



Substitute House Bill No. 7369

Public Act No. 07-233

AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE BROWNFIELDS TASK FORCE.

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

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 Section 32-9cc of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

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

(b) The office shall:

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

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

(3) Establish [a place where municipalities or economic development agencies may facilitate compliance with state and federal

Substitute House Bill No. 7369

clean up requirements and qualification for state funds] an office to provide assistance and information concerning the state's technical assistance, funding, regulatory and permitting programs;

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

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

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

[(5) Analyze any action taken by other states, particularly New Jersey and Pennsylvania, regarding brownfield remediation and liability;] and

[(6)] (7) Develop and execute [an] a communication and outreach program to educate municipalities, economic development agencies, property owners and potential property owners and other organizations and individuals with regard to state policies and procedures for brownfield remediation.

(c) [The Office of Brownfield Remediation and Development shall establish and operate] Subject to the availability of funds, there shall be a state-funded pilot program to identify brownfield remediation economic opportunities in [four] five Connecticut municipalities, one of which shall have a population of [more than twenty-five thousand but] less than fifty thousand, one of which shall have a population of more than fifty thousand but less than one hundred thousand, [and] two of which shall have populations of more than one hundred thousand and one of which shall be selected without regard to population. The [Office of Brownfield Remediation and Development] Commissioner of Economic and Community Development shall

Substitute House Bill No. 7369

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

(d) The Department of Environmental Protection, [and] the Connecticut Development Authority and the Department of Public Health shall each designate [a staff member] one or more staff members to act as a liaison between their offices and the Office of Brownfield Remediation and Development. The Commissioners of Economic and Community Development, Environmental Protection and Public Health and the executive director of the Connecticut Development Authority shall enter into a memorandum of understanding concerning each entity's responsibilities with respect to the Office of Brownfield Remediation and Development. The Office of Brownfield Remediation and Development [shall] may develop and recruit two volunteers from the private sector, including a person from the Connecticut chapter of the National Brownfield Association, with experience in different aspects of brownfield remediation and development. Said [liaisons and] volunteers [shall] may assist the Office of Brownfield Remediation and Development in achieving the goals of this section. [and, together, shall represent said office's response team.]

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

Substitute House Bill No. 7369

Development and to furnish such reports, information and assistance.

(f) Brownfield sites identified for funding under the pilot program established in subsection (c) of this section shall receive priority review status from the Department of Environmental Protection. Each property funded under this program shall be investigated in accordance with prevailing standards and guidelines and remediated in accordance with the regulations established for the remediation of such sites adopted by the Commissioner of Environmental Protection or pursuant to section 22a-133k and under the supervision of the department or in accordance with the voluntary remediation program established in section 22a-133x. In either event, the department shall determine that remediation of the property has been fully implemented upon submission of a report indicating that remediation has been verified by an environmental professional licensed in accordance with section 22a-133v. Not later than ninety days after submission of the verification report, the [commissioner] Commissioner of Environmental Protection shall notify the municipality or economic development agency as to whether the remediation has been performed and completed in accordance with the remediation standards or whether any additional remediation is warranted. For purposes of acknowledging that the remediation is complete, the commissioner may indicate that all actions to remediate any pollution caused by any release have been taken in accordance with the remediation standards and that no further remediation is necessary to achieve compliance except postremediation monitoring, natural attenuation monitoring or the recording of an environmental land use restriction.

(g) All relevant terms in this subsection, subsection (h) of this section, sections 32-9dd to 32-9ff, inclusive, and section 11 of public act 06-184* shall be defined in accordance with the definitions in chapter 445. For purposes of subdivision (12) of subsection (a) of section 32-9t,

Substitute House Bill No. 7369

this subsection, subsection (h) of this section, sections 32-9dd to 32-9gg, inclusive, and section 11 of public act 06-184*, "brownfields" means any abandoned or underutilized site where redevelopment and reuse has not occurred due to the presence of pollution in the soil or groundwater that requires remediation prior to or in conjunction with the restoration, redevelopment and reuse of the property.

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

Sec. 2. Subsection (b) of section 32-9ee of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

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

Sec. 3. (NEW) (*Effective July 1, 2007*) As used in sections 4 and 5 of this act:

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

Substitute House Bill No. 7369

redevelopment and reuse of the property;

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

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

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

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

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

(7) "Eligible brownfield project" means the assessment, remediation and development of a brownfield undertaken pursuant to this section and sections 4 and 5 of this act;

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

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

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

Sec. 4. (NEW) (*Effective July 1, 2007*) Subject to the availability of funds, the Commissioner of Economic and Community Development

Substitute House Bill No. 7369

may, in consultation with the Commissioner of Environmental Protection, provide financial assistance in support of eligible brownfield projects, as defined in subdivision (7) of section 3 of this act.

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

(b) The commissioner may approve, reject or modify any application properly submitted. In reviewing an application and determining the type and amount of financial assistance, if any, to be provided, the commissioner shall consider the following criteria: (1) The availability of funds; (2) the estimated costs of assessing and remediating the site, if known; (3) the relative economic condition of the municipality; (4) the relative need of the eligible project for financial assistance; (5) the degree to which financial assistance is necessary as an inducement to the eligible applicant to undertake the project; (6) the public health and environmental benefits of the project; (7) relative economic benefits of the project to the municipality, the region and the state, including, but not limited to, the extent to which the project will likely result in the retention and creation of jobs; (8) the

Substitute House Bill No. 7369

timeframe in which the contamination occurred; (9) the relationship of the applicant to the person or entity that caused the contamination; and (10) such other criteria as the commissioner may establish consistent with the purposes of sections 3 to 5, inclusive, of this act.

(c) The Commissioner of Economic and Community Development shall approve applications submitted in accordance with subsection (a) of this section before awarding any financial assistance to an eligible applicant or purchasing any participation interest in a loan made by the Connecticut Development Authority for the benefit of an eligible applicant. Notwithstanding any other provision of this section, if the applicant's request for financial assistance involves the department purchasing a participation interest in a loan made by the Connecticut Development Authority, such authority may submit such application and other information as is required of eligible applicants under subsection (a) of this section on behalf of such eligible applicant and no further application shall be required of such eligible applicant. No financial assistance shall exceed fifty per cent of the total project cost, provided in the case of (1) planning or site evaluation projects, and (2) financial assistance to any project in a targeted investment community, such assistance shall not exceed ninety per cent of the project cost. Upon approval of the commissioner, a nonstate share of the total project cost, if any, may be satisfied entirely or partially from noncash contributions, including contributions of real property, from private sources or, to the extent permitted by federal law, from moneys received by the municipality under any federal grant program.

(d) Financial assistance may be made available for (1) site investigation and assessment, (2) planning and engineering, including, but not limited to, the reasonable cost of environmental consultants, laboratory analysis, investigatory and remedial contractors, architects, attorneys' fees, feasibility studies, appraisals, market studies and related activities, (3) the acquisition of real property, provided

Substitute House Bill No. 7369

financial assistance for such acquisition shall not exceed fair market value as appraised as if clean, (4) the construction of site and infrastructure improvements related to the site remediation, (5) demolition, asbestos abatement, hazardous waste removal, PCB removal and related infrastructure remedial activities, (6) remediation, groundwater monitoring, including, but not limited to, natural attenuation groundwater monitoring and costs associated with filing an environmental land use restriction, (7) environmental insurance, and (8) other reasonable expenses the commissioner determines are necessary or appropriate for the initiation, implementation and completion of the project. The department may purchase participation interests in loans made by the Connecticut Development Authority for the foregoing purposes.

(e) The commissioner may establish the terms and conditions of any financial assistance provided pursuant to sections 3 to 5, inclusive, of this act. The commissioner may make any stipulation in connection with an offer of financial assistance the commissioner deems necessary to implement the policies and purposes of such sections, including, but not limited to the following: (1) Providing assurances that the eligible applicant will discharge its obligations in connection with the project; and (2) requiring that the eligible applicant provide the department with appropriate security for such financial assistance, including, but not limited to, a letter of credit, a lien on real property or a security interest in goods, equipment, inventory or other property of any kind.

(f) The commissioner may use any available funds for financial assistance under the provisions of sections 3 to 5, inclusive, of this act.

(g) Whenever funds are used pursuant to sections 3 to 5, inclusive, of this act for purposes of environmental assessments or remediation of a brownfield, the Commissioner of Environmental Protection may seek reimbursement of the costs and expenses incurred by requesting the Attorney General to bring a civil action to recover such costs and

Substitute House Bill No. 7369

expenses from any party responsible for such pollution provided no such action shall be brought separately from any action to recover costs and expenses incurred by the Commissioner of Environmental Protection in pursuing action to contain, remove or mitigate any pollution on such site. The costs and expenses recovered may include, but shall not be limited to, (1) the actual cost of identifying, evaluating, planning for and undertaking the remediation of the site; (2) any administrative costs not exceeding ten per cent of the actual costs; (3) the costs of recovering the reimbursement; and (4) interest on the actual costs at a rate of ten per cent a year from the date such expenses were paid. The defendant in any civil action brought pursuant to this subsection shall have no cause of action or claim for contribution against any person with whom the Commissioner of Environmental Protection has entered into a covenant not to sue pursuant to sections 22a-133aa and 22a-133bb of the general statutes with respect to pollution on or emanating from the property that is the subject of said civil action. Funds recovered pursuant to this section shall be deposited in the brownfield remediation and development account established pursuant to section 6 of this act. The provisions of this subsection shall be in addition to any other remedies provided by law.

Sec. 6. (NEW) (*Effective July 1, 2007*) (a) There is established a separate nonlapsing account within the General Fund to be known as the "brownfield remediation and development account". There shall be deposited in the account: (1) The proceeds of bonds issued by the state for deposit into said account and used in accordance with this section; (2) repayments of assistance provided pursuant to subsection (c) of section 22a-133u of the general statutes, as amended by this act; (3) interest or other income earned on the investment of moneys in the account; (4) funds recovered pursuant to subsection (g) of section 5 of this act; and (5) all funds required by law to be deposited in the account. Repayment of principal and interest on loans made pursuant to sections 3 to 5, inclusive, of this act shall be credited to such account

Substitute House Bill No. 7369

and shall become part of the assets of the account. Any balance remaining in such account at the end of any fiscal year shall be carried forward in the account for the fiscal year next succeeding.

(b) All moneys received in consideration of financial assistance, including payments of principal and interest on any loans, shall be credited to the account. At the discretion of the Commissioner of Economic and Community Development and subject to the approval of the Secretary of the Office of Policy and Management, any federal, private or other moneys received by the state in connection with projects undertaken pursuant to sections 3 to 5, inclusive, of this act shall be credited to the assets of the account.

(c) Notwithstanding any provision of law, proceeds from the sale of bonds available pursuant to subdivision (1) of subsection (b) of section 4-66c of the general statutes may, with the approval of the Governor and the State Bond Commission, be used to capitalize the brownfield remediation and development account created by this section.

(d) The commissioner may, with the approval of the Secretary of the Office of Policy and Management, provide financial assistance pursuant to sections 3 to 5, inclusive, of this act from the account established under this section.

Sec. 7. Subsection (c) of section 22a-133u of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

(c) Any person, firm, corporation or municipality which has received funds under subsection (b) of this section shall repay such funds to the Commissioner of Economic and Community Development, according to a schedule and terms which said commissioner deems appropriate. The principal amount of the loan shall be due at a time deemed appropriate by the commissioner as

Substitute House Bill No. 7369

follows: (1) Upon the sale of the property or lease of the property, in whole or in part, which is the subject of such evaluation or demolition; (2) upon the sale or release of a municipality's liens on such property; or (3) upon the approval by the Commissioner of Environmental Protection of a final remedial action report submitted in accordance with section 22a-133y. The Commissioner of Economic and Community Development may require repayment of the loan amortized over a period of no more than five years from the sale of the property, sale of the lien or approval by the Commissioner of Environmental Protection of the final remedial action report. No repayment shall be required, other than interest for the period that the loan is outstanding, if completion of remediation of environmental pollution at or on the property, or the sale or lease of such property, is economically infeasible due to the cost of such remediation. The commissioner may require partial repayment of the loan only if partial repayment is economically feasible. Any funds received by said commissioner as repayment under this subsection shall be deposited into the [Special Contaminated Property Remediation and Insurance Fund] brownfield remediation and development account. The terms of any loan agreement entered into by said commissioner under said subsection may provide for the collection of interest on the loan which may vary according to whether the applicant is a municipality or a private entity and the duration of the repayment schedule for such loan provided the interest cost to the borrower provided for in such agreement shall not exceed the interest cost to the state on borrowings of like terms.

Sec. 8. (NEW) (*Effective July 1, 2007*) The Commissioners of Environmental Protection and Economic and Community Development shall, in consultation with the Secretary of the Office of Policy and Management, establish a pilot program to identify and evaluate brownfield sites in priority funding areas designated pursuant to section 16a-35c of the general statutes. Said commissioners

Substitute House Bill No. 7369

will work with state and local agencies as a coordinated team to identify all necessary permits and approvals for development, conduct outreach to solicit development proposals, and coordinate to review all requests for funding and permit approvals.

Sec. 9. Subsection (d) of section 25-68d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

(d) Any state agency proposing an activity or critical activity within or affecting the floodplain may apply to the commissioner for exemption from the provisions of subsection (b) of this section. Such application shall include a statement of the reasons why such agency is unable to comply with said subsection and any other information the commissioner deems necessary. The commissioner, at least thirty days before approving, approving with conditions or denying any such application, shall publish once in a newspaper having a substantial circulation in the affected area notice of: (1) The name of the applicant; (2) the location and nature of the requested exemption; (3) the tentative decision on the application; and (4) additional information the commissioner deems necessary to support the decision to approve, approve with conditions or deny the application. There shall be a comment period following the public notice during which period interested persons and municipalities may submit written comments. After the comment period, the commissioner shall make a final determination to either approve the application, approve the application with conditions or deny the application. The commissioner may hold a public hearing prior to approving, approving with conditions or denying any application if in the discretion of the commissioner the public interest will be best served thereby, and the commissioner shall hold a public hearing upon receipt of a petition signed by at least twenty-five persons. Notice of such hearing shall be published at least thirty days before the hearing in a newspaper

Substitute House Bill No. 7369

having a substantial circulation in the area affected. The commissioner may approve or approve with conditions such exemption if the commissioner determines that (A) the agency has shown that the activity or critical activity is in the public interest, will not injure persons or damage property in the area of such activity or critical activity, complies with the provisions of the National Flood Insurance Program, and, in the case of a loan or grant, the recipient of the loan or grant has been informed that increased flood insurance premiums may result from the activity or critical activity. An activity shall be considered to be in the public interest if it is a development subject to environmental remediation regulations adopted pursuant to section 22a-133k and is in or adjacent to an area identified as a regional center, neighborhood conservation area, growth area or rural community center in the State Plan of Conservation and Development pursuant to chapter 297, or (B) in the case of a flood control project, such project meets the criteria of subparagraph (A) of this subdivision and is more cost-effective to the state and municipalities than a project constructed to or above the base flood or base flood for a critical activity. Following approval for exemption for a flood control project, the commissioner shall provide notice of the hazards of a flood greater than the capacity of the project design to each member of the legislature whose district will be affected by the project and to the following agencies and officials in the area to be protected by the project: The planning and zoning commission, the inland wetlands agency, the director of civil defense, the conservation commission, the fire department, the police department, the chief elected official and each member of the legislative body, and the regional planning agency. Notice shall be given to the general public by publication in a newspaper of general circulation in each municipality in the area in which the project is to be located.

Sec. 10. Subsections (e) to (g), inclusive, of section 22a-134a of the general statutes are repealed and the following is substituted in lieu

Substitute House Bill No. 7369

thereof (*Effective July 1, 2007*):

(e) [No] Not later than thirty days after receipt of a Form III or Form IV, the commissioner shall notify the certifying party whether the form is complete or incomplete. [Within forty-five days of] The certifying party shall use a licensed environmental professional to verify the investigation and remediation, unless not later than seventy-five days after receipt of a complete Form III or IV, the commissioner [shall notify] notifies the certifying party in writing [whether] that review and approval of the remediation by the commissioner [will] shall be required. [, or whether a licensed environmental professional may verify that the investigation has been performed in accordance with prevailing standards and guidelines and that the remediation has been performed in accordance with the remediation standards.] Any person who submitted a Form III to the commissioner prior to October 1, 1995, may submit an environmental condition assessment form to the commissioner. The commissioner shall, [within] not later than forty-five days [of] after receipt of such form, notify the certifying party whether approval of the remediation by the commissioner will be required or whether a licensed environmental professional may verify that the investigation was performed in accordance with prevailing standards and guidelines and the remediation has been performed in accordance with the remediation standards.

(f) In determining whether review and approval of the remediation by the commissioner will be required, or whether a licensed environmental professional may verify that the remediation has been performed in accordance with the remediation standards, the commissioner shall consider: (1) The potential risk to human health and the environment posed by any discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste or a hazardous substance at the establishment; (2) the degree of environmental investigation at the parcel; (3) the proximity of the establishment to significant natural

Substitute House Bill No. 7369

resources; (4) the character of the land uses surrounding the establishment; (5) the complexity of the environmental condition of the establishment; and (6) any other factor the commissioner deems relevant.

(g) (1) [If the commissioner notifies] Except as provided in subsection (h) of this section, the certifying party to a Form III or Form IV [that a licensed environmental professional may verify the remediation, such certifying party] shall, on or before [thirty] seventy-five days [of] after the receipt of such notice that such form is complete or such later date as may be approved in writing by the commissioner, submit a schedule for the investigation of the parcel and remediation of the establishment. Such schedule shall, unless a later date is specified in writing by the commissioner, provide that the investigation shall be completed within two years of the date of receipt of such notice and that remediation shall be initiated within three years of the date of receipt of such notice. The schedule shall also include a schedule for providing public notice of the remediation prior to the initiation of such remediation in accordance with subsection (i) of this section. [The commissioner] Not later than two years after the date of the receipt of the notice that the Form III or Form IV is complete, unless the commissioner has specified a later day, in writing, the certifying party shall submit to the commissioner documentation, approved in writing by a licensed environmental professional and in a form prescribed by the commissioner, that the investigation has been completed in accordance with prevailing standards and guidelines. Not later than three years after the date of the receipt of the notice that the Form III or Form IV is complete, unless the commissioner has specified a later day in writing, the certifying party shall notify the commissioner in a form prescribed by the commissioner that the remediation has been initiated, and shall submit to the commissioner a remedial action plan approved in writing by a licensed environmental professional in a form prescribed by the commissioner.

Substitute House Bill No. 7369

Notwithstanding any other provision of this section, the commissioner may determine at any time that the commissioner's review and written approval is necessary and in such case shall notify such certifying party [if the commissioner determines] that the commissioner's review and written approval is necessary. Such certifying party shall investigate the parcel and remediate the establishment in accordance with the proposed schedule or the schedule specified by the commissioner. When remediation of the entire establishment is complete, the certifying party shall submit to the commissioner a final verification by a licensed environmental professional. Any such final verification may include and rely upon a verification for a portion of the establishment submitted pursuant to subdivision (2) of this subsection. Verifications shall be submitted on a form prescribed by the commissioner.

(2) If a certifying party completes the remediation for a portion of an establishment, such party may submit a verification by a licensed environmental professional for any such portion of an establishment. The certifying party shall be deemed to have satisfied the requirements of this subsection for that portion of the establishment covered by any such verification. If any portion of an establishment for which a verification is submitted pursuant to this subdivision is transferred, conveyed or undergoes a change in ownership before remediation of the entire establishment is complete that would not otherwise be subject to the provisions of sections 22a-134 to 22a-134e, inclusive, then the certifying party shall provide notice to the commissioner of such transfer, conveyance or change in ownership not later than thirty days of any such transfer, conveyance or change in ownership.

(3) (A) The commissioner may conduct an audit of any verification submitted pursuant to this section, but shall not conduct an audit of a final verification of an entire establishment submitted pursuant to subdivision (1) of this subsection after three years have passed since

Substitute House Bill No. 7369

the date of the commissioner's receipt of such final verification unless an exception listed in subparagraph (C) of subdivision (3) of this subsection applies. Upon completion of an audit, the commissioner shall send written audit findings to the certifying party and the licensed environmental professional who verified. The three-year time frame for an audit of a final verification of an entire establishment shall apply to such final verifications received by the commissioner after October 1, 2007.

(B) The commissioner may request additional information during an audit. If such information has not been provided to the commissioner within ninety days of the commissioner's request for such information or any longer time as the commissioner may determine in writing, the commissioner may either (i) suspend the audit, which for a final verification shall suspend the running of the three-year audit time frame until such time as the commissioner receives all the information requested, or (ii) complete the audit based upon the information provided in the verification before the request for additional information.

(C) The commissioner shall not conduct an audit of a final verification of an entire establishment after three years from receipt of such verification pursuant to this subdivision unless (i) the commissioner has reason to believe that a verification was obtained through the submittal of materially inaccurate or erroneous information, or otherwise misleading information material to the verification or that misrepresentations were made in connection with the submittal of the verification, (ii) a verification is submitted pursuant to an order of the commissioner pursuant to subdivision (j) of section 22a-134a, (iii) any post-verification monitoring, or operations and maintenance, is required as part of a verification and which has not been done, (iv) a verification that relies upon an environmental land use restriction was not recorded on the land records of the

Substitute House Bill No. 7369

municipality in which such land is located in accordance with section 22a-133o and applicable regulations, (v) the commissioner determines that there has been a violation of sections 22a-134 to 22a-134e, or (vi) the commissioner determines that information exists indicating that the remediation may have failed to prevent a substantial threat to public health or the environment.

Sec. 11. Section 12-63e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

(a) Notwithstanding the provisions of this chapter, and except as provided in subsection (b) of this section, when determining the value of any property, except residential property, for purpose of the assessment for property taxes, the assessors of a municipality shall not reduce the value of any property due to any polluted or environmentally hazardous condition existing on such property if such condition was caused by the owner of such property or if a successor in title to such owner acquired such property after any notice of the existence of any such condition was filed on the land records in the town where the property is located. For purposes of this section, an owner shall be deemed to have caused the polluted or environmentally hazardous condition if the Department of Environmental Protection, the United States Environmental Protection Agency or a court of competent jurisdiction has determined that such owner caused such condition or a portion of it.

(b) If any owner of such property or if any successor in title to such owner who acquired such property after any notice of the existence of any such condition was filed on the land records in the town where the property is located (1) enters into an agreement with the department to voluntarily remediate such property, (2) files such agreement on the land records of the town where such property is located, and (3) has developed an approved remedial action plan for the property, the provisions of subsection (a) of this section shall not apply. In any such

Substitute House Bill No. 7369

cases, the assessors of a municipality may reduce the value of any property due to any polluted of environmentally hazardous condition existing on such property. The assessors of a municipality may also raise the value of any property after remediation is completed to take into account the removal of such pollution or environmentally hazardous condition.

Sec. 12. Section 22a-133aa of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

(a) The Commissioner of Environmental Protection may enter into a covenant not to sue with any prospective purchaser or owner of contaminated real property provided (1) a detailed written plan for remediation of the property, in accordance with standards adopted by said commissioner pursuant to section 22a-133k, has been approved by the Commissioner of Environmental Protection which plan shall be incorporated by reference in the covenant, [or] (2) the Commissioner of Environmental Protection has approved a final remedial action report for such property, or (3) if before any approval by the commissioner of a detailed written plan or final remedial action report for such property, the commissioner has approved a brownfield investigation plan and remediation schedule, as defined in subsection (f) of section 22a-133aa, which investigation plan and remediation schedule shall be incorporated by reference in the covenant. No such covenant may be entered into unless such purchaser or owner has demonstrated to the satisfaction of the commissioner that such purchaser or owner (A) did not establish or create a facility or condition at or on such property which reasonably can be expected to create a source of pollution to the waters of the state for purposes of section 22a-432 and has not maintained any such facility or condition at such property for purposes of said section, and such purchaser is not responsible pursuant to any other provision of the general statutes for any pollution or source of pollution on the property; (B) is not affiliated

Substitute House Bill No. 7369

with any person responsible for such pollution or source of pollution through any direct or indirect familial relationship or any contractual, corporate or financial relationship other than that by which such purchaser's interest in such property is to be conveyed or financed; and (C) will redevelop the property for productive use or continue productive use of such property provided the commissioner determines that the covenant not to sue is in the public interest. Upon the request of a successor of an original holder of a covenant issued under this section, the commissioner shall enter into such covenant with such successor if such successor certifies to the satisfaction of the commissioner that such successor complies with subparagraphs (A), (B) and (C) of this subsection. The commissioner may enter into a covenant not to sue with any lending institution to whom a prospective purchaser of contaminated real property conveys a security interest in such property provided such institution has demonstrated to the satisfaction of the commissioner that such institution did not establish or create a facility or condition at or on such property which reasonably can be expected to create a source of pollution to the waters of the state for purposes of section 22a-432 and has not maintained any such facility or condition at such property for purposes of said section, and such institution is not responsible pursuant to any other provision of the general statutes for any pollution or source of pollution on the property. Any covenant issued to a lending institution under this section shall be effective with respect to any lending institution which is a successor in interest to the original lending institution provided such successor lending institution did not establish or create a facility or condition at or on such property which reasonably can be expected to create a source of pollution to the waters of the state for purposes of section 22a-432 and has not maintained any such facility or condition at such property for purposes of said section, and such institution is not responsible pursuant to any other provision of the general statutes for any pollution or source of pollution on the property.

Substitute House Bill No. 7369

(b) Any covenant entered into under this section shall release only those claims said commissioner may have which are related to pollution or contamination on or emanating from the property, which contamination resulted from a discharge, spillage, uncontrolled loss, seepage or filtration on such property prior to the effective date of the covenant. Such covenant shall provide that the commissioner will not take any action against the holder of the covenant to require remediation of the parcel or any other action against such holder related to such discharge, spillage, uncontrolled loss, seepage or filtration unless (1) prior to the commissioner's approval of a detailed written plan for remediation pursuant to a brownfields investigation plan and remediation schedule, the commissioner finds that there is substantial noncompliance with such investigation plan and remediation schedule and there has not been a good faith effort to substantially comply therewith, (2) such property is not remediated in accordance with the detailed written plan approved by the commissioner and incorporated by reference in such covenant, [(2)] (3) prior to completion of remediation in accordance with such plan, the commissioner finds that there is substantial noncompliance with any such plan and there has not been a good faith effort to substantially comply therewith, [(3)] (4) remediation of the parcel in accordance with [such] any detailed written plan for remediation did not comply with standards adopted by the commissioner pursuant to section 22a-133k which were in effect as of the effective date of either the covenant or the commissioner's approval of the detailed written plan for remediation, whichever is later, [or (4)] (5) if required by the standards adopted by the commissioner pursuant to section 22a-133k, an environmental land use restriction has not been recorded in accordance with section 22a-133o or there has been a failure to comply with the provisions of such a restriction, (6) for a property subject to the brownfield plan and remediation schedule, the commissioner does not approve a detailed written plan for remediation, or (7) the prospective buyer or owner fails to pay the fee, including fails to pay

Substitute House Bill No. 7369

in accordance with any payment schedule pursuant to subsection (c) of this section.

(c) (1) Any prospective purchaser or owner receiving a covenant not to sue pursuant to this section shall pay to the commissioner a fee equal to three per cent of the value of the property for which the covenant was issued provided such property is appraised as if it were uncontaminated. Such fee shall be deposited into the Special Contaminated Property Remediation and Insurance Fund established under section 22a-133t. No such fee shall be required for a covenant issued to a successor in interest to the original covenant, [or] for a covenant issued in connection with a remediation project conducted under section 22a-133m, or for a municipality or municipal economic development agency or a nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality and such corporation's officers and directors.

(2) Notwithstanding any other provision, the commissioner may approve a written payment schedule of the fee set forth in subdivision (1) of subsection (c) of this section, for a prospective purchaser or owner receiving the covenant not to sue and who has a brownfield investigation plan and remediation schedule approved by the commissioner. Any such payment schedule shall be incorporated by reference into the covenant.

(d) A covenant not to sue issued under this section may provide for continued monitoring in accordance with the remediation standards adopted under section 22a-133k, and, if further remediation is necessary based upon the results of such monitoring, that further action will be taken to remediate the property in accordance with such standards.

Substitute House Bill No. 7369

(e) A covenant not to sue issued under this section shall not preclude the commissioner from taking any appropriate action, including, but not limited to, any action to require remediation of the property, if he determines that the covenant not to sue was based on information provided by the person seeking the covenant which information such person knew, or had reason to know, was false or misleading.

(f) A "brownfield investigation plan and remediation schedule" means a plan and schedule for investigation, and a schedule for remediation, of any abandoned or underutilized site where redevelopment and reuse has not occurred due to the presence of pollution on the soil or groundwater that requires remediation prior to or in conjunction with the restoration, redevelopment and reuse of the property. The commissioner may determine for each property whether the commissioner will oversee the investigation and remediation of the property or whether such oversight will be delegated to a licensed environmental professional. For each property subject to a covenant under this section based on an approved brownfield investigation plan and remediation schedule, the owner or prospective purchaser shall perform all investigation and remediation activities under the direction of a licensed environmental professional, and shall ensure that all documents required to be submitted contain a written approval of a licensed environmental professional, even at properties for which the commissioner has not delegated oversight to a licensed environmental professional. Each investigation plan and remediation schedule shall provide a schedule for activities including, but not limited to, completion of the investigation of the property in accordance with prevailing standards and guidelines, submittal of a complete investigation report, submittal of a detailed written plan for remediation, completion of remediation in accordance with standards adopted by said commissioner pursuant to section 22a-133k, and submittal of a final remedial action report. At a minimum, the detailed

Substitute House Bill No. 7369

written plan for remediation shall be submitted, pursuant to the schedule, for the commissioner's review and, as appropriate, approval. If the commissioner approves the detailed written plan for remediation, the plan shall be considered incorporated by reference into the covenant not to sue. The commissioner may require submittal of other plans and reports for the commissioner's review and approval.

Sec. 13. Subsection (ii) of section 32-23d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2007*):

(ii) "Remediation project" means any project (1) involving the development, redevelopment or productive reuse of real property within this state that (A) has been subject to a spill, as defined in section 22a-452c, (B) is an establishment, as defined in subdivision (3) of section 22a-134, (C) is a facility, as defined in 42 USC 9601(9), or (D) is eligible to be treated as polluted real property for purposes of section 22a-133m or contaminated real property for purposes of section 22a-133aa or section 22a-133bb, provided the development, redevelopment or productive reuse is undertaken pursuant to a remediation plan meeting all applicable standards and requirements of the Department of Environmental Protection, (2) that the authority determines will add or support significant new economic activity or employment in the municipality in which such project is located or will otherwise materially contribute to the economic base of the state or the municipality or will provide a residential or mixed-use development pursuant to chapter 828, and (3) for which assistance from the authority will be needed to attract necessary private investment.

Sec. 14. (NEW) (*Effective July 1, 2007*) The Connecticut Development Authority may establish a loan guarantee program to provide guarantees of not more than thirty per cent of the loan to lenders who provide financing to eligible developers or eligible property owners as

Substitute House Bill No. 7369

defined in section 3 of this act.

Sec. 15. Section 11 of public act 06-184 is amended to read as follows
(Effective July 1, 2007):

(a) There is established a task force to study strategies for providing long-term solutions for the state's brownfields.

(b) The task force shall consist of the following [nine] eleven members, each of whom shall have expertise in brownfield redevelopment either in environmental law, engineering, finance, development, consulting, insurance or other relevant experience:

(1) Two appointed by the Governor;

(2) One appointed by the president pro tempore of the Senate;

(3) One appointed by the speaker of the House of Representatives;

(4) One appointed by the majority leader of the Senate;

(5) One appointed by the majority leader of the House of Representatives;

(6) One appointed by the minority leader of the Senate;

(7) One appointed by the minority leader of the House of Representatives; [and]

[(8) A representative of the Department of Environmental Protection, as appointed by the]

(8) The Commissioner of Economic and Community Development, or the commissioner's designee;

(9) The Commissioner of Environmental Protection, or the commissioner's designee; and

Substitute House Bill No. 7369

(10) The Secretary of the Office of Policy and Management or the secretary's designee.

(c) Any member of the task force appointed under subdivision (1), (2), (3), (4), (5), (6) or (7) of subsection (b) of this section may be a member of the General Assembly. At least one member shall be an employee.

(d) All appointments to the task force shall be made no later than thirty days after the effective date of this section. Any vacancy shall be filled by the appointing authority.

(e) The speaker of the House of Representatives and the president pro tempore of the Senate shall select the chairpersons of the task force, from among the members of the task force. Such chairpersons shall schedule the first meeting of the task force, which shall be held no later than sixty days after the effective date of this section.

(f) Not later than [January 1, 2007] February 1, 2008, the task force shall submit a report on its findings and recommendations to the joint standing committees of the General Assembly having cognizance of matters relating to environment and commerce, in accordance with the provisions of section 11-4a of the general statutes. The task force shall terminate on the date that it submits such report or [January 1, 2007] February 1, 2008, whichever is later.

Approved July 6, 2007