File No. 482

Substitute House Bill No. 5430

House of Representatives, April 14, 1998. The Committee on Finance, Revenue and Bonding reported through REP. SCHIESSL, 60th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING BROWNFIELDS REMEDIATION AND RECYCLING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 1 of public act 97-109 is repealed and the following is substituted in lieu thereof:

[Any municipality may, by vote of its legislative body or, in a municipality where the legislative body is a town meeting, by vote of the board of selectmen, and by vote of its board of finance, and upon application of the owner of any eligible real property who agrees, in order to redevelop environmentally impacted sites, to conduct environmental site assessment, demolition, remediation or other clean-up of such property enter into an agreement to abate the property tax due, during the period of such redevelopment and remediation, as of the date of the agreement, but for not longer than seven years, provided such property meets the criteria established by such municipality to qualify for such abatement. Any such tax abatement shall be contingent upon the continuation of the redevelopment and remediation process with respect to the property for those purposes specified in the agreement creating such

23 abatement and such abatement shall cease upon the
24 sale or transfer of the property for any other
25 purpose unless the municipality shall have
26 consented thereto. Such a municipality may also
27 establish a recapture in the event of sale
28 provided such recapture shall not exceed the
29 original amount of taxes abated and may not go
30 back further than the date of the agreement.]
31 (a) ANY MUNICIPALITY MAY (1) ENTER INTO AN
32 AGREEMENT WITH THE OWNER OF ANY REAL PROPERTY TO
33 ABATE THE PROPERTY TAX DUE AS OF THE DATE OF THE
34 AGREEMENT FOR A PERIOD NOT TO EXCEED SEVEN YEARS
35 IF THE PROPERTY HAS BEEN SUBJECT TO A SPILL, AS
36 DEFINED IN SECTION 22a-452c, AND THE OWNER AGREES
37 TO CONDUCT ANY ENVIRONMENTAL SITE ASSESSMENT,
38 DEMOLITION AND REMEDIATION OF THE SPILL NECESSARY
39 TO REDEVELOP THE PROPERTY. ANY SUCH TAX ABATEMENT
40 SHALL ONLY BE FOR THE PERIOD OF REMEDIATION AND
41 REDEVELOPMENT AND SHALL BE CONTINGENT UPON THE
42 CONTINUATION OF THE REMEDIATION AND REDEVELOPMENT
43 PROCESS WITH RESPECT TO THE PURPOSES SPECIFIED IN
44 THE AGREEMENT. THE ABATEMENT SHALL CEASE UPON THE
45 SALE OR TRANSFER OF THE PROPERTY FOR ANY OTHER
46 PURPOSE UNLESS THE MUNICIPALITY CONSENTS TO ITS
47 CONTINUATION. THE MUNICIPALITY MAY ALSO ESTABLISH
48 A RECAPTURE PROVISION IN THE EVENT OF SALE
49 PROVIDED SUCH RECAPTURE SHALL NOT EXCEED THE
50 ORIGINAL AMOUNT OF TAXES ABATED AND MAY NOT GO
51 BACK FURTHER THAN THE DATE OF THE AGREEMENT; OR
52 (2) FORGIVE ALL OR A PORTION OF THE PRINCIPAL
53 BALANCE AND INTEREST DUE ON DELINQUENT PROPERTY
54 TAXES FOR THE BENEFIT OF ANY PERSON WHO HAS, OR
55 WILL OBTAIN, AN ENVIRONMENTAL INVESTIGATION OR
56 REMEDIATION PLAN APPROVED BY THE COMMISSIONER OF
57 ENVIRONMENTAL PROTECTION OR A LICENSED
58 ENVIRONMENTAL PROFESSIONAL UNDER SECTION 22a-133w,
59 22a-133x, AS AMENDED BY SECTION 5 OF THIS ACT, OR
60 22a-133y FOR ANY PROPERTY OR ESTABLISHMENT, AS
61 DEFINED IN SECTION 22a-134, AS AMENDED BY SECTION
62 3 OF THIS ACT, DEEMED BY THE MUNICIPALITY TO BE
63 UNDERUTILIZED, VACANT OR ABANDONED.
64 (b) ANY ABATEMENT OR FORGIVENESS OF TAXES
65 UNDER SUBSECTION (a) OF THIS SECTION SHALL BE
66 APPROVED BY VOTE OF THE BOARD OF FINANCE AND THE
67 LEGISLATIVE BODY OF THE MUNICIPALITY, OR BY VOTE
68 OF THE BOARD OF FINANCE AND THE BOARD OF SELECTMEN
69 IN A MUNICIPALITY WHERE THE LEGISLATIVE BODY IS A
70 TOWN MEETING.

71 (c) A MUNICIPALITY SHALL NOTIFY THE
72 COMMISSIONER OF ENVIRONMENTAL PROTECTION NOT LATER
73 THAN THIRTY DAYS AFTER GRANTING ANY ABATEMENT OR
74 FORGIVENESS OF TAXES UNDER SUBSECTION (a) OF THIS
75 SECTION. SUCH NOTICE SHALL PROVIDE THE OWNER OR
76 PURCHASER'S NAME, AS THE CASE MAY BE, AND THE
77 ADDRESS OF THE PROPERTY.
78 Sec. 2. (NEW) Any licensed environmental
79 professional employed or retained by a
80 municipality may enter, without liability, upon
81 any property within such municipality for the
82 purpose of performing an environmental site
83 assessment or investigation if: (1) The owner of
84 such property cannot be located; or (2) such
85 property is encumbered by a lien for taxes due
86 such municipality; or (3) upon designation of a
87 property as part of a redevelopment plan or
88 municipal development plan pursuant to chapter 130
89 or 132 of the general statutes; or (4) upon the
90 determination by an urban rehabilitation agency,
91 as defined in section 8-292 of the general
92 statutes, that a property is either "abandoned
93 property", as defined in section 8-291 of the
94 general statutes, or underutilized; or (5) upon a
95 determination by the chief executive officer of
96 any municipality that the property may present an
97 imminent and substantial endangerment to human
98 health or the environment, or may be a public
99 nuisance.
100 Sec. 3. Subdivision (1) of section 22a-134 of
101 the general statutes, as amended by section 1 of
102 public act 97-218, is repealed and the following
103 is substituted in lieu thereof:
104 (1) "Transfer of establishment" means any
105 transaction or proceeding through which an
106 establishment undergoes a change in ownership, but
107 does not mean (A) conveyance or extinguishment of
108 an easement, (B) conveyance of property through a
109 judicial foreclosure, (C) conveyance of a deed in
110 lieu of foreclosure to an institutional lender,
111 including, but not limited to, a banking
112 institution, (D) conveyance of a security interest
113 including, without limitation, a mortgage, (E)
114 renewal of a lease, (F) conveyance, assignment or
115 termination of a lease for a period less than
116 twenty-five years from the date of such
117 conveyance, assignment or termination, including
118 options or extensions of such period, (G) any

119 change in ownership approved by the Probate Court,
120 (H) conveyance of title to a surviving joint
121 tenant, or to a trustee, executor, or
122 administrator under the terms of a testamentary
123 trust or will, or by intestate succession, (I)
124 corporate reorganization not substantially
125 affecting the ownership of the establishment,
126 including, but not limited to, stock dividend
127 distributions or stock distributions in connection
128 with a merger, (J) the original issuance of stock
129 or other securities of an entity which owns or
130 operates an establishment, (K) the transfer of
131 stock, securities or other ownership interests
132 representing less than a majority of the voting
133 power of the entity that owns or operates the
134 establishment, (L) any conveyance of an interest
135 in an establishment where the transferor is the
136 sibling, spouse, child, parent, grandparent, child
137 of a sibling or sibling of a parent of the
138 transferee, (M) any conveyance of a portion of a
139 parcel upon which portion no establishment is or
140 has been located and upon which there has not
141 occurred a discharge, spillage, uncontrolled loss,
142 seepage or filtration of hazardous waste, provided
143 either the area of such portion is not greater
144 than fifty per cent of the area of such parcel or
145 written notice of such proposed conveyance and an
146 environmental condition assessment form for such
147 parcel is provided to the commissioner sixty days
148 prior to such conveyance, (N) conveyance of a
149 service station, as defined in subdivision (5) of
150 this section, [or] (O) any conveyance of a parcel
151 which, prior to July 1, 1997, had been developed
152 solely for residential use and such use has not
153 changed, OR (P) ANY CONVEYANCE OF A PARCEL TO ANY
154 ENTITY CREATED OR OPERATING UNDER CHAPTER 130 OR
155 132, OR TO AN URBAN REHABILITATION AGENCY, AS
156 DEFINED IN SECTION 8-292, OR TO A MUNICIPALITY
157 UNDER SECTION 32-225, OR TO THE CONNECTICUT
158 DEVELOPMENT AUTHORITY OR TO THE CONNECTICUT
159 BROWNFIELD DEVELOPMENT CORP., INC., ESTABLISHED
160 UNDER SECTION 9 OF THIS ACT.
161 Sec. 4. Section 22a-133m of the general
162 statutes is amended by adding subsections (h), (i)
163 and (j) as follows:
164 (NEW) (h) The Commissioner of Environmental
165 Protection and the Commissioner of Economic
166 Development shall jointly identify urban community

167 sites known to have, or suspected to have,
168 environmental contamination which, if remediated
169 and developed, will improve the urban environment.
170 The Commissioner of Environmental Protection and
171 the Commissioner of Economic and Community
172 Development shall jointly establish the priority
173 of such sites for evaluation and remediation based
174 upon the following factors: (1) The potential
175 benefits of remediation to the environment; (2)
176 the estimated cost of evaluating and remediating
177 the site, if known; (3) the potential benefits to
178 the local community of such site; (4) community
179 support for remediation and redevelopment of such
180 site; (5) the commitment from investors or the
181 municipality to redevelop the site; and (6) any
182 other factors which the commissioners deem
183 relevant. No real property shall be eligible for
184 evaluation and remediation under this subsection
185 unless: (A) The Commissioner of Environmental
186 Protection is unable to determine the responsible
187 party, or the responsible party is not in timely
188 compliance with orders issued by the commissioner
189 to provide remedial action, or the commissioner
190 has not issued a final decision on an order to a
191 responsible party to provide remedial action
192 because of a request for a hearing on an order or
193 an issued order is subject to an appeal pending
194 before a court; (B) the site is located in a
195 distressed municipality, as defined in section
196 32-9p, a targeted investment community, as defined
197 in section 32-222, or an enterprise corridor zone,
198 as defined in section 32-80, or in such other
199 municipality as the Commissioner of Economic and
200 Community Development may designate; and (C) the
201 site is not undergoing evaluation or remediation
202 under subsections (a) to (g), inclusive, of this
203 section.
204 (NEW) (i) As used in subsection (h) of this
205 section:
206 (1) "Urban community site" means property
207 that is abandoned, vacant or underutilized but is
208 suitable for development for community-oriented
209 uses including, but not limited to, commercial,
210 retail or medical establishments, small industrial
211 or manufacturing facilities, neighborhood services
212 or public uses including parks or open space; and
213 (2) "Responsible party" means any person, as
214 defined in section 22a-2, who created a source of

215 pollution on the site or an owner of the site
216 during the investigation or remediation funded
217 pursuant to this section provided an innocent
218 owner, as defined in section 22a-452, shall not be
219 deemed a responsible party for the purpose of this
220 subsection.
221 (NEW) (j) (1) There is established an urban
222 community sites remediation account which shall be
223 a separate nonlapsing account within the General
224 Fund. Such account may contain any moneys required
225 to be deposited into it by law. The Commissioners
226 of Economic and Community Development and
227 Environmental Protection shall jointly make grants
228 from such account as provided in this subsection.
229 (2) The Commissioner of Environmental
230 Protection and the Commissioner of Economic and
231 Community Development shall jointly decide if a
232 property is eligible for development pursuant to
233 subsection (a) or (h) of this section. No property
234 shall be deemed eligible under both subsections
235 (a) and (h) of this section. The Commissioner of
236 Environmental Protection, in consultation with the
237 Commissioner of Economic and Community
238 Development, shall provide grants, on such
239 conditions as said commissioners may require, to a
240 distressed municipality, as defined in section
241 32-9p, or a targeted investment community, as
242 defined in section 32-222, or to municipalities
243 that are part of enterprise corridor zones, as
244 defined in section 32-80, or to such other
245 municipalities as the Commissioner of Economic and
246 Community Development might designate, to develop
247 an inventory of abandoned, vacant or underutilized
248 sites with redevelopment potential. Such grants
249 shall be used to establish an inventory of urban
250 community sites and to evaluate such sites by: (A)
251 Collecting information on such sites within the
252 municipality, including information such as tax
253 status, land use, land area, demolition needs,
254 existing infrastructure and redevelopment
255 potential; (B) assessing environmental conditions
256 at such sites to develop cost estimates for
257 remedial measures; and (C) identifying those sites
258 with significant redevelopment potential within a
259 municipality.
260 Sec. 5. Subsection (a) of section 22a-133x of
261 the general statutes is repealed and the following
262 is substituted in lieu thereof:

263 (a) Except as provided in section 22a-133y, a
264 municipality, an owner of an establishment, [or]
265 an owner of property identified on the inventory
266 of hazardous waste disposal sites maintained
267 pursuant to section 22a-133c on October 1, 1995,
268 OR AN OWNER OF CONTAMINATED PROPERTY LOCATED IN AN
269 AREA FOR WHICH THE GROUNDWATER CLASSIFICATION IS
270 GA OR GAA, may, at any time, submit to the
271 commissioner an environmental condition assessment
272 form for such real property owned by such
273 municipality or such owner and an initial review
274 fee in accordance with subsection (e) of this
275 section. Within thirty days of his receipt of such
276 form, the commissioner shall notify the owner, in
277 writing, whether or not review and written
278 approval of any remedial action at such
279 establishment or property by the commissioner will
280 be required. The commissioner shall not process
281 any such form submitted pursuant to this section
282 unless such form is accompanied by the required
283 initial review fee. For the purposes of this
284 section, "municipality" means any of the one
285 hundred sixty-nine towns of the state.
286 Sec. 6. Section 22a-133aa of the general
287 statutes is repealed and the following is
288 substituted in lieu thereof:
289 (a) The Commissioner of Environmental
290 Protection may enter into a covenant not to sue
291 with any prospective purchaser OR OWNER of
292 contaminated real property provided (1) a detailed
293 written plan [has been submitted] for remediation
294 of the property, in accordance with standards
295 adopted by said commissioner pursuant to section
296 22a-133k, HAS BEEN APPROVED BY THE COMMISSIONER OF
297 ENVIRONMENTAL PROTECTION which plan shall be
298 incorporated by reference in the covenant, or (2)
299 the Commissioner of Environmental Protection has
300 approved a final remedial action report for such
301 property. No such covenant may be entered into
302 unless such purchaser OR OWNER has demonstrated to
303 the satisfaction of the commissioner that such
304 purchaser OR OWNER (A) did not establish or create
305 a facility or condition at or on such property
306 which reasonably can be expected to create a
307 source of pollution to the waters of the state for
308 purposes of section 22a-432 and has not maintained
309 any such facility or condition at such property
310 for purposes of said section, and such purchaser

311 is not responsible pursuant to any other provision
312 of the general statutes for any pollution or
313 source of pollution on the property; (B) is not
314 affiliated with any person responsible for such
315 pollution or source of pollution through any
316 direct or indirect familial relationship or any
317 contractual, corporate or financial relationship
318 other than that by which such purchaser's interest
319 in such property is to be conveyed or financed;
320 and (C) will redevelop the property for productive
321 use or continue productive use of such property
322 provided the commissioner determines that the
323 covenant not to sue is in the public interest.
324 Upon the request of a successor of an original
325 holder of a covenant issued under this section,
326 the commissioner shall enter into such covenant
327 with such successor if such successor certifies to
328 the satisfaction of the commissioner that such
329 successor complies with subparagraphs (A), (B) and
330 (C) of this subsection. The commissioner may enter
331 into a covenant not to sue with any lending
332 institution to whom a prospective purchaser of
333 contaminated real property conveys a security
334 interest in such property provided such
335 institution has demonstrated to the satisfaction
336 of the commissioner that such institution did not
337 establish or create a facility or condition at or
338 on such property which reasonably can be expected
339 to create a source of pollution to the waters of
340 the state for purposes of section 22a-432 and has
341 not maintained any such facility or condition at
342 such property for purposes of said section, and
343 such institution is not responsible pursuant to
344 any other provision of the general statutes for
345 any pollution or source of pollution on the
346 property. Any covenant issued to a lending
347 institution under this section shall be effective
348 with respect to any lending institution which is a
349 successor in interest to the original lending
350 institution provided such successor lending
351 institution did not establish or create a facility
352 or condition at or on such property which
353 reasonably can be expected to create a source of
354 pollution to the waters of the state for purposes
355 of section 22a-432 and has not maintained any such
356 facility or condition at such property for
357 purposes of said section, and such institution is
358 not responsible pursuant to any other provision of

359 the general statutes for any pollution or source
360 of pollution on the property.
361 (b) Any covenant entered into under this
362 section shall release only those claims said
363 commissioner may have which are related to
364 pollution or contamination on or emanating from
365 the property, which contamination resulted from a
366 RELEASE, discharge, spillage, uncontrolled loss,
367 seepage or filtration on such property prior to
368 the effective date of the covenant. Such covenant
369 shall provide that the commissioner will not take
370 any action against the holder of the covenant to
371 require remediation of the parcel or any other
372 action against such holder related to such
373 discharge, spillage, uncontrolled loss, seepage or
374 filtration unless (1) such property is not
375 remediated in accordance with the detailed written
376 plan [submitted to] APPROVED BY the commissioner
377 and incorporated by reference in such covenant,
378 (2) prior to completion of remediation in
379 accordance with such plan, the commissioner finds
380 that there is substantial noncompliance with such
381 plan and there has not been a good faith effort to
382 substantially comply therewith, (3) remediation of
383 the parcel in accordance with such plan did not
384 comply with standards adopted by the commissioner
385 pursuant to section 22a-133k which were in effect
386 as of the effective date of the covenant, or (4)
387 if required by the standards adopted by the
388 commissioner pursuant to section 22a-133k, an
389 environmental LAND use restriction has not been
390 recorded in accordance with section 22a-133o OR
391 THERE HAS BEEN A FAILURE TO COMPLY WITH THE
392 PROVISIONS OF SUCH A RESTRICTION.
393 (c) Any prospective purchaser OR OWNER
394 receiving a covenant not to sue pursuant to this
395 section shall pay to the commissioner a fee equal
396 to three per cent of the value of the property for
397 which the covenant was issued provided such
398 property is appraised as if it were
399 uncontaminated. Such fee shall be deposited into
400 the Special Contaminated Property Remediation and
401 Insurance Fund established under section 22a-133t.
402 No such fee shall be required for a covenant
403 issued to a successor in interest to the original
404 covenant or for a covenant issued in connection
405 with a remediation project conducted under section
406 22a-133m.

407 (d) A covenant not to sue issued under this
408 section may provide for continued monitoring in
409 accordance with the remediation standards adopted
410 under section 22a-133k, and, if further
411 remediation is necessary based upon the results of
412 such monitoring, that further action will be taken
413 to remediate the property in accordance with such
414 standards.
415 (e) A covenant not to sue issued under this
416 section shall not preclude the commissioner from
417 taking any appropriate action, including, but not
418 limited to, any action to require remediation of
419 the property, if he determines that the covenant
420 not to sue was based on information provided by
421 the person seeking the covenant which information
422 such person knew, or had reason to know, was false
423 or misleading.
424 Sec. 7. Section 22a-133bb of the general
425 statutes is repealed and the following is
426 substituted in lieu thereof:
427 (a) The Commissioner of Environmental
428 Protection [may] SHALL enter into a covenant not
429 to sue with any PROSPECTIVE PURCHASER OR owner of
430 contaminated real property provided (1) THE OWNER
431 OR PURCHASER CERTIFIES THAT THERE IS a detailed
432 written plan [has been submitted] for remediation
433 of the property, in accordance with standards
434 adopted by said commissioner pursuant to section
435 22a-133k, APPROVED BY THE COMMISSIONER OF
436 ENVIRONMENTAL PROTECTION, which plan shall be
437 incorporated by reference in the covenant, [or]
438 (2) the Commissioner of Environmental Protection
439 has approved a final remedial action report for
440 such property AND THE PERSON REQUESTING A COVENANT
441 CERTIFIES THAT THERE HAS BEEN NO RELEASE OR
442 DISCHARGE AFTER THE DATE OF SUCH APPROVAL, (3) A
443 DETAILED WRITTEN PLAN FOR REMEDIATION OF THE
444 PROPERTY IN ACCORDANCE WITH SUCH REGULATIONS HAS
445 BEEN APPROVED BY A LICENSED ENVIRONMENTAL
446 PROFESSIONAL, WHICH PLAN SHALL BE INCORPORATED BY
447 REFERENCE IN THE COVENANT, (4) A LICENSED
448 ENVIRONMENTAL PROFESSIONAL HAS VERIFIED, PURSUANT
449 TO SECTION 22a-133x, AS AMENDED BY SECTION 5 OF
450 THIS ACT OR 22a-134a, THAT THE PROPERTY HAS BEEN
451 REMEDIATED IN ACCORDANCE WITH SUCH STANDARDS AND
452 THE PERSON REQUESTING A COVENANT CERTIFIES THAT
453 THERE HAS BEEN NO RELEASE OR DISCHARGE AFTER THE
454 DATE OF SUCH APPROVAL, OR (5) A LICENSED

455 ENVIRONMENTAL PROFESSIONAL HAS APPROVED A FINAL
456 REMEDIAL ACTION REPORT PURSUANT TO SECTION
457 22a-133y AND THE PERSON REQUESTING A COVENANT
458 CERTIFIES THAT THERE HAS BEEN NO RELEASE OR
459 DISCHARGE AFTER THE DATE OF SUCH APPROVAL.
460 (b) No such covenant may be entered into
461 unless such owner [demonstrated to the
462 satisfaction of the commissioner that such owner
463 (A)] OR PURCHASER HAS CERTIFIED TO THE
464 COMMISSIONER THAT SUCH OWNER OR PURCHASER (1) did
465 not establish or create a facility or condition at
466 or on such property which reasonably can be
467 expected to create a source of pollution to the
468 waters of the state for purposes of section
469 22a-432; [(B)] (2) is not affiliated with any
470 person responsible for such pollution or source of
471 pollution through any direct or indirect familial
472 relationship or any contractual, corporate or
473 financial relationship other than [that] A
474 RELATIONSHIP by which such owner's interest in
475 such property is to be conveyed or financed; and
476 [(C)] (3) will redevelop the property for
477 productive use or continue productive use of such
478 property. [provided the covenant not to sue is in
479 the public interest.]
480 (c) The commissioner [may] SHALL enter into a
481 covenant not to sue with any lending institution
482 to whom such owner conveys a security interest in
483 such property provided such institution [has
484 demonstrated to the satisfaction of] HAS CERTIFIED
485 TO the commissioner that such institution did not
486 establish or create a facility or condition at or
487 on such property which reasonably can be expected
488 to create a source of pollution to the waters of
489 the state for purposes of section 22a-432 and has
490 not maintained any such facility or condition at
491 such property for purposes of said section, and
492 such institution is not responsible pursuant to
493 any other provision of the general statutes for
494 any pollution or source of pollution on the
495 property. Any covenant issued to a lending
496 institution under this section shall be effective
497 with respect to any lending institution which is a
498 successor in interest to the original lending
499 institution provided such successor lending
500 institution did not establish or create a facility
501 or condition at or on such property which
502 reasonably can be expected to create a source of

503 pollution to the waters of the state for purposes
504 of section 22a-432 and has not maintained any such
505 facility or condition at such property for
506 purposes of said section, and such institution is
507 not responsible pursuant to any other provision of
508 the general statutes for any pollution or source
509 of pollution on the property.
510 [(b)] (d) Any covenant entered into under
511 this section shall release [only those] ALL claims
512 said commissioner may have which are related to
513 THE REMEDIATION OF pollution or contamination on
514 or emanating from the property, which
515 contamination resulted from a RELEASE, discharge,
516 spillage, uncontrolled loss, seepage or filtration
517 on such property prior to the effective date of
518 the covenant. Such covenant shall provide that the
519 commissioner will not take any action to require
520 remediation of the parcel or any other action
521 related to such RELEASE, discharge, spillage,
522 uncontrolled loss, seepage or filtration unless
523 (1) such property is not remediated in accordance
524 with the detailed written plan submitted to the
525 commissioner and incorporated by reference in such
526 covenant, (2) prior to completion of remediation
527 in accordance with such plan, the commissioner
528 finds that there is substantial noncompliance with
529 such plan and there has not been a good faith
530 effort to substantially comply therewith, (3)
531 remediation of the property in accordance with
532 such plan did not comply with standards adopted by
533 the commissioner pursuant to section 22a-133k
534 which were in effect as of the [effective] date of
535 the covenant or (4) if required by the standards
536 adopted by the commissioner pursuant to section
537 22a-133k, an environmental use restriction has not
538 been recorded in accordance with section 22a-133o
539 OR IF THE PROVISIONS OF AN ENVIRONMENTAL LAND USE
540 RESTRICTION WERE NOT COMPLIED WITH.
541 [(c) Any person receiving a covenant not to
542 sue pursuant to this section shall pay to the
543 commissioner a review fee of five thousand dollars
544 which fee shall be deposited in the Special
545 Contaminated Property Remediation and Insurance
546 Fund established under section 22a-133t.
547 (d) A covenant not to sue issued under this
548 section may provide for continued monitoring in
549 accordance with such standards and, if further
550 remediation is necessary based upon the results of

551 such monitoring, that further action will be taken
552 to remediate the property in accordance with such
553 standards.]
554 (e) A covenant not to sue issued under this
555 section shall not preclude the commissioner from
556 taking any appropriate action, including, but not
557 limited to, any action to require remediation of
558 the property, if he determines that (1) the
559 covenant not to sue was based on information
560 provided by the person seeking the covenant which
561 information such person knew, or had reason to
562 know, was false or misleading, (2) new information
563 confirms the existence of previously unknown
564 contamination which resulted from a discharge,
565 spillage, uncontrolled loss, seepage or filtration
566 which occurred prior to the effective date of the
567 covenant, or (3) the threat to human health or the
568 environment is increased beyond an acceptable
569 level due to substantial changes in exposure
570 conditions at such property, including, but not
571 limited to, a change from nonresidential to
572 residential use of such property.
573 (f) THE COMMISSIONER SHALL ISSUE THE COVENANT
574 NOT LATER THAN FORTY-FIVE DAYS AFTER THE DATE HE
575 RECEIVES THE CERTIFICATIONS AND ALL OTHER
576 DOCUMENTS REQUIRED UNDER THIS SECTION.
577 Sec. 8. (NEW) (a) (1) A lender who holds
578 indicia of ownership primarily to protect a
579 security interest in a property, business
580 including its tangible and intangible assets or
581 establishment, as defined in section 22a-134 of
582 the general statutes, as amended by section 3 of
583 this act and does not participate in the
584 management of such property, business or
585 establishment, shall not be liable for any
586 damages, assessment, fine or other costs imposed
587 by the state for the containment, removal or
588 mitigation of such a spill or discharge, or for
589 any order of the commissioner to abate or
590 remediate such spill or discharge from, or in
591 connection with a property, business or
592 establishment.
593 (2) A lender who did not participate in
594 management of a property, business or
595 establishment, but acquires right, title or
596 interest in a property, business, including its
597 tangible or intangible assets, or establishment by
598 foreclosure, shall not be liable for any damage,

599 assessment, fine or other costs imposed by the
600 state for the containment, removal or mitigation
601 of such a spill or discharge, or for any order of
602 the commissioner to abate or remediate such spill
603 or discharge provided such lender seeks to sell,
604 re-lease, in the case of a lease finance
605 transaction, or otherwise divest itself of the
606 property, business or establishment at the
607 earliest practicable, commercially reasonable
608 time, on commercially reasonable terms, taking
609 into account market conditions and legal and
610 regulatory requirements, after the foreclosure. A
611 lender who has acquired right, title or interest
612 in a business, including its tangible or
613 intangible assets, or establishment by
614 foreclosure, shall not be liable for any damages,
615 assessment, fine or other costs imposed by the
616 state for the containment, removal or mitigation
617 of such a spill or discharge, or for any order of
618 the commissioner to abate or remediate such spill
619 or discharge, if it (A) sells, re-leases in the
620 case of a lease finance transaction, or liquidates
621 the property, business, including its tangible and
622 intangible assets or establishment, (B) maintains
623 business activities, (C) winds up operations, (D)
624 undertakes an attempt to contain, remove or
625 otherwise mitigate a discharge or spill, (E) takes
626 any other measure to preserve, protect or prepare
627 the property, business or establishment prior to
628 sale or disposition, or (F) declines to take any
629 of the actions listed in subparagraphs (A) to (E),
630 inclusive, of this subdivision.
631 (b) For the purposes of this section:
632 (1) "Participate in management" means
633 actually taking part in the management or
634 operational affairs of a vessel or facility, but
635 does not mean merely having the capacity to
636 influence or the unexercised right to control the
637 property, business or establishment operations. A
638 lender holding indicia of ownership primarily to
639 protect a security interest in a property,
640 business or establishment shall be considered to
641 participate in management only if, while the
642 borrower is still in possession of the property,
643 business or establishment encumbered by the
644 security interest, the lender exercises
645 decision-making control over the borrower's
646 environmental compliance activities such that (A)

647 the lender has undertaken responsibility for the
648 hazardous substance handling or disposal practices
649 related to the property, business or
650 establishment, or (B) the lender exercises control
651 at a level comparable to that of a property,
652 business or establishment manager to the point
653 where the lender has assumed or manifested
654 responsibility for the overall management
655 encompassing day-by-day decision-making with
656 respect to environmental compliance or decision
657 making over all or substantially all of the
658 operational functions, as distinguished from
659 financial or administrative functions, of the
660 property, business or establishment other than the
661 function of compliance with environmental
662 protection laws. "Participate in management" does
663 not mean: (i) Performing an act or failing to act
664 prior to the time at which a security interest is
665 created in a vessel or facility; (ii) holding such
666 a security interest or abandoning or releasing
667 such a security interest; (iii) including in the
668 terms of an extension of credit, or in a contract
669 or security agreement relating to the extension, a
670 covenant, warranty or other term or condition that
671 relates to compliance with environmental
672 protection laws; (iv) monitoring or enforcing the
673 terms and conditions of the extension of credit or
674 security interest; (v) monitoring or undertaking
675 one or more inspections of the property, business
676 or establishment; (vi) requiring a response action
677 or other lawful means of containing, removing or
678 attempting to mitigate a discharge or spill prior
679 to, during or on the expiration of the term of the
680 extension of credit; (vii) providing financial or
681 other advice or counseling in an effort to
682 mitigate, prevent or cure default or diminution in
683 the value of the vessel or facility; (viii)
684 restructuring, renegotiating or otherwise agreeing
685 to alter the terms and conditions of the extension
686 of credit or security interest; (ix) exercising
687 forbearance; (x) exercising other remedies that
688 may be available under applicable law for the
689 breach of a term or condition of the extension of
690 credit or security agreement; or (xi) containing,
691 removing or otherwise mitigating a spill or
692 discharge;
693 (2) "Extension of credit" means a lease
694 finance transaction in which the lessor does not

695 initially select the leased property, business,
696 including tangible and intangible assets, or
697 establishment and does not during the lease term
698 control the daily operations or maintenance of the
699 property, business or establishment, or the lease
700 or finance transaction provided such transaction
701 conforms to regulations issued by the federal
702 banking agency or the state bank supervisor, as
703 those terms are defined in the Federal Deposit
704 Insurance Act (12 USC 1813), or in regulations
705 issued by the National Credit Union Administration
706 Board;
707 (3) "Financial or administrative function"
708 means a function of a credit management officer,
709 accounts payable officer, accounts receivable
710 officer, personnel manager, comptroller or chief
711 financial officer or similar function;
712 (4) "Foreclosure" and "foreclose" means,
713 respectively, acquiring, and to acquire, a vessel
714 or facility through (A) purchase at sale under a
715 judgment or decree, a power of sale, a nonjudicial
716 foreclosure sale, a deed in lieu of foreclosure,
717 or similar conveyance from a trustee, or
718 repossession, if the property, business, including
719 its tangible and intangible assets, or
720 establishment was security for an extension of
721 credit previously contracted, including the
722 termination of a lease agreement, or (B) any other
723 formal or informal manner by which a lender
724 acquires, for subsequent disposition, title to or
725 possession of a property, business, including its
726 tangible and intangible assets, or facility in
727 order to protect its security interest;
728 (5) "Lender" means (A) an insured depository
729 institution, as defined in Section 3 of the
730 Federal Deposit Insurance Act (12 USC 1813); (B)
731 an insured credit union, as defined in Section 101
732 of the Federal Credit Union Act (12 USC 1752); (C)
733 a bank or association chartered under the Farm
734 Credit Act of 1971 (12 USC 2001 et seq.); (D) a
735 leasing or trust company that is an affiliate of
736 an insured depository institution; (E) any person,
737 including a successor or assignee of any such
738 person, that makes a bona fide extension of credit
739 to, or takes or acquires a security interest from,
740 a nonaffiliated person; (F) the Federal National
741 Mortgage Association, the Federal Home Loan
742 Mortgage Corporation, the Federal Agricultural

743 Mortgage Corporation, or any other person or
744 entity that in a bona fide manner makes, buys or
745 sells loans or interests in loans; (G) a person
746 who insures or guarantees against a default in the
747 repayment of an extension of credit or acts as a
748 surety with respect to an extension of credit to a
749 nonaffiliated person; and (H) any person who
750 provides title or other insurance and who acquires
751 a vessel or facility as a result of assignment or
752 conveyance in the course of underwriting claims
753 and claims settlement;
754 (6) "Operational function" means a facility
755 or plant manager, operations manager, chief
756 operating officer or chief executive officer; and
757 (7) "Security interest" means a right under a
758 mortgage, deed of trust, assignment, judgment
759 lien, pledge, security agreement, factoring
760 agreement or lease and any other right accruing to
761 a person to secure the repayment of money, the
762 performance of a duty or any other obligation by a
763 nonaffiliated person.
764 Sec. 9. (NEW) (a) There is hereby created a
765 body politic and corporate to be known as
766 "Connecticut Brownfield Development Corp., Inc."
767 Such corporation is constituted a public
768 instrumentality and political subdivision of the
769 state and the exercise by the corporation of the
770 power conferred in this section and sections 10 to
771 13, inclusive, of this act shall be deemed to be
772 the performance of an essential public and
773 governmental function. The corporation shall not
774 be construed to be a department, institution or
775 agency of the state.
776 (b) The corporation shall be governed by a
777 board of fifteen directors. The Commissioner of
778 Economic and Community Development, the chairman
779 of the Connecticut Development Authority, the
780 State Treasurer, the Attorney General, the
781 Commissioner of Environmental Protection, the
782 chairpersons of the joint standing committee of
783 the General Assembly having cognizance of matters
784 relating to commerce and the Secretary of the
785 Office of Policy and Management, or the designee
786 of any such official, shall be directors. The
787 majority leaders and minority leaders of the House
788 of Representatives and the Senate shall each
789 appoint a director who shall be an economic
790 development director of a municipality. The

791 Governor shall appoint three directors, one of
792 whom shall be an attorney, one of whom shall be
793 employed in the field of real estate finance and
794 one of whom shall be employed in the field of real
795 estate development. The Governor shall appoint an
796 additional nonvoting director who shall have
797 experience in the field of redevelopment of, or
798 financing for the redevelopment of,
799 environmentally contaminated urban real property.
800 Each member appointed by the Governor shall serve
801 at the pleasure of the Governor but no longer than
802 the term of office of the Governor or until the
803 director's successor is appointed and has
804 qualified, whichever is longer. Each director
805 appointed by a member of the General Assembly
806 shall serve in accordance with the provisions of
807 section 4-1a of the general statutes. A director
808 shall be eligible for reappointment. The Governor
809 shall fill any vacancy for the unexpired term of a
810 director appointed by the Governor. The
811 legislative appointing authority shall fill any
812 vacancy for the unexpired term of a member
813 appointed by such authority.
814 (c) The chairperson of the board shall be a
815 director appointed by the Governor, with the
816 advice and consent of both houses of the General
817 Assembly. The directors shall annually elect one
818 of the directors as secretary. The board may elect
819 such other officers of the board as it deems
820 proper. Directors shall receive no compensation
821 for the performance of their duties but shall be
822 reimbursed for necessary expenses incurred in such
823 performance.
824 (d) Each director of the corporation before
825 entering upon his duties shall take and subscribe
826 the oath or affirmation required by article
827 eleventh, section 1 of the Constitution of the
828 State of Connecticut. A record of each such oath
829 or affirmation shall be filed in the Office of the
830 Secretary of the State. The board of directors of
831 the corporation shall adopt written procedures, in
832 accordance with the provisions of section 1-121 of
833 the general statutes, for: (1) Adopting an annual
834 budget and plan of operations, including a
835 requirement of board approval before the budget
836 may take effect; (2) hiring, dismissing, promoting
837 and compensating employees of the corporation
838 including an affirmative action policy and a

839 requirement of board approval before a position
840 may be created or a vacancy filled; (3)
841 purchasing, leasing or acquiring real and personal
842 property and personal services, including a
843 requirement of board approval for any nonbudgeted
844 expenditure in excess of five thousand dollars;
845 (4) contracting for financial, legal, bond
846 underwriting and other professional services,
847 including a requirement that the corporation
848 solicit proposals at least once every three years
849 for each such service which it uses; (5) awarding
850 loans, grants and other financial assistance,
851 including eligibility criteria, the application
852 process and the role played by the corporation's
853 staff and board of directors; and (6) the use of
854 surplus funds to the extent authorized under
855 sections 9 to 13, inclusive, of this act, or other
856 provisions of the general statutes.
857 (e) It shall not constitute a conflict of
858 interest for a trustee, director, partner or
859 officer of any person, firm or corporation, or any
860 individual having a financial interest in a
861 person, firm or corporation, to serve as a member
862 of said board of directors, provided such trustee,
863 directors, partner, officer or individual shall
864 abstain from deliberation, action or vote in
865 matters relating to such person, firm or
866 corporation.
867 (f) The corporation shall have the authority
868 to contract with the Connecticut Development
869 Authority for administrative or other services.
870 Sec. 10. (NEW) The corporation shall have
871 perpetual succession and shall adopt, amend and
872 repeal bylaws for the conduct of its affairs. Such
873 succession shall continue until the existence of
874 the corporation is terminated by law, provided no
875 such termination shall affect any outstanding
876 contractual obligation of the corporation to
877 assist any person and the state shall succeed to
878 the obligations of the corporation under such
879 contract. Upon termination of the corporation, its
880 rights and properties shall pass to and be vested
881 in the state.
882 Sec. 11. (NEW) (a) The powers of the
883 corporation shall be vested in and exercised by
884 the board of directors. Eight members of the board
885 shall constitute a quorum and the affirmative vote
886 of a majority of the members present at a meeting

887 of the board shall be necessary and sufficient for
888 any action taken by the board. No vacancy in the
889 membership of the board shall impair the right of
890 a quorum to exercise all the rights and perform
891 all the duties of the board. Any action taken by
892 the board may be authorized by resolution at any
893 regular or special meeting and shall take effect
894 immediately unless otherwise provided in the
895 resolution. Notice of any regular meeting shall be
896 given in writing, by telephone or orally, not less
897 than forty-eight hours prior to the meeting.
898 Notice of any special meeting shall be given in
899 accordance with subsection (a) of section 1-121 of
900 the general statutes.
901 (b) The board may delegate to three or more
902 of its members such board powers and duties as it
903 may deem proper. At least one of such members
904 shall not be a state employee. The board shall
905 establish such committees, subcommittees or other
906 entities as it deems necessary to further the
907 purposes of the corporation including, but not
908 limited to, a finance committee and one or more
909 technical peer review committees.
910 Sec. 12. (NEW) The board shall appoint an
911 executive director of the corporation who shall
912 not be a member of the board and who shall serve
913 at the pleasure of the board and shall receive
914 such compensation as shall be determined by the
915 board. The executive director shall be the chief
916 administrative and operational officer of the
917 corporation and shall direct and supervise
918 administrative affairs and the general management
919 of the corporation. The executive director may
920 employ such employees as shall be designated by
921 the board of directors; shall attend all meetings
922 of the board; shall keep a record of all
923 proceedings; and maintain and be custodian of all
924 books, documents and papers filed with the
925 corporation and of the minutes book of the
926 corporation to the effect that such copies are
927 true copies, and that all persons dealing with the
928 corporation may rely upon such books, documents
929 and papers. The executive director or his designee
930 may serve as a member of such other boards or
931 committees as may be necessary or desirable to
932 carry out the purposes of the corporation.
933 Sec. 13. (NEW) The purposes of the
934 corporation shall be to stimulate and encourage

935 the development and financing of environmentally
936 contaminated real property within this state and
937 to provide financial, development and
938 environmental remediation expertise to others,
939 including municipalities, interested in or
940 undertaking such financing or development, and for
941 these purposes the corporation shall have the
942 following powers:
943 (1) To have perpetual succession as a body
944 corporate and to adopt bylaws, policies and
945 procedures for the regulation of its affairs and
946 conduct of its businesses;
947 (2) To enter into agreements with persons
948 upon such terms and conditions as are consistent
949 with the purposes of the corporation, to acquire
950 or facilitate development of environmentally
951 contaminated real property;
952 (3) To solicit, receive and accept aid,
953 grants or contributions from any source of money,
954 property or labor or other things of value, to be
955 held, used and applied to carry out the purposes
956 of sections 9 to 13, inclusive, of this act,
957 subject to the conditions upon which such grants
958 and contributions may be made, including but not
959 limited to, gifts, grants or loans, from any
960 department or agency of the United States or the
961 state;
962 (4) To invest in, acquire, lease, purchase,
963 package, own, manage, hold and dispose of real
964 property and lease, convey or deal in or enter in
965 agreements with respect to such property on any
966 terms necessary or incidental to the carrying out
967 of these purposes;
968 (5) To undertake debt or equity financing in
969 order to carry out the purposes of this section,
970 including, but not limited to, issuing bonds,
971 securities, equity interests and other obligations
972 necessary or incident to the corporation's
973 purposes or creating such trusts or corporate
974 entities as may be necessary to issue bonds,
975 securities, equity interests or other obligations;
976 (6) To employ such assistants, agents and
977 other employees as may be necessary or desirable,
978 which employees shall be exempt from the
979 classified service and shall not be employees, as
980 defined in subsection (b) of section 5-270 of the
981 general statutes; establish all necessary or
982 appropriate personnel practices and policies,

983 including those relating to hiring, promotion,
984 compensation, retirement and collective
985 bargaining, which need not be in accordance with
986 chapter 68 of the general statutes provided the
987 corporation shall not be an employer, as defined
988 in subsection (a) of section 5-270 of the general
989 statutes, and engage consultants, attorneys and
990 appraisers as may be necessary or desirable to
991 carry out its purposes in accordance with sections
992 9 to 13, inclusive, of this act;
993 (7) To make and enter into all contracts and
994 agreements necessary or incidental to the
995 performance of its duties and the execution of its
996 powers under sections 9 to 13, inclusive, of this
997 act;
998 (8) To sue and be sued, plead and be
999 impleaded, adopt a seal and alter the same at
1000 pleasure;
1001 (9) With the approval of the State Treasurer,
1002 to invest any funds not needed for immediate use
1003 or disbursement, including any funds held in
1004 reserve, in obligations issued or guaranteed by
1005 the United States of America or the state of
1006 Connecticut and in other obligations which are
1007 legal investments for retirement funds in this
1008 state;
1009 (10) To procure insurance against any loss in
1010 such amounts and from such insurers as it deems
1011 desirable;
1012 (11) To the extent permitted under its
1013 contract with other persons, to consent to any
1014 termination, modification, forgiveness or other
1015 change or any term of any contractual right,
1016 payment, royalty, contract or agreement of any
1017 kind to which the corporation is a party;
1018 (12) To do anything necessary and convenient
1019 to render any bonds or obligations issued by the
1020 corporation, or to advance the corporation's
1021 purposes, more marketable;
1022 (13) To acquire, lease, purchase, own,
1023 manage, hold and dispose of personal property and
1024 lease, convey or deal in or enter into agreements
1025 with respect to such property on any terms
1026 necessary or incidental to the carrying out of
1027 these purposes;
1028 (14) In connection with any technical
1029 assistance or other services provided under
1030 sections 9 to 13, inclusive, of this act, to make

1031 and collect such fees as the corporation shall
1032 determine to be reasonable;
1033 (15) To create corporations or real estate
1034 investment trusts or similar entities or to enter
1035 into limited partnerships or other contractual
1036 arrangements with private and public sector
1037 entities as the corporation deems necessary to
1038 develop environmentally contaminated real property
1039 in the state. Such development shall be structured
1040 in such manner as the corporation deems will best
1041 encourage private sector participation. The board
1042 of directors, executive director, officers and
1043 staff of the corporation may serve as members of
1044 any advisory or other board which may be
1045 established to carry out the purposes of this
1046 section;
1047 (16) To account for and audit funds of the
1048 corporation and funds of any recipients of
1049 financial aid from the corporation;
1050 (17) To maintain an inventory of data and
1051 information concerning state and federal programs
1052 which are related to the purposes of sections 9 to
1053 13, inclusive, of this act and to serve as a
1054 clearinghouse and referral service for such data
1055 and information;
1056 (18) To conduct and encourage research and
1057 studies relating to development of environmentally
1058 contaminated real property;
1059 (19) To provide technical or other assistance
1060 and, within available resources, to provide
1061 financial aid to municipalities;
1062 (20) To promote and encourage the
1063 coordination of public and private resources and
1064 activities within the state in order to assist
1065 development of environmentally contaminated real
1066 property; and
1067 (21) To do all acts and things necessary and
1068 convenient to carry out the purposes of this
1069 section.
1070 Sec. 14. The Connecticut Development
1071 Authority shall conduct a study of the feasibility
1072 of using tax incremental financing for the Steel
1073 Point development project in Bridgeport and shall
1074 report any findings or recommendations resulting
1075 from such study to the joint standing committee of
1076 the General Assembly having cognizance of matters
1077 relating to finance, revenue and bonding on or
1078 before April 21, 1998.

1079 Sec. 15. In codifying the provisions of this
1080 act, the Legislative Commissioners shall delete
1081 the reference to subsection (c) of section
1082 22a-133bb which appears in section 22a-133u of the
1083 general statutes.

1084 CE COMMITTEE VOTE: YEA 26 NAY 0 JFS C/R ENV
1085 ENV COMMITTEE VOTE: YEA 23 NAY 0 JF C/R FIN
1086 FIN COMMITTEE VOTE: YEA 45 NAY 0 JFS

* * * * *

"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

* * * * *

FISCAL IMPACT STATEMENT - BILL NUMBER sHB 5430

STATE IMPACT	Yes, see explanation below
MUNICIPAL IMPACT	Potential Future Grand List Expansion, see explanation below
STATE AGENCY(S)	Departments of Environmental Protection, Economic and Community Development, Connecticut Development Authority, Various

EXPLANATION OF ESTIMATES:

STATE AND MUNICIPAL IMPACT: Creation of a new quasi-public agency, the Connecticut Brownfields Development Corporation (CBDC) is estimated to cost $500,000. Costs include funding for an Executive Director, CBDC personnel, associated other expenses including data processing costs, equipment and necessary expenses of the CBDC board. The personnel is needed to issue bonds and develop real estate trusts, provide financial, development and environmental remediation expertise. No funds are provided for these purposes. In addition, the bill gives the CBDC board power to issue bonds and create real estate investment trusts. It is not clear under what circumstances and for what amounts of funds, bonds or trusts will be issued or developed. Therefore, the fiscal impact of these provisions is indeterminate.

It is anticipated that membership on the 15-member CBDC governing board by the Commissioner of the Departments of Economic and Community Development, Environmental Protection, the State Treasurer, the Connecticut Development Authority chairman, the Attorney General, the Secretary of the Office of Policy and Management,

legislative members and municipal members can be handled within existing resources.

Requiring the Department of Environmental Protection (DEP) and the Department of Economic and Community Development (DECD) to identify contaminated sites that benefit the community (current law requires them to identify sites that benefit the state) can be handled within existing resources of both agencies.

Although the bill authorizes grants to towns for "urban community sites" to be paid from a new account established in the bill, no funds are provided to capitalize the account.

The bill also allows towns to forgive all or part of delinquent property taxes on contaminated properties and properties they cite as underutilized, vacant or abandoned if approved by the governing body of the town. It is assumed that a municipality would choose to forgive all or a portion of delinquent property taxes and interest due on back taxes on these properties only where it would ultimately result in a grand list expansion.

Exempting property conveyed to municipal and state agencies from the Hazardous Waste Transfer Act (Transfer Act) is minimally anticipated to reduce fees to DEP and potentially reduce minimal costs to municipalities and other entities. It should be noted that if properties had been foreclosed on, they would be exempt anyway.

The bill expands the voluntary site remediation program to include contaminated properties located in an area for which the ground water classification is GA or GAA. It is anticipated that any increase in the workload of DEP will be offset by fees ($2,000 filing fee) already established.

Changes made in the covenants not to sue (CNT) provisions, requiring, rather than allowing DEP to enter into non-transferable covenants with eligible parties, eliminating requiring continuous monitoring and changes in approval, could increase the state's liability. The exact impact is indeterminate. The expansion of the CNT program will increase the workload to the DEP. The transferable CNT's will still require

the payment of a fee into the Special Contaminated Property Remediation and Insurance Fund (SCPRIF), enabling DEP to cover their costs. However, the non-transferable covenants $5,000 fee is eliminated. These funds are also paid into the SCPRIF to cover the administrative costs to DEP. The number of the CNT's which will be issued is not known. The SCPRIF is used for administrative costs, various remediation costs, loans for site assessments, investigation of property and demolition costs. Currently, there is approximately a $162,000 balance due to fee collections and $1 million of a $5 million bond authorization has been allocated, but not yet allotted to the Fund.

Provisions in the bill expanding lender liability protection are not anticipated to have a state or municipal fiscal impact.

In addition, since the determination by the Connecticut Development Authority (CDA) on the feasibility of using tax incremental financing to fund Bridgeport's Steel Point project must be made by April 21, 1998 and this bill does not take effect until October 1, 1998, no impact is anticipated to CDA.

* * * * *

OLR BILL ANALYSIS

sHB 5430

AN ACT CONCERNING BROWNFIELDS REMEDIATION AND RECYCLING

SUMMARY: This bill creates the Connecticut Brownfields Development Corporation (CBDC) as a quasi-public agency to help redevelop environmentally contaminated properties. CBDC can do this by issuing bonds and creating real estate investment trusts. The bill specifies its other powers and duties and creates a 15-member governing board consisting of state officials, local economic development directors, and private citizens with real estate backgrounds. The bill requires the governor and legislative leaders to appoint the private citizens and economic development directors, respectively.

The bill expands municipal powers with respect to contaminated properties. It sets conditions under which

towns can forgive delinquent property taxes on contaminated properties that are being remediated and redeveloped. The towns must notify the Department of Environmental Protection (DEP) commissioner about these properties and those receiving tax abatements already authorized by law. The bill also allows towns to hire licensed environmental professionals (LEPs) to investigate contaminated properties meeting specified criteria. It exempts any property conveyed to municipal and state agencies from the Hazardous Waste Transfer Act (Transfer Act).

The bill requires the DEP and Department of Economic and Community Development (DECD) commissioners to identify contaminated sites whose remediation will benefit the community and specifies the criteria they must use. The law already requires them to identify sites whose remediation will benefit the state. The commissioners cannot include these sites among those listed under the bill.

The bill authorizes grants to towns for listing contaminated sites but appropriates no funds for them. The sites must be underutilized, vacant, or abandoned, and towns must identify those that can most likely be redeveloped.

Under current law DEP may issue two types of covenants not to sue (CNTS): (1) a nontransferable covenant to owners and (2) a transferable covenant to prospective purchasers. The bill makes an owner or prospective purchaser eligible for either a transferable or nontransferable CNTS, and it requires rather than allows DEP to enter into non-transferable covenants with eligible parties. With regard to nontransferable CNTSs it (1) allows the covenants to be based on an LEP's approval or verification of the site remediation, (2) eliminates the DEP's authority to require continuing site monitoring as a covenant condition, (3) eliminates the $5,000 application fee, and (4) requires the DEP to enter into the covenant within 45 days after the application is complete. It adds releases of pollution or contaminants to the liability protection and makes other minor changes to both types of covenants.

The bill expands the lender liability protection by exempting lenders holding a (1) security interest or

(2) right, title, or other interest by foreclosure, from damages, assessments, fines, or other costs imposed by the state related to remediation under certain circumstances.

The bill expands the voluntary site remediation program to allow owners of sites located over present or future drinking water supplies to apply to DEP for approval to remediate with DEP oversight or under the authority of an LEP.

The bill requires the Connecticut Development Authority (CDA) to determine the feasibility of using tax increment financing (TIF) to fund Bridgeport's Steel Point development project. TIF dedicates the extra tax revenues a project generates to pay off the bonds that were sold to finance it. CDA must report its findings to the Finance, Revenue and Bonding Committee by April 21, 1998 (see COMMENT).

It also makes technical changes.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Connecticut Brownfields Development Corporation, Inc.

Corporate Status. The bill creates the CBDC as a quasi-public agency to help develop environmentally contaminated properties. CBDC has perpetual succession until the legislature terminates it, after which the state must assume CBDC's outstanding contractual obligations and its rights and property. CBDC powers are vested in and exercised by its board, which can adopt, amend, and repeal bylaws.

Board. The board's 15 members consist of state and local officials and private citizens with real estate backgrounds. The governor must appoint the chairman from its members, subject to the legislature's approval. The board must annually elect its secretary and may elect other officers at its discretion. The members serve without compensation but must be reimbursed for necessary expenses. They cannot participate in any discussion or vote on any issue that affects a person, firm, or corporation in which they have a financial interest. They must swear an oath

supporting the U.S. and Connecticut constitutions.

The bill appoints the following state officials or their designees to the board: the DECD and DEP commissioners, the CDA chairman, the state treasurer, the attorney general, the co-chairmen of the Commerce Committee, and the secretary of the Office of Policy and Management.

The governor and legislative leaders appoint the other members. The governor appoints three members, one of whom must be an attorney, one employed in real estate finance, and one in real estate development. He must also appoint a nonvoting member with experience in redeveloping contaminated urban sites. Their terms are the same as his and they serve at his pleasure or until their successors have been named. He must fill any vacancy in these positions for the unexpired term.

The House and Senate majority and minority leaders each must appoint a municipal economic development director. The appropriate leader must fill any vacancy in these positions for the unexpired term.

Eight members constitute a quorum and a majority vote of members present at a meeting is needed to approve an action. A vacancy does not prevent a quorum from acting. The board can act by adopting a resolution at any regular or special meeting, and the resolution can take effect immediately unless it provides otherwise. CBDC must give members at least 48-hour written or verbal notice of a regular meeting. It must notify them about special meetings the same way the law requires quasi-public agencies to notify the public about their intent to adopt written procedures.

The board can delegate its powers and duties to three or more members, all but one of whom can be a state employee. It can create committees, subcommittees, and other entities to conduct its business, including a finance committee and several technical peer review committees.

Executive Director. The board must appoint an executive director from outside the board and determine his compensation. He must oversee CBDC's administrative affairs and general management. He or his designee can serve on the CBDC's boards or committees. He may hire

people the board approves. He must attend all board meetings, record all proceedings, and maintain all of the CBDC's documents.

Written Procedures. The board must adopt written procedures governing CBDC's operations. The procedures must specify the process for adopting an annual budget and operations plan, and require the board's approval before the budget can take effect. They must limit the use of surplus funds only for those activities the bill authorizes.

The procedures must specify the process for hiring, dismissing, promoting, and compensating employees. They must require the board's approval for creating new positions and filling vacant ones. The procedures must include an affirmative action policy.

The procedures must cover procurement matters. They must specify the process for purchasing property and personal services, and require the board's approval for any unbudgeted expenditure over $5,000. They must also specify the process contracting for legal, bond underwriting, and other professional services, and require the board to solicit proposals for these services at least once every three years. CBDC can contract with CDA for administrative and other services.

Lastly, the procedures must specify the process for awarding financial assistance, application requirements, and funding criteria. They must also delineate the respective roles of the board and the staff in that process.

Powers. The bill specifies the CBDC's powers, many of which are similar to those of other quasi-public agencies. These include the power to issue bonds and other debt; acquire and dispose of real and personal property; have perpetual succession as a body corporate; and adopt bylaws, policies, and procedures.

The other powers are peculiar to CBDC. CBDC can create trusts and other corporate entities to issue bonds and other debt, acquire environmentally sensitive properties, and create or collaborate with other entities to redevelop them. It may specifically create corporations or real estate investment trusts or

similar entities and form limited partnerships or enter into other contractual arrangements with public and private entities. CBDC must structure these agreements in a way that will encourage private participation.

CBDC can collect and disseminate information on state and federal remediation and redevelopment programs, conduct research on redevelopment methods, and provide technical and financial assistance to municipalities.

Property Tax Incentives

The bill allows towns to forgive delinquent property taxes on contaminated properties and those they cite as being underutilized, vacant, or abandoned. The towns can forgive all or a portion of the principal and interest due on the back taxes if someone has or will (1) investigate the property or (2) obtain a plan to remediate it that was approved by the DEP commissioner or an LEP. This tax forgiveness must first be approved by the town's legislative body, or, in a town where the legislative body is a town meeting, the board of selectmen, and also by the board of finance.

The bill changes some of the conditions under which towns can abate taxes on contaminated properties that are being remediated and redeveloped. Current law requires them to specify the criteria a property has to meet. The bill drops this requirement and allows them to abate the taxes on any property where there has been a discharge, spill, uncontrolled loss, seepage, or filtration of oil, petroleum, or chemical liquids, or solid, liquid, or gaseous products or hazardous wastes.

The bill requires towns to notify the DEP commissioner within 30 days after forgiving or abating the taxes on a property. They must state the owner or purchaser's name and the property's address.

Municipal Inspection Powers

The bill allows towns to hire licensed LEPs to investigate certain properties or perform environmental site assessments on them. A town can do this if it cannot find a property's owner, placed a tax lien on the property, or designated it in a redevelopment or municipal development plan. It can also hire an LEP to investigate or assess the property if the town's urban

rehabilitation agency deemed it to be abandoned or underutilized or its chief executive officer determines that it may be a public nuisance or threatens human health or the environment. The law does not give urban rehabilitation agencies the power to identify abandoned and underutilized properties. Instead, it requires local building officials to identify only abandoned commercial and industrial properties that can be rehabilitated. These officials must submit a list to the urban rehabilitation agency, which can then move to acquire and rehabilitate them.

The bill allows LEPs to enter the properties identified by the urban rehabilitation agencies without liability.

Hazardous Waste Establishment Transfer Act Exemptions

The bill exempts any properties conveyed to certain municipal and state agencies from the Hazardous Waste Establishment Transfer Act. The exemption applies to properties conveyed to municipal development, redevelopment, community development, urban homesteading, and urban rehabilitation agencies. It also applies to properties conveyed to CDA and CBDC.

The Transfer Act requires anyone transferring ownership of a business that handles hazardous waste to give certain assurances. He must provide the purchaser with a written statement that any wastes on the site are under control, or he must certify to the DEP commissioner that the waste will be cleaned up in accordance with a DEP-approved schedule. But the law exempts certain types of properties (e.g., security interest) or property transactions (e.g., conveyance through judicial foreclosure) from this requirement.

Site Inventories

State Inventory. The bill requires the DEP and DECD commissioners to identify and rank contaminated sites whose remediation will benefit the local community. The law already requires them to identify sites whose remediation can benefit the state. Under the bill, the commissioners must select sites that are or suspected to be contaminated if they are not already being evaluated and remediated under the Urban Sites Remediation program. They must select abandoned, vacant, or underutilized sites that can be remediated

and developed for public uses, such as parks and open spaces; neighborhood services; commercial, retail, medical establishments; and small industrial or manufacturing facilities.

The sites must be in state-designated distressed municipalities, enterprise corridor zones, targeted investment communities (i.e., the 17 towns with enterprise zones), or in any other town the DECD commissioner designates. The commissioners can include a site in these areas if:

1. the DEP commissioner cannot identify the party responsible for causing the contamination,

2. the party is not complying with the DEP commissioner's remediation orders in a timely manner,

3. the party has requested a hearing before DEP issued a final order, and

4. if DEP issued a final order and the party decided to appeal it in court.

A responsible party can be the person who created the source of pollution on the site or the party that owns it when it is being investigated or remediated under the Urban Sites Remediation Program, excluding an innocent landowner.

The commissioners must then rank the sites based on the following factors:

1. the extent to which a site's remediation will benefit the environment,

2. the estimated cost of evaluating and remediating the site,

3. its potential benefits to the community,

4. community support for remediating and redeveloping the site,

5. the extent to which the town and private investors are committed to redeveloping the site, and

6. any other factors the commissioners believe are relevant.

The law already requires the commissioner to identify and rank sites under the Urban Sites Remediation Program, which applies to any contaminated property, not just sites that are abandoned, vacant, or underutilized. It also allows the DECD commissioner to acquire polluted commercial or industrial properties for redevelopment, and the DEP commissioner to fund property's remediation. The bill specifies that properties being evaluated and remediated under the bill do not qualify for assistance under the Urban Sites Remediation program.

Municipal Inventories. The bill authorizes the commissioners to make grants to towns for developing inventories of sites and establishes a nonlasping account for that purpose. But it appropriates no funds for the account. The commissioners can grant funds to distressed municipalities, towns with enterprise zones or enterprise corridor zones, and other towns the DECD commissioner designates.

The towns can list abandoned, vacant, or underutilized sites that can be redeveloped. They must collect data on each site, including its tax status, land use, land area, demolition needs, existing infrastructure, and redevelopment potential. They must also assess the environmental conditions and estimate remediation costs. After listing the sites, the towns must identify those with significant redevelopment potential.

Covenants Not to Sue (CNTS)

Under current law, DEP may, if it is in the public interest, issue two types of covenants: (1) a transferable covenant available to prospective purchasers for a fee of 3% of the property's value, which, with DEP's approval, protects future owners and (2) a nontransferable covenant available to owners for a $5,000 fee. Both require applicants to show that they (1) did not create or cause the contamination or are not affiliated with anyone that did, and (2) will redevelop the property for productive use. The covenants protect the holders from state claims related to their property's contamination and may be subject to continuing monitoring requirements.

The bill makes owners and prospective purchasers eligible for both covenants, and requires rather than allows the DEP to enter into the nontransferable covenants with eligible parties. It allows those covenants based on an LEP approval or verification or DEP approval. Under current law, they must be based on DEP approval of the remediation.

Nontransferable Covenants DEP Must Enter Into. The bill requires the DEP to enter into the nontransferable covenant with eligible owners and prospective purchasers if;

1. the owner or purchaser (presumably prospective) certifies that the DEP or an LEP has approved a written detailed remedial plan and it is incorporated by reference into the covenant;

2. the DEP or an LEP has approved a final remedial action report for the property and the person requesting the covenant certifies that no release or discharge occurred after the approval; or

3. an LEP has verified, in the case of a property under the Transfer Act, a hazardous waste disposal area or property owned by a municipality, that the property has been remediated in accordance with DEP standards and the person requesting the covenant certifies that no release of discharge occurred after the approval.

By law, unchanged by the bill, applicants must show that they (1) did not create or cause the contamination or are not affiliated with anyone that did, and (2) will redevelop the property for productive use.

The bill eliminates the DEP's authority to require continued monitoring of the remediation as a condition of the covenant and the requirement that the DEP determine that the covenant is in the public interest. It requires DEP to issue the covenant within 45 days after receiving the certifications and required documents.

Transferable Covenants the DEP May Issue. The bill expands the parties that may apply for the transferable covenants to include owners in addition to prospective purchasers eligible under existing law. It requires applicants (1) to have remediation plans approved by, rather than submitted to, DEP or, (2) unchanged by the bill, to have their final remedial action report approved by DEP.

Covenants with Lenders. Under current law, the DEP may enter into covenants with lenders of CNTS applicants as long as the lenders are not responsible for the contamination or pollution.

Under the bill, DEP must enter into a covenant with eligible lenders to owners, but not prospective purchasers, holding a nontransferable covenant, if the lenders certify, rather than demonstrate, they are not responsible for the contamination. DEP may enter into covenants with eligible lenders to prospective purchasers, but not lenders to owners holding a transferable covenant. All covenants with lenders are transferable to their successor lenders.

Liability Protection. The bill adds "releases" to the types of contaminant or pollution loss covered by both CNTS (it does not add the term consistently throughout the relevant provisions). Under current law, covenant holders are protected from liability for state claims related to pollution or contamination on or emanating from the property resulting from a discharge, spill, or other loss, occurring before the covenant.

The bill also modifies the nontransferable covenant protection to cover the state claims related to "the remediation of" pollution of contamination on or from the property. It is unclear how this affects a covenant's protection. The bill adds violation of the environmental land use restriction as a condition or re-opener that invalidates either covenant's protection.

Covenant Fee. The bill eliminates the $5,000 application fee for a nontransferable covenant. The transferable covenant fee remains an amount equal to 3% of the property value and it is not required of successors in interest or properties remediated under the urban sites program. Under current law, both fees

The bill specifies that the following activities do not constitute participating in management of a property or business:

1. taking or failing to take any actions before creating a security interest;

2. holding, releasing, or abandoning a security interest;

3. including an environmental compliance provision or condition in a contract, covenant, warranty or lease transaction in which the lessor does not initially select or control the subject property;

4. inspecting a property or business;

5. providing advice or counseling on ways to prevent or mitigate a reduction in the property or business's value or cure a default;

6. renegotiating or altering the terms of a security interest or lease transaction in which the lessor does not initially select or control the property;

7. taking or refraining from taking an action the lender has a right to under law or agreement; or

8. containing, removing, or mitigating a spill or discharge or requiring such.

Foreclosure. Under the bill, a lender forecloses when it acquires property by (1) a judicial or nonjudicial foreclosure sale; (2) a deed in lieu of foreclosure, repossession, or similar transaction appropriate to the type of property or transaction; or (3) any other formal or informal method of acquiring property for subsequent sale or transaction to protect a security interest.

Lender. Under the bill, lenders are (1) insured depositories; (2) credit unions, banks, farm credit banks, and leasing and trust companies; (3) people who finance certain lease transactions or acquire security

interest from nonaffiliated people; (4) anyone who, in a bona fide manner, makes, buys, or sells loans or interests in loans; (5) anyone who insures or guarantees certain financial transactions or pledges responsibility for the obligations of another to secure a benefit; (6) anyone who provides insurance while acquiring an interest in property in the course of underwriting claims or claims settlements; and (7) federal mortgage and home loan corporations and associations.

Voluntary Remediation in GA or GAA Areas

The bill expands the types of contaminated properties that owners may apply to DEP to voluntarily remediate with DEP oversight or under the authority of an LEP to include those located above drinking water or future drinking water supplies. By law, owners of inventoried hazardous waste disposal sites and municipalities may apply to voluntarily remediate their property. The DEP can require its review and written approval of the remediation or allow an LEP to certify the property has been remediated to DEP standards.

BACKGROUND

Conditions or Re-openers of Covenants

By law, the covenants entered into by DEP are valid and protect their holders from liability unless:

1. they do not remediate the property in accordance with the written plan or schedule submitted and incorporated into the covenant;

2. the DEP determines, before the remediation is complete, that the holder has not substantially complied with the conditions and has not made a good faith effort to do so;

3. the remediated property does not meet DEP standards in effect on the effective date of the covenant;

4. the holder fails to record all required land use restrictions; or

5. DEP determines that the holder provided false information.

In addition, the nontransferable covenant may be invalid if (1) the DEP finds new information confirming the property contains previously unknown contamination that occurred before the covenant's effective date or (2) the threat to human health or the environment increases to an unacceptable level due to changes in the exposure conditions or new information about the contaminant.

COMMENT

CDA TIF Study

The bill requires CDA to reports its finding regarding the feasibility of funding to Steel Point project using TIF by April 21, 1998, which falls before the bill's October 1, 1998 effective date.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute Change of Reference
Yea 26 Nay 0

Environment Committee

Joint Favorable Change of Reference
Yea 23 Nay 0

Finance, Revenue and Bonding

Joint Favorable Substitute
Yea 45 Nay 0