



# House of Representatives

**File No. 826**

General Assembly

January Session, 2015

**(Reprint of File No. 581)**

Substitute House Bill No. 6830  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
May 14, 2015

**AN ACT CONCERNING THE REMEDIAL ACTION AND  
REDEVELOPMENT MUNICIPAL GRANT PROGRAM, THE TARGETED  
BROWNFIELD DEVELOPMENT LOAN PROGRAM AND THE  
REMEDICATION OF STATE-OWNED AND FORMERLY STATE-OWNED  
BROWNFIELDS.**

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

1 Section 1. Section 32-763 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2015*):

3 (a) There is established a remedial action and redevelopment  
4 municipal grant program to be administered by the Department of  
5 Economic and Community Development for the purpose of providing  
6 grants to municipalities and economic development agencies for the  
7 eligible costs of brownfield remediation projects, brownfield  
8 assessment projects and reasonable administrative expenses not to  
9 exceed five per cent of any grant awarded. A grant awarded under this  
10 section shall not exceed four million dollars.

11 (b) A grant applicant shall submit an application to the

12 Commissioner of Economic and Community Development on forms  
13 provided by the commissioner and with such information the  
14 commissioner deems necessary, including, but not limited to: (1) A  
15 description of the proposed project; (2) an explanation of the expected  
16 benefits of the project in relation to the purposes of this section; (3)  
17 information concerning the financial and technical capacity of the  
18 applicant to undertake the proposed project; (4) a project budget; and  
19 (5) with respect to a brownfield remediation project, a description of  
20 the condition of the brownfield, including the results of any  
21 environmental assessment of the brownfield in the possession of or  
22 available to the applicant.

23 (c) The commissioner may approve, reject or modify any application  
24 properly submitted in accordance with the provisions of this section.  
25 In reviewing an application and determining the amount of the grant,  
26 if any, to be provided, the commissioner shall consider the following  
27 criteria: (1) The availability of funds; (2) the estimated costs of  
28 assessing and remediating the brownfield, if known; (3) the relative  
29 economic condition of the municipality in which the brownfield is  
30 located; (4) the relative need of the project for financial assistance; (5)  
31 the degree to which a grant under this section is necessary to induce  
32 the applicant to undertake the project; (6) the public health and  
33 environmental benefits of the project; (7) the relative benefits of the  
34 project to the municipality, the region and the state, including, but not  
35 limited to, the extent to which the project will likely result in a  
36 contribution to the municipality's tax base, the retention and creation  
37 of jobs and the reduction of blight; (8) the time frame in which the  
38 contamination occurred; (9) the relationship of the applicant to the  
39 person or entity that caused the contamination; (10) the length of time  
40 the brownfield has been abandoned; (11) the taxes owed and the  
41 projected revenues that may be restored to the community; (12) the  
42 relative need for assessment of the brownfield within the municipality  
43 or region; and (13) such other criteria as the commissioner may  
44 establish consistent with the purposes of this section.

45 (d) The commissioner shall award grants on a competitive basis,

46 based on a request for applications occurring on or before October  
47 first, annually. The commissioner may increase the frequency of  
48 requests for applications and awards depending upon the number of  
49 applicants and the availability of funding.

50 [(e) A grant recipient may make low-interest loans to a brownfield  
51 redeveloper if (1) such recipient coapplied for the grant under this  
52 section with such brownfield redeveloper, and (2) not later than ninety  
53 days after receiving the grant, such recipient enters into a written  
54 agreement with such brownfield redeveloper for an identified future  
55 reuse of such brownfield after remediation. Loan principal and interest  
56 payments shall be returned to the brownfield remediation and  
57 development account established pursuant to section 32-762, minus  
58 twenty per cent of the principal, which the eligible grant recipient shall  
59 retain. If the eligible grant recipient provides a loan, such loan may be  
60 secured by a state or municipal lien on the property.

61 (f) Any recipient of a loan pursuant to subsection (e) of this section,  
62 as a condition of such loan, shall enter a program for remediation of  
63 the property pursuant to section 22a-133x, 22a-133y, 32-768 or 32-769.]

64 (e) The commissioner, in consultation with the Commissioner of  
65 Energy and Environmental Protection and following the award of a  
66 grant to a municipality or economic development agency pursuant to  
67 subsections (c) and (d) of this section, may award an additional grant  
68 to such municipality or economic development agency to enable the  
69 completion of a brownfield remediation or assessment project,  
70 provided such project is identified as a priority by said commissioners  
71 and such additional grant funds (1) will be used to address unexpected  
72 cost overruns or costs related to remedial activities that will provide a  
73 greater environmental benefit than originally proposed pursuant to  
74 subsection (b) of this section, (2) do not exceed fifty per cent of the  
75 original grant, and (3) will not result in more than four million dollars  
76 in total grants being awarded for a single brownfield remediation or  
77 assessment project.

78     (f) The commissioner may award grants to any municipality,  
79     economic development agency or regional council of governments  
80     organized under sections 4-124i to 4-124p, inclusive, for the eligible  
81     costs of developing a comprehensive plan for the remediation and  
82     redevelopment of multiple brownfields whenever such plan is  
83     consistent with the state plan of conservation and development,  
84     adopted pursuant to chapter 297, and the plan of conservation and  
85     development, adopted pursuant to section 8-23, for each municipality  
86     in which such brownfields are located. For purposes of this subsection,  
87     "eligible costs" shall also include expenditures associated with the  
88     development of any such plan for remediation and redevelopment.

89     (g) The provisions of sections 32-5a and 32-701 shall not apply to  
90     grants provided pursuant to this section.

91     Sec. 2. Section 32-765 of the general statutes is repealed and the  
92     following is substituted in lieu thereof (*Effective July 1, 2015*):

93     (a) The Department of Economic and Community Development  
94     shall establish a targeted brownfield development loan program to  
95     provide low-interest loans for the eligible costs of brownfield  
96     remediation projects to potential brownfield purchasers and current  
97     brownfield owners who (1) have no direct or related liability for the  
98     conditions of the brownfield, and (2) seek to develop brownfields for  
99     purposes of reducing blight or for industrial, commercial, residential  
100     or mixed use development.

101     (b) Notwithstanding subsection (a) of this section, a current owner  
102     of a brownfield on which a manufacturing facility is located shall be  
103     eligible for a loan under this section, provided neither such owner nor  
104     any partner, member, officer, manager, director, shareholder,  
105     subsidiary or affiliate of such owner (1) is liable under section 22a-427,  
106     22a-432, 22a-433, 22a-451 or 22a-452 with respect to the property; (2) is  
107     otherwise responsible, directly or indirectly, for the discharge, spillage,  
108     uncontrolled loss, seepage or filtration of the hazardous substance,  
109     material or waste; (3) is a member, officer, manager, director,

110 shareholder, subsidiary, successor of, or affiliated with, directly or  
111 indirectly, the person who is otherwise liable under section 22a-427,  
112 22a-432, 22a-433, 22a-451 or 22a-452 with respect to the property; or (4)  
113 has been found guilty of knowingly or wilfully violating any  
114 environmental law.

115 (c) An applicant for a loan pursuant to this section shall submit an  
116 application to the Commissioner of Economic and Community  
117 Development on forms provided by the commissioner and with such  
118 information the commissioner deems necessary, including, but not  
119 limited to: (1) A description of the proposed project; (2) an explanation  
120 of the expected benefits of the project in relation to the purposes of this  
121 section; (3) information concerning the financial and technical capacity  
122 of the applicant to undertake the proposed project; (4) a project budget;  
123 and (5) a description of the condition of the brownfield involved,  
124 including the results of any environmental assessment of the  
125 brownfield in the possession of or available to the applicant. The  
126 commissioner shall provide loans based upon project merit and  
127 viability, the economic and community development opportunity,  
128 municipal support, contribution to the community's tax base, past  
129 experience of the applicant, compliance history and ability to pay.

130 (d) If a loan recipient is not subject to section 22a-134a, such  
131 recipient shall enter a program for remediation of the property  
132 pursuant to either section 22a-133x, 22a-133y, 32-768 or 32-769, as  
133 determined by the commissioner, except if the loan funds are used for  
134 the abatement of hazardous building materials and such recipient  
135 demonstrates to the satisfaction of the Commissioners of Economic  
136 and Community Development and Energy and Environmental  
137 Protection that such hazardous building materials represent the sole or  
138 sole remaining environmental contamination on the property.

139 (e) Loans made pursuant to this section shall have such terms and  
140 conditions and be subject to such eligibility and loan approval criteria  
141 as determined by the commissioner. Such loans shall be for a period  
142 not to exceed twenty years.

143 (f) If a loan recipient sells a property subject to a loan granted  
144 pursuant to this section before the loan is repaid, the loan shall be  
145 payable upon closing of such sale, according to its terms, unless the  
146 commissioner agrees otherwise. The commissioner may carry the loan  
147 forward as an encumbrance to the purchaser with the same terms and  
148 conditions as the original loan.

149 (g) A loan recipient may be eligible for a loan of not more than [two]  
150 four million dollars per year, [for not more than two years,] subject to  
151 agency underwriting and reasonable and customary requirements to  
152 assure performance. If additional funds are required, the commissioner  
153 may recommend that the project be funded through other programs  
154 administered by the commissioner.

155 (h) The commissioner may modify the terms of any loan made  
156 pursuant to this section to provide for forgiveness of interest,  
157 principal, or both, or delay in repayment of interest, principal, or both,  
158 when the commissioner determines such forgiveness or delay is in the  
159 best interest of the state from an economic or community development  
160 perspective.

161 (i) The provisions of sections 32-5a and 32-701 shall not apply to  
162 loans provided pursuant to this section.

163 Sec. 3. Section 24 of public act 11-1 of the October special session is  
164 repealed and the following is substituted in lieu thereof (*Effective July*  
165 *1, 2015*):

166 (a) The Department of Economic and Community Development, in  
167 consultation with the Department of Energy and Environmental  
168 Protection, shall identify, market and remediate five geographically  
169 diverse state-owned or formerly state-owned brownfields from the  
170 priority [brownfield] list established pursuant to subsection (b) of this  
171 section. Selection of brownfields shall be in accordance with the  
172 provisions of subsection (c) of this section.

173 (b) On or before January 1, [2012] 2016, the Department of Economic

174 and Community Development shall develop a priority list of [eligible]  
175 state-owned and formerly state-owned brownfields to be marketed  
176 and remediated based on criteria to include, but not be limited to,  
177 [state-owned] brownfields that (1) have economic development  
178 viability, (2) [have a predetermined end use, (3)] are located in a  
179 municipality with an unemployment rate that exceeds the state's  
180 average unemployment rate, [(4)] (3) have access to transportation or  
181 other infrastructure, [(5)] (4) are of an environmentally urgent nature,  
182 [(6)] (5) the development of which would be consistent with the state  
183 plan of conservation and development, and [(7)] (6) the transfer of  
184 which to a private party would not conflict with state law or process.

185 (c) The Department of Economic and Community Development  
186 shall solicit proposals from companies interested in purchasing any of  
187 the state-owned brownfields on the priority list developed pursuant to  
188 subsection (b) of this section. The Commissioner of Economic and  
189 Community Development (1) shall review proposals, match up to five  
190 of the state-owned brownfields with companies, and sell,  
191 notwithstanding chapter 59 of the general statutes, prepermitted,  
192 cleaned sites to the selected companies, and (2) may remediate [one of]  
193 the brownfields on said priority list without identification of a specific  
194 commercial purchaser.

195 Sec. 4. Section 25 of public act 11-1 of the October special session is  
196 repealed and the following is substituted in lieu thereof (*Effective July*  
197 *1, 2015*):

198 (a) For the purposes described in subsection (b) of this section, the  
199 State Bond Commission shall have the power, from time to time to  
200 authorize the issuance of bonds of the state in one or more series and  
201 in principal amounts not exceeding in the aggregate twenty million  
202 dollars.

203 (b) The proceeds of the sale of said bonds, to the extent of the  
204 amount stated in subsection (a) of this section, shall be used by the  
205 Department of Economic and Community Development for the

206 purpose of identifying, marketing and remediating five [state-owned]  
207 brownfields pursuant to section 24 of [this act] public act 11-1 of the  
208 October special session.

209 (c) All provisions of section 3-20 of the general statutes, or the  
210 exercise of any right or power granted thereby, which are not  
211 inconsistent with the provisions of this section are hereby adopted and  
212 shall apply to all bonds authorized by the State Bond Commission  
213 pursuant to this section, and temporary notes in anticipation of the  
214 money to be derived from the sale of any such bonds so authorized  
215 may be issued in accordance with said section 3-20 and from time to  
216 time renewed. Such bonds shall mature at such time or times not  
217 exceeding twenty years from their respective dates as may be provided  
218 in or pursuant to the resolution or resolutions of the State Bond  
219 Commission authorizing such bonds. None of said bonds shall be  
220 authorized except upon a finding by the State Bond Commission that  
221 there has been filed with it a request for such authorization which is  
222 signed by or on behalf of the Secretary of the Office of Policy and  
223 Management and states such terms and conditions as said commission,  
224 in its discretion, may require. Said bonds issued pursuant to this  
225 section shall be general obligations of the state and the full faith and  
226 credit of the state of Connecticut are pledged for the payment of the  
227 principal of and interest on said bonds as the same become due, and  
228 accordingly and as part of the contract of the state with the holders of  
229 said bonds, appropriation of all amounts necessary for punctual  
230 payment of such principal and interest is hereby made, and the State  
231 Treasurer shall pay such principal and interest as the same become  
232 due.

233 Sec. 5. Section 32-760 of the general statutes is repealed and the  
234 following is substituted in lieu thereof (*Effective July 1, 2015*):

235 As used in this section and sections 32-761 to 32-769, inclusive:

236 (1) "Bona fide prospective purchaser" means a person who acquires  
237 ownership of a property after July 1, 2011, and establishes by a

238 preponderance of the evidence that:

239 (A) All disposal of regulated substances at the property occurred  
240 before such person acquired the property;

241 (B) Such person made all appropriate inquiries, as set forth in 40  
242 CFR Part 312, into the previous ownership and uses of the property in  
243 accordance with generally accepted good commercial and customary  
244 standards and practices, including, but not limited to, the standards  
245 and practices set forth in the ASTM Standard Practice for  
246 Environmental Site Assessments, Phase I Environmental Site  
247 Assessment Process, [E1527-05, as may be amended from time to time]  
248 in effect on the date such person acquired the property. In the case of  
249 property in residential or other similar use at the time of purchase by a  
250 nongovernmental or noncommercial entity, a property inspection and  
251 a title search that reveal no basis for further investigation shall be  
252 considered to satisfy the requirements of this subparagraph;

253 (C) Such person provides all legally required notices with respect to  
254 the discovery or release of any regulated substances at the property;

255 (D) Such person exercises appropriate care with respect to regulated  
256 substances found at the property by taking reasonable steps to (i) stop  
257 any continuing release, (ii) prevent any threatened future release, and  
258 (iii) prevent or limit human, environmental or natural resource  
259 exposure to any previously released regulated substance;

260 (E) Such person provides full cooperation, assistance and access to  
261 persons authorized to conduct response actions or natural resource  
262 restoration at the property, including, but not limited to, the  
263 cooperation and access necessary for the installation, integrity,  
264 operation and maintenance of any complete or partial response actions  
265 or natural resource restoration at the property;

266 (F) Such person complies with any land use restrictions established  
267 or relied on in connection with the response action at the property and  
268 does not impede the effectiveness or integrity of any institutional

269 control employed at the property in connection with a response action;  
270 and

271 (G) Such person complies with any request for information from the  
272 Commissioner of Energy and Environmental Protection;

273 (2) "Brownfield" means any abandoned or underutilized site where  
274 redevelopment, reuse or expansion has not occurred due to the  
275 presence or potential presence of pollution in the buildings, soil or  
276 groundwater that requires investigation or remediation before or in  
277 conjunction with the redevelopment, reuse or expansion of the  
278 property;

279 (3) "Commissioner" means the Commissioner of Economic and  
280 Community Development;

281 (4) "Contiguous property owner" means a person who owns real  
282 property contiguous to or otherwise similarly situated with respect to,  
283 and that is or may be contaminated by a release or threatened release  
284 of a regulated substance from, real property that is not owned by that  
285 person, provided:

286 (A) With respect to the property owned by such person, such person  
287 takes reasonable steps to (i) stop any continuing release of any  
288 regulated substance released on or from the property, (ii) prevent any  
289 threatened future release of any regulated substance released on or  
290 from the property, and (iii) prevent or limit human, environmental or  
291 natural resource exposure to any regulated substance released on or  
292 from the property;

293 (B) Such person provides full cooperation, assistance and access to  
294 persons authorized to conduct response actions or natural resource  
295 restoration at the property from which there has been a release or  
296 threatened release, including, but not limited to, the cooperation and  
297 access necessary for the installation, integrity, operation and  
298 maintenance of any complete or partial response action or natural  
299 resource restoration at the property;

300 (C) Such person complies with any land use restrictions established  
301 or relied on in connection with the response action at the property and  
302 does not impede the effectiveness or integrity of any institutional  
303 control employed in connection with a response action;

304 (D) Such person complies with any request for information from the  
305 Commissioner of Energy and Environmental Protection; and

306 (E) Such person provides all legally required notices with respect to  
307 the discovery or release of any hazardous substances at the property;

308 (5) "Department" means the Department of Economic and  
309 Community Development;

310 (6) "Economic development agency" means (A) a municipal  
311 economic development agency or entity created or operating under  
312 chapter 130 or 132; (B) a nonprofit economic development corporation  
313 formed to promote the common good, general welfare and economic  
314 development of a municipality or a region that is funded, either  
315 directly or through in-kind services, in part by one or more  
316 municipalities; (C) a nonstock corporation or limited liability company  
317 established or controlled by a municipality, municipal economic  
318 development agency or an entity created or operating under chapter  
319 130 or 132; or (D) an agency, as defined in section 32-327;

320 (7) "Eligible costs" means the costs associated with the investigation,  
321 assessment, remediation and development of a brownfield, including,  
322 but not limited to, (A) soil, groundwater and infrastructure  
323 investigation, (B) assessment, (C) remediation, (D) abatement, (E)  
324 hazardous materials or waste disposal, (F) long-term groundwater or  
325 natural attenuation monitoring, (G) (i) environmental land use  
326 restrictions, (ii) activity and use limitations, or (iii) other forms of  
327 institutional control, (H) attorneys' fees, (I) planning, engineering and  
328 environmental consulting, and (J) building and structural issues,  
329 including demolition, asbestos abatement, polychlorinated biphenyls  
330 removal, contaminated wood or paint removal, and other  
331 infrastructure remedial activities;

332 (8) "Financial assistance" means grants, loans or loan guarantees, or  
333 any combination thereof;

334 (9) "Innocent landowner" has the same meaning as provided in  
335 section 22a-452d;

336 (10) "Interim verification" has the same meaning as provided in  
337 section 22a-134;

338 (11) "Manufacturing facility" means a business establishment  
339 classified under sector 31, 32 or 33 of the North American Industrial  
340 Classification System;

341 (12) "Municipality" means a town, city, consolidated town and city  
342 or consolidated town and borough;

343 (13) "PCB regulations" means the polychlorinated biphenyls  
344 manufacturing, processing, distribution in commerce and use  
345 prohibitions found at 40 CFR Part 761;

346 (14) "Person" means any individual, firm, partnership, association,  
347 syndicate, company, trust, corporation, limited liability company,  
348 municipality, economic development agency, agency or political or  
349 administrative subdivision of the state or any other legal entity;

350 (15) "Real property" means land, buildings and other structures and  
351 improvements thereto, subterranean or subsurface rights, any and all  
352 easements, air rights and franchises of any kind or nature;

353 (16) "Regulated substance" has the same meaning as provided in  
354 section 22a-134g;

355 (17) "Release" means any discharge, spillage, uncontrolled loss,  
356 seepage, filtration, leakage, injection, escape, dumping, pumping,  
357 pouring, emitting, emptying or disposal of a substance;

358 (18) "Remediation standards" has the same meaning as provided in  
359 section 22a-134;

360 (19) "State" means the state of Connecticut;

361 (20) "UST regulations" means the regulations adopted pursuant to  
362 subsection (d) of section 22a-449; and

363 (21) "Verification" has the same meaning as provided in section 22a-  
364 134.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2015</i>	32-763
Sec. 2	<i>July 1, 2015</i>	32-765
Sec. 3	<i>July 1, 2015</i>	PA 11-1 of the October Sp. Sess., Sec. 24
Sec. 4	<i>July 1, 2015</i>	PA 11-1 of the October Sp. Sess., Sec. 25
Sec. 5	<i>July 1, 2015</i>	32-760

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 16 \$</b>	<b>FY 17 \$</b>
Treasurer, Debt Serv.	GF - Acceleration of Debt Service Costs	Potential	Potential

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill makes various changes that expand the Department of Economic and Community Development's brownfield grant and loan programs and state-owned brownfield program created in PA 11-1 of the October special session.

These programs are funded through General Obligation (GO) bond funds. The bill does not include any additional bond authorizations to support the programs.

Future General Fund debt service costs may be incurred sooner under the bill to the degree that the bill causes currently authorized GO bond funds to be expended more rapidly than they otherwise would have been.

As of May 12<sup>th</sup>, the unallocated balances are (1) \$14.8 million for brownfield loans and grants and (2) \$19.5 million for the state-owned property brownfields.<sup>1</sup>

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<sup>1</sup> Since 2011, only \$500,000 of the \$20 million authorization for the state-owned brownfield program has been allocated. With regards to the brownfield grant and loan programs, \$65.2 million out of a total \$80 million has been allocated.

House "A" alters the original bill by (1) requiring participants in the state's brownfield loan program to demonstrate that the hazardous building materials constitute the property's only or only remaining environmental contamination issue and (2) clarifying that bona fide prospective purchasers must make all appropriate inquiries into previous owner's use of the property as set forth by certain practice and standards in order to be eligible for the state's brownfield liability protection program. There is no fiscal impact to either provision.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

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**OLR Bill Analysis****sHB 6830 (as amended by House "A")\******AN ACT CONCERNING THE REMEDIAL ACTION AND REDEVELOPMENT MUNICIPAL GRANT PROGRAM, THE TARGETED BROWNFIELD DEVELOPMENT LOAN PROGRAM AND THE REMEDIATION OF STATE-OWNED AND FORMERLY STATE-OWNED BROWNFIELDS.*****SUMMARY:**

This bill makes programmatic changes in several Department of Economic and Community Development (DECD) brownfield remediation programs.

It adds new components to the Municipal Brownfield Grant program, which provides grants to municipalities and economic development agencies for assessing and remediating contaminated property. One component allows DECD to make additional grants needed to complete an ongoing project. The other allows DECD to make grants for preparing comprehensive plans to remediate and redevelop multiple brownfields. The bill precludes recipients under the existing and the new components from lending grant proceeds to brownfield developers.

The bill increases maximum loan amounts under the Brownfield Loan Program from \$2 million per year for up to two years to \$4 million per year for an unlimited number of years. It also exempts developers, under a narrow condition, from participating in a state voluntary cleanup or liability relief program. The loan program finances investigation and assessment and remediation costs.

The bill makes it easier for developers that acquire brownfields they did not contaminate to participate in DECD's program that protects

them from liability to the state and third parties. It does so by specifying this duty to investigate the property's prior ownership and use is tied to the standards that are in effect when they acquire the property.

Lastly, the bill expands the range of brownfields DECD can remediate and market to include those the state owned and transferred to other parties (i.e., formerly state-owned brownfields). It allows DECD to select these brownfields for its priority list of brownfields, which is currently limited to those the state owns. The bill makes other changes that expand the range of state-owned brownfields eligible for remediation and marketing. It also makes a conforming technical change.

\*House Amendment "A" (1) changes the condition under which developers may receive a loan under the Brownfield Loan Program without having to participate in a state brownfield clean-up program and (2) adds the provision affecting bona fide prospective purchasers.

EFFECTIVE DATE: July 1, 2015

## **BROWNFIELD REMEDIATION PROGRAMS**

### ***Municipal Brownfield Grant Program***

The bill makes programmatic changes in the Municipal Brownfield Grant program, which provides up to \$4 million grants to municipalities and economic development agencies, including nonprofit regional development corporations and councils of government, for assessing and remediating contaminated property. The bill allows the DECD commissioner to award additional grants needed to complete a project or to prepare comprehensive brownfield remediation plans.

The bill sets conditions under which the commissioner may award an additional grant. She may award the grant if she and the Department of Energy and Environmental Protection (DEEP) commissioner identify the project as a priority for remediation and the

grant:

1. is needed to cover unexpected cost overruns or fund cleanup activities that increase the project's environmental benefits,
2. does not exceed 50% of the original grant, and
3. will not increase the project's total grant funding to more than \$4 million.

The bill also allows the commissioner to award grants to municipalities and economic development agencies to prepare comprehensive plans for cleaning up and redeveloping multiple brownfields. These grants may cover only the costs of preparing the plans, which must be consistent with the state and local plans of conservation and development.

In addition to adding the new grant components, the bill precludes municipalities and economic development agencies from lending grant proceeds to a brownfield redeveloper. Current law allows them to do so when the:

1. municipality or agency and developer jointly apply for the grant and identify within 90 days how the remediated brownfield will be used and
2. developer agrees to clean up the property under a DEEP voluntary remediation program or DECD liability protection program.

***Brownfield Loan Program***

The bill makes programmatic changes in DECD's Brownfield Loan Program, which provides loans for (1) investigating and assessing a property's environmental condition and (2) remediating any contamination. It increases the maximum loan amount from \$2 million per year for up to two years to \$4 million per year with no limit on the number of years.

The bill sets a narrow condition under which borrowers who are not subject to the Transfer Act may receive loans under the program without having to remediate the property under a DEEP voluntary cleanup program or a DECD liability protection program. (The Transfer Act requires parties involved in the sale or transfer of a potentially contaminated property to assess its environmental condition and remediate it if necessary.)

The bill exempts borrowers from this program requirement if the loan proceeds will be used to abate hazardous building material. The exemption applies only if the loan recipient demonstrates, to the DECD and DEEP commissioners' satisfaction, that the material constitutes the property's only or only remaining environmental contamination.

#### ***Liability Protection Program***

The bill makes it easier for bona fide prospective purchasers to participate in the DECD program that protects developers from liability to the state and third parties for cleaning up brownfields. A person or entity qualifies as a bona fide purchaser if it can establish, by a preponderance of the evidence, certain facts about its acquisition of a brownfield.

Under current law, the purchaser must, among other things, show that it is complying with national standards for inquiring about a property's previous owners and uses, specifically, the American Society for Testing and Materials' (ASTM) Standard Practice for Environmental Site Assessment Process, E1527-05, as amended from time to time. It is unclear whether this provision requires a new investigation each time the standards change. The bill specifies that the purchaser must comply only with those standards that were in effect when it acquired the property.

#### **PROGRAM FOR REMEDIATING AND MARKETING STATE-OWNED BROWNFIELDS**

The bill expands the range of brownfields DECD can remediate and

market for private development. It allows DECD to consider adding brownfields the state owned and transferred to other parties to its priority list of brownfields, which is currently limited to state-owned brownfields that meet statutory criteria. Under current law, DECD must select five geographically diverse state-owned brownfields from that list for marketing and remediation.

The bill gives DECD until January 1, 2016 to add formerly state-owned property to the priority list and further expands the range of eligible state-owned and formerly state-owned brownfields by eliminating the selection criterion that a brownfield must have a predetermined end use. DECD must still use the remaining criteria to select both types of brownfields. At a minimum, it must select brownfields that:

1. are economically viable,
2. can be developed in a way that is consistent with the State Plan of Conservation and Development,
3. are located in municipalities where the unemployment rate exceeds the state's average rate,
4. have access to transportation and other infrastructure,
5. require immediate environmental remediation, and
6. can be transferred to a private party without conflicting with any state law or process.

The bill also allows DECD to remediate any number of state-owned and formerly state-owned brownfields without first identifying a commercial purchaser. Current law limits DECD to one brownfield.

The bill makes no changes in the program under which DECD may solicit proposals from companies interested in purchasing state-owned brownfields.

**COMMITTEE ACTION**

Commerce Committee

Joint Favorable Substitute Change of Reference

Yea 21 Nay 0 (03/10/2015)

Environment Committee

Joint Favorable

Yea 29 Nay 0 (03/25/2015)