



House of Representatives

General Assembly

File No. 579

February Session, 2006

Substitute House Bill No. 5685

House of Representatives, April 20, 2006

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING BROWNFIELDS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2006*) (a) There is established an
2 Office of Brownfield Remediation and Development that shall be
3 within the Department of Economic and Community Development for
4 administrative purposes only.

5 (b) The office shall:

6 (1) Develop procedures and policies for streamlining the process for
7 brownfield remediation;

8 (2) Identify existing and create new sources of funding for
9 brownfield remediation and develop procedures for expediting the
10 application for and release of such funds;

11 (3) Establish a place where property owners and potential property
12 owners may facilitate compliance with state and federal clean up

13 requirements and qualification for state funds;

14 (4) Identify and prioritize brownfield development opportunities;

15 (5) Analyze any action taken by other states, particularly New Jersey
16 and Pennsylvania, regarding brownfield remediation and liability; and

17 (6) Develop and execute an outreach program to educate property
18 owners and potential property owners with regard to state policies
19 and procedures for brownfield remediation.

20 (c) The Office of Brownfield Remediation and Development shall
21 establish and operate a state-funded pilot program to identify
22 brownfield remediation economic opportunities in four Connecticut
23 municipalities, one of which shall have a population of more than
24 twenty-five thousand but less than fifty thousand, one of which shall
25 have a population of more than fifty thousand but less than one
26 hundred thousand and two of which shall have populations of more
27 than one hundred thousand. The Office of Brownfield Remediation
28 and Development shall designate four pilot municipalities in which
29 untreated brownfields hinder economic development and shall make
30 grants under such pilot program that are likely to produce significant
31 economic development benefit for the designated municipality.

32 (d) The Department of Environmental Protection and the
33 Connecticut Development Authority shall each designate a staff
34 member to act as a liaison between their offices and the Office of
35 Brownfield Remediation and Development. The Office of Brownfield
36 Remediation and Development shall develop and recruit two
37 volunteers from the private sector, including a person from the
38 Connecticut chapter of the National Brownfield Association, with
39 experience in different aspects of brownfield remediation and
40 development. Said liaisons and volunteers shall assist the Office of
41 Brownfield Remediation and Development in achieving the goals of
42 this section and, together, shall represent said office's response team.

43 (e) The Office of Brownfield Remediation and Development may

44 call upon any other department, board, commission or other agency of
45 the state to supply such reports, information and assistance as said
46 office determines is appropriate to carry out its duties and
47 responsibilities. Each officer or employee of such office, department,
48 board, commission or other agency of the state is authorized and
49 directed to cooperate with the Office of Brownfield Remediation and
50 Development and to furnish such reports, information and assistance.

51 Sec. 2. Section 22a-452 of the general statutes is repealed and the
52 following is substituted in lieu thereof (*Effective July 1, 2006*):

53 (a) Any person [, firm, corporation] or municipality which contains
54 or removes or otherwise mitigates the effects of oil or petroleum or
55 chemical liquids or solid, liquid or gaseous products or hazardous
56 wastes or hazardous substances resulting from any discharge, spillage,
57 uncontrolled loss, seepage or filtration of such substance or material or
58 waste shall be entitled to reimbursement or recovery from any person
59 [, firm or corporation] for the reasonable costs expended or to be
60 expended for such containment, removal, or mitigation, including the
61 reasonable costs of investigation and monitoring, if such oil or
62 petroleum or chemical liquids or solid, liquid or gaseous products or
63 hazardous wastes or hazardous substances pollution or contamination
64 or other emergency [resulted from the negligence or other actions of
65 such person, firm or corporation] (1) was directly or indirectly caused
66 by such person, or (2) such person, regardless of fault, is one of the
67 following: (A) The owner or operator of a facility, (B) any person who,
68 at the time of disposal of any hazardous substance, owned or operated
69 any facility at which such hazardous substances were disposed of, (C)
70 any person who, by contract, agreement or otherwise, arranged for
71 disposal or treatment, or arranged with a transporter for transport for
72 disposal or treatment, of hazardous substances owned or possessed by
73 such person, by any other party or entity at any facility owned or
74 operated by another party or entity and containing such hazardous
75 substances, or (D) any person who accepts or accepted any hazardous
76 substances for transport to disposal or treatment facilities or sites
77 selected by such person, from which there is any discharge, spillage,

78 uncontrolled loss, seepage or filtration of hazardous substances, for the
79 reasonable costs expended or to be expended for such containment,
80 removal or mitigation, including the reasonable costs of investigation
81 and monitoring. When such pollution or contamination or emergency
82 results from the joint [negligence or other] actions or omissions of two
83 or more persons, [firms or corporations,] each shall be liable to the
84 others for a pro rata share of the costs of containing, and removing or
85 otherwise mitigating the effects of the same and for all damage caused
86 thereby. For the purposes of this section, "hazardous substances" has
87 the same meaning as provided in section 22a-134 and "owner or
88 operator" and "facility" have the same meaning as provided in 42 USC
89 9601.

90 (b) No person [, firm or corporation which] who renders assistance
91 or advice in mitigating or attempting to mitigate the effects of an actual
92 or threatened discharge of oil or petroleum or chemical liquids or
93 solid, liquid or gaseous products or hazardous [materials] wastes or
94 hazardous substances, other than a discharge of oil as defined in
95 section 22a-457b, to the surface waters of the state, or [which] who
96 assists in preventing, cleaning-up or disposing of any such discharge
97 shall be held liable, notwithstanding any other provision of law, for
98 civil damages as a result of any act or omission by [him] the person in
99 rendering such assistance or advice, except acts or omissions
100 amounting to gross negligence or wilful or wanton misconduct, unless
101 [he] the person is compensated for such assistance or advice for more
102 than actual expenses. For the purpose of this subsection, "discharge"
103 means spillage, uncontrolled loss, seepage or filtration, [and
104 "hazardous materials" means any material or substance designated as
105 such by any state or federal law or regulation.]

106 (c) The immunity provided in this section shall not apply to (1) any
107 person [, firm or corporation] responsible for such discharge, or under
108 a duty to mitigate the effects of such discharge, (2) any agency or
109 instrumentality of such person, [firm or corporation] or (3) negligence
110 in the operation of a motor vehicle.

111 (d) An action for reimbursement or recovery of the reasonable costs
112 expended for containment, removal or mitigation, including the
113 reasonable costs of investigation and monitoring shall be commenced
114 not later than six years after initiation of the physical on-site
115 construction of the remedial action taken to contain, remove or
116 mitigate the effects of oil or petroleum or chemical liquids or solid,
117 liquid or gaseous products or hazardous wastes or hazardous
118 substances, or three years after the completion of the containment,
119 removal or mitigation activities, whichever is later.

120 (e) In any action brought pursuant to this section, the Superior
121 Court may issue an order granting the reimbursement or recovery of
122 reasonable costs to be incurred in the future.

123 (f) A person shall not be liable under this section if the person
124 establishes by clear and convincing evidence that the discharge,
125 spillage, uncontrolled loss, seepage or filtration of a hazardous
126 substance and the resulting damages were caused solely by (1) an act
127 of God, (2) an act of war, (3) an act or omission of a third party other
128 than (A) an employee or agent of the person, or (B) a third party whose
129 act or omission occurs in connection with a contractual relationship,
130 existing directly or indirectly, with the person, except that a person
131 shall not be liable under this section if the sole contractual arrangement
132 with such third party arises from a published tariff and acceptance for
133 carriage by a common carrier by rail, if the person establishes by clear
134 and convincing evidence that such person (i) exercised due care with
135 respect to the hazardous substance taking into consideration the
136 characteristics of such hazardous substance, in light of all relevant facts
137 and circumstances, and (ii) took precautions against foreseeable acts or
138 omissions of any such third party and the consequences that could
139 foreseeably result from such acts or omissions, or (4) any combination
140 of the foregoing.

141 (g) This section shall apply to any action brought before, on or after
142 July 1, 2006, for the reimbursement or recovery of the reasonable costs
143 for containment, removal or mitigation, including the reasonable costs

144 of investigation and monitoring, except that this section shall not apply
145 to any action if such action has become final, and is no longer subject
146 to appeal, prior to July 1, 2006.

147 Sec. 3. Section 32-1m of the 2006 supplement to the general statutes
148 is repealed and the following is substituted in lieu thereof (*Effective July*
149 *1, 2006*):

150 Not later than February 1, 2006, and annually thereafter, the
151 Commissioner of Economic and Community Development shall
152 submit a report to the Governor and the General Assembly, in
153 accordance with the provisions of section 11-4a. Not later than thirty
154 days after submission of the report to the Governor and the General
155 Assembly, said commissioner shall post the report on the Department
156 of Economic and Community Development's web site. Said report
157 shall include, but not be limited to, the following information with
158 regard to the activities of the Department of Economic and
159 Community Development during the preceding state fiscal year:

160 (1) A brief description and assessment of the state's economy during
161 such year, utilizing the most recent and reasonably available data, and
162 including:

163 (A) Connecticut employment by industry;

164 (B) Connecticut and national average unemployment;

165 (C) Connecticut gross state product, by industry;

166 (D) Connecticut productivity, by industry, compared to the national
167 average;

168 (E) Connecticut manufacturing activity;

169 (F) Identification of economic and competitive conditions affecting
170 Connecticut's industry sectors, problems resulting from these
171 conditions and state efforts to address the problems; and

172 (G) Any other economic information that the commissioner deems

173 appropriate.

174 (2) A statement of the department's economic and community
175 development objectives, measures of program success and standards
176 for granting financial and nonfinancial assistance under programs
177 administered by the department.

178 (3) An analysis of the economic development portfolio of the
179 department, including:

180 (A) A list of the names, addresses and locations of all recipients of
181 the department's assistance;

182 (B) The following information concerning each recipient of such
183 assistance: (i) Business activities, (ii) standard industrial classification
184 codes or North American industrial classification codes, (iii) number of
185 full-time jobs and part-time jobs at the time of application, (iv) number
186 of actual full-time jobs and actual part-time jobs at application during
187 the preceding state fiscal year, (v) whether the recipient is a minority
188 or woman-owned business, (vi) a summary of the terms and
189 conditions for the assistance, including the type and amount of state
190 financial assistance, job creation or retention requirements and
191 anticipated wage rates, (vii) the amount of investments from private
192 and other nonstate sources that have been leveraged by the assistance,
193 (viii) the extent to which employees of the recipient participate in
194 health benefit plans offered by such recipient, (ix) the extent to which
195 the recipient offers unique economic, social, cultural or aesthetic
196 attributes to the municipality in which the recipient is located or to the
197 state, and (x) the amount of state investment;

198 (C) A portfolio analysis, including (i) an analysis of the wages paid
199 by recipients of financial assistance, (ii) the average portfolio wage,
200 median portfolio wage, highest and lowest portfolio wage, (iii)
201 portfolio wage data by industry, and (iv) portfolio wage data by
202 municipality;

203 (D) An investment analysis, including (i) total portfolio value, (ii)

204 total investment by industry, (iii) portfolio dollar per job average, (iv)
205 portfolio leverage ratio, and (v) percentage of financial assistance
206 which was provided to high performance work organizations in the
207 preceding state fiscal year; and

208 (E) An analysis of the estimated economic effects of the
209 department's economic development investments on the state's
210 economy, including (i) contribution to gross state product for the total
211 economic development portfolio and for any investment activity
212 occurring in the preceding state fiscal year, (ii) direct and indirect
213 employment created by the investments for the total portfolio and for
214 any investment activity occurring in the preceding state fiscal year, (iii)
215 productivity of recipients of financial assistance as a result of the
216 department's investment occurring in the preceding state fiscal year,
217 (iv) directly or indirectly increased property values in the
218 municipalities in which the recipients of assistance are located, and (v)
219 personal income.

220 (4) An analysis of the community development portfolio of the
221 department, including:

222 (A) A list of the names, addresses and locations of all recipients of
223 the department's assistance;

224 (B) The following information concerning each recipient of such
225 assistance: (i) Amount of state investment, (ii) a summary of the terms
226 and conditions for the department's assistance, including the type and
227 amount of state financial assistance, and (iii) the amount of
228 investments from private and other nonstate sources that have been
229 leveraged by such assistance;

230 (C) An investment analysis, including (i) total active portfolio value,
231 (ii) total investments made in the preceding state fiscal year, (iii) total
232 portfolio by municipality, (iv) total investments made in the preceding
233 state fiscal year categorized by municipality, (v) total portfolio
234 leverage ratio, and (vi) leverage ratio of the total investments made in
235 the preceding state fiscal year; and

236 (D) An analysis of the estimated economic effects of the
237 department's economic development investments on the state's
238 economy, including (i) contribution to gross state product for the total
239 portfolio and for any investment activity occurring in the preceding
240 state fiscal year, (ii) direct and indirect employment created by the
241 investments for the total portfolio and for any investment activity
242 occurring in the preceding state fiscal year, (iii) productivity of
243 recipients of financial assistance as a result of the department's
244 investment occurring in the preceding state fiscal year, (iv) directly or
245 indirectly increased property values in the municipalities in which the
246 recipients are located, and (v) personal income.

247 (5) A summary of the department's economic and community
248 development marketing efforts in the preceding state fiscal year, a
249 summary of the department's business recruitment strategies and
250 activities in such year, and a summary of the department's efforts to
251 assist small businesses and minority business enterprises in such year.

252 (6) A summary of the department's international trade efforts in the
253 preceding state fiscal year, and, to the extent possible, a summary of
254 foreign direct investment that occurred in the state in such year.

255 (7) Identification of existing economic clusters, the formation of new
256 economic clusters and the measures taken by the commissioner during
257 the preceding state fiscal year to encourage the growth of economic
258 clusters.

259 (8) (A) A summary of the department's brownfield-related efforts
260 and activities within the Office of Brownfield Remediation and
261 Development established pursuant to section 1 of this act in the
262 preceding state fiscal year, except for activity under the Special
263 Contaminated Property Remediation and Insurance Fund program.
264 Such efforts shall include, but not be limited to, (i) total portfolio
265 investment in brownfield remediation projects, (ii) total investment in
266 brownfield remediation projects in the preceding state fiscal year, (iii)
267 total number of brownfield remediation projects, (iv) total number of
268 brownfield remediation projects in the preceding state fiscal year, (v)

269 total of reclaimed and remediated acreage, (vi) total of reclaimed and
270 remediated acreage in the preceding state fiscal year, (vii) leverage
271 ratio for the total portfolio investment in brownfield remediation
272 projects, and (viii) leverage ratio for the total portfolio investment in
273 brownfield remediation projects in the preceding state fiscal year. Such
274 summary shall include a list of such brownfield remediation projects
275 and, for each such project, the name of the developer and the location
276 by street address and municipality and a tracking of all funds
277 administered through or by said office; and

278 (B) A summary of the department's efforts with regard to the
279 Special Contaminated Property Remediation and Insurance Fund,
280 including, but not limited to, (i) the number of applications received in
281 the preceding state fiscal year, (ii) the number and amounts of loans
282 made in such year, (iii) the names of the applicants for such loans, (iv)
283 the average time period between submission of application and the
284 decision to grant or deny the loan, (v) a list of the applications
285 approved and the applications denied and the reasons for such
286 denials, and (vi) for each project, the location by street address and
287 municipality.

288 (9) The following concerning enterprise zones designated under
289 section 32-70:

290 (A) A statement of the current goals for enterprise zones;

291 (B) A statement of the current performance standards to measure
292 the progress of municipalities that have enterprise zones in attaining
293 the goals for such zones;

294 (C) A report from each municipality that has an enterprise zone,
295 which evaluates the progress of the municipality in meeting the
296 performance standards established under subsection (a) of section 32-
297 70a; and

298 (D) An assessment of the performance of each enterprise zone based
299 on information collected under subparagraph (C) of this subdivision.

300 (10) With regard to the department's housing-development-related
301 functions and activities:

302 (A) A brief description and assessment of the state's housing market
303 during the preceding state fiscal year, utilizing the most recent and
304 reasonably available data, and including, but not be limited to, (i) a
305 brief description of the significant characteristics of such market,
306 including supply, demand and condition and cost of housing, and (ii)
307 any other information that the commissioner deems appropriate;

308 (B) An analysis of the progress of the public and private sector
309 toward meeting housing needs in the state, using building permit data
310 from the United States Census Bureau and demolition data from
311 Connecticut municipalities;

312 (C) A list of municipalities that meet the affordable housing criteria
313 set forth in subsection (k) of section 8-30g, as amended, pursuant to
314 regulations that the Commissioner of Economic and Community
315 Development shall adopt pursuant to the provisions of chapter 54. For
316 the purpose of determining the percentage required by subsection (k)
317 of said section 8-30g, the commissioner shall use as the denominator
318 the number of dwelling units in the municipality, as reported in the
319 most recent United States decennial census;

320 (D) A statement of the department's housing development
321 objectives, measures of program success and standards for granting
322 financial and nonfinancial assistance under programs administered by
323 said commissioner.

324 (11) A presentation of the state funded housing development
325 portfolio of the department, including:

326 (A) A list of the names, addresses and locations of all recipients of
327 such assistance; and

328 (B) For each such recipient, (i) a summary of the terms and
329 conditions for the assistance, including the type and amount of state
330 financial assistance, (ii) the amount of investments from private and

331 other nonstate sources that have been leveraged by the assistance, (iii)
332 the number of new units to be created and the number of units to be
333 preserved at the time of the application, and (iv) the number of actual
334 new units created and number of units preserved.

335 (12) An analysis of the state funded housing development portfolio
336 of the department, including:

337 (A) An investment analysis, including the (i) total active portfolio
338 value, (ii) total investment made in the preceding state fiscal year, (iii)
339 portfolio dollar per new unit created, (iv) estimated dollars per new
340 unit created for projects receiving an assistance award in the preceding
341 state fiscal year, (v) portfolio dollars per unit preserved, (vi) estimated
342 dollar per unit preserved for projects receiving an assistance award in
343 the preceding state fiscal year, (vii) portfolio leverage ratio, and (viii)
344 leverage ratio for housing development investments made in the
345 preceding state fiscal year; and

346 (B) A production and preservation analysis, including [the] (i) the
347 total number of units created, itemized by municipality for the total
348 portfolio and projects receiving an assistance award in the preceding
349 state fiscal year, (ii) the total number of elderly units created for the
350 total portfolio and for projects receiving an assistance award in the
351 preceding state fiscal year, (iii) the total number of family units created
352 for the total portfolio and for projects receiving an assistance award in
353 the preceding state fiscal year, (iv) the total number of units preserved,
354 itemized by municipality for the total portfolio and projects receiving
355 an assistance award in the preceding state fiscal year, (v) the total
356 number of elderly units preserved for the total portfolio and for
357 projects receiving an assistance award in the preceding state fiscal
358 year, (vi) the total number of family units preserved for the total
359 portfolio and for projects receiving an assistance award in the
360 preceding state fiscal year, (vii) an analysis by income group, of
361 households served by the department's housing construction,
362 substantial rehabilitation, purchase and rental assistance programs, for
363 each housing development, if applicable, and for each program,

364 including number of households served under each program by race
365 and data for all households, and (viii) a summary of the department's
366 efforts in promoting fair housing choice and racial and economic
367 integration including data on the racial composition of the occupants
368 and persons on the waiting list of each housing project that is assisted
369 under any housing program established by the general statutes or a
370 special act or that is supervised by the department, provided no
371 information shall be required to be disclosed by any occupant or
372 person on a waiting list for the preparation of such summary. As used
373 in this subparagraph, "elderly units" means dwelling units for which
374 occupancy is restricted by age, and "family units" means dwelling
375 units for which occupancy is not restricted by age.

376 (13) An economic impact analysis of the department's housing
377 development efforts and activities, including, but not limited to:

378 (A) The contribution of such efforts and activities to the gross state
379 product;

380 (B) The direct and indirect employment created by the investments
381 for the total housing development portfolio and for any investment
382 activity for such portfolio occurring in the preceding state fiscal year;
383 and

384 (C) Personal income in the state.

385 (14) With regard to the department's energy conservation loan
386 program:

387 (A) The number of loans or deferred loans made during the
388 preceding fiscal year under each component of such program and the
389 total amount of the loans or deferred loans made during such fiscal
390 year under each such component;

391 (B) A description of each step of the loan or deferred loan
392 application and review process;

393 (C) The location of each loan or deferred loan application intake site

394 for such program;

395 (D) The average period for the processing of loan or deferred loan
396 applications during such fiscal year; and

397 (E) The total administrative expenses of such program for such
398 fiscal year.

399 (15) A summary of the total social and economic impact of the
400 department's efforts and activities in the areas of economic,
401 community and housing development and an assessment of the
402 department's performance in terms of meeting its stated goals and
403 objectives.

404 Sec. 4. (*Effective July 1, 2006*) The sum of fifteen million dollars is
405 appropriated to the Department of Economic and Community
406 Development, from the General Fund, for the fiscal year ending June
407 30, 2007, for the Office of Brownfield Remediation and Development's
408 projects and pilot program, as established in section 1 of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2006</i>	New section
Sec. 2	<i>July 1, 2006</i>	22a-452
Sec. 3	<i>July 1, 2006</i>	32-1m
Sec. 4	<i>July 1, 2006</i>	New section

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 07 \$	FY 08 \$
Department of Economic & Community Development	GF - Cost	15,000,000	See Below
Department of Environmental Protection	GF - Cost	Minimal	Minimal
CT. Development Auth. (quasi-public)	Cost	Minimal	Minimal

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 07 \$	FY 08 \$
Various Municipalities	Revenue Impact	Potential	Potential

Explanation

The bill creates an Office of Brownfield Remediation and Development (Office) within the Department of Economic and Community Development (DECD) for administrative purposes only and appropriates \$15 million dollars from the General Fund for the fiscal year ending June 30, 2007 to DECD for the new Office. sHB 5007, the Appropriations Act, as favorably reported by the Appropriations Committee does not include funds for this purpose. The DECD currently has a Community Development Specialist and a Civil Engineer that work on brownfield projects. The appropriation would be used by the Office for the additional responsibilities outlined in the bill and to establish and operate pilot programs in four Connecticut municipalities, providing grants to produce an economic development benefit for the municipality to be designated. It is anticipated that the Office will require a Supervising Environmental Analyst and an Environmental Analyst 1 at a cost of \$100,000 in FY 07 plus fringe

benefits¹ and associated other expenses estimated at \$8,000 to implement the legislation.

Any increase in the workloads of the Department of Environmental Protection or the Connecticut Development Authority to act as liaisons with the new Office is anticipated to be minimal and handled within existing resources.

In addition, to the extent that the changes made in this legislation would expand the ability of a municipality to recover costs for remediation from a responsible party, a cost savings/revenue gain could be incurred.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated first year fringe benefit rate as a percentage of payroll is 23.6%, effective July 1, 2005. The first year fringe benefit costs for new positions do not include pension costs. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS 2005-06 fringe benefit rate is 34.7%, which when combined with the non pension fringe benefit rate would total 58.3%.

OLR Bill Analysis**sHB 5685*****AN ACT CONCERNING BROWNFIELDS.*****SUMMARY:**

The bill establishes an office to help clean up and redevelop contaminated properties (i.e., brownfields) and appropriates \$15 million in FY 07 for its projects, which include establishing a pilot brownfield clean-up and redevelopment program. The bill places the office in the Department of Economic and Community Development (DECD) for administrative purposes only and channels the appropriation through it to the office.

The bill also allows people to remove or mitigate more types of substances for which they can seek compensation from the party that spilled or discharged them. It sets a timeframe during which these people must seek compensation and specifies the grounds under which a person is liable for the clean-up costs. These changes apply to actions started before, on, or after July 1, 2006 but not to those that became final before that date and cannot be appealed.

EFFECTIVE DATE: July 1, 2006

OFFICE OF BROWNFIELD REMEDIATION AND DEVELOPMENT***Duties***

The office must expedite the process for identifying, cleaning up, and redeveloping contaminated properties. It must do this by:

1. developing procedures and policies for streamlining the clean-up process;
2. identifying funding sources and creating new ones for cleaning up brownfields and develop ways to expedite the process for

- obtaining the funds;
3. establishing a place that can help developers meet federal and state clean-up standards and qualify for state funds;
 4. identifying and ranking opportunities for cleaning up and redeveloping brownfields;
 5. analyzing how New Jersey, Pennsylvania, and other states encourage parties to clean up brownfields and address the potential liability for doing so; and
 6. educating property owners and developers about state policies and procedures for cleaning up brownfields.

Interagency Coordination

The bill allows the office to obtain help from state agencies and other organizations. The Department of Environmental Protection (DEP) and the Connecticut Development Authority (CDA) must designate a member of their respective staffs to serve as a liaison to the office. The office can ask other state organizations for reports, information, and technical assistance it needs to carry out its duties, and the bill directs the employees of these organizations to cooperate with the office.

The bill also requires the office to recruit two volunteers from the private sector to help it carry out its duties. One must be a representative of the Connecticut Chapter of the National Brownfield Association experienced in cleaning up and redeveloping contaminated properties. The DEP and CDA liaisons and the private-sector volunteers must help the office achieve its goals and represent its response team.

Pilot Program

The office must establish a pilot program to identify opportunities for cleaning up and redeveloping contaminated properties. It must designate four towns where contaminated properties hinder economic

development and fund projects that could significantly benefit them. One town must have between 25,000 and 50,000 people, one between 50,000 and 100,000 people, and two over 100,000 people.

The bill requires DECD to describe the office's activities in its annual report to the legislature.

RECOVERING CLEAN-UP COSTS

Hazardous Substances

The law entitles people who clean up contaminated property to be compensated for doing so by the person or entity that contaminated the property. Current law limits the form of compensation to reimbursement for the reasonable costs for containing, removing, or mitigating the contamination. It also allows people to seek reimbursement for cleaning up oil, petroleum, chemicals, gaseous products, and hazardous wastes.

The bill adds federally defined hazardous substances to this list and allows people to seek reimbursement or recovery for reasonable clean-up costs including those incurred for investigating the property and monitoring its cleanup.

Liability for Clean-up Costs

The bill specifies the grounds under which a person must pay the clean-up costs. Under current law, a person is liable for the costs if he was negligent or acted in a way that caused the contamination. Under the bill, he is liable if he directly or indirectly caused the contamination, regardless of whether he was negligent. He is also liable even if he did not cause the contamination but:

1. owns or operates a facility;
2. owned or operated any facility when hazardous substances were disposed;
3. contracted or arranged for another party to dispose or treat hazardous substances;

4. contracted or arranged with a mover to transport the hazardous substances to facility owned or operated by another party for the purpose of disposing or treating the substances; or
5. accepted and moved hazardous substances to a facility he chose from which they were subsequently discharged.

The bill also addresses situations where several people are jointly liable for clean-up costs. Under current law, they are liable when the contamination results from their joint negligence or the actions of two or more people. Under the bill, they are also jointly liable for the omissions of two or more persons, regardless of whether they were negligent.

Defense

The bill establishes criteria a person must meet to avoid being liable for the cost of cleaning up a hazardous substance (but not a hazardous waste). The person can avoid liability if he can show by clear and convincing evidence that an act of God or war caused the contamination or that it resulted from a third party's act or omission. Third parties do not include the person's employees or agents.

But the person is liable for third party acts or omissions if they occurred under a direct or indirect contractual relationship with that person. This rule applies to all contractual relationships except contracts to ship hazardous substances by rail. To avoid liability in contractual cases, the person must establish by a preponderance of the evidence that he:

1. carefully handled the hazardous substance based on its characteristics, and
2. took precautions against the third party's foreseeable acts or omissions and their foreseeable consequences.

Immunity from Liability for Clean-up Actions

Current law exempts people who clean up hazardous materials

from civil liability except for gross negligence or willful or wanton misconduct. The bill specifies that this exemption applies to people who clean up hazardous wastes or substances.

Timeframe for Seeking Reimbursement or Recovery

The bill sets a timeframe during which people can seek reimbursement or recovery for their clean-up costs. A person must begin to do this within six years after starting the clean-up work or three years after finishing it, whichever is later. The bill allows the Superior Court to add reasonable future clean-up costs to any order granting reimbursement or recovery.

BACKGROUND

Legislative History

The House referred the bill (File 219) to the Judiciary Committee, which reported a substitute that changed the standard a person has to meet in order to avoid liability for clean up. Under the original version, the person had to show by a preponderance of the evidence that an act of God or war caused the contamination or that it resulted from a third party’s act or omission. Under the substitute, he must show these things by clear and convincing evidence.

Related Bill

sSB 415 (File 99) makes similar changes to the provisions under which a person is entitled to reimbursement for cleaning up contaminated property. But, under that bill the standard a person must meet in order to avoid liability for clean up costs is the same as under the original version of the bill (i.e., the person must show by a preponderance of the evidence that an act of God or war caused the contamination or that it resulted from a third party’s act or omission).

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute

Yea 26 Nay 0 (03/16/2006)

Judiciary Committee

Joint Favorable Substitute

Yea 28 Nay 5 (04/10/2006)