



# OLR RESEARCH REPORT

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## **BROWNFIELD INITIATIVES 2006-2012**

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You asked for a summary of recent legislative initiatives to address brownfield clean up and redevelopment. This report summarizes such initiatives from 2006 through 2012.

### **SUMMARY**

Cleaning up and redeveloping brownfields furthers public health and safety goals while creating jobs, expanding tax rolls, and providing more land for parks, homes, and new businesses. But several barriers discourage businesses from turning brownfields into environmentally safe and economically viable properties. These include investigation and remediation costs, property sale or transfer restrictions, liability concerns, and procedural complexity. During the last seven legislative sessions, the legislature sought to reduce or eliminate these barriers.

The legislature took steps to increase the state's capacity to develop policies and programs for brownfield clean up and redevelopment, including requiring periodic program evaluations and creating offices to expedite the remediation and redevelopment process.

The legislature also made changes to the state's property transfer law ("Transfer Act"), which generally requires certification of a property's or business's environmental condition and, in some cases, identification of the party that will certify that it has been investigated and remediated. It exempted more parties and properties from the law's requirements and expanded the role of licensed environmental professionals in determining the environmental conditions.

The legislature authorized various forms of regulatory relief, including reforming permit procedures and exempting certain projects from filing requirements and environmental restrictions.

Other mechanisms the legislature used to encourage and support brownfield remediation and redevelopment include (1) establishing funding programs for this purpose; (2) providing various protections from liability associated with brownfield properties; and (3) allowing municipalities to reduce, abate, or forgive certain property taxes on contaminated properties.

Most of the legislation discussed in this report originated in the Commerce or Environment committees.

## **CAPACITY BUILDING**

Beginning in 2006, the legislature took several steps to strengthen the state's capacity to develop and implement policies and programs for cleaning up and redeveloping brownfields.

### ***Policy Analysis and Planning***

***Brownfields Study Groups.*** [PA 06-184](#) established a nine-member task force consisting of state officials and legislative appointees to develop long-term solutions for cleaning up brownfields. The taskforce had to report its findings to the Commerce and Environment committees by January 1, 2007. The legislature subsequently reestablished the task force in 2007 and 2008, requiring it to prepare and recommend more potential solutions ([PA 07-233](#) and [PA 08-174](#), respectively). The task force delivered its last recommendations in 2009.

In 2010, the legislature created an 11-member working group to examine how brownfields were being cleaned up and redeveloped in Connecticut and how permitting requirements and liability concerns affected these activities ([PA 10-135](#)). The group submitted its findings and recommendations to the Commerce Committee in 2011. [PA 11-141](#) extended the group's term until January 15, 2012 and [PA 12-183](#) further extended it by one year.

***Brownfield Program Evaluation.*** Many different laws and programs come into play when brownfields are investigated, remediated, and redeveloped. Consequently, in 2011, the legislature directed the Department of Energy and Environmental Protection (DEEP) commissioner to evaluate these laws and programs and report his findings to the governor and the Commerce and Environment committees by December 15, 2011 ([PA 11-141](#)). [PA 12-196](#) requires him to consider the 2011 report and report further on the status of his continuing review of the state's brownfield laws and regulations by January 1, 2013.

### ***Promoting Brownfield Remediation and Redevelopment***

***Pilot Brownfield Identification and Assessment Program.*** In 2007, the legislature took steps to integrate brownfield remediation when determining where state development dollars should be targeted. It requires the DEEP and Department of Economic and Community Development (DECD) commissioners to identify and evaluate brownfields in areas targeted for those dollars ([PA 07-233](#)).

***Office of Brownfield Remediation and Development (OBRD).*** In 2006, the legislature created an office within DECD focused exclusively on expediting the process for indentifying, cleaning up, and redeveloping brownfields ([PA 06-184](#)). The following year, it expanded and redefined OBRD's duties ([PA 07-233](#)). In 2011, the legislature expanded OBRD's reach by allowing it to fund other agencies that design, implement, and supervise brownfield assessment and remediation ([PA 11-140](#)).

***Office of Permit Ombudsman.*** Remediating and redeveloping brownfields often cannot be done without first obtaining various state and local permits. But the permitting process can take time, especially if the permitting agencies are simultaneously reviewing and approving permits for other activities. To help expedite the permitting process, the legislature created the Office of Permit Ombudsman within DECD for economic development projects, including brownfields, which require multiple permits ([PA 10-158](#)).

**Remediating and Marketing State-Owned Brownfields.** The state’s brownfield-related laws and programs generally cast state agencies in the role of regulator or funder. In 2011, the legislature gave DECD a new role—to identify, remediate, and market five geographically diverse state-owned brownfields for private redevelopment—and authorized up to \$20 million in bonds for that purpose ([PA 11-1](#), October Special Session).

### ***Municipal Inspection and Enforcement Powers***

Brownfields, which often include abandoned and blighted structures, can threaten public health and safety, the protection of which is a major municipal duty. Consequently, the legislature has sought ways to help municipalities meet that responsibility. [PA 08-174](#) expands the circumstances under which a municipality can, without liability, enter and investigate contaminated or potentially contaminated property or assess its environmental status ([PA 08-174](#)). [PA 09-235](#) extends this power to municipal development agencies.

## **TRANSFER ACT CHANGES**

The Transfer Act requires the transferor (or in some instances, a party associated with the transfer) of certain real property or business operations (an “establishment”), to certify its environmental condition. Transferring an establishment where there has been a release of a hazardous waste or hazardous substance requires a party to the transfer to certify that they will investigate and remediate any pollution from the establishment. Since 2006, the legislature has increased the types of parties and properties exempted from the act’s requirements.

### ***Transfer Exemptions***

**Certifying Parties.** As noted above, the Transfer Act requires the parties to a property transaction to identify the party that will certify to the DEEP commissioner that a property was investigated and remediated. [PA 11-141](#) exempts these parties from investigating and remediating a release of contamination that occurs after they remediated the property.

**Municipalities and State Agencies.** [PA 06-184](#) exempts municipalities from the Transfer Act when (1) acquiring a tax delinquent property they intend to sell for back taxes and (2) conveying one they acquired through a tax warrant sale or foreclosure of tax lien and cleaned up under the pilot program the act established (see below).

[PA 09-235](#) further exempts municipalities from the Transfer Act when (1) taking property by eminent domain and (2), under certain conditions, conveying condemned or foreclosed properties.

[PA 11-141](#) exempts title transfers from a municipality or bankruptcy court to a nonprofit organization.

[PA 12-196](#) exempts certain airport property the Department of Transportation conveys to the Connecticut Airport Authority from the act's requirements.

***Other Exempt Entities or Properties.*** [PA 06-76](#) exempts from the Transfer Act (1) certain properties or businesses that deal solely with solid waste and (2) condominium and similar residential community transfers that meet certain requirements, including requiring the community declarant to provide financial assurance to DEEP that remediation costs will be covered. It also allows, in certain instances, the sale or transfer of a remediated portion of land subject to the Transfer Act before the entire site is cleaned up.

Under certain conditions, [PA 11-141](#) exempts from the Transfer Act's requirements an establishment (and all subsequent transfers of it) that is remediated or undergoing remediation under either of two brownfield clean up programs. And [PA 12-183](#) exempts property acquired to undertake or complete a DECD-certified development project if it was investigated and remediated under DEEP's Voluntary Site Remediation Program ([CGS §§ 22a-133y](#)).

### ***Transfer Act Fee Exemptions***

[PA 11-141](#) exempts (1) public, private, and nonprofit organizations receiving state brownfield investigation and remediation funds from paying Transfer Act, environmental condition assessment form, and covenant-not-to-sue fees and (2) state agencies, authorities, or higher education institutions from paying these fees when remediating a brownfield for siting a state facility.

It also exempts parties from paying DEEP fees when they intend to investigate and remediate brownfields without state assistance. In these cases, they pay no fees for contamination other parties caused before they acquired the property.

## ***Licensed Environmental Professionals (LEPs)***

By law, under specific circumstances, a DEEP-licensed environmental professional may verify that an investigation has been performed at a specific property according to certain standards and that pollution on the property has been remediated ([CGS § 22a-133v](#)).

[PA 07-233](#) expands the role of LEPs in determining a property's environmental condition under the Transfer Act. It requires the party certifying the property's condition to use a LEP unless the DEEP commissioner notifies it that he will review and approve the property's remediation.

[PA 07-81](#) similarly expands the LEP's role by making their use a standard procedure unless the DEEP commissioner chooses to review and approve a remediation himself. It also (1) specifies that the law on investigation and remediation of contaminated property applies to land owned by political subdivisions of the state and (2) requires a LEP to submit documentation to the DEEP commissioner when a site investigation required by the Transfer Act is complete, and to notify him when remediation begins.

[PA 07-233](#) also (1) gives parties more time to submit the statutorily required schedule for completing an investigation and starting remediation and (2) limits the circumstances under which the DEEP commissioner can audit the report verifying a property's remediation.

## ***Transfer Act Administration***

[PA 06-76](#) modified Transfer Act filing procedure by requiring a LEP verification for certain forms to be in writing. Among other things, it also required that a transferor, on certain forms, certify that there has been no leak of a hazardous waste or hazardous substance on the establishment since remediation.

[PA 09-235](#) imposes deadlines for (1) remediating certain establishments, including dry cleaning, furniture stripping, and vehicle repair businesses and (2) suing the party transferring a property under the Transfer Act for damages suffered because the sued party failed to comply with it.

## **REGULATORY RELIEF**

Many of the changes the legislature made to the Transfer Act make it easier for specific parties to comply with its requirements. Other forms of regulatory relief the legislature authorized include changes to the permitting process, exempting specific projects from certain filing requirements, and exempting certain parties from performing future investigation and remediation.

### ***Developments in Floodplains and Other Designated Areas***

[PA 07-233](#) makes it easier for state agencies to redevelop contaminated property in floodplains by designating such activities as serving the public interest. [PA 09-141](#) and [PA 09-235](#) help these agencies to use, or allow others to use, mills on contaminated floodplain sites by exempting them from a certification requirement if they can show the mills meet specified criteria.

[PA 10-135](#) sets narrow conditions under which a regulated activity must be permitted on a municipally owned site undergoing remediation in an aquifer protection area. Regulated activities involve producing, handling, using, storing, or disposing of materials that potentially threaten the groundwater in these areas.

### ***Covenants-Not-to-Sue (CNS)***

CNS is a regulatory tool that exempts a developer from having to reinvestigate a brownfield and perform further remediation after it was remediated according to state standards. [PA 07-233](#) expands the conditions under which the DEEP commissioner can enter into these agreements.

### ***Permitting Process***

[PA 10-158](#) makes many changes to the permitting process including:

1. setting timeframes for completing specific tasks and requiring the DEEP commissioner to account for instances when those timeframes are not met,
2. allowing him to extend the expiration dates for general permits,

3. providing a procedure for canceling public hearing requests regarding permit applications and requiring him to streamline the process for conducting hearings, and
4. authorizing him to establish a consultation service advising people and entities about how to comply with environmental laws.

### ***Water Quality Standards Notification***

[PA 10-158](#) requires the DEEP commissioner to adopt water quality standards by regulation instead of through statute. It gives the public at least a 90-day, instead of a 30-day, notice about proposed changes to these standards.

### ***Surface and Groundwater Reclassification***

The time and expense needed to remediate and redevelop a brownfield often depends on the surface and groundwater quality on or under it. The water quality is reflected in how the state classifies the water and the standards that developers must meet to maintain that quality. To ensure that the standards reflect the actual water conditions, [PA 11-141](#) allows the DEEP commissioner to reclassify surface and groundwater, consistent with the state's water quality standards and applicable federal requirements.

### ***Environmental Use Restrictions (EUR)***

EURs are easements prohibiting specific uses or activities at a property that could harm human health or the environment. [PA 11-141](#) allows the DEEP commissioner to waive some of the requirements for EURs and releasing parties from them.

## **LIABILITY PROTECTION**

The fear of being sued may discourage developers from cleaning up and redeveloping brownfields, which can arise even when a developer acquired a property that was polluted by a prior owner and who has remediated it according to government standards. Since 2011, the legislature has authorized protections from liability to the state and third-parties for cleaning up brownfields according to the law's strict processes and standards.

[PA 09-235](#) establishes a program protecting developers from liability for investigating and remediating pollution that escapes from a property before they acquired it. [PA 11-141](#) makes several programmatic changes, including:

1. limiting a developer's liability to the state and third-parties for this pollution to anything they do to cause or contribute to it or to negligently or recklessly exacerbate it,
2. expanding the range of eligible property, and
3. opening the program to municipalities.

[PA 11-141](#) establishes a broader liability protection program that protects developers from liability to the state and third-parties for contamination that existed before they started cleaning up a brownfield, which they must do according to act's requirements. It extends the protections during or after the remediation to a brownfield's immediate prior owner and the party that subsequently acquires a brownfield from a program participant. [PA 12-183](#) makes many procedural and administrative changes to the program.

[PA 11-141](#) also set conditions protecting municipalities with more than 90,000 people from liability to the state for pollution or hazardous waste spreading from certain property on which they have an easement.

## **FINANCIAL ASSISTANCE**

In 2006, the legislature began devising new brownfield remediation programs and amending existing ones.

### ***Pilot Program***

[PA 06-184](#) established an OBRD-administered pilot program to identify opportunities for cleaning up and redeveloping brownfields that hinder economic development in four municipalities that OBRD designates. It also designates the participating municipalities as innocent parties and protects them from liability to DEEP for clean up costs.

[PA 07-233](#) increases the number of towns participating in the pilot program to five and changes some of the selection criteria. [PA 11-141](#) makes the program permanent, increases the number of participating municipalities to six, and expands the range of eligible projects.

### ***New Brownfield Remediation and Development Program***

[PA 07-233](#) establishes a new program providing financing to assess, remediate, and redevelop contaminated land and structures to municipalities, local and regional nonprofit economic development agencies acting on their behalf, and for-profit and nonprofit organizations.

[PA 08-174](#) divides the above program into a grant component for municipalities and a loan component for parties that currently own or plan to purchase a brownfield, each with their own criteria and administrative requirements. [PA 12-183](#) makes programmatic and administrative changes to both components, including narrowing the types of entities that qualify for funding, tapping established funding sources, and allowing loan funds to be used for more types of affordable housing.

### ***Connecticut Development Authority Loan Guarantees***

[PA 07-233](#) also (1) allows the Connecticut Development Authority (now part of Connecticut Innovations, Inc.) to guarantee loans banks make to developers for investigating and remediating contaminated sites and (2) expands the range of brownfield remediation projects the authority can finance with bonds it issues on a municipality's behalf.

### ***Property Redevelopment Pilot Program***

[PA 12-183](#) creates a pilot program to expedite the environmental review process for redevelopment projects, which may include brownfields.

### ***Existing Program Expansions***

[PA 06-184](#) sets conditions under which the current owners of manufacturing facilities qualify for funds under many state brownfield clean-up programs.

[PA 10-135](#) allows the:

1. DEEP commissioner to use the Urban Site Remediation Fund to reimburse municipal and nonprofit development agencies for directors' and officers' liability insurance and general liability insurance and

2. DECD commissioner to tap the Special Contaminated Property Remediation and Insurance Fund for brownfield projects approved under the Brownfield Remediation and Development Program discussed above.

## **PROPERTY TAX ASSESSMENT**

The law generally prohibits municipalities from reducing a brownfield's fair market value to reflect contamination's effects. But [PA 07-233](#) allows tax assessors to reduce the assessment if the owner or his or her successor agrees to take specific steps, including volunteering to remediate the property under an agreement with the state.

The law specifies conditions under which municipalities can abate or forgive property taxes on contaminated property that is being cleaned up and redeveloped. [PA 10-135](#) (1) allows municipalities to fix the assessment on this property as of the last assessment date before the clean-up activities begin and (2) expands the circumstances under which municipalities can forgive some or all of the back taxes plus interest on a contaminated property.

The law also allows municipalities to defer tax assessment increases on rehabilitated or newly built rental and cooperative housing in locally designated rehabilitation areas. [PA 11-96](#) extends this option to rehabilitated or newly constructed housing situated on remediated brownfields.

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