



General Assembly

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Amendment

LCO No. 8054

HB0609708054HDO

Offered by:

REP. BERGER, 73rd Dist.
REP. MAZUREK, 80th Dist.
REP. SHARKEY, 88th Dist.
REP. FRITZ, 90th Dist.
REP. MIOLI, 136th Dist.
REP. DREW, 132nd Dist.
REP. O'CONNOR, 35th Dist.
REP. ALDARONDO, 75th Dist.
REP. BUTLER, 72nd Dist.
REP. D'AMELIO, 71st Dist.
REP. NOUJAIM, 74th Dist.
REP. ARESIMOWICZ, 30th Dist.
REP. ALBERTS, 50th Dist.

SEN. LEBEAU, 3rd Dist.
SEN. CALIGIURI, 16th Dist.
SEN. HARTLEY, 15th Dist.
REP. MORRIS, 140th Dist.
REP. JOHNSON, 49th Dist.
REP. ZALASKI, 81st Dist.
REP. HURLBURT, 53rd Dist.
REP. LEONE, 148th Dist.
REP. WILLIAMS, 68th Dist.
REP. PERILLO, 113th Dist.
SEN. FRANTZ, 36th Dist.
REP. ROY, 119th Dist.
SEN. MEYER, 12th Dist.

To: Subst. House Bill No. 6097

File No. 956

Cal. No. 238

"AN ACT CONCERNING BROWNFIELDS DEVELOPMENT PROJECTS."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 25-68d of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective from passage*):

5 (a) No state agency shall undertake an activity or a critical activity

6 within or affecting the floodplain without first obtaining an approval
7 or approval with conditions from the commissioner of a certification
8 submitted in accordance with subsection (b) of this section or
9 exemption by the commissioner from such approval or approval with
10 conditions in accordance with subsection (d) of this section.

11 (b) Any state agency proposing an activity or critical activity within
12 or affecting the floodplain shall submit to the commissioner
13 information certifying that:

14 (1) The proposal will not obstruct flood flows or result in an adverse
15 increase in flood elevations, significantly affect the storage or flood
16 control value of the floodplains, cause an adverse increase in flood
17 velocities, or an adverse flooding impact upon upstream, downstream
18 or abutting properties, or pose a hazard to human life, health or
19 property in the event of a base flood or base flood for a critical activity;

20 (2) The proposal complies with the provisions of the National Flood
21 Insurance Program (44 CFR 59 et seq.), and any floodplain zoning
22 requirements adopted by a municipality in the area of the proposal
23 and the requirements for stream channel encroachment lines adopted
24 pursuant to the provisions of section 22a-342;

25 (3) The agency has acquired, through public or private purchase or
26 conveyance, easements and property in floodplains when the base
27 flood or base flood for a critical activity is elevated above the
28 increment authorized by the National Flood Insurance Program or the
29 flood storage loss would cause adverse increases in such base flood
30 flows;

31 (4) The proposal promotes long-term nonintensive floodplain uses
32 and has utilities located to discourage floodplain development;

33 (5) The agency has considered and will use to the extent feasible
34 flood-proofing techniques to protect new and existing structures and
35 utility lines, will construct dikes, dams, channel alterations, seawalls,
36 breakwaters or other structures only where there are no practical

37 alternatives and will implement stormwater management practices in
38 accordance with regulations adopted pursuant to section 25-68h; and

39 (6) The agency has flood forecasting and warning capabilities
40 consistent with the system maintained by the National Weather
41 Service and has a flood preparedness plan.

42 (c) The commissioner shall make a decision either approving,
43 approving with conditions or rejecting a certification not later than
44 ninety days after receipt of such certification, except that in the case of
45 an exemption any decision shall be made ninety days after the close of
46 the hearing. If a certification is rejected, the agency shall be entitled to a
47 hearing in accordance with the provisions of sections 4-176e, 4-177, 4-
48 177c and 4-180.

49 (d) Any state agency proposing an activity or critical activity within
50 or affecting the floodplain may apply to the commissioner for
51 exemption from the provisions of subsection (b) of this section. Such
52 application shall include a statement of the reasons why such agency is
53 unable to comply with said subsection and any other information the
54 commissioner deems necessary. The commissioner, at least thirty days
55 before approving, approving with conditions or denying any such
56 application, shall publish once in a newspaper having a substantial
57 circulation in the affected area notice of: (1) The name of the applicant;
58 (2) the location and nature of the requested exemption; (3) the tentative
59 decision on the application; and (4) additional information the
60 commissioner deems necessary to support the decision to approve,
61 approve with conditions or deny the application. There shall be a
62 comment period following the public notice during which period
63 interested persons and municipalities may submit written comments.
64 After the comment period, the commissioner shall make a final
65 determination to either approve the application, approve the
66 application with conditions or deny the application. The commissioner
67 may hold a public hearing prior to approving, approving with
68 conditions or denying any application if in the discretion of the
69 commissioner the public interest will be best served thereby, and the

70 commissioner shall hold a public hearing upon receipt of a petition
71 signed by at least twenty-five persons. Notice of such hearing shall be
72 published at least thirty days before the hearing in a newspaper
73 having a substantial circulation in the area affected. The commissioner
74 may approve or approve with conditions such exemption if the
75 commissioner determines that (A) the agency has shown that the
76 activity or critical activity is in the public interest, will not injure
77 persons or damage property in the area of such activity or critical
78 activity, complies with the provisions of the National Flood Insurance
79 Program, and, in the case of a loan or grant, the recipient of the loan or
80 grant has been informed that increased flood insurance premiums may
81 result from the activity or critical activity. An activity shall be
82 considered to be in the public interest if it is a development subject to
83 environmental remediation regulations adopted pursuant to section
84 22a-133k and is in or adjacent to an area identified as a regional center,
85 neighborhood conservation area, growth area or rural community
86 center in the State Plan of Conservation and Development pursuant to
87 chapter 297, or (B) in the case of a flood control project, such project
88 meets the criteria of subparagraph (A) of this subdivision and is more
89 cost-effective to the state and municipalities than a project constructed
90 to or above the base flood or base flood for a critical activity. Following
91 approval for exemption for a flood control project, the commissioner
92 shall provide notice of the hazards of a flood greater than the capacity
93 of the project design to each member of the legislature whose district
94 will be affected by the project and to the following agencies and
95 officials in the area to be protected by the project: The planning and
96 zoning commission, the inland wetlands agency, the director of civil
97 defense, the conservation commission, the fire department, the police
98 department, the chief elected official and each member of the
99 legislative body, and the regional planning agency. Notice shall be
100 given to the general public by publication in a newspaper of general
101 circulation in each municipality in the area in which the project is to be
102 located.

103 (e) The use of a mill that is located on a brownfield, as defined in

104 section 32-9kk, shall be exempt from the certification requirements of
105 subdivision (4) of subsection (b) of this section, provided the agency
106 demonstrates: (1) The activity is subject to the environmental
107 remediation requirements of the regulations adopted pursuant to
108 section 22a-133k, (2) the activity is limited to the areas of the property
109 where historical mill uses occurred, (3) any critical activity is above the
110 five hundred year flood elevation, and (4) the activity complies with
111 the provisions of the National Flood Insurance Program.

112 [(e)] (f) The failure of any agency to comply with the provisions of
113 this section or any regulations adopted pursuant to section 25-68c shall
114 be grounds for revocation of the approval of the certification.

115 [(f)] (g) The provisions of this section shall not apply to any
116 proposal by the Department of Transportation for a project within a
117 drainage basin of less than one square mile.

118 Sec. 2. Subdivision (1) of section 22a-134 of the general statutes is
119 repealed and the following is substituted in lieu thereof (*Effective from*
120 *passage*):

121 (1) "Transfer of establishment" means any transaction or proceeding
122 through which an establishment undergoes a change in ownership, but
123 does not mean:

124 (A) Conveyance or extinguishment of an easement;

125 (B) Conveyance of an establishment through a foreclosure, as
126 defined in subsection (b) of section 22a-452f, [or] foreclosure of a
127 municipal tax lien or through a tax warrant sale pursuant to section 12-
128 157, [or, provided the establishment is within the pilot program
129 established in subsection (c) of section 32-9cc,] an exercise of eminent
130 domain pursuant to section 8-128 or 8-193 or by condemnation
131 pursuant to section 32-224 or purchase pursuant to a resolution by the
132 legislative body of a municipality authorizing the acquisition through
133 eminent domain for establishments that also meet the definition of a
134 brownfield as defined in section 32-9kk or a subsequent transfer by

135 such municipality that has foreclosed on the property, foreclosed
136 municipal tax liens or that has acquired title to the property through
137 section 12-157, or has been within the pilot program established in
138 subsection (c) of section 32-9cc, or has acquired such property through
139 the exercise of eminent domain pursuant to section 8-128 or 8-193 or by
140 condemnation pursuant to section 32-224 or a resolution, provided (i)
141 the party acquiring the property from the municipality did not
142 establish, create or contribute to the contamination at the establishment
143 and is not affiliated with any person who established, created or
144 contributed to such contamination or with any person who is or was
145 an owner or certifying party for the establishment, and (ii) on or before
146 the date the party acquires the property from the municipality, such
147 party or municipality enters and subsequently remains in the
148 voluntary remediation program administered by the commissioner
149 pursuant to section 22a-133x, as amended by this act, and remains in
150 compliance with schedules and approvals issued by the commissioner.
151 For purposes of this subparagraph, municipality includes any
152 municipality, municipal economic development agency or entity
153 created or operating under chapter 130 or 132, a nonprofit economic
154 development corporation formed to promote the common good,
155 general welfare and economic development of a municipality that is
156 funded, either directly or through in-kind services, in part by a
157 municipality, or a nonstock corporation or limited liability company
158 controlled or established by a municipality, municipal economic
159 development agency or entity created or operating under chapter 130
160 or 132;

161 (C) Conveyance of a deed in lieu of foreclosure to a lender, as
162 defined in and that qualifies for the secured lender exemption
163 pursuant to subsection (b) of section 22a-452f;

164 (D) Conveyance of a security interest, as defined in subdivision (7)
165 of subsection (b) of section 22a-452f;

166 (E) Termination of a lease and conveyance, assignment or execution
167 of a lease for a period less than ninety-nine years including

168 conveyance, assignment or execution of a lease with options or similar
169 terms that will extend the period of the leasehold to ninety-nine years,
170 or from the commencement of the leasehold, ninety-nine years,
171 including conveyance, assignment or execution of a lease with options
172 or similar terms that will extend the period of the leasehold to ninety-
173 nine years, or from the commencement of the leasehold;

174 (F) Any change in ownership approved by the Probate Court;

175 (G) Devolution of title to a surviving joint tenant, or to a trustee,
176 executor or administrator under the terms of a testamentary trust or
177 will, or by intestate succession;

178 (H) Corporate reorganization not substantially affecting the
179 ownership of the establishment;

180 (I) The issuance of stock or other securities of an entity which owns
181 or operates an establishment;

182 (J) The transfer of stock, securities or other ownership interests
183 representing less than forty per cent of the ownership of the entity that
184 owns or operates the establishment;

185 (K) Any conveyance of an interest in an establishment where the
186 transferor is the sibling, spouse, child, parent, grandparent, child of a
187 sibling or sibling of a parent of the transferee;

188 (L) Conveyance of an interest in an establishment to a trustee of an
189 inter vivos trust created by the transferor solely for the benefit of one
190 or more siblings, spouses, children, parents, grandchildren, children of
191 a sibling or siblings of a parent of the transferor;

192 (M) Any conveyance of a portion of a parcel upon which portion no
193 establishment is or has been located and upon which there has not
194 occurred a discharge, spillage, uncontrolled loss, seepage or filtration
195 of hazardous waste, provided either the area of such portion is not
196 greater than fifty per cent of the area of such parcel or written notice of
197 such proposed conveyance and an environmental condition

198 assessment form for such parcel is provided to the commissioner sixty
199 days prior to such conveyance;

200 (N) Conveyance of a service station, as defined in subdivision (5) of
201 this section;

202 (O) Any conveyance of an establishment which, prior to July 1, 1997,
203 had been developed solely for residential use and such use has not
204 changed;

205 (P) Any conveyance of an establishment to any entity created or
206 operating under chapter 130 or 132, or to an urban rehabilitation
207 agency, as defined in section 8-292, or to a municipality under section
208 32-224, or to the Connecticut Development Authority or any
209 subsidiary of the authority;

210 (Q) Any conveyance of a parcel in connection with the acquisition of
211 properties to effectuate the development of the overall project, as
212 defined in section 32-651;

213 (R) The conversion of a general or limited partnership to a limited
214 liability company under section 34-199;

215 (S) The transfer of general partnership property held in the names of
216 all of its general partners to a general partnership which includes as
217 general partners immediately after the transfer all of the same persons
218 as were general partners immediately prior to the transfer;

219 (T) The transfer of general partnership property held in the names
220 of all of its general partners to a limited liability company which
221 includes as members immediately after the transfer all of the same
222 persons as were general partners immediately prior to the transfer;

223 (U) Acquisition of an establishment by any governmental or quasi-
224 governmental condemning authority;

225 (V) Conveyance of any real property or business operation that
226 would qualify as an establishment solely as a result of (i) the

227 generation of more than one hundred kilograms of universal waste in
228 a calendar month, (ii) the storage, handling or transportation of
229 universal waste generated at a different location, or (iii) activities
230 undertaken at a universal waste transfer facility, provided any such
231 real property or business operation does not otherwise qualify as an
232 establishment; there has been no discharge, spillage, uncontrolled loss,
233 seepage or filtration of a universal waste or a constituent of universal
234 waste that is a hazardous substance at or from such real property or
235 business operation; and universal waste is not also recycled, treated,
236 except for treatment of a universal waste pursuant to 40 CFR
237 273.13(a)(2) or (c)(2) or 40 CFR 273.33 (a)(2) or (c)(2), or disposed of at
238 such real property or business operation; or

239 (W) Conveyance of a unit in a residential common interest
240 community in accordance with section 22a-134i.

241 Sec. 3. Section 32-9dd of the general statutes is repealed and the
242 following is substituted in lieu thereof (*Effective July 1, 2009*):

243 Upon remediation as approved by the Department of
244 Environmental Protection of the brownfield property by the
245 municipality, [or] economic development agency [, the economic
246 development agency or the municipality] or entity established under
247 chapter 130 or 132, nonprofit economic development corporation
248 formed to promote the common good, general welfare and economic
249 development of a municipality that is funded, either directly or
250 through in-kind services, in part by a municipality, or a nonstock
251 corporation or limited liability company controlled or established by a
252 municipality, municipal economic development agency or entity
253 created or operating under chapter 130 or 132, such entity may transfer
254 the property to any person provided such a person is not otherwise
255 liable under section 22a-432, 22a-433, 22a-451 or 22a-452, as amended
256 by this act. The person who acquires title [from the municipality or
257 economic development agency] pursuant to this section shall not be
258 liable under section 22a-432, 22a-433, 22a-451 or 22a-452, as amended
259 by this act, provided that such person does not cause or contribute to

260 the discharge, spillage, uncontrolled loss, seepage or filtration of such
261 hazardous substance, material or waste and such person is not a
262 member, officer, manager, director, shareholder, subsidiary, successor
263 of, related to, or affiliated with, directly or indirectly, the person who is
264 otherwise liable under section 22a-432, 22a-433, 22a-451 or 22a-452, as
265 amended by this act. In addition, the Commissioner of Environmental
266 Protection shall also provide such person with a covenant not to sue
267 pursuant to section 22a-133 and shall not require the prospective
268 purchaser or owner to pay a fee. The municipality, [or] economic
269 development agency or entity established under chapter 130 or 132,
270 nonprofit economic development corporation formed to promote the
271 common good, general welfare and economic development of a
272 municipality that is funded, either directly or through in-kind services,
273 in part by a municipality, or a nonstock corporation or limited liability
274 company controlled or established by a municipality, municipal
275 economic development agency or entity created or operating under
276 chapter 130 or 132 shall distribute the proceeds from any sale as
277 follows: (1) Twenty per cent shall be retained by the municipality, [or]
278 economic development agency, nonprofit economic development
279 corporation or nonstock corporation or limited liability company and
280 used for capital improvements for economic development, and (2)
281 eighty per cent shall be transferred to the Office of Brownfield
282 Remediation and Development and deposited in the account
283 established pursuant to section 32-9ff.

284 Sec. 4. Subsection (a) of section 32-9ee of the general statutes is
285 repealed and the following is substituted in lieu thereof (*Effective July*
286 *1, 2009*):

287 (a) [The] Any municipality, [or] economic development agency or
288 entity established under chapter 130 or 132, nonprofit economic
289 development corporation formed to promote the common good,
290 general welfare and economic development of a municipality that is
291 funded, either directly or through in-kind services, in part by a
292 municipality, or a nonstock corporation or limited liability company
293 controlled or established by a municipality, municipal economic

294 development agency or entity created or operating under chapter 130
295 or 132 that receives grants through the Office of Brownfield
296 Remediation and [Development's] Development or the Department of
297 Economic and Community Development, including those
298 municipalities designated by the Commissioner of Economic and
299 Community Development as part of the pilot program established in
300 subsection (c) of section 32-9cc for the investigation and remediation of
301 a brownfield property shall be considered an innocent party and shall
302 not be liable under section 22a-432, 22a-433, 22a-451 or 22a-452, as
303 amended by this act, for conditions pre-existing or existing on the
304 brownfield property as of the date of acquisition or control as long as
305 the municipality, [or] economic development agency or entity
306 established under chapter 130 or 132, nonprofit economic development
307 corporation formed to promote the common good, general welfare and
308 economic development of a municipality that is funded, either directly
309 or through in-kind services, in part by a municipality, or a nonstock
310 corporation or limited liability company controlled or established by a
311 municipality, municipal economic development agency or entity
312 created or operating under chapter 130 or 132 did not cause or
313 contribute to the discharge, spillage, uncontrolled loss, seepage or
314 filtration of such hazardous substance, material, waste or pollution
315 that is subject to remediation under [this pilot program] section 22a-
316 133k and funded by the Office of Brownfield Remediation and
317 Development or the Department of Economic and Community
318 Development; does not exacerbate the conditions; and complies with
319 reporting of significant environmental hazard requirements in section
320 22a-6u. To the extent that any conditions are exacerbated, the
321 municipality, economic development agency or entity established
322 under chapter 130 or 132, nonprofit economic development
323 corporation formed to promote the common good, general welfare and
324 economic development of a municipality that is funded, either directly
325 or through in-kind services, in part by a municipality, or nonstock
326 corporation or limited liability company controlled or established by a
327 municipality, municipal economic development agency or entity
328 created or operating under chapter 130 or 132 shall only be responsible

329 for responding to contamination exacerbated by its negligent or
330 reckless activities.

331 Sec. 5. Section 22a-452 of the general statutes is repealed and the
332 following is substituted in lieu thereof (*Effective July 1, 2009*):

333 (a) Any person, firm, corporation or municipality which contains or
334 removes or otherwise mitigates the effects of oil or petroleum or
335 chemical liquids or solid, liquid or gaseous products or hazardous
336 wastes resulting from any discharge, spillage, uncontrolled loss,
337 seepage or filtration of such substance or material or waste shall be
338 entitled, subject to the conditions in this section, to reimbursement
339 from any person, firm or corporation for the necessary and reasonable
340 costs expended for such containment, removal, or mitigation,
341 including any investigation and remediation, if such oil or petroleum
342 or chemical liquids or solid, liquid or gaseous products or hazardous
343 wastes pollution or contamination or other emergency [resulted from
344 the negligence or other] was directly or indirectly caused by or
345 contributed to or exacerbated by the actions or omissions of such
346 person, firm or corporation. When such pollution or contamination or
347 emergency results from the [joint negligence or other] actions or
348 omissions of two or more persons, firms or corporations, each shall be
349 liable [to the others] for a pro rata share of the costs of [containing, and
350 removing or otherwise mitigating the effects] investigation and
351 remediation of the same and for all damage caused thereby. No
352 person, firm or corporation shall be liable for reimbursement of costs
353 incurred unless such person, firm or corporation received notice and
354 the opportunity to participate in the investigation and remediation
355 pursuant to subsection (g) of this section. No such responsible person,
356 firm or corporation shall be required to fund any remediation above
357 the land use that existed when the person, firm or corporation owned
358 or operated such site. If an imminent and substantial endangerment
359 exists at the property or arises from pollution migrating beyond the
360 property line, the provisions of this section limiting the potentially
361 responsible party's liability shall not apply to an action for the costs
362 associated with the investigation and remediation of such condition.

363 For the purposes of this subsection, "reimbursement" means the
364 reimbursement of funds already expended or the recovery of funds to
365 be expended, pursuant to this section, and "pro rata share" means an
366 equitable proportionate share based upon equitable and site-specific
367 factors, including, but not limited to, the activity conducted on the
368 property, the duration of such activity or ownership of the property,
369 compliance with the laws, regulations and other standards that existed
370 at the time of ownership or operation with respect to the ownership or
371 operation of the property, type and amount of pollution caused, and
372 prior efforts to prevent, contain, mitigate or remediate such pollution.

373 (b) No person, firm, [or] corporation or municipality which renders
374 assistance or advice in mitigating or attempting to mitigate the effects
375 of an actual or threatened discharge of oil or petroleum or chemical
376 liquids or solid, liquid or gaseous products or hazardous materials,
377 hazardous wastes or hazardous substances, other than a discharge of
378 oil as defined in section 22a-457b, to the surface waters of the state, or
379 [which] who assists in preventing, cleaning-up or disposing of any
380 such discharge shall be held liable, notwithstanding any other
381 provision of law, for civil damages as a result of any act or omission by
382 him in rendering such assistance or advice, except acts or omissions
383 amounting to gross negligence or wilful or wanton misconduct, unless
384 he is compensated for such assistance or advice for more than actual
385 expenses. For the purpose of this subsection, "discharge" means
386 spillage, uncontrolled loss, seepage or filtration and "hazardous
387 materials" means any material or substance designated as such by any
388 state or federal law or regulation.

389 (c) The immunity provided in subsection (b) of this section shall not
390 apply to (1) any person, firm, [or] corporation or municipality
391 responsible for such discharge, or under a duty to mitigate the effects
392 of such discharge, (2) any agency or instrumentality of such person,
393 firm or corporation, or (3) negligence in the operation of a motor
394 vehicle.

395 (d) An action for reimbursement or recovery of the reasonable costs

396 expected for containment, removal, remediation or mitigation,
397 including the reasonable costs of investigation and remediation, shall
398 be commenced on or before the later of (1) six years after written notice
399 was provided to the known responsible person, firm or corporation
400 pursuant to subsection (g) of this section, or (2) three years after the
401 completion of remediation activities, exclusive of any post-remedial or
402 other long-term groundwater monitoring.

403 (e) In any action brought pursuant to this section, the Superior
404 Court may issue an order granting the reimbursement or recovery of
405 reasonable costs to be incurred in the future consistent with the pro
406 rata share of the costs of the potential responsible party.

407 (f) This section shall apply to any action for reimbursement or
408 recovery of the reasonable costs for containment, removal, remediation
409 or mitigation, including the reasonable costs of investigation and
410 remediation, except that it shall not apply to any action that has
411 become final and is no longer subject to appeal on or before October 1,
412 2009.

413 (g) Before any person, firm or corporation files an action under this
414 section in the Superior Court, such person, firm or corporation shall
415 provide written notice of intent to conduct any remediation to all
416 known potential responsible parties no later than one hundred twenty
417 days before the commencement of each such activity. Such notice shall
418 identify the property, the potential responsible party's relationship to
419 such site, the proposed investigation or remediation activity and its
420 estimated cost and the date that such activity is to commence. No such
421 notice shall be required before filing a lawsuit if an imminent and
422 substantial endangerment exists necessitating immediate action,
423 provided notice is made within a reasonable time after immediate
424 action is taken. Notice provided pursuant to this subsection shall be
425 sent certified mail, return receipt requested to any potentially
426 responsible party at their last known address on file at the Secretary of
427 the State's office or their agent for service of process, if any. If a private
428 corporation is no longer on file with the Secretary of the State, notice

429 shall be sent to the last-known address of the president or, if a
430 partnership, to the last-known address of any of the known partners,
431 or, if an individual, to the last-known residential address of the
432 individual. The performing party shall provide a copy of the notice to
433 the Office of the Attorney General and the Commissioner of
434 Environmental Protection. When other potentially responsible parties
435 become known to the performing party after the notice under this
436 section is provided, the performing party shall provide notice
437 pursuant to this subsection not later than forty-five days after the
438 discovery of the other potentially responsible parties.

439 (h) Any potentially responsible party shall inform such performing
440 party, not later than forty-five days after receipt of the notice required
441 pursuant to subsection (g) of this section and before commencement of
442 any activity on such site, of their intent to participate in the
443 investigation and remediation. Such notice shall include a statement of
444 the extent to which the potential responsible party is willing to
445 reimburse necessary and reasonable costs or undertake investigation
446 or remediation activities, and any objections to necessity or
447 reasonableness of the proposed activity.

448 (i) A potentially responsible party that has exercised its right to
449 participate and participates in the investigation and remediation of an
450 eligible site shall be responsible solely for its pro rata share of any
451 necessary and reasonable costs of investigation and remediation. A
452 potentially responsible party that fails to offer and share in the costs
453 reasonably proportionate to its pro rata share, or who fails to
454 participate or respond to the notice provided in subsection (c) of this
455 section shall (1) waive any right to challenge the necessity and
456 reasonableness of investigation and remediation costs in any claim or
457 action for reimbursement of such investigation and remediation costs;
458 (2) pay damages to the performing party, including costs associated
459 with any lost business opportunities; and (3) pay the performing
460 party's attorneys fees and other costs of litigation, in the event the
461 performing party prevails in its claim or action for reimbursement.

462 (j) A performing party that has failed to provide notice and
463 opportunity to participate to any known potential responsible party
464 shall be prohibited from seeking reimbursement of investigation and
465 remediation costs from such potential responsible party.

466 (k) Nothing in this section shall relieve any potential responsible
467 party from any liability to any third party for property damage or
468 personal injury based upon common law.

469 (l) Nothing in this section shall deprive any potential responsible
470 party from any possible defenses to any action, including, but not
471 limited to, contribution, available by law.

472 (m) No eligible party shall be liable for a claim under this section for
473 any costs or damages arising from any pollution or source of pollution
474 on or emanating from the property that occurred or existed prior to
475 such eligible party taking title to such property provided the eligible
476 party did not establish or create a condition or facility at or on such
477 property that reasonably can be expected to create a source of
478 pollution and the eligible party is not affiliated with any person
479 responsible for such pollution or source of pollution through any
480 direct or indirect familial relationship or any contractual, corporate or
481 financial relationship other than that by which such eligible party's
482 interest in the property was conveyed or financed.

483 (n) For purposes of this section: (1) "Potentially responsible party"
484 means any person, firm, corporation or municipality that is liable
485 under this section for an act or omission that directly or indirectly
486 caused or contributed to or exacerbated the release, discharge, spillage,
487 uncontrolled loss, seepage or filtration of oil or petroleum or chemical
488 liquids or solid, liquid or gaseous products or hazardous wastes; (2)
489 "eligible party" means a person, firm, corporation or municipality that
490 acquired the property after the pollution or source of pollution existed
491 or occurred and such party is not otherwise responsible pursuant to
492 section 22a-428, 22a-432, 22a-433 or 22a-451 or pursuant to transfer of
493 ownership filing pursuant to section 22a-134, as amended by this act,

494 or 22a-134e and is not affiliated with any person responsible for such
495 pollution or source of pollution through any direct or indirect familial
496 relationship or any contractual, corporate or financial relationship
497 other than that by which such owner's interest in the property was
498 conveyed or financed; (3) "performing party" means the person, firm or
499 corporation that performs an investigation and remediation or
500 contains or removes or otherwise mitigates the effects of oil or
501 petroleum or chemical liquids or solid, liquid or gaseous products or
502 hazardous wastes; (4) "investigation and remediation" means
503 assessment, investigation, containment, mitigation, removal,
504 remediation and subsequent monitoring; (5) "remediation" means the
505 work performed on a site that is undertaken pursuant to a remedial
506 action plan; and (6) "municipality" shall have the same meaning as in
507 section 22a-423, and includes any municipal economic development
508 agency or entity created or operating under chapter 130 or 132 and any
509 nonprofit economic development corporation formed to promote the
510 common good, general welfare and economic development of a
511 municipality that is funded, either directly or through in-kind services,
512 in part by a municipality, or a nonstock corporation or limited liability
513 company established and controlled by a municipality, municipal
514 economic development agency or entity created or operating under
515 chapter 130 or 132.

516 Sec. 6. Section 22a-134b of the general statutes is repealed and the
517 following is substituted in lieu thereof (*Effective from passage*):

518 (a) Failure of the transferor to comply with any of the provisions of
519 sections 22a-134 to 22a-134e, inclusive, as amended by this act, entitles
520 the transferee to recover damages from the transferor, and renders the
521 transferor of the establishment strictly liable, without regard to fault,
522 for all remediation costs and for all direct and indirect damages.

523 (b) An action to recover damages pursuant to subsection (a) of this
524 section shall be commenced not later than six years after the later of (1)
525 the due date for the filing of the appropriate transfer form pursuant to
526 section 22a-134a, as amended by this act, or (2) the actual filing date of

527 the appropriate transfer form.

528 (c) This section shall apply to any action brought for the
529 reimbursement or recovery of costs associated with investigation and
530 remediation, as defined in subsection (n) of section 22a-452, as
531 amended by this act, and all direct and indirect damages, except any
532 action that becomes final and is no longer subject to appeal on or
533 before October 1, 2009.

534 Sec. 7. Section 22a-133dd of the general statutes is repealed and the
535 following is substituted in lieu thereof (*Effective from passage*):

536 (a) Any municipality or any licensed environmental professional
537 employed or retained by a municipality may enter, without liability [to
538 any person other than the Commissioner of Environmental Protection,]
539 upon any property within such municipality for the purpose of
540 performing an environmental site assessment or investigation on
541 behalf of the municipality if: (1) The owner of such property cannot be
542 located; (2) such property is encumbered by a lien for taxes due such
543 municipality; (3) upon a filing of a notice of eminent domain; (4) the
544 municipality's legislative body finds that such investigation is in the
545 public interest to determine if the property is underutilized or should
546 be included in any undertaking of development, redevelopment or
547 remediation pursuant to this chapter or chapter 130, 132 or 581; or (5)
548 any official of the municipality reasonably finds such investigation
549 necessary to determine if such property presents a risk to the safety,
550 health or welfare of the public or a risk to the environment. The
551 municipality shall give at least forty-five days' notice of such entry
552 before the first such entry by certified mail to the property owner's last
553 known address of record.

554 (b) A municipality accessing or entering a property to perform an
555 investigation pursuant to this section shall not [incur any liability
556 pursuant to section 22a-432 for any preexisting contamination or
557 pollution on such property, provided, however, a municipality may be
558 liable for any pollution or contamination resulting from a negligent or

559 reckless investigation] be liable for preexisting conditions pursuant to
560 section 22a-432, 22a-433, 22a-451 or 22a-452, as amended by this act, or
561 to the property owner or any third party, provided the municipality (1)
562 did not cause or contribute to the discharge, spillage, uncontrolled
563 loss, seepage or filtration of such hazardous substance, material, waste
564 or pollution; (2) does not negligently or recklessly exacerbate the
565 conditions; and (3) complies with reporting of significant
566 environmental hazard requirements pursuant to section 22a-6u. To the
567 extent that any conditions are negligently or recklessly exacerbated,
568 the municipality shall only be responsible for responding to
569 contamination exacerbated by its activities.

570 (c) The owner of the property may object to such access and entry
571 by the municipality by filing an action in the Superior Court not later
572 than thirty days after receipt of the notice provided pursuant to
573 subsection (a) of this section, provided any objection be limited to the
574 [owner affirmatively representing that it is diligently investigating the
575 site in a timely manner and that any municipal taxes owed will be paid
576 in full] issue of whether access is necessary and only upon proof by the
577 owner that the owner has (1) completed or is in the process of
578 completing in a timely manner a comprehensive environmental site
579 assessment or investigation report; (2) provided the party seeking
580 access with a copy of the assessment or report or will do so not later
581 than thirty days after the delivery of such assessment or report to the
582 owner; and (3) paid any delinquent property taxes assessed against the
583 property for which access is being sought.

584 (d) For purposes of this section, "municipality" includes any
585 municipality, municipal economic development agency or entity
586 created or operating under chapter 130 or 132, nonprofit economic
587 development corporation formed to promote the common good,
588 general welfare and economic development of a municipality that is
589 funded, either directly or through in-kind services, in part by a
590 municipality, or nonstock corporation or limited liability company
591 established and controlled by a municipality, municipal economic
592 development agency or entity created or operating under chapter 130

593 or 132.

594 Sec. 8. (NEW) (*Effective from passage*) At sites undergoing remedial
595 action pursuant to subdivision (1) of subsection (b) of section 22a-133e
596 of the general statutes or subsection (c) of section 22a-133e of the
597 general statutes, the Commissioner of Environmental Protection may
598 approve an alternative institutional control to protect human health
599 and the environment, other than an environmental land use restriction,
600 as defined in section 22a-133n of the general statutes, and such
601 remedial action shall be deemed consistent with regulations adopted
602 pursuant to section 22a-133k of the general statutes.

603 Sec. 9. (NEW) (*Effective October 1, 2009*) (a) There is established an
604 abandoned brownfield cleanup program. The Commissioner of
605 Economic and Community Development shall determine, in
606 consultation with the Commissioner of Environmental Protection,
607 properties and persons eligible for said program. For a person and a
608 property to be eligible, the Commissioner of Economic and
609 Community Development shall determine if (1) the property is a
610 brownfield, as defined in section 32-9kk of the general statutes and
611 such property has been unused or significantly underused since
612 October 1, 1999; (2) such person intends to acquire title to such
613 property for the purpose of redeveloping such property; (3) the
614 redevelopment of such property has a regional or municipal economic
615 development benefit; (4) such person did not establish or create a
616 facility or condition at or on such property that can reasonably be
617 expected to create a source of pollution to the waters of the state for the
618 purposes of section 22a-432 of the general statutes and is not affiliated
619 with any person responsible for such pollution or source of pollution
620 through any direct or indirect familial relationship or any contractual,
621 corporate or financial relationship other than a relationship by which
622 such owner's interest in such property is to be conveyed or financed;
623 (5) such person is not otherwise required by law, an order or consent
624 order issued by the Commissioner of Environmental Protection or a
625 stipulated judgment to remediate pollution on or emanating from such
626 property; (6) the person responsible for pollution on or emanating

627 from the property is indeterminable, is no longer in existence or is
628 otherwise unable to perform necessary remediation of such property;
629 and (7) the property and the person meet any other criteria said
630 commissioner deems necessary.

631 (b) Upon designation by the Commissioner of Economic and
632 Community Development of an eligible person who holds title to such
633 property, such eligible person shall (1) enter and remain in the
634 voluntary remediation program established in section 22a-133x of the
635 general statutes, as amended by this act, provided such person will not
636 be a certifying party for the property pursuant to section 22a-134 of the
637 general statutes, as amended by this act, when acquiring such
638 property, (2) investigate pollution on such property in accordance with
639 prevailing standards and guidelines and remediate pollution on such
640 property in accordance with regulations established for remediation
641 adopted by the Commissioner of Environmental Protection and in
642 accordance with applicable schedules; and (3) eliminate further
643 emanation or migration of any pollution from such property. An
644 eligible person who holds title to an eligible property designated to be
645 in the abandoned brownfields cleanup program shall not be
646 responsible for investigating or remediating any pollution or source of
647 pollution that has emanated from such property prior to such person
648 taking title to such property.

649 (c) Any applicant seeking a designation of eligibility for a person or
650 a property under the abandoned brownfields cleanup program shall
651 apply to the Commissioner of Economic and Community
652 Development at such times and on such forms as the commissioner
653 may prescribe.

654 (d) Not later than sixty days after receipt of the application, the
655 Commissioner of Economic and Community Development shall
656 determine if the application is complete and shall notify the applicant
657 of such determination.

658 (e) Not later than ninety days after determining that the application

659 is complete, the Commissioner of Economic and Community
660 Development shall determine whether to include the property and
661 applicant in the abandoned brownfields cleanup program.

662 (f) Designation of a property in the abandoned brownfields cleanup
663 program by the Commissioner of Economic and Community
664 Development shall not limit the applicant's or any other person's
665 ability to seek funding for such property under any other brownfield
666 grant or loan program administered by the Department of Economic
667 and Community Development, the Connecticut Development
668 Authority or the Department of Environmental Protection.

669 Sec. 10. Section 22a-134 of the general statutes is amended by adding
670 subdivision (28) as follows (*Effective October 1, 2009*):

671 (NEW) (28) "Interim verification" means a written opinion by a
672 licensed environmental professional, on a form prescribed by the
673 commissioner, that (A) the investigation has been performed in
674 accordance with prevailing standards and guidelines, (B) the
675 remediation has been completed in accordance with the remediation
676 standards, except that, for remediation standards for groundwater, the
677 selected remedy is in operation but has not achieved the remediation
678 standards for groundwater, (C) identifies the long-term remedy being
679 implemented to achieve groundwater standards, the estimated
680 duration of such remedy, and the ongoing operation and maintenance
681 requirements for continued operation of such remedy, and (D) there
682 are no current exposure pathways to the groundwater area that have
683 not yet met the remediation standards.

684 Sec. 11. Subdivision (1) of subsection (g) of section 22a-134a of the
685 general statutes is repealed and the following is substituted in lieu
686 thereof (*Effective October 1, 2009*):

687 (g) (1) (A) Except as provided in subsection (h) of this section, the
688 certifying party to a Form III [or Form IV] shall, not later than seventy-
689 five days after the receipt of the notice that such form is complete or
690 such later date as may be approved in writing by the commissioner,

691 submit a schedule for the investigation of the parcel and remediation
692 of the establishment. Such schedule shall, unless a later date is
693 specified in writing by the commissioner, provide that the
694 investigation shall be completed within two years of the date of receipt
695 of such notice, [and that] remediation shall be initiated not later than
696 three years after the date of receipt of such notice and remediation
697 shall be completed sufficient to support either a verification or interim
698 verification not later than eight years after the date of such notice. The
699 schedule shall also include a schedule for providing public notice of
700 the remediation prior to the initiation of such remediation in
701 accordance with subsection (i) of this section. Not later than two years
702 after the date of the receipt of the notice that the Form III [or Form IV]
703 is complete, unless the commissioner has specified a later day, in
704 writing, the certifying party shall submit to the commissioner
705 documentation, approved in writing by a licensed environmental
706 professional and in a form prescribed by the commissioner, that the
707 investigation has been completed in accordance with prevailing
708 standards and guidelines. Not later than three years after the date of
709 the receipt of the notice that the Form III [or Form IV] is complete,
710 unless the commissioner has specified a later day in writing, the
711 certifying party shall notify the commissioner in a form prescribed by
712 the commissioner that the remediation has been initiated, and shall
713 submit to the commissioner a remedial action plan approved in
714 writing by a licensed environmental professional in a form prescribed
715 by the commissioner. Notwithstanding any other provision of this
716 section, the commissioner may determine at any time that the
717 commissioner's review and written approval is necessary and in such
718 case shall notify the certifying party that the commissioner's review
719 and written approval is necessary. Such certifying party shall
720 investigate the parcel and remediate the establishment in accordance
721 with the [proposed] schedule or the schedule specified by the
722 commissioner. [When]

723 (B) For a certifying party that submitted a Form III or Form IV
724 before October 1, 2009, when remediation of the entire establishment is

725 complete, the certifying party shall achieve the remediation standards
726 for the establishment sufficient to support a final verification and shall
727 submit to the commissioner a final verification by a licensed
728 environmental professional. For a certifying party that submits a Form
729 III or Form IV after October 1, 2009, not later than eight years after the
730 date of receipt of the notice that the Form III or Form IV is complete,
731 unless the commissioner has specified a later date in writing, the
732 certifying party shall achieve the remediation standards for the
733 establishment sufficient to support a final or interim verification and
734 shall submit to the commissioner such final or interim verification by a
735 licensed environmental professional. Any such final verification may
736 include and rely upon a verification for a portion of the establishment
737 submitted pursuant to subdivision (2) of this subsection. Verifications
738 shall be submitted on a form prescribed by the commissioner.

739 (C) A certifying party who submits an interim verification shall,
740 until the remediation standards for groundwater are achieved, operate
741 and maintain the long-term remedy for groundwater in accordance
742 with the remedial action plan, the interim verification and any
743 approvals by the commissioner, prevent exposure to the groundwater
744 plume and submit annual status reports to the commissioner.

745 (D) The certifying party to a Form IV shall submit with the Form IV
746 a schedule for the groundwater monitoring and recording of an
747 environmental land use restriction, as applicable.

748 Sec. 12. Section 22a-133x of the general statutes is repealed and the
749 following is substituted in lieu thereof (*Effective October 1, 2009*):

750 (a) For the purposes of this section, "applicant" means the person
751 who submits the environmental condition assessment form to the
752 commissioner pursuant to this section. Except as provided in section
753 22a-133y, [a political subdivision of the state, an owner of an
754 establishment, as defined in section 22a-134, an owner of property
755 identified on the inventory of hazardous waste disposal sites
756 maintained pursuant to section 22a-133c on October 1, 1995, or an

757 owner of contaminated property located in an area for which the
758 groundwater classification is GA or GAA,] any person may, at any
759 time, submit to the commissioner an environmental condition
760 assessment form for [such] real property [owned by such political
761 subdivision or such owner] and an initial review fee in accordance
762 with subsection (e) of this section. [The owner or political subdivision]
763 Such applicant shall use a licensed environmental professional to
764 verify the investigation and remediation, unless not later than thirty
765 days after the commissioner's receipt of such form, the commissioner
766 notifies [the owner or political subdivision] such applicant, in writing,
767 that review and written approval of any remedial action at such
768 [establishment or] property by the commissioner will be required. The
769 commissioner shall not process any such form submitted pursuant to
770 this section unless such form is accompanied by the required initial
771 review fee.

772 (b) The [owner or political subdivision] applicant shall, on or before
773 ninety days after the submission of an environmental condition
774 assessment form, submit a statement of proposed actions for
775 investigating and remediating the parcel or a release area, as defined in
776 the regulations adopted by the commissioner pursuant to section 22a-
777 133k, and a schedule for implementing such actions. The commissioner
778 may require the [owner or political subdivision] applicant to submit to
779 the commissioner copies of technical plans and reports related to
780 investigation and remediation of the parcel or release area.
781 Notwithstanding any other provision of this section, the commissioner
782 may determine that the commissioner's review and written approval
783 of such technical plans and reports is necessary at any time, and in
784 such case the commissioner shall notify the [owner or political
785 subdivision] applicant of the need for the commissioner's review and
786 written approval. The commissioner shall require that the certifying
787 party submit to the commissioner all technical plans and reports
788 related to the investigation and remediation of the parcel or release
789 area if the commissioner receives a written request from any person for
790 such information. The [owner or political subdivision] applicant shall

791 advise the commissioner of any modifications to the proposed
792 schedule. Upon receipt of a verification by a licensed environmental
793 professional that the parcel or release area has been investigated in
794 accordance with prevailing standards and guidelines and remediated
795 in accordance with the remediation standards, the [owner or political
796 subdivision] applicant shall submit such verification to the
797 commissioner on a form prescribed by the commissioner.

798 (c) If the commissioner notifies the [owner or political subdivision]
799 applicant that the commissioner will formally review and approve in
800 writing the investigation and remediation of the parcel, the [owner or
801 political subdivision] applicant shall, on or before thirty days of the
802 receipt of such notice, or such later date as may be approved in writing
803 by the commissioner, submit for the commissioner's review and
804 written approval, a proposed schedule for: (1) Investigating and
805 remediating the parcel or release area; and (2) submitting to the
806 commissioner technical plans, technical reports and progress reports
807 related to such investigation and remediation. Upon the
808 commissioner's approval of such schedule, the [owner or political
809 subdivision] applicant shall, in accordance with the approved
810 schedule, submit technical plans, technical reports and progress
811 reports to the commissioner for the commissioner's review and written
812 approval. The [owner or political subdivision] applicant shall perform
813 all actions identified in the approved technical plans, technical reports
814 and progress reports in accordance with the approved schedule. The
815 commissioner may approve, in writing, any modification proposed in
816 writing by the [owner or political subdivision] applicant to such
817 schedule or investigation and remediation and may notify the [owner]
818 applicant, in writing, if the commissioner determines that it is
819 appropriate to discontinue formal review and approval of the
820 investigation or remediation.

821 (d) If, in accordance with the provisions of this section, the
822 commissioner has approved in writing or, as applicable, a licensed
823 environmental professional has verified, that the parcel or release area
824 has been remediated in accordance with the remediation standards,

825 such approval or verification may be used as the basis for submitting a
826 Form II pursuant to sections 22a-134 to 22a-134e, inclusive, as
827 amended by this act, provided there has been no additional discharge,
828 spillage, uncontrolled loss, seepage or filtration of hazardous waste at
829 or on the parcel subsequent to the date of the commissioner's approval
830 or verification by a licensed environmental professional.

831 (e) The fee for submitting an environmental condition assessment
832 form to the commissioner pursuant to this section shall be three
833 thousand dollars and shall be paid at the time the environmental
834 condition assessment form is submitted. Any fee paid pursuant to this
835 section shall be deducted from any fee required by subsection (m) or
836 (n) of section 22a-134e for the transfer of any parcel for which an
837 environmental condition assessment form has been submitted within
838 three years of such transfer.

839 (f) Nothing in this section shall be construed to affect or impair the
840 voluntary site remediation process provided for in section 22a-133y.

841 (g) Prior to commencement of remedial action taken under this
842 section, the [owner or political subdivision] applicant shall (1) publish
843 notice of the remediation, in accordance with the schedule submitted
844 pursuant to this section, in a newspaper having a substantial
845 circulation in the area affected by the establishment, (2) notify the
846 director of health of the municipality where the parcel is located of the
847 remediation, and (3) either (A) erect and maintain for at least thirty
848 days in a legible condition a sign not less than six feet by four feet on
849 the parcel, which sign shall be clearly visible from the public highway,
850 and shall include the words "ENVIRONMENTAL CLEAN-UP IN
851 PROGRESS AT THIS SITE. FOR FURTHER INFORMATION
852 CONTACT:" and include a telephone number for an office from which
853 any interested person may obtain additional information about the
854 remediation, or (B) mail notice of the remediation to each owner of
855 record of property which abuts the parcel, at the last-known address of
856 such owner on the last-completed grand list of the municipality where
857 the parcel is located.

858 Sec. 13. (NEW) (*Effective October 1, 2009*) Notwithstanding any other
 859 provisions of the general statutes, whenever a state agency or quasi-
 860 public agency, as defined in section 1-120 of the general statutes,
 861 solicits bids, makes a request for proposals or negotiates a contract for
 862 the environmental remediation of a brownfield property, such bid,
 863 proposal or contract shall include a provision whereby the
 864 employment and utilization of green remediation technologies shall be
 865 accorded due consideration."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	25-68d
Sec. 2	<i>from passage</i>	22a-134(1)
Sec. 3	<i>July 1, 2009</i>	32-9dd
Sec. 4	<i>July 1, 2009</i>	32-9ee(a)
Sec. 5	<i>July 1, 2009</i>	22a-452
Sec. 6	<i>from passage</i>	22a-134b
Sec. 7	<i>from passage</i>	22a-133dd
Sec. 8	<i>from passage</i>	New section
Sec. 9	<i>October 1, 2009</i>	New section
Sec. 10	<i>October 1, 2009</i>	22a-134
Sec. 11	<i>October 1, 2009</i>	22a-134a(g)(1)
Sec. 12	<i>October 1, 2009</i>	22a-133x
Sec. 13	<i>October 1, 2009</i>	New section