

Testimony of Gary B. O'Connor
Co-Chair, Brownfield Working Group
Before the Joint Committee on Commerce of the General Assembly
In support of
Raised Bill No. 5425
An Act Authorizing The Creation of Connecticut Brownfield Land Banks
March 1, 2016

Good afternoon, my name is Gary O'Connor and I am a partner at the law firm of Pullman & Comley. I have practiced law for over 30 years concentrating in the areas of environmental law and real estate development. I serve with Ann Catino as co-chair of the Brownfield Working Group appointed by the General Assembly. I would like to thank the Committee on Commerce for the opportunity to speak today in support of *Raised Bill No. 5425, An Act Authorizing The Creation of Connecticut Brownfield Land Banks*. I would also like to acknowledge and thank Senator Hartley, Representative Perone and the other members of the Commerce Committee for your leadership and support of brownfield redevelopment as an important catalyst for revitalizing our communities, restoring properties to beneficial reuse and enhancing the quality of life in Connecticut.

Since the creation of the Brownfield Working Group (f/k/a the Brownfield Task Force) in 2006, we have examined issues relating to the remediation and redevelopment of brownfields in this state, the regulatory scheme for remediating such properties, funding requirements and liability concerns. Over the years, we have made recommendations to the General Assembly on reducing the barriers to brownfield redevelopment by creating more certainty, streamlining regulatory requirements, providing certain liability immunities, reducing the cost and time of remediation and providing cleanup funds to eligible businesses, developers and municipalities. Many of these recommendations have become law and have greatly assisted stakeholders in revitalizing Connecticut's brownfields.

Nevertheless, many municipalities have been reluctant to acquire and redevelop brownfield sites. Many communities simply do not have the expertise to take on this task. Many others have been discouraged by internal challenges such as compliance with procurement and sale ordinances, the uncertain cost of remediation, public safety concerns during the holding period and political considerations. And despite the great work of this legislature, there is still liability exposure at the federal level.

Raised Bill No. 5425 creates a viable alternative for municipalities and adds another important tool to the brownfield redevelopment tool box. It provides a certification process for qualified non-stock corporations to acquire, manage, cleanup and reposition brownfield sites for redevelopment on behalf of municipalities. In many ways, this legislation is unique and will place Connecticut at the head of the class in the brownfield land bank movement. A number of states have established land banks to manage and dispose of vacant or blighted properties. However, the promotion of brownfield redevelopment by a certified land bank takes the land bank concept to the next level. In most other states, land banks are captive organizations controlled by a single county for operation solely in that county. In Connecticut, such a concept

is unworkable in view of the fact that we do not have viable county governments. Likewise, creating quasi-municipal organizations is impracticable, because it would not allow for economies of scale and expert staffing. The certification of Connecticut land banks allows qualified entities that possess the necessary resources and expertise to enter into land banking agreements with any number of municipalities, but gives each municipality the ability to control the remediation, transfer and redevelopment of any property transferred by such municipality to the land bank, without that municipality incurring the liability, costs and other challenges associated with owning and managing a brownfield site. It is expected that some or all of the certified land banks will apply for non-profit status under the Internal Revenue Code, which, in turn, will make them attractive to foundations and other philanthropists, who are looking to donate money to help improve the environment and/or the quality of life in distressed communities.

Under Raised Bill 5425 a qualified entity may apply to the Commissioner of Economic and Community Development for certification as a Connecticut brownfield land bank. In reviewing an application and making a determination to certify an applicant as a Connecticut brownfield land bank, the Commissioner will consider the following criteria:

- (1) the financial and technical capabilities of the applicant to perform the mission of a Connecticut brownfield land bank;
- (2) the relative economic condition of the municipalities the applicant intends to serve;
- (3) the level of support from municipalities;
- (4) the quality of the applicant's business plan; and
- (5) such other criteria as the Commissioner may establish consistent with the purpose of this Act.

The issuance of a certificate to the successful applicant confers upon such applicant most of the rights, privileges and immunities currently possessed by municipalities regarding brownfield redevelopment. These include the right to:

- (1) Acquire real property by purchase contracts, lease purchase agreements, installment sales contracts, land contracts, foreclosure of municipal tax liens, and accept transfers from municipalities upon such terms and conditions as agreed to by the brownfield land bank and the municipality;
- (2) Transfer property to third parties, but only on such terms and conditions as determined by the municipality in which the property is located;
- (3) Access brownfield sites to perform environmental due diligence;
- (4) Qualify for exemption from state and municipal taxes;

- (5) Qualify for tax forgiveness on all or a portion of the principal balance or interest on any real property taxes of any property acquired by the land bank;
- (6) Participate in the Brownfield liability relief program under Section 32-133ii, the Abandoned Brownfield Cleanup program under Section 32-768 and the Brownfield Remediation and Revitalization program under Section 32-769;
- (7) Qualify for Transfer Act exemptions; and
- (8) Participate in the state's Remedial Action and Redevelopment Municipal Grant program.

A typical transaction might proceed as follows: A municipality and a Connecticut land bank enter into a land banking agreement under which the municipality assigns a municipal real property tax lien to the land bank, the land bank forecloses on the lien and manages and remediates the property so that it is in shovel ready condition for a prospective redeveloper. During this holding period the land bank applies for remediation funding from the federal and state governments as well as foundations and philanthropists. The land bank and the municipality will market the property as it is being remediated and at some point the property will be subject to an RFQ or RFP and the successful redeveloper will enter into a land development agreement with the municipality and land bank, which sets forth the terms for the transfer of the property from the land bank to the redeveloper and the conditions upon which the redeveloper may redevelop the site.

In short, Raised Bill No. 5425 creates a valuable new tool for municipalities seeking to remediate and redevelop brownfield sites. It does so without additional cost to the state and allows municipalities, through the land bank, to potentially tap into private sector funds.

Thank you for the opportunity to provide testimony in support of the Connecticut brownfield land bank bill.