



# House of Representatives

General Assembly

**File No. 369**

January Session, 2007

Substitute House Bill No. 7079

*House of Representatives, April 5, 2007*

The Committee on Commerce reported through REP. BERGER of the 73rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## **AN ACT CONCERNING BROWNFIELD REMEDIATION AND REDEVELOPMENT.**

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

1 Section 1. (NEW) (*Effective July 1, 2007*) Sections 4 to 7, inclusive, and  
2 section 9 of this act may be cited as the Brownfield Redevelopment Act  
3 of 2007.

4 Sec. 2. Section 32-9cc of the general statutes is repealed and the  
5 following is substituted in lieu thereof (*Effective July 1, 2007*):

6 (a) There is established, within the Department of Economic and  
7 Community Development, an Office of Brownfield Remediation and  
8 Development. [that shall be within the Department of Economic and  
9 Community Development for administrative purposes only.]

10 (b) The office shall:

11 (1) Develop procedures and policies for streamlining the process for  
12 brownfield remediation;

13 (2) Identify existing and [create new] potential sources of funding  
14 for brownfield remediation and develop procedures for expediting the  
15 application for and release of such funds; [to municipalities or  
16 economic development agencies;]

17 (3) Establish a place where municipalities or economic development  
18 agencies may facilitate compliance with state and federal clean up  
19 requirements and qualification for state funds;

20 (4) Provide a single point of contact for financial and technical  
21 assistance from the state and quasi-public agencies;

22 (5) Develop a common application to be used by all state and quasi-  
23 public entities providing financial assistance for brownfield  
24 assessment remediation and redevelopment;

25 [(4)] (6) Identify and prioritize brownfield development  
26 opportunities state-wide;

27 [(5)] (7) Analyze any action taken by the federal government and  
28 other states, particularly New Jersey and Pennsylvania, regarding  
29 brownfield remediation and liability; and

30 [(6)] (8) Develop and execute an outreach program to educate  
31 municipalities, property owners and potential property owners and  
32 other organizations and individuals with regard to state policies and  
33 procedures for brownfield remediation.

34 (c) [The Office of Brownfield Remediation and Development shall  
35 establish and operate] There shall be a state-funded pilot program to  
36 identify brownfield remediation economic opportunities in four  
37 Connecticut municipalities, one of which shall have a population of  
38 more than twenty-five thousand but less than fifty thousand, one of  
39 which shall have a population of more than fifty thousand but less  
40 than one hundred thousand and two of which shall have populations  
41 of more than one hundred thousand. The [Office of Brownfield  
42 Remediation and Development] Commissioner of Economic and  
43 Community Development shall designate four pilot municipalities in

44 which untreated brownfields hinder economic development and shall  
45 make grants under such pilot program to these municipalities or  
46 economic development agencies associated with each of the four  
47 municipalities that are likely to produce significant economic  
48 development benefit for the designated municipality.

49 (d) The Department of Environmental Protection, [and] the  
50 Connecticut Development Authority and the Department of Public  
51 Health shall each designate a staff member or members to act as a  
52 liaison between their offices and the Office of Brownfield Remediation  
53 and Development. The Office of Brownfield Remediation and  
54 Development [shall] may develop and recruit two volunteers from the  
55 private sector, including a person from the Connecticut chapter of the  
56 National Brownfield Association, with experience in different aspects  
57 of brownfield remediation and development. Said liaisons and  
58 volunteers [shall] may assist the Office of Brownfield Remediation and  
59 Development in achieving the goals of this section and, together,  
60 [shall] may represent said office's response team.

61 (e) The Office of Brownfield Remediation and Development may  
62 call upon any other department, board, commission or other agency of  
63 the state to supply such reports, information and assistance as said  
64 office determines is appropriate to carry out its duties and  
65 responsibilities. Each officer or employee of such office, department,  
66 board, commission or other agency of the state is authorized and  
67 directed to cooperate with the Office of Brownfield Remediation and  
68 Development and to furnish such reports, information and assistance.

69 (f) Brownfield sites identified for funding under the pilot program  
70 established in subsection (c) of this section shall receive priority review  
71 status from the Department of Environmental Protection. Each  
72 property funded under this program shall be investigated in  
73 accordance with prevailing standards and practices and remediated in  
74 accordance with the regulations established for the remediation of  
75 such sites adopted by the Commissioner of Environmental Protection  
76 or pursuant to section 22a-133k and under the supervision of the

77 department or in accordance with the voluntary remediation program  
78 established in section 22a-133x. In either event, the department shall  
79 determine that remediation of the property has been fully  
80 implemented upon submission of a report indicating that remediation  
81 has been verified by an environmental professional licensed in  
82 accordance with section 22a-133v. Not later than ninety days after  
83 submission of the verification report, the [commissioner]  
84 Commissioner of Environmental Protection shall notify the  
85 municipality or economic development agency as to whether the  
86 remediation has been performed and completed in accordance with  
87 the remediation standards or whether any additional remediation is  
88 warranted. For purposes of acknowledging that the remediation is  
89 complete, the commissioner may indicate that all actions to remediate  
90 any pollution caused by any release have been taken in accordance  
91 with the remediation standards and that no further remediation is  
92 necessary to achieve compliance except postremediation monitoring,  
93 natural attenuation monitoring or the recording of an environmental  
94 land use restriction.

95 (g) All relevant terms in this subsection, subsection (h) of this  
96 section, sections 32-9dd to 32-9ff, inclusive, and section 11 of public act  
97 06-184\* shall be defined in accordance with the definitions in chapter  
98 445. For purposes of subdivision (12) of subsection (a) of section 32-9t,  
99 this subsection, subsection (h) of this section, sections 32-9dd to 32-9gg,  
100 inclusive, and section 11 of public act 06-184\*, "brownfields" means any  
101 abandoned or underutilized site where redevelopment and reuse has  
102 not occurred due to the presence of pollution in the soil or  
103 groundwater that requires remediation prior to or in conjunction with  
104 the restoration, redevelopment and reuse of the property.

105 (h) The Departments of Economic and Community Development  
106 and Environmental Protection shall administer the provisions of  
107 subdivision (1) of section 22a-134, section 32-1m, subdivision (12) of  
108 subsection (a) of section 32-9t, sections 32-9cc to 32-9gg, inclusive, and  
109 section 11 of public act 06-184\* within available appropriations and  
110 any funds allocated pursuant to sections 4-66c, 22a-133t and 32-9t.

111 Sec. 3. Subsection (b) of section 32-9ee of the general statutes is  
112 repealed and the following is substituted in lieu thereof (*Effective July*  
113 *1, 2007*):

114 (b) In determining what funds shall be made available for an  
115 eligible brownfield remediation, the [Office of Brownfield Remediation  
116 and Development] Commissioner of Economic and Community  
117 Development shall consider (1) the economic development  
118 opportunities such reuse and redevelopment may provide, [and] (2)  
119 the feasibility of the project, (3) the environmental and public health  
120 benefits of the project, and (4) the contribution of the reuse and  
121 redevelopment to the municipality's tax base.

122 Sec. 4. (NEW) (*Effective July 1, 2007*) As used in sections 5 and 6 of  
123 this act:

124 (1) "Brownfield" means any abandoned or underutilized site where  
125 redevelopment and reuse has not occurred due to the presence or  
126 potential presence of pollution in the buildings, soil or groundwater  
127 that requires remediation prior to or in conjunction with the  
128 restoration, redevelopment and reuse of the property;

129 (2) "Commissioner" means the Commissioner of Economic and  
130 Community Development;

131 (3) "Department" means the Department of Economic and  
132 Community Development;

133 (4) "Eligible applicant" means any municipality, a for-profit or  
134 nonprofit organization, a local or regional economic development  
135 entity acting on behalf of a municipality or any combination thereof;

136 (5) "Financial assistance" means grants, extensions of credit, loans or  
137 loan guarantees, participation interests in loans made to eligible  
138 applicants by the Connecticut Development Authority or combinations  
139 thereof;

140 (6) "Municipality" means a town, city, consolidated town and city or

141 consolidated town and borough;

142 (7) "Eligible brownfield project" means the assessment, remediation  
143 and redevelopment of a brownfield undertaken pursuant to this act;

144 (8) "Project area" means the area within which a brownfield  
145 redevelopment project is located;

146 (9) "Real property" means land, buildings and other structures and  
147 improvements thereto, subterranean or subsurface rights, any and all  
148 easements, air rights and franchises of any kind or nature; and

149 (10) "State" means the state of Connecticut.

150 Sec. 5. (NEW) (*Effective July 1, 2007*) Subject to the availability of  
151 funds, the Commissioner of Economic and Community Development  
152 is authorized to, in consultation with the Commissioner of  
153 Environmental Protection, provide financial assistance in support of  
154 eligible brownfield projects, as defined in subdivision (7) of section 4 of  
155 this act.

156 Sec. 6. (NEW) (*Effective July 1, 2007*) (a) An eligible applicant, as  
157 defined in subdivision (4) of section 4 of this act shall submit an  
158 application for financial assistance to the commissioner on forms  
159 provided by the Commissioner of Economic and Community  
160 Development and with such information the commissioner deems  
161 necessary, including, but not limited to: (1) A description of the  
162 proposed project; (2) an explanation of the expected benefits of the  
163 project in relation to the purposes of sections 4 to 6, inclusive, of this  
164 act; (3) information concerning the financial and technical capacity of  
165 the eligible applicant to undertake the proposed project; (4) a project  
166 budget; (5) a description of the condition of the property involved  
167 including the results of any environmental assessment of the property;  
168 and (6) the names of any persons known to be liable for the  
169 remediation of the property.

170 (b) Applications properly submitted shall be reviewed and may be  
171 approved, disapproved or modified by the commissioner. In reviewing

172 an application and determining the type and amount of financial  
173 assistance, if any, to be provided, the commissioner shall consider the  
174 following criteria: (1) The availability of funds; (2) the estimated costs  
175 of assessing and remediating the site, if known; (3) the relative  
176 economic condition of the municipality; (4) the relative need of the  
177 eligible project for financial assistance; (5) the degree to which financial  
178 assistance is necessary as an inducement to the eligible applicant to  
179 undertake the project; (6) the public health and environmental benefits  
180 of the project; (7) relative economic benefits of the project to the  
181 municipality, the region and the state, including, but not limited to, the  
182 extent to which the project will likely result in the retention and  
183 creation of jobs; (8) the timeframe in which the contamination  
184 occurred; (9) the relationship of the applicant to the person or entity  
185 that caused the contamination; and (10) such other criteria as the  
186 commissioner may establish consistent with the purposes of sections 4  
187 to 6, inclusive, of this act.

188 (c) The Commissioner of Economic and Community Development  
189 may approve applications submitted in accordance with subsection (a)  
190 of this section before awarding any financial assistance to an eligible  
191 applicant or purchasing any participation interest in a loan made by  
192 the Connecticut Development Authority for the benefit of an eligible  
193 applicant. Notwithstanding any other provision of this section, if the  
194 applicant's request for financial assistance involves the department  
195 purchasing a participation interest in a loan made by the Connecticut  
196 Development Authority, such authority may submit such application  
197 and other information as is required of eligible applicants under  
198 subsection (a) of this section on behalf of such eligible applicant and no  
199 further application shall be required of such eligible applicant. No  
200 financial assistance shall exceed fifty per cent of the total project cost,  
201 provided in the case of (1) planning or site evaluation projects; and (2)  
202 financial assistance to any project in a targeted investment community,  
203 such assistance shall not exceed ninety per cent of the project cost.  
204 Upon approval of the commissioner, a nonstate share of the total  
205 project cost, if any, may be satisfied entirely or partially from noncash  
206 contributions, including contributions of real property, from private

207 sources or, to the extent permitted by federal law, from moneys  
208 received by the municipality under any federal grant program.

209 (d) Financial assistance may be used for (1) site investigation and  
210 assessment; (2) planning, including, but not limited to, the reasonable  
211 cost of feasibility studies, engineering, appraisals, market studies and  
212 related activities; (3) the acquisition of real property, provided such  
213 financial assistance shall not exceed fair market value; (4) the  
214 construction of site and infrastructure improvements related to the site  
215 remediation; (5) demolition and related activities; (6) remediation; (7)  
216 environmental insurance; and (8) other reasonable expenses which the  
217 commissioner determines are necessary or appropriate for the  
218 initiation, implementation and completion of the project. The  
219 department may purchase participation interests in loans made by the  
220 Connecticut Development Authority for the foregoing purposes.

221 (e) The commissioner may establish the terms and conditions of any  
222 financial assistance provided pursuant to sections 4 to 6, inclusive, of  
223 this act. The commissioner may make any stipulation in connection  
224 with an offer of financial assistance the commissioner deems necessary  
225 to implement the policies and purposes of such sections, including, but  
226 not limited to the following: (1) Providing assurances that the eligible  
227 applicant will discharge its obligations in connection with the project;  
228 and (2) requiring that the eligible applicant provide the department  
229 with appropriate security for such financial assistance, including, but  
230 not limited to, a letter of credit, a lien on real property or a security  
231 interest in goods, equipment, inventory or other property of any kind.

232 (f) The commissioner may use any available funds for financial  
233 assistance under the provisions of sections 4 to 6, inclusive, of this act.

234 (g) Whenever funds are used pursuant to sections 4 to 6, inclusive,  
235 of this act for purposes of environmental assessments or remediation  
236 of a brownfield, the Commissioner of Environmental Protection may  
237 seek reimbursement of the costs and expenses incurred by requesting  
238 the Attorney General to bring a civil action to recover such costs and  
239 expenses from any party responsible for such pollution provided no

240 such action shall be brought separately from any action to recover  
241 costs and expenses incurred by the Commissioner of Environmental  
242 Protection in pursuing action to contain, remove or mitigate any  
243 pollution on such site. The costs and expenses recovered may include,  
244 but shall not be limited to, (1) the actual cost of identifying, evaluating,  
245 planning for and undertaking the remediation of the site; (2) any  
246 administrative costs not exceeding ten per cent of the actual costs; (3)  
247 the costs of recovering the reimbursement; and (4) interest on the  
248 actual costs at a rate of ten per cent a year from the date such expenses  
249 were paid. The defendant in any civil action brought pursuant to this  
250 subsection shall have no cause of action or claim for contribution  
251 against any person with whom the Commissioner of Environmental  
252 Protection has entered into a covenant not to sue pursuant to sections  
253 22a-133aa and 22a-133bb of the general statutes with respect to  
254 pollution on or emanating from the property that is the subject of said  
255 civil action. Funds recovered pursuant to this section shall be  
256 deposited in the Brownfield Remediation and Redevelopment  
257 Revolving Loan Fund established pursuant to section 7 of this act. The  
258 provisions of this subsection shall be in addition to any other remedies  
259 provided by law.

260 Sec. 7. (NEW) (*Effective July 1, 2007*) (a) There is established a fund to  
261 be known as the "Brownfield Remediation and Redevelopment  
262 Revolving Loan Fund". There shall be deposited in the fund: (1) The  
263 proceeds of bonds issued by the state for deposit into said fund and  
264 used in accordance with this section; (2) repayments of assistance  
265 provided pursuant to subsection (c) of 22a-133u of the general statutes,  
266 as amended by this act; (3) interest or other income earned on the  
267 investment of moneys in the fund; (4) funds recovered pursuant to  
268 subsection (g) of section 6 of this act; and (5) all funds required by law  
269 to be deposited in the fund. Repayment of principal and interest on  
270 loans made pursuant to sections 4 to 6, inclusive, of this act shall be  
271 credited to such fund and shall become part of the assets of the fund.  
272 The Brownfield Remediation and Redevelopment Revolving Loan  
273 Fund may include other separate accounts. Any balance remaining in  
274 such fund at the end of any fiscal year shall be carried forward in the

275 fund for the fiscal year next succeeding.

276 (b) All moneys received in consideration of financial assistance,  
277 including payments of principal and interest on any loans, shall be  
278 credited to the fund. At the discretion of the Commissioner of  
279 Economic and Community Development and subject to the approval  
280 of the Secretary of the Office of Policy and Management, any federal,  
281 private or other moneys received by the state in connection with  
282 projects undertaken pursuant to sections 4 to 6, inclusive, of this act  
283 shall be credited to the assets of the fund.

284 (c) Notwithstanding any provision of law, proceeds from the sale of  
285 bonds available pursuant to subdivision (1) of subsection (b) of section  
286 4-66c of the general statutes may, with the approval of the Governor  
287 and the State Bond Commission, be used to capitalize the Brownfield  
288 Remediation and Redevelopment Revolving Loan Fund created by this  
289 section.

290 (d) The commissioner may, with the approval of the Secretary of the  
291 Office of Policy and Management, provide financial assistance  
292 pursuant to sections 4 to 6, inclusive, of this act from the fund  
293 established under this section.

294 Sec. 8. Subsection (c) of section 22a-133u of the general statutes is  
295 repealed and the following is substituted in lieu thereof (*Effective July*  
296 *1, 2007*):

297 (c) Any person, firm, corporation or municipality which has  
298 received funds under subsection (b) of this section shall repay such  
299 funds to the Commissioner of Economic and Community  
300 Development, according to a schedule and terms which said  
301 commissioner deems appropriate. The principal amount of the loan  
302 shall be due at a time deemed appropriate by the commissioner as  
303 follows: (1) Upon the sale of the property or lease of the property, in  
304 whole or in part, which is the subject of such evaluation or demolition;  
305 (2) upon the sale or release of a municipality's liens on such property;  
306 or (3) upon the approval by the Commissioner of Environmental

307 Protection of a final remedial action report submitted in accordance  
308 with section 22a-133y. The Commissioner of Economic and  
309 Community Development may require repayment of the loan  
310 amortized over a period of no more than five years from the sale of the  
311 property, sale of the lien or approval by the Commissioner of  
312 Environmental Protection of the final remedial action report. No  
313 repayment shall be required, other than interest for the period that the  
314 loan is outstanding, if completion of remediation of environmental  
315 pollution at or on the property, or the sale or lease of such property, is  
316 economically infeasible due to the cost of such remediation. The  
317 commissioner may require partial repayment of the loan only if partial  
318 repayment is economically feasible. Any funds received by said  
319 commissioner as repayment under this subsection shall be deposited  
320 into the [Special Contaminated Property Remediation and Insurance  
321 Fund] Brownfield Remediation and Redevelopment Revolving Loan  
322 Fund. The terms of any loan agreement entered into by said  
323 commissioner under said subsection may provide for the collection of  
324 interest on the loan which may vary according to whether the  
325 applicant is a municipality or a private entity and the duration of the  
326 repayment schedule for such loan provided the interest cost to the  
327 borrower provided for in such agreement shall not exceed the interest  
328 cost to the state on borrowings of like terms.

329 Sec. 9. (NEW) (*Effective July 1, 2007*) The Commissioners of  
330 Environmental Protection and Economic and Community  
331 Development shall, in consultation with the Secretary of the Office of  
332 Policy and Management, establish a pilot program to identify and  
333 evaluate brownfield sites in priority funding areas designated  
334 pursuant to section 16a-35c of the general statutes. Said commissioners  
335 will work with state and local agencies as a coordinated team to  
336 identify all necessary permits and approvals for redevelopment,  
337 conduct outreach to solicit development proposals, and coordinate to  
338 review all requests for funding and permit approvals.

339 Sec. 10. Subsection (d) of section 25-68d of the general statutes is  
340 repealed and the following is substituted in lieu thereof (*Effective July*

341 1, 2007):

342 (d) Any state agency proposing an activity or critical activity within  
343 or affecting the floodplain may apply to the commissioner for  
344 exemption from the provisions of subsection (b) of this section. Such  
345 application shall include a statement of the reasons why such agency is  
346 unable to comply with said subsection and any other information the  
347 commissioner deems necessary. The commissioner, [at least thirty days  
348 before approving, approving with conditions or denying any such  
349 application, shall publish once in a newspaper having a substantial  
350 circulation in the affected area notice of: (1) The name of the applicant;  
351 (2) the location and nature of the requested exemption; (3) the tentative  
352 decision on the application; and (4) additional information the  
353 commissioner deems necessary to support the decision to approve,  
354 approve with conditions or deny the application. There shall be a  
355 comment period following the public notice during which period  
356 interested persons and municipalities may submit written comments.  
357 After the comment period, the commissioner shall make a final  
358 determination to either approve the application, approve the  
359 application with conditions or deny the application. The commissioner  
360 may hold a public hearing prior to approving, approving with  
361 conditions or denying any application if in the discretion of the  
362 commissioner the public interest will be best served thereby, and the  
363 commissioner shall hold a public hearing upon receipt of a petition  
364 signed by at least twenty-five persons. Notice of such hearing shall be  
365 published at least thirty days before the hearing in a newspaper  
366 having a substantial circulation in the area affected. The commissioner  
367 may approve or approve with conditions such exemption if the  
368 commissioner determines that (A)] after public notice of the  
369 application and an opportunity for a public hearing in accordance with  
370 the provisions of chapter 54, may approve such exemption if the  
371 commissioner determines that (1) the agency has shown that the  
372 activity or critical activity is in the public interest, will not injure  
373 persons or damage property in the area of such activity or critical  
374 activity, complies with the provisions of the National Flood Insurance  
375 Program, and, in the case of a loan or grant, the recipient of the loan or

376 grant has been informed that increased flood insurance premiums may  
 377 result from the activity or critical activity, or [(B)] (2) in the case of a  
 378 flood control project, such project meets the criteria of [subparagraph  
 379 (A) of this subdivision] subdivision (1) of this subsection and is more  
 380 cost-effective to the state and municipalities than a project constructed  
 381 to or above the base flood or base flood for a critical activity. An  
 382 activity shall be considered to be in the public interest if it is a  
 383 redevelopment subject to environmental remediation regulations  
 384 adopted pursuant to section 22a-133k and is located in an area  
 385 identified as a regional center, neighborhood conservation area,  
 386 growth area or rural community center in the State Plan of  
 387 Conservation and Development pursuant to chapter 297. Following  
 388 approval for exemption for a flood control project, the commissioner  
 389 shall provide notice of the hazards of a flood greater than the capacity  
 390 of the project design to each member of the legislature whose district  
 391 will be affected by the project and to the following agencies and  
 392 officials in the area to be protected by the project: The planning and  
 393 zoning commission, the inland wetlands agency, the director of civil  
 394 defense, the conservation commission, the fire department, the police  
 395 department, the chief elected official and each member of the  
 396 legislative body, and the regional planning agency. Notice shall be  
 397 given to the general public by publication in a newspaper of general  
 398 circulation in each municipality in the area in which the project is to be  
 399 located.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2007	New section
Sec. 2	July 1, 2007	32-9cc
Sec. 3	July 1, 2007	32-9ee(b)
Sec. 4	July 1, 2007	New section
Sec. 5	July 1, 2007	New section
Sec. 6	July 1, 2007	New section
Sec. 7	July 1, 2007	New section
Sec. 8	July 1, 2007	22a-133u(c)
Sec. 9	July 1, 2007	New section

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Sec. 10	July 1, 2007	25-68d(d)
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**Statement of Legislative Commissioners:**

In the first sentence of subsection (c) of section 6, "shall" was changed to "may" for consistency within the section. In the first sentence of section 9, the statutory reference was changed for accuracy.

**CE**      *Joint Favorable Subst.-LCO*

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 chamber thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Various	Various - See Below	See Below	See Below

**Municipal Impact:**

Municipalities	Effect	FY 08 \$	FY 09 \$
Various Municipalities	Revenue Impact	See Below	See Below

**Explanation**

The bill expands the duties of the Office of Brownfield Redevelopment (OBRD) within the Department of Economic and Community Development (DECD). HB 7077, the Governor’s recommended budget, provides funds for the OBRD in the amount of \$85,260 in FY 08 and \$88,670 in FY 09 for 2 positions to staff this office originally established in PA06-184.

The bill authorizes the DECD to provide different types and combinations of financing for investigating and cleaning up properties. The bill provides that the funding is subject to the availability of funds. The bill also establishes a nonlapsing “Brownfield Remediation and Redevelopment Revolving Loan Fund” and allows it to be capitalized with Urban Act bonds. The unallocated balance of this General Obligation (GO) bond fund account as of April 1, 2007 is \$113.3 million. Additional funds that can be deposited into the revolving loan fund include certain repayments of assistance, interest or other income earned on the investment of any moneys in the fund, and any funds recovered in a civil suit. The total dollars that will be available in this fund cannot be estimated at this time.

It is anticipated that the workload increase of the Department of Environmental Protection (DEP) due to establishment of a pilot program concerning priority funding for certain brownfield sites, consultation on financial assistance, or enforcement actions, are anticipated to minimally increase the workload of staff and be handled within existing program resources.

The bill allows the Commissioner of the DEP to ask the Attorney General to bring a civil action to recover certain costs. The Office of the Attorney General could carry out any such civil actions without requiring additional resources.

The bill adds the Department of Public Health (DPH) to the agencies that must designate staff to act as a liaison with the OBRD. It is anticipated that the DPH can provide liaison services to the OBRD within their current budgetary resources.

It is anticipated that the Secretary of the Office of Policy and Management can consult with various agencies as the bill requires within the agency's normal budgetary resources.

Any potential revenue gain to municipalities related to the financial assistance programs in the bill would depend upon the amount and recipient of assistance.

### ***The Out Years***

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

**OLR Bill Analysis****sHB 7079*****AN ACT CONCERNING BROWNFIELD REMEDIATION AND REDEVELOPMENT.*****SUMMARY:**

This bill expands the state's financial and administrative capacity to remediate contaminated sites (i.e., "brownfields"). It establishes a new program to provide financing for remediating these sites and funds it with Urban Act bonds issued for economic development. Towns, businesses, nonprofit organizations, and regional economic development agencies may apply for financing to the Department of Economic and Community Development (DECD) commissioner, who may fund an application subject to the Office of Policy and Management (OPM) secretary's approval. The bill specifies the process and criteria for approving and administering the financing.

The bill also establishes new policies for funding remediation projects in designated areas. It allows state agencies to undertake activities, including financing development projects, in floodplains located in state-designated development areas if the activities will not injure people or damage property. The bill also requires the OPM secretary and DECD commissioner to establish a pilot program for identifying and evaluating sites in areas the secretary designates as priority areas for state-funded infrastructure and development projects.

The bill expands the Office of Brownfield Remediation and Development's (OBRD) duties, makes the office a unit of DECD, and requires the Department of Public Health (DPH) to assign a liaison to the OBRD. The new duties require the office to make it easier for developers to access state brownfield remediation programs.

Lastly, the bill shifts the administration of the Brownfields Pilot Program from OBRD to DECD. The program must designate four towns where contaminated properties hinder the towns' economic development and remediate those sites. The bill expands the criteria for selecting those sites.

EFFECTIVE DATE: July 1, 2007

### **BROWNFIELD CLEANUP PROGRAM (§§ 4 - 8)**

#### ***Purpose (§ 4 (1))***

The bill establishes a program to provide the financing needed to remediate contaminated properties slated for redevelopment or reuse. A property qualifies for financing if it is abandoned or unused and requires remediation, which may occur before or during the property's restoration, redevelopment, or reuse.

#### ***Financial Assistance (§§ 4 & 5)***

The bill authorizes the DECD commissioner to provide different types of financing for investigating and cleaning up properties. He can provide grants, loans, loan guarantees, and credit extensions or purchase a portion of a loan the Connecticut Development Authority (CDA) made for redeveloping a remediated property. He can also combine these different types of financing in one package.

#### ***Eligible Costs (§ 6 (d))***

Developers can use the funds to investigate and assess contaminated sites; prepare appraisals and feasibility, engineering, and marketing studies; acquire and improve sites; demolish structures and remove the debris; clean the land; purchase environmental insurance; and cover other reasonable costs the DECD commissioner deems necessary to start, implement, and complete the clean up.

#### ***Funding Sources (§§ 7 & 8)***

The bill establishes a nonlapsing revolving loan fund for the program and allows the governor and the State Bond Commission to capitalize the fund with the proceeds of Urban Act bonds issued to

fund economic development programs. It also taps money from other sources for the fund. These include:

1. principal and interest payments on loans made under the existing Special Contaminated Property Remediation and Insurance Fund, which provides loans for assessing and demolishing contaminated properties;
2. money the attorney general recovers from the parties that polluted the properties being cleaned up under the program (see below); and
3. all other funds the law requires to be deposited in the fund.

If the OPM secretary approves, the commissioner may credit any federal or private dollars to the fund's assets if they were provided for a project being assisted under the program.

Lastly, the bill requires repayments on loans made under the fund to be credited to it. The interest and other income the fund generates must also be credited to the fund.

***Applying for Funds (§ 6(a), (b), (c), & (d))***

Towns, local and regional nonprofit economic development organizations acting on a town's behalf, and for-profit and nonprofit organizations qualify for financing. They do so when they apply separately or join with any other eligible applicant to sponsor a project.

An eligible applicant must apply to the commissioner for funds on forms he must provide. It must describe the proposed project and its potential benefits and its technical and financial capacity to undertake the project. The applicant must also describe the site's condition, including the findings of any environmental assessment conducted on it, and the budget for remediating the site. Lastly, it must list the names of the people responsible for cleaning up the property.

The commissioner must review each application and decide whether to approve, disapprove, or modify it based on:

1. the funds available;
2. the estimated assessment and cleanup costs, if known;
3. the town's relative economic condition;
4. the financing needed to complete the project;
5. whether the applicant would undertake the project without financial assistance;
6. the project's environmental and public health benefits;
7. the project's relative economic benefits, including the number of jobs it will create or retain, to the town, the region, and the state;
8. when the site became contaminated;
9. the applicant's relationship to the party that contaminated the site; and
10. other criteria the commissioner establishes, which must be consistent with the program's purpose.

In approving or modifying an application, the commissioner must decide the type and amount of financial assistance to provide.

The commissioner may also provide financing to a developer who applied to CDA for financing. He can do this if CDA submits an application to him on the applicant's behalf requesting his participation in the financing. The application must contain all the information the bill requires from applicants applying directly to the commissioner, but the commissioner cannot require the applicant to submit an additional application.

The commissioner may tap the fund to help finance projects receiving CDA financing. He may do this by purchasing a portion of the CDA loan. The maximum amount he can purchase depends on the project's location. He purchase up to 90% of the cost of projects

located in the 17 targeted investment communities and up to 50% of the costs in the other towns. If the project involves planning studies or site assessments, he can purchase up to 90% of the cost regardless of its location. The developer can match the commissioner's contribution with real property or other noncash contributions. And, if federal law allow it, the commissioner can use federal dollars the town received to remediate the property.

***Terms and Conditions (§ 6 (e))***

The bill authorizes the commissioner to attach any terms and conditions he deems necessary to achieve its purposes. These specifically include:

1. assurances that the applicant will discharge his obligations regarding the project and
2. requirements that he provide the department letters of credit; liens; security interest in goods, equipment, inventory, or other property; or other appropriate security.

***DEP Cost Recovery (§ 6 (g))***

When DEP has already spent funds to contain, remove, or mitigate the contamination on a property being assessed and remediated under the program, the bill allows the DEP commissioner can seek to recover these costs from anyone responsible for contaminating the property. She may do this by requesting the attorney general to bring a civil action against the responsible party. The attorney general must do this in conjunction with action the commissioner took to address the contamination.

The law already allows the commissioner to take these steps with respect to property she included in the hazardous waste disposal site inventory.

The attorney general may seek reimbursement under the bill for:

1. the actual cost to identify, evaluate, plan for, or remediate the

- site;
2. any associated administrative costs up to 10% of the actual costs;
  3. the cost of recovering the reimbursement; and
  4. the interest on the actual costs at 10% per year from when they were paid.

Any funds DEP recovers from these actions must go into the revolving fund.

The bill prohibits the defendant in these actions from acting against anyone who is party to a DEP covenant-not-sue with respect the pollution on the site. (Under these covenants, the party that cleaned the site according to DEP standards does not have to clean it again if more pollution is subsequently found on the site.)

#### **DEVELOPMENT IN FLOODPLAINS (§ 10)**

The bill makes it easier to for state agencies to undertake activities floodplain areas. By law, a state agency must obtain the DEP commissioner's approval before transferring state-owned property or doing things that could affect the land uses in the floodplain. Under current law, the DEP commissioner must publish a notice describing the proposed activity at least 30 days before rendering a decision. She must also allow the public to comment and hold a public hearing if she thinks it is necessary or if 25 people petition for one. Under the bill, she must follow the procedure specified in the Uniform Administrative Procedure Act.

Under current law, the commissioner may approve the activity if it serves the public interest, will not harm people or property in the floodplain, and complies with the National Flood Insurance Program. If a town or private organization wants to implement the activity with state funds, it must be informed that the activity could increase flood insurance premiums.

The bill designates the activity as serving the public interest if it is to be remediated according to DEP standards, and is located in a development zone, as designated in the State Plan of Conservation and Development.

### **NEW PILOT BROWNFIELD IDENTIFICATION AND ASSESSMENT PROGRAM (§ 9)**

By law, the OPM secretary must recommend areas where the state should target development dollars to the Continuing Legislative Committee on State Planning and Development by 2010.

The bill requires the DEP and DECD commissioners, in consultation with the OPM secretary, to identify and evaluate brownfields in these areas. They must work with other state and local agencies as a coordinated team to (1) solicit proposals for redeveloping the sites, (2) identify the necessary permits and approvals, and (3) review all requests for funding and permit approvals.

The commissioners cannot begin these actions until 2010 because the law requires OPM to submit the recommended funding areas the legislature the next time it revises the five-year State Plan of Conservation and Development, which is due that year.

### **OBRD**

#### ***Expanded Duties (§ 2 (b))***

The bill expands OBRD's duties and refines and expands some existing ones. OBRD's new duties include (1) providing a single point of contact for financial and technical assistance for state and quasi-public agencies and (2) developing a common application to be used by all state and quasi-public entities providing financial assistance for assessing, remediating, and developing brownfields.

OBRD must analyze federal brownfield programs in addition to those implemented by the state. It must also direct its outreach program to towns and individuals in addition to existing and potential property owners.

**Coordination (§ 2 (a))**

The bill makes OBRD an organizational unit of the DECD and requires the Department of Public Health to assign a liaison to work with the office. Current law places OBRD within DECD for administrative purposes only. It also requires DEP and CDA to assign liaisons to the office.

**Pilot Program (§ 3)**

PA 06-184 required OBRD to establish a pilot program to identify four towns where contaminated properties hinder economic development and work with other agencies to assess and remediate the sites. The bill specifies that these sites must be assessed and remediated according to prevailing standards and practices.

The bill shifts responsibility for the program from OBRD to the DECD commissioner and expands the funding criteria. Under current law, OBRD must base its decision on (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. Under the bill, the commissioner must consider these criteria plus the feasibility of the project and its environmental and public health benefits.

**BACKGROUND*****Related Bill***

sHB 7369, An Act Implementing the Recommendations of the Browfields Task Force, makes similar changes with respect to OBRD's organizational status and role. But it also specifies minimum staffing levels and appropriates funds for this purpose. It also requires the Department of Public Health and the Office of Responsible Growth to assign liaisons to OBRD.

sHB 7368 also makes it easier for state agencies to undertake fund activities in floodplains located in designated development zones.

sSB 784 requires zoning regulations to allow only farming, passive recreation, and fishing and hunting in floodplains.

**COMMITTEE ACTION**

Commerce Committee

Joint Favorable

Yea 18 Nay 0 (03/20/2007)