



Senate

General Assembly

File No. 905

January Session, 2007

Substitute Senate Bill No. 1432

Senate, June 1, 2007

The Committee on Finance, Revenue and Bonding reported through SEN. DAILY of the 33rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING GLOBAL WARMING AND BROWNFIELDS
REMEDICATION AND DEVELOPMENT.***

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

1 Section 1. Section 4a-67d of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) The fleet average for cars or light duty trucks purchased by the
4 state shall: (1) On and after October 1, 2001, have a United States
5 Environmental Protection Agency estimated highway gasoline mileage
6 rating of at least thirty-five miles per gallon and on and after January 1,
7 2003, have a United States Environmental Protection Agency estimated
8 highway gasoline mileage rating of at least forty miles per gallon, (2)
9 comply with the requirements set forth in 10 CFR 490 concerning the
10 percentage of alternative-fueled vehicles required in the state motor
11 vehicle fleet, and (3) obtain the best achievable mileage per pound of
12 carbon dioxide emitted in its class. The alternative-fueled vehicles
13 purchased by the state to comply with said requirements shall be

14 capable of operating on natural gas or electricity or any other system
15 acceptable to the United States Department of Energy that operates on
16 fuel that is available in the state.

17 (b) Notwithstanding any other provisions of this section, (1) on and
18 after January 1, 2008, any car or light duty truck purchased by the state
19 shall have an efficiency rating that is in the top third of all vehicles in
20 such purchased vehicle's class and fifty per cent of such cars and light
21 duty trucks shall be an alternative fueled, hybrid electric or plug-in
22 electric vehicle, and (2) on and after January 1, 2010, any car or light
23 duty truck purchased by the state shall have an efficiency rating that is
24 in the top third of all vehicles in such purchased vehicle's class and be
25 an alternative fueled, hybrid electric or plug-in electric vehicle.

26 ~~[(b)]~~ (c) The provisions of [subsection (a)] subsections (a) and (b) of
27 this section shall not apply to cars or light duty trucks purchased for
28 law enforcement or other special use purposes as designated by the
29 Department of Administrative Services.

30 ~~[(c)]~~ (d) As used in this section, the terms "car" and "light duty
31 truck" shall be as defined in the United States Department of Energy
32 Publication DOE/CE -0019/8, or any successor publication.

33 Sec. 2. Section 16a-32a of the general statutes is repealed and the
34 following is substituted in lieu thereof (*Effective from passage*):

35 The Office of Policy and Management shall amend the state plan of
36 conservation and development adopted pursuant to this chapter to
37 include therein a goal for reducing carbon dioxide emissions within
38 this state in accordance with the state's agreement with the Climate
39 Change Action Plan adopted by the Conference of New England
40 Governors and Canadian Premiers. [Said office, in consultation with
41 the Department of Environmental Protection, shall submit a report to
42 the General Assembly on or before the thirtieth day following May 22,
43 1995, on or before May 1, 1996, and annually thereafter, which details
44 the net amount of carbon dioxide emitted annually within this state.
45 Subsequent to the May 1, 2000, submittal, said report shall be

46 submitted every three years with the first such report due May 1,
47 2003.]

48 Sec. 3. (*Effective from passage*) On or before February 1, 2008, the
49 Connecticut Academy of Science and Engineering, in consultation with
50 the state Department of Environmental Protection, shall submit a
51 written report regarding the expected effects of climate change on
52 Connecticut and including recommendations on what the state should
53 do to prepare for such effects to the joint standing committee of the
54 General Assembly having cognizance of matters relating to the
55 environment in accordance with the provisions of section 11-4a of the
56 general statutes.

57 Sec. 4. (NEW) (*Effective from passage*) The Commissioner of
58 Environmental Protection shall study the potential for integrating
59 motorized fleets into the cap and trade mechanism of the Northeast
60 Regional Greenhouse Gas Initiative, and not later than January 1, 2008,
61 the commissioner shall submit a written recommendation concerning
62 what legislative action would be necessary to include transportation
63 sources of climate change gases into regional cap and trade agreements
64 to the joint standing committee of the General Assembly having
65 cognizance of matters relating to the environment in accordance with
66 the provisions of section 11-4a of the general statutes.

67 Sec. 5. (NEW) (*Effective October 1, 2007*) The Commissioner of
68 Environmental Protection shall study the availability of energy
69 efficient lamps such as compact fluorescent lamps, halogen lamps and
70 high-intensity discharge lamps at competitive prices for consumers
71 and compile a list of inefficient incandescent lamps. Not later than
72 April 1, 2008, the commissioner shall give notice of the preliminary
73 draft of such list. Such notice shall: (1) Be posted on the Department of
74 Environmental Protection's Internet web site, (2) be published in one
75 or more newspapers having a general circulation in the state, and (3)
76 contain when, where and how interested parties may present their
77 views on the preliminary draft. The commissioner may revise such list
78 based upon written or oral comments received in response to the

79 preliminary draft. Not later than sixty-five days after the publication of
80 the notice of the preliminary draft and not less than twenty days before
81 publishing the final list on the department's Internet web site, the
82 commissioner shall reach a decision on the content of the final list.
83 The commissioner shall submit the final list to the joint standing
84 committee of the General Assembly having cognizance of matters
85 relating to the environment along with a statement of the reasons for
86 the final decision and shall mail to all persons who have submitted
87 written comments in response to the preliminary draft a copy of such
88 final list and statement.

89 Sec. 6. (NEW) (*Effective July 1, 2007, and applicable to assessment years*
90 *commencing on or after October 1, 2007*) Any municipality, by vote of its
91 legislative body or, in a municipality where the legislative body is a
92 town meeting, by vote of the board of selectmen, may abate up to one
93 hundred per cent of the property taxes due, for any assessment year
94 commencing on or after July 1, 2007, with respect to any hybrid
95 passenger car, as defined in subdivision (115) of section 12-412,
96 purchased on or after July 1, 2007.

97 Sec. 7. Subsection (e) of section 22a-134a of the general statutes is
98 repealed and the following is substituted in lieu thereof (*Effective July*
99 *1, 2007*):

100 (e) (1) No later than thirty days after receipt of a Form III or Form
101 IV, the commissioner shall notify the certifying party whether the form
102 is complete or incomplete. Within forty-five days of receipt of a
103 complete Form III or IV, the commissioner shall notify the certifying
104 party in writing whether review and approval of the remediation by
105 the commissioner will be required, or whether a licensed
106 environmental professional may verify that the investigation has been
107 performed in accordance with prevailing standards and guidelines and
108 that the remediation has been performed in accordance with the
109 remediation standards. Any person who submitted a Form III to the
110 commissioner prior to October 1, 1995, may submit an environmental
111 condition assessment form to the commissioner. The commissioner

112 shall, within forty-five days of receipt of such form, notify the
113 certifying party whether approval of the remediation by the
114 commissioner will be required or whether a licensed environmental
115 professional may verify that the remediation has been performed in
116 accordance with the remediation standards.

117 (2) (A) When a licensed environmental professional verifies that the
118 remediation has been performed in accordance with the remediation
119 standards, such verifications shall be deemed approved by the
120 commissioner unless, within twelve months of such verification, the
121 commissioner determines, in the commissioner's sole discretion, that
122 an audit of such verification or remedial action is necessary to assess
123 whether remedial action beyond that indicated in such verification is
124 necessary for the protection of human health or the environment. Such
125 an audit shall be completed within twenty-four months of the
126 submittal of the verification. At the completion of the audit, the
127 commissioner shall approve the verification, disapprove the
128 verification or request additional information from the party
129 submitting the verification.

130 (B) If the commissioner requests additional information pursuant to
131 subparagraph (A) of this subdivision and such information has not
132 been provided to the commissioner within ninety days of the deadline
133 for completing the audit, the commissioner shall extend the period for
134 completing the audit by up to one hundred eighty days. The
135 commissioner shall make any such requests for information in writing.
136 Upon evaluating the additional information, the commissioner shall
137 approve or disapprove the verification.

138 (C) If the commissioner disapproves the verification pursuant to
139 either subparagraph (A) or (B) of this subdivision, the commissioner
140 shall give reasons for such disapproval, in writing, and such certifying
141 party may appeal such disapproval to the Superior Court pursuant to
142 section 4-183. Before approving a final verification, the commissioner
143 may enter into a memorandum of understanding with the certifying
144 party with regard to any further remedial action or monitoring

145 activities on or at such property that the commissioner deems
146 necessary for the protection of human health or the environment.

147 (D) The deadlines for the conduct of an audit pursuant to this
148 subdivision shall not apply to (i) properties for which the department
149 finds that the submitted verification was obtained through the
150 submittal of fraudulent information or that intentional
151 misrepresentations were made to the department in connection with
152 the submittal of the verification, or (ii) those sites that are currently
153 subject to an order of the department.

154 Sec. 8. Subsection (g) of section 22a-133v of the general statutes is
155 repealed and the following is substituted in lieu thereof (*Effective July*
156 *1, 2007*):

157 (g) The board may conduct investigations concerning the conduct of
158 any licensed environmental professional. The commissioner may
159 conduct audits of any actions authorized by law to be performed by a
160 licensed environmental professional. The board shall authorize the
161 commissioner to (1) revoke [or suspend] the license of any
162 environmental professional; [or to] (2) suspend the license of any
163 environmental professional; (3) impose any other sanctions less severe
164 than revocation or suspension that the board deems appropriate; or (4)
165 deny an application for such licensure if the board, after providing
166 such professional with notice and an opportunity to be heard
167 concerning such revocation, suspension, other sanction or denial, finds
168 that such professional has submitted false or misleading information to
169 the board or has engaged in professional misconduct including,
170 without limitation, knowingly or recklessly making a false verification
171 of a remediation under section 22a-134a, or violating any provision of
172 this section or regulations adopted hereunder. The board shall make
173 available to the public a list of any sanctions, license suspensions or
174 license revocations. Any sanction imposed under this subsection shall
175 not include the imposition of any civil fine or civil penalty.

176 Sec. 9. Subsection (d) of section 25-68d of the general statutes is
177 repealed and the following is substituted in lieu thereof (*Effective July*

178 1, 2007):

179 (d) Any state agency proposing an activity or critical activity within
180 or affecting the floodplain may apply to the commissioner for
181 exemption from the provisions of subsection (b) of this section. Such
182 application shall include a statement of the reasons why such agency is
183 unable to comply with said subsection and any other information the
184 commissioner deems necessary. The commissioner, [at least thirty days
185 before approving, approving with conditions or denying any such
186 application, shall publish once in a newspaper having a substantial
187 circulation in the affected area notice of: (1) The name of the applicant;
188 (2) the location and nature of the requested exemption; (3) the tentative
189 decision on the application; and (4) additional information the
190 commissioner deems necessary to support the decision to approve,
191 approve with conditions or deny the application. There shall be a
192 comment period following the public notice during which period
193 interested persons and municipalities may submit written comments.
194 After the comment period, the commissioner shall make a final
195 determination to either approve the application, approve the
196 application with conditions or deny the application. The commissioner
197 may hold a public hearing prior to approving, approving with
198 conditions or denying any application if in the discretion of the
199 commissioner the public interest will be best served thereby, and the
200 commissioner shall hold a public hearing upon receipt of a petition
201 signed by at least twenty-five persons. Notice of such hearing shall be
202 published at least thirty days before the hearing in a newspaper
203 having a substantial circulation in the area affected. The commissioner
204 may approve or approve with conditions such exemption if the
205 commissioner determines that (A)] after public notice of the
206 application and an opportunity for a public hearing in accordance with
207 the provisions of chapter 54, may approve such exemption if the
208 commissioner determines that (1) the agency has shown that the
209 activity or critical activity is in the public interest, will not injure
210 persons or damage property in the area of such activity or critical
211 activity, complies with the provisions of the National Flood Insurance
212 Program, and, in the case of a loan or grant, the recipient of the loan or

213 grant has been informed that increased flood insurance premiums may
214 result from the activity or critical activity, or [(B)] (2) in the case of a
215 flood control project, such project meets the criteria of [subparagraph
216 (A) of this subdivision] subdivision (1) of this subsection and is more
217 cost-effective to the state and municipalities than a project constructed
218 to or above the base flood or base flood for a critical activity. Any
219 activity that is a redevelopment subject to environmental remediation
220 regulations adopted pursuant to section 22a-133k located in an area
221 identified as a regional center, neighborhood conservation area,
222 growth area or rural community center in the State Plan of
223 Conservation and Development pursuant to chapter 297 shall be
224 considered to be in the public interest. Following approval for
225 exemption for a flood control project, the commissioner shall provide
226 notice of the hazards of a flood greater than the capacity of the project
227 design to each member of the legislature whose district will be affected
228 by the project and to the following agencies and officials in the area to
229 be protected by the project: The planning and zoning commission, the
230 inland wetlands agency, the director of civil defense, the conservation
231 commission, the fire department, the police department, the chief
232 elected official and each member of the legislative body, and the
233 regional planning agency. Notice shall be given to the general public
234 by publication in a newspaper of general circulation in each
235 municipality in the area in which the project is to be located.

236 Sec. 10. Section 12-63e of the general statutes is repealed and the
237 following is substituted in lieu thereof (*Effective July 1, 2007*):

238 (a) Notwithstanding the provisions of this chapter, when
239 determining the value of any property, except residential property, for
240 purpose of the assessment for property taxes, the assessors of a
241 municipality shall not reduce the value of any property due to any
242 polluted or environmentally hazardous condition existing on such
243 property if such condition was caused by the owner of such property
244 or if a successor in title to such owner acquired such property after any
245 notice of the existence of any such condition was filed on the land
246 records in the town where the property is located. For purposes of this

247 section, an owner shall be deemed to have caused the polluted or
248 environmentally hazardous condition if the Department of
249 Environmental Protection, the United States Environmental Protection
250 Agency or a court of competent jurisdiction has determined that such
251 owner caused such condition or a portion of it.

252 (b) If any owner of such property or if any successor in title to such
253 owner who acquired such property after any notice of the existence of
254 any such condition was filed on the land records in the town where the
255 property is located (1) enters into an agreement with the department to
256 voluntarily remediate such property, (2) files such agreement on the
257 land records of the town where such property is located, and (3) has
258 developed an approved remedial action plan for the property, the
259 provisions of subsection (a) of this section shall not apply. In such
260 instances, the assessors of a municipality may reduce the value of any
261 property due to any polluted of environmentally hazardous condition
262 existing on such property. The assessors of a municipality may also
263 raise the value of any property after remediation is completed to take
264 into account the removal of such pollution or environmentally
265 hazardous condition.

266 Sec. 11. (NEW) (*Effective July 1, 2007*) (a) For purposes of this section,
267 (1) "eligible property owner" means a person who is an existing
268 property owner who is in good general standing with the Department
269 of Environmental Protection, demonstrates an inability to pay, and
270 cannot retain or expand jobs due to the expense associated with the
271 investigation and remediation of contamination of a property; (2)
272 "eligible developer" means a person who did not cause or contribute to
273 the discharge, spillage, uncontrolled loss, seepage or filtration of such
274 hazardous substance, material or waste and who is not a member,
275 officer, manager, director, shareholder, subsidiary, successor of,
276 related to, or affiliated with, directly or indirectly, the person who is
277 otherwise liable under section 22a-432, 22a-433, 22a-451 or 22a-452 of
278 the general statutes; (3) "brownfield remediation agreement" means an
279 agreement entered into by and between the Commissioner of
280 Environmental Protection and an eligible property owner or developer

281 for the investigation and remediation of a brownfield site; (4)
282 "brownfield site" means any abandoned or underutilized site where
283 redevelopment and reuse has not occurred due to the presence or
284 pollution on the soil or groundwater that requires remediation prior to
285 or in conjunction with the restoration, redevelopment and reuse of the
286 property; (5) "Commissioner" means the Commissioner of
287 Environmental Protection; and (6) "person" shall have the same
288 meaning as in section 22-2 of the general statutes.

289 (b) On or before January 1, 2008, the commissioner shall prepare a
290 brownfield remediation agreement that shall be available to any
291 eligible developer who voluntarily elects to investigate and remediate
292 a property for purposes of development, redevelopment or reuse. The
293 brownfield remediation agreement shall (1) set forth deadlines for
294 completion of the site investigation, remedial activities and the
295 submittal of a verification by a licensed environmental professional or
296 approval by the commissioner of the completion of the remedial
297 activities; (2) provide for a covenant not to sue under subsection (b) of
298 section 22a-133aa of the general statutes without fee; (3) exempt the
299 eligible developer from remediation of contamination that has
300 migrated off-site as of the date the eligible developer acquired its
301 ownership interest in the property; (4) exempt the eligible developer
302 from natural resources damage claims that may arise under state or
303 common law; and (5) protect the eligible developer from remediation
304 orders provided the eligible developer is following the remedial action
305 plan and has not provided intentional, fraudulent or negligent
306 misrepresentations to the commissioner.

307 (c) At the request of the eligible developer, the commissioner shall
308 execute the agreement with the eligible developer prior to the eligible
309 developer initiating any investigation or remediation activities on the
310 brownfield property. The brownfield remediation agreement shall be
311 assignable to any subsequent eligible developer, provided that the
312 subsequent eligible developer agrees in writing to its terms. In such
313 event, the prior eligible developer is released from its investigation and
314 remedial obligations under the brownfield remediation agreement but

315 remains subject to the protections provided in subsection (b) of this
 316 section. Once a brownfield site is subject to a brownfield remediation
 317 agreement, the provisions of section 22a-134 to 22a-134ee, inclusive, of
 318 the general statutes do not apply, unless the eligible developer creates
 319 an establishment on the brownfield site and a new release has
 320 occurred.

321 (d) On or before January 1, 2008, the commissioner shall prepare a
 322 brownfield remediation agreement that shall be available to any
 323 eligible owner who voluntarily elects to investigate and remediate a
 324 property for purposes of development, redevelopment or reuse. The
 325 brownfield remediation agreement shall (1) set forth deadlines for
 326 completion of the site investigation, remedial activities, and the
 327 submittal of a verification by a licensed environmental professional or
 328 approval by the commissioner of the completion of the remedial
 329 activities; (2) provide for a covenant not to sue under subsection (b) of
 330 section 22a-133aa of the general statutes without fee; and (3) protect
 331 the eligible owner from remediation orders provided said eligible
 332 owner is following the remedial action plan and has not provided
 333 intentional, fraudulent or negligent misrepresentations to the
 334 commissioner. To qualify for the brownfield remediation agreement
 335 pursuant to this subsection, the eligible owner shall demonstrate a
 336 limited ability to pay the necessary costs of remediation and agree to
 337 remain in Connecticut for no less than ten years.

338 Sec. 12. (NEW) (*Effective July 1, 2007*) On or before June 1, 2009, the
 339 Commissioner of Environmental Protection shall adopt regulations, in
 340 accordance with the provisions of chapter 54 of the general statutes,
 341 identifying locations that were subject to urban fill and areas in the
 342 state where filling historically occurred. Such regulations shall also set
 343 forth remediation standards consistent with the urban or filling history
 344 of the property and adjacent properties.

This act shall take effect as follows and shall amend the following sections:		
Section 1	from passage	4a-67d

Sec. 2	<i>from passage</i>	16a-32a
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section
Sec. 5	<i>October 1, 2007</i>	New section
Sec. 6	<i>July 1, 2007, and applicable to assessment years commencing on or after October 1, 2007</i>	New section
Sec. 7	<i>July 1, 2007</i>	22a-134a(e)
Sec. 8	<i>July 1, 2007</i>	22a-133v(g)
Sec. 9	<i>July 1, 2007</i>	25-68d(d)
Sec. 10	<i>July 1, 2007</i>	12-63e
Sec. 11	<i>July 1, 2007</i>	New section
Sec. 12	<i>July 1, 2007</i>	New section

FIN *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	See Below	See Below
Dept. of Administrative Services	GF - Cost	See Below	See Below

Note: GF=General Fund

Municipal Impact:

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

Explanation

The bill requires that any car or light duty truck purchased by the state after January 1, 2008 have an efficiency rating in the top third of its class, and 50% of such cars and light duty trucks must be alternative fueled, hybrid electric or plug-in electric vehicles. As the state meets the federal requirement that 75% of cars and light duty trucks purchased must be alternative fueled, this provision has no fiscal impact.

Requiring that cars and light duty trucks purchased after January 1, 2008 must have an efficiency rating in the top third of all vehicles in its class could conflict with federal law requiring the purchase of alternative fueled vehicles (which are not always "efficient" as that term is defined in the industry). Non-compliance with federal law could subject the state to the risk of fines and penalties.

The bill also requires that cars and light duty trucks purchased by the state after January 1, 2010 must have an efficiency rating in the top third of its class, and such cars and light duty trucks must be alternative fueled, hybrid electric or plug-in electric vehicles. There

will be increased costs in FY 10 for the state to purchase cars and light duty trucks that are all alternative fueled, hybrid electric or plug-in electric.

The bill requires the Department of Environmental Protection (DEP) to study the potential for integrating motorized fleets into the cap and trade mechanism of the Northeast Regional Greenhouse Gas Initiative. It is estimated that the study will cost approximately \$75,000 for an outside consultant. The DEP is also required to study the availability of energy efficient lamps. This study is anticipated to cost approximately \$75,000 for an outside consultant. No resources are available for either study. Compiling a list of inefficient lamps, publication of the list and mailing the list is anticipated to result in a minimal cost to DEP.

The bill requires the Connecticut Academy of Science and Engineering (CASE) to submit a report on climate change to the General Assembly on or before February 1, 2008. CASE is a private non profit public service institution. The budget, sHB 7077 as favorably reported by the Appropriations Committee appropriates \$200,000 in both FY 08 and FY 09 to CASE for various scientific studies. It is anticipated that the DEP can consult on the study within resources if CASE conducts the study. 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 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 of

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

\$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 bill allows municipalities to exempt hybrid passenger cars from the property tax. Municipalities electing to provide this exemption will experience a loss to their net grand list (assessed value less exemptions permitted under state law) that will likely necessitate an increase in a municipality's mill rate or modifications to their budget to offset this loss.

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%.

The Out Years

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

OLR Bill Analysis**sSB 1432*****AN ACT CONCERNING GLOBAL WARMING AND BROWNFIELDS REMEDIATION AND DEVELOPMENT.*****SUMMARY:**

This bill (1) makes changes to laws affecting brownfield remediation and development, (2) makes it easier for state agencies to transfer property and undertake activities in floodplains, and (3) seeks to encourage energy conservation and reduce global warming.

Specifically, it requires the Department of Environmental Protection (DEP) commissioner to prepare voluntary agreements for investigating and remediating contaminated sites (i.e., brownfields) according to 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.

The bill imposes deadlines on the 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 licensees.

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.

It 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.

It also:

1. requires DEP to study the availability of energy efficient light bulbs and prepare a list of inefficient incandescent light bulbs (§ 5);
2. requires the state to purchase only hybrid electric, plug-in electric, or alternative fuel-powered vehicles for its motor vehicle fleet, starting January 1, 2010 (§1);
3. allows municipalities to abate up to 100% of the property tax due on tax hybrid passenger cars bought on or after July 1, 2007, starting with the October 1, 2007 assessment year (§ 6);
4. requires certain studies on global warming (§§ 3, 4); and
5. makes other minor changes.

EFFECTIVE DATE: Upon passage, except the brownfields remediation provisions and local option property tax abatement for hybrid passenger cars take effect July 1, 2007, and the provisions on light bulbs and corporate business tax credits take effect October 1, 2007.

§ 11 — VOLUNTARY AGREEMENTS

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. The bill defines the term “brownfield site,” but does not otherwise refer to it.

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 directly or indirectly connected 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 a 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, fraudulently, or negligently misrepresented things to the commissioner. These provisions do not affect responsibility or liability under federal law.

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 from which a discharge occurs.

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.

Like the developer agreement, the agreement with an owner 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. Unlike the developer agreement, it does not exempt the owner from remediation of contamination that migrated off-site before

the owner acquired the property, or from natural resources damage claims arising under state or common law.

§ 7 — DEADLINES FOR VERIFYING REMEDIATION

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.

The law requires anyone transferring an establishment (see BACKGROUND) to complete one or more of four different forms, depending on the presence of hazardous waste or hazardous substances, and the status of investigations and remediation. A person who agrees to investigate a parcel according to prevailing standards and properly remediate pollution ("certifying party") files a Form III when (1) a hazardous waste or hazardous substance leak has occurred, but has not been fully remediated, or (2) he or she does not know the environmental conditions at the establishment. The certifying party agrees to properly investigate and remediate the parcel. A certifying party files a Form IV when there has been a leak and all remediation actions have been completed except for post-remediation monitoring or the recording of an environmental land use restriction.

In cases involving a Form III or IV, the law imposes deadlines on the DEP commissioner after she receives a report from an LEP verifying that a property was cleaned up according to DEP standards. 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. The verification is considered approved 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.

§ 8 — LEP BOARD OF EXAMINERS

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.

§ 9 — FLOODPLAINS

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, approve conditionally, or deny 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 necessary or at least 25 people petition for one. Under the bill, she must instead follow the procedures specified in the Uniform Administrative Procedure Act for notice and opportunity for a hearing. The bill eliminates her ability to issue a conditional approval.

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.

§ 10 — PROPERTY TAX ASSESSMENT

The bill specifies circumstances when tax assessors may reduce the assessment on a contaminated nonresidential 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.

§ 5 — INEFFICIENT LIGHT BULB STUDY AND LIST

It requires the DEP commissioner to (1) study the availability of compact fluorescent, halogen, and high-intensity discharge lamps at competitive prices for consumers and (2) compile a list of inefficient incandescent light bulbs. The commissioner, by April 1, 2008, must provide notice of the preliminary draft of the list on the DEP website and in a newspaper of general circulation. The notice must state when, where, and how interested people may comment on the preliminary draft. The notice must apparently include a copy of the preliminary draft. The commissioner may revise the preliminary list in response to the written and oral comments.

No later than 65 days after publishing notice of the preliminary list, and at least 20 days before publishing the final list on its website, the commissioner must decide the contents of the final list. She must submit this list, and her reasons for the final decision, to the Environment Committee. She must mail the final list and her explanation to everyone who submitted written comments on the preliminary draft. The bill does not state whether the Environment Committee must approve the final list.

§ 1 — STATE FLEET VEHICLE PURCHASES

By law, the fleet average for cars and light-duty trucks purchased for the state must meet certain (1) mileage, (2) alternative fuel, and (3) carbon dioxide emission requirements.

In addition, the bill requires, starting January 1, 2008, that (1) any car or light-duty truck the state buys have an efficiency rating in the top third of all vehicles in its class and (2) half the vehicles the state buys be hybrid electric, plug-in electric, or alternative fuel-powered vehicles. Starting January 1, 2010, the state must only buy cars and light-duty trucks that have such an efficiency rating and are either

hybrid electric, plug-in electric, or alternative fuel-powered. As under existing law, cars and light-duty trucks purchased for law enforcement or other Department of Administrative Services-designated special uses are exempt from these requirements. By law, alternative fueled vehicles must be capable of operating on natural gas, electricity, or any other system (1) acceptable to the U.S. Department of Energy and (2) that uses fuel available in Connecticut.

Under federal law, 75% of the state fleet, with certain exceptions, must be alternatively fueled. The federal definition of alternatively fueled vehicles does not include hybrids.

§ 6 — LOCAL OPTION PROPERTY TAX EXEMPTION

The bill allows municipalities to abate up to 100% of the property tax due on hybrid passenger cars bought on or after July 1, 2007, starting with the October 1, 2007 assessment year. A town may do so by a vote of its legislative body, or where the legislative body is a town meeting, by a vote of the board of selectmen. (Although the bill's effective date notes that this provision applies to assessment years beginning October 1, 2007, the text of the bill states that it applies to assessment years beginning July 1, 2007.)

§§ 3, 4 — GLOBAL WARMING STUDIES

The bill requires, by February 1, 2008, the Connecticut Academy of Science and Engineering, in consultation with DEP, to submit to the Environment Committee a written report on the effects of climate change in Connecticut and recommendations on how to respond. It requires the commissioner to (1) study the possibility of including motor vehicle fleets in the cap-and-trade mechanism of the Northeast Regional Greenhouse Gas Initiative (RGGI) (see BACKGROUND) and (2) submit to the Environment Committee, by January 1, 2008, written recommendations concerning the legislation needed to include these greenhouse gas sources. RGGI's cap-and-trade program currently only affects power plant emissions.

§ 2 — STATE PLAN OF CONSERVATION AND DEVELOPMENT

Current law requires the Office of Policy and Management (OPM) to include a goal for reducing carbon dioxide emissions in the State Plan of Conservation and Development. The bill specifies that this emissions goal must be in accord with the state's agreement with the Climate Change Action Plan adopted by the Conference of New England Governors and Eastern Canadian Premiers. It eliminates a requirement that OPM, in consultation with DEP, report triennially to the legislature on state carbon dioxide emissions.

BACKGROUND

Transfer Act and Establishments

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

Regional Greenhouse Gas Initiative (RGGI)

RGGI, of which Connecticut is a member, is a multistate initiative to design and implement a flexible, market-based, cap-and-trade program to reduce power plant carbon dioxide emissions in the northeast U.S.

Under a cap-and-trade program, states set the total amount of carbon dioxide emissions to be allowed from all sources (emissions cap). The emissions allowed under the new cap are then divided into individual permits that represent the right to emit that amount. Companies are free to buy and sell permits in order to continue operating in the most profitable manner available to them. Thus, companies that are able to reduce emissions at a low cost can sell their extra permits to companies facing high costs (which will generally prefer to buy permits rather than make costly reductions themselves).

Climate Change Action Plan

The Climate Change Action Plan, adopted by the Conference of New England Governors and Eastern Canadian Premiers in 2001, set a short-term goal of reducing regional greenhouse gas emissions to 1990 levels by 2010, and to at least 10% below 1990 emissions by 2020. It set a long-term goal of reducing regional greenhouse gas emissions by at least 75%. PA 04-252 requires the state to take steps to reduce greenhouse gas emissions to help achieve these regional goals.

Related Act and Bills

Licensed Environmental Professionals (LEPs). PA 07-81 expands the sanctions that can be imposed on LEPs who falsify information, engage in professional misconduct, or otherwise violate relevant laws or regulations; requires owners of contaminated property to have an LEP verify the site investigation and remediation unless the DEP commissioner notifies them that she must review and approve the clean-up; and makes other changes to laws affecting LEPs.

State Fleet Vehicles. sHB 7098 (File 863), favorably reported by the Energy and Technology Committee, contains the same provision concerning state fleet vehicles.

Property Tax Exemptions for Hybrid Vehicles. sSB 1374 (File 192), favorably reported by the Energy and Technology Committee, allows municipalities to exempt hybrid motor vehicles and vehicles attaining at least 40 miles per gallon from the property tax.

sSB 1260 (File 183), favorably reported by the Environment Committee, permits municipalities to abate by ordinance, in whole or in part, personal property taxes on hybrid passenger vehicles or motor vehicles exclusively powered by a clean alternative fuel.

Floodplains. HB 7079 (Files 369 and 704) contains similar provisions making it easier for state agencies to undertake activities in floodplains. It and sHB 7369 (File 783) also create new programs to finance assessment and remediation costs and expand the state's capacity to assist and process brownfield remediation projects.

Legislative History

On April 25, the Senate referred the bill (File 497) to the Planning and Development Committee, which reported the substitute bill adding the brownfields and floodplain provisions; eliminating a (1) local option buyers' conveyance tax on the sale of certain real property, (2) 10-cent surcharge on the sale of incandescent light bulbs, and (3) 2010 ban on the sale of inefficient incandescent bulbs; and making other minor changes. On May 23, the Senate referred the bill (File 828) to the Finance, Revenue and Bonding Committee, which reported the substitute bill (1) making the hybrid car property tax exemption a local option, rather than mandatory and (2) eliminating a provision excluding proceeds from the sale of greenhouse gas emission credits from a business' net income when determining its corporation business tax.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute Change of Reference

Yea 21 Nay 8 (03/21/2007)

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 13 Nay 0 (03/28/2007)

Planning and Development Committee

Joint Favorable Substitute

Yea 14 Nay 5 (05/02/2007)

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 38 Nay 1 (05/30/2007)