

Testimony of **Ann M. Catino, Esq.**  
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And  
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Commerce Committee  
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HB 5573 & 5576

My name is Ann Catino and I am a partner at the law firm of Halloran & Sage in Hartford. I have practiced for over 25 years in the area of environmental law. For the past several years, together with Gary O'Connor, I have been pleased to serve as co-chair of the Brownfield Working Group, formerly the State's Task Force on Brownfield Strategies.

I want to first thank Representative Perone, Senator LeBeau and the members of the Commerce Committee and former Chair Berger for all your leadership and support for the brownfield initiatives in this State that have been proposed by the Brownfield Working Group. Beginning in 2006, new laws were passed every year that broke ground on many new and innovative programs. The Office of Brownfield Remediation and Development was established and now we have a new director, Tim Sullivan. New programs were developed and are administered by the Department of Economic and Community Development. Municipal grant and loan programs were established, funded and multiple projects in many municipalities are underway. Flexibility was added to the programs administered by the Department of Energy & Environmental Protection and some obstacles relating to the standard liability schemes were removed for certain types of brownfield redevelopment, particularly relating to municipal liability relief.

Last year, was groundbreaking, in moving forward with a new initiative. The DEEP's transformation process has begun and a candid assessment of DEEP's remediation programs is underway. A consultant was hired to evaluate the State's remediation programs with a focus on evaluating risk based decision making in our State and in comparison to other States. While this initiative is far from over and may provide the framework for a new remediation program in our State, it is at its early stages right now and no one can predict with certainty what any new program will look like. This initiative is an excellent one, but we cannot ignore the sites that are entangled in the programs that exist today. Many sites and site owners/developers require assistance now so that they can, with some certainty, remove their sites or portions of their sites from the existing regulatory program, whether it is the Transfer Act or a voluntary clean-up program.

HB 5573 is a step in that direction. Simply stated, HB 5573 seeks to accomplish three things.

First, it excludes from the Transfer Act those properties that only become "establishments" under the Act due to the generation of hazardous building materials. This issue received considerable discussion during the Working Group meetings. Many buildings in this State did not house

businesses that generated hazardous waste. Those properties that did not generate hazardous waste should not become establishments when they are demolished, in whole or in part, because of the nature of the building materials. For example, when such building materials contain lead paint, asbestos or PCBs in window caulk or paint or other hazardous or toxic materials, those materials must be disposed of in accordance with law. If a property did not otherwise generate hazardous wastes, it should not become an establishment and subject to the Transfer Act. Section 3 & 4 of the bill addresses this issue. This change is also consistent with another provision already existing in the Transfer Act. That is, when soils, groundwater or sediments are remediated, and the property is not otherwise an establishment, it does not become one solely by the generation of the polluted materials. This proposed change incentivizes the demolition and renovation of buildings as the existing exclusion incentivizes the remediation of contaminated media. The Working Group is willing to further refine the language and work with DEEP as I believe we are in agreement conceptually with this approach.

Second, sections 1 & 5 would allow parts of properties that have been remediated to be closed out in accordance with the interim verification standard definition set forth in 22a-134. Section 1 addresses those properties in the voluntary remediation program and section 5 applies to those in the Transfer Act. I should note that HB 5544, introduced at the Environment Committee, also addresses the concept of interim verifications for portions of sites in the Transfer Act. Generally speaking, under existing law, remediation of an entire site needs to occur and be completed before an interim verification can be provided. For larger and potentially more complicated sites, this framework often creates hardship for the property owner. For example, if 10 acres of a 20 acre site is remediated, that 10 acre portion should be allowed to receive an interim verification – whether it is remediated under either the Transfer Act or the voluntary program. Such a designation would allow that 10 acre site to be either sold or, quite importantly, leveraged and financed. This release of value from the site, to adopt the nomenclature Deputy Commissioner McCleary has used, would put that portion back into productive use. And, it could generate additional funds that may be needed for the other 10 acres. This change encourages remediation and I, personally, support such a concept.

The concept of providing an interim verification for a portion of a site has been discussed by and supported by the nonpublic members of the Brownfield Working Group. The bill, however, remains a work in progress. I believe it can be consolidated with HB5544 and both improved and we are currently in discussions with DEEP on it and I am hopeful that we will be able to reach a consensus shortly. In addition, I am also mindful of creating ambiguities as to what properties are eligible for interim verifications on portions of a site. I believe all properties should be eligible regardless of what program they are in (Transfer Act or voluntary) or when the property was entered into such a program.

The Working Group has continued to work with DECD, DEEP, and various other stakeholders and interested parties. We understand that DEEP has concerns relating to the specific language of these sections and we are committed to continuing to work with them to develop a better and more workable program for those properties in the Transfer Act and those in the voluntary program.

Finally, section 2 should allow the general exercise of eminent domain by a municipality to be excluded from the Transfer Act. However, an "or" is missing between the word "municipality" and "pursuant to section 8-149 128, 8-169e or 8-193...."

While a new frontier is being developed by DEEP due to legislation created two years ago and last year as part of the brownfield package, our work has continued. The theme this year that has emerged is to help properties that have been remediated either in the context of the Transfer Act or the voluntary program to exit that regulatory program. There are thousands of properties in the Transfer Act and the voluntary remediation programs. If portions of those properties can take advantage of an interim verification, the potential exists that they can either be put back into productive use and their value released. Whether a new program is developed next year or not, we need to continue to find solutions that allow properties to exit the regulatory programs. HB 5573 does that.

As to 5576, DECD has been establishing a regular program for the award of grants to municipalities. And, since the grant and loan programs were initiated, there have been regular rounds announced, and the competition for the funding is growing. Multiple projects in many municipalities have been funded and are underway. With the addition of Tim Sullivan as the Director of OBRD, I think that outreach will certainly continue and there will be more and more municipalities seeking funding to revitalize their brownfields. I wholeheartedly support increasing the funding available to be awarded by \$10 million dollars.

We look forward to working with DEEP further on this bill, other interested stakeholders and with the members of this Committee. I sincerely thank you for your interest, support and leadership.

Thank you.  
Ann M. Catino