

Working Draft of a Legal Intern - Produced for Educational Purposes

To: Robert LaFrance, Legislative Affairs

From: Michelle Concannon, Legal Intern – Quinnipiac University School of Law

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Brownfield's Remediation Legislative History in CT

The 2006 Brownfield's Act and the 2007 Task Force Act combine to promote Brownfield's development in Connecticut by (1) establishing a sub-agency dedicated solely to Brownfield's; (2) funding a pilot program (Brownfield Pilot Program) for municipalities or economic development agencies to remediate Brownfield sites; (3) creating liability exemptions for entities that enter the Brownfield Pilot Program or purchase Brownfield sites remediated under this Brownfield Pilot Program; and (4) establishing a financial assistance program via a separate, nonlapsing Brownfield Remediation and Development Account.

Public Act 06-184, "An Act Concerning Brownfield's"

Highlights:

- Created task force
- Created Office of Brownfield's Remediation and Development
 - Implements a Pilot Program
- Exempts municipalities from application to Transfer Act when they acquire tax delinquent properties enrolled in Pilot Program
- Shields liability for eligible purchasers (did not cause or contribute to the discharge; no related or affiliated with liable party); DEP must waive fees and provide purchaser with covenant not to sue

The act provides various regulatory and financial incentives for parties that clean up contaminated properties. It sets conditions exempting them from the Transfer Act and protects them from liability if they acquire a contaminated site from a town or an economic development agency and clean it up according to Department of Environmental Protection (DEP) standards. The act also sets conditions under which the owners of existing manufacturing facilities qualify for funds to clean up contaminated properties.

The act creates a source to fund the office. It entitles the office to 80% of the proceeds from the sale of any property towns or their development agencies cleaned up. (As discussed below, the act protects parties from liability when they acquire property from a town and clean it up according to DEP's standards.) The office must deposit the proceeds in the General Fund account. The towns or the development agencies keep the remaining 20%, which they may use for capital improvements for economic development.

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The act establishes a separate, nonlapsing General Fund account in which the office can deposit any funds it receives. Any investment earnings the account generates must be credited to the account and any year-end balances must be carried forward to the next fiscal year. The office can use the fund to clean up and restore contaminated sites under the pilot program.

The office must consider two factors before it can award funds for cleaning up a site: (1) the remediated site's potential for economic development and (2) the extent to which the redeveloped site will contribute to the town's tax base.

07-233 “An Act Implementing the Recommendations of the Brownfield’s Task Force”

-Places OBRD within DECD

-requires the DECD to implement a Brownfield Pilot Program by designating 5 municipalities—4 of varying sizes and 1 without regard to population—with Brownfield’s that hinder economic development and provide municipalities with grants. DEP must review these Brownfield sites on a priority basis; After remediation is complete, a municipality or economic development agency may transfer the Brownfield Pilot Program property to anyone who is not otherwise liable under state environmental law.

-Section 3 of the Brownfields Act exempts municipalities from application of the Transfer Act when they acquire tax-delinquent properties enrolled in the Brownfield Pilot Program with the intent of selling them for back-taxes at tax warrant sales.

-municipalities and economic development agencies receiving grants under the Brownfield Pilot Program qualify as “innocent parties” and therefore are exempt from state environmental liability.

-shields from liability eligible purchasers of properties remediated under the Brownfield Pilot Program. This shield applies so long as the purchaser does not cause or contribute to the discharge and is not in any way related to or affiliated with the liable party

-Act authorizes the DECD, in consultation with the DEP, to provide financial assistance for the assessment, remediation, and development of a Brownfield and establishes a separate, non-lapsing Brownfield Remediation and Development Account.

- Assistance consists of “grants, extensions of credit, loans or loan guarantees, [or] participation interests” in DECD loans to “eligible applicants. “Eligible applicants” for this financial assistance include “any

municipality, a for-profit or nonprofit organization or entity, a local or regional economic development entity acting on behalf of a municipality or any combination thereof

-activities eligible for funding includes environmental insurance

Summary: allows CDA to guarantee bank loans and issue bonds on behalf of towns for redeveloping Brownfield’s. The act allows tax assessors to reduce the value of contaminated business property when owners agree to remediate it.

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The act gives property owners more latitude when voluntarily cleaning up contaminated properties. It expands the role of licensed environmental professionals (LEPs) in overseeing that process and specifies procedures for documenting, verifying, and auditing their work. The act also broadens the conditions under which the Department of Environmental Protection (DEP) commissioner can enter into covenants not to sue with parties that agree to remediate contaminated sites according to DEP standards. It also makes it easier for state agencies to develop contaminated property in floodplains.

The act establishes a pilot program for identifying brownfields in areas where the Office of Policy and Management (OPM) secretary recommends targeting state development dollars. It reestablishes the Brownfields Task Force and requires it to recommend additional brownfield remediation options to the legislature by February 1, 2008.

PA 08-174 "AAC THE FACE OF CONNECTICUT STEERING COMMITTEE, THE PRESERVATION OF FARMLAND, A MUNICIPAL GRANT PROGRAM FOR DEVELOPMENT PROJECTS, LOANS FOR BROWNFIELD PURCHASERS AND TAX EXEMPTIONS FOR OPEN SPACE LAND HELD BY OR FOR CERTAIN CORPORATIONS"

- revamps the multipurpose brownfield clean-up and redevelopment program into separate grant and loan programs, each with its own eligibility criteria and administrative requirements. But it also retains most of the old program's criteria and application procedures. DECD remains the administering agency.

- expands circumstances under which a municipality can enter and investigate or assess contaminated property and specifies the extent to which it is immune from liability when it does so. It requires the municipality to notify the owner before entering the property, and sets narrow grounds under which the owner can appeal the municipality's intention to do so.

The act reestablishes the Brownfields Task Force and requires it to recommend additional Brownfield remediation options to the legislature by January 1, 2009

Remedial Action and Redevelopment Municipal Grant Program → only municipalities, local and regional economic development authorities, and qualified nonprofit community and economic development corporations to apply for the grants.

Targeted Development Loan Program → a low-interest loan program for parties who currently own or plan to purchase contaminated property. Eligible applicants are those who qualify for financing under the former generic program: municipalities, for profit and nonprofit organizations, local and regional economic development corporations acting on a municipality's behalf, and combinations of these organizations acting jointly. Organizations that may purchase a contaminated property (i. e. , potential purchasers) qualify if they are not liable for the contamination

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PA 09-235 “AAC Brownfield’s Development Projects”

-extends various powers and protections granted to municipalities and economic development agencies to other municipal development agencies and private organizations acting on a municipalities behalf (MDO’s = (1) redevelopment, municipal development, and implementing agencies and (2) nonprofit economic development corporations and (LLCs)

-expands the protections from liability for municipalities when entering and inspecting Brownfield’s and acquiring and conveying them to other parties. It also expands the circumstances under which municipalities are exempted from the Transfer Act when acquiring and conveying a potentially contaminated property (i. e. , an establishment).

-The act changes some of the rules under which parties may convey brownfields - sets deadlines for remediating the property after transfer and sets conditions under which a party could transfer the property while the groundwater is still undergoing long-term monitoring and remediation.

-The act establishes a program protecting brownfield developers from liability for contamination that escapes from a brownfield before they acquired it. It also allows any party, rather than just the owner or a municipality, to assess the property's environmental condition based on state criteria.

-Lastly, the act reduces the regulatory criteria state agencies must meet when developing contaminated mill sites in floodplains. It also requires state agencies and quasi-public agencies to provide for the use of green remediation technologies when soliciting bids, requesting proposals, or negotiating contracts for remediating brownfields.

PA 10-135 “AAC Brownfield Remediation Liability”

-expands the range of activities that qualify for funds under the Urban Sites Remediation Program and the Special Contaminated Property Remediation and Insurance Fund and allows DEP commissioner to use the former to reimburse municipal and nonprofit development agencies for directors' and officers' liability insurance and general liability insurance. Under prior law, she could use the program only to acquire, assess, and remediate contaminated sites acquired by DECD or a regional economic development agency

- allows DECD commissioner to tap the SCRIF for brownfield projects approved under the existing Remedial Action and Redevelopment Municipal Grant Program and the Targeted Brownfield Development Loan Program. The former provides grants to municipal and nonprofit agencies for assessing and remediating contaminated property. The latter provides up to \$2 million in financing to municipal, nonprofit, and for-profit developers for investigating and remediating brownfields

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-specifies conditions under which municipalities can abate or forgive property taxes on contaminated property being cleaned up and redeveloped. The act also allows them to fix the assessment on this property as of the last assessment date before the clean-up activities begin (that portion of the property's fair market value subject to taxation) Fixing the assessment on contaminated property freezes its value, thus allowing the owner to improve it without paying taxes on the improvement's value

-establishes an 11-member working group to examine how brownfields are being cleaned up and developed in Connecticut and how permits and liability affect these activities

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