
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 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

Task	Deadlines	
	Current Law	Bill
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)