, which could arise as a result of the voluntary reclamation of, abandoned lands or the reduction and abatement of water pollution. This act is not intended to limit the liability of a person who under existing law is or may become responsible to reclaim the land or address the water pollution or anyone who by contract, order or otherwise is required to or agrees to perform the reclamation or abate the water pollution.

**Section 4. {Definitions.}** The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Approved project.” A reclamation project or water pollution abatement project approved by the Department of \_\_\_\_\_ prior to completion.

“Consideration”. Something of value promised, given or performed in exchange for something that has the effect of making a legally enforceable contract. For the purpose of this act, the term does not include a promise to a landowner to repair damage caused by a reclamation project or water pollution abatement project when the promise is made in exchange for access to the land.

“Department.” The Department of \_\_\_\_\_ of the State of \_\_\_\_\_.

“Eligible land and water.” Land and water adversely affected by mining or oil or gas extraction and left or abandoned in an unreclaimed or inadequately reclaimed condition or left discharging water pollution and for which no person has a continuing reclamation or water pollution abatement obligation. The term shall also include land and water adversely affected by mining or oil or gas extraction and left in an unreclaimed or inadequately reclaimed condition or left discharging water pollution for which the Department of \_\_\_\_\_ has forfeited and collected the operators bonds and there is no outstanding litigation concerning the bond forfeiture.

“Landowner.” A person who holds either legal or equitable interest in real property.

“Mineral.” Any aggregate or mass of mineral matter, whether or not coherent, which is extracted by mining, including, but not limited to, limestone, dolomite, sand, gravel, slate, argillite, diabase, gneiss, micaceous sandstone known as bluestone, rock, stone, earth, fill, slag, iron ore, zinc ore, vermiculite, clay and coal.

“Person.” A natural person, partnership, association, association members, corporation, political subdivision of the State, an agency, instrumentality or entity of Federal or State Government or other legal entity recognized by law as the subject of rights and liabilities.

“Project work area.” That land necessary for a person to complete a reclamation project or a water pollution abatement project.

“Reclamation project.” The restoration of eligible lands and water to productive use by regarding and revegetating the land to stable contours that blend in and complement the drainage pattern of the surrounding terrain with no high walls, spoil piles or depressions to accumulate water and by plugging abandoned oil or gas wells and removing production of storage facilities, supplies and equipment from areas disturbed in siting, drilling completing and producing such wells.

“Water pollution abatement facilities.” The methods for treatment or abatement of water

pollution located on eligible lands and water. These methods include, but are not limited to, a structure, system, practice, technique or method constructed, installed or followed to reduce, treat or abate such water pollution.

“Water pollution abatement project.” A plan for treatment or abatement of water pollution located on eligible lands and water. These plans include, but are not limited to, the practices to be followed and the installation, operation and maintenance of facilities to reduce, treat or abate such water pollution.

### **Section 5. {Consultation with department.}**

(a) General rule. Landowners and persons planning a reclamation project or a water pollution abatement project may notify the department of their proposed project. If notified, the department shall review its files and advise whether any person is legally responsible for the unreclaimed land or the water pollution and whether the proposed project would be located on eligible lands and water.

(b) Inventory of projects. The department shall develop and maintain a system to inventory and record each water pollution abatement project and each reclamation project which is submitted in writing, reviewed and approved by the department before each project is completed. The approved project inventory shall identify the land containing the project work area and each landowner and each person who, through participation in the reclamation project or water pollution abatement project, is entitled to the protections and immunities provided by this act.

1. Every landowner and person identified in the approved project inventory shall be presumed to be covered by the protections and immunities provided by this act. This presumption may be rebutted by clear and convincing evidence that the landowner or person did not participate in an approved reclamation project or water pollution abatement project.

2. A landowner or a person who participates in a reclamation project or a water pollution abatement project, which is not an approved project, is eligible for the protections and immunities provided by this act but shall not be entitled to the presumption provided by paragraph (1).

### **Section 6. {Landowner liability limitation and exceptions.}**

(a) General rule. Except as specifically provided in subsections (b) and (c), a landowner who provides access to the land, without charge or other consideration, which results in the implementation of reclamation project or a water pollution abatement project:

1. Shall be immune from liability for any injury or damage suffered by the person implementing the reclamation project or the water pollution abatement project while the person is within or traveling to and from the project work area.

2. Shall be immune from liability for any injury to or damage suffered by a third party which arises out of or occurs as a result of an act or omission of a person implementing a reclamation project or water pollution abatement project which occurs during the implementation of the reclamation project or the water pollution abatement project.

3. Shall be immune from liability for any injury to or damage suffered by a third party, which arises out of or occurs as a result of a reclamation project or a water pollution abatement project.

4. Shall not be deemed to assume legal responsibility for or incur liability for any pollution resulting from a reclamation project or a water pollution abatement project.

5. Shall not be subject to a citizen suit filed pursuant to \_\_\_\_\_, for pollution resulting from a reclamation project or water pollution abatement project.

6. Shall be immune from liability for the operation, maintenance or repair of the water pollution abatement facilities constructed or installed during the project unless the landowner negligently damages or destroys the water pollution abatement facilities or denies access to those persons who operate, maintain or repair the water pollution abatement facilities.

(b) Duty to warn. A landowner shall warn a person implementing a reclamation project or water pollution abatement project of known, latent, dangerous conditions located on the project work area which known, latent, dangerous conditions are not the subject of the reclamation project or the water pollution abatement project. Nothing in this act shall limit in any way or affect a landowner's liability that results from the landowner's failure to warn of such known, latent, dangerous conditions.

(c) Exceptions to immunity. Nothing in this act shall limit in any way or affect a landowner's liability which results from a reclamation project or water pollution abatement project and which would otherwise exist:

1. For injury or damage resulting from the landowner's acts or omissions that are reckless or constitute gross negligence or willful misconduct.

2. Where the landowner charges an access fee or requires other consideration before allowing access to the land for the purpose of implementing a reclamation project or water pollution abatement project or to operate, maintain or repair water pollution abatement facilities constructed or installed during a water pollution abatement project.

3. The term "access fee" in term "consideration" does not include any contract, permit or agreement not related to the reclamation or abatement project, such as access roads, temporary fill areas, etc., which are not part of the original project which would require the restoration of the non-project areas to original condition.

4. For the landowner's unlawful activities.

#### **Section 7. {Project liability limitation and exceptions.}**

(a) General rule. Except as specifically provided in subsection (b), a person who implements or participates in a reclamation project or a water pollution abatement project:

1. Shall be immune from liability for any injury to or damage suffered by a person, which arises out of or occurs as a result of the water pollution abatement facilities constructed or installed during the water pollution abatement project.

2. Shall be immune from liability for any pollution emanating from the water pollution abatement facilities constructed or installed during the water pollution abatement project unless the person affects an area that is hydrologically connected to the water pollution abatement project work area and causes increased pollution by activities which are unrelated to the implementation of a water pollution abatement project.

3. Shall not be deemed to assume responsibility for or incur liability for the operation, maintenance and repair of the water pollution abatement facilities constructed or installed during the water pollution abatement project.

4. Shall not be subject to a citizen suit under \_\_\_\_\_, for pollution emanating from the water pollution abatement facilities constructed or installed during the water pollution abatement project.

(b) Exceptions.

(i) Nothing in this act shall limit in any way the liability of a person who implements or participates in a reclamation project or a water pollution abatement project which liability results from the reclamation project or the water pollution abatement project and which would otherwise exist:

(ii) For injury or damage resulting from the person's acts or omissions which are reckless or constitute gross negligence or willful misconduct.

(iii) For the person's unlawful activities.

2. Nothing in this act shall limit in any way the liability of a person who the department has found to be in violation of any of the following acts:

(i) [List appropriate controlling acts.]

(ii) Any other Federal or State statute relating to environmental protection or to the protection of the public health, safety and welfare.

**Section 8. {Permits and zoning.}** Nothing in this act shall be construed as waiving any existing permit requirements or waiving any local zoning requirements.

[(Optional) Section ( ). State Responsibility.

Should any person operating under the provisions of this act, subsequently find that they are ineligible to participate in this program because of a conflict with federal law and this act, the State will assume the rights, responsibilities and obligations of any such person operating under the provision of this act.]

**Section 9. {Relationship to Federal and State programs.}** The provisions of this act shall not prevent the State from enforcing requirements necessary or imposed by the Federal Government as a condition to receiving or maintaining program authorization, delegation, and primacy or Federal funds.

**Section 10. {General permits.}** If the department determines it will further the purposes of this act, the department may issue a general permit for each reclamation project or water pollution abatement project, which general permit shall:

(a) Encompass all of the activities included in that reclamation project or water pollution abatement project.

(b) Be issued in place of any required stream encroachment, earth disturbance or national pollution discharge elimination system permits.

**Section 11. {Exceptions.}**

(a) General rule. Any person who under existing law shall be or may become responsible to reclaim the land or treat or abate the water pollution or any person who for payment or consideration or who receives some other benefit through a contract, or any person who through a contract, or any person who through a consent order and agreement or otherwise agrees or is ordered to perform or complete reclamation or treat or abate water pollution as well as a surety which provided a bond for the site shall not be eligible for nor shall that person receive the benefit of the protections and immunities available under this act.

(b) Projects near mining or coal refuse sites. This act shall not apply to a reclamation project or a water pollution abatement project that is located adjacent to, hydrologically connected to or in close proximity to a site permitted under (list acts):

1. The reclamation project or water pollution abatement project is submitted to the department in writing before the project is started.

2. The department finds:

(i) The reclamation project or the water pollution abatement project will not adversely affect the permittee's obligations under the permit and the applicable law.

(ii) The activities on the project work area cannot be used by the permittee to avoid the permittee's reclamation or water pollution treatment or abatement obligations.

3. The department issues a written notice of its findings and the approval of the project.

(c) Projects in lieu of civil penalties. This act shall not apply to a reclamation project or a water pollution abatement project that is performed in lieu of paying civil penalties.

**Section 12. {Regulations.}** The department may promulgate rules and regulations necessary to implement the provision of this act.

**Section 13. {Repealer Clause.}** All acts and parts of acts are repealed insofar as they are inconsistent with this act.

Were your laws repealed?

**Section 14. {Effective date.}** This act shall take effect in 60 days.

*Adopted by the Natural Resources Task Force at the Annual Meeting, July 28, 2000.  
Approved by the full ALEC Board of Directors August, 2000.*

**About Us and ALEC EXPOSED.** The Center for Media and Democracy reports on corporate spin and government propaganda. We are located in Madison, Wisconsin, and publish [www.PRWatch.org](http://www.PRWatch.org), [www.SourceWatch.org](http://www.SourceWatch.org), and now [www.ALECexposed.org](http://www.ALECexposed.org). For more information contact: [editor@prwatch.org](mailto:editor@prwatch.org) or 608-260-9713.

From CMD: On the surface, this "model" legislation encourages people or companies to take-on environmental cleanup projects by providing immunity from the associated liability -- but it could be used by polluting corporations to escape liability for harming the environment in the first place. The concern is that a mining or gas company could sell all interest in the land to a subsidiary, which would get authorization for cleanup and with it, exemption from liability. While Sect. 7(b)(2) states that a landowner is not exempted from state or federal laws, it requires the environmental department to have actually discovered the violation. Similar legislation exists in Pennsylvania with an exemption from state environmental laws, and a federal Good Samaritan Act passed with exemptions from federal Clean Water Act requirements.