

Testimony on Raised Bill No. 6526
AN ACT CONCERNING BROWNFIELD REMEDIATION AND DEVELOPMENT AS
AN ECONOMIC DRIVER
Committee on Commerce
March 8, 2011

Good morning. My name is Beth Barton. I am partner at Day Pitney's Hartford office, practicing environmental law for more than 20 years. The nature of my practice in the environmental arena is and, over the years, has been diverse. It includes work on transactions and projects presenting environmental challenges and the representation of property owners, developers and others in connection with these transactions and projects. Working with various stakeholders as well as on behalf of specific clients, I have participated in a number of efforts to make the climate in Connecticut more hospitable to the return of economically underutilized properties to productive reuse, while assuring adequate protection of public health and our environment. I am a long-time member of the National Brownfields Association, including the Connecticut chapter whose first chair was Governor Malloy during his tenure as Stamford's Mayor. I am currently a member of the National Brownfields Association's national brownfields Advocacy Network.

I am here to voice my support for Raised Bill No. 6526, An Act Concerning Brownfield Remediation and Development as an Economic Driver, and in particular Section 17, for the very reason stated in the title of this bill. The reality is that Connecticut has many, many underutilized properties – large and small – particularly in our urban areas, which present significant impediments to economic revitalization and economic recovery efforts as well as the investigation and remediation of environmental conditions at these properties. An additional reality – whether actual or perceived – is that Connecticut is seriously behind the curve in removing or even mitigating these impediments.

In voicing my support, however, I must also express my disappointment in a subsection of Section 17 which unnecessarily limits its prospects for success. This is subsection (b) of Section 17. If the goal of Raised Bill No. 6526 is to be, or perhaps more to the point, have the redevelopment of our many, many brownfield sites – again large and small – be, an economic driver, why are we limiting the numbers and universe of properties that can benefit from participation in a comprehensive framework intended to entice previously uninvolved owners and developers to redevelop these sites? Why are we hampering the prospects for the much-needed success of this framework by interposing criteria for participating which is inconsistent with an emphasis on predictability and expediency? Concerns about predictability and expediency push development to greenfields and away from brownfields.

Importantly, Section 17 is not about public funding. There is no public funding component. That is the province of other statutes (some of which are referenced in this bill) that are not impacted by this proposed framework. Rather the framework presented in Section 17, unless it has the practical effect of creating an exclusive club to which a limited number of properties and persons will be admitted, is an opportunity for Connecticut to tout that it is a state open for, and welcoming of, brownfield redevelopment business.

I would like to briefly highlight several other sections of the bill, which I believe are in particular need of further attention. These are Sections 4, 5, 7 and 13.

Section 4. I am uncertain about the impetus behind this provision and I caution that, as drafted, it appears to reach back, that is, operate retroactively, potentially having significant and undesirable (or at least unintended) impacts and consequences for perhaps thousands of property transfers pursuant to deals struck by private parties. At best, again as drafted, it creates ambiguity for these past transfers and the on-going implementation of remedial action plans.

Not a good thing. In addition, if a provision such as this is to become law, other provisions of the very same statutory scheme – the Transfer Act – require amendment. For example, this section relieves a certifying party from any obligation to investigate and remediate any release or potential release following the sale of a property and presumably applies where there will be a verification by a Licensed Environmental Professional that the certifying party's obligations have been met. Another section of the Transfer Act – in Section 22a-134a - states that, where there has been a LEP verification, there is no requirement to comply with the Transfer Act at the time of a subsequent sale if the site has not operated as an establishment since the date of that verification. The date of verification will presumably be some time – could be up to 8 years or more – after the initial sale, yet only the activities since the verification, not the initial sale, will be looked at to determine whether there has to be a filing in connection with the subsequent sale. I'm not suggesting it is the intent of the proposed Section 4 to do an end run; I am merely citing this scenario to illustrate a need for further attention if Section 4 is to move forward.

Section 5. While I recognize that our technical knowledge is improving daily, I am sensitive to the mandate of this provision as worded, which creates at least an impression of uncertainty and unpredictability for those requiring a predictable and reliable endpoint to the investigation and remediation process. Is this provision necessary?

Section 7. This provision mandates “a comprehensive evaluation of the property remediation programs and the provisions of the general statutes that affect property remediation.” Initially, I would offer that this is very broad and presumably could be construed to go way beyond our environmental laws and even our economic development laws. Is that the intent? I also note the obvious. We have a new administration, we will have a new DEP commissioner and we may have even have a new Department . I fully support the intent and

good practice I assume is behind Section 7, that is, the reexamination of laws and regulations that are 10, 20, 30 and perhaps even, in some instances, almost 40 years old, but I am concerned again about the message such a statutory provision, as opposed to an administrative initiative, may send within and outside Connecticut as well as the need for its inclusion in this bill.

Lastly, Section 13. There are many concerns about the legality of the process and the mechanism this section would create. I urge, as I believe is happening, that members of, for example, the real estate community, including the real estate bar, have input into the consideration of this section. If, as I understand to be the case, the impetus behind this section is an interest in finding a way to address unduly burdensome and unnecessary existing prerequisites to the securing of an Environmental Land Use Restriction, could we instead seek to modify the existing statutory provisions to eliminate these burdensome and unnecessary prerequisites in appropriate scenarios?

Thank you.