



House of Representatives

General Assembly

File No. 328

February Session, 2010

Substitute House Bill No. 5436

House of Representatives, April 6, 2010

The Committee on Commerce reported through REP. BERGER of the 73rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING BROWNFIELD REMEDIATION LIABILITY.

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

1 Section 1. Subsection (f) of section 22a-133m of the general statutes
2 is repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2010*):

4 (f) There is established an Urban Site Remediation Fund. The fund
5 may contain any moneys required by law to be deposited in the fund
6 and shall be held by the Treasurer separate and apart from all other
7 moneys, funds and accounts. Any balance remaining in the fund at the
8 end of any fiscal year shall be carried forward in the fund for the fiscal
9 year next succeeding. The fund shall be used (1) by the Commissioner
10 of Environmental Protection (A) for costs incurred in the assessment
11 and remedial activities conducted at real property acquired pursuant
12 to subsection (e) of this section, or (B) to reimburse the costs to obtain
13 directors' and liability insurance and for certain administrative
14 expenses of (i) a municipal economic development agency or entity
15 created or operating under chapter 130 or 132, or (ii) a nonprofit

16 economic development corporation formed to promote the common
17 good, general welfare and economic development of a municipality
18 that is funded, either directly or through in-kind services, in part by a
19 municipality, or a nonstock corporation or limited liability company
20 controlled or established by a municipality, municipal economic
21 development agency or entity created or operating under chapter 130
22 or 132; and (2) by the Commissioner of Economic and Community
23 Development to pay any local property taxes on real property acquired
24 pursuant to subsection (e) of this section and the costs of administering
25 the program. The Commissioner of Economic and Community
26 Development may allocate money from the fund to a regional
27 economic development entity organized for the purpose of
28 remediating contaminated real property.

29 Sec. 2. (*Effective July 1, 2010*) (a) The speaker of the House of
30 Representatives and the president pro tempore of the Senate shall
31 appoint a brownfield remediation and development working group
32 for the purpose of examining the remediation and development of
33 brownfields in this state, including, but not limited to, the remediation
34 scheme for such properties, permitting issues and liability issues,
35 including those set forth by sections 22a-14 to 22a-20, inclusive, of the
36 general statutes.

37 (b) The working group appointed jointly by the speaker and
38 president pro tempore shall include, but need not be limited to: (1)
39 Representatives with expertise in brownfield redevelopment in
40 environmental law, engineering, finance, development or insurance;
41 (2) a licensed environmental professional; (3) a representative from the
42 Department of Economic and Community Development; (4) a
43 representative from the Department of Environmental Protection; (5) a
44 representative from the Connecticut Development Authority; and (6) a
45 representative of the Office of Policy and Management.

46 (c) On or before January 15, 2011, the working group shall report, in
47 accordance with the provisions of section 11-4a of the general statutes,
48 on its findings and provide recommendations on facilitating

49 brownfield remediation and development to the chairpersons and
50 ranking members of the joint standing committee of the General
51 Assembly having cognizance of matters relating to commerce.

52 Sec. 3. Section 12-81r of the general statutes is repealed and the
53 following is substituted in lieu thereof (*Effective July 1, 2010, and*
54 *applicable to assessment years commencing on and after October 1, 2010*):

55 (a) Any municipality may (1) enter into an agreement with the
56 owner of any real property to abate the property tax due as of the date
57 of the agreement for a period not to exceed seven years if the property
58 has been subject to a spill, as defined in section 22a-452c, and the
59 owner agrees to conduct any environmental site assessment,
60 demolition and remediation of the spill necessary to redevelop the
61 property. Any such tax abatement shall only be for the period of
62 remediation and redevelopment and shall be contingent upon the
63 continuation and completion of the remediation and redevelopment
64 process with respect to the purposes specified in the agreement. The
65 abatement shall cease upon the sale or transfer of the property for any
66 other purpose unless the municipality consents to its continuation. The
67 municipality may also establish a recapture provision in the event of
68 sale provided such recapture shall not exceed the original amount of
69 taxes abated and may not go back further than the date of the
70 agreement; [or] (2) forgive all or a portion of the principal balance and
71 interest due on delinquent property taxes for the benefit of any
72 prospective purchaser who has obtained an environmental
73 investigation or remediation plan approved by the Commissioner of
74 Environmental Protection or a licensed environmental professional
75 under section 22a-133w, 22a-133x or 22a-133y and completes such
76 remediation plan for an establishment, as defined in section 22a-134,
77 deemed by the municipality to be abandoned or a brownfield, as
78 defined in subdivision (1) of subsection (a) of section 32-9kk; or (3)
79 enter into an agreement with the owner of any real property to fix the
80 assessment of the property as of the last assessment date prior to
81 commencement of remediation activities for a period not to exceed
82 seven years, provided the property has been the subject of a

83 remediation approved by the Commissioner of Environmental
84 Protection or verified by a licensed environmental professional
85 pursuant to section 22a-133w, 22a-133x, 22a-133y or 22a-134.

86 (b) Any abatement or forgiveness of taxes or fixed assessment or
87 any combination thereof under subsection (a) of this section shall be
88 approved by vote of the board of finance, if applicable, and the
89 legislative body of the municipality, or by vote of the board of finance,
90 if applicable, and the board of selectmen in a municipality where the
91 legislative body is a town meeting and contingent upon any other
92 conditions deemed appropriate by such body.

93 (c) A municipality shall notify the Commissioner of Environmental
94 Protection, the Commissioner of Economic and Community
95 Development and the Secretary of the Office of Policy and
96 Management not later than thirty days after granting any abatement or
97 forgiveness of taxes or any fixed assessment under subsection (a) of
98 this section. Such notice shall provide the owner or purchaser's name,
99 as the case may be, and the address of the property.

100 Sec. 4. Subsection (c) of section 22a-134b of the 2010 supplement to
101 the general statutes is repealed and the following is substituted in lieu
102 thereof (*Effective July 1, 2010*):

103 (c) This section shall apply to any action brought for the
104 reimbursement or recovery of costs associated with investigation and
105 remediation, [as defined in subsection (n) of section 22a-452] which
106 includes assessment, investigation, containment, mitigation, removal,
107 remediation and monitoring, and all direct and indirect damages,
108 except any action that becomes final and is no longer subject to appeal
109 on or before October 1, 2009.

110 Sec. 5. Subsection (b) of section 22a-133u of the general statutes is
111 repealed and the following is substituted in lieu thereof (*Effective July*
112 *1, 2010*):

113 (b) The Commissioner of Economic and Community Development

114 may use any funds deposited into the Special Contaminated Property
 115 Remediation and Insurance Fund pursuant to section 3 of public act
 116 96-250 for (1) loans to municipalities, individuals or firms for Phase II
 117 environmental site assessments, Phase III investigations of real
 118 property or for any costs of demolition, including related lead and
 119 asbestos removal or abatement costs or costs related to the remediation
 120 of environmental pollution, undertaken to prepare contaminated real
 121 property for development subsequent to any Phase III investigation,
 122 [and] (2) expenses related to administration of this subsection
 123 provided such expenses may not exceed one hundred twenty-five
 124 thousand dollars per year, (3) funding the remedial action and
 125 redevelopment municipal grant program established pursuant to
 126 subsection (e) of section 32-9kk, and (4) funding the targeted
 127 brownfield development loan program developed pursuant to
 128 subsection (f) of section 32-9kk.

| | | |
|---|---|-------------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | October 1, 2010 | 22a-133m(f) |
| Sec. 2 | July 1, 2010 | New section |
| Sec. 3 | July 1, 2010, and applicable to assessment years commencing on and after October 1, 2010 | 12-81r |
| Sec. 4 | July 1, 2010 | 22a-134b(c) |
| Sec. 5 | July 1, 2010 | 22a-133u(b) |

Statement of Legislative Commissioners:

In section (2)(c), the requirement was added that the report be submitted in accordance with the provisions of section 11-4a of the general statutes.

CE *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

| Agency Affected | Fund-Effect | FY 11 \$ | FY 12 \$ |
|-----------------------|-------------|-----------|-----------|
| Legislative Mgmt. | GF - Cost | Minimal | Minimal |
| Treasurer, Debt Serv. | GF - Cost | See Below | See Below |

Note: GF=General Fund

Municipal Impact:

| Municipalities | Effect | FY 11 \$ | FY 12 \$ |
|------------------------|----------------|-----------|-----------|
| Various Municipalities | Revenue Impact | See Below | See Below |

Explanation

The bill expands the scope of several brownfield clean up programs. The Special Contaminated Property Remediation and Insurance Fund and the Urban Sites Remediation (Brownfields) Program are financed with General Obligation (GO) bonds. Expanding scope of these programs will increase future General Fund debt service costs to the degree that this causes GO bond funds to be expended more rapidly than they otherwise would have been. The unallocated bond balance as of 4/1/10 for the Special Contaminated Property Remediation and Insurance Fund is \$3 million and the balance for the Urban Sites Remediation Program is \$4.4 million.

The bill establishes a working group that may result in minimal costs to the Office of Legislative Management (OLM) to the extent that legislators are included in the working group.

The bill may preclude an increase in the net grand list of municipalities to the extent they elect to fix the assessment on contaminated property before the owner begins to remediate it. A net

grand list reduction for a municipality will likely necessitate an increase in their mill rate to offset the reduction in assessed value.

The bill may result in a revenue loss to municipalities to the extent they elect to forgive back taxes on a contaminated property if a developer proposes to remediate it under a state-approved plan.

The Out Years

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

OLR Bill Analysis**sHB 5436*****AN ACT CONCERNING BROWNFIELD REMEDIATION LIABILITY.*****SUMMARY:**

This bill expands the scope of several brownfield clean-up programs, establishes a working group to study brownfield issues, and makes a technical correction. It qualifies municipal and nonprofit development agencies for directors' and liability insurance under an existing brownfield clean-up program and allows the Department of Economic and Community Development (DECD) commissioner to use the funds from another brownfield program as a funding source for two newer programs opened to municipalities and private developers.

The bill allows municipalities to fix the assessment on contaminated property before the owner begins to remediate it. It also allows them to forgive back taxes on a contaminated property if a developer proposes to remediate it under a state-approved plan.

Lastly, the bill establishes a working group to examine brownfield issues and requires it to report its findings and recommendations to the Commerce Committee by January 15, 2011. The House speaker and Senate president pro tempore must appoint the group.

EFFECTIVE DATE: July 1, 2010, except for the provisions concerning the Urban Site Remediation Fund, which are effective October 1, 2010 and the provisions for fixing property tax assessments, which are effective July 1, 2010 and apply to assessment years beginning on or after October 1, 2010.

PROGRAM EXPANSIONS***Brownfield Clean-up Programs***

The bill allows the Urban Sites Remediation Program and the

Special Contaminated Property Remediation and Insurance Fund to fund more activities. First, it allows the Department of Environmental Protection (DEP) commissioner to reimburse municipal and nonprofit development agencies for directors' and liability insurance and certain administrative expenses, which the bill does not delineate. It allows her to do so by tapping the Urban Site Remediation Fund, which is currently used to acquire, assess, and remediate contaminated sites acquired by DECD or a regional economic development agency.

Municipal economic development agencies and those formed specifically to plan and implement redevelopment and municipal development projects qualify for the insurance and administrative reimbursement under the bill. Nonprofit organizations also qualify if they were formed to promote a municipality's economic development and receive funds or in-kind services in part from the municipality, its economic development or redevelopment agencies, or a nonstock corporation or limited liability company the municipality established or controls.

Next, the bill allows the DECD commissioner to tap the Special Contaminated Property Remediation and Insurance Fund for funding brownfield projects under the existing Remedial Action and Redevelopment Municipal Grant Program and the Targeted Brownfield Development Loan Program. The former provides grants to municipal and nonprofit agencies for assessing and remediating contaminated property. The loan program provides up to \$2 million in financing to municipal, nonprofit, and for-profit developers for investigating and remediating brownfields.

Property Tax Incentive

Current law specifies conditions under which municipalities can abate or forgive the property taxes on contaminated property being remediated and redeveloped. The bill additionally allows them to fix the assessment on contaminated property as of the last assessment date before clean-up activities begin. Fixing the assessment prevents tax bill from going up as the owner improves the property and

consequently increases its worth. The bill allows the municipality to fix the assessment for up to seven years if (1) the DEP commissioner or a licensed environmental professional approved its clean-up plan and (2) as applicable, the municipality's board of finance, legislative body, or board of selectmen approves.

The bill also expands the circumstances under which municipalities can forgive all or some of the back taxes plus interest on a contaminated property. Current law allows them to do so if the parties to a property sale assess the property's environmental condition and remediate it if necessary.

The property qualifies for tax forgiveness if the prospective purchaser's plan to investigate or remediate it was approved by DEP or a licensed environmental professional. The bill extends this option to any abandoned or underutilized property, regardless of whether it is up for sale, if its condition discourages developers from redeveloping it (i.e., brownfields). As under current law, the municipality's board of finance, legislative body, or board of selectmen, as applicable, must approve the forgiveness.

WORKING GROUP

The bill requires the House speaker and Senate president pro tempore to appoint a brownfields remediation and development working group that includes state officials and experts in various fields. The group must examine how brownfields are being cleaned up and developed in Connecticut and how permits and liability affect these activities.

The bill imposes no size limit on the group, but requires it to include experts in environmental law, engineering, finance, development, and insurance; a licensed environmental professional; and representatives of DEP, DECD, the Connecticut Development Authority, and the Office of Policy and Management.

The group must report its findings and recommendations to the Commerce Committee's chairpersons and ranking members by

January 15, 2011.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute

Yea 19 Nay 0 (03/18/2010)