

Testimony of Ann M. Catino
Attorney, Halloran & Sage LLP
&
Co-Chair, State's Brownfield Working Group

Public Hearing, March 9, 2015
Finance, Revenue and Bonding Committee

In Support of Proposed Bill No. 5592
An Act Concerning Connecticut First

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 (almost) 10 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 \$155 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 significant new interest and competition. These program have experienced much success and have set Connecticut apart from other states. We are becoming very well known in the development community that Connecticut is a place to do business on brownfield sites; we mean business to our cities and towns. 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. Last year we spent considerable time fashioning a brownfield tax credit program. And, this year, section 1 is the result of collective efforts and should be supported.

Section 1 of Bill 5592 includes a brownfield tax credit and I urge its adoption. Now is the time, based upon 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.

As I indicated last year in my testimony before you, the Working Group spent time studying 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. Last year, I reported that:

- 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 5592) 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 section 1 of the bill is a viable brownfield tax credit program that we believe could work well in our state.

The important elements of section 1 are:

- “Qualified Expenditures”. This is a limited, but important definition that identifies that the costs eligible for the credit are those associated with the environmental clean-up of the property or the abatement of hazardous building materials. 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 specific 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 plan, which may be in its entirety or in phases to an identifiable portion of the brownfield.
- Per Project Cap. The credit is capped at the lesser of 25% of the qualified expenditures or \$2 million.
- Total state-wide Cap. \$10 million annually for the fiscal years commencing July 1, 2019 and July 1, 2020.
- Transferability. The tax credit may be sold, assigned or otherwise transferred, upon notice to DECD.

As to **Section 2 of the bill**, we fully support further State Bond authorization for the brownfield grant and loan programs. Conn. Gen. Statutes §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 to Somers and many in between all have received funding. Almost every quarter another fund round is announced and projects funded. Just last month, Governor Malloy announced that 17 projects in 16 communities were awarded \$8.7 million in grant funding. This funding round will improve 190 acres of property in our state. This program has a proven track record for providing jobs and restoring properties to beneficial reuse. And private sector monies follow. DECD recently confirmed that for every \$1 invested by the state government in brownfield development, non-state partners have invested another \$8.37 over the 16 year to date history of these programs. These programs should continue. It is a demonstrated win-win for the community, the environment, the tax base and job creation. Our state is known to be open for brownfield redevelopment and that is a good thing for our economy, cities and towns.

The Brownfields Working Group meets every three weeks with DECD and representatives of the Department of Energy & Environmental Protection, who have been good partners in moving these properties forward. 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. Brownfield tax credits and bond authorization for the grants and loans program needs to be done.

THANK YOU for your support.