



# OLR RESEARCH REPORT

May 17, 2012

2012-R-0183

## **ANALYSIS OF sHB 5342, AN ACT CONCERNING REVISIONS TO THE STATE'S BROWNFIELD REMEDIATION AND DEVELOPMENT STATUTES**

By: John Rappa, Chief Analyst

This report analyzes sHB 5342, as amended by House Amendment "A" (LCO 5280) and passed by the House and Senate. (As of the report's date, the bill has not been assigned a public act number.)

### **SUMMARY**

sHB 5342 makes changes to existing brownfield remediation programs, establishes a pilot program for conducting environmental reviews of eligible redevelopment projects, expands the Office of Brownfield Remediation and Development's (OBRD) mission, and extends the term of the Brownfields Working Group.

The act 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 act 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 program's funds to cover staffing and marketing costs.

The act makes many procedural changes to DECD's 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.

The act authorizes, on a limited basis, a process for determining the environmental effects of eligible redevelopment projects that is shorter than the process state agencies must use to determine the environmental effects of proposed state funded projects. It also exempts property to be redeveloped under the pilot program from the Hazardous Waste Transfer Act (i.e., Transfer Act) if it was remediated under the Department of Energy and Environmental Protection's (DEEP) Voluntary Site Remediation Program.

The act requires OBRD, in consultation with the State Historic Preservation Office, municipal officials, and regional planning organizations, to identify abandoned and underutilized mills that are important assets to their municipalities and regions (§ 13). It also requires the DECD commissioner to appoint a director to manage OBRD, specifically requiring her to do so in accordance with the statute listing the types of positions exempted from civil service ([CGS § 5-198](#)). (The statute lists these positions, but not the process for exempting them.)

The act extends the brownfields working group's reporting deadline by one year, from January 15, 2012 to January 15, 2013 (§ 12). PA 10-135 established the group to study and report to the Commerce Committee on how the state's brownfields were being cleaned up and remediated.

The act takes effect July 1, 2012, except the authorization for the pilot program and the extension of the brownfield working group's reporting deadline take effect upon passage.

#### **§§ 1-4, 10, & 11 — BROWNFIELD FINANCING PROGRAM**

The act 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 act narrows the range of municipal entities eligible for grants (i.e., eligible grant recipients). Under prior law, grants were available to municipalities, economic development authorities, regional economic development authorities, or qualified nonprofit community and economic development corporations.

The act 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 established or controlled by a municipality, municipal economic development agency, or entity operating under CGS Chapter 130 or CGS Chapter 132.

***Funding.*** The act 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 act allows the commissioner to use the proceeds from these bonds to make loans or grants (§§ 10 and 11).

## ***Loan Program***

***Eligible Entities.*** The act limits the types of economic development agencies that qualify for loans. Under prior law, local and regional nonprofit organizations were eligible for loans if they acted on a municipality’s behalf. The act limits eligibility to the same types of local economic development agencies that qualify, under the act, for grants. The loan program remains open to municipalities and for profit and nonprofit organizations or entities.

***Affordable Housing.*** Under existing law, eligible loan applicants can use the loan proceeds to redevelop a remediated brownfield for different uses, including housing. But, under prior law, the housing could be only for first-time homebuyers, regardless of income. Under the act, the housing must be (1) affordable, (2) suitable for first-time homebuyers, (3)

workforce housing, (4) located in locally designated incentive housing zones, and (5) for other residential purposes approved by the DECD commissioner. Further, the loan agreement must specify the number of affordable units the redevelopment will create.

The act 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 act specifies that municipalities and economic development agencies qualify for loans and allows the commissioner to forgive them or defer their repayment if it is in the state’s best interest to do so.

### ***Administrative Support***

The act 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 act allows her to tap the \$25 million in bonds PA 11-57 authorized in FYs 12 and 13 for the program to cover the program’s staffing and marketing costs.

### ***Brownfield Remediation and Development Account***

The act requires money the attorney general recovers from parties that polluted property being cleaned up and developed under the Brownfield Financing Program to be deposited in the Brownfield Remediation and Development Account. By law, revenue from the following sources must already 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.

## **§ 9—LIABILITY PROTECTION PROGRAM**

The act 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 law provides two methods for a brownfield to 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. The act changes the procedures for accepting brownfields into the program under both methods.

***Acceptance by Application.*** By law, parties applying to have a brownfield accepted into the program must submit with their application an assessment of the property's current and historical uses and the activities conducted there. The act requires the assessment to be prepared according to the prevailing standards and guidelines for conducting a Phase I Environmental Assessment, instead of DEEP's Site Characterization Guidance Document, as prior law required.

The act also requires this assessment to be prepared by or for applicants who own property contiguous to a brownfield (i.e., contiguous property owners) as well as by or for applicants who intended to purchase a brownfield (i.e., bona fide prospective purchasers), as the law requires.

Besides changing some of the application requirements, the act changes how the DECD commissioner must decide whether to accept a property into the program. It requires her to consider the statutory factors for creating a diverse portfolio of brownfield projects (i.e.,

statewide portfolio factors) instead of basing her decision on these factors, as prior law required.

**Acceptance by Nomination.** The act narrows the conditions under which municipalities and their economic development agencies can nominate brownfields for acceptance into the program and establishes a process for doing so. It allows them to nominate a brownfield only if an eligible applicant has not already applied to have it accepted into the program. Prior law allowed municipalities and their economic development agencies to nominate any brownfield, including one for which an application has been submitted.

The act 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.

The second step occurs if the commissioner approves the nomination and an eligible applicant applies to have the property admitted into the program. The applicant must show that the brownfield still meets the above criteria and that he or she:

1. qualifies as an innocent landowner, bona fide prospective, 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.

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

The act 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. Prior law allowed properties only in the voluntary remediation and covenant not to sue programs to participate in the Limited Liability Program.

## ***Fee Installment Payments***

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

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

The act allows the DECD commissioner to extend the deadlines for paying either installment upon the applicant's request.

***Fee Revenue.*** By law, the DEEP commissioner must deposit the fee revenue in the Special Contaminated Property Remediation and Insurance Fund. The act specifies that he may use the revenue for the fund's statutory purposes, which include removing or mitigating spills into the state's waters and making low-interest loans for investigating and remediating brownfields.

***Municipal Exemptions.*** The act 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. Prior law allowed 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.

The 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, prior law required them to collect the fee from that party and remit it to DEEP. The act instead requires the party to whom the brownfield is being transferred to pay the fee directly to the DEEP commissioner.

**Property Transfers.** The act changes a condition for keeping a brownfield in the program when it is transferred before it is investigated and remediated. By law, both parties to the transaction must meet specific criteria. The party transferring the property must be in compliance with the program's requirements and brownfield's investigation plan and remediation schedule. The party receiving the brownfield also receives the program's benefits under current law if it:

1. is eligible to participate in the program,
2. pays "the fee," and
3. submits the remedial action report and verification or interim verification the law requires.

The act specifically requires this party to pay the acceptance fee, which is in addition to the \$10,000 fee all parties must, by law, pay when they finish remediating the brownfield and other specified conditions are met.

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

The act resets the statutory deadlines for investigating and remediating brownfields. Under prior law, applicants accepted into the program had to submit a plan and schedule showing:

1. the investigation being completed within two years of the application's approval date,
2. remediation being started within three years of that date, and
3. remediation being completed within eight years of the approval date.

The act bases the deadlines on the due date for paying the first installment of the application fee, including any extensions. Prior law set the deadlines from when the DECD commissioner approves an application. Table 1 compares the deadlines under prior law and the act.

**Table 1: Deadline for Investigating and Remediating Brownfields under Prior Law and the Act**

<b>Task</b>	<b>Deadlines</b>	
	<b>Prior Law</b>	<b>Act</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	Plan submitted and	Plan submitted

environmental professional-approved remediation plan and begin remediation	remediation begun within three years after acceptance date	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 within eight years after first installment payment due date, including extensions

**§§ 5-8 PROPERTY REDEVELOPMENT PILOT PROGRAM**

***Eligible Projects***

The act authorizes the Office of Policy and Management (OPM) secretary and the DECD, DEEP, and Department of Transportation commissioners to establish a pilot program promoting redevelopment projects. By February 1, 2013, the DECD commissioner must certify to the governor up to three proposed projects for his approval.

The projects must provide significant regional or statewide benefits in a way that simultaneously promotes economic competitiveness and conserves natural resources by steering new development away from forests, farms, open spaces, and other underdeveloped areas toward those where supporting infrastructure and amenities already exist (i.e., smart growth). The projects must also be located in state-designated enterprise zones, targeted investment communities, or distressed municipalities.

After the governor approves a project, the DECD commissioner must publish a notice of the approval in the *Environmental Monitor* that describes the project and the affected municipalities. She must also report to the governor and the Commerce Committee on the projects by February 1, 2013.

## ***Expedited Environmental Impact Reviews***

The Connecticut Environmental Policy Act (CEPA) requires state agencies to determine how proposed state funded projects could affect land, water, and other environmental resources and prescribes the procedure they must follow to determine a project's potential environmental effects. The act requires DECD to follow a different procedure for redevelopment projects chosen for the pilot program (i.e., pilot projects). The procedure has fewer steps than CEPA's.

Under CEPA, each agency must prepare guidelines to determine if a proposed project could affect the environment. Before implementing the project, the agency must:

1. determine if the project could significantly affect the environment based on the guidelines,
2. solicit comments from the public and other agencies before preparing environment impact evaluation (i.e., scoping process),
3. provide the evaluation to specified agencies and the public for comment, and
4. review all comments and respond to any substantive issues they raise.

When the agency completes the process, the OPM secretary must determine if it adequately identified and addressed the project's environmental effects. The agency cannot start the project until the secretary notifies it about his determination.

The act assumes that the pilot projects affect the environment and requires DECD to evaluate their environmental effects. Under CEPA, DECD would decide whether to prepare an evaluation based on its guidelines and the information it received through public scoping process. Under the act, DECD must prepare a detail written evaluation of each pilot project's environmental effects and, as part of the evaluation, identify each DEEP-required permit, license, and other approval.

The act requires DECD commissioner to consider all public comments when preparing the evaluation, presumably the ones she receives after publishing the notice that the governor approved the project. The commissioner must summarize the evaluation and submit it and the summary to the DEEP commissioner and OPM secretary and, at the same time, allow the public to inspect these documents and comment on them.

The commissioner must also hold a public hearing on the evaluation and publish a notice about it at least 14 days before the hearing in the *Environmental Monitor* and a newspaper serving the affected municipalities. The notice must also inform the public that the evaluation and summary are available for inspection.

Anyone can speak at the hearing or provide written comments no later than the second day after DECD closes the hearing. The DECD commissioner must forward all comments to the DEEP commissioner and the OPM secretary and allow the public to inspect them.

After the hearing, the act requires the OPM secretary to review the evaluation and the comments and decide if (1) DECD followed the act's process, (2) the evaluation was adequate, and (3) DECD addressed all comments. In making his decision, the secretary must consider all the comments made by state agencies and the public. He must notify the public and the DECD commissioner about his decision with within 10 days after the hearing's close. He may revise the evaluation or require DECD to do so if he decides it was inadequate.

### ***Transfer Act Exemption***

The act exempts from the Transfer Act property acquired to undertake or complete a certified redevelopment project if it was investigated and remediated under DEEP's Voluntary Site Remediation Program. The Transfer Act requires the party transferring a contaminated property to assess its condition and identify who will clean it up before transferring it to another party.

The Voluntary Site Remediation Program allows property owners to investigate and remediate a site before they decide to convey or transfer it. It also requires the DEEP commissioner to expedite the process for issuing any permits needed to investigate and remediate it. If the property is subsequently transferred or conveyed, the parties to the transaction must comply with the Transfer Act.

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