



Substitute House Bill No. 5343

Public Act No. 12-196

AN ACT CONCERNING ECONOMIC DEVELOPMENT THROUGH STREAMLINED AND IMPROVED BROWNFIELD REMEDIATION PROGRAMS, EXEMPTING CERTAIN AIRPORT CONVEYANCES FROM THE DEPARTMENT OF TRANSPORTATION TO THE CONNECTICUT AIRPORT AUTHORITY FROM THE HAZARDOUS WASTE ESTABLISHMENT TRANSFER ACT, AND HOLDING HARMLESS AND INDEMNIFYING THE CONNECTICUT AIRPORT AUTHORITY AND ITS EMPLOYEES AND DIRECTORS.

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

Section 1. (*Effective from passage*) (a) On or before January 1, 2013, the Commissioner of Energy and Environmental Protection shall report, in accordance with the provisions of section 11-4a of the general statutes, to the Governor and the joint standing committees of the General Assembly having cognizance of matters relating to commerce and the environment the results of an ongoing review of the general statutes as they relate to brownfield remediation and development and regulations promulgated pursuant to section 22a-133k of the general statutes. Such report shall include any recommended changes to such statutes and regulations or any recommendations for any new program for responding to hazardous material releases. Any recommendation for any such changes or new program shall consider the report submitted pursuant to section 6 of public act 11-141. In developing recommendations for such changes or new program, the

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commissioner shall also consider: (1) The potential effect on federally-delegated programs; (2) the potential impact on certain small business sectors and municipalities; (3) protection of human health and the environment; (4) improvements in responding to releases, including the greater use of and authority for licensed environmental professionals overseeing the investigation and remediation of releases; and (5) how any such changes or new program may facilitate remediation and economic development, including at properties with existing remediation responsibilities.

(b) For purposes of the report required pursuant to subsection (a) of this section, the commissioner shall also consider new and expanded means for periodically evaluating or auditing the effectiveness and efficiency of any such changes or new program to ensure, among other things, the appropriate exercise of authority by licensed environmental professionals and timely and effective action by those responsible for responding to releases. Such means may include, but are not limited to, the expanded use of the State Board of Examiners of Environmental Professionals established pursuant to section 22a-133v of the general statutes, that currently oversees licensed environmental professionals.

(c) For purposes of the report required pursuant to subsection (a) of this section, the commissioner shall also consider the most effective means to implement any such recommended program, including, but not limited to, the impact upon federally-delegated programs and the extent, if at all, to which any changes or program may be applicable to properties undergoing investigation and remediation under current statutory requirements.

Sec. 2. Subdivision (1) of section 22a-134 of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(1) "Transfer of establishment" means any transaction or proceeding

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through which an establishment undergoes a change in ownership, but does not mean:

(A) Conveyance or extinguishment of an easement;

(B) Conveyance of an establishment through a foreclosure, as defined in subsection (b) of section 22a-452f, foreclosure of a municipal tax lien or through a tax warrant sale pursuant to section 12-157, an exercise of eminent domain pursuant to section 8-128, 8-169e or 8-193 or by condemnation pursuant to section 32-224 or purchase pursuant to a resolution by the legislative body of a municipality authorizing the acquisition through eminent domain for establishments that also meet the definition of a brownfield, as defined in section 32-9kk or a subsequent transfer by such municipality that has foreclosed on the property, foreclosed municipal tax liens or that has acquired title to the property through section 12-157, or is within the pilot program established in subsection (c) of section 32-9cc, or has acquired such property through the exercise of eminent domain pursuant to section 8-128, 8-169e or 8-193 or by condemnation pursuant to section 32-224 or a resolution adopted in accordance with this subparagraph, provided (i) the party acquiring the property from the municipality did not establish, create or contribute to the contamination at the establishment and is not affiliated with any person who established, created or contributed to such contamination or with any person who is or was an owner or certifying party for the establishment, and (ii) on or before the date the party acquires the property from the municipality, such party or municipality enters and subsequently remains in the voluntary remediation program administered by the commissioner pursuant to section 22a-133x and remains in compliance with schedules and approvals issued by the commissioner. For purposes of this subparagraph, subsequent transfer by a municipality includes any transfer to, from or between a municipality, municipal economic development agency or entity created or operating under

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chapter 130 or 132, a nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or a nonstock corporation or limited liability company controlled or established by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132;

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

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

(E) Termination of a lease and conveyance, assignment or execution of a lease for a period less than ninety-nine years including conveyance, assignment or execution of a lease with options or similar terms that will extend the period of the leasehold to ninety-nine years, or from the commencement of the leasehold, ninety-nine years, including conveyance, assignment or execution of a lease with options or similar terms that will extend the period of the leasehold to ninety-nine years, or from the commencement of the leasehold;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(V) Conveyance of any real property or business operation that would qualify as an establishment solely as a result of (i) the generation of more than one hundred kilograms of universal waste in a calendar month, (ii) the storage, handling or transportation of universal waste generated at a different location, or (iii) activities undertaken at a universal waste transfer facility, provided any such real property or business operation does not otherwise qualify as an establishment; there has been no discharge, spillage, uncontrolled loss, seepage or filtration of a universal waste or a constituent of universal waste that is a hazardous substance at or from such real property or business operation; and universal waste is not also recycled, treated, except for treatment of a universal waste pursuant to 40 CFR 273.13(a)(2) or (c)(2) or 40 CFR 273.33 (a)(2) or (c)(2), or disposed of at such real property or business operation;

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

(X) Acquisition of an establishment that is in the abandoned brownfield cleanup program established pursuant to section 32-9ll and all subsequent transfers of the establishment, provided the establishment is undergoing remediation or is remediated in accordance with subsection (g) of said section 32-9ll;

(Y) Any transfer of title from a bankruptcy court or a municipality to a nonprofit organization; [or]

(Z) Acquisition of an establishment that is in the brownfield remediation and revitalization program and all subsequent transfers of the establishment, provided the establishment is in compliance with the brownfield investigation plan and remediation schedule, the commissioner has issued a no audit letter or successful audit closure letter in response to a verification or interim verification submitted regarding the remediation of such establishment under the brownfield remediation and revitalization program, or one hundred eighty days has expired since a verification or interim verification submitted regarding the remediation of such establishment under the brownfield remediation and revitalization program without an audit decision from the Commissioner of Energy and Environmental Protection; or

(AA) Conveyance from the Department of Transportation to the Connecticut Airport Authority of any properties comprising (i) Bradley International Airport and all related improvements and facilities now in existence and as hereafter acquired, added, extended, improved and equipped, including any property or facilities purchased with funds of, or revenues derived from, Bradley International Airport, and any other property or facilities allocated by the state, the Connecticut Airport Authority or otherwise to Bradley International Airport, (ii) the state-owned and operated general

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aviation airports, including Danielson Airport, Groton/New London Airport, Hartford Brainard Airport, Waterbury-Oxford Airport and Windham Airport and any such other airport as may be owned, operated or managed by the Connecticut Airport Authority and designated as general aviation airports, (iii) any other airport as may be owned, operated or managed by the Connecticut Airport Authority, and (iv) any airport site or any part thereof, including, but not limited to, any restricted landing areas and any air navigation facilities.

Sec. 3. Subdivision (1) of section 22a-134 of the 2012 supplement to the general statutes, as amended by section 53 of public act 11-241, is repealed and the following is substituted in lieu thereof (*Effective January 1, 2014*):

(1) "Transfer of establishment" means any transaction or proceeding through which an establishment undergoes a change in ownership, but does not mean:

(A) Conveyance or extinguishment of an easement;

(B) Conveyance of an establishment through a foreclosure, as defined in subsection (b) of section 22a-452f, foreclosure of a municipal tax lien or through a tax warrant sale pursuant to section 12-157, an exercise of eminent domain pursuant to section 8-128, 8-169e or 8-193 or by condemnation pursuant to section 32-224 or purchase pursuant to a resolution by the legislative body of a municipality authorizing the acquisition through eminent domain for establishments that also meet the definition of a brownfield, as defined in section 32-9kk, or a subsequent transfer by such municipality that has foreclosed on the property, foreclosed municipal tax liens or that has acquired title to the property through section 12-157, or is within the pilot program established in subsection (c) of section 32-9cc, or has acquired such property through the exercise of eminent domain pursuant to section 8-128, 8-169e or 8-193 or by condemnation pursuant to section 32-224

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or a resolution adopted in accordance with this subparagraph, provided (i) the party acquiring the property from the municipality did not establish, create or contribute to the contamination at the establishment and is not affiliated with any person who established, created or contributed to such contamination or with any person who is or was an owner or certifying party for the establishment, and (ii) on or before the date the party acquires the property from the municipality, such party or municipality enters and subsequently remains in the voluntary remediation program administered by the commissioner pursuant to section 22a-133x and remains in compliance with schedules and approvals issued by the commissioner. For purposes of this subparagraph, subsequent transfer by a municipality includes any transfer to, from or between a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132, a nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or a nonstock corporation or limited liability company controlled or established by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132;

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

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

(E) Termination of a lease and conveyance, assignment or execution of a lease for a period less than ninety-nine years including conveyance, assignment or execution of a lease with options or similar terms that will extend the period of the leasehold to ninety-nine years, or from the commencement of the leasehold, ninety-nine years,

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

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

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

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

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

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

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

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

(M) Any conveyance of a portion of a parcel upon which portion no establishment is or has been located and upon which there has not occurred a discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste, provided either the area of such portion is not greater than fifty per cent of the area of such parcel or written notice of such proposed conveyance and an environmental condition

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assessment form for such parcel is provided to the commissioner sixty days prior to such conveyance;

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

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

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

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

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

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

(T) Acquisition of an establishment by any governmental or quasi-governmental condemning authority;

(U) Conveyance of any real property or business operation that would qualify as an establishment solely as a result of (i) the

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generation of more than one hundred kilograms of universal waste in a calendar month, (ii) the storage, handling or transportation of universal waste generated at a different location, or (iii) activities undertaken at a universal waste transfer facility, provided any such real property or business operation does not otherwise qualify as an establishment; there has been no discharge, spillage, uncontrolled loss, seepage or filtration of a universal waste or a constituent of universal waste that is a hazardous substance at or from such real property or business operation; and universal waste is not also recycled, treated, except for treatment of a universal waste pursuant to 40 CFR 273.13(a)(2) or (c)(2) or 40 CFR 273.33 (a)(2) or (c)(2), or disposed of at such real property or business operation; [or]

(V) Conveyance of a unit in a residential common interest community in accordance with section 22a-134i; or

(W) Conveyance from the Department of Transportation to the Connecticut Airport Authority of any properties comprising (i) Bradley International Airport and all related improvements and facilities now in existence and as hereafter acquired, added, extended, improved and equipped, including any property or facilities purchased with funds of, or revenues derived from, Bradley International Airport, and any other property or facilities allocated by the state, the Connecticut Airport Authority or otherwise to Bradley International Airport, (ii) the state-owned and operated general aviation airports, including Danielson Airport, Groton/New London Airport, Hartford Brainard Airport, Waterbury-Oxford Airport and Windham Airport and any such other airport as may be owned, operated or managed by the Connecticut Airport Authority and designated as general aviation airports, (iii) any other airport as may be owned, operated or managed by the Connecticut Airport Authority, and (iv) any airport site or any part thereof, including, but not limited to, any restricted landing areas and any air navigation facilities.

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Sec. 4. (NEW) (*Effective from passage*) (a) The state shall hold harmless and indemnify the Connecticut Airport Authority and any employee and any director of the authority from any liability, financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand, order, penalty, lien, assessment, suit or judgment by reason of any title defects relating to, or any pollution, contamination, hazardous waste, hazardous substance, or hazardous building material, including, but not limited to, asbestos, asbestos-containing materials, lead or lead-containing materials, polychlorinated biphenyls (PCB) in building and infrastructure, mold, fluorescent and high intensity discharge (HID) lamps, mercury, PCB ballasts, lead-acid battery electrolytes, fluorocarbons, equipment coolant, hydraulic fluids, radioactive materials, explosives, military ordinance, gasoline and petroleum products or any other environmental condition existing at, originating or emanating from or relating to, the real property, facilities and other improvements comprising Bradley Airport, the general aviation airports, any other airports, any airport site or any part thereof that are part of any lease, assignment, transfer, sale or other disposition from the Department of Transportation to the authority of such real property, facilities and other improvements which title defects or environmental issues were in existence as of the date of any such lease, assignment, transfer, sale or other disposition. The state shall not hold harmless nor indemnify the authority for any title defects or environmental issues arising after the date of any such lease, assignment, transfer, sale or other disposition which are not related to or attributable to any preexisting title defects or environmental issues.

(b) The authority or any such employee or director may bring an action in the Superior Court against the state to enforce the provisions of this section.

(c) For purposes of this section, "pollution", "contamination",

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"hazardous waste", "hazardous substance" and "environmental condition" have the same meanings as in applicable federal, state or local laws, whether now in force or as amended or enacted in the future, pertaining to public health or the environment and including, without limitation, title 22a of the general statutes and any regulations or guidance promulgated by the Department of Energy and Environmental Protection, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976 and the Superfund Amendments and Reauthorization Act of 1987, as may be amended from time to time, and "hazardous building material" has the same meaning commonly ascribed to it in the environmental remediation context and in any regulations or guidance promulgated by the Department of Energy and Environmental Protection or the Department of Construction Services.

Approved June 15, 2012