
OLR Bill Analysis

sSB 218

AN ACT CONCERNING BROWNFIELD REMEDIATION.

SUMMARY

This bill makes changes to both the Abandoned Brownfield Cleanup (ABC) program and the Brownfield Remediation and Revitalization program (BRRP).

Specifically, the bill:

1. allows short-term lessees (i.e., terms of five years or less) to be considered for participation in the programs;
2. expressly requires program participants to remain in compliance with the respective programs' obligations in order to receive the programs' liability protections; and
3. requires applicants to acquire title to a property within two years after the Department of Economic and Community Development (DECD) commissioner designates it for inclusion in the program and authorizes the commissioner to extend this deadline at the applicant's request.

The bill also makes changes specific to each program. Regarding the ABC program, among other things, the bill generally (1) sets a deadline by which participants must enter into the state's voluntary remediation program and (2) requires the Department of Energy and Environmental Protection (DEEP) commissioner to determine whether to audit the verification of a property and complete this audit within specified timeframes, with exceptions. Regarding the BRRP, the bill requires the DECD commissioner to accept property nominations from Connecticut brownfield land banks (CBLBs; see BACKGROUND).

It also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2022

ABANDONED BROWNFIELD CLEANUP PROGRAM

Deadline to Enter the Voluntary Remediation Program

The bill requires an eligible person accepted into the ABC program to enter into the state's voluntary remediation program within six months after taking title to an eligible property, unless the DECD commissioner, in consultation with the DEEP commissioner, grants an exception. Under current law, there is no deadline by which such a person must enter into the program.

DEEP Verification Audits

Under current law the DEEP commissioner does not have a deadline by which she is required to audit an ABC program verification or a time limit on how long this audit can take. The bill establishes both. By law, a verification generally means a licensed environmental professional's (LEP) written opinion, on a DEEP form, stating that (1) a property's investigation was performed in accordance with prevailing standards and guidelines and (2) it has been remediated in accordance with the remediation standards.

Audit Time Limits. The bill requires the DEEP commissioner, within 60 days after receiving a verification for a designated property or a portion of one, to notify the DECD commissioner and program-eligible person whether she will audit it. The DEEP commissioner must conduct the audit within 180 days after the department receives the verification, with certain exceptions (see below). The bill (1) allows her to request more information during an audit and (2) suspends DEEP's 180-day audit time limit if an eligible person fails to provide this information within 14 days of the request, and until the information is provided.

Exceptions. In addition to the suspension described above, the DEEP commissioner can conduct a verification audit after the 180-day time limit has passed for other specified reasons, including if she:

1. has reason to believe an eligible person (a) obtained a verification using materially inaccurate, erroneous, or otherwise misleading

information or (b) made material misrepresentations in submitting the verification to DEEP; or

2. determines (a) there has been a violation of law that is material to the verification or (b) information exists indicating the property's remediation did not prevent releases that are a substantial threat to public health or the environment.

Additionally, the time limit does not apply if:

1. an eligible person fails to complete required post-verification monitoring and maintenance; or
2. the verification relies on an environmental land use restriction that was not recorded in the land records of the municipality in which the property is located.

Audit Process. The bill requires the DEEP commissioner, within 14 days after completing the audit, to provide written findings either approving or disapproving verification to the eligible person, DECD commissioner, and issuing LEP. A disapproval must include the reasons for the decision. Under the bill, an eligible person must submit a report of cure of noted deficiencies to the DECD and DEEP commissioners within 60 days after receiving a notice of disapproval. Within 60 days after receiving the cure of noted deficiencies report, the DEEP commissioner must issue a successful audit closure letter or a written disapproval of the report.

BROWNFIELD REMEDIATION AND REVITALIZATION PROGRAM

Nominations by CBLBs

By law, BRRP participants and properties are accepted by application or by approved nomination. Under current law, the DECD commissioner must accept nominations meeting certain criteria from municipalities and economic development agencies; the bill requires that he also accept them from CBLBs. The bill also makes conforming changes requiring that CBLBs be treated the same as municipalities and economic development agencies under the program.

SHORT-TERM LESSEES

Under current law, for an applicant to be eligible for consideration under the ABC program and BRRP (“eligible person”), he or she cannot be affiliated with the person responsible for the property's pollution through any contractual relationship, other than a relationship by which the owner's or applicant's interest in the eligible property is to be conveyed or financed. The bill expressly provides that a short-term lease (i.e., terms of five years or less) does not constitute a contractual relationship that would disqualify someone from being considered for participation in these programs.

BACKGROUND

Connecticut Brownfield Land Banks (CBLBs)

By law, local nonprofit organizations may be certified by DECD as CBLBs. CBLBs may acquire and remediate contaminated brownfields and sell them for redevelopment. To do so, CBLBs may access the same tools and incentives available to municipalities for remediating and redeveloping brownfields (CGS § 32-771).

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute

Yea 22 Nay 0 (03/22/2022)