



House of Representatives

File No. 684

General Assembly

February Session, 2010

(Reprint of File No. 328)

Substitute House Bill No. 5436
As Amended by House Amendment
Schedules "A" and "B"

Approved by the Legislative Commissioner
May 1, 2010

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2 is repealed and the following is substituted in lieu thereof (*Effective*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 officers' liability and general liability insurance of (i) a
14 municipal economic development agency or entity created or
15 operating under chapter 130 or 132, or (ii) a nonprofit economic

16 development corporation formed to promote the common good,
17 general welfare and economic development of a municipality that is
18 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 from passage*) (a) There is established a working
30 group to examine the remediation and development of brownfields in
31 this state, including, but not limited to, the remediation scheme for
32 such properties, permitting issues and liability issues, including those
33 set forth by sections 22a-14 to 22a-20, inclusive, of the general statutes.

34 (b) The working group shall consist of the following eleven
35 members, each of whom shall have expertise related to brownfield
36 redevelopment in environmental law, engineering, finance,
37 development, consulting, insurance or another relevant field:

38 (1) Two appointed by the Governor;

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

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

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

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

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

45 (7) One appointed by the minority leader of the House of
46 Representatives;

47 (8) The Commissioner of Economic and Community Development
48 or the commissioner's designee, who shall serve ex officio;

49 (9) The Commissioner of Environmental Protection or the
50 commissioner's designee, who shall serve ex officio; and

51 (10) The Secretary of the Office of Policy and Management or the
52 secretary's designee, who shall serve ex officio.

53 (c) All appointments to the working group shall be made no later
54 than thirty days after the effective date of this section. Any vacancy
55 shall be filled by the appointing authority.

56 (d) The working group shall select chairpersons of the working
57 group from among the appointed members of the working group.
58 Such chairpersons shall schedule the first meeting of the working
59 group, which shall be held no later than sixty days after the effective
60 date of this section.

61 (e) On or before January 15, 2011, the working group shall report, in
62 accordance with the provisions of section 11-4a of the general statutes,
63 on its findings and recommendations to the joint standing committee
64 of the General Assembly having cognizance of matters relating to
65 commerce.

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

69 (a) Any municipality may (1) enter into an agreement with the
70 owner of any real property to abate the property tax due as of the date
71 of the agreement for a period not to exceed seven years if the property
72 has been subject to a spill, as defined in section 22a-452c, and the
73 owner agrees to conduct any environmental site assessment,
74 demolition and remediation of the spill necessary to redevelop the

75 property. Any such tax abatement shall only be for the period of
76 remediation and redevelopment and shall be contingent upon the
77 continuation and completion of the remediation and redevelopment
78 process with respect to the purposes specified in the agreement. The
79 abatement shall cease upon the sale or transfer of the property for any
80 other purpose unless the municipality consents to its continuation. The
81 municipality may also establish a recapture provision in the event of
82 sale provided such recapture shall not exceed the original amount of
83 taxes abated and may not go back further than the date of the
84 agreement; [or] (2) forgive all or a portion of the principal balance and
85 interest due on delinquent property taxes for the benefit of any
86 prospective purchaser who has obtained an environmental
87 investigation or remediation plan approved by the Commissioner of
88 Environmental Protection or a licensed environmental professional
89 under section 22a-133w, 22a-133x or 22a-133y and completes such
90 remediation plan for an establishment, as defined in section 22a-134,
91 deemed by the municipality to be abandoned or a brownfield, as
92 defined in subdivision (1) of subsection (a) of section 32-9kk; or (3)
93 enter into an agreement with the owner of any real property to fix the
94 assessment of the property as of the last assessment date prior to
95 commencement of remediation activities for a period not to exceed
96 seven years, provided the property has been the subject of a
97 remediation approved by the Commissioner of Environmental
98 Protection or verified by a licensed environmental professional
99 pursuant to section 22a-133w, 22a-133x, 22a-133y or 22a-134.

100 (b) Any abatement or forgiveness of taxes or fixed assessment or
101 any combination thereof under subsection (a) of this section shall be
102 approved by vote of the board of finance, if applicable, and the
103 legislative body of the municipality, or by vote of the board of finance,
104 if applicable, and the board of selectmen in a municipality where the
105 legislative body is a town meeting and contingent upon any other
106 conditions deemed appropriate by such body.

107 (c) A municipality shall notify the Commissioner of Environmental
108 Protection, the Commissioner of Economic and Community

109 Development and the Secretary of the Office of Policy and
110 Management not later than thirty days after granting any abatement or
111 forgiveness of taxes or any fixed assessment under subsection (a) of
112 this section. Such notice shall provide the owner or purchaser's name,
113 as the case may be, and the address of the property.

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

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

124 Sec. 5. Subsection (b) of section 22a-133u of the general statutes is
125 repealed and the following is substituted in lieu thereof (*Effective July*
126 *1, 2010*):

127 (b) The Commissioner of Economic and Community Development
128 may use any funds deposited into the Special Contaminated Property
129 Remediation and Insurance Fund pursuant to section 3 of public act
130 96-250 for (1) loans to municipalities, individuals or firms for Phase II
131 environmental site assessments, Phase III investigations of real
132 property or for any costs of demolition, including related lead and
133 asbestos removal or abatement costs or costs related to the remediation
134 of environmental pollution, undertaken to prepare contaminated real
135 property for development subsequent to any Phase III investigation,
136 [and] (2) expenses related to administration of this subsection
137 provided such expenses may not exceed one hundred twenty-five
138 thousand dollars per year, (3) funding the remedial action and
139 redevelopment municipal grant program established pursuant to
140 subsection (e) of section 32-9kk, and (4) funding the targeted

141 brownfield development loan program developed pursuant to
 142 subsection (f) of section 32-9kk.

143 Sec. 6. (NEW) (*Effective from passage*) Regulated activity, as defined
 144 in section 22a-354h of the general statutes, shall not be prohibited in
 145 aquifer protection areas on any municipally owned site undergoing
 146 remedial action pursuant to 40 CFR 271 at the time the applicable
 147 aquifer protection area is designated on a municipal zoning district
 148 map or inland wetland map, provided: (1) No such regulated activity
 149 substantially commenced or was in active operation for the five-year
 150 period preceding the date that the applicable aquifer protection area is
 151 designated on a municipal zoning district map or inland wetland map,
 152 and (2) any person who engages in such regulated activity for the ten-
 153 year period commencing on the date that such applicable aquifer
 154 protection area is designated on a municipal zoning district map or
 155 inland wetland map registers such regulated activity on a form
 156 prescribed by the Commissioner of Environmental Protection and in
 157 accordance with the provisions of section 22a-354i-7 of the regulations
 158 of Connecticut state agencies.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2010</i>	22a-133m(f)
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>July 1, 2010, and applicable to assessment years commencing on and after October 1, 2010</i>	12-81r
Sec. 4	<i>July 1, 2010</i>	22a-134b(c)
Sec. 5	<i>July 1, 2010</i>	22a-133u(b)
Sec. 6	<i>from passage</i>	New section

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.

House "A" eliminates certain administrative expenses as reimbursable costs for municipal and nonprofit development agencies, which could reduce the General Fund debt service fiscal impact noted above.

House "B", which states that certain regulated activities will not be prohibited, has no fiscal impact.

The Out Years

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

OLR Bill Analysis**sHB 5436 (as amended by House "A" and "B")******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 officers' liability and general liability insurance under an existing brownfield clean-up program. It 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.

The bill sets narrow conditions under which a regulated activity must be permitted on municipally owned sites undergoing remediation in aquifer protection areas.

Lastly, the bill establishes an 11-member working group to examine brownfield issues and requires it to report its findings and recommendations to the Commerce Committee by January 15, 2011. It requires the governor and legislative leaders to appoint the members and designates three state officials as ex-officio members.

*House Amendment A extends funding for liability insurance to development agencies' officers and eliminates funding for unspecified

administrative costs. It also modifies the membership and appointment of the brownfields working group and eliminates a representative of the Connecticut Development Authority as a member.

*House Amendment B adds provisions allowing regulated activities in aquifer protection areas undergoing remediation.

EFFECTIVE DATE: July 1, 2010, except for the provisions establishing the working group, which are effective upon passage; 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 applicable 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 officers' liability insurance and general liability insurance. 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 funds the 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 bills 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 the property's clean-up plan and (2) approved by the municipality's board of board of finance, legislative body, or board of selectmen, as applicable.

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 environment 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.

REGULATED ACTIVITIES IN AQUIFER PROTECTION AREAS

The bill sets narrow conditions under which a regulated activity must be permitted in an aquifer protection area. The activity must be permitted if:

1. it is being conducted on a municipally owned site where the process of cleaning up hazardous waste began when the area was designated on a municipal zoning or inland wetland map;
2. the regulated activity did not substantially begin, or actively operate for five years, before the area was designated on these maps; and
3. anyone conducting the activity for 10 years, starting on the designation date, registers the activity on a DEP form as its regulations require.

WORKING GROUP

The bill established an 11-member working group to examine how brownfields are being cleaned up and developed in Connecticut and how permits and liability affect these activities.

It requires the governor to appoint two members and the legislative leaders to appoint one each. The members must be experts in environmental law, engineering, finance, consulting, insurance, development, or other relevant fields. They must be appointed within 30 days after the bill takes effect. The governor and leaders must also fill any vacancies to their appointments. The bill also designates the Office of Policy and Management secretary and the DEP and DECD commissioners, or their designees, as ex-officio members.

The members must appoint their chairpersons who must call the first meeting within 60 days after the bill takes effect.

The working group must report its findings and recommendations

to the Commerce Committee’s chairpersons and ranking members by January 15, 2011.

BACKGROUND

Regulated Activity

By law, a regulated activity is any action, process, or condition that the DEP commissioner determines involves the production, handling, use storage, or disposal of material that may pose a threat to groundwater in an aquifer protection area, including structures and appurtenances used in conjunction with this activity (CGS § 22a-354h).

Related Bill

sHB 5119 (File 269) allows regulated activities under similar conditions on any site under going remediation in an aquifer protection area.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute

Yea 19 Nay 0 (03/18/2010)

Planning and Development Committee

Joint Favorable

Yea 18 Nay 0 (04/14/2010)

Environment Committee

Joint Favorable

Yea 28 Nay 0 (04/26/2010)