



# House of Representatives

General Assembly

**File No. 441**

February Session, 2012

Substitute House Bill No. 5342

*House of Representatives, April 16, 2012*

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 REVISIONS TO THE STATE'S BROWNFIELD  
REMEDiation AND DEVELOPMENT STATUTES.***

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

1 Section 1. Subsection (a) of section 32-9kk of the 2012 supplement to  
2 the general statutes is repealed and the following is substituted in lieu  
3 thereof (*Effective July 1, 2012*):

4 (a) As used in subsections (b) to (k), inclusive, of this section:

5 (1) "Brownfield" means any abandoned or underutilized site where  
6 redevelopment, reuse or expansion has not occurred due to the  
7 presence or potential presence of pollution in the buildings, soil or  
8 groundwater that requires investigation or remediation before or in  
9 conjunction with the restoration, redevelopment and reuse of the  
10 property;

11 (2) "Commissioner" means the Commissioner of Economic and  
12 Community Development;

13 (3) "Department" means the Department of Economic and  
14 Community Development;

15 (4) "Eligible applicant" means any municipality [, a for-profit or  
16 nonprofit organization or entity, a local or regional] or economic  
17 development [entity acting on behalf of a municipality] agency or any  
18 combination thereof;

19 (5) "Financial assistance" means grants, extensions of credit, loans or  
20 loan guarantees, participation interests in loans made to eligible  
21 applicants by the Connecticut Development Authority or combinations  
22 thereof;

23 (6) "Municipality" means a town, city, consolidated town and city or  
24 consolidated town and borough;

25 (7) "Eligible brownfield project" means the foreclosure,  
26 investigation, assessment, remediation and development of a  
27 brownfield undertaken pursuant to this subsection and subsections (b)  
28 to (k), inclusive, of this section;

29 (8) "Project area" means the area within which a brownfield  
30 development project is located;

31 (9) "Real property" means land, buildings and other structures and  
32 improvements thereto, subterranean or subsurface rights, any and all  
33 easements, air rights and franchises of any kind or nature;

34 (10) "State" means the state of Connecticut; [and]

35 (11) "Eligible grant recipients" means municipalities [,] or economic  
36 development [authorities, regional economic development authorities,  
37 or qualified nonprofit community and economic development  
38 corporations.] agencies; and

39 (12) "Economic development agency" means (A) a municipal  
40 economic development agency or entity created or operating under  
41 chapter 130 or 132; (B) a nonprofit economic development corporation

42 formed to promote the common good, general welfare and economic  
43 development of a municipality that is funded, either directly or  
44 through in-kind services, in part by a municipality; or (C) a nonstock  
45 corporation or limited liability company established or controlled by a  
46 municipality, municipal economic development agency or an entity  
47 created or operating under chapter 130 or 132.

48 Sec. 2. Subsection (f) of section 32-9kk of the 2012 supplement to the  
49 general statutes is repealed and the following is substituted in lieu  
50 thereof (*Effective July 1, 2012*):

51 (f) (1) The Department of Economic and Community Development  
52 shall develop a targeted brownfield development loan program to  
53 provide financial assistance in the form of low-interest loans to eligible  
54 applicants who are potential brownfield purchasers who have no  
55 direct or related liability for the site conditions and eligible applicants  
56 who are existing property owners who (A) are currently in good  
57 standing and otherwise compliant with the Department of Energy and  
58 Environmental Protection's regulatory programs, (B) demonstrate an  
59 inability to fund the investigation and cleanup themselves, and (C)  
60 cannot retain or expand jobs due to the costs associated with the  
61 investigating and remediating of the contamination.

62 (2) The commissioner shall provide low-interest loans to eligible  
63 applicants who are purchasers or existing property owners pursuant to  
64 this section who seek to develop property for purposes of retaining or  
65 expanding jobs in the state or for developing affordable housing [to  
66 serve the needs of first-time home buyers] units, suitable for first-time  
67 home buyers, incentive housing zones, workforce housing and other  
68 residential purposes, as approved by the commissioner. Loans shall be  
69 available to manufacturing, retail, residential or mixed-use  
70 developments, expansions or reuses. The commissioner shall provide  
71 loans based upon project merit and viability, the economic and  
72 community development opportunity, municipal support,  
73 contribution to the community's tax base, number of jobs, past  
74 experience of the applicant, compliance history and ability to pay.

75 (3) Any loan recipient who is a brownfields purchaser and who (A)  
76 receives a loan in excess of thirty thousand dollars, or (B) uses loan  
77 proceeds to perform a Phase II environmental investigation, shall be  
78 subject to section 22a-134a or shall enter a voluntary program for  
79 remediation of the property with the Department of Energy and  
80 Environmental Protection. Any loan recipient who is an existing  
81 property owner shall enter a voluntary program with the Department  
82 of Energy and Environmental Protection.

83 (4) Loans made pursuant to this subsection shall have such terms  
84 and conditions and shall be subject to such eligibility, loan approval  
85 and criteria, as determined by the commissioner. Such conditions shall  
86 include, but not be limited to, performance requirements and  
87 commitments to maintain or retain jobs or provide a specified number  
88 of affordable housing units. Loan repayment shall coincide with the  
89 restoration of the site to a productive use or the completion of the  
90 expansion. Such loans shall be for a period not to exceed twenty years.

91 (5) If the property is sold before loan repayment, the loan is payable  
92 upon closing, with interest, unless the commissioner agrees otherwise.  
93 The commissioner may carry the loan forward as an encumbrance to  
94 the purchaser with the same terms and conditions as the original loan.

95 (6) Loans made pursuant to this subsection may be used for any  
96 purpose, including the present or past costs of investigation,  
97 assessment, remediation, abatement, hazardous materials or waste  
98 disposal, long-term groundwater or natural attenuation monitoring,  
99 costs associated with an environmental land use restriction, attorneys'  
100 fees, planning, engineering and environmental consulting costs, and  
101 building and structural issues, including demolition, asbestos  
102 abatement, polychlorinated biphenyls removal, contaminated wood or  
103 paint removal, and other infrastructure remedial activities.

104 (7) For any loan made pursuant to this subsection that is greater  
105 than fifty thousand dollars, the applicant shall submit a redevelopment  
106 plan that describes how the property will be used or reused for  
107 commercial, industrial, residential or mixed-use development and how

108 it will result in jobs and private investment in the community. For any  
109 residential development loan pursuant to this subsection, the  
110 developer shall agree that the development will provide the affordable  
111 housing needs reasonable and appropriate for first-time home buyers  
112 or for workforce housing or recent college graduates looking to remain  
113 in this state.

114 (8) The loan program established pursuant to this subsection shall  
115 be available to all qualified new and existing property owners.  
116 Recipients who use loans for commercial, industrial or mixed-use  
117 development shall agree to retain or add jobs, during the term of the  
118 loan, unless otherwise agreed to by the Department of Economic and  
119 Community Development, the Connecticut Development Authority  
120 and the Connecticut Brownfield Redevelopment Authority. The  
121 residential developer shall agree to retire the loan upon sale of the  
122 units unless the development will be apartments.

123 (9) Each loan recipient pursuant to this subsection may be eligible  
124 for up to two million dollars per year for up to two years, subject to  
125 agency underwriting and reasonable and customary requirements to  
126 assure performance. If additional funds are needed, the Commissioner  
127 of Economic and Community Development may recommend that the  
128 project be funded through the State Bond Commission.

129 (10) The loan program established pursuant to this subsection shall  
130 be available to all municipalities and economic development agencies,  
131 and the commissioner may provide such loans to such municipalities  
132 and economic development agencies as forgivable loans.

133 Sec. 3. Subsection (j) of section 32-9kk of the 2012 supplement to the  
134 general statutes is repealed and the following is substituted in lieu  
135 thereof (*Effective July 1, 2012*):

136 (j) The commissioner may use any available funds for financial  
137 assistance under the provisions of subsections (a) to (k), inclusive, of  
138 this section and may use such funds for the staffing, marketing and  
139 web site development for the programs established pursuant to

140 subsections (a) to (k), inclusive, of this section and the administration  
141 of the Office of Brownfield Remediation and Development established  
142 pursuant to section 32-9cc, provided such costs do not exceed four per  
143 cent of any such funds authorized.

144 Sec. 4. Subsection (l) of section 32-9kk of the 2012 supplement to the  
145 general statutes is repealed and the following is substituted in lieu  
146 thereof (*Effective July 1, 2012*):

147 (l) There is established a separate nonlapsing account within the  
148 General Fund to be known as the "brownfield remediation and  
149 development account". There shall be deposited in the account: (1) The  
150 proceeds of bonds issued by the state for deposit into said account and  
151 used in accordance with this section; (2) repayments of assistance  
152 provided pursuant to subsection (c) of section 22a-133u; (3) interest or  
153 other income earned on the investment of moneys in the account; (4)  
154 funds recovered pursuant to [subsection] subsections (i) and (k) of this  
155 section; and (5) all funds required by law to be deposited in the  
156 account. Repayment of principal and interest on loans made pursuant  
157 to subsections (a) to (k), inclusive, of this section shall be credited to  
158 such account and shall become part of the assets of the account. Any  
159 balance remaining in such account at the end of any fiscal year shall be  
160 carried forward in the account for the fiscal year next succeeding.

161 Sec. 5. Section 32-9mm of the 2012 supplement to the general  
162 statutes is repealed and the following is substituted in lieu thereof  
163 (*Effective July 1, 2012*):

164 (a) As used in this section:

165 (1) "Bona fide prospective purchaser" means a person that acquires  
166 ownership of a property after July 1, 2011, and establishes by a  
167 preponderance of the evidence that:

168 (A) All disposal of regulated substances at the property occurred  
169 before the person acquired the property;

170 (B) Such person made all appropriate inquiries, as set forth in 40

171 CFR Part 312, into the previous ownership and uses of the property in  
172 accordance with generally accepted good commercial and customary  
173 standards and practices, including, but not limited to, the standards  
174 and practices set forth in the ASTM Standard Practice for  
175 Environmental Site Assessments, Phase I Environmental Site  
176 Assessment Process, E1527-05, as may be amended from time to time.  
177 In the case of property in residential or other similar use at the time of  
178 purchase by a nongovernmental or noncommercial entity, a property  
179 inspection and a title search that reveal no basis for further  
180 investigation shall be considered to satisfy the requirements of this  
181 subparagraph;

182 (C) Such person provides all legally required notices with respect to  
183 the discovery or release of any regulated substances at the property;

184 (D) Such person exercises appropriate care with respect to regulated  
185 substances found at the property by taking reasonable steps to (i) stop  
186 any continuing release, (ii) prevent any threatened future release, and  
187 (iii) prevent or limit human, environmental or natural resource  
188 exposure to any previously released regulated substance;

189 (E) Such person provides full cooperation, assistance and access to  
190 persons authorized to conduct response actions or natural resource  
191 restoration at the property, including, but not limited to, the  
192 cooperation and access necessary for the installation, integrity,  
193 operation and maintenance of any complete or partial response actions  
194 or natural resource restoration at the property;

195 (F) Such person complies with any land use restrictions established  
196 or relied on in connection with the response action at the property and  
197 does not impede the effectiveness or integrity of any institutional  
198 control employed at the property in connection with a response action;  
199 and

200 (G) Such person complies with any request for information from the  
201 Commissioner of Energy and Environmental Protection.

202 (2) "Brownfield" has the same meaning as provided in section 32-  
203 9kk, as amended by this act.

204 (3) "Brownfield investigation plan and remediation schedule" means  
205 a plan and schedule for investigation and a schedule for remediation  
206 of an eligible property under this section. Such investigation plan and  
207 remediation schedule shall include both interim status or other  
208 appropriate interim target dates and a date for project completion not  
209 later than [five] eight years after a licensed environmental professional  
210 submits such investigation plan and remediation schedule to the  
211 Commissioner of Energy and Environmental Protection, provided the  
212 Commissioner of Energy and Environmental Protection may extend  
213 such dates for good cause. The plan shall provide a schedule for  
214 activities including, but not limited to, completion of the investigation  
215 of the property in accordance with prevailing standards and  
216 guidelines, submittal of a complete investigation report, submittal of a  
217 detailed written plan for remediation, publication of notice of remedial  
218 actions, completion of remediation in accordance with standards  
219 adopted by said commissioner pursuant to section 22a-133k and  
220 submittal to said commissioner of a remedial action report. Except as  
221 otherwise provided in this section, in any detailed written plan for  
222 remediation submitted under this section, the applicant shall only be  
223 required to investigate and remediate conditions existing within the  
224 property boundaries and shall not be required to investigate or  
225 remediate any pollution or contamination that exists outside of the  
226 property's boundaries, including any contamination that may exist or  
227 has migrated to sediments, rivers, streams or off site.

228 (4) "Commissioner" means the Commissioner of Economic and  
229 Community Development.

230 (5) "Contiguous property owner" means a person who owns real  
231 property contiguous to or otherwise similarly situated with respect to,  
232 and that is or may be contaminated by a release or threatened release  
233 of a regulated substance from, real property that is not owned by that  
234 person, provided:

235 (A) With respect to the property owned by such person, such person  
236 takes reasonable steps to (i) stop any continuing release of any  
237 regulated substance released on or from the property, (ii) prevent any  
238 threatened future release of any regulated substance released on or  
239 from the property, and (iii) prevent or limit human, environmental or  
240 natural resource exposure to any regulated substance released on or  
241 from the property;

242 (B) Such person provides full cooperation, assistance and access to  
243 persons authorized to conduct response actions or natural resource  
244 restoration at the property from which there has been a release or  
245 threatened release, including, but not limited to, the cooperation and  
246 access necessary for the installation, integrity, operation and  
247 maintenance of any complete or partial response action or natural  
248 resource restoration at the property;

249 (C) Such person complies with any land use restrictions established  
250 or relied on in connection with the response action at the property and  
251 does not impede the effectiveness or integrity of any institutional  
252 control employed in connection with a response action;

253 (D) Such person complies with any request for information from the  
254 Commissioner of Energy and Environmental Protection; and

255 (E) Such person provides all legally required notices with respect to  
256 the discovery or release of any hazardous substances at the property.

257 (6) "Distressed municipality" has the same meaning as provided in  
258 section 32-9p.

259 (7) "Economic development agency" means a municipality,  
260 municipal economic development agency or entity created or  
261 operating under chapter 130 or 132, nonprofit economic development  
262 corporation formed to promote the common good, general welfare and  
263 economic development of a municipality that is funded, either directly  
264 or through in-kind services, in part by a municipality, or nonstock  
265 corporation or limited liability company established or controlled by a

266 municipality, municipal economic development agency or entity  
267 created or operating under chapter 130 or 132.

268 (8) "Innocent landowner" has the same meaning as provided in  
269 section 22a-452d.

270 (9) "Interim verification" has the same meaning as provided in  
271 section 22a-134.

272 (10) "Municipality" [means any town, city or borough] has the same  
273 meaning as in section 32-9kk, as amended by this act.

274 (11) "National priorities list" means the list of hazardous waste  
275 disposal sites compiled by the United States Environmental Protection  
276 Agency pursuant to 42 USC 9605.

277 (12) "PCB regulations" means the polychlorinated biphenyls  
278 manufacturing, processing, distribution in commerce and use  
279 prohibitions found at 40 CFR Part 761.

280 (13) "Person" means any individual, firm, partnership, association,  
281 syndicate, company, trust, corporation, limited liability company,  
282 municipality, economic development agency, agency or political or  
283 administrative subdivision of the state and any other legal entity.

284 (14) "Principles of smart growth" means standards and objectives  
285 that support and encourage smart growth when used to guide actions  
286 and decisions, including, but not limited to, standards and criteria for  
287 (A) integrated planning or investment that coordinates tax,  
288 transportation, housing, environmental and economic development  
289 policies at the state, regional and local level, (B) the reduction of  
290 reliance on the property tax by municipalities by creating efficiencies  
291 and coordination of services on the regional level while reducing  
292 interlocal competition for grand list growth, (C) the redevelopment of  
293 existing infrastructure and resources, including, but not limited to,  
294 brownfields and historic places, (D) transportation choices that  
295 provide alternatives to automobiles, including rail, public transit,  
296 bikeways and walking, while reducing energy consumption, (E) the

297 development or preservation of housing affordable to households of  
298 varying income in locations proximate to transportation or  
299 employment centers or locations compatible with smart growth, (F)  
300 concentrated, mixed-use, mixed income development proximate to  
301 transit nodes and civic, employment or cultural centers, and (G) the  
302 conservation and protection of natural resources by (i) preserving open  
303 space, water resources, farmland, environmentally sensitive areas and  
304 historic properties, and (ii) furthering energy efficiency.

305 (15) "Regulated substance" means any element, compound or  
306 material that, when added to air, water, soil or sediment, may alter the  
307 physical, chemical, biological or other characteristic of such air, water,  
308 soil or sediment.

309 (16) "Release" means any discharge, spillage, uncontrolled loss,  
310 seepage, filtration, leakage, injection, escape, dumping, pumping,  
311 pouring, emitting, emptying or disposal of a substance.

312 (17) "Remediation standards" has the same meaning as provided in  
313 section 22a-134.

314 (18) "RCRA" means the Resource Conservation and Recovery Act  
315 promulgated pursuant to 42 USC.

316 (19) "Smart growth" means economic, social and environmental  
317 development that (A) promotes, through financial and other  
318 incentives, economic competitiveness in the state while preserving  
319 natural resources, and (B) uses a collaborative approach to planning,  
320 decision-making and evaluation between and among all levels of  
321 government and the communities and the constituents they serve.

322 (20) "State of Connecticut Superfund Priority List" means the list of  
323 hazardous waste disposal sites compiled by the Connecticut  
324 Department of Energy and Environmental Protection pursuant to  
325 section 22a-133f.

326 (21) "Transit-oriented development" has the same meaning as  
327 provided in section 13b-79o.

328 (22) "UST regulations" means regulations adopted pursuant to  
329 subsection (d) of section 22a-449.

330 (23) "Verification" has the same meaning as provided in section 22a-  
331 134.

332 (b) The commissioner shall, within available appropriations,  
333 establish a brownfield remediation and revitalization program to  
334 provide certain liability protections to program participants. Not more  
335 than thirty-two properties a year shall be accepted into the program.  
336 Participation in the program shall be by accepted application pursuant  
337 to this subsection or by approved nomination pursuant to subsection  
338 (d) of this section. To be considered for acceptance, [into the program  
339 established pursuant to this subsection,] an applicant shall submit to  
340 the commissioner, on a form prescribed by the commissioner, a  
341 certification that: (1) The applicant meets the definition of a bona fide  
342 prospective purchaser, innocent land owner or contiguous property  
343 owner; (2) the property meets the definition of a brownfield and has  
344 been subject to a release of a regulated substance in an amount that is  
345 in excess of the remediation standards; (3) the applicant did not  
346 establish, create or maintain a source of pollution to the waters of the  
347 state for purposes of section 22a-432 and is not responsible pursuant to  
348 any other provision of the general statutes for any pollution or source  
349 of pollution on the property; (4) the applicant is not affiliated with any  
350 person responsible for such pollution or source of pollution through  
351 any direct or indirect familial relationship or any contractual, corporate  
352 or financial relationship other than that by which such purchaser's  
353 interest in such property is to be conveyed or financed; and (5) the  
354 property is not currently the subject of an enforcement action,  
355 including any consent order issued by the Department of Energy and  
356 Environmental Protection or the United States Environmental  
357 Protection Agency under any current Department of Energy and  
358 Environmental Protection or United States Environmental Protection  
359 Agency program, listed on the national priorities list, listed on the  
360 State of Connecticut Superfund Priority List, or subject to corrective  
361 action as may be required by RCRA. The commissioner may review

362 such certifications to ensure accuracy, in consultation with the  
363 Commissioner of Energy and Environmental Protection, and  
364 applications will not be considered if such certifications are found  
365 inaccurate.

366 (c) To ensure a geographic distribution and a diversity of projects  
367 and broad access to the brownfield remediation and revitalization  
368 program when more than sixteen applications have been received in  
369 any six-month period or more than thirty-two applications have been  
370 received in any one year, the commissioner, in consultation with the  
371 Commissioner of Energy and Environmental Protection, shall review  
372 all applications received and determine admission of eligible  
373 properties into the brownfield remediation and revitalization program  
374 [based on] taking into consideration state-wide portfolio factors  
375 including: (1) Job creation and retention; (2) sustainability; (3)  
376 readiness to proceed; (4) geographic distribution of projects; (5)  
377 population of the municipality where the property is located; (6)  
378 project size; (7) project complexity; (8) duration and degree to which  
379 the property has been underused; (9) projected increase to the  
380 municipal grand list; (10) consistency of the property as remediated  
381 and developed with municipal or regional planning objectives; (11)  
382 development plan's support for and furtherance of principles of smart  
383 growth or transit-oriented development; and (12) other factors as may  
384 be determined by the commissioner. Admittance into the brownfield  
385 remediation and revitalization program shall not indicate approval or  
386 award of funding requested under any federal, state or municipal  
387 grant or loan program, including, but not limited to, any state  
388 brownfield grant or loan program.

389 (d) The commissioner shall accept nominations of properties for  
390 participation in the program established pursuant to subsection (b) of  
391 this section [from] by a municipality or an economic development  
392 agency. For a property to be considered for approval for nomination to  
393 the program established pursuant to this section, a municipality shall  
394 submit to the commissioner, on a form prescribed by the  
395 commissioner, a certification that the property meets the eligibility

396 requirements provided in subdivisions (2) and (5) of subsection (b) of  
397 this section and any other relevant factors, including state-wide  
398 portfolio factors provided in subsection (c) of this section, as may be  
399 determined by the commissioner. After the commissioner approves a  
400 property's nomination, the municipality shall submit to the  
401 commissioner, on a form prescribed by the commissioner, a  
402 certification that the municipality has identified a person who meets  
403 the eligibility requirements provided in subdivisions (1), (3) and (4) of  
404 subsection (b) of this section, for the commissioner to issue a final  
405 acceptance into the program, which acceptance shall be based solely on  
406 the person meeting the eligibility requirements provided in  
407 subdivisions (1), (3) and (4) of subsection (b) of this section.

408 (e) (1) Properties otherwise eligible for the brownfield remediation  
409 and revitalization program currently being investigated and  
410 remediated in accordance with the state voluntary remediation  
411 programs under sections 22a-133x, [and] 22a-133y and 22a-134 and the  
412 covenant not to sue programs under section 22a-133aa or 22a-133bb  
413 [may participate] shall not be excluded from eligibility in said  
414 program, provided the other requirements set forth in this section are  
415 met.

416 (2) Properties otherwise eligible for the brownfield remediation and  
417 revitalization program that have been subject to a release requiring  
418 action pursuant to the PCB regulations or that have been subject to a  
419 release requiring action pursuant to the UST regulations shall not be  
420 deemed ineligible, but no provision of this section shall affect any  
421 eligible party's obligation under such regulations to investigate or  
422 remediate the extent of any such release.

423 (f) Inclusion of a property within the brownfield remediation and  
424 revitalization program by the commissioner shall not limit any  
425 person's ability to seek funding for such property under any federal,  
426 state or municipal grant or loan program, including, but not limited to,  
427 any state brownfield grant or loan program. Admittance into the  
428 brownfield remediation and revitalization program shall not indicate

429 approval or award of funding requested under any federal, state or  
430 municipal grant or loan program, including, but not limited to, any  
431 state brownfield grant or loan program.

432 (g) Any applicant seeking a designation of eligibility for a person or  
433 a property under the brownfield remediation and revitalization  
434 program shall apply to the commissioner at such times and on such  
435 forms as the commissioner may prescribe. The application shall  
436 include, but not be limited to, (1) a title search, (2) the Phase I  
437 Environmental Site Assessment conducted by or for the bona fide  
438 prospective purchaser or the contiguous property owner, which shall  
439 be prepared in accordance with [the Department of Energy and  
440 Environmental Protection's Site Characterization Guidance Document]  
441 prevailing standards and guidelines, (3) a current property inspection,  
442 (4) documentation demonstrating satisfaction of the eligibility criteria  
443 set forth in subsection (b) of this section, (5) information about the  
444 project that relates to the state-wide portfolio factors set forth in  
445 subsection (c) of this section, and (6) such other information as the  
446 commissioner may request to determine admission.

447 (h) Any applicant accepted into the brownfield remediation and  
448 revitalization program by the commissioner shall pay the  
449 Commissioner of Energy and Environmental Protection a fee equal to  
450 five per cent of the assessed value of the land, as stated on the last-  
451 completed grand list of the relevant town. The fee shall be paid in two  
452 installments, each equal to fifty per cent of such fee, subject to potential  
453 reductions as specified in subsection (i) of this section. The first  
454 installment shall be due [within] not later than one hundred eighty  
455 days [of being] after the later of the date the eligible applicant is  
456 notified that the application has been accepted by the commissioner or  
457 the date that the eligible applicant takes title to the eligible property.  
458 The second installment shall be due not later than four years [of being  
459 notified that the application has been accepted by the commissioner]  
460 after the acceptance date. Upon request by an eligible applicant, a  
461 municipality or an economic development agency, the commissioner  
462 may, at the commissioner's discretion, extend either or both of the

463 installment due dates. Such fee shall be deposited into the [Special  
464 Contaminated Property Remediation and Insurance Fund established  
465 pursuant to section 22a-133t] brownfield remediation and  
466 development account and shall be available for use by the  
467 Commissioner of Economic and Community Development to fund the  
468 grant and loan programs established pursuant to section 32-9kk, as  
469 amended by this act, or for use by the Commissioner of Energy and  
470 Environmental Protection to remediate the effects of contamination  
471 that have migrated off site from the eligible property.

472 (i) (1) The first installment of the fee in subsection (h) of this section  
473 shall be reduced by ten per cent for any eligible party that completes  
474 and submits to the Commissioner of Energy and Environmental  
475 Protection documentation, approved in writing by a licensed  
476 environmental professional and on a form prescribed by said  
477 commissioner, that the investigation of the property has been  
478 completed in accordance with prevailing standards and guidelines  
479 within one hundred eighty days after the [date the application is  
480 accepted by the commissioner] first installment due date, including  
481 any extension thereof by the commissioner, of the fee required  
482 pursuant to subsection (h) of this section.

483 (2) The second installment of the fee in subsection (h) of this section  
484 shall be eliminated for any eligible party that submits the remedial  
485 action report and verification or interim verification to the  
486 Commissioner of Energy and Environmental Protection within four  
487 years after the [date the application is accepted by the commissioner]  
488 first installment due date, including any extension thereof by the  
489 commissioner, of the fee required pursuant to subsection (h) of this  
490 section. In the event an eligible party submits a request for the  
491 Commissioner of Energy and Environmental Protection's approval,  
492 where such approval is required pursuant to the remediation standard  
493 and where said commissioner issues a decision on such request  
494 beyond sixty days after submittal, such four-year period shall be  
495 extended by the number of days equal to the number of days between  
496 the sixtieth day and the date a decision is issued by said commissioner,

497 but not including the number of days that a request by said  
498 commissioner for supplemental information remains pending with the  
499 eligible party.

500 (3) The second installment of the fee in subsection (h) of this section  
501 shall be reduced by, or any eligible party shall receive a refund in the  
502 amount equal to, twice the reasonable environmental service costs of  
503 such investigation, as determined by the Commissioner of Energy and  
504 Environmental Protection, for any eligible party that completes and  
505 submits to the Commissioner of Energy and Environmental Protection  
506 documentation, approved in writing by a licensed environmental  
507 professional and on a form that may be prescribed by said  
508 commissioner, that the investigation of the nature and extent of any  
509 contamination that has migrated from the property has been  
510 completed in accordance with prevailing standards and guidelines.  
511 Such refund shall not exceed the amount of the second installment of  
512 the fee in subsection (h) of this section.

513 (4) No municipality or economic development agency seeking  
514 designation of eligibility shall be required to pay a fee, provided, [the  
515 municipality or economic development agency shall collect and] upon  
516 transfer of the eligible property from the municipality or economic  
517 development agency to an eligible person, that eligible person shall  
518 pay to the Commissioner of Energy and Environmental Protection the  
519 fee in subsection (h) of this section [upon transfer of the property to  
520 another person for purposes of development] in accordance with the  
521 applicable requirements in this subsection.

522 (5) A municipality or economic development agency may submit a  
523 fee waiver request to the commissioner to waive a portion or the entire  
524 fee for an eligible property [not owned by the municipality and]  
525 located within that municipality. The commissioner, at [their] his or  
526 her discretion, shall consider the following factors in determining  
527 whether to approve a fee waiver or reduction: (A) Location of the  
528 eligible project within a distressed municipality; (B) demonstration by  
529 the municipality or economic development agency that the project is of

530 significant economic impact; (C) demonstration by the municipality or  
531 economic development agency that the project has a significant  
532 community benefit to the municipality; (D) demonstration that the  
533 eligible party is a governmental or nonprofit entity; and (E)  
534 demonstration that the fee required will have a detrimental effect on  
535 the overall success of the project.

536 (j) [A person] An applicant whose application has been accepted  
537 into the brownfield remediation and revitalization program shall not  
538 be liable to the state or any third party for the release of any regulated  
539 substance at or from the eligible property, except and only to the  
540 extent that such applicant (A) caused or contributed to the release of a  
541 regulated substance that is subject to remediation or exacerbated such  
542 condition, or (B) the Commissioner of Energy and Environmental  
543 Protection determines the existence of any of the conditions set forth in  
544 subdivision (4) of subsection (n) of this section.

545 (k) (1) [A person] An applicant whose application to the brownfield  
546 remediation and revitalization program has been accepted by the  
547 commissioner (A) shall investigate the release or threatened release of  
548 any regulated substance within the boundaries of the property in  
549 accordance with prevailing standards and guidelines and remediate  
550 such release or threatened release within the boundaries of such  
551 property in accordance with the brownfield investigation plan and  
552 remediation schedule and this section, and (B) shall not be required to  
553 characterize, abate and remediate the release of a regulated substance  
554 beyond the boundary of the eligible property, except for releases  
555 caused or contributed to by such [person] applicant.

556 (2) Not later than one hundred eighty days after the [commissioner  
557 accepts the application] first installment due date, including any  
558 extension thereof by the commissioner, of the fee required pursuant to  
559 subsection (h) of this section, the eligible party shall submit to the  
560 commissioner and the Commissioner of Energy and Environmental  
561 Protection a brownfield investigation plan and remediation schedule  
562 that is signed and stamped by a licensed environmental professional.

563 Unless otherwise approved in writing by the Commissioner of Energy  
564 and Environmental Protection, the eligible party shall submit a  
565 brownfield investigation plan and remediation schedule which  
566 provides that the investigation shall be completed [within two years of  
567 the application being accepted by the commissioner] not later than two  
568 years after the first installment due date, including any extension  
569 thereof by the commissioner, of the fee required pursuant to  
570 subsection (h) of this section, remediation shall be initiated not later  
571 than three years from the [date of the application being accepted by the  
572 commissioner] first installment due date, including any extension  
573 thereof by the commissioner, of the fee required pursuant to  
574 subsection (h) of this section and remediation shall be completed  
575 sufficiently to support either a verification or interim verification  
576 [within eight years of the application being accepted by the  
577 commissioner] not later than eight years after the first installment due  
578 date, including any extension thereof by the commissioner, of the fee  
579 required pursuant to subsection (h) of this section. The schedule shall  
580 also include a schedule for providing public notice of the remediation  
581 prior to the initiation of such remediation in accordance with  
582 subdivision (1) of subsection (k) of this section. Not later than two  
583 years after the [application is accepted by the commissioner] first  
584 installment due date, including any extension thereof by the  
585 commissioner, of the fee required pursuant to subsection (h) of this  
586 section, unless the Commissioner of Energy and Environmental  
587 Protection has specified a later day, in writing, the eligible party shall  
588 submit to the Commissioner of Energy and Environmental Protection  
589 documentation, approved in writing by a licensed environmental  
590 professional and in a form prescribed by the Commissioner of Energy  
591 and Environmental Protection, that the investigation of the property  
592 has been completed in accordance with prevailing standards and  
593 guidelines. Not later than three years after the [application is accepted  
594 by the commissioner] first installment due date, including any  
595 extension thereof by the commissioner, of the fee required pursuant to  
596 subsection (h) of this section, unless the Commissioner of Energy and  
597 Environmental Protection has specified a later day, in writing, the

598 eligible party shall notify the Commissioner of Energy and  
599 Environmental Protection and the commissioner in a form prescribed  
600 by the Commissioner of Energy and Environmental Protection that the  
601 remediation has been initiated, and shall submit to the Commissioner  
602 of Energy and Environmental Protection a remedial action plan,  
603 approved in writing by a licensed environmental professional in a  
604 form prescribed by the Commissioner of Energy and Environmental  
605 Protection. Not later than eight years after the [application is accepted  
606 by the commissioner] first installment due date, including any  
607 extension thereof by the commissioner, of the fee required pursuant to  
608 subsection (h) of this section, unless the Commissioner of Energy and  
609 Environmental Protection has specified a later day, in writing, the  
610 eligible party shall complete remediation of the property and submit  
611 the remedial action report and verification or interim verification to the  
612 Commissioner of Energy and Environmental Protection and the  
613 commissioner. The Commissioner of Energy and Environmental  
614 Protection shall grant a reasonable extension if the eligible party  
615 demonstrates to the satisfaction of the Commissioner of Energy and  
616 Environmental Protection that: (A) Such eligible party has made  
617 reasonable progress toward investigation and remediation of the  
618 eligible property; and (B) despite best efforts, circumstances beyond  
619 the control of the eligible party have significantly delayed the  
620 remediation of the eligible property.

621 (3) An eligible party who submits an interim verification for an  
622 eligible property, and any subsequent owner of such eligible property,  
623 shall, until the remediation standards for groundwater are achieved,  
624 (A) operate and maintain the long-term remedy for groundwater in  
625 accordance with the remedial action plan, the interim verification and  
626 any approvals issued by the Commissioner of Energy and  
627 Environmental Protection, (B) prevent exposure to any groundwater  
628 plume containing a regulated substance in excess of the remediation  
629 standards on the property, (C) take all reasonable action to contain any  
630 groundwater plume on the property, and (D) submit annual status  
631 reports to the Commissioner of Energy and Environmental Protection  
632 and the commissioner.

633 (4) Before commencement of remedial action pursuant to the plan  
634 and schedule, the eligible party shall: (A) Publish notice of the  
635 remedial action in a newspaper having a substantial circulation in the  
636 town where the property is located, (B) notify the director of health of  
637 the municipality where the property is located, and (C) either (i) erect  
638 and maintain for at least thirty days in a legible condition a sign not  
639 less than six feet by four feet on the property, which shall be clearly  
640 visible from the public highway and shall include the words  
641 "ENVIRONMENTAL CLEAN-UP IN PROGRESS AT THIS SITE. FOR  
642 FURTHER INFORMATION CONTACT:" and include a telephone  
643 number for an office from which any interested person may obtain  
644 additional information about the remedial action, or (ii) mail notice of  
645 the remedial action to each owner of record of property which abuts  
646 such property, at the address on the last-completed grand list of the  
647 relevant town. Public comments shall be directed to the eligible party  
648 for a thirty-day period starting with the last provided public notice  
649 provision and such eligible party shall provide all comments and any  
650 responses to the Commissioner of Energy and Environmental  
651 Protection prior to commencing remedial action.

652 (5) The remedial action shall be conducted under the supervision of  
653 a licensed environmental professional and the remedial action report  
654 shall be submitted to the commissioner and the Commissioner of  
655 Energy and Environmental Protection signed and stamped by a  
656 licensed environmental professional. In such report, the licensed  
657 environmental professional shall include a detailed description of the  
658 remedial actions taken and issue a verification or interim verification,  
659 in which he or she shall render an opinion, in accordance with the  
660 standard of care provided in subsection (c) of section 22a-133w, that  
661 the action taken to contain, remove or mitigate the release of regulated  
662 substances within the boundaries of such property is in accordance  
663 with the remediation standards.

664 (6) All applications for permits required to implement such plan  
665 and schedule in this section shall be submitted to the permit  
666 ombudsman within the Department of Economic and Community

667 Development.

668 (7) Each eligible party participating in the brownfield remediation  
669 and revitalization program shall maintain all records related to its  
670 implementation of such plan and schedule and completion of the  
671 remedial action of the property for a period of not less than ten years  
672 and shall make such records available to the commissioner or the  
673 Commissioner of Energy and Environmental Protection at any time  
674 upon request by either.

675 (8) (A) Within sixty days of receiving a remedial action report  
676 signed and stamped by a licensed environmental professional and a  
677 verification or interim verification, the Commissioner of Energy and  
678 Environmental Protection shall notify the eligible party and the  
679 commissioner whether the Commissioner of Energy and  
680 Environmental Protection will conduct an audit of such remedial  
681 action. Any such audit shall be conducted not later than one hundred  
682 eighty days after the Commissioner of Energy and Environmental  
683 Protection receives a remedial action report signed and stamped by a  
684 licensed environmental professional and a verification or interim  
685 verification. Within fourteen days of completion of an audit, the  
686 Commissioner of Energy and Environmental Protection shall send  
687 written audit findings to the eligible party, the commissioner and the  
688 licensed environmental professional. The audit findings may approve  
689 or disapprove the report, provided any disapproval shall set forth the  
690 reasons for such disapproval.

691 (B) The Commissioner of Energy and Environmental Protection may  
692 request additional information during an audit conducted pursuant to  
693 this subdivision. If such information has not been provided to said  
694 commissioner within fourteen days of such request, the time frame for  
695 said commissioner to complete the audit shall be suspended until the  
696 information is provided to said commissioner. The Commissioner of  
697 Energy and Environmental Protection may choose to conduct such  
698 audit if and when the eligible party fails to provide a response to said  
699 commissioner's request for additional information within sixty days.

700 (C) The Commissioner of Energy and Environmental Protection  
701 shall not conduct an audit of a verification or interim verification  
702 pursuant to this subdivision after one hundred eighty days from  
703 receipt of such verification unless (i) said commissioner has reason to  
704 believe that a verification was obtained through the submittal of  
705 materially inaccurate or erroneous information, or otherwise  
706 misleading information material to the verification or that material  
707 misrepresentations were made in connection with the submittal of the  
708 verification, (ii) any post-verification monitoring or operations and  
709 maintenance is required as part of a verification and has not been  
710 done, (iii) a verification that relies upon an environmental land use  
711 restriction was not recorded on the land records of the municipality in  
712 which such land is located in accordance with section 22a-133o and  
713 applicable regulations, (iv) said commissioner determines that there  
714 has been a violation of law material to the verification, or (v) said  
715 commissioner determines that information exists indicating that the  
716 remediation may have failed to prevent a substantial threat to public  
717 health or the environment for releases on the property.

718 (l) Not later than sixty days after receiving a notice of disapproval or  
719 a verification or interim verification from the Commissioner of Energy  
720 and Environmental Protection, the eligible party shall submit to said  
721 commissioner and to the commissioner a report of cure of noted  
722 deficiencies. Within sixty days after receiving such report of cure of  
723 noted deficiencies by said commissioner, said commissioner shall issue  
724 a successful audit closure letter or a written disapproval of such report  
725 of cure of noted deficiencies.

726 (m) Before approving a verification or interim verification, the  
727 Commissioner of Energy and Environmental Protection may enter into  
728 a memorandum of understanding with the eligible party with regard  
729 to any further remedial action or monitoring activities on or at such  
730 property that said commissioner deems necessary for the protection of  
731 human health or the environment.

732 (n) (1) An eligible party who has been accepted into the brownfield

733 remediation and revitalization program shall have no obligation as  
734 part of its plan and schedule to characterize, abate and remediate any  
735 plume of a regulated substance outside the boundaries of the subject  
736 property, provided the notification requirements of section 22a-6u  
737 pertaining to significant environmental hazards shall continue to apply  
738 to the property and the eligible party shall not be required to  
739 characterize, abate or remediate any such significant environmental  
740 hazard outside the boundaries of the subject property unless such  
741 significant environmental hazard arises from the actions of the eligible  
742 party after its acquisition of or control over the property from which  
743 such significant environmental hazard has emanated outside its own  
744 boundaries. If an eligible party who has been accepted into the  
745 brownfield remediation and revitalization program conveys or  
746 otherwise transfers its ownership of the subject property and such  
747 eligible party is in compliance with the provisions of this section and  
748 the brownfield investigation plan and remediation schedule at the time  
749 of conveyance or transfer of ownership, the provisions of this section  
750 shall apply to such transferee, if such transferee meets the eligibility  
751 criteria set forth in this section, pays the outstanding balance of the fee  
752 required by subsection (h) of this section and complies with all the  
753 obligations undertaken by the eligible party under this section. In such  
754 case, all references to applicant or eligible party shall mean the  
755 subsequent owner or transferee.

756 (2) After the Commissioner of Energy and Environmental Protection  
757 issues either a no audit letter or a successful audit closure letter, or no  
758 audit decision has been made by said commissioner within one  
759 hundred eighty days after the submittal of the remedial action report  
760 and verification or interim verification, such eligible party shall not be  
761 liable to the state or any third party for (A) costs incurred in the  
762 remediation of, equitable relief relating to, or damages resulting from  
763 the release of regulated substances addressed in the brownfield  
764 investigation plan and remediation schedule, and (B) historical off-site  
765 impacts including air deposition, waste disposal, impacts to sediments  
766 and natural resource damages. No eligible party shall be afforded any  
767 relief from liability such eligible party may have from a release

768 requiring action pursuant to the PCB regulations or a release requiring  
769 action pursuant to the UST regulations.

770 (3) The provisions of this section concerning liability shall extend to  
771 any person who acquires title to all or part of the property for which a  
772 remedial action report and verification or interim verification have  
773 been submitted pursuant to this section, provided (A) there is payment  
774 of a fee of ten thousand dollars to said commissioner for each such  
775 extension, (B) such person acquiring all or part of the property meets  
776 the criteria of this section, and (C) the Commissioner of Energy and  
777 Environmental Protection has issued either a successful audit closure  
778 letter or no audit letter, or no audit decision has been made by said  
779 commissioner within one hundred eighty days after the submittal of  
780 the remedial action report and verification or interim verification. No  
781 municipality or economic development agency that acquires title to all  
782 or part of the property shall be required to pay a fee, provided the  
783 municipality or economic development agency shall collect and pay  
784 the fee upon transfer of the property to another person for purposes of  
785 development. Such fee shall be deposited into the Special  
786 Contaminated Property Remediation and Insurance Fund established  
787 under section 22a-133t and such funds shall be for the exclusive use by  
788 the Department of Energy and Environmental Protection.

789 (4) Neither a successful audit closure nor no audit letter issued  
790 pursuant to this section, nor the expiration of one hundred eighty days  
791 after the submittal of the remedial action report and verification or  
792 interim verification without an audit decision by the Commissioner of  
793 Energy and Environmental Protection, shall preclude said  
794 commissioner from taking any appropriate action, including, but not  
795 limited to, any action to require remediation of the property by the  
796 eligible party or, as applicable, to its successor, if said commissioner  
797 determines that:

798 (A) The successful audit closure, no audit letter, or the expiration of  
799 one hundred eighty days after the submittal of the remedial action  
800 report and verification or interim verification without an audit

801 decision by the Commissioner of Energy and Environmental  
802 Protection was based on information provided by the person  
803 submitting such remedial action report and verification or interim  
804 verification that the Commissioner of Energy and Environmental  
805 Protection can show that such person knew, or had reason to know,  
806 was false or misleading, and, in the case of the successor to an  
807 applicant, that such successor was aware or had reason to know that  
808 such information was false or misleading;

809 (B) New information confirms the existence of previously unknown  
810 contamination that resulted from a release that occurred before the  
811 date that an application has been accepted into the brownfield  
812 remediation and revitalization program;

813 (C) The eligible party who received the successful audit closure or  
814 no audit letter or where one hundred eighty days lapsed without an  
815 audit decision by the Commissioner of Energy and Environmental  
816 Protection has materially failed to complete the remedial action  
817 required by the brownfield investigation plan and remediation  
818 schedule or to carry out or comply with monitoring, maintenance or  
819 operating requirements pertinent to a remedial action including the  
820 requirements of any environmental land use restriction; or

821 (D) The threat to human health or the environment is increased  
822 beyond an acceptable level due to substantial changes in exposure  
823 conditions at such property, including, but not limited to, a change  
824 from nonresidential to residential use of such property.

825 (5) If an eligible party who has been accepted into the brownfield  
826 remediation and revitalization program conveys or otherwise transfers  
827 all or part of its ownership interest in the subject property at any time  
828 before the issuance of a successful audit closure or no audit letter or  
829 the expiration of one hundred eighty days after the submittal of the  
830 remedial action report and verification or interim verification without  
831 an audit decision by the Commissioner of Energy and Environmental  
832 Protection, the eligible party conveying or otherwise transferring its  
833 ownership interest shall not be liable to the state or any third party for

834 (A) costs incurred in the remediation of, equitable relief relating to, or  
835 damages resulting from the release of regulated substances addressed  
836 in the brownfield investigation plan and remediation schedule, and (B)  
837 historical off-site impacts including air deposition, waste disposal,  
838 impacts to sediments and natural resource damages, provided the  
839 eligible party complied with its obligations under this section during  
840 the period when the eligible party held an ownership interest in the  
841 subject property. Nothing in this subsection shall provide any relief  
842 from liability such eligible party may have related to a release  
843 requiring action pursuant to the PCB regulations, or a release requiring  
844 action pursuant to the UST regulations.

845 (6) Upon the Commissioner of Energy and Environmental  
846 Protection's issuance of a successful audit closure letter, no audit letter,  
847 or one hundred eighty days have passed since the submittal of a  
848 verification or interim verification and said commissioner has not  
849 audited the verification or interim verification, the immediate prior  
850 owner regardless of its own eligibility to participate in the  
851 comprehensive brownfield remediation and revitalization program  
852 shall have no liability to the state or any third party for any future  
853 investigation and remediation of the release of any regulated substance  
854 at the eligible property addressed in the verification or interim  
855 verification, provided the immediate prior owner has complied with  
856 any legal obligation such owner had with respect to investigation and  
857 remediation of releases at and from the property, and provided further  
858 the immediate prior owner shall retain any and all liability such  
859 immediate prior owner would otherwise have for the investigation  
860 and remediation of the release of any regulated substance beyond the  
861 boundary of the eligible property. In any event, the immediate prior  
862 owner shall remain liable for (A) penalties or fines, if any, relating to  
863 the release of any regulated substance at or from the eligible property,  
864 (B) costs and expenses, if any, recoverable or reimbursable pursuant to  
865 sections 22a-134b, 22a-451 and 22a-452, and (C) obligations of the  
866 immediate prior owner as a certifying party on a Form III or IV  
867 submitted pursuant to sections 22a-134 to 22a-134e, inclusive.

868 (o) A person whose application to the brownfield remediation and  
869 revitalization program has been accepted by the commissioner or any  
870 subsequent eligible party whose application to the brownfield  
871 remediation and revitalization program has been accepted by the  
872 commissioner shall be exempt for filing as an establishment pursuant  
873 to sections 22a-134a to 22a-134d, inclusive, if such real property or  
874 prior business operations constitute an establishment. Nothing in this  
875 section shall be construed to alter any existing legal requirement  
876 applicable to any certifying party at a property under sections 22a-134  
877 and 22a-134a to 22a-134e, inclusive.

878 (p) Notwithstanding the provisions of this section, eligible parties  
879 shall investigate and remediate, and remain subject to all applicable  
880 statutes and requirements, the extent of any new release that occurs  
881 during their ownership of the property.

882 Sec. 6. Subsection (b) of section 13 of public act 11-57 is amended to  
883 read as follows (*Effective July 1, 2012*):

884 (b) For the Department of Economic and Community Development:  
885 Regional brownfield redevelopment grant and loan fund to provide  
886 funding for the brownfield programs established pursuant to section  
887 32-9kk, as amended by this act, and the staffing and marketing of such  
888 programs, not exceeding \$25,000,000.

889 Sec. 7. Subsection (b) of section 32 of public act 11-57 is amended to  
890 read as follows (*Effective July 1, 2012*):

891 (b) For the Department of Economic and Community Development:  
892 Regional brownfield redevelopment grant and loan fund to provide  
893 funding for the brownfield programs established pursuant to section  
894 32-9kk, as amended by this act, and the staffing and marketing of such  
895 programs, not exceeding \$25,000,000.

896 Sec. 8. (NEW) (*Effective July 1, 2012*) The Commissioner of Economic  
897 and Community Development, in consultation with the State Historic  
898 Preservation Office, shall identify abandoned and underutilized mills

899 that are important assets to either the municipality or the region of the  
900 state in which such mill is located.

901 Sec. 9. Section 2 of public act 10-135, as amended by section 15 of  
902 public act 11-141, is repealed and the following is substituted in lieu  
903 thereof (*Effective from passage*):

904 (a) There is established a working group to examine the remediation  
905 and development of brownfields in this state, including, but not  
906 limited to, the remediation scheme for such properties, permitting  
907 issues and liability issues, including those set forth by sections 22a-14  
908 to 22a-20, inclusive, of the general statutes.

909 (b) The working group shall consist of the following thirteen  
910 members, each of whom shall have expertise related to brownfield  
911 redevelopment in environmental law, engineering, finance,  
912 development, consulting, insurance or another relevant field:

913 (1) Four appointed by the Governor;

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

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

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

917 (5) One appointed by the majority leader of the House of  
918 Representatives;

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

920 (7) One appointed by the minority leader of the House of  
921 Representatives;

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

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

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

928 (c) Any member of the working group as of the effective date of this  
929 section shall continue to serve and all new appointments to the  
930 working group shall be made no later than thirty days after the  
931 effective date of this section. Any vacancy shall be filled by the  
932 appointing authority.

933 (d) The working group shall select chairpersons of the working  
934 group. Such chairpersons shall schedule the first meeting of the  
935 working group, which shall be held no later than sixty days after the  
936 effective date of this section.

937 (e) On or before January 15, [2012] 2013, the working group shall  
938 report, in accordance with the provisions of section 11-4a of the general  
939 statutes, on its findings and recommendations to the Governor and the  
940 joint standing committees of the General Assembly having cognizance  
941 of matters relating to commerce and the environment.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2012</i>	32-9kk(a)
Sec. 2	<i>July 1, 2012</i>	32-9kk(f)
Sec. 3	<i>July 1, 2012</i>	32-9kk(j)
Sec. 4	<i>July 1, 2012</i>	32-9kk(l)
Sec. 5	<i>July 1, 2012</i>	32-9mm
Sec. 6	<i>July 1, 2012</i>	PA 11-57, Sec. 13(b)
Sec. 7	<i>July 1, 2012</i>	PA 11-57, Sec. 32(b)
Sec. 8	<i>July 1, 2012</i>	New section
Sec. 9	<i>from passage</i>	PA 10-135, Sec. 2

**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:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 13 \$</b>	<b>FY 14 \$</b>
Treasurer, Debt Serv.	GF - Cost	See Below	See Below
Department of Economic & Community Development	GF - Potential Cost	Indeterminate	Indeterminate
Department of Energy and Environmental Protection	GF -Potential Revenue Loss	See Below	See Below
Various State Agencies	GF - Potential Cost	Less than \$1,000	Less than \$1,000

Note: GF=General Fund

**Municipal Impact:**

<b>Municipalities</b>	<b>Effect</b>	<b>FY 13 \$</b>	<b>FY 14 \$</b>
Various Municipalities	Potential Revenue Impact	See Below	See Below

**Explanation**

**Sections 1, 2, 6 and 7** expand the purposes for which General Obligation (GO) bond funds authorized for the Regional Brownfield Redevelopment Loan Fund can be used to include: (1) grants to municipalities, (2) loans for affordable housing projects, and (3) staffing and marketing costs associated with the Department of Economic and Community Development's (DECD) Brownfields Remediation Program. To the degree that bond funds are expended more rapidly than they otherwise would have been, this will accelerate General Fund expenditures for debt service costs. It could also result in the need for the authorization of additional GO bonds for this program in future years.

There is currently a \$10 million unallocated GO bond balance for the Regional Brownfield Redevelopment Loan Fund and an additional \$25

million will be made available in FY 13.

Section 2 also results in a potential cost by permitting the Commissioner of Economic and Community Development to forgive loans provided to municipalities and economic development agencies. The actual cost is uncertain as the commissioner has discretion over forgiving any particular loan that would otherwise be repaid.

**Section 3** has no fiscal impact by specifying that DECD may use up to four percent of available funding for brownfield financing programs for certain administrative expenses related to those programs and the administration of the Office of Brownfield Remediation and Development (OBRD). There is no fiscal impact because the provision redirects funding to this specific purpose without providing additional funds.

**Section 4** has no fiscal impact by redirecting any funds recovered by the Attorney General from parties that polluted brownfield sites to the Brownfield Remediation and Development account.

**Section 5** results in a decrease in revenue by reducing and eliminating certain fees collected under the Liability Protection Program.

Section 5 gives applicants more time to pay the program's various application fees, which they must pay in two installments to the Department of Energy and Environmental Protection (DEEP). This is anticipated to result in delayed receipt of revenue to the state, as applicants are likely to take longer in submitting fees. This provision also allows municipal applicants to delay the remittance of fees to the state.

This section also reduces fees submitted to DEEP under certain conditions and eliminates the second installment payment. Currently, the first installment must be reduced by 10% if the applicant finishes investigating and remediating the property within 180 days of being notified that the DECD commissioner accepted the brownfield into the

program. This requirement would result in a revenue loss to the state, and is anticipated to result in cost avoidance to municipalities, to the extent that they are applicants of brownfields.

The bill allows municipalities to ask the DEEP commissioner to waive the fee on any brownfield located within their respective jurisdictions that has been accepted into the program. Currently, municipalities are permitted to request fee waivers only for brownfields within their respective jurisdictions that others own. This is expected to result in a revenue loss to DEEP and a revenue gain to municipalities.

The bill eliminates the requirement that a party receiving a brownfield transfer from an applicant pay a \$10,000 fee upon the transfer.<sup>1</sup> It instead requires the party to pay any outstanding application fee balance. It is uncertain what this provision would have on the state and municipalities, since the balance of application fees varies. The balance may, or may not, exceed the \$10,000 application fee. Currently however no payments have been made in this program as the first applications were received in FY 11.

Section 5 also redirects application fees from the Special Contaminated Property Remediation and Insurance Fund (SCPRIF) to the Brownfield Remediation and Development account. This transfer from one account to another has no fiscal impact to the state.

**Section 8** requires DECD to identify abandoned and underutilized mills, which will require at least one employee at an annual cost of \$86,071 (\$66,608 in salary plus \$19,463 in fringe) in the OBRD to administer. It is anticipated that the administrative funding support provided to OBRD in Section 3 of the bill may accommodate this expense.

---

<sup>1</sup> Under current law, an applicant may transfer a brownfield to another party before completing its investigation and remediation. The brownfield may remain in the program if the transferee meets the program's eligibility criteria and pays a \$10,000 fee, which it must pay again when it finishes remediating the property and submits documents necessary to receive the program's protections.

Currently, there are three full-time employees at the ORBD that manage DECD's brownfield programs and initiatives.

**Section 9** may result in a cost of less than \$1,000 to agencies participating in the working group to reimburse legislators and agency staff for mileage expenses.

### ***The Out Years***

The annualized ongoing fiscal impact identified above for General Fund debt service would continue into the future subject to inflation. The impact of Section 5 would continue into the future subject to fee changes and the extent to which municipalities apply to certain state brownfield programs.

All other annualized ongoing fiscal impacts would also continue into the future subject to inflation.

**OLR Bill Analysis****sHB 5342*****AN ACT CONCERNING REVISIONS TO THE STATE'S BROWNFIELD REMEDIATION AND DEVELOPMENT STATUTES*****SUMMARY:**

This bill makes programmatic and administrative changes to the Department of Economic and Community Development's (DECD) program providing financial assistance to clean up and redevelop brownfields. The program consists of separate grant and loan components. The bill narrows the range of entities eligible for assistance under both components, allows loans proceeds to be used to develop affordable housing, and allows the DECD commissioner to use a portion of the funds allocated to the program to cover staffing and marketing costs.

The bill makes many procedural changes to the Brownfield Liability Protection Program, which protects developers from liability to the state and third parties for cleaning up brownfields according to the program's requirements. It makes changes to the process for accepting brownfields into the program; gives developers more time to pay the program's application fees; and resets the deadlines for completing specified tasks, including investigating and remediating brownfields.

The bill requires the commissioner, in consultation with the State Historic Preservation Office, to identify abandoned and underused mills that are important assets to their respective municipalities or regions (§ 8).

Lastly, the bill extends the brownfields working group's reporting deadline by one year (§ 9). PA 10-135 established the group to study how the state's brownfields were being cleaned up and remediated and required it to report its findings to the Commerce

Committee by January 15, 2012. The bill extends this deadline to January 15, 2013.

EFFECTIVE DATE: July 1, 2012, except that the extension of the brownfield working group's reporting deadline takes effect upon passage.

### **§§ 1-4, 6, & 7 — BROWNFIELD FINANCING PROGRAM**

The bill makes programmatic and administrative changes to DECD's brownfield financing program, which consists of separate grant and loan components.

#### ***Municipal Grant Program***

***Eligible Entities.*** The bill narrows the range of municipal entities eligible for grants (i.e., eligible grant recipients). Under current law, grants are available to municipalities, economic development authorities, regional economic development authorities, qualified nonprofit community and economic development corporations, or any combination of these organizations. (Current law does not specify criteria for determining if a nonprofit community and economic development corporation qualifies for grants.)

The bill limits the grants to municipalities and three types of "economic development agencies:"

1. municipal economic development agencies or entities created or designated to implement a redevelopment project (i.e., CGS Chapter 130) or municipal development project (i.e., CGS Chapter 132);
2. municipally-funded or -supported nonprofit economic development corporations; and
3. nonstock corporations or limited liability companies that a municipality, municipal economic development agency, or entity operating under CGS Chapter 130 or CGS Chapter 132 establishes or controls.

**Funding.** The bill allows the commissioner to use previously authorized bonds to make the grants. PA 11-57 authorized \$25 million in bonds in FY 12 and \$25 million in FY 13 for loans. The bill allows the commissioner to use the proceeds from these bonds to make loans or grants (§§ 6 and 7).

### **Loan Program**

**Eligible Entities.** The bill makes the same change with respect to the types of organizations that qualify for loans (i.e., eligible applicants). Under current law, for-profit and nonprofit entities qualify for loans regardless of whether a municipality establishes or controls them. Under the bill, only those a municipality establishes or controls qualify for loans.

**Affordable Housing.** By law, eligible loan applicants can use the loan proceeds to redevelop a remediated brownfield for a range of uses, including housing. But, under current law, the housing may only be for first-time homebuyers, regardless of income. Under the bill, the housing must be affordable and suitable for first-time homebuyers, workforce housing, housing in locally designated incentive housing zones, and other residential purposes the DECD commissioner approves. Further, the loan agreement must specify the number of affordable units the redevelopment will create.

The bill does not define “affordable housing,” but under the housing statutes, housing is affordable based on a family’s income and the share of that income spent on housing. Consequently, housing is affordable if a family earning no more than the median income of the municipality where the housing is located pays no more than 30% of its income for the housing (CGS § 8-39a).

**Forgivable Loans.** The bill specifies that municipalities and economic development agencies qualify for loans and allows the commissioner to forgive them.

### **Administrative Support**

The bill allows the commissioner to use a portion of the funds

allocated to the program for administrative expenses. She can use up to 4% of the funds to staff and market the grant and loan programs, including developing their websites, and fund DECD's Office of Brownfield Remediation and Development.

The bill allows her to tap the \$25 million PA 11-57 authorized in FY 12 and 13 for the program to cover only the program's staffing and marketing costs.

***Brownfield Remediation and Development Account***

The bill requires revenue from two additional sources to be deposited in the Brownfield Remediation and Development Account. Under current law, revenue from the following sources must be deposited there:

1. loan repayments;
2. the proceeds of bonds issued for the program;
3. principal and interest payments on loans made to assess and demolish contaminated property (i.e., Special Contaminated Property Remediation and Insurance Fund);
4. the account's interest and investment earnings;
5. security for the loans; and
6. any other funds the law requires to be deposited in the account.

The bill requires application fees charged under the Liability Protection Program to be deposited in the account, but allows the DECD and Department of Energy and Environmental Protection (DEEP) commissioners to use it for different purposes. The DECD commissioner can use the revenue for making more grants and loans and the DEEP commissioner can use it for cleaning up contamination that migrates from property enrolled in the Liability Protection Program. Under current law, the revenue goes into the Special Contaminated Property Remediation and Insurance Fund.

The other revenue that must be deposited in the account is the money the attorney general recovers from parties that polluted property being cleaned up and developed under the Brownfield Financing Program.

## **LIABILITY PROTECTION PROGRAM**

The bill makes procedural and administrative changes to the Liability Protection Program, which protects developers from liability to the state and third parties for cleaning up brownfields according to the program's requirements. The law requires the DECD commissioner to operate the program within available appropriations, but divides the administrative duties between her and the DEEP commissioner: the DECD commissioner accepts brownfields into the program and the DEEP commissioner monitors and audits their remediation.

### ***Acceptance in the Program***

The bill changes the procedures for accepting brownfields into the program. Under current law, there are two ways a brownfield can be accepted into the program: (1) a developer applies to the DECD commissioner to have the brownfield accepted into the program or (2) a municipality or an economic development agency nominates a brownfield for acceptance into the program.

***Acceptance by Application.*** By law, parties applying to have a brownfield accepted into a program must submit an application to DECD that includes, among other things, an assessment of the property's historical and current uses and the activities conducted there. Under current law, the assessment must be prepared according to DEEP's Site Characterization Guidance Document by or for a bona fide purchaser.

Under the bill the assessment may also be prepared by or for a contiguous property owner. Regardless of the party for whom the assessment is prepared, it must meet the prevailing standards and guidelines for conducting a Phase I Environmental Site Assessment, instead of the characterization guidance document.

Besides changing some of the application requirements, the bill specifies when the DECD commissioner must review and accept brownfields into the program. Current law allows her to accept up to 32 applications per year into the program, imposing no time period on when she may review and accept them. The bill requires her to begin reviewing and accepting applications only when she receives at least 16 applications in a six-month period or at least 33 applications in a 12-month period. In doing so, she must consider the law's statewide portfolio factors, instead of basing her decision on them, as current law requires.

**Acceptance by Nomination.** Current law allows municipalities or their economic development agencies to nominate brownfields for acceptance into the program, but provides no process or criteria for doing so. The bill provides a two-step process for nominating brownfields, but allows only municipalities (not their economic development agencies) to do so. The steps require the nominated brownfields to meet the same criteria as those submitted via application.

The first step requires a municipality to certify on a DECD form that the property:

1. is a brownfield and that the contamination exceeds DEEP's remediation standards;
2. is not subject to federal or state enforcement action or on the state or national list of contaminated sites; and
3. meets any other relevant factors, including the statewide portfolio factors, as the commissioner determines.

If the commissioner approves the nomination, the municipality must provide an additional certification before DECD can accept the brownfield into the program. It must, on a DECD form, certify that it has identified a person who:

1. is an innocent landlord, bona fide prospective purchaser, or

contiguous property owner;

2. did not contaminate the property and is not affiliated with the party that did; and
3. did nothing to pollute the state's waters.

If the person meets these criteria, the commissioner must accept the property into the program.

### ***Brownfields Participating in Other Remediation Programs***

The bill specifies that brownfields being remediated under the Transfer Act or DEEP's voluntary remediation and covenant not to sue programs are eligible for acceptance in the Limited Liability Program if they meet its criteria. Current law allows properties in the voluntary remediation and covenant not to sue programs to participate in the Limited Liability Program.

### ***Fee Installment Payments***

***Timeframes.*** The bill gives applicants more time to pay the program's application fee, which they must pay in two installments. By law, applicants accepted into the program must pay a fee equal to 5% of the brownfield's assessed value as of the municipality's most recently completed grand list. They pay the fee to the DEEP commissioner.

Under current law, an applicant must pay the first installment within 180 days after being notified that the DECD commissioner accepted the brownfield into the program. The bill gives the applicant 180 days from that date or the date he or she takes title to the property, whichever is later.

The bill changes the timeframe for paying the second installment. Under current law, the applicant must pay the second installment to the DEEP commissioner within four years after being notified that the DECD commissioner accepted the application. Under the bill, the applicant must pay the installment within four years after the date the

commissioner accepts the application.

The bill allows the DECD commissioner to extend the deadlines for paying either installment if the applicant requests an extension.

**Reducing and Eliminating Fees.** The bill makes similar changes to the provisions requiring the DEEP commissioner to reduce the first installment and eliminate the second. Under current law, he must reduce the first installment by 10% if the applicant finishes investigating and remediating the property within 180 days of being notified that the DECD commissioner accepted the brownfield into the program. Under the bill, the DEEP commissioner must reduce the installment if these tasks are completed within 180 days after the first installment is due, including any deadline extensions.

Under current law, the DEEP commissioner must eliminate the second installment if (1) the applicant cleans up the brownfield within four years after being notified that the DECD commissioner accepted the brownfield into the program and (2) submits the required remedial action report and the verification or interim verification. Under the bill, the DEEP commissioner must eliminate the installment if these are completed within four years after the first installment is due, including any deadline extensions.

**Municipal Exemptions.** The bill allows municipalities and economic development agencies to ask the DEEP commissioner to waive the fee on any brownfield located within their respective jurisdictions that has been accepted into the program. Current law allows them to request fee waivers only for brownfields within their respective jurisdictions that others own. The DEEP commissioner may grant the waiver based on statutory criteria.

Current law exempts municipalities and economic development agencies whose brownfields have been accepted into the program from paying the fee. But, if they transfer the property to another party for development, they must collect the fee from that party and remit it to DEEP. The bill instead requires the party to whom the brownfield is

being transferred to pay the fee directly to the DEEP commissioner.

**Property Transfers.** By law, an applicant may transfer a brownfield to another party before completing its investigation and remediation. Under current law, the brownfield may remain in the program if the transferee meets the program's eligibility criteria and pays a \$10,000 fee, which it must pay again when it finishes remediating the property and submits documents necessary to receive the program's protections. The bill eliminates the requirement that the transferee pay the \$10,000 upon the brownfield's transfer and instead requires it pay any outstanding application fee balance.

### **Timeframe for Investigating and Remediating Brownfield**

The bill resets the deadlines for investigating and remediating brownfields by basing them on the due date for paying the first installment of the application fee, including any extensions. Current law sets the deadlines from when the DECD commissioner approves an application. Table 1 compares the deadlines under current law and the bill.

**Table 1: Deadline for Investigating and Remediating Brownfields under Current Law and the Bill**

<b>Task</b>	<b>Deadlines</b>	
	<b>Current Law</b>	<b>Bill</b>
Submit investigation plan and remediation schedule	Plan and schedule due within 180 days after brownfield accepted into program (i.e., acceptance date)	Plan and schedule due within 180 days after the first installment payment due date, including extensions
Plan and schedule shows when investigation and remediation will be started and completed	Investigation completed within two years after acceptance date and remediation started and completed within three and eight years, respectively, after acceptance date	Investigation completed within two years after first installment payment due date, including extensions, and remediation started and completed within three and eight years, respectively, after first installment due date,

		including extensions
Complete investigation	Investigation completed within two years after the acceptance date	Investigation completed within two years after first installment payment due date, including extensions
Submit licensed environmental professional-approved remediation plan and begin remediation	Plan submitted and remediation begun within three years after acceptance date	Plan submitted and remediation begun within three years after first installment payment due date, including extensions
Complete remediation and submit remedial action report and verification or interim verification	Remediation completed and remedial action report and verification or interim verification submitted within eight years after acceptance date	Remediation completed and remedial action report and verification or interim verification submitted to within eight years after first installment payment due date, including extensions

**COMMITTEE ACTION**

Commerce Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/27/2012)