



PA 18-85—SB 268
Commerce Committee

AN ACT CONCERNING MODIFICATIONS TO BROWNFIELD REMEDIATION GRANT AND LOAN PROGRAMS, THE APPLICATION OF NOTICES OF ACTIVITY AND USE LIMITATION TO CERTAIN PRIOR HOLDERS OF INTEREST IN PROPERTY, PROPERTY TAX AGREEMENTS BETWEEN MUNICIPALITIES AND PROSPECTIVE PURCHASERS OF BROWNFIELDS AND ENVIRONMENTAL IMPACT EVALUATION EXEMPTIONS FOR CERTAIN FEDERALLY APPROVED PROJECTS

SUMMARY: This act makes programmatic changes to state and municipal brownfield remediation programs, loosens a restriction on using the notice of activity and use limitation (NAUL), and exempts proposed actions supporting certain nuclear submarine construction projects from environmental impact evaluation requirements.

The programmatic changes to the state brownfield remediation programs (1) extend the maximum period for repaying certain Department of Economic and Community Development (DECD) loans from 20 to 30 years and (2) require municipalities and other entities that remediate brownfields with DECD grants to do so under a specified state voluntary remediation program.

The act's changes to the municipal property tax incentive programs allow municipalities to extend tax abatements and assessment freezes to people and entities proposing to acquire a brownfield. The changes also expand the range of state voluntary remediation programs under which they must remediate a brownfield as a condition for receiving a tax incentive.

A NAUL is a legal instrument that intends to minimize exposure to contamination in a property by controlling the kind of activity that can occur there. To achieve this purpose, NAULs are executed and recorded in the land records. The act allows NAULs to be used in areas where a prior holder of interest in the property (i.e., prior holder), such as a lender, holds an interest that allows activities the NAUL otherwise prohibits if the prior holder agrees to the NAUL's conditions.

The act also makes minor and technical changes.

EFFECTIVE DATE: October 1, 2018, except the provision (1) extending the period for repaying brownfield loans takes effect July 1, 2018, and is applicable to loans issued on or after that date and (2) exempting state supported nuclear submarine projects from state environmental impact evaluations takes effect upon passage.

§§ 1 & 5 — STATE BROWNFIELD REMEDIATION PROGRAMS

OLR PUBLIC ACT SUMMARY

Targeted Brownfield Development Loan Program (§ 1)

The act extends, from 20 to 30 years, the maximum period for repaying loans DECD makes under its Targeted Brownfield Development Loan Program, which provides loans of up to \$4 million per year for investigating and assessing a property's environmental condition and remediating any contamination. The loans are available to the current owners of a contaminated property and its potential purchasers if they (1) are not liable for the contamination and (2) plan to develop the property to reduce blight or for industrial, commercial, residential, or mixed use purposes.

Remedial Action and Redevelopment Municipal Grant Program (§ 5)

In addition to making loans to a brownfield's owners or potential purchasers, DECD makes grants to municipalities; municipal and nonprofit economic development agencies; and state-certified brownfield land banks for remediating brownfields they own or control. (It also makes grants to these entities and regional councils of government for preparing comprehensive brownfield remediation and development plans.) As a condition for receiving a grant, the act requires certain grant recipients to conduct the remediation under one of four state voluntary remediation programs the DECD commissioner selects. The voluntary remediation programs are administered by DECD and the Department of Energy and Environmental Protection (DEEP).

The act specifies that the requirement applies to any entity that is eligible for a grant and not subject to requirements under the Transfer Act, the law that requires parties to a real estate transaction involving contaminated property to notify the DEEP commissioner about the contamination and identify the party that will investigate and remediate it.

The act exempts from the remediation program requirement any recipient that will use the grant funds to:

1. prepare a comprehensive brownfield remediation and redevelopment plan,
2. only assess a brownfield's condition, or
3. abate hazardous building materials as long as the recipient demonstrates to the DECD and DEEP commissioners that these materials are the only remaining contamination on the property.

§ 6 — BROWNFIELD REMEDIATION PROPERTY TAX INCENTIVES

The act makes several changes in the law that allows municipalities to offer different types of property tax incentives to brownfield owners. These incentives include abating (reducing) the taxes on a remediated brownfield or fixing its assessment at its pre-remediation level. Under the act, municipalities may offer these incentives to people and entities proposing to acquire a brownfield (i.e., prospective owners). As with current brownfield owners, municipalities that choose to offer these incentives to prospective owners must do so by entering into an agreement with a prospective owner. Prospective owners (and state-certified brownfield land banks) already qualify for property tax forgiveness, the other incentive municipalities may offer to spur brownfield remediation and

OLR PUBLIC ACT SUMMARY

redevelopment.

Municipalities that choose to offer these incentives must also require the recipient to comply with the law's requirements, including those for remediating a brownfield. Prior law required the recipients of tax forgiveness and assessment fixes to remediate the property under a DEEP voluntary remediation program and meet the Transfer Act's remediation standards. The act expands the range of programs recipients may use to remediate a brownfield to include DECD's voluntary remediation programs, which provide protection from liability if the remediation is completed according to the Transfer Act's standards.

§§ 2-4 — NAUL

The act loosens a restriction on the use of NAULs, which are designed to control activities that could potentially expose people to contamination. Prior law prohibited NAULs from being used in places where a prior holder of interest in the property held an interest that allowed (1) activities the NAUL otherwise prohibited or (2) intrusions into contaminated soil. The act eliminates the latter restriction and allows NAULs to be used in areas where the prior interest allows the activities the NAUL prohibits, but only if the prior holder agrees, by signing the NAUL, to subject that interest to the NAUL's conditions.

§ 7 — ENVIRONMENTAL IMPACT EVALUATION EXEMPTION FOR SUBMARINE CONSTRUCTION PROJECTS

By law, with exceptions, state agencies must prepare an environmental impact evaluation of any activity they propose or fund. The act creates an exception to this requirement for activities supporting certain nuclear submarine construction projects.

The act exempts from this requirement activities that are part of a nuclear submarine construction project that received, on or before the act's passage, the highest priority ranking (i.e., DX) under the U.S. Defense Department's Defense Priorities and Allocation System (see BACKGROUND). The activity must further an "approved program," as defined under the Defense Priorities and Allocations System regulations (15 C.F.R. Part 700).

BACKGROUND

Defense Priorities and Allocations Systems Program

Administered by the U.S. Department of Commerce's Bureau of Industry and Security, the Defense Priorities and Allocations Systems Program prioritizes national defense-related contracts and orders throughout the U.S. supply chain to support military, energy, homeland security, emergency preparedness, and critical infrastructure requirements.

The authorization comes from Title I of the Defense Production Act of 1950, which required the president to require preferential acceptance and performance of contracts or orders (other than employment contracts) supporting certain approved national defense and energy programs, and to allocate materials,

OLR PUBLIC ACT SUMMARY

services, and facilities in such a manner as to promote these programs. The president delegated this authority to the Commerce Department under Executive Order 13603.