



General Assembly

Amendment

January Session, 2009

LCO No. 7947

HB0609707947HDO

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.

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 Section 25-68d of the general statutes is repealed and the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 has been within the pilot program established in
138 subsection (c) of section 32-9cc, or has acquired such property through
139 the exercise of eminent domain pursuant to section 8-128 or 8-193 or by
140 condemnation pursuant to section 32-224 or a resolution, provided (i)
141 the party acquiring the property from the municipality did not
142 establish, create or contribute to the contamination at the establishment
143 and is not affiliated with any person who established, created or
144 contributed to such contamination or with any person who is or was
145 an owner or certifying party for the establishment, and (ii) on or before
146 the date the party acquires the property from the municipality, such
147 party or municipality enters and subsequently remains in the
148 voluntary remediation program administered by the commissioner
149 pursuant to section 22a-133x, as amended by this act, and remains in
150 compliance with schedules and approvals issued by the commissioner.
151 For purposes of this subparagraph, municipality includes any
152 municipality, municipal economic development agency or entity
153 created or operating under chapter 130 or 132, a nonprofit economic
154 development corporation formed to promote the common good,
155 general welfare and economic development of a municipality that is
156 funded, either directly or through in-kind services, in part by a
157 municipality, or a nonstock corporation or limited liability company
158 controlled or established by a municipality, municipal economic
159 development agency or entity created or operating under chapter 130
160 or 132;

161 (C) Conveyance of a deed in lieu of foreclosure to a lender, as
162 defined in and that qualifies for the secured lender exemption
163 pursuant to subsection (b) of section 22a-452f;

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

166 (E) Termination of a lease and conveyance, assignment or execution
167 of a lease for a period less than ninety-nine years including
168 conveyance, assignment or execution of a lease with options or similar

169 terms that will extend the period of the leasehold to ninety-nine years,
170 or from the commencement of the leasehold, ninety-nine years,
171 including conveyance, assignment or execution of a lease with options
172 or similar terms that will extend the period of the leasehold to ninety-
173 nine years, or from the commencement of the leasehold;

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

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

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

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

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

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

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

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

199 days prior to such conveyance;

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

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

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

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

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

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

219 (T) The transfer of general partnership property held in the names
220 of all of its general partners to a limited liability company which
221 includes as members immediately after the transfer all of the same
222 persons as were general partners immediately prior to the transfer;

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

225 (V) Conveyance of any real property or business operation that
226 would qualify as an establishment solely as a result of (i) the
227 generation of more than one hundred kilograms of universal waste in

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

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

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

243 Upon remediation as approved by the Department of
244 Environmental Protection of the brownfield property by the
245 municipality, [or] economic development agency [, the economic
246 development agency or the municipality] or entity established under
247 chapter 130 or 132, nonprofit economic development corporation
248 formed to promote the common good, general welfare and economic
249 development of a municipality that is funded, either directly or
250 through in-kind services, in part by a municipality, or a nonstock
251 corporation or limited liability company controlled or established by a
252 municipality, municipal economic development agency or entity
253 created or operating under chapter 130 or 132, such entity may transfer
254 the property to any person provided such a person is not otherwise
255 liable under section 22a-432, 22a-433, 22a-451 or 22a-452, as amended
256 by this act. The person who acquires title [from the municipality or
257 economic development agency] pursuant to this section shall not be
258 liable under section 22a-432, 22a-433, 22a-451 or 22a-452, as amended
259 by this act, provided that such person does not cause or contribute to
260 the discharge, spillage, uncontrolled loss, seepage or filtration of such

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

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

286 (a) [The] Any municipality, [or] economic development agency or
287 entity established under chapter 130 or 132, nonprofit economic
288 development corporation formed to promote the common good,
289 general welfare and economic development of a municipality that is
290 funded, either directly or through in-kind services, in part by a
291 municipality, or a nonstock corporation or limited liability company
292 controlled or established by a municipality, municipal economic
293 development agency or entity created or operating under chapter 130
294 or 132 that receives grants through the Office of Brownfield

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

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

332 (a) Any person, firm, corporation or municipality which contains or
333 removes or otherwise mitigates the effects of oil or petroleum or
334 chemical liquids or solid, liquid or gaseous products or hazardous
335 wastes resulting from any discharge, spillage, uncontrolled loss,
336 seepage or filtration of such substance or material or waste shall be
337 entitled, subject to the conditions in this section, to reimbursement
338 from any person, firm or corporation for the necessary and reasonable
339 costs expended for such containment, removal, or mitigation,
340 including any investigation and remediation, if such oil or petroleum
341 or chemical liquids or solid, liquid or gaseous products or hazardous
342 wastes pollution or contamination or other emergency resulted from
343 the negligence or other actions of such person, firm or corporation.
344 When such pollution or contamination or emergency [results from the
345 joint negligence or other] was directly or indirectly caused by or
346 contributed to or exacerbated by the actions or omissions of two or
347 more persons, firms or corporations, each shall be liable to the others
348 for a pro rata share of the costs of containing, and removing or
349 otherwise mitigating the effects of the same and for all damage caused
350 thereby.

351 (b) No person, firm or corporation which renders assistance or
352 advice in mitigating or attempting to mitigate the effects of an actual or
353 threatened discharge of oil or petroleum or chemical liquids or solid,
354 liquid or gaseous products or hazardous materials, hazardous wastes
355 or hazardous substances, other than a discharge of oil as defined in
356 section 22a-457b, to the surface waters of the state, or [which] who
357 assists in preventing, cleaning-up or disposing of any such discharge
358 shall be held liable, notwithstanding any other provision of law, for
359 civil damages as a result of any act or omission by him in rendering
360 such assistance or advice, except acts or omissions amounting to gross
361 negligence or wilful or wanton misconduct, unless he is compensated
362 for such assistance or advice for more than actual expenses. For the
363 purpose of this subsection, "discharge" means spillage, uncontrolled

364 loss, seepage or filtration and "hazardous materials" means any
365 material or substance designated as such by any state or federal law or
366 regulation.

367 (c) The immunity provided in subsection (b) of this section shall not
368 apply to (1) any person, firm or corporation responsible for such
369 discharge, or under a duty to mitigate the effects of such discharge, (2)
370 any agency or instrumentality of such person, firm or corporation, or
371 (3) negligence in the operation of a motor vehicle.

372 (d) An action for reimbursement or recovery of the reasonable costs
373 expected for containment, removal, remediation or mitigation,
374 including the reasonable costs of investigation and remediation, shall
375 be commenced on or before the later of (1) six years after written notice
376 was provided to the responsible person, firm or corporation pursuant
377 to subsection (g) of this section, or (2) three years after the completion
378 of remediation activities, exclusive of any post-remedial or other long-
379 term groundwater monitoring.

380 (e) In any action brought pursuant to this section, the Superior
381 Court may issue an order granting the reimbursement or recovery of
382 reasonable costs to be incurred in the future consistent with the pro
383 rata share of the costs of the potential responsible party.

384 (f) This section shall apply to any action for reimbursement or
385 recovery of the reasonable costs for containment, removal, remediation
386 or mitigation, including the reasonable costs of investigation and
387 remediation, except that it shall not apply to any action that has
388 become final and is no longer subject to appeal on or before October 1,
389 2009.

390 (g) Before any person, firm or corporation files an action under this
391 section in the Superior Court, such person, firm or corporation shall
392 provide written notice of intent to conduct any remediation to all
393 known potential responsible parties no later than one hundred twenty
394 days before the commencement of each such activity. Such notice shall
395 identify the property, the potential responsible party's relationship to

396 such site, the proposed investigation or remediation activity and its
397 estimated cost and the date that such activity is to commence. No such
398 notice shall be required before filing a lawsuit if an imminent and
399 substantial endangerment exists necessitating immediate action,
400 provided notice is made within a reasonable time after immediate
401 action is taken. Notice provided pursuant to this subsection shall be
402 sent certified mail, return receipt requested to any potentially
403 responsible party at their last known address on file at the Secretary of
404 the State's office or other address as may be on file with the
405 municipality. The performing party shall provide a copy of the notice
406 to the Office of the Attorney General and the Commissioner of
407 Environmental Protection.

408 (h) Any potentially responsible party shall inform such performing
409 party, not later than forty-five days after receipt of the notice required
410 pursuant to subsection (g) of this section and before commencement of
411 any activity on such site, of their intent to participate in the
412 investigation and remediation. Such notice shall include a statement of
413 the extent to which the potential responsible party is willing to
414 reimburse necessary and reasonable costs or undertake investigation
415 or remediation activities, and any objections to necessity or
416 reasonableness of the proposed activity.

417 (i) A potentially responsible party that has exercised its right to
418 participate and participates in the investigation and remediation of an
419 eligible site shall be responsible solely for its pro rata share of any
420 necessary and reasonable costs of investigation and remediation. A
421 potentially responsible party that fails to offer and share in the costs
422 reasonably proportionate to its pro rata share, or who fails to
423 participate or respond to the notice provided in subsection (c) of this
424 section shall (1) waive any right to challenge the necessity and
425 reasonableness of investigation and remediation costs in any claim or
426 action for reimbursement of such investigation and remediation costs;
427 (2) pay damages to the performing party, including costs associated
428 with any lost business opportunities; and (3) pay the performing
429 party's attorneys fees and other costs of litigation, in the event the

430 performing party prevails in its claim or action for reimbursement.

431 (j) A performing party that has failed to provide notice and
432 opportunity to participate to any known potential responsible party
433 shall be prohibited from seeking reimbursement of investigation and
434 remediation costs from such potential responsible party.

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

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

441 (m) No eligible party shall be liable for a claim under this section for
442 any costs or damages arising from any pollution or source of pollution
443 on or emanating from the property that occurred or existed prior to
444 such eligible party taking title to such property provided the eligible
445 party did not establish or create a condition or facility at or on such
446 property that reasonably can be expected to create a source of
447 pollution and the eligible party is not affiliated with any person
448 responsible for such pollution or source of pollution through any
449 direct or indirect familial relationship or any contractual, corporate or
450 financial relationship other than that by which such eligible party's
451 interest in the property was conveyed or financed.

452 (n) For purposes of this section: (1) "Potentially responsible party"
453 means any person, firm, corporation or municipality that is liable
454 under this section for an act or omission that directly or indirectly
455 caused or contributed to or exacerbated the release, discharge, spillage,
456 uncontrolled loss, seepage or filtration of oil or petroleum or chemical
457 liquids or solid, liquid or gaseous products or hazardous wastes; (2)
458 "eligible party" means a person, firm, corporation or municipality that
459 acquired the property after the pollution or source of pollution existed
460 or occurred and such party is not otherwise responsible pursuant to
461 sections 22a-428, 22a-432, 22a-433 or 22a-451 or pursuant to transfer of

462 ownership filing pursuant to section 22a-134, as amended by this act,
463 or 22a-134e and is not affiliated with any person responsible for such
464 pollution or source of pollution through any direct or indirect familial
465 relationship or any contractual, corporate or financial relationship
466 other than that by which such owner's interest in the property was
467 conveyed or financed; (3) "performing party" means the person, firm or
468 corporation that performs an investigation and remediation or
469 contains or removes or otherwise mitigates the effects of oil or
470 petroleum or chemical liquids or solid, liquid or gaseous products or
471 hazardous wastes; (4) "investigation and remediation" means
472 assessment, investigation, containment, mitigation, removal,
473 remediation and subsequent monitoring; (5) "remediation" means the
474 work performed on a site that is undertaken pursuant to a remedial
475 action plan; and (6) "municipality" shall have the same meaning as in
476 section 22a-423, and includes any municipal economic development
477 agency or entity created or operating under chapter 130 or 132 and any
478 nonprofit economic development corporation formed to promote the
479 common good, general welfare and economic development of a
480 municipality that is funded, either directly or through in-kind services,
481 in part by a municipality, or a nonstock corporation or limited liability
482 company established and controlled by a municipality, municipal
483 economic development agency or entity created or operating under
484 chapter 130 or 132.

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

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

492 (b) An action to recover damages pursuant to subsection (a) of this
493 section shall be commenced not later than six years after the later of (1)
494 the due date for the filing of the appropriate transfer form pursuant to

495 section 22a-134a, as amended by this act, or (2) the actual filing date of
496 the appropriate transfer form.

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

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

505 (a) Any municipality or any licensed environmental professional
506 employed or retained by a municipality may enter, without liability to
507 any person other than the Commissioner of Environmental Protection,
508 upon any property within such municipality for the purpose of
509 performing an environmental site assessment or investigation on
510 behalf of the municipality if: (1) The owner of such property cannot be
511 located; (2) such property is encumbered by a lien for taxes due such
512 municipality; (3) upon a filing of a notice of eminent domain; (4) the
513 municipality's legislative body finds that such investigation is in the
514 public interest to determine if the property is underutilized or should
515 be included in any undertaking of development, redevelopment or
516 remediation pursuant to this chapter or chapter 130, 132 or 581; or (5)
517 any official of the municipality reasonably finds such investigation
518 necessary to determine if such property presents a risk to the safety,
519 health or welfare of the public or a risk to the environment. The
520 municipality shall give at least forty-five days' notice of such entry
521 before the first such entry by certified mail to the property owner's last
522 known address of record.

523 (b) A municipality accessing or entering a property to perform an
524 investigation pursuant to this section shall not [incur any liability
525 pursuant to section 22a-432 for any preexisting contamination or
526 pollution on such property, provided, however, a municipality may be

527 liable for any pollution or contamination resulting from a negligent or
528 reckless investigation] be liable for preexisting conditions pursuant to
529 section 22a-432, 22a-433, 22a-451 or 22a-452, as amended by this act, or
530 to the property owner or any third party, provided the municipality (1)
531 did not cause or contribute to the discharge, spillage, uncontrolled
532 loss, seepage or filtration of such hazardous substance, material, waste
533 or pollution; (2) does not negligently or recklessly exacerbate the
534 conditions; and (3) complies with reporting of significant
535 environmental hazard requirements pursuant to section 22a-6u. To the
536 extent that any conditions are negligently or recklessly exacerbated,
537 the municipality shall only be responsible for responding to
538 contamination exacerbated by its activities.

539 (c) The owner of the property may object to such access and entry
540 by the municipality by filing an action in the Superior Court not later
541 than thirty days after receipt of the notice provided pursuant to
542 subsection (a) of this section, provided any objection be limited to the
543 [owner affirmatively representing that it is diligently investigating the
544 site in a timely manner and that any municipal taxes owed will be paid
545 in full] issue of whether access is necessary and only upon proof by the
546 owner that the owner has (1) completed or is in the process of
547 completing in a timely manner a comprehensive environmental site
548 assessment or investigation report; (2) provided the party seeking
549 access with a copy of the assessment or report or will do so not later
550 than thirty days after the delivery of such assessment or report to the
551 owner; and (3) paid any delinquent property taxes assessed against the
552 property for which access is being sought.

553 (d) For purposes of this section, "municipality" includes any
554 municipality, municipal economic development agency or entity
555 created or operating under chapter 130 or 132, nonprofit economic
556 development corporation formed to promote the common good,
557 general welfare and economic development of a municipality that is
558 funded, either directly or through in-kind services, in part by a
559 municipality, or nonstock corporation or limited liability company
560 established and controlled by a municipality, municipal economic

561 development agency or entity created or operating under chapter 130
562 or 132.

563 Sec. 8. (NEW) (*Effective from passage*) At sites undergoing remedial
564 action pursuant to subdivision (1) of subsection (b) of section 22a-133e
565 of the general statutes or subsection (c) of section 22a-133e of the
566 general statutes, the Commissioner of Environmental Protection may
567 approve an alternative institutional control to protect human health
568 and the environment, other than an environmental land use restriction,
569 as defined in section 22a-133n of the general statutes, and such
570 remedial action shall be deemed consistent with regulations adopted
571 pursuant to section 22a-133k of the general statutes.

572 Sec. 9. (NEW) (*Effective October 1, 2009*) (a) There is established an
573 abandoned brownfield cleanup program. The Commissioner of
574 Economic and Community Development shall determine, in
575 consultation with the Commissioner of Environmental Protection,
576 properties and persons eligible for said program. For a person and a
577 property to be eligible, the Commissioner of Economic and
578 Community Development shall determine if (1) the property is a
579 brownfield, as defined in section 32-9kk of the general statutes and
580 such property has been unused or significantly underused since
581 October 1, 1999; (2) such person intends to acquire title to such
582 property for the purpose of redeveloping such property; (3) the
583 redevelopment of such property has a regional benefit; (4) such person
584 did not establish or create a facility or condition at or on such property
585 that can reasonably be expected to create a source of pollution to the
586 waters of the state for the purposes of section 22a-432 of the general
587 statutes and is not affiliated with any person responsible for such
588 pollution or source of pollution through any direct or indirect familial
589 relationship or any contractual, corporate or financial relationship
590 other than a relationship by which such owner's interest in such
591 property is to be conveyed or financed; (5) such person is not
592 otherwise required by law, an order or consent order issued by the
593 Commissioner of Environmental Protection or a stipulated judgment
594 to remediate pollution on or emanating from such property; (6) the

595 person responsible for pollution on or emanating from the property is
596 indeterminable, is no longer in existence or is otherwise unable to
597 perform necessary remediation of such property; and (7) the property
598 and the person meet any other criteria said commissioner deems
599 necessary.

600 (b) Upon designation by the Commissioner of Economic and
601 Community Development of an eligible person who holds title to such
602 property, such eligible person shall (1) enter and remain in the
603 voluntary remediation program established in section 22a-133x of the
604 general statutes, as amended by this act, provided such person will not
605 be a certifying party for the property pursuant to section 22a-134 of the
606 general statutes, as amended by this act, when acquiring such
607 property, (2) investigate pollution on such property in accordance with
608 prevailing standards and guidelines and remediate pollution on such
609 property in accordance with regulations established for remediation
610 adopted by the Commissioner of Environmental Protection and in
611 accordance with applicable schedules; and (3) eliminate further
612 emanation or migration of any pollution from such property. An
613 eligible person who holds title to an eligible property designated to be
614 in the abandoned brownfields cleanup program shall not be
615 responsible for investigating or remediating any pollution or source of
616 pollution that has emanated from such property prior to such person
617 taking title to such property.

618 (c) Any applicant seeking a designation of eligibility for a person or
619 a property under the abandoned brownfields cleanup program shall
620 apply to the Commissioner of Economic and Community
621 Development at such times and on such forms as the commissioner
622 may prescribe.

623 (d) Not later than sixty days after receipt of the application, the
624 Commissioner of Economic and Community Development shall
625 determine if the application is complete and shall notify the applicant
626 of such determination.

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

631 (f) Designation of a property in the abandoned brownfields cleanup
632 program by the Commissioner of Economic and Community
633 Development shall not limit the applicant's or any other person's
634 ability to seek funding for such property under any other brownfield
635 grant or loan program administered by the Department of Economic
636 and Community Development, the Connecticut Development
637 Authority or the Department of Environmental Protection.

638 Sec. 10. Section 22a-134 of the general statutes is amended by adding
639 subdivision (28) as follows (*Effective October 1, 2009*):

640 (NEW) (28) "Interim verification" means a written opinion by a
641 licensed environmental professional, on a form prescribed by the
642 commissioner, that (A) the investigation has been performed in
643 accordance with prevailing standards and guidelines, (B) the
644 remediation has been completed in accordance with the remediation
645 standards, except that, for remediation standards for groundwater, the
646 selected remedy is in operation but has not achieved the remediation
647 standards for groundwater, (C) identifies the long-term remedy being
648 implemented to achieve groundwater standards, the estimated
649 duration of such remedy, and the ongoing operation and maintenance
650 requirements for continued operation of such remedy, and (D) there
651 are no current exposure pathways to the groundwater area that have
652 not yet met the remediation standards.

653 Sec. 11. Subdivision (1) of subsection (g) of section 22a-134a of the
654 general statutes is repealed and the following is substituted in lieu
655 thereof (*Effective October 1, 2009*):

656 (g) (1) (A) Except as provided in subsection (h) of this section, the
657 certifying party to a Form III [or Form IV] shall, not later than seventy-
658 five days after the receipt of the notice that such form is complete or

659 such later date as may be approved in writing by the commissioner,
660 submit a schedule for the investigation of the parcel and remediation
661 of the establishment. Such schedule shall, unless a later date is
662 specified in writing by the commissioner, provide that the
663 investigation shall be completed within two years of the date of receipt
664 of such notice, [and that] remediation shall be initiated not later than
665 three years after the date of receipt of such notice and remediation
666 shall be completed sufficient to support either a verification or interim
667 verification not later than eight years after the date of such notice. The
668 schedule shall also include a schedule for providing public notice of
669 the remediation prior to the initiation of such remediation in
670 accordance with subsection (i) of this section. Not later than two years
671 after the date of the receipt of the notice that the Form III [or Form IV]
672 is complete, unless the commissioner has specified a later day, in
673 writing, the certifying party shall submit to the commissioner
674 documentation, approved in writing by a licensed environmental
675 professional and in a form prescribed by the commissioner, that the
676 investigation has been completed in accordance with prevailing
677 standards and guidelines. Not later than three years after the date of
678 the receipt of the notice that the Form III [or Form IV] is complete,
679 unless the commissioner has specified a later day in writing, the
680 certifying party shall notify the commissioner in a form prescribed by
681 the commissioner that the remediation has been initiated, and shall
682 submit to the commissioner a remedial action plan approved in
683 writing by a licensed environmental professional in a form prescribed
684 by the commissioner. Notwithstanding any other provision of this
685 section, the commissioner may determine at any time that the
686 commissioner's review and written approval is necessary and in such
687 case shall notify the certifying party that the commissioner's review
688 and written approval is necessary. Such certifying party shall
689 investigate the parcel and remediate the establishment in accordance
690 with the [proposed] schedule or the schedule specified by the
691 commissioner. [When]

692 (B) For a certifying party that submitted a Form III or Form IV

693 before October 1, 2009, when remediation of the entire establishment is
694 complete, the certifying party shall achieve the remediation standards
695 for the establishment sufficient to support a final verification and shall
696 submit to the commissioner a final verification by a licensed
697 environmental professional. For a certifying party that submits a Form
698 III or Form IV after October 1, 2009, not later than six years after the
699 date of receipt of the notice that the Form III or Form IV is complete,
700 unless the commissioner has specified a later date in writing, the
701 certifying party shall achieve the remediation standards for the
702 establishment sufficient to support a final or interim verification and
703 shall submit to the commissioner such final or interim verification by a
704 licensed environmental professional. Any such final verification may
705 include and rely upon a verification for a portion of the establishment
706 submitted pursuant to subdivision (2) of this subsection. Verifications
707 shall be submitted on a form prescribed by the commissioner.

708 (C) A certifying party who submits an interim verification shall,
709 until the remediation standards for groundwater are achieved, operate
710 and maintain the long-term remedy for groundwater in accordance
711 with the remedial action plan, the interim verification and any
712 approvals by the commissioner, prevent exposure to the groundwater
713 plume and submit annual status reports to the commissioner.

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

717 Sec. 12. Section 22a-133x of the general statutes is repealed and the
718 following is substituted in lieu thereof (*Effective October 1, 2009*):

719 (a) For the purposes of this section, "applicant" means the person
720 who submits the environmental condition assessment form to the
721 commissioner pursuant to this section. Except as provided in section
722 22a-133y, [a political subdivision of the state, an owner of an
723 establishment, as defined in section 22a-134, an owner of property
724 identified on the inventory of hazardous waste disposal sites

725 maintained pursuant to section 22a-133c on October 1, 1995, or an
726 owner of contaminated property located in an area for which the
727 groundwater classification is GA or GAA,] any person may, at any
728 time, submit to the commissioner an environmental condition
729 assessment form for [such] real property [owned by such political
730 subdivision or such owner] and an initial review fee in accordance
731 with subsection (e) of this section. [The owner or political subdivision]
732 Such applicant shall use a licensed environmental professional to
733 verify the investigation and remediation, unless not later than thirty
734 days after the commissioner's receipt of such form, the commissioner
735 notifies [the owner or political subdivision] such applicant, in writing,
736 that review and written approval of any remedial action at such
737 [establishment or] property by the commissioner will be required. The
738 commissioner shall not process any such form submitted pursuant to
739 this section unless such form is accompanied by the required initial
740 review fee.

741 (b) The [owner or political subdivision] applicant shall, on or before
742 ninety days after the submission of an environmental condition
743 assessment form, submit a statement of proposed actions for
744 investigating and remediating the parcel or a release area, as defined in
745 the regulations adopted by the commissioner pursuant to section 22a-
746 133k, and a schedule for implementing such actions. The commissioner
747 may require the [owner or political subdivision] applicant to submit to
748 the commissioner copies of technical plans and reports related to
749 investigation and remediation of the parcel or release area.
750 Notwithstanding any other provision of this section, the commissioner
751 may determine that the commissioner's review and written approval
752 of such technical plans and reports is necessary at any time, and in
753 such case the commissioner shall notify the [owner or political
754 subdivision] applicant of the need for the commissioner's review and
755 written approval. The commissioner shall require that the certifying
756 party submit to the commissioner all technical plans and reports
757 related to the investigation and remediation of the parcel or release
758 area if the commissioner receives a written request from any person for

759 such information. The [owner or political subdivision] applicant shall
760 advise the commissioner of any modifications to the proposed
761 schedule. Upon receipt of a verification by a licensed environmental
762 professional that the parcel or release area has been investigated in
763 accordance with prevailing standards and guidelines and remediated
764 in accordance with the remediation standards, the [owner or political
765 subdivision] applicant shall submit such verification to the
766 commissioner on a form prescribed by the commissioner.

767 (c) If the commissioner notifies the [owner or political subdivision]
768 applicant that the commissioner will formally review and approve in
769 writing the investigation and remediation of the parcel, the [owner or
770 political subdivision] applicant shall, on or before thirty days of the
771 receipt of such notice, or such later date as may be approved in writing
772 by the commissioner, submit for the commissioner's review and
773 written approval, a proposed schedule for: (1) Investigating and
774 remediating the parcel or release area; and (2) submitting to the
775 commissioner technical plans, technical reports and progress reports
776 related to such investigation and remediation. Upon the
777 commissioner's approval of such schedule, the [owner or political
778 subdivision] applicant shall, in accordance with the approved
779 schedule, submit technical plans, technical reports and progress
780 reports to the commissioner for the commissioner's review and written
781 approval. The [owner or political subdivision] applicant shall perform
782 all actions identified in the approved technical plans, technical reports
783 and progress reports in accordance with the approved schedule. The
784 commissioner may approve, in writing, any modification proposed in
785 writing by the [owner or political subdivision] applicant to such
786 schedule or investigation and remediation and may notify the [owner]
787 applicant, in writing, if the commissioner determines that it is
788 appropriate to discontinue formal review and approval of the
789 investigation or remediation.

790 (d) If, in accordance with the provisions of this section, the
791 commissioner has approved in writing or, as applicable, a licensed
792 environmental professional has verified, that the parcel or release area

793 has been remediated in accordance with the remediation standards,
794 such approval or verification may be used as the basis for submitting a
795 Form II pursuant to sections 22a-134 to 22a-134e, inclusive, as
796 amended by this act, provided there has been no additional discharge,
797 spillage, uncontrolled loss, seepage or filtration of hazardous waste at
798 or on the parcel subsequent to the date of the commissioner's approval
799 or verification by a licensed environmental professional.

800 (e) The fee for submitting an environmental condition assessment
801 form to the commissioner pursuant to this section shall be three
802 thousand dollars and shall be paid at the time the environmental
803 condition assessment form is submitted. Any fee paid pursuant to this
804 section shall be deducted from any fee required by subsection (m) or
805 (n) of section 22a-134e for the transfer of any parcel for which an
806 environmental condition assessment form has been submitted within
807 three years of such transfer.

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

810 (g) Prior to commencement of remedial action taken under this
811 section, the [owner or political subdivision] applicant shall (1) publish
812 notice of the remediation, in accordance with the schedule submitted
813 pursuant to this section, in a newspaper having a substantial
814 circulation in the area affected by the establishment, (2) notify the
815 director of health of the municipality where the parcel is located of the
816 remediation, and (3) either (A) erect and maintain for at least thirty
817 days in a legible condition a sign not less than six feet by four feet on
818 the parcel, which sign shall be clearly visible from the public highway,
819 and shall include the words "ENVIRONMENTAL CLEAN-UP IN
820 PROGRESS AT THIS SITE. FOR FURTHER INFORMATION
821 CONTACT:" and include a telephone number for an office from which
822 any interested person may obtain additional information about the
823 remediation, or (B) mail notice of the remediation to each owner of
824 record of property which abuts the parcel, at the last-known address of
825 such owner on the last-completed grand list of the municipality where

826 the parcel is located.

827 Sec. 13. (NEW) (*Effective October 1, 2009*) Notwithstanding any other
 828 provisions of the general statutes, whenever a state agency or quasi-
 829 public agency, as defined in section 1-120 of the general statutes,
 830 solicits bids, makes a request for proposals or negotiates a contract for
 831 the environmental remediation of a brownfield property, such bid,
 832 proposal or contract shall include a provision whereby the
 833 employment and utilization of green remediation technologies shall be
 834 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>from passage</i>	New section
Sec. 9	<i>October 1, 2009</i>	New section
Sec. 10	<i>October 1, 2009</i>	22a-134
Sec. 11	<i>October 1, 2009</i>	22a-134a(g)(1)
Sec. 12	<i>October 1, 2009</i>	22a-133x
Sec. 13	<i>October 1, 2009</i>	New section