



General Assembly

January Session, 2009

Amendment

LCO No. 8797

HB0609708797HDO

Offered by:

REP. BERGER, 73rd Dist.
REP. MAZUREK, 80th Dist.
REP. SHARKEY, 88th Dist.
REP. FRITZ, 90th Dist.
REP. MIOLI, 136th Dist.
REP. DREW, 132nd Dist.
REP. O'CONNOR, 35th Dist.
REP. ALDARONDO, 75th Dist.
REP. BUTLER, 72nd Dist.
REP. D'AMELIO, 71st Dist.
REP. NOUJAIM, 74th Dist.
REP. ARESIMOWICZ, 30th Dist.
REP. ALBERTS, 50th Dist.
SEN. LEBEAU, 3rd Dist.
SEN. CALIGIURI, 16th Dist.
SEN. HARTLEY, 15th Dist.
REP. MORRIS, 140th Dist.
REP. JOHNSON, 49th Dist.
REP. ZALASKI, 81st Dist.

REP. HURLBURT, 53rd Dist.
REP. LEONE, 148th Dist.
REP. WILLIAMS, 68th Dist.
REP. PERILLO, 113th Dist.
SEN. FRANTZ, 36th Dist.
REP. ROY, 119th Dist.
SEN. MEYER, 12th Dist.
REP. MILLER L., 122nd Dist.
REP. GENTILE, 104th Dist.
SEN. DUFF, 25th Dist.
REP. CLEMONS, 124th Dist.
REP. CARUSO, 126th Dist.
REP. HENNESSY, 127th Dist.
REP. AYALA, 128th Dist.
REP. GROGINS, 129th Dist.
REP. SANTIAGO, 130th Dist.
REP. CONWAY, 61st Dist.
SEN. GOMES, 23rd Dist.
SEN. MUSTO, 22nd Dist.

To: Subst. House Bill No. 6097

File No. 956

Cal. No. 238

"AN ACT CONCERNING BROWNFIELDS DEVELOPMENT PROJECTS."

1 Strike everything after the enacting clause and substitute the

2 following in lieu thereof:

3 "Section 1. Section 25-68d of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective from passage*):

5 (a) No state agency shall undertake an activity or a critical activity
6 within or affecting the floodplain without first obtaining an approval
7 or approval with conditions from the commissioner of a certification
8 submitted in accordance with subsection (b) of this section or
9 exemption by the commissioner from such approval or approval with
10 conditions in accordance with subsection (d) of this section.

11 (b) Any state agency proposing an activity or critical activity within
12 or affecting the floodplain shall submit to the commissioner
13 information certifying that:

14 (1) The proposal will not obstruct flood flows or result in an adverse
15 increase in flood elevations, significantly affect the storage or flood
16 control value of the floodplains, cause an adverse increase in flood
17 velocities, or an adverse flooding impact upon upstream, downstream
18 or abutting properties, or pose a hazard to human life, health or
19 property in the event of a base flood or base flood for a critical activity;

20 (2) The proposal complies with the provisions of the National Flood
21 Insurance Program (44 CFR 59 et seq.), and any floodplain zoning
22 requirements adopted by a municipality in the area of the proposal
23 and the requirements for stream channel encroachment lines adopted
24 pursuant to the provisions of section 22a-342;

25 (3) The agency has acquired, through public or private purchase or
26 conveyance, easements and property in floodplains when the base
27 flood or base flood for a critical activity is elevated above the
28 increment authorized by the National Flood Insurance Program or the
29 flood storage loss would cause adverse increases in such base flood
30 flows;

31 (4) The proposal promotes long-term nonintensive floodplain uses

32 and has utilities located to discourage floodplain development;

33 (5) The agency has considered and will use to the extent feasible
34 flood-proofing techniques to protect new and existing structures and
35 utility lines, will construct dikes, dams, channel alterations, seawalls,
36 breakwaters or other structures only where there are no practical
37 alternatives and will implement stormwater management practices in
38 accordance with regulations adopted pursuant to section 25-68h; and

39 (6) The agency has flood forecasting and warning capabilities
40 consistent with the system maintained by the National Weather
41 Service and has a flood preparedness plan.

42 (c) The commissioner shall make a decision either approving,
43 approving with conditions or rejecting a certification not later than
44 ninety days after receipt of such certification, except that in the case of
45 an exemption any decision shall be made ninety days after the close of
46 the hearing. If a certification is rejected, the agency shall be entitled to a
47 hearing in accordance with the provisions of sections 4-176e, 4-177, 4-
48 177c and 4-180.

49 (d) Any state agency proposing an activity or critical activity within
50 or affecting the floodplain may apply to the commissioner for
51 exemption from the provisions of subsection (b) of this section. Such
52 application shall include a statement of the reasons why such agency is
53 unable to comply with said subsection and any other information the
54 commissioner deems necessary. The commissioner, at least thirty days
55 before approving, approving with conditions or denying any such
56 application, shall publish once in a newspaper having a substantial
57 circulation in the affected area notice of: (1) The name of the applicant;
58 (2) the location and nature of the requested exemption; (3) the tentative
59 decision on the application; and (4) additional information the
60 commissioner deems necessary to support the decision to approve,
61 approve with conditions or deny the application. There shall be a
62 comment period following the public notice during which period
63 interested persons and municipalities may submit written comments.

64 After the comment period, the commissioner shall make a final
65 determination to either approve the application, approve the
66 application with conditions or deny the application. The commissioner
67 may hold a public hearing prior to approving, approving with
68 conditions or denying any application if in the discretion of the
69 commissioner the public interest will be best served thereby, and the
70 commissioner shall hold a public hearing upon receipt of a petition
71 signed by at least twenty-five persons. Notice of such hearing shall be
72 published at least thirty days before the hearing in a newspaper
73 having a substantial circulation in the area affected. The commissioner
74 may approve or approve with conditions such exemption if the
75 commissioner determines that (A) the agency has shown that the
76 activity or critical activity is in the public interest, will not injure
77 persons or damage property in the area of such activity or critical
78 activity, complies with the provisions of the National Flood Insurance
79 Program, and, in the case of a loan or grant, the recipient of the loan or
80 grant has been informed that increased flood insurance premiums may
81 result from the activity or critical activity. An activity shall be
82 considered to be in the public interest if it is a development subject to
83 environmental remediation regulations adopted pursuant to section
84 22a-133k and is in or adjacent to an area identified as a regional center,
85 neighborhood conservation area, growth area or rural community
86 center in the State Plan of Conservation and Development pursuant to
87 chapter 297, or (B) in the case of a flood control project, such project
88 meets the criteria of subparagraph (A) of this subdivision and is more
89 cost-effective to the state and municipalities than a project constructed
90 to or above the base flood or base flood for a critical activity. Following
91 approval for exemption for a flood control project, the commissioner
92 shall provide notice of the hazards of a flood greater than the capacity
93 of the project design to each member of the legislature whose district
94 will be affected by the project and to the following agencies and
95 officials in the area to be protected by the project: The planning and
96 zoning commission, the inland wetlands agency, the director of civil
97 defense, the conservation commission, the fire department, the police
98 department, the chief elected official and each member of the

99 legislative body, and the regional planning agency. Notice shall be
100 given to the general public by publication in a newspaper of general
101 circulation in each municipality in the area in which the project is to be
102 located.

103 (e) The use of a mill that is located on a brownfield, as defined in
104 section 32-9kk, shall be exempt from the certification requirements of
105 subdivision (4) of subsection (b) of this section, provided the agency
106 demonstrates: (1) The activity is subject to the environmental
107 remediation requirements of the regulations adopted pursuant to
108 section 22a-133k, (2) the activity is limited to the areas of the property
109 where historical mill uses occurred, (3) any critical activity is above the
110 five hundred year flood elevation, and (4) the activity complies with
111 the provisions of the National Flood Insurance Program.

112 [(e)] (f) The failure of any agency to comply with the provisions of
113 this section or any regulations adopted pursuant to section 25-68c shall
114 be grounds for revocation of the approval of the certification.

115 [(f)] (g) The provisions of this section shall not apply to any
116 proposal by the Department of Transportation for a project within a
117 drainage basin of less than one square mile.

118 Sec. 2. Subdivision (1) of section 22a-134 of the general statutes is
119 repealed and the following is substituted in lieu thereof (*Effective from*
120 *passage*):

121 (1) "Transfer of establishment" means any transaction or proceeding
122 through which an establishment undergoes a change in ownership, but
123 does not mean:

124 (A) Conveyance or extinguishment of an easement;

125 (B) Conveyance of an establishment through a foreclosure, as
126 defined in subsection (b) of section 22a-452f, [or] foreclosure of a
127 municipal tax lien or through a tax warrant sale pursuant to section 12-
128 157, [or, provided the establishment is within the pilot program

129 established in subsection (c) of section 32-9cc,] an exercise of eminent
130 domain pursuant to section 8-128 or 8-193 or by condemnation
131 pursuant to section 32-224 or purchase pursuant to a resolution by the
132 legislative body of a municipality authorizing the acquisition through
133 eminent domain for establishments that also meet the definition of a
134 brownfield as defined in section 32-9kk or a subsequent transfer by
135 such municipality that has foreclosed on the property, foreclosed
136 municipal tax liens or that has acquired title to the property through
137 section 12-157, or is within the pilot program established in subsection
138 (c) of section 32-9cc, or has acquired such property through the
139 exercise of eminent domain pursuant to section 8-128 or 8-193 or by
140 condemnation pursuant to section 32-224 or a resolution adopted in
141 accordance with this subparagraph, provided (i) the party acquiring
142 the property from the municipality did not establish, create or
143 contribute to the contamination at the establishment and is not
144 affiliated with any person who established, created or contributed to
145 such contamination or with any person who is or was an owner or
146 certifying party for the establishment, and (ii) on or before the date the
147 party acquires the property from the municipality, such party or
148 municipality enters and subsequently remains in the voluntary
149 remediation program administered by the commissioner pursuant to
150 section 22a-133x, as amended by this act, and remains in compliance
151 with schedules and approvals issued by the commissioner. For
152 purposes of this subparagraph, subsequent transfer by a municipality
153 includes any transfer to, from or between a municipality, municipal
154 economic development agency or entity created or operating under
155 chapter 130 or 132, a nonprofit economic development corporation
156 formed to promote the common good, general welfare and economic
157 development of a municipality that is funded, either directly or
158 through in-kind services, in part by a municipality, or a nonstock
159 corporation or limited liability company controlled or established by a
160 municipality, municipal economic development agency or entity
161 created or operating under chapter 130 or 132;

162 (C) Conveyance of a deed in lieu of foreclosure to a lender, as

163 defined in and that qualifies for the secured lender exemption
164 pursuant to subsection (b) of section 22a-452f;

165 (D) Conveyance of a security interest, as defined in subdivision (7)
166 of subsection (b) of section 22a-452f;

167 (E) Termination of a lease and conveyance, assignment or execution
168 of a lease for a period less than ninety-nine years including
169 conveyance, assignment or execution of a lease with options or similar
170 terms that will extend the period of the leasehold to ninety-nine years,
171 or from the commencement of the leasehold, ninety-nine years,
172 including conveyance, assignment or execution of a lease with options
173 or similar terms that will extend the period of the leasehold to ninety-
174 nine years, or from the commencement of the leasehold;

175 (F) Any change in ownership approved by the Probate Court;

176 (G) Devolution of title to a surviving joint tenant, or to a trustee,
177 executor or administrator under the terms of a testamentary trust or
178 will, or by intestate succession;

179 (H) Corporate reorganization not substantially affecting the
180 ownership of the establishment;

181 (I) The issuance of stock or other securities of an entity which owns
182 or operates an establishment;

183 (J) The transfer of stock, securities or other ownership interests
184 representing less than forty per cent of the ownership of the entity that
185 owns or operates the establishment;

186 (K) Any conveyance of an interest in an establishment where the
187 transferor is the sibling, spouse, child, parent, grandparent, child of a
188 sibling or sibling of a parent of the transferee;

189 (L) Conveyance of an interest in an establishment to a trustee of an
190 inter vivos trust created by the transferor solely for the benefit of one
191 or more siblings, spouses, children, parents, grandchildren, children of

192 a sibling or siblings of a parent of the transferor;

193 (M) Any conveyance of a portion of a parcel upon which portion no
194 establishment is or has been located and upon which there has not
195 occurred a discharge, spillage, uncontrolled loss, seepage or filtration
196 of hazardous waste, provided either the area of such portion is not
197 greater than fifty per cent of the area of such parcel or written notice of
198 such proposed conveyance and an environmental condition
199 assessment form for such parcel is provided to the commissioner sixty
200 days prior to such conveyance;

201 (N) Conveyance of a service station, as defined in subdivision (5) of
202 this section;

203 (O) Any conveyance of an establishment which, prior to July 1, 1997,
204 had been developed solely for residential use and such use has not
205 changed;

206 (P) Any conveyance of an establishment to any entity created or
207 operating under chapter 130 or 132, or to an urban rehabilitation
208 agency, as defined in section 8-292, or to a municipality under section
209 32-224, or to the Connecticut Development Authority or any
210 subsidiary of the authority;

211 (Q) Any conveyance of a parcel in connection with the acquisition of
212 properties to effectuate the development of the overall project, as
213 defined in section 32-651;

214 (R) The conversion of a general or limited partnership to a limited
215 liability company under section 34-199;

216 (S) The transfer of general partnership property held in the names of
217 all of its general partners to a general partnership which includes as
218 general partners immediately after the transfer all of the same persons
219 as were general partners immediately prior to the transfer;

220 (T) The transfer of general partnership property held in the names
221 of all of its general partners to a limited liability company which

222 includes as members immediately after the transfer all of the same
223 persons as were general partners immediately prior to the transfer;

224 (U) Acquisition of an establishment by any governmental or quasi-
225 governmental condemning authority;

226 (V) Conveyance of any real property or business operation that
227 would qualify as an establishment solely as a result of (i) the
228 generation of more than one hundred kilograms of universal waste in
229 a calendar month, (ii) the storage, handling or transportation of
230 universal waste generated at a different location, or (iii) activities
231 undertaken at a universal waste transfer facility, provided any such
232 real property or business operation does not otherwise qualify as an
233 establishment; there has been no discharge, spillage, uncontrolled loss,
234 seepage or filtration of a universal waste or a constituent of universal
235 waste that is a hazardous substance at or from such real property or
236 business operation; and universal waste is not also recycled, treated,
237 except for treatment of a universal waste pursuant to 40 CFR
238 273.13(a)(2) or (c)(2) or 40 CFR 273.33 (a)(2) or (c)(2), or disposed of at
239 such real property or business operation; or

240 (W) Conveyance of a unit in a residential common interest
241 community in accordance with section 22a-134i.

242 Sec. 3. Section 32-9dd of the general statutes is repealed and the
243 following is substituted in lieu thereof (*Effective July 1, 2009*):

244 Upon remediation as approved by the Department of
245 Environmental Protection of the brownfield property by the
246 municipality, [or] economic development agency [, the economic
247 development agency or the municipality] or entity established under
248 chapter 130 or 132, nonprofit economic development corporation
249 formed to promote the common good, general welfare and economic
250 development of a municipality that is funded, either directly or
251 through in-kind services, in part by a municipality, or a nonstock
252 corporation or limited liability company controlled or established by a
253 municipality, municipal economic development agency or entity

254 created or operating under chapter 130 or 132, such entity may transfer
255 the property to any person provided such a person is not otherwise
256 liable under section 22a-432, 22a-433, 22a-451 or 22a-452, as amended
257 by this act. The person who acquires title [from the municipality or
258 economic development agency] pursuant to this section shall not be
259 liable under section 22a-432, 22a-433, 22a-451 or 22a-452, as amended
260 by this act, provided that such person does not cause or contribute to
261 the discharge, spillage, uncontrolled loss, seepage or filtration of such
262 hazardous substance, material or waste and such person is not a
263 member, officer, manager, director, shareholder, subsidiary, successor
264 of, related to, or affiliated with, directly or indirectly, the person who is
265 otherwise liable under section 22a-432, 22a-433, 22a-451 or 22a-452, as
266 amended by this act. In addition, the Commissioner of Environmental
267 Protection shall also provide such person with a covenant not to sue
268 pursuant to section 22a-133 and shall not require the prospective
269 purchaser or owner to pay a fee. The municipality, [or] economic
270 development agency or entity established under chapter 130 or 132,
271 nonprofit economic development corporation formed to promote the
272 common good, general welfare and economic development of a
273 municipality that is funded, either directly or through in-kind services,
274 in part by a municipality, or a nonstock corporation or limited liability
275 company controlled or established by a municipality, municipal
276 economic development agency or entity created or operating under
277 chapter 130 or 132 shall distribute the proceeds from any sale as
278 follows: (1) Twenty per cent shall be retained by the municipality, [or]
279 economic development agency, nonprofit economic development
280 corporation or nonstock corporation or limited liability company and
281 used for capital improvements for economic development, and (2)
282 eighty per cent shall be transferred to the Office of Brownfield
283 Remediation and Development and deposited in the account
284 established pursuant to section 32-9ff.

285 Sec. 4. Subsection (a) of section 32-9ee of the general statutes is
286 repealed and the following is substituted in lieu thereof (*Effective July*
287 *1, 2009*):

288 (a) [The] Any municipality, [or] economic development agency or
289 entity established under chapter 130 or 132, nonprofit economic
290 development corporation formed to promote the common good,
291 general welfare and economic development of a municipality that is
292 funded, either directly or through in-kind services, in part by a
293 municipality, or a nonstock corporation or limited liability company
294 controlled or established by a municipality, municipal economic
295 development agency or entity created or operating under chapter 130
296 or 132 that receives grants through the Office of Brownfield
297 Remediation and [Development's] Development or the Department of
298 Economic and Community Development, including those
299 municipalities designated by the Commissioner of Economic and
300 Community Development as part of the pilot program established in
301 subsection (c) of section 32-9cc for the investigation and remediation of
302 a brownfield property shall be considered an innocent party and shall
303 not be liable under section 22a-432, 22a-433, 22a-451 or 22a-452, as
304 amended by this act, for conditions pre-existing or existing on the
305 brownfield property as of the date of acquisition or control as long as
306 the municipality, [or] economic development agency or entity
307 established under chapter 130 or 132, nonprofit economic development
308 corporation formed to promote the common good, general welfare and
309 economic development of a municipality that is funded, either directly
310 or through in-kind services, in part by a municipality, or a nonstock
311 corporation or limited liability company controlled or established by a
312 municipality, municipal economic development agency or entity
313 created or operating under chapter 130 or 132 did not establish, cause
314 or contribute to the discharge, spillage, uncontrolled loss, seepage or
315 filtration of such hazardous substance, material, waste or pollution
316 that is subject to remediation under [this pilot program] section 22a-
317 133k and funded by the Office of Brownfield Remediation and
318 Development or the Department of Economic and Community
319 Development; does not exacerbate the conditions; and complies with
320 reporting of significant environmental hazard requirements in section
321 22a-6u. To the extent that any conditions are exacerbated, the
322 municipality, economic development agency or entity established

323 under chapter 130 or 132, nonprofit economic development
324 corporation formed to promote the common good, general welfare and
325 economic development of a municipality that is funded, either directly
326 or through in-kind services, in part by a municipality, or nonstock
327 corporation or limited liability company controlled or established by a
328 municipality, municipal economic development agency or entity
329 created or operating under chapter 130 or 132 shall only be responsible
330 for responding to contamination exacerbated by its negligent or
331 reckless activities.

332 Sec. 5. Section 22a-452 of the general statutes is repealed and the
333 following is substituted in lieu thereof (*Effective July 1, 2009*):

334 (a) Any person, firm, corporation or municipality which contains or
335 removes or otherwise mitigates the effects of oil or petroleum or
336 chemical liquids or solid, liquid or gaseous products or hazardous
337 wastes resulting from any discharge, spillage, uncontrolled loss,
338 seepage or filtration of such substance or material or waste shall be
339 entitled, subject to the conditions in this section, to reimbursement
340 from any person, firm or corporation for the reasonable costs
341 expended for such containment, removal, or mitigation, including any
342 investigation and remediation, if such oil or petroleum or chemical
343 liquids or solid, liquid or gaseous products or hazardous wastes
344 pollution or contamination or other emergency [resulted from the
345 negligence or other] was directly or indirectly caused by or contributed
346 to or exacerbated by the actions or negligent omissions of such person,
347 firm or corporation. When such pollution or contamination or
348 emergency results from the [joint negligence or other] actions or
349 negligent omissions of two or more persons, firms or corporations,
350 each shall be liable [to the others] for a pro rata share of the costs of
351 [containing, and removing or otherwise mitigating the effects]
352 investigation and remediation of the same and for all damage caused
353 thereby. No person, firm or corporation shall be liable for
354 reimbursement of costs incurred unless such person, firm or
355 corporation received notice and the opportunity to participate in the
356 investigation and remediation pursuant to subsection (f) of this

357 section. No such responsible person, firm or corporation shall be
358 required to fund any remediation above the land use that existed when
359 the person, firm or corporation owned or operated such site. If an
360 imminent and substantial endangerment exists at the property or
361 arises from pollution migrating beyond the property line, the
362 provisions of this section limiting the potentially responsible party's
363 liability shall not apply to an action for the costs associated with the
364 investigation and remediation of such condition. For the purposes of
365 this subsection, "reimbursement" means the reimbursement of funds
366 already expended or the recovery of funds to be expended, pursuant to
367 this section, and "pro rata share" means an equitable proportionate
368 share based upon equitable and site-specific factors, including, but not
369 limited to, the activity conducted on the property, the duration of such
370 activity or ownership of the property, compliance with the laws,
371 regulations and other standards that existed at the time of ownership
372 or operation with respect to the ownership or operation of the
373 property, type and amount of pollution caused, and prior efforts to
374 prevent, contain, mitigate or remediate such pollution.

375 (b) No person, firm, [or] corporation or municipality which renders
376 assistance or advice in mitigating or attempting to mitigate the effects
377 of an actual or threatened discharge of oil or petroleum or chemical
378 liquids or solid, liquid or gaseous products or hazardous materials,
379 hazardous wastes or hazardous substances, other than a discharge of
380 oil as defined in section 22a-457b, to the surface waters of the state, or
381 [which] who assists in preventing, cleaning-up or disposing of any
382 such discharge shall be held liable, notwithstanding any other
383 provision of law, for any costs of investigation or remediation under
384 this section and civil damages as a result of any act or omission by him
385 in rendering such assistance or advice, except acts or omissions
386 amounting to gross negligence or wilful or wanton misconduct, unless
387 he is compensated for such assistance or advice for more than actual
388 expenses. For the purpose of this subsection, "discharge" means
389 spillage, uncontrolled loss, seepage or filtration and "hazardous
390 materials" means any material or substance designated as such by any

391 state or federal law or regulation.

392 (c) The immunity provided in subsection (b) of this section shall not
393 apply to (1) any person, firm, [or] corporation or municipality
394 responsible for such discharge, or under a duty to mitigate the effects
395 of such discharge, (2) any agency or instrumentality of such person,
396 firm or corporation, or (3) negligence in the operation of a motor
397 vehicle.

398 (d) An action for reimbursement or recovery of the reasonable costs
399 expected for investigation and remediation, including the reasonable
400 costs of investigation and remediation, shall be commenced on or
401 before the later of (1) six years after written notice was provided to the
402 known responsible person, firm or corporation pursuant to subsection
403 (f) of this section, or (2) three years after the completion of remediation
404 activities, exclusive of any post-remedial or other long-term
405 groundwater monitoring.

406 (e) The provisions of this section shall not apply to any action filed
407 before July 1, 2009. A performing party who has begun incurring costs
408 for remediation started before July 1, 2009, who may seek to recover
409 such costs pursuant to this section shall provide notice pursuant to
410 subsection (f) of this section, no later than November 1, 2009.

411 (f) Before any person, firm or corporation files an action under this
412 section in the Superior Court, such person, firm or corporation shall
413 provide written notice of intent to conduct any remediation to all
414 known potential responsible parties no later than one hundred twenty
415 days before the commencement of such activity. Such notice shall
416 identify the property, the potential responsible party's relationship to
417 such site, the proposed investigation or remediation activity and its
418 estimated cost and the date that such activity is to commence. No such
419 notice shall be required before filing a lawsuit if an imminent and
420 substantial endangerment exists necessitating immediate action,
421 provided notice is made within a reasonable time after immediate
422 action is taken. Notice provided pursuant to this subsection shall be

423 sent certified mail, return receipt requested to any potentially
424 responsible party at their last known address on file at the Secretary of
425 the State's office or their agent for service of process, if any. If a private
426 corporation is no longer on file with the Secretary of the State, notice
427 shall be sent to the last-known address of the president or, if a
428 partnership, to the last-known address of any of the known partners,
429 or, if an individual, to the last-known residential address of the
430 individual. The performing party shall provide a copy of the notice to
431 the Office of the Attorney General and the Commissioner of
432 Environmental Protection. When other potentially responsible parties
433 become known to the performing party after the notice under this
434 section is provided, the performing party shall provide notice
435 pursuant to this subsection not later than forty-five days after the
436 discovery of the other potentially responsible parties.

437 (g) Any potentially responsible party shall inform such performing
438 party, not later than ninety days after receipt of the notice required
439 pursuant to subsection (f) of this section, of their intent to negotiate
440 with the performing party regarding a reasonable pro rata allocation
441 for the investigation and remediation costs.

442 (h) A potentially responsible party that has exercised its right to
443 participate and participates in the investigation and remediation of an
444 eligible site shall be responsible solely for its pro rata share of any
445 necessary and reasonable costs of investigation and remediation. A
446 potentially responsible party that fails to offer and share in the costs
447 reasonably proportionate to its pro rata share, or who fails to
448 participate or respond to the notice provided in subsection (c) of this
449 section shall (1) waive any right to challenge the reasonableness of
450 investigation and remediation costs in any claim or action for
451 reimbursement of such investigation and remediation costs; (2) pay
452 damages to the performing party, including costs associated with any
453 lost business opportunities; and (3) pay the performing party's
454 attorneys fees, in the discretion of the court, and other costs of
455 litigation, in the event the performing party prevails in its claim or
456 action for reimbursement.

457 (i) In any action brought pursuant to this section, the Superior Court
458 may issue an order granting the reimbursement or recovery of
459 reasonable costs to be incurred in the future consistent with the pro
460 rata share of the costs of the potential responsible party.

461 (j) A performing party that has failed to provide notice and
462 opportunity to participate to any known potential responsible party
463 shall be prohibited from seeking reimbursement of investigation and
464 remediation costs from such potential responsible party.

465 (k) Nothing in this section shall relieve any potential responsible
466 party from any liability to any third party for property damage or
467 personal injury based upon common law.

468 (l) Nothing in this section shall deprive any potential responsible
469 party from any possible defenses to any action, including, but not
470 limited to, contribution, available by law.

471 (m) No eligible party shall be liable for a claim under this section for
472 any costs or damages arising from any pollution or source of pollution
473 on or emanating from the property that occurred or existed prior to
474 such eligible party taking title to such property provided the eligible
475 party did not establish, create or contribute to a condition or facility at
476 or on such property that reasonably can be expected to create a source
477 of pollution and the eligible party is not affiliated with any person
478 responsible for such pollution or source of pollution through any
479 direct or indirect familial relationship or any contractual, corporate or
480 financial relationship other than that by which such eligible party's
481 interest in the property was conveyed or financed.

482 (n) For purposes of this section: (1) "Potentially responsible party"
483 means any person, firm, corporation or municipality that is liable
484 under this section for an act or negligent omission that directly or
485 indirectly caused or contributed to or exacerbated the release,
486 discharge, spillage, uncontrolled loss, seepage or filtration of oil or
487 petroleum or chemical liquids or solid, liquid or gaseous products or
488 hazardous wastes; (2) "eligible party" means a person, firm,

489 corporation or municipality that acquired the property after the
490 pollution or source of pollution existed or occurred and such party is
491 not otherwise responsible pursuant to section 22a-428, 22a-432, 22a-433
492 or 22a-451 or pursuant to transfer of ownership filing pursuant to
493 section 22a-134, as amended by this act, or 22a-134e and is not
494 affiliated with any person responsible for such pollution or source of
495 pollution through any direct or indirect familial relationship or any
496 contractual, corporate or financial relationship other than that by
497 which such owner's interest in the property was conveyed or financed;
498 (3) "performing party" means the person, firm or corporation that
499 performs an investigation and remediation or contains or removes or
500 otherwise mitigates the effects of oil or petroleum or chemical liquids
501 or solid, liquid or gaseous products or hazardous wastes; (4)
502 "investigation and remediation" means assessment, investigation,
503 containment, mitigation, removal, remediation and subsequent
504 monitoring; (5) "remediation" means the work performed on a site that
505 is undertaken pursuant to a remedial action plan; and (6)
506 "municipality" shall have the same meaning as in section 22a-423, and
507 includes any municipal economic development agency or entity
508 created or operating under chapter 130 or 132 and any nonprofit
509 economic development corporation formed to promote the common
510 good, general welfare and economic development of a municipality
511 that is funded, either directly or through in-kind services, in part by a
512 municipality, or a nonstock corporation or limited liability company
513 established and controlled by a municipality, municipal economic
514 development agency or entity created or operating under chapter 130
515 or 132.

516 Sec. 6. Section 22a-134b of the general statutes is repealed and the
517 following is substituted in lieu thereof (*Effective from passage*):

518 (a) Failure of the transferor to comply with any of the provisions of
519 sections 22a-134 to 22a-134e, inclusive, as amended by this act, entitles
520 the transferee to recover damages from the transferor, and renders the
521 transferor of the establishment strictly liable, without regard to fault,
522 for all remediation costs and for all direct and indirect damages.

523 (b) An action to recover damages pursuant to subsection (a) of this
524 section shall be commenced not later than six years after the later of (1)
525 the due date for the filing of the appropriate transfer form pursuant to
526 section 22a-134a, as amended by this act, or (2) the actual filing date of
527 the appropriate transfer form.

528 (c) This section shall apply to any action brought for the
529 reimbursement or recovery of costs associated with investigation and
530 remediation, as defined in subsection (n) of section 22a-452, as
531 amended by this act, and all direct and indirect damages, except any
532 action that becomes final and is no longer subject to appeal on or
533 before October 1, 2009.

534 Sec. 7. Section 22a-133dd of the general statutes is repealed and the
535 following is substituted in lieu thereof (*Effective from passage*):

536 (a) Any municipality or any licensed environmental professional
537 employed or retained by a municipality may enter, without liability [to
538 any person other than the Commissioner of Environmental Protection,]
539 upon any property within such municipality for the purpose of
540 performing an environmental site assessment or investigation on
541 behalf of the municipality if: (1) The owner of such property cannot be
542 located; (2) such property is encumbered by a lien for taxes due such
543 municipality; (3) upon a filing of a notice of eminent domain; (4) the
544 municipality's legislative body finds that such investigation is in the
545 public interest to determine if the property is underutilized or should
546 be included in any undertaking of development, redevelopment or
547 remediation pursuant to this chapter or chapter 130, 132 or 581; or (5)
548 any official of the municipality reasonably finds such investigation
549 necessary to determine if such property presents a risk to the safety,
550 health or welfare of the public or a risk to the environment. The
551 municipality shall give at least forty-five days' notice of such entry
552 before the first such entry by certified mail to the property owner's last
553 known address of record.

554 (b) A municipality accessing or entering a property to perform an

555 investigation pursuant to this section shall not [incur any liability
556 pursuant to section 22a-432 for any preexisting contamination or
557 pollution on such property, provided, however, a municipality may be
558 liable for any pollution or contamination resulting from a negligent or
559 reckless investigation] be liable for preexisting conditions pursuant to
560 section 22a-432, 22a-433, 22a-451 or 22a-452, as amended by this act, or
561 to the property owner or any third party, provided the municipality (1)
562 did not establish, cause or contribute to the discharge, spillage,
563 uncontrolled loss, seepage or filtration of such hazardous substance,
564 material, waste or pollution; (2) does not negligently or recklessly
565 exacerbate the conditions; and (3) complies with reporting of
566 significant environmental hazard requirements pursuant to section
567 22a-6u. To the extent that any conditions are negligently or recklessly
568 exacerbated, the municipality shall only be responsible for responding
569 to contamination exacerbated by its activities.

570 (c) The owner of the property may object to such access and entry
571 by the municipality by filing an action in the Superior Court not later
572 than thirty days after receipt of the notice provided pursuant to
573 subsection (a) of this section, provided any objection be limited to the
574 [owner affirmatively representing that it is diligently investigating the
575 site in a timely manner and that any municipal taxes owed will be paid
576 in full] issue of whether access is necessary and only upon proof by the
577 owner that the owner has (1) completed or is in the process of
578 completing in a timely manner a comprehensive environmental site
579 assessment or investigation report; (2) provided the party seeking
580 access with a copy of the assessment or report or will do so not later
581 than thirty days after the delivery of such assessment or report to the
582 owner; and (3) paid any delinquent property taxes assessed against the
583 property for which access is being sought.

584 (d) For purposes of this section, "municipality" includes any
585 municipality, municipal economic development agency or entity
586 created or operating under chapter 130 or 132, nonprofit economic
587 development corporation formed to promote the common good,
588 general welfare and economic development of a municipality that is

589 funded, either directly or through in-kind services, in part by a
590 municipality, or nonstock corporation or limited liability company
591 established and controlled by a municipality, municipal economic
592 development agency or entity created or operating under chapter 130
593 or 132.

594 Sec. 8. (NEW) (*Effective October 1, 2009*) (a) There is established an
595 abandoned brownfield cleanup program. The Commissioner of
596 Economic and Community Development shall determine, in
597 consultation with the Commissioner of Environmental Protection,
598 properties and persons eligible for said program. For a person and a
599 property to be eligible, the Commissioner of Economic and
600 Community Development shall determine if (1) the property is a
601 brownfield, as defined in section 32-9kk of the general statutes and
602 such property has been unused or significantly underused since
603 October 1, 1999; (2) such person intends to acquire title to such
604 property for the purpose of redeveloping such property; (3) the
605 redevelopment of such property has a regional or municipal economic
606 development benefit; (4) such person did not establish or create a
607 facility or condition at or on such property that can reasonably be
608 expected to create a source of pollution to the waters of the state for the
609 purposes of section 22a-432 of the general statutes and is not affiliated
610 with any person responsible for such pollution or source of pollution
611 through any direct or indirect familial relationship or any contractual,
612 corporate or financial relationship other than a relationship by which
613 such owner's interest in such property is to be conveyed or financed;
614 (5) such person is not otherwise required by law, an order or consent
615 order issued by the Commissioner of Environmental Protection or a
616 stipulated judgment to remediate pollution on or emanating from such
617 property; (6) the person responsible for pollution on or emanating
618 from the property is indeterminable, is no longer in existence or is
619 otherwise unable to perform necessary remediation of such property;
620 and (7) the property and the person meet any other criteria said
621 commissioner deems necessary.

622 (b) Upon designation by the Commissioner of Economic and

623 Community Development of an eligible person who holds title to such
624 property, such eligible person shall (1) enter and remain in the
625 voluntary remediation program established in section 22a-133x of the
626 general statutes, as amended by this act, provided such person will not
627 be a certifying party for the property pursuant to section 22a-134 of the
628 general statutes, as amended by this act, when acquiring such
629 property, (2) investigate pollution on such property in accordance with
630 prevailing standards and guidelines and remediate pollution on such
631 property in accordance with regulations established for remediation
632 adopted by the Commissioner of Environmental Protection and in
633 accordance with applicable schedules; and (3) eliminate further
634 emanation or migration of any pollution from such property. An
635 eligible person who holds title to an eligible property designated to be
636 in the abandoned brownfields cleanup program shall not be
637 responsible for investigating or remediating any pollution or source of
638 pollution that has emanated from such property prior to such person
639 taking title to such property.

640 (c) Any applicant seeking a designation of eligibility for a person or
641 a property under the abandoned brownfields cleanup program shall
642 apply to the Commissioner of Economic and Community
643 Development at such times and on such forms as the commissioner
644 may prescribe.

645 (d) Not later than sixty days after receipt of the application, the
646 Commissioner of Economic and Community Development shall
647 determine if the application is complete and shall notify the applicant
648 of such determination.

649 (e) Not later than ninety days after determining that the application
650 is complete, the Commissioner of Economic and Community
651 Development shall determine whether to include the property and
652 applicant in the abandoned brownfields cleanup program.

653 (f) Designation of a property in the abandoned brownfields cleanup
654 program by the Commissioner of Economic and Community

655 Development shall not limit the applicant's or any other person's
656 ability to seek funding for such property under any other brownfield
657 grant or loan program administered by the Department of Economic
658 and Community Development, the Connecticut Development
659 Authority or the Department of Environmental Protection.

660 Sec. 9. Section 22a-134 of the general statutes is amended by adding
661 subdivision (28) as follows (*Effective October 1, 2009*):

662 (NEW) (28) "Interim verification" means a written opinion by a
663 licensed environmental professional, on a form prescribed by the
664 commissioner, that (A) the investigation has been performed in
665 accordance with prevailing standards and guidelines, (B) the
666 remediation has been completed in accordance with the remediation
667 standards, except that, for remediation standards for groundwater, the
668 selected remedy is in operation but has not achieved the remediation
669 standards for groundwater, (C) identifies the long-term remedy being
670 implemented to achieve groundwater standards, the estimated
671 duration of such remedy, and the ongoing operation and maintenance
672 requirements for continued operation of such remedy, and (D) there
673 are no current exposure pathways to the groundwater area that have
674 not yet met the remediation standards.

675 Sec. 10. Subdivision (1) of subsection (g) of section 22a-134a of the
676 general statutes is repealed and the following is substituted in lieu
677 thereof (*Effective October 1, 2009*):

678 (g) (1) (A) Except as provided in subsection (h) of this section, the
679 certifying party to a Form III [or Form IV] shall, not later than seventy-
680 five days after the receipt of the notice that such form is complete or
681 such later date as may be approved in writing by the commissioner,
682 submit a schedule for the investigation of the parcel and remediation
683 of the establishment. Such schedule shall, unless a later date is
684 specified in writing by the commissioner, provide that the
685 investigation shall be completed within two years of the date of receipt
686 of such notice, [and that] remediation shall be initiated not later than

687 three years after the date of receipt of such notice and remediation
688 shall be completed sufficient to support either a verification or interim
689 verification not later than eight years after the date of such notice. The
690 schedule shall also include a schedule for providing public notice of
691 the remediation prior to the initiation of such remediation in
692 accordance with subsection (i) of this section. Not later than two years
693 after the date of the receipt of the notice that the Form III [or Form IV]
694 is complete, unless the commissioner has specified a later day, in
695 writing, the certifying party shall submit to the commissioner
696 documentation, approved in writing by a licensed environmental
697 professional and in a form prescribed by the commissioner, that the
698 investigation has been completed in accordance with prevailing
699 standards and guidelines. Not later than three years after the date of
700 the receipt of the notice that the Form III [or Form IV] is complete,
701 unless the commissioner has specified a later day in writing, the
702 certifying party shall notify the commissioner in a form prescribed by
703 the commissioner that the remediation has been initiated, and shall
704 submit to the commissioner a remedial action plan approved in
705 writing by a licensed environmental professional in a form prescribed
706 by the commissioner. Notwithstanding any other provision of this
707 section, the commissioner may determine at any time that the
708 commissioner's review and written approval is necessary and in such
709 case shall notify the certifying party that the commissioner's review
710 and written approval is necessary. Such certifying party shall
711 investigate the parcel and remediate the establishment in accordance
712 with the [proposed] schedule or the schedule specified by the
713 commissioner. [When]

714 (B) For a certifying party that submitted a Form III or Form IV
715 before October 1, 2009, when remediation of the entire establishment is
716 complete, the certifying party shall achieve the remediation standards
717 for the establishment sufficient to support a final verification and shall
718 submit to the commissioner a final verification by a licensed
719 environmental professional. For a certifying party that submits a Form
720 III or Form IV after October 1, 2009, not later than eight years after the

721 date of receipt of the notice that the Form III or Form IV is complete,
722 unless the commissioner has specified a later date in writing, the
723 certifying party shall achieve the remediation standards for the
724 establishment sufficient to support a final or interim verification and
725 shall submit to the commissioner such final or interim verification by a
726 licensed environmental professional. Any such final verification may
727 include and rely upon a verification for a portion of the establishment
728 submitted pursuant to subdivision (2) of this subsection. Verifications
729 shall be submitted on a form prescribed by the commissioner.

730 (C) A certifying party who submits an interim verification shall,
731 until the remediation standards for groundwater are achieved, operate
732 and maintain the long-term remedy for groundwater in accordance
733 with the remedial action plan, the interim verification and any
734 approvals by the commissioner, prevent exposure to the groundwater
735 plume and submit annual status reports to the commissioner.

736 (D) The certifying party to a Form IV shall submit with the Form IV
737 a schedule for the groundwater monitoring and recording of an
738 environmental land use restriction, as applicable.

739 Sec. 11. Section 22a-133x of the general statutes is repealed and the
740 following is substituted in lieu thereof (*Effective October 1, 2009*):

741 (a) For the purposes of this section, "applicant" means the person
742 who submits the environmental condition assessment form to the
743 commissioner pursuant to this section. Except as provided in section
744 22a-133y, [a political subdivision of the state, an owner of an
745 establishment, as defined in section 22a-134, an owner of property
746 identified on the inventory of hazardous waste disposal sites
747 maintained pursuant to section 22a-133c on October 1, 1995, or an
748 owner of contaminated property located in an area for which the
749 groundwater classification is GA or GAA,] any person may, at any
750 time, submit to the commissioner an environmental condition
751 assessment form for [such] real property [owned by such political
752 subdivision or such owner] and an initial review fee in accordance

753 with subsection (e) of this section. [The owner or political subdivision]
754 Such applicant shall use a licensed environmental professional to
755 verify the investigation and remediation, unless not later than thirty
756 days after the commissioner's receipt of such form, the commissioner
757 notifies [the owner or political subdivision] such applicant, in writing,
758 that review and written approval of any remedial action at such
759 [establishment or] property by the commissioner will be required. The
760 commissioner shall not process any such form submitted pursuant to
761 this section unless such form is accompanied by the required initial
762 review fee.

763 (b) The [owner or political subdivision] applicant shall, on or before
764 ninety days after the submission of an environmental condition
765 assessment form, submit a statement of proposed actions for
766 investigating and remediating the parcel or a release area, as defined in
767 the regulations adopted by the commissioner pursuant to section 22a-
768 133k, and a schedule for implementing such actions. The commissioner
769 may require the [owner or political subdivision] applicant to submit to
770 the commissioner copies of technical plans and reports related to
771 investigation and remediation of the parcel or release area.
772 Notwithstanding any other provision of this section, the commissioner
773 may determine that the commissioner's review and written approval
774 of such technical plans and reports is necessary at any time, and in
775 such case the commissioner shall notify the [owner or political
776 subdivision] applicant of the need for the commissioner's review and
777 written approval. The commissioner shall require that the certifying
778 party submit to the commissioner all technical plans and reports
779 related to the investigation and remediation of the parcel or release
780 area if the commissioner receives a written request from any person for
781 such information. The [owner or political subdivision] applicant shall
782 advise the commissioner of any modifications to the proposed
783 schedule. Upon receipt of a verification by a licensed environmental
784 professional that the parcel or release area has been investigated in
785 accordance with prevailing standards and guidelines and remediated
786 in accordance with the remediation standards, the [owner or political

787 subdivision] applicant shall submit such verification to the
788 commissioner on a form prescribed by the commissioner.

789 (c) If the commissioner notifies the [owner or political subdivision]
790 applicant that the commissioner will formally review and approve in
791 writing the investigation and remediation of the parcel, the [owner or
792 political subdivision] applicant shall, on or before thirty days of the
793 receipt of such notice, or such later date as may be approved in writing
794 by the commissioner, submit for the commissioner's review and
795 written approval, a proposed schedule for: (1) Investigating and
796 remediating the parcel or release area; and (2) submitting to the
797 commissioner technical plans, technical reports and progress reports
798 related to such investigation and remediation. Upon the
799 commissioner's approval of such schedule, the [owner or political
800 subdivision] applicant shall, in accordance with the approved
801 schedule, submit technical plans, technical reports and progress
802 reports to the commissioner for the commissioner's review and written
803 approval. The [owner or political subdivision] applicant shall perform
804 all actions identified in the approved technical plans, technical reports
805 and progress reports in accordance with the approved schedule. The
806 commissioner may approve, in writing, any modification proposed in
807 writing by the [owner or political subdivision] applicant to such
808 schedule or investigation and remediation and may notify the [owner]
809 applicant, in writing, if the commissioner determines that it is
810 appropriate to discontinue formal review and approval of the
811 investigation or remediation.

812 (d) If, in accordance with the provisions of this section, the
813 commissioner has approved in writing or, as applicable, a licensed
814 environmental professional has verified, that the parcel or release area
815 has been remediated in accordance with the remediation standards,
816 such approval or verification may be used as the basis for submitting a
817 Form II pursuant to sections 22a-134 to 22a-134e, inclusive, as
818 amended by this act, provided there has been no additional discharge,
819 spillage, uncontrolled loss, seepage or filtration of hazardous waste at
820 or on the parcel subsequent to the date of the commissioner's approval

821 or verification by a licensed environmental professional.

822 (e) The fee for submitting an environmental condition assessment
823 form to the commissioner pursuant to this section shall be three
824 thousand dollars and shall be paid at the time the environmental
825 condition assessment form is submitted. Any fee paid pursuant to this
826 section shall be deducted from any fee required by subsection (m) or
827 (n) of section 22a-134e for the transfer of any parcel for which an
828 environmental condition assessment form has been submitted within
829 three years of such transfer.

830 (f) Nothing in this section shall be construed to affect or impair the
831 voluntary site remediation process provided for in section 22a-133y.

832 (g) Prior to commencement of remedial action taken under this
833 section, the [owner or political subdivision] applicant shall (1) publish
834 notice of the remediation, in accordance with the schedule submitted
835 pursuant to this section, in a newspaper having a substantial
836 circulation in the area affected by the establishment, (2) notify the
837 director of health of the municipality where the parcel is located of the
838 remediation, and (3) either (A) erect and maintain for at least thirty
839 days in a legible condition a sign not less than six feet by four feet on
840 the parcel, which sign shall be clearly visible from the public highway,
841 and shall include the words "ENVIRONMENTAL CLEAN-UP IN
842 PROGRESS AT THIS SITE. FOR FURTHER INFORMATION
843 CONTACT:" and include a telephone number for an office from which
844 any interested person may obtain additional information about the
845 remediation, or (B) mail notice of the remediation to each owner of
846 record of property which abuts the parcel, at the last-known address of
847 such owner on the last-completed grand list of the municipality where
848 the parcel is located.

849 Sec. 12. (NEW) (*Effective October 1, 2009*) Notwithstanding any other
850 provisions of the general statutes, whenever a state agency or quasi-
851 public agency, as defined in section 1-120 of the general statutes,
852 solicits bids, makes a request for proposals or negotiates a contract for

853 the environmental remediation of a brownfield property, such bid,
 854 proposal or contract shall include a provision whereby the
 855 employment and utilization of green remediation technologies shall be
 856 accorded due consideration."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	25-68d
Sec. 2	<i>from passage</i>	22a-134(1)
Sec. 3	<i>July 1, 2009</i>	32-9dd
Sec. 4	<i>July 1, 2009</i>	32-9ee(a)
Sec. 5	<i>July 1, 2009</i>	22a-452
Sec. 6	<i>from passage</i>	22a-134b
Sec. 7	<i>from passage</i>	22a-133dd
Sec. 8	<i>October 1, 2009</i>	New section
Sec. 9	<i>October 1, 2009</i>	22a-134
Sec. 10	<i>October 1, 2009</i>	22a-134a(g)(1)
Sec. 11	<i>October 1, 2009</i>	22a-133x
Sec. 12	<i>October 1, 2009</i>	New section