



House of Representatives

General Assembly

File No. 704

January Session, 2007

Substitute House Bill No. 7079

House of Representatives, May 2, 2007

The Committee on Environment reported through REP. ROY, R. of the 119th 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 Section 32-9cc of the general statutes is repealed and the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] five
37 Connecticut municipalities, one of which shall have a population of
38 less than twenty-five thousand, one of which shall have a population
39 of more than twenty-five thousand but less than fifty thousand, one of
40 which shall have a population of more than fifty thousand but less
41 than one hundred thousand and two of which shall have populations
42 of more than one hundred thousand. The [Office of Brownfield
43 Remediation and Development] Commissioner of Economic and

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

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

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

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

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

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

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

111 any funds allocated pursuant to sections 4-66c, 22a-133t and 32-9t.

112 Sec. 3. Subsection (b) of section 32-9ee of the general statutes is
113 repealed and the following is substituted in lieu thereof (*Effective July*
114 *1, 2007*):

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

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

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

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

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

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

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

141 (6) "Municipality" means a town, city, consolidated town and city or
142 consolidated town and borough;

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

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

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

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

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

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

171 (b) Applications properly submitted shall be reviewed and may be

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

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

207 contributions, including contributions of real property, from private
208 sources or, to the extent permitted by federal law, from moneys
209 received by the municipality under any federal grant program.

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

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

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

235 (g) Whenever funds are used pursuant to sections 4 to 6, inclusive,
236 of this act for purposes of environmental assessments or remediation
237 of a brownfield, the Commissioner of Environmental Protection may
238 seek reimbursement of the costs and expenses incurred by requesting
239 the Attorney General to bring a civil action to recover such costs and

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

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

275 such fund at the end of any fiscal year shall be carried forward in the
276 fund for the fiscal year next succeeding.

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

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

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

295 Sec. 8. Subsection (c) of section 22a-133u of the general statutes is
296 repealed and the following is substituted in lieu thereof (*Effective July*
297 *1, 2007*):

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

307 or (3) upon the approval by the Commissioner of Environmental
308 Protection of a final remedial action report submitted in accordance
309 with section 22a-133y. The Commissioner of Economic and
310 Community Development may require repayment of the loan
311 amortized over a period of no more than five years from the sale of the
312 property, sale of the lien or approval by the Commissioner of
313 Environmental Protection of the final remedial action report. No
314 repayment shall be required, other than interest for the period that the
315 loan is outstanding, if completion of remediation of environmental
316 pollution at or on the property, or the sale or lease of such property, is
317 economically infeasible due to the cost of such remediation. The
318 commissioner may require partial repayment of the loan only if partial
319 repayment is economically feasible. Any funds received by said
320 commissioner as repayment under this subsection shall be deposited
321 into the [Special Contaminated Property Remediation and Insurance
322 Fund] Brownfield Remediation and Redevelopment Revolving Loan
323 Fund. The terms of any loan agreement entered into by said
324 commissioner under said subsection may provide for the collection of
325 interest on the loan which may vary according to whether the
326 applicant is a municipality or a private entity and the duration of the
327 repayment schedule for such loan provided the interest cost to the
328 borrower provided for in such agreement shall not exceed the interest
329 cost to the state on borrowings of like terms.

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

340 Sec. 10. Subsection (d) of section 25-68d of the general statutes is

341 repealed and the following is substituted in lieu thereof (*Effective July*
342 *1, 2007*):

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

376 Program, and, in the case of a loan or grant, the recipient of the loan or
 377 grant has been informed that increased flood insurance premiums may
 378 result from the activity or critical activity, or [(B)] (2) in the case of a
 379 flood control project, such project meets the criteria of [subparagraph
 380 (A) of this subdivision] subdivision (1) of this subsection and is more
 381 cost-effective to the state and municipalities than a project constructed
 382 to or above the base flood or base flood for a critical activity. An
 383 activity shall be considered to be in the public interest if it is a
 384 redevelopment subject to environmental remediation regulations
 385 adopted pursuant to section 22a-133k and is located in an area
 386 identified as a regional center, neighborhood conservation area,
 387 growth area or rural community center in the State Plan of
 388 Conservation and Development pursuant to chapter 297. Following
 389 approval for exemption for a flood control project, the commissioner
 390 shall provide notice of the hazards of a flood greater than the capacity
 391 of the project design to each member of the legislature whose district
 392 will be affected by the project and to the following agencies and
 393 officials in the area to be protected by the project: The planning and
 394 zoning commission, the inland wetlands agency, the director of civil
 395 defense, the conservation commission, the fire department, the police
 396 department, the chief elected official and each member of the
 397 legislative body, and the regional planning agency. Notice shall be
 398 given to the general public by publication in a newspaper of general
 399 circulation in each municipality in the area in which the project is to be
 400 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	<i>July 1, 2007</i>	New section
Sec. 10	<i>July 1, 2007</i>	25-68d(d)

ENV *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 chamber thereof for any purpose:

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). The Appropriations Act, as favorably reported by the Appropriations Committee 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 PA 06-184.

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.

The bill increases the number of towns in the brownfield pilot program created in PA 06-184 from 4 to 5, potentially reducing and/or diverting funds from one pilot program town to another. The Bond Act, as favorably approved by the Finance, Revenue and Bonding Committee authorizes \$2.5 million in General Obligation (GO) bonds in FY 08 and \$3 million in GO bonds in FY 09 for the initial pilot program.

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. Under current law, the program must designate four towns where contaminated properties hinder the towns' economic development and remediate those sites. The bill increases the number of participating towns to five and expands the criteria for selecting the contaminated properties.

EFFECTIVE DATE: July 1, 2007

§§ 4-8 — BROWNFIELD CLEANUP PROGRAM

§ 4 (1) — Purpose

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.

§§ 4 & 5 — Financial Assistance

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.

§ 6 (d) — Eligible Costs

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.

§§ 7 & 8 — Funding Sources

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. Interest and other income the fund generates must also be credited to the fund.

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

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 may 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 allows it, the commissioner can use federal dollars the town received to remediate the property.

§ 6 (e) — Terms and Conditions

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 or her obligations regarding the project and
2. requirements that he or she provide the department with letters of credit; liens; security interest in goods, equipment, inventory, or other property; or other appropriate security.

§ 6 (g) — DEP Cost Recovery

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 to 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 a defendant in these actions from acting against anyone who is party to a DEP covenant-not-sue with respect to 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.)

§ 10 — DEVELOPMENT IN FLOODPLAINS

The bill makes it easier for state agencies to undertake activities in 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 land uses in a 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.

§ 9 — NEW PILOT BROWNFIELD IDENTIFICATION AND ASSESSMENT PROGRAM

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 to the legislature the next time it revises the five-year State Plan of Conservation and Development, which is due that year.

OBRD

§ 2 (b) — Expanded Duties

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 state programs. It must also direct its outreach program to towns and individuals, in addition to existing and potential property owners.

§ 2 (a) — Coordination

The bill makes OBRD an organizational unit of DECD and requires DPH 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.

§§ 2(c) & 3 — Pilot Program

PA 06-184 required OBRD to establish a pilot program to clean up contaminated properties that hinder a town's economic development. It required OBRD to run the program in four towns, one of which must have between 25,000 and 50,000 people, one between 50,000 and 100,000 people, and two must have more than 100,000. The bill increases the number of participating towns to five and specifies that the additional town must have fewer than 25,000 people. It also specifies that the sites in these towns 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***Legislative History***

The House referred the bill to the Environment Committee, which increased the number of towns in the pilot program from four to five and specified that one of the towns must have fewer than 25,000 people.

Related Bill

sHB 7369 (File 340), 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

DPH and the Office of Responsible Growth to assign liaisons to OBRD.

sHB 7368 (File 382) also makes it easier for state agencies to undertake fund activities in floodplains located in designated development zones.

sSB 784 (File 385) 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)

Environment Committee

Joint Favorable Substitute

Yea 27 Nay 0 (04/18/2007)