

## ***Statement***

### ***Insurance Association of Connecticut***

Commerce Committee

February 26, 2009

#### **HB 6097, An Act Concerning Brownfield Development**

The Insurance Association of Connecticut is opposed to HB 6097, An Act Concerning Brownfield Development, in that it unnecessarily expands a party's liability exposure.

Since the formation of the Brown Fields Task Force, the task force has heard from numerous parties that something had to be done to limit one's exposure to liability. Unfortunately, the provisions in HB 6097 do the exact opposite of what was asked of the task force.

HB 6097 appears to provide finer parameters limiting a municipality's liability exposure. However, the well intentions of the act are negated by making a municipality legally responsible for any condition which it may have exacerbated. A town simply entering onto a property could stir up sediment exacerbating the condition of the contamination. A responsible party would simply have to allege the town worsened the condition and the town is now embroiled in a legal controversy. Additionally, it is well established that clean-up procedures frequently do aggravate underlying contamination. So by making a town legally responsible for such conditions does nothing to neither shield it from liability nor encourage it to undertake clean-up.

Under current law the liability exposure to potentially responsible parties is already quite extensive. Section 4 of HB 6097 seeks to unnecessarily expand the

definition of a potentially responsible party by incorporating provisions similar to the most onerous provisions of the federal government's Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). CERCLA has resulted in increasing the barriers to brownfield redevelopment since businesses have been unwilling to invest in redeveloping sites that could later subject them to federal enforcement actions. Although, CERCLA is at least limited to direct government action or recovery of costs after government action, HB 6097 CERCLA like liability principles expand the basis for private causes of action. As such, HB 6097 will only serve to deter businesses further because of the threat of government enforcement actions coupled with the expanded threat of private causes of action.

Additionally, the inclusion of a CERCLA-like definition of a potentially responsible party exponentially expands the realm parties that may be sued. HB 6097 also removes Connecticut's current negligence standard, replacing it with CERCLA's strict liability standard. Pursuant to the amended provisions of HB 6097, a party who may have had even the slightest connection to a contaminated property may be held responsible for contamination. The mother who had her minivan's oil changed at a repair facility may be held responsible. The trucker, who delivered a load of supplies some thirty years ago, may be held responsible under the expanded definition. What does HB 6097 do for the responsible property owner who wants to do the right thing and clean up its property but would be exposed to limitless litigation? Adopting the CERCLA-like liability standard completely ignores the pleas of the parties that appeared before the task force seeking meaningful liability reform.

HB 6097 also invents a statute of limitation that would result in the potential for neverending liability. The statute of limitations created by HB 6097 allows the statute of

limitations to run once the later of two events occurs: six years from the initiation of the physical on-site construction of remedial action or three years after the completion of containment, removal or mitigation activities. Statutes of limitations are designed to provide a finite time in which a person can assert their rights and protect parties from limitless litigation. Statute of limitations ensures that information is available and evidence does not become stale. In essence, the statute of limitations created by HB 6097 is in fact no real limit at all, with the result that the statute may never begin to run or may only start to run some decades after an alleged wrongful event. For example, even if site discovery, investigation and remediation took place and were concluded promptly, post-remedial monitoring could extend the statute of limitations by 20 to 30 years, or more. Pursuant to the terms of HB 6097, those engaged in cleanup may still be subject to suit decades after they last had contact with the piece of property. How are those parties to defend against a claim? The involved parties would need to locate witnesses, if alive, and would have to find evidence that may no longer exist, or that has been destroyed in conjunction with the clean-up, or which they may have no knowledge of.

The IAC urges your rejection of HB 6097 as it fails to adopt meaningful liability reform.