



House of Representatives

General Assembly

File No. 382

January Session, 2007

Substitute House Bill No. 7368

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 BROWNFIELDS REMEDIATION AND DEVELOPMENT.

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

1 Section 1. Subsection (e) of section 22a-134a of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July*
3 *1, 2007*):

4 (e) (1) No later than thirty days after receipt of a Form III or Form
5 IV, the commissioner shall notify the certifying party whether the form
6 is complete or incomplete. Within forty-five days of receipt of a
7 complete Form III or IV, the commissioner shall notify the certifying
8 party in writing whether review and approval of the remediation by
9 the commissioner will be required, or whether a licensed
10 environmental professional may verify that the investigation has been
11 performed in accordance with prevailing standards and guidelines and
12 that the remediation has been performed in accordance with the
13 remediation standards. Any person who submitted a Form III to the
14 commissioner prior to October 1, 1995, may submit an environmental

15 condition assessment form to the commissioner. The commissioner
16 shall, within forty-five days of receipt of such form, notify the
17 certifying party whether approval of the remediation by the
18 commissioner will be required or whether a licensed environmental
19 professional may verify that the remediation has been performed in
20 accordance with the remediation standards.

21 (2) (A) When a licensed environmental professional verifies that the
22 remediation has been performed in accordance with the remediation
23 standards, such verifications shall be deemed approved by the
24 commissioner unless, within twelve months of such verification, the
25 commissioner determines, in the commissioner's sole discretion, that
26 an audit of such verification or remedial action is necessary to assess
27 whether remedial action beyond that indicated in such verification is
28 necessary for the protection of human health or the environment. Such
29 an audit shall be completed within twenty-four months of the
30 submittal of the verification. At the completion of the audit, the
31 commissioner shall approve the verification, disapprove the
32 verification or request additional information from the party
33 submitting the verification.

34 (B) If the commissioner requests additional information pursuant to
35 subparagraph (A) of this subdivision and such information has not
36 been provided to the commissioner within ninety days of the deadline
37 for completing the audit, the commissioner shall extend the period for
38 completing the audit by up to one hundred eighty days. The
39 commissioner shall make any such requests for information in writing.
40 Upon evaluating the additional information, the commissioner shall
41 approve or disapprove the verification.

42 (C) If the commissioner disapproves the verification pursuant to
43 either subparagraph (A) or (B) of this subdivision, the commissioner
44 shall give reasons for such disapproval, in writing, and such certifying
45 party may appeal such disapproval to the Superior Court pursuant to
46 section 4-183. Before approving a final verification, the commissioner
47 may enter into a memorandum of understanding with the certifying

48 party with regard to any further remedial action or monitoring
49 activities on or at such property that the commissioner deems
50 necessary for the protection of human health or the environment.

51 (D) The deadlines for the conduct of an audit pursuant to this
52 subdivision shall not apply to (i) properties for which the department
53 finds that the submitted verification was obtained through the
54 submittal of fraudulent information or that intentional
55 misrepresentations were made to the department in connection with
56 the submittal of the verification, or (ii) those sites that are currently
57 subject to an order of the department.

58 Sec. 2. Subsection (g) of section 22a-133v of the general statutes is
59 repealed and the following is substituted in lieu thereof (*Effective July*
60 *1, 2007*):

61 (g) The board may conduct investigations concerning the conduct of
62 any licensed environmental professional. The commissioner may
63 conduct audits of any actions authorized by law to be performed by a
64 licensed environmental professional. The board shall authorize the
65 commissioner to (1) revoke [or suspend] the license of any
66 environmental professional; [or to] (2) suspend the license of any
67 environmental professional; (3) impose any other sanctions less severe
68 than revocation or suspension that the board deems appropriate; or (4)
69 deny an application for such licensure if the board, after providing
70 such professional with notice and an opportunity to be heard
71 concerning such revocation, suspension, other sanction or denial, finds
72 that such professional has submitted false or misleading information to
73 the board or has engaged in professional misconduct including,
74 without limitation, knowingly or recklessly making a false verification
75 of a remediation under section 22a-134a, or violating any provision of
76 this section or regulations adopted hereunder. The board shall make
77 available to the public a list of any sanctions, license suspensions or
78 license revocations. Any sanction imposed under this subsection shall
79 not include the imposition of any civil fine or civil penalty.

80 Sec. 3. Subsection (d) of section 25-68d of the general statutes is

81 repealed and the following is substituted in lieu thereof (*Effective July*
82 *1, 2007*):

83 (d) Any state agency proposing an activity or critical activity within
84 or affecting the floodplain may apply to the commissioner for
85 exemption from the provisions of subsection (b) of this section. Such
86 application shall include a statement of the reasons why such agency is
87 unable to comply with said subsection and any other information the
88 commissioner deems necessary. The commissioner, [at least thirty days
89 before approving, approving with conditions or denying any such
90 application, shall publish once in a newspaper having a substantial
91 circulation in the affected area notice of: (1) The name of the applicant;
92 (2) the location and nature of the requested exemption; (3) the tentative
93 decision on the application; and (4) additional information the
94 commissioner deems necessary to support the decision to approve,
95 approve with conditions or deny the application. There shall be a
96 comment period following the public notice during which period
97 interested persons and municipalities may submit written comments.
98 After the comment period, the commissioner shall make a final
99 determination to either approve the application, approve the
100 application with conditions or deny the application. The commissioner
101 may hold a public hearing prior to approving, approving with
102 conditions or denying any application if in the discretion of the
103 commissioner the public interest will be best served thereby, and the
104 commissioner shall hold a public hearing upon receipt of a petition
105 signed by at least twenty-five persons. Notice of such hearing shall be
106 published at least thirty days before the hearing in a newspaper
107 having a substantial circulation in the area affected. The commissioner
108 may approve or approve with conditions such exemption if the
109 commissioner determines that (A)] after public notice of the
110 application and an opportunity for a public hearing in accordance with
111 the provisions of chapter 54, may approve such exemption if the
112 commissioner determines that (1) the agency has shown that the
113 activity or critical activity is in the public interest, will not injure
114 persons or damage property in the area of such activity or critical
115 activity, complies with the provisions of the National Flood Insurance

116 Program, and, in the case of a loan or grant, the recipient of the loan or
117 grant has been informed that increased flood insurance premiums may
118 result from the activity or critical activity, or [(B)] (2) in the case of a
119 flood control project, such project meets the criteria of [subparagraph
120 (A) of this subdivision] subdivision (1) of this subsection and is more
121 cost-effective to the state and municipalities than a project constructed
122 to or above the base flood or base flood for a critical activity. Any
123 activity that is a redevelopment subject to environmental remediation
124 regulations adopted pursuant to section 22a-133k located in an area
125 identified as a regional center, neighborhood conservation area,
126 growth area or rural community center in the State Plan of
127 Conservation and Development pursuant to chapter 297 shall be
128 considered to be in the public interest. Following approval for
129 exemption for a flood control project, the commissioner shall provide
130 notice of the hazards of a flood greater than the capacity of the project
131 design to each member of the legislature whose district will be affected
132 by the project and to the following agencies and officials in the area to
133 be protected by the project: The planning and zoning commission, the
134 inland wetlands agency, the director of civil defense, the conservation
135 commission, the fire department, the police department, the chief
136 elected official and each member of the legislative body, and the
137 regional planning agency. Notice shall be given to the general public
138 by publication in a newspaper of general circulation in each
139 municipality in the area in which the project is to be located.

140 Sec. 4. Section 12-63e of the general statutes is repealed and the
141 following is substituted in lieu thereof (*Effective July 1, 2007*):

142 (a) Notwithstanding the provisions of this chapter, when
143 determining the value of any property, except residential property, for
144 purpose of the assessment for property taxes, the assessors of a
145 municipality shall not reduce the value of any property due to any
146 polluted or environmentally hazardous condition existing on such
147 property if such condition was caused by the owner of such property
148 or if a successor in title to such owner acquired such property after any
149 notice of the existence of any such condition was filed on the land

150 records in the town where the property is located. For purposes of this
151 section, an owner shall be deemed to have caused the polluted or
152 environmentally hazardous condition if the Department of
153 Environmental Protection, the United States Environmental Protection
154 Agency or a court of competent jurisdiction has determined that such
155 owner caused such condition or a portion of it.

156 (b) If any owner of such property or if any successor in title to such
157 owner who acquired such property after any notice of the existence of
158 any such condition was filed on the land records in the town where the
159 property is located (1) enters into an agreement with the department to
160 voluntarily remediate such property, (2) files such agreement on the
161 land records of the town where such property is located, and (3) has
162 developed an approved remedial action plan for the property, the
163 provisions of subsection (a) of this section shall not apply. In such
164 instances, the assessors of a municipality may reduce the value of any
165 property due to any polluted or environmentally hazardous condition
166 existing on such property. The assessors of a municipality may also
167 raise the value of any property after remediation is completed to take
168 into account the removal of such pollution or environmentally
169 hazardous condition.

170 Sec. 5. (NEW) (Effective July 1, 2007) (a) For purposes of this section,
171 (1) "eligible property owner" means a person who is an existing
172 property owner who is in good general standing with the Department
173 of Environmental Protection, demonstrates an inability to pay, and
174 cannot retain or expand jobs due to the expense associated with the
175 investigation and remediation of contamination of a property; (2)
176 "eligible developer" means a person who did not cause or contribute to
177 the discharge, spillage, uncontrolled loss, seepage or filtration of such
178 hazardous substance, material or waste and who is not a member,
179 officer, manager, director, shareholder, subsidiary, successor of,
180 related to, or affiliated with, directly or indirectly, the person who is
181 otherwise liable under section 22a-432, 22a-433, 22a-451 or 22a-452 of
182 the general statutes; (3) "brownfield remediation agreement" means an
183 agreement entered into by and between the Commissioner of

184 Environmental Protection and an eligible property owner or developer
185 for the investigation and remediation of a brownfield site; (4)
186 "brownfield site" means any abandoned or underutilized site where
187 redevelopment and reuse has not occurred due to the presence or
188 pollution on the soil or groundwater that requires remediation prior to
189 or in conjunction with the restoration, redevelopment and reuse of the
190 property; (5) "Commissioner" means the Commissioner of
191 Environmental Protection; and (6) "person" shall have the same
192 meaning as in section 22-2 of the general statutes.

193 (b) On or before January 1, 2008, the commissioner shall prepare a
194 brownfield remediation agreement that shall be available to any
195 eligible developer who voluntarily elects to investigate and remediate
196 a property for purposes of development, redevelopment or reuse. The
197 brownfield remediation agreement shall (1) set forth deadlines for
198 completion of the site investigation, remedial activities and the
199 submittal of a verification by a licensed environmental professional or
200 approval by the commissioner of the completion of the remedial
201 activities; (2) provide for a covenant not to sue under subsection (b) of
202 section 22a-133aa of the general statutes without fee; (3) exempt the
203 eligible developer from remediation of contamination that has
204 migrated off-site as of the date the eligible developer acquired its
205 ownership interest in the property; (4) exempt the eligible developer
206 from natural resources damage claims that may arise under state or
207 common law; and (5) protect the eligible developer from remediation
208 orders provided the eligible developer is following the remedial action
209 plan and has not provided intentional, fraudulent or negligent
210 misrepresentations to the commissioner.

211 (c) At the request of the eligible developer, the commissioner shall
212 execute the agreement with the eligible developer prior to the eligible
213 developer initiating any investigation or remediation activities on the
214 brownfield property. The brownfield remediation agreement shall be
215 assignable to any subsequent eligible developer, provided that the
216 subsequent eligible developer agrees in writing to its terms. In such
217 event, the prior eligible developer is released from its investigation and

218 remedial obligations under the brownfield remediation agreement but
219 remains subject to the protections provided in subsection (b) of this
220 section. Once a brownfield site is subject to a brownfield remediation
221 agreement, the provisions of section 22a-134 to 22a-134ee, inclusive, of
222 the general statutes do not apply, unless the eligible developer creates
223 an establishment on the brownfield site and a new release has
224 occurred.

225 (d) On or before January 1, 2008, the commissioner shall prepare a
226 brownfield remediation agreement that shall be available to any
227 eligible owner who voluntarily elects to investigate and remediate a
228 property for purposes of development, redevelopment or reuse. The
229 brownfield remediation agreement shall (1) set forth deadlines for
230 completion of the site investigation, remedial activities, and the
231 submittal of a verification by a licensed environmental professional or
232 approval by the commissioner of the completion of the remedial
233 activities; (2) provide for a covenant not to sue under subsection (b) of
234 section 22a-133aa of the general statutes without fee; and (3) protect
235 the eligible owner from remediation orders provided said eligible
236 owner is following the remedial action plan and has not provided
237 intentional, fraudulent or negligent misrepresentations to the
238 commissioner. To qualify for the brownfield remediation agreement
239 pursuant to this subsection, the eligible owner shall demonstrate a
240 limited ability to pay the necessary costs of remediation and agree to
241 remain in Connecticut for no less than ten years.

242 Sec. 6. (NEW) (*Effective July 1, 2007*) On or before June 1, 2009, the
243 Commissioner of Environmental Protection shall adopt regulations, in
244 accordance with the provisions of chapter 54 of the general statutes,
245 identifying locations that were subject to urban fill and areas in the
246 state where filling historically occurred. Such regulations shall also set
247 forth remediation standards consistent with the urban or filling history
248 of the property and adjacent properties.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>July 1, 2007</i>	22a-134a(e)
Sec. 2	<i>July 1, 2007</i>	22a-133v(g)
Sec. 3	<i>July 1, 2007</i>	25-68d(d)
Sec. 4	<i>July 1, 2007</i>	12-63e
Sec. 5	<i>July 1, 2007</i>	New section
Sec. 6	<i>July 1, 2007</i>	New section

CE *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 \$
Department of Environmental Protection	GF - Cost	Significant	Significant

Note: GF=General Fund

Municipal Impact:

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

Explanation

The bill changes and imposes deadlines on the verification and audit process concerning the remediation of properties under the transfer act using licensed environmental professionals (LEPS) for the Department of Environmental Protection (DEP). Currently 2/3 of all audits result in noncompliance. There are approximately 175-200 properties which fall under the transfer act each year, and there have been thousands of sites historically. The deadline would require the DEP to audit all transfers that have taken place which are presumed to be in compliance within the next 2 years. It is estimated that the DEP will require 6-8 environmental analysts at a FY 08 cost of \$360,000-\$480,000 for salaries plus fringe benefits¹ and associated other expenses

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated first year fringe benefit rate for a new employee as a percentage of average salary is 25.8%, effective July 1, 2006. The first year fringe benefit costs for new positions do not include pension costs. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS 2006-07 fringe benefit rate is 34.4%, which when combined with the non pension fringe benefit rate totals 60.2%.

of \$15,000 to \$20,000. This would be an ongoing cost incurred by the DEP for the continued auditing of new transfer properties.

The bill also establishes a new 'voluntary agreements' program which requires the DEP prepare agreements entitling developers to certain protections and exemptions under certain conditions and will require the DEP to actively oversee and review the polluted sites. It is estimated that the DEP would require 8 to 10 environmental analysts at a FY 08 cost of \$480,000 - \$600,000 for salaries plus fringe benefits and associated other expenses cost of approximately \$20,000 to \$25,000.

The DEP would also require additional resources of \$50,000 to \$100,000 in FY 08 in order to adopt the regulations required in the bill concerning urban fill, areas where filling historically occurred and remediation standards.

The bill allows municipalities to reduce the assessment of a contaminated property if the owner has entered into an agreement with the DEP to remediate the property. Municipalities electing to do this will experience a loss to their net grand list (assessed value less exemptions permitted under state law) that will likely necessitate an increase in their mill rate to offset the reduction in assessed value.

The Out Years

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

OLR Bill Analysis

sHB 7368

AN ACT CONCERNING BROWNFIELDS REMEDIATION AND DEVELOPMENT.

SUMMARY:

This bill requires the Department of Environmental Protection (DEP) commissioner to prepare voluntary agreements for investigating and remediating contaminated sites (i.e., brownfields) according to the prevailing DEP standards. She must treat brownfield developers and owners differently in preparing agreements and providing protection and assurance from future liability and future remediation orders. She must do this by January 1, 2008.

It imposes deadlines on the DEP commissioner when she receives a report from a licensed environmental professional (LEP) under the Transfer Act verifying that a contaminated property was remediated according to DEP standards. It sets deadlines for (1) deciding whether to accept the report or audit the verification and (2) completing the audit and approving or disapproving the remediation.

The bill gives the LEP board of examiners more options for disciplining licenses.

The bill makes it easier for state agencies to transfer property and undertake activities in floodplains. It designates these activities to be in the public interest if the floodplain is located in an area that is suitable for development under the State Plan of Conservation and Development.

The bill allows tax assessors to reduce the value of contaminated business property if the owner or his successor in title agrees to

remediate it according to DEP standards.

Lastly, the bill requires the commissioner to adopt regulations by June 1, 2009 identifying areas where urban fill historically occurred. The regulations must include remediation standards consistent with the urban filling history of the properties and those adjacent to them in these areas.

EFFECTIVE DATE: July 1, 2007

VOLUNTARY AGREEMENTS (§ 5)

Eligible Properties

The bill requires the DEP commissioner to prepare agreements under which developers and property owners voluntarily agree to investigate and remediate brownfields. A property can be remediated under these agreements if it is an abandoned or underused site where soil or ground water pollution requiring remediation has kept it from being redeveloped or reused.

Developer Agreements

The bill requires the commissioner to prepare an agreement entitling a developer to certain protections if he voluntarily agrees to investigate and remediate a brownfield that will be developed, redeveloped, or reused. A developer qualifies for an agreement if he did not cause or contribute to the contamination and is not connected directly or indirectly with the party that is legally liable for it.

The agreement must impose deadlines on the developer for completing the site investigation and remedial actions and obtaining verification that the remediation was completed. The verification can come from an LEP or the commissioner. The agreement must also provide for a covenant not to sue between the developer and the commissioner. The law allows the commissioner to enter into these covenants, which assure the developer that DEP will not require additional future remediation if he remediates the site according to current standards. The bill requires the agreement to provide the covenant without fee.

The bill requires the agreement to provide the developer other benefits. It must exempt him from remediating contamination that migrated off the brownfield before he acquired the property and from any natural resource damage claims that could arise under statutory or common law. The agreement must also protect the developer from any remediation orders as long as he is following the remedial action plan and has not intentionally, fraudulent, or negligently misrepresented things to the commissioner.

The commissioner must execute the agreement at the developer's request before the developer begins to investigate and remediate the brownfield. The bill allows the developer to assign the agreement to a subsequent eligible developer if that developer agrees in writing to comply with the agreement's terms. In this case, the first developer is relieved from having to perform under the agreement, but still enjoys its protections.

The agreement exempts the brownfield from the Transfer Act, under which parties to a transaction must notify the commissioner about a contaminated or potentially contaminated property's environmental status. The exemption applies as long as the developer does not establish a use involving hazardous wastes and those wastes are discharged on the property.

Owner Agreements

The commissioner must also prepare a different agreement for the owners of brownfields who also voluntarily agree to investigate and remediate them before developing, redeveloping, or reusing them. An owner qualifies for the agreement if he is in good standing with DEP, shows that he cannot afford to remediate the property, and that the remediation cost prevents him from creating or retaining jobs. He must also agree to remain in Connecticut for at least 10 years.

The agreement must contain some of the same provisions as the developer agreement. It must impose deadlines on the owner for completing the site investigation and remedial actions and obtaining

verification that the remediation was completed. The verification can come from an LEP or the commissioner. The agreement must also provide for a covenant not to sue between the owner and the commissioner. The commissioner must provide the covenant without imposing a fee. The agreement must protect the owner from any remediation orders as long as he is following the remedial action plan and has not intentionally, fraudulently, or negligently misrepresented things to the commissioner.

DEADLINES FOR VERIFYING REMEDIATION (§ 1)

The bill imposes deadlines on the commissioner after she receives a report from an LEP verifying that a property was cleaned up according to DEP standards. LEPs are hired by parties that want to transfer a contaminated or potentially contaminated property. They allow the parties to comply with the law requiring them to notify the commissioner about the property's environmental status before they can transfer it. Within 45 days after receiving the report, the commissioner must notify parties as to whether DEP will review and approve the remediation or allow them to hire an LEP for that purpose.

If, under the bill, the commissioner allows the parties to hire an LEP to verify that the property was remediated according to DEP's standards, she must notify them within 12 months after receiving the report as to whether she needs to audit its findings to determine if more remediation is needed to protect human health and the environment. She tacitly approves the report if she does not respond to the parties by the 12-month deadline.

If the commissioner decides to audit the verification, she must do so within 24 months after receiving the report. When DEP completes the audit, the commissioner must approve or disapprove the verification or request additional information from the LEP, which she must make in writing. If the commissioner requests additional information, the LEP must provide it at least 90 days before the deadline for completing the audit. Otherwise, she can extend the audit deadline by up to 180

days. The commissioner must evaluate the additional information and approve or disapprove the verification.

If the commissioner approves the verification, she may enter into a memorandum of understanding with the party requiring future remedial action or monitoring she deems necessary to protect human health and the environment. If she disapproves the verification, she must state her reasons for doing so in writing. The party may appeal her decision to Superior Court.

The bill's deadlines do not apply if the property is under a DEP order. Nor do they apply if DEP found that the verification is based on fraudulent information or was submitted to DEP with intentional misrepresentations.

LEP BOARD OF EXAMINERS (§ 2)

The bill expands the disciplinary actions the LEP board of examiners can take. Current law allows the board to revoke or suspend a license or deny someone's license application for submitting false or misleading information to the board or engaging in professional misconduct. The bill allows the board to impose other less severe sanctions but prohibits it from imposing any civil fines or penalties. The board must make a list of the sanctions and license suspensions and revocations available to the public.

FLOODPLAINS (§ 3)

The bill makes it easier for state agencies to undertake activities in floodplain areas. The law generally restricts agencies from undertaking activities in these areas unless they obtain the DEP commissioner's approval. The commissioner must approve any transfer of state property in the floodplain or any activity that could affect land uses there. Under current law, she must publish a notice describing the proposed activity at least 30 days before rendering a decision. She must also allow the public to comment on the activity and hold a hearing if she thinks it's necessary or at least 25 people petition for one. Under the bill, she must follow the procedures specified in the

Uniform Administrative Procedures Act for notice and opportunity for a hearing.

Under current law, the commissioner may approve the project 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 project with state funds, it must be informed that the project could increase flood insurance premiums. The bill specifies that the activity serves the public interest if it will remediate property according to DEP standards and the property is located in an area designated for development in the State Plan of Conservation and Development.

PROPERTY TAX ASSESSMENT (§ 4)

The bill specifies circumstances when tax assessors may reduce the assessment on a contaminated property. Current law prohibits them from reducing the value of contaminated business property if the federal and state environmental protection agencies or a court determined the owner contaminated it. The owner's successor in title is also responsible for the contamination if he purchased the property knowing that it was contaminated.

The bill allows the assessors to reduce the property's value if the owner or his successor in title:

1. volunteers to remediate it under an agreement with DEP,
2. files the agreement in the town's land records, and
3. has prepared a DEP-approved remediation plan.

The assessors may increase the value of the property after it is remediated.

BACKGROUND

Related Bill

HB 7079 contains similar provisions making it easier for state agencies to undertake activities in floodplains. It and sHB 7369 also

create new programs to finance assessment and remediation costs and expand the state's capacity to assist and process brownfield remediation projects.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute

Yea 19 Nay 0 (03/20/2007)