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&
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Public Hearing, April, 2015
Finance, Revenue and Bonding Committee

In Support of Proposed Bill No. 7055

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 and property development. For the past seven years, together with Gary O'Connor, I have been pleased to serve as co-chair of the Brownfield Working Group, formerly the Brownfield Task Force.

I want to first thank Representative Berger, Senator Fonfara and all the members of the committee for all your leadership and support for the brownfield initiatives in this State that have been proposed by the Brownfield Working Group. By way of background, the Brownfield Working Group was first created as the State's Task Force on Brownfield Strategies through Public Act 06-184. It was authorized to develop long-term solutions for cleaning up Brownfields and to propose new incentives to stimulate investment and rehabilitation of Brownfields. The Task Force issued its first Report to the Commerce and Environment Committees in February 2007. Since that time, and after considerable study, the Working Group proposed many new initiatives and the legislature has responded with new laws passed virtually every year that broke ground on many new and innovative programs. The Office of Brownfield Remediation and Development (OBRD) was established. New grants and loan programs as well as liability relief programs were developed and are administered by the Department of Economic and Community Development together with the Department of Energy and Environmental Protection. To date, under the Malloy administration alone, approximately \$125 million in funding was provided to restore our State's brownfields, which is bringing many contaminated and abandoned properties back to be vibrant, income producing properties, creating jobs, removing blight and contributing to our municipal tax base. These programs have implemented the vision of the Task Force. Commissioner Smith is to be applauded for her efforts and leadership. Under Tim Sullivan's direction as the Director of the OBRD, we see the full implementation of programs that are placing brownfields back into the marketplace. Without exception, almost every quarter, new funding rounds are announced, a competitive process is put into place and new projects funded. Municipalities and the private sector are becoming more familiar with these programs and there is significantly new interest and competition. But, there is a lot more to do.

One initiative that the Brownfield Task Force first proposed in 2006 was the development of a brownfield tax credit. However, at that time, we had other work to do to develop a robust program. Now is the time, based upon our study, and where we are with our brownfield program, that the State provide a brownfield tax credit available to the private sector, which is a

missing piece of our brownfield puzzle. We have studied whether such a tax credit could be feasible in our state and we met with representatives of the state's historic tax credit program and others in order to develop the appropriate program. We also learned some lessons from other states that have brownfield tax credit programs. Although several states have such programs, two of our neighboring states have enjoyed some success:

- In Massachusetts, the Brownfields Tax Credit Program provides a tax credit of up to 50% after a cleanup is completed, and 25% for a cleanup that uses an Activity and Use Limitation (what we call an environmental land use restriction). The party taking the credit must be an eligible person, which is defined, and the project must be located in an economically distressed zone. In addition, the tax credit is transferable and may be sold or assigned to another eligible person or to a nonprofit organization. First initiated in 1998, it currently extends to eligible costs incurred prior to 2019.
- In New York, the Brownfields Tax Credit was recently reauthorized for 10 years. In large part, the NY program (unlike the program proposed in 7055) included the development cost in the credit. It was also heavily skewed to development in and surrounding New York City to the detriment of the other counties. The brownfield program now has been modified to provide for two sets of tax credits covering varying percentages of costs, with one reserved for "remediation" costs and the other for redeveloping the property. Previously, considerable credits were going to redevelopment costs, which greatly outweighed the remediation costs. And, now, the new law specifies those costs that can be claimed under the remediation credit, such as excavation work and asbestos removal. The credits are also more limited in New York City, which is meant to drive participation in the program to others parts of the state.

We learned from the other states, particularly the experience in New York, and have proposed what you see in section 1 of the bill to be a viable brownfield tax credit program that we believe could work well in our state.

The important elements of the tax credit bill are that are proposed are:

- “Qualified Expenditures”. Clearly defined costs that are eligible for the tax credit – The bill includes a definition of “qualified expenditures” to include the cost of the investigation of the soil and groundwater and building materials and the remediation and abatement of all. Significantly, it does not the cost of development of the project.
- Application Process. Application is made to DECD prior to beginning any remediation activity. It is evaluated on the basis of eleven criteria and authorized on a competitive basis twice a year. DECD then would issue a voucher for a credit up to a reserved amount.
- When the Tax Credits Are Available. Upon the completion of the remediation, which is largely determined by filing of an interim verification or full verification.

I should note that this is appropriate for soil and groundwater; however, we need to develop a trigger for availability for abatement of hazardous building materials and we are willing to work with the Committee on such language. In addition, we believe the tax credit should be available in all instances of voluntary remediation including under 22a-133y, which pertains to properties located in areas with degraded groundwater.

- Per Project Cap. The credit is capped at the lesser of 50% of the qualified expenditures or \$2 million.
- Total state-wide Cap. \$20 million for FY 2017 to FY 2021.
- Transferability. The tax credit may be sold, assigned or otherwise transferred, upon notice to DECD.

As to section 2 of the bill, this needs some modification because we believe that the reference to tax credits for bond authorization was inadvertent. As I mentioned earlier, strong brownfield grants and loan programs were developed and are set forth in Chapter 588gg of the General Statutes. Section 2 of the bill authorizes the bond commission to issue bonds not exceeding \$100 million for tax credits. This section 2 should be for funding the brownfield grant and loan programs established under Chapter 588gg. Conn. Gen. Statutes §32-762 establishes the account; §32-763 establishes the grant program; §32-765 is the loan program. These programs require funds, through bond authorizations. The DECD has demonstrated considerable success with these programs. Properties from Killingly and Willimantic to Torrington to Stamford all have received funding. Properties are cleaned up and restored to productive reuse throughout our state. DECD recently confirmed that for every \$1 invested by the state government in brownfield development, non-state partners have invested another \$4. These programs should continue. It is a demonstrated win-win for the community, the environment, the tax base and job creation.

The Brownfields Working Group meets almost every two weeks with DECD and representatives of the Department of Energy & Environmental Protection, who has been a good partner in moving these properties forward as well. We meet to be your eyes and ears, and to determine whether the programs are working and to determine what more needs to be done. Right now, brownfield tax credits and bond authorization for the grants and loans program needs to be done.

THANK YOU for your support.

