



House of Representatives

General Assembly

File No. 487

February Session, 2006

House Bill No. 5701

House of Representatives, April 11, 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 bill ought to pass.

AN ACT CONCERNING THE CONVEYANCE OF UNITS IN COMMON INTEREST COMMUNITIES THAT ARE HAZARDOUS WASTE ESTABLISHMENTS.

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

1 Section 1. (NEW) (*Effective October 1, 2006*) (a) As used in this
2 section: (1) "Certifying party" and "establishment" have the same
3 meanings as provided in section 22a-134 of the general statutes; and (2)
4 "association", "common interest community", "declarant", "purchaser"
5 and "unit" have the same meanings as provided in section 47-202 of the
6 general statutes.

7 (b) Notwithstanding the provisions of chapter 445 of the general
8 statutes, a conveyance of a unit in any residential common interest
9 community that is or contains an establishment shall not be subject to
10 the requirements of sections 22a-134 to 22a-134e, inclusive, of the
11 general statutes, as amended, provided the declarant for such
12 residential common interest community, of which such unit is a part,
13 (1) is a certifying party for purposes of remediation of such

14 establishment, and (2) provides to the Commissioner of Environmental
15 Protection a surety bond or other form of financial assurance
16 acceptable to the commissioner as provided in subsection (c) of this
17 section.

18 (c) The surety bond or other form of financial assurance required
19 pursuant to subsection (b) of this section shall identify both the
20 Department of Environmental Protection and the association for the
21 common interest community as beneficiaries, and be in a form
22 approved by the commissioner and in an amount that, at all times
23 when the real property comprising the common interest community is
24 an establishment, shall be equal to the cost of remediation of the
25 contamination on such real property, provided the amount of such
26 surety bond or other form of financial assurance may (1) exclude the
27 cost of completed remediation work and be reduced from time to time
28 as such work is completed, (2) exclude the cost of any improvements to
29 such real property that are not required for remediation of such
30 contamination, and (3) exclude the cost of any remediation work on
31 parcels of real property that may be added to the common interest
32 community by the exercise of development rights pursuant to section
33 47-229 of the general statutes.

34 (d) Before the conveyance of a unit in any common interest
35 community that is or contains an establishment, the seller of such unit
36 shall provide a notice to the purchaser of such unit that summarizes (1)
37 the status of the environmental condition of such common interest
38 community, (2) any investigation or remediation activities with respect
39 to such common interest community, and (3) any environmental use
40 restrictions applicable to such common interest community. Such
41 notice requirement applies to any such conveyance made on or after
42 the effective date of this section, including a conveyance otherwise
43 excepted from the requirement for delivery of a public offering
44 statement or a resale certificate under subsection (b) of section 47-262
45 of the general statutes or subsection (a) of section 47-270 of the 2006
46 supplement to the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2006</i>	New section

JUD *Joint Favorable*

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 Environmental Protection	GF/Environmental Quality - None	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

Exempting from the Transfer Act, a conveyance of a unit in any residential condominium, cooperative, or other common interest community under certain circumstances is not anticipated to result in a fiscal impact to the Department of Environmental Protection.

The Out Years

None

OLR Bill Analysis**HB 5701*****AN ACT CONCERNING THE CONVEYANCE OF UNITS IN COMMON INTEREST COMMUNITIES THAT ARE HAZARDOUS WASTE ESTABLISHMENTS.*****SUMMARY:**

The Transfer Act governs the sale or other conveyance of certain property where hazardous waste was generated, used, or stored. It requires such property to be investigated and pollution properly remediated. The act regulates "establishments," which include certain businesses, and property where (1) more than 100 kilograms (220 pounds) of hazardous waste was generated in a calendar month or (2) hazardous waste was disposed of, recycled, reclaimed, reused, stored, handled, treated, or transported.

This bill exempts from the requirements of the Transfer Act, a conveyance of a unit in any residential condominium, cooperative, or other common interest community, under certain circumstances. To be exempt, the declarant must (1) be a certifying party for purposes of remediating an establishment within the community and (2) provide the Department of Environmental Protection (DEP) commissioner with a surety bond or other form of financial assurance she finds acceptable.

The bill also requires that before the conveyance of a unit in any common interest community that is or contains an establishment, the seller must provide a notice to the purchaser that summarizes (1) the status of the environmental condition of such common interest community, (2) any investigation or remediation activities, and (3) any applicable environmental use restrictions. The notice requirement applies to any conveyance made on or after October 1, 2006, including

a conveyance otherwise excepted from the requirement for delivery of a public offering statement or a resale certificate.

EFFECTIVE DATE: October 1, 2006

SURETY BOND OR OTHER FINANCIAL ASSURANCE

The surety bond or other form of financial assurance the bill requires must identify both the DEP and the common interest community's association as beneficiaries. It must be in a form the commissioner approves and equal to the cost of remediating the contamination. But the amount of the bond or other form of financial assurance may (1) exclude the cost of completed remediation work and be reduced from time to time as such work is completed, (2) exclude the cost of any improvements to such real property not required for remediating the contamination, and (3) exclude the cost of any remediation work on parcels of real property that may be added to the common interest community by the exercise of development rights.

BACKGROUND

Transfer Act

The law requires anyone transferring an establishment to complete one or more of four different forms, depending on the presence of hazardous waste or hazardous substances, and the status of investigations and remediation.

Generally speaking, a transferor files a Form I if (1) there was no release of a hazardous waste or a hazardous substance or (2) a hazardous substance spill was properly cleaned up and the remediation (a) approved in writing by the DEP commissioner or (b) verified by a licensed environmental professional (LEP).

A transferor files a Form II when, among other things, a hazardous waste or hazardous substance spill has taken place, cleanup has been completed and the DEP commissioner has approved the cleanup in writing or an LEP has verified in writing that it has been properly performed.

By law, a certifying party files a Form III when (1) a hazardous waste or hazardous substance leak has occurred, but has not been fully remediated, or (2) he does not know the environmental conditions at the establishment. The certifying party agrees to properly investigate and remediate the parcel. A certifying party files a Form IV when there has been a leak, and all remediation actions have been completed except for post-remediation monitoring or the recording of an environmental land use restriction.

Hazardous Waste

“Hazardous waste” means any waste that is:

1. hazardous waste identified in accordance with Section 3001 of the 1996 federal Resource Conservation and Recovery Act, 42 USC 6901 *et seq.*;
2. hazardous waste identified by regulations adopted by the DEP commissioner; or
3. polychlorinated biphenyls in concentrations greater than 50 parts per million except that sewage, sewage sludge, and lead paint abatement wastes are not be considered to be hazardous waste (CGS § 22a-134(4)).

Declarant

A declarant is any person or group of people acting in concert who as part of a common promotional plan, offer to sell a condominium unit not previously sold (CGS § 47-202).

Related Bill

sHB 5564 contains the same provisions. The Environment Committee reported it favorably on March 20.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 38 Nay 0 (03/27/2006)