Legislative History for Connecticut Act

HB 6681 PA 190 1995
SENATE: 3109-3110, 4469-4499 (33)
HOUSE: 1978, 2855-2878, 5127-5130 (29)
ENVIRONMENT: 2503-2505, 2507-2522, 2524-2536, 2539-2564, 2568-2623, 2629-2634, 2643-2646, 2657-97 (165)
COMMERCE: 314-332, 334-336, 343, 345-348, 350-352, 354-369, 374-376, 381-392A (61)

TOTAL (288)

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

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S-379

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1995

VOL. 38
PART 9
2920-3329

is a PR.

The next Calendar No. 473, Substitute for HB6496 is a Go.

The next matter, Calendar 474, Substitute for HB6933, AN ACT CONCERNING IN-HOUSE LEGAL ADVICE as amended by House Amendment Schedule "A" I move to Consent Calendar.

THE CHAIR:

The motion is to refer this item to the Consent Calendar. Without objection, so ordered.

SENATOR UPSON:

Thank you Madam President. The last matter on Page 15, Calendar 475, Substitute for HB6547, AN ACT CONCERNING DISCLOSURE OF INFORMATION as amended by House Amendment Schedule "A" I also move to the Consent Calendar.

THE CHAIR:

The motion is to refer this item to the Consent Calendar. Without objection, so ordered.

SENATOR UPSON:

Madam President, on Page 16, Calendar 476, Substitute for HB6681, AN ACT CONCERNING REMEDIATION OF, AND LIABILITY FOR, CONTAMINATED REAL PROPERTY as amended by House Amendment Schedule "A" I refer that to Legislative Management.

THE CHAIR:

The motion is to refer this item to the Committee on Legislative Management. Without objection, so ordered.

SENATOR UPSON:

The next matter, on top of 16, Madam President. Calendar 477, Substitute for HB6873 is a Go.

The next matter on top, on Page 16, Madam President, Calendar 478, Substitute for HB5386 is a Go.

The next matter, Calendar 479, is a PR.

The last matter, Calendar 480, HB5229 is a PT.

The next matter, Page 17, Madam President. Calendar 481, Substitute for HB6804, AN ACT CONCERNING MINOR AND TECHNICAL REVISIONS TO CERTAIN DEPARTMENT OF CONSUMER PROTECTION STATUTES, is a Consent Calendar.

THE CHAIR:

The motion is to refer this item to the Consent Calendar. Without objection, so ordered.

SENATOR UPSON:

Yes, Madam President, also on Page 17, Calendar 482, Substitute for HB5646, AN ACT CONCERNING A DRUG DOCKET as amended by House Amendment Schedule "A". I move to the Consent Calendar.

THE CHAIR:

The motion is to refer this item to the Consent

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Coleman? Senator Fleming? Senator Ciotto? Senator Aniskovich?

THE CLERK:

Will everybody please stay, we've got a Consent Calendar vote coming right up.

THE CHAIR:

If all Senators have voted, the machine will be closed and would you give me the tally please.

THE CLERK:

Total number voting, 33; necessary for passage, 17. Those voting "yea", 33; those voting "nay", 0.

THE CHAIR:

HB6443 passes as amended.

THE CLERK:

Page 24, Calendar 476, Substitute for HB6681, An Act Concerning Remediation of, and Liability for, Contaminated Real Property, amended by House Amendments "A", "B" and "C". Favorable Report of the Committee on Environment, Judiciary, Finance & Legislative Management, File 526, 777.

THE CHAIR: (THE PRESIDENT IN THE CHAIR)

Senator Cook.

SEN. COOK:

Thank you, Madam President. I move acceptance of

the Joint Committee's Favorable Report and passage of the bill in concurrence with the House.

THE CHAIR:

The question is on passage. Will you remark?

SEN. COOK:

Thank you. Would the Clerk please call LCO7151?

THE CLERK:

Senate Amendment Schedule "A", LCO7151 introduced by Senator Cook.

THE CHAIR:

Senator Cook, the amendment's in your possession.

SEN. COOK:

Thank you very much. I would move adoption of the amendment and seek leave to summarize.

THE CHAIR:

The question is on adoption of Senate "A". Will you remark?

SEN. COOK:

Thank you. This is a major environmental bill and the amendment makes a good bill better. It allows the DEP Commissioner more time to review remediation reports, increasing the efficiency of the Department.

It eliminates the requirement that the DEP Commissioner recommend a source of funding for the revenue bonds to support this program, minimally

reducing the cost, of course, to the Department and it specifies that certain funds are deposited in a special contamination property remediation and insurance fund after a revenue source is identified and after bonds are offered.

It is meant to clarify the bill as it has come to us from the House.

THE CHAIR:

The question is on adoption of Senate "A". Will you remark? Will you remark? Senator Gaffey.

SEN. GAFFEY:

Yes, Madam President. Through you to the proponent.

THE CHAIR:

Please proceed.

SEN. GAFFEY:

Senator Cook, do you have a fiscal note on this amendment?

SEN. COOK:

Yes. The fiscal note on the amendment says that it minimally reduces costs and specifies that those funds are not deposited until after the revenue bonds are offered after the source of funding is identified.

THE CHAIR:

Senator Gaffey.

SEN. GAFFEY:

Thank you, Madam President. And Senator Cook, the fund that you referred to, what fund is that? Through you, Madam President.

THE CHAIR:

Senator Cook.

SEN. COOK:

Thank you. First, let me just clarify. The fiscal analysis note says there's a minimal fiscal impact to the amendment and that the fund is one that is set up in the bill and the amendment clarifies when the fund goes into effect and that time would not be until after the revenue source is identified and after the revenue bonds have been issued.

Does that answer your question? I'm not sure if I've done a good job with that.

THE CHAIR:

Senator Gaffey.

SEN. GAFFEY:

Thank you, Madam President. So in essence, this fund does not exist? Through you, Madam President?

THE CHAIR:

Senator Cook.

SEN. COOK:

It does not exist at this time, that is correct.

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THE CHAIR:

Senator Gaffey.

SEN. GAFFEY:

Through you, Madam President. When will this fund exist, Senator Cook?

THE CHAIR:

Senator Cook.

SEN. COOK:

Thank you. The fund will exist, once again, after a revenue source is identified and there is a mechanism in the amendment which identifies how we will work out what the revenue source will be for the sale of revenue bonds.

THE CHAIR:

Senator Gaffey.

SEN. GAFFEY:

Thank you, Madam President. So we're calling for a fund that doesn't exist and it doesn't have a revenue source to fund it, to fund the activities that are called for in this bill. Is that correct, Senator Cook? Through you, Madam President.

THE CHAIR:

Senator Cook.

SEN. COOK:

If we would like to discuss the bill itself, or

how the amendment affects the bill, I will try to merge those two lessons together.

What we are doing with this amendment, and eventually through the bill, should the amendment be adopted as part of the bill, is creating an outline for the Department to look at a program for urban site remediation for contaminated sites.

And the parameters or the outline within which we will do this program says that we would ask the Department of Environmental Protection to convene a group to identify what would be an appropriate nexus or an appropriate tax or source of revenue that would be appropriate for the funding of this kind of a program for our state and that that revenue source would be used for the sale of revenue bonds, not to exceed $30 million.

When those two occurrences happen, for the purposes of this outlined program in the bill, then there would be an account set up and that account would receive repayments to the fund from, and also it would be the account would also be the one used for any cost to the state which the state would occur after the program goes into effect.

There are no costs to the state until the tax is identified, the revenue bonds are sold and the fund is

set up.

THE CHAIR:

Senator Gaffey.

SEN. GAFFEY:

Thank you, Madam President. So in effect, we are establishing, or seeking to establish some sort of a fund which will only exist when we identify the revenue sources to fund the fund to pay for the activities that are called for in the underlying bill.

Is that correct, Senator Cook? Through you, Madam President.

SEN. COOK:

That is correct.

THE CHAIR:

Senator Gaffey.

SEN. GAFFEY:

Thank you, Madam President.

THE CHAIR:

Thank you. I'll remind you members that we are on Amendment "A". Will you remark further on Senate "A". Senator Sullivan.

SEN. SULLIVAN:

I will, Madam President, thank you. Senator Cook, in explanation of the amendment and in explanation, part of its impact on the bill, you refer to the action

of the Commissioner after he consults with this Committee in identifying a funding source.

With respect to the amendment and the bill, could you show me the section, or point to me the section of the bill that accomplishes that process?

SEN. COOK:

It would be under the House Amendment "A".

THE CHAIR:

Senator Cook.

SEN. COOK:

And the file copy in your File 777. Let's see if I can pull that out for you. Actually, it's in House "A" and that may not be in your file. You may have that separate.

SEN. SULLIVAN:

Let me try to help.

THE CHAIR:

Senator Sullivan.

SEN. SULLIVAN:

As I look at the file copy, the language that sets up this process of the Commissioner recommending appropriate funding source in consultation occurs in Section 6 which appears on Page, you'll forgive me, 15 of the file copy.

SEN. COOK:

Yes?

SEN. SULLIVAN:

Is that the process you refer to?

THE CHAIR:

Senator Cook.

SEN. COOK:

That Section 6 is removed by the amendment.

SEN. SULLIVAN:

Yes.

SEN. COOK:

Therefore, no longer requiring that it is solely the Commissioner who makes the determination on the revenue source and in the file copy of the bill we have a group that is identified that should be identifying that revenue source including representatives of the home heating oil industry and others. Do you need help in finding that?

SEN. SULLIVAN:

I actually do.

THE CHAIR:

Senator Sullivan.

SEN. SULLIVAN:

Senator Cook will have to trust me. This is not a wild goose chase. I simply cannot locate it.

THE CHAIR:

Senator Cook.

SEN. COOK:

Madam President, because we are striking Section 6 on the House Amendment, it is no longer specified exactly in the bill who will be doing the determination of the revenue source. That is incorporated in language in a task force that is in part of the task force bill.

The bill before us, through the amendment that we have before us under discussion right now, is clear that there will be no revenue bonds sold until a revenue source is identified.

THE CHAIR:

Senator Sullivan.

SEN. SULLIVAN:

I want to thank you for finding the section which is in fact the section being removed by the amendment, so you can understand that I might have been confused.

In which case, similar to Senator Gaffey's remarks, we have not a fund not funded and a process not identified in the same bill, based on another bill that's somewhere else.

And I know we've done some interesting things this year, and ingenuity is always called for at times when we're trying to accomplish good ends.

What I don't understand is why we can't have a bill before use that clearly sets forward one, the process of who's going to be making this decision.

Two, how is this decision going to be made?

Three, what source will be the choices available in terms of deciding, because now we've also eliminated that language with Section 6, so we don't really know what they're going to look at as possible choices.

So I wonder why we're striking Section 6, I guess that's the heart of the matter for the moment?

THE CHAIR:

Senator Cook, would you care to respond?

SEN. COOK:

The only response that I really think is appropriate to give right now is that the Legislature will decide what the revenue source is going to be, ultimately, that we will set a group in the task force to give us recommendations, but it is indeed, of course, the Legislature's responsibility to determine any revenue sources that are going to be sold, used to support the sale of revenue bonds.

THE CHAIR:

Senator Sullivan.

SEN. SULLIVAN:

I'll try again. And I certainly understand that

that decision would be ours to make.

THE CHAIR:

Senator Sullivan, was that a question?

SEN. SULLIVAN:

It will be. But I will give Senator Cook the opportunity to consult before asking the Chair. Or the empty chair.

SEN. COOK:

Sorry, Madam President.

THE CHAIR:

Senator Cook, would you care to respond?

SEN. SULLIVAN:

I'm going to try to ask the question.

THE CHAIR:

We haven't quite gotten there. Senator Sullivan will try again. Would you phrase your question?

SEN. SULLIVAN:

Thank you, Madam President. And out of respect for Senator Cook, I did not want to ask a question while she was consulting.

Why would we delete Section 6 from this bill? I guess for the moment, that's the gist of the question. I understand your explanation that of course, I accept your explanation that at some point the Legislature will determine.

This bill, at least on the face of it tells us here who's going to be involved in looking at that issue, who's going to make recommendations, who, I guess in the ultimate authority over environmental issues would make that determination and then let the Legislature know what our choices might be. And yet, that seems to be the principal purpose of this amendment, is to strike out that very process.

Why would we do that?

THE CHAIR:

Senator Cook.

SEN. COOK:

Thank you. I guess the best way to explain that would be that it may not be appropriate that it be solely the Commissioner of the Department of Environmental Protection who should have that single responsibility.

Certainly, the Secretary of the Office of Policy and Management should be very closely involved in this as well as other members of the General Assembly and t his will be accomplished through the collaborative effort described in the task force in a future bill.

THE CHAIR:

Senator Sullivan.

SEN. SULLIVAN:

I think that's the answer I'm going to get. Thank you, Senator Cook. I do know that Section 6 of the bill does involved the Office of Policy and Management, which obviously would be an important consideration, but that is not important enough I guess to say here.

This bill. We'll save that. This amendment, I think, strikes out, and therefore sort of suggests further, the uncertainty of this entire proposition and that's the dilemma I think of having this before us tonight. It is now even more uncertain as to even how this process will go forward, yet we are being asked to vote on it this evening.

THE CHAIR:

Will you remark further on the amendment? Will you remark further? Senator Bozek.

SEN. BOZEK:

Thank you, Madam President. To the maker. While we're in this area and if it's not appropriate, you can reply after, but I have this question and I think it's maybe in balance it goes to the amendment. But the question is, with regard to payment for properties, is the payment by this statute, is the payment for properties going to be paid for contaminated properties as if they were not contaminated?

THE CHAIR:

Senator Bozek. We are on Amendment "A".

SEN. BOZEK:

All right, I'll hold that. Thank you.

THE CHAIR:

Will you remark further on Senate Amendment "A". Will you remark further on Senate Amendment "A". Will you remark further? If not, all those in favor indicate by saying "aye".

ASSEMBLY:

Aye.

THE CHAIR:

Opposed, "nay". Ayes have it. Senate "A" is adopted. Will you remark on the bill? Senator Sullivan.

SEN. SULLIVAN:

Thank you, Madam President. And I do thank you, Madam President, and that will be a question, Madam President. First, on the negative declarations sections of this particular bill, and I in this case can direct you more particularly to lines 860 through 863 of the file copy.

Under current law, the extent of the lien which may be placed against an impacted and affected property appears to be to the extent of the interest of the innocent landowner therein, that interest being in

practice the equitable interest of the landowner and therefore usually the mortgage amount outstanding.

The amendment strikes that portion of the bill and instead says that the lien shall be an amount not to exceed the value of the land appraised as if it were uncontaminated. The full market value not the equitable interest of the landowner, of the innocent landowner.

Can you explain to me why we would wish to increase the amount of lien that will be applied as opposed to current law?

THE CHAIR:

Senator Cook.

SEN. COOK:

The best explanation that I can offer to my colleague, Senator Sullivan, would be that if we did not have language like this, then all of the taxpayers of the State of Connecticut would be liable to a much greater degree for the cost of the clean up of a contaminated piece of property.

THE CHAIR:

Senator Sullivan.

SEN. SULLIVAN:

Thank you, Senator Cook. Therefore, acknowledging that the consequences for the innocent landowner under

this bill are therefore substantially more severe than under current law and I think that is a problem with this legislation though I understand the purpose of that is to mitigate the collective responsibility by imposing a greater responsibility, financial burden, liability and lien on the innocent landowner who is now stuck with a burden which equals the value of the land as if it had no contamination. Clearly, not exactly what that landowner is able to sell.

Turning to the fiscal note. The fiscal note indicates with or without having read the amendment now, with or without the amendment, the need for additional personnel and the need for additional expenditure in the Department as a consequence of the implementation of this bill, more particularly there are no provisions for first year costs.

Could you comment on the prospective fiscal impact, separate and apart from the fact that I do understand that the revenue bond financing issue has been addressed, but more particularly the allocation issue and whether or not some provision has been made prospectively or otherwise in the out year for the personnel and the personnel costs in the Department.

THE CHAIR:

Senator Cook.

SEN. COOK:

I can only repeat that this is a blueprint for a prospective program and there will be no costs to the state until the revenue source is identified, the revenue bonds are issued and all of the costs to the state will come from that fund, once it is created.

THE CHAIR:

Senator Sullivan.

SEN. SULLIVAN:

Thank you, Madam President. Would there be, let's try this. Is there the prospect, certain or otherwise, and you can distinguish whether it's a certain prospect or a possibility at this point, of expenditures in the Department during the next biennium for purposes of this legislation.

THE CHAIR:

Senator Cook.

SEN. COOK:

That would be indeterminate and speculative. There's not, we are not able to determine that there would be any costs to the Department at this point.

THE CHAIR:

Senator Sullivan.

SEN. SULLIVAN:

Can we determine that there would be no cost to

the Department at this point?

THE CHAIR:

Senator Cook.

SEN. COOK:

The bill neither carries or requires cost to the Department.

THE CHAIR:

Senator Sullivan.

SEN. SULLIVAN:

So it is your representation that if this legislation goes into effect, there will be no expenditures within the Department within the next biennium unless and until, the Legislature of the State of Connecticut takes express action to authorize those expenditures and in some fashion amend the biennial budget to put in place both the positions and the dollars to allocate to those operating expenditures.

THE CHAIR:

Senator Cook.

SEN. COOK:

The bill as it is amended before us neither carries nor requires cost and appropriations to the Department.

THE CHAIR:

Senator Sullivan.

SEN. SULLIVAN:

I will desperately try my question again, Senator Cook. If I may, Madam President.

THE CHAIR:

Please proceed.

SEN. SULLIVAN:

In the opportunity we had before you brought this bill out to talk, it was my understanding from you that there would not be expenditures until such time as there had been a report by whoever it is some place else that's supposed to be doing this study and this report, that once that report was done and those recommendations made to whoever they're going to be made to, that at that point the Legislature of the State of Connecticut would have to take some action, some further action beyond this bill.

And in the absence of that action, no expenditure, no expenditure would be possible in the biennium in the implementation of this legislation as prospectively and potentially identified in the fiscal note of the Office of Fiscal Analysis.

So the question is, is that conversation we had still correct? Did I misunderstand and if I misunderstood how did I misunderstand.

THE CHAIR:

Senator Cook, would you care to respond?

SEN. COOK:

I believe yes, you understand it completely.

THE CHAIR:

Senator Sullivan.

SEN. SULLIVAN:

So, thank you. So just to make the understanding of my understanding crystal clear, instead of the answer that there is no determinate or indeterminate or possible, the answer really is that there will be no expenditure by the Department to implement this bill unless and until there's a report and an action of the Legislature beyond this bill to allow that expenditure to take place.

THE CHAIR:

Senator Cook.

SEN. COOK:

Madam Chairman, through you to the questioner, who is much more experienced in legislative matters than I, the best way I can answer this for you is that there is nothing in the file copy that I read that should change the understanding that I've put forward in bringing out this bill that there is anything but indeterminate costs to the Department, nothing that states that there is no expectation of funds and he can read it as well

as I, probably much better than I can at this point.

THE CHAIR:

Senator Sullivan. I'm trying to read it as well, Senator Sullivan.

SEN. SULLIVAN:

Madam President, when you get the answer, would you step down from the dais and whisper it in our ears.

As I read the fiscal note, and I can only read what the Office of Fiscal Analysis puts into the fiscal notes, I can't read what they don't put into the fiscal notes.

I read that depending on certain things, and I admit to that degree, it is clear that this is contingent and possible, but some of those certain things are the things that are anticipated to happen as a consequence of this other task force that it is estimated that two employees could be needed costing approximately $100,000. The exact impact would depend on the activity generated.

No future funding is provided. The bill as amended does not authorize the DEP to use the fund for this purpose. It is anticipated that DED will require four additional employees, two for fund loan management and two for site development at an estimated cost of $200,000. The exact impact would depend on the

activity generated. DED can use up to 10% of the maximum balance for the fund in the previous years for this purpose, however, there is no provision for first year costs.

Now, that's not quite our President's rule of determinate, but it's awfully close to our President's rule of determinate. And to that degree, I guess I'd just like to go back to the question, and I'm not really trying to ask this question to death, trust me on that.

I want to understand whether any of that money will be expended or can be expended the moment this legislation passes and that committee reports, or whether nothing happens to add to the expenditures in personnel of the State of Connecticut until the Legislature takes a further action.

I think that's not a question about determinate, indeterminate, it's not a quibble over the amount of dollars, it's a question whether something else must happen as you suggested in our authority, not the Department's authority, not anybody's authority, but the authority of the Legislature to authorize the actual expenditure of funds and the actual hiring of personnel.

SEN. COOK:

Let me try to be as precise as possible with you.

THE CHAIR:

Senator Cook.

SEN. COOK:

As I read the fiscal note on the file copy, on Page 27 of the file copy, it states that there may indeed be a necessity for two employees costing approximately $100,000. However, there would be no need for the employees, until there is activity generated so there would not be any expenditure by the state until the revenue source is identified, until the revenue bonds are sold, until the special contaminated property remediation and insurance fund is created by the Legislature and then there's activity requiring employees.

The same would be true for the Department of Economic Development which may need additional employees to do a fund loan management program, but absent a fund or a loan, there is no program to manage.

I think the fiscal note is pretty clear that there are no costs until we have the fund in place.

THE CHAIR:

Senator Sullivan.

SEN. SULLIVAN:

Madam President. Thank you. Senator Cook, I

think we're almost there.

SEN. COOK:

Promises, promises.

SEN. SULLIVAN:

Well, this is the place for those kind of promises, isn't it?

Is it your testimony, is it your position, is it your statement, is it your explanation this evening, then, that we and we alone, not the Commissioner, not OPM, not anyone else, are the ones who will take an action somewhere between now and the close of the biennium to create the fund, a legislative action to create the fund separate from this bill, and until that action is taken, no money goes in, no money goes out, no people are hired, and no operating costs.

Is that what you're saying? And he crosses his fingers hoping that it is. Thank you, Madam President.

THE CHAIR:

Thank you, Senator Sullivan. Senator Cook, would you care to respond?

SEN. COOK:

Let's see if we can make it as clear as mud for you. There exists already by this Legislature a Transfer Act Fund, a place where money is deposited regarding transfer act fees. From that fund, grants

are occasionally made to fund similar positions in the Department of Environmental Protection.

It is possible, and I do not wish to have my testimony be anything other than the fact that it is possible that the Department could use excess funds from the Transfer Act Fund for activities that are part of the blueprint which we will be passing today.

But the, you know, I certainly would then be clear that the larger activities that are described in the fiscal note are part of the fund that would be set up called the Special Contaminated Property Remediation and Insurance Fund which will be created to receive deposits from the revenue bonds that are sold after the Legislature determines the revenue source that will support the revenue bonds.

I so testify.

THE CHAIR:

Senator Sullivan, will you accept that testimony?

SEN. SULLIVAN:

I will always accept Senator Cook's testimony because I know that she works hard on these bills as does Representative Stratton who joins us this evening.

My sense then is, that thank you, Senator Cook, sincerely. And I know that was a bit of a grind. The concern here is that we are adopting what has been

described as a blueprint. I am only concerned that we are essentially giving someone the mortar and bricks and wood and saws and labor to build a house before we've had an opportunity to sign off on that particular decision.

It would appear to me that Senator Cook has represented the incidental costs under existing authorization may occur in the next two years but that the principal implemental of this and certainly the magnitude of fiscal impact identified by the Office of Fiscal Analysis will not occur during the coming biennium unless we take further action.

The proof of that pudding will be in the eating of the second year of the biennium. We will have a chance for a time to tell. I thank you for your comments. I thank you for your response.

THE CHAIR:

Thank you, Senator Sullivan. Will you remark further on the bill as amended? Senator Cook.

SEN. COOK:

Just before I call for a roll call vote on this, I do want to add sort of a short treatise on the merits of this whole bill as we've now amended it and come forward.

This is a major piece of legislation for the State

of Connecticut. It will help our urban, our cities so much and it will be a major environmental movement for our suburban areas. No longer will we need to develop our greenway areas, our other lands in Connecticut that should be better preserved as fertile farmland or other activities and we'll be able to move those Transfer Act sites that are in New Haven and Bridgeport and Hartford and Waterbury and along the Valley.

We will be able to get those properties that are only minimally contaminated and through a voluntary program through the licensed environmental professionals that are in this blueprint, we will be able to move those sites.

So rather than have the fear continue that a landowner will not want to potentially develop land, land that should be put back into economic use for this state, land that can be used for new manufacturing and the new high tech programs that are going to be very supportive to the economy and the pull out of our recession.

This is what the purpose of this bill. It encourages a voluntary program to move those contaminated sites and in companion with the bill that previously passed the Senate, SB1189, I believe we are making a major step far ahead of what other states have

been doing and I believe it's going to do much more to help cities in Connecticut get back on their feet to move those properties that have not done anything and have been lying fallow, continuing to be polluted and dirty and I believe that this on its merits is reason enough for this Senate to go forward with this blueprint, to work with due diligence to find the appropriate revenue source that will help us fund those large amounts of revenue bonds as an investment for Connecticut's future, a place where we're going to be able to create new jobs for ourselves and for our children and I hope that my colleagues will join me in supporting this piece of legislation. Thank you.

THE CHAIR:

Thank you, Senator Cook. Will you remark further? Senator Looney?

SEN. LOONEY:

Yes, thank you, Madam President. Speaking in support of the bill, I would like to comment Senator Cook and Representative Stratton and all who worked on this bill and its companion bill, SB1189 because it is true that there are many, many formerly used industrial parcels lying fallow in cities across this state which developers and lenders are shying away from making an investment in because of the environmental problems and

because of all of the other concerns that have stymied development.

There are many potentially developable parcels, large sites that could be readily assembled with some creativity. The risks and the costs and the concerns have been daunting and have constituted a real bar in recent years to that development. So these two bills together as companion pieces I think will make a breakthrough in that regard and provide us with some reason for hope. Thank you, Madam President.

THE CHAIR:

Thank you, Senator. Will you remark further? Will you remark further? If not, would the Clerk please announce a roll call vote. The machine will be open. Members please take your seat.

THE CLERK:

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

Have all members voted? If all members have voted, the machine will be locked. The Clerk please

take a tally.

THE CLERK:

Total number voting, 35; necessary for passage, 18. Those voting "yea", 34; those voting "nay", 0.

THE CHAIR:

The bill as amended is passed.

THE CLERK:

Page 5, Calendar 398, Substitute for SB967, An Act Concerning Payments by the State by Hospitals for Administratively Necessary Days. Favorable Report of the Committee on Human Services and Appropriations, File 681.

THE CHAIR:

Senator Genuario.

SEN. GENUARIO:

Madam President, I move adoption of the Joint Committee's Favorable Report and approval of the bill.

THE CHAIR:

Question is on passage of the bill. Senator Genuario, one moment please.

Would the Senate please come to order. Members please take your seat. Staff and guests please take your conversations out into the hallway.

Senator Genuario.

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Appropriations.

DEPUTY SPEAKER HYSLOP:

Are there any objections, seeing none, so ordered.

CLERK:

On page eighteen, calendar 363. Substitute for House Bill Number 6681, AN ACT CONCERNING REMEDIATION OF, AND LIABILITY FOR CONTAMINATED REAL PROPERTY. Favorable report of the Committee of Judiciary.

DEPUTY SPEAKER HYSLOP:

Representative Godfrey.

REP. GODFREY: (110th)

Thank you Mr. Speaker. I move that substitute for House Bill Number 6681 be referred to the Committee on Finance Revenue and Bonding.

DEPUTY SPEAKER HYSLOP:

Are there any objections? Seeing none, so ordered.

CLERK:

On page twenty-eight, calendar 121. House Bill Number 6834, AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE RELATIVE TO STATE POLICE HIRING AND OTHER EMPLOYMENT PRACTICES AFFECTING PROTECTED CLASSES. Favorable report of the Committee on Labor.

DEPUTY SPEAKER HYSLOP:

H-727

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The House of Representatives is voting by roll call. Members to the Chamber.

The House is voting by roll call. Members to the Chamber, please.

DEPUTY SPEAKER HYSLOP:

Have all members voted? Have all members voted?

If all members have voted, please check the machine, make sure that your vote is properly cast. The machine will be locked and the Clerk will take a tally.

The Clerk will announce the tally.

THE CLERK:

HB5386 as amended by House A. Total number voting, 147; necessary for passage, 74. Those voting yea, 142; those voting nay, 5. Absent, not voting, 4.

DEPUTY SPEAKER HYSLOP:

Bill as amended is passed.

Clerk call Calendar 363.

THE CLERK:

On page 32, Calendar 363, Substitute for HB6681, An Act Concerning Remediation of and Liability for Contaminated Real Property. Favorable report of the Committee on Finance.

DEPUTY SPEAKER HYSLOP:

Representative Stratton.

REP. STRATTON: (17th)

Thank you very much, Mr. Speaker.

I move acceptance of the Joint Committee's favorable report and passage of the bill.

DEPUTY SPEAKER HYSLOP:

Questions on acceptance and passage, will you remark further?

REP. STRATTON: (17th)

Yes, Mr. Speaker.

I really feel that both this bill and its companion which is currently in the Senate, SB1189, may be some of the most significant legislation that this Chamber considers this year.

Two years ago we adopted a program known as the Urban Sites Initiative which has been very successful in cleaning up a few contaminated urban properties. However, it is going to be impossible for the State of Connecticut to deal with the vast numbers of properties that sit unattended, even if we were successful.

And as a result, thousands of properties around the state with varying and often unknown levels of contamination sit underutilized or abandoned, draining the local economy, thwarting community development efforts and potentially extending the environmental or public health hazards caused by the contamination.

It is fears of liability for clean up of unknown dimensions that scare off all but the most determined or well-financed individuals. As a result, today most banks will not extend credit to access, let alone clean up contaminated properties.

Business transactions and their associated economic growth are severely impeded and municipalities are afraid to close untaxed, delinquent or abandoned properties.

The contamination remains unaddressed and those seeking development opportunities choose undeveloped areas, potentially reducing or threatening the state's limited pristine areas.

Clearly the economic, social and environmental costs of not returning these contaminated properties to productive use provide us with very compelling reason to boldly rethink and I would suggest change the way we go about governing the clean up of contaminated properties.

The bill before us this afternoon seeks to do that and before I get into a more detailed discussion of the bill itself, I would like to call an amendment that really is central to explaining those provisions and would hope that the Chamber would adopt the amendment and then discuss the bill as amended.

So at this point would the Clerk please call LCO7257 and I be allowed to briefly summarize?

DEPUTY SPEAKER HYSLOP:

Will the Clerk please call LCO7257, designated House A, Representative has asked leave to summarize?

THE CLERK:

LCO7257 designated House A offered by Representative Stratton.

DEPUTY SPEAKER HYSLOP:

Representative Stratton.

REP. STRATTON: (17th)

Thank you, Mr. Speaker.

As I said earlier, this amendment really makes many changes in the underlying file copy. Many of them are technical and a few are substantive and will certainly become a part of a discussion and explanation of the bill.

Probably most importantly it separates the use of the fund and the administration of that between the Department of Economic Development and the Department of Environmental Protection.

With the amendment, the Department of Economic Development would administer any loans to municipalities that are provided in the underlying bill --

DEPUTY SPEAKER HYSLOP:

Excuse me, Representative Stratton. I'm going to have to call the House to order once again. I'm going to ask if you have conversations, would you please take them outside of the Chamber? It is getting quite noisy in here. You cannot hear. We die down for a little while, then we build right back up again.

REP. STRATTON: (17th)

Thank you, Mr. --

DEPUTY SPEAKER HYSLOP:

Proceed, Representative Stratton.

REP. STRATTON: (17th)

Thank you, Mr. Speaker.

As I said, it makes a separation in the duties carried out in the bill between environmental protection and economic development.

It also makes clear that the revenue source for the bonds that would provide those loans in the future is something that is not in place in the bill and that the sections of the bill that relate to the use of that fund do not go into effect until that revenue source is identified.

I would move adoption of the amendment and urge adoption of it and then discussion of the bill as amended.

Thank you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Questions on adoption. Will you remark further? Questions on adoption. Will you remark further?

If now, we'll try your minds. All those in favor signify by saying aye.

ASSEMBLY:

Aye.

DEPUTY SPEAKER HYSLOP:

All those opposed, nay. The ayes have it, amendment passes, rule technical.

Will you remark further on the bill as amended? Representative Stratton?

REP. STRATTON: (17th)

Thank you, Mr. Speaker.

I do have a second, very brief amendment, which is LCO6499, if the Clerk would call and I be allowed to summarize?

DEPUTY SPEAKER HYSLOP:

Will the Clerk please call LCO6499, designated House B? The Representative has asked leave to summarize.

THE CLERK:

LCO6499, House B offered by Representative Stratton.

DEPUTY SPEAKER HYSLOP:

Proceed Representative Stratton.

REP. STRATTON: (17th)

Thank you, Mr. Speaker.

This amendment merely deletes an unintended reference to the workers compensation laws in the bond part of the bill and I would urge adoption.

DEPUTY SPEAKER HYSLOP:

Questions on adoption of House B. Will you remark further?

If not, we'll try your minds. All those in favor, signify by saying aye.

ASSEMBLY:

Aye.

DEPUTY SPEAKER HYSLOP:

Those opposed, nay. The ayes have it. Amendment B passes, rule technical.

Will you remark further on the bill as amended? Representative Stratton.

REP. STRATTON: (17th)

Yes, Mr. Speaker.

Without taking too much time of the Chamber, let me try to briefly highlight what the different sections of this relatively long bill do.

Section 1 deals with definitions.

Section 2 is really the innovative new program that we are establishing in conjunction with SB1189. It refers to a category of licensed environmental professionals who will be licensed under the under bill -- under the other bill and through this bill in Section 2, would be authorized to conduct certain activities in specific areas within the state.

Those areas are limited to places in Connecticut where the ground water classification is GB or GC, which means that it is not used for drinking water. Those properties must not be subject to an order of the DEP for a clean up of the contamination in question.

In those instances, the investigation, the remedial action plan, the actual remediation and a filing of a final report can be conducted independently by one of these licensed environmental professionals.

After the conclusion of that work and the signing of that final plan by the LEP, the plan is filed with the DEP. The Commissioner must approve that plan within 30 days or make a decision that it needs to be audited.

If, indeed, the Department decides that on the basis of the report there is a need to further investigate the site, that must be completed within six months. At that point in time, the Commissioner may

enter into a memorandum of understanding as to further monitoring or other action that he deems needs to be taken.

But in the event that that does not occur, the site would be considered clean in accordance with the standards that would be in effect at the time and an environmental use restriction would be filed on the land records for that property, unless it was determined that that was not necessary by the Commissioner.

Section 3 of the bill provides the opportunity for those that go through this process to request a covenant not to sue, which in -- the Commissioner in consultation with the Attorney General, could enter into limiting the liability of the person entering into the covenant and any future successor owners of that land from liability for past contamination.

Section 4 establishes a fund that is a combination of a loan fund and an insurance account for the state to deal with the increased liability or potential liability of the state.

Section 5, which is a very long section, deals with the issuance of those revenue bonds.

Section 6, deals with the revenue source for those bonds. And as I said in my introductory remarks, at

this point is to be a recommendation that would come back to this General Assembly next session prior to the implementation of those sections of the bill.

Section 7 outlines the uses of the fund and separates them between the Department of Environmental Protection which would be responsible for any expenditures incurred as a result of liability the state assumes under the innocent landowner provisions in the bill as a result of the covenant not to sue, transfer act provisions, which they currently carry out and the potential for extending loans for the removal of residential underground fuel tanks.

The Department of Economic Development is charged with making the loans to municipalities, individuals or firms for the investigation and demolition necessary for redevelopment of contaminated properties.

Sections 8, 9 and 10 incorporate the innocent landowner bill that this Chamber adopted a year ago and which then died on the Senate Calendar.

Section 11, directs that within the clean standards that the Department of Environmental Protection is currently drafting, that there be a specific standard created for GB and GC areas, which are non-residential, which is a lesser standard than would be required if those properties were going to be

used for residential purposes.

Section 12 allows the transfer act functions of the Department of Environmental Protection to continue as is and they are not subjected to the 10 percent cap which is noted in the OLR comment on the bill or fiscal note on the bill.

Section 13, 14 deal with the recording of environmental use restrictions on these properties.

Section 15 allows the Commissioner to extend loans for removal of fuel tanks that might be of risk to the environment.

Section 16 is the penalty provision.

Section 17 authorizes the Department to issue general permits for the primary kinds of activities that are involved in remedial activity.

And Section 18 specifies that the Sections of the bill, 3, 5 and 15 which deal with the expenditure of funds do not go into effect until July of 1996.

And I urge adoption of the bill.

DEPUTY SPEAKER HYSLOP:

Will you remark further on the bill as amended? Representative Young.

REP. YOUNG: (143rd)

Mr. Speaker, thank you.

A couple of questions through you for

Representative Stratton.

DEPUTY SPEAKER HYSLOP:

Representative Stratton, will you prepare yourself for question. Proceed.

REP. YOUNG: (143rd)

Representative Stratton, is it clear to everybody here that there is no currently -- currently there is no funding in this bill, no source of funds for the loans? Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Stratton.

REP. STRATTON: (17th)

Through you, Mr. Speaker.

The anticipated source of funding for those loans is not in place in the bill. There is a slight possibility that excess funds from transfer act or filings of covenants or other such things could provide a very, very limited amount of funding. But basically, yes, you are correct. Through you.

REP. YOUNG: (143rd)

And --

DEPUTY SPEAKER HYSLOP:

Representative Young.

REP. YOUNG: (143rd)

-- then through you, Mr. Speaker, is it clear then

that to establish a sufficient source of funds to operate this program, additional legislation will be needed, I presume, in the next session of this legislature?

DEPUTY SPEAKER HYSLOP:

Representative Stratton.

REP. STRATTON: (17th)

Through you, Mr. Speaker, that is correct.

REP. YOUNG: (143rd)

And, thank you, Mr. Speaker.

Through you, a further question. I have an amendment drawn which I'm not going to call, because it got drawn backwards. But is it -- for legislative intent, will it be the purpose of the proponents of this bill and the legislation which finally enacts the loan -- the, whatever income source there is for the loan provision, to provide such schedules for the repayment of loan, both interest and timing, so as the state will not be, in effect, giving any grants to homeowners; this whole process will be a revolving loan program without grants, grants which could occur because we borrow the money at 7 percent and lend it out at 4. Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Stratton.

REP. STRATTON: (17th)

Thank you, Mr. Speaker.

Through you, if I could direct the questioner's attention to lines 117 to 122 of the amendment, the first amendment we adopted. That states that the terms of any loan may provide for a variable interest rate. The intent is to provide incentive for early repayment of those loans. This amendment says that the overall cost to any borrower cannot exceed the state's cost.

It is conceivable if someone paid back the loan essentially immediately, that there would be some slight cost to the state. But the intent is clearly a revolving loan account that generates itself.

DEPUTY SPEAKER HYSLOP:

Representative Young.

REP. YOUNG: (143rd)

Thank you, Mr. Speaker.

So then for further clarification, it would be that the State Bond Commission, upon the issuance -- upon authorizing the issuance of bonds for this program, would probably at that point also determine the interest rate at which those loans -- those funds could be loaned out? Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Stratton.

REP. STRATTON: (17th)

Through you, Mr. Speaker.

I'm sure that you know far more about the interaction there. But I -- the Department of Economic Development would actually draw up the terms of the loan with the person doing it. But obviously, that would be at the rate that those bonds would be sold at.

REP. YOUNG: (143rd)

Thank --

REP. STRATTON: (17th)

Through you, Mr. Speaker.

REP. YOUNG: (143rd)

Thank you, Representative Stratton. Thank you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Will you remark further on the bill as amended? Representative Stripp.

REP. STRIPP: (135th)

Thank you, Mr. Speaker.

Through you, Mr. Speaker, a question for the proponent of the bill.

DEPUTY SPEAKER HYSLOP:

Representative Stratton, will you prepare yourself for a question.

REP. STRIPP: (135th)

Mr. Speaker, through you, is there any provision or potential for the state in protecting the innocent landowner for the state to become liable for any federal regulation or federal charges or expenses or liability? Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Stratton.

REP. STRATTON: (17th)

Through you, Mr. Speaker.

The language that's in the bill with regard to the innocent landowner is actually drafted to coincide with the federal superfund similar kind of thing.

But I do believe that there could be a circumstance where there was a property conceivably that was one that became subject to some type of federal action that indeed the owner could be deemed an innocent landowner and so the state's responsibility or liability for cleaning it up would be just as if it were under order from us to do that.

But it could conceivably be involved with a federal order on it also. But the extent of the liability would be the same as if it was a state order. There would be no difference because the contamination would obviously be the same contamination. Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Stripp.

REP. STRIPP: (135th)

Thank you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Belden.

REP. BELDEN: (113th)

Thank you, Mr. Speaker.

Mr. Speaker, this particular legislation has a section in it that allows homeowners to borrow money from the state at low interest rates to remove a fuel oil tank that they have buried in the ground.

I'd like to give you a couple scenarios. I own a three million dollar estate in one of the affluent communities. I have a 2500 gallon oil tank buried in the ground in the yard and guess what; the State of Connecticut just became my low cost interest loan bank to have my tank removed.

This bill sets the State of Connecticut up again as the low interest loan bank of the state for private home remediation. Not only does it do that, but it says, hey, look, we'll put all this in place, but we won't define a funding source until next year.

Let me tell you, I don't want to be anywhere on that hill where the steam roller is rolling down next

year when this has been in place for a year and try to stop the borrowing of $30 million to fund this program.

If we need it all, if this is the will of the General Assembly, then let's step up right now and define where the money's going to come from. These are supposed to be revenue neutral bonds. You borrow the money, you get money back.

I can tell you it doesn't quite work that way, because not everybody pays it back.

And if you want to set up a $30 million bank that gives low interest loans in small amounts, you can add the people on staff to administer it, because I don't know how many loans you might grant with $30 million, if it's two or three thousand dollars at a clip to remove a oil tank from somebody's yard, is it a 10-year pay back? Does the state have to send out bills? I mean, where does it all end?

We cannot go down to the lowest, lowest level and help everybody in this state by borrowing money. This $30 million would also be in the bond -- the debt limit cap. So I think we need to choose, make sure that we know where we're going and there are some good things in this bill and we're at our usual nemesis here and that is unique packaging, something for everybody and how do you vote against it?

Unfortunately, for the reasons I have mentioned, I am going to vote against it. Thank you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Will you remark further on the bill as amended? Representative Nystrom.

REP. NYSTROM: (46th)

Thank you, Mr. Speaker.

I rise to support this legislation. I think what this bill actually tries to do is separate the best of standards that we always seek to achieve and recognize how the real world operates and that there are large parcels of land in our municipalities, in particular, who are classified as contaminated. And yet we currently hold them to the same standards that we hold other tracts of land that we would have higher concerns for, such as risk to human health and safety.

The sites themselves of being an origin of industrial nature and so forth, we're trying to in this piece of legislation, recognize that those standards, perhaps don't fit best and actually impede the process of cleaning up these sites.

And so I think this bill is important. Some of the previous speakers have mentioned some concerns that I, too, share. However, I think the crux or the basis of this bill deals with cleaning up the environment.

Some of those other issues are important and I don't mean to put them on the back burner, but if you want the land to be cleaned up, if you want land restored to tax rolls which benefits municipalities and I don't know if anybody's listening, but, they're not.

I think you need to look at this bill as a step forward. I think there are adequate protections, particularly on the funding issues that mean we will be back here readdressing this next year. I mean, the Commissioner may very well come back and say that he does not have a source to provide for the revenue stream. And if that is the case, then very little will get done.

But in the past everything has been passed back and forth in our courts. And all our money, including state dollars ends up going into litigation and contaminated properties remain contaminated and they remain off the tax rolls and that benefits no one in this state.

Therefore, I support this bill and I look forward to continue to working with the Committee on this bill in the future. Thank you.

DEPUTY SPEAKER HYSLOP:

Will you remark further on the bill as amended? Representative Schiessl.

REP. SCHIESSL: (60th)

Thank you, Mr. Speaker.

The Clerk has an amendment, LCO6668. I would ask the amendment be called and I be given permission to summarize.

DEPUTY SPEAKER HYSLOP:

Will the Clerk please call LCO6668, designated House Amendment C. And the Clerk -- I mean, the Representative has asked leave to summarize.

REP. SCHIESSL: (60th)

Thank you, Mr. Speaker.

THE CLERK:

LCO6668, designated House C, offered by Representative Schiessl and Senator Nickerson.

DEPUTY SPEAKER HYSLOP:

Representative Schiessl.

REP. SCHIESSL: (60th)

Thank you, Mr. Speaker.

This amendment addresses a major concern we, in the Finance Committee, had with this bill regarding the funding mechanism and the funding of bonds.

It adds language that simply states that no bonds shall be issued under this section unless a pledged revenue source has been enacted by the General Assembly. This makes very explicit the obstacles or

the burdens that need to be overcome before bonds will be issued under the terms of this proposal before you today.

And I would urge adoption of the amendment. Thank you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Questions on adoption. Will you remark further? Representative Stratton.

REP. STRATTON: (17th)

Just very quickly, Mr. Speaker, thank you.

I similarly support this amendment. It is implicit in the implementation dates within the bill and think it makes a good bill and the language stronger.

DEPUTY SPEAKER HYSLOP:

Will you remark further on Amendment C?

If not, we'll try your minds. All those in favor signify by saying aye.

ASSEMBLY:

Aye.

DEPUTY SPEAKER HYSLOP:

Those opposed, nay. The ayes have it, Amendment C passes, rule technical.

Will you remark further on the bill as amended? Will remark further on the bill as amended?

Representative DiMeo.

REP. DiMEO: (103rd)

Thank you, Mr. Speaker.

Mr. Speaker, in order not to give the appearance of conflict, I'd like to be accused from this vote.

DEPUTY SPEAKER HYSLOP:

You may be excused, sir.

REP. DiMEO: (103rd)

Thank you.

DEPUTY SPEAKER HYSLOP:

Will you remark further on the bill as amended?

If not, staff and guests to the well of the House. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the Chamber.

The House is taking a roll call vote. Members to the Chamber.

DEPUTY SPEAKER HYSLOP:

Have all members voted? Have all members voted?

If all members have voted, please check the machine, make sure your vote is properly cast. The machine will be locked and the Clerk will take a tally.

Representative Gelsi.

REP. GELSI: (58th)

Mr. Speaker, in the affirmative.

DEPUTY SPEAKER HYSLOP:

Representative Gelsi in the affirmative.

Clerk will announce the tally.

THE CLERK:

HB6681 as amended by House Amendment Schedules A, B and C. Total number voting, 147; necessary for passage, 74. Those voting yea, 142; those voting nay, 5. Absent, not voting, 4.

DEPUTY SPEAKER HYSLOP:

Bill as amended is passed.

Are there any announcements, points of personal privilege? Representative Collins.

REP. COLLINS: (117th)

Thank you, Mr. Speaker.

A note to my colleagues in the Chamber that Speaker Ritter last week said that the votes would be coming quicker and quicker and that we should stay close to the Chamber as we get to the end of session.

Those of us who served in the Chamber in the past knew that if former Representative Holbrook was in the hall, that you really didn't have to be in quite that fast because Speaker Ritter and Speaker Balducci before him were always extremely courteous in making sure that the machine was not locked until Representative

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The Clerk will take the tally.

The Clerk will announce the tally.

CLERK:

House Bill 6776, as amended by House Amendment Schedule "B"

Total Number Voting	144
Necessary for Passage	73
Those voting Yea	144
Those voting Nay	0
Those absent and not voting	7

DEPUTY SPEAKER PUDLIN:

The bill passes. The Clerk will return to the Call of the Calendar, Calendar 363.

CLERK:

On page 36, Calendar 363, Substitute for House Bill Number 6681, AN ACT CONCERNING REMEDIATION OF, AND LIABILITY FOR, CONTAMINATED REAL PROPERTY, as amended by House Amendment Schedules "A", "B", "C" and Senate Amendment Schedule "A". Favorable Report of the Committee on Legislative Management.

DEPUTY SPEAKER PUDLIN:

Good afternoon, Representative Stratton.

REP. STRATTON: (17th)

Thank you, Mr. Speaker. I move acceptance of the Joint Committee's Favorable Report and passage of the

bill, in concurrence with the Senate.

DEPUTY SPEAKER PUDLIN:

On acceptance and passage, will you remark?

REP. STRATTON: (17th)

Yes, Mr. Speaker. The Clerk has an amendment, LCO 7151, previously designated Senate "A". Would he call and I be allowed to summarize?

DEPUTY SPEAKER PUDLIN:

Clerk, please call LCO 7151, Senate "A".

CLERK:

LCO 7151, Senate "A" offered by Senator Cook.

DEPUTY SPEAKER PUDLIN:

Madam has asked leave of the Chamber to summarize. Please, please.

REP. STRATTON: (17th)

Thank you, Mr. Speaker. This amendment makes four changes in the underlying file copy approved by this chamber the other evening.

First, it changes the period of time within which the Commissioner has to act on a final remediation plan submitted to him.

Secondly, it deletes the language on the Advisory Committee which shall be included in the Task Force bill later to be considered by this chamber.

Thirdly, it makes it clear that any funds in the

loan account, once that is up and operational when repaid, go back into that account.

And lastly, it delays implementation of Section 12, which is the Transfer Act fee part of the bill, also for the year that other sections of the bill are delayed and I would urge adoption of the amendment.

DEPUTY SPEAKER PUDLIN:

On the adoption of "A", will you remark? If not, I will try your minds. All those in favor of Senate "A", signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER PUDLIN:

Opposed, nay. Senate "A" is adopted. Will you remark further on the bill, as amended by Senate "A"? Representative Stratton? No. Will you remark? Will you remark? If not, staff and guests to the well of the House. Members, be seated. The machine is open.

CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting by roll call. Members to the Chamber, please.

DEPUTY SPEAKER PUDLIN:

If all the members have voted and if your votes are properly recorded -- the machine is open. If all

the members have voted and if your votes are properly recorded, the machine will be locked. The Clerk will take the tally.

Will the Clerk please announce that tally?

CLERK:

House Bill 6681, as amended by House Schedules "A", "B" and "C" and Senate "A", in concurrence with the Senate

Total Number Voting	145
Necessary for Passage	73
Those voting Yea	145
Those voting Nay	0
Those absent and not voting	6

DEPUTY SPEAKER PUDLIN:

The bill passes. Mr. Clerk, please call Calendar 479.

CLERK:

On page 33, Calendar 479. Substitute for House Bill Number 5440, AN ACT CONCERNING MARITAL AND FAMILY THERAPISTS. Favorable Report of the Committee on Judiciary.

DEPUTY SPEAKER PUDLIN:

Representative Gerratana from the great City of New Britain.

REP. GERRATANA: (23rd)

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REP. STRATTON: Another, just question that I had, I was reading through your amendment here. I'm wondering whether the second page, the line on 373 which deals with the voluntary clean up related to the earlier version of HB6681 which was still a registered environmental professional and in the process of rewriting that, with respect to the work that the task force has done, HB6681 also embraces a licensed professional exactly like the Department bill and whether that becomes a moot point at that juncture or not.

It would involve a slightly different category of sites, but it's using the same licensed individual that the board is licensing and carrying forward.

THAYNE JOYLE: For the record, I'm Thayne Joyle with the Department of Environmental Protection. I think we were looking at an amended version, or a proposed revision to HB6681. I think that's what that comment refers to.

REP. STRATTON: Prior to the time that that incorporated the licensed professional.

THAYNE JOYLE: I think that's correct.

REP. STRATTON: Okay. Other questions?

SEN. CLARK: I just want to echo my appreciation for the work that the task force put together. I know that it was a very concentrated period of time that you were able to do this and I'm particularly pleased that the banking profession was involved as well because what we're going to be able to accomplish with SB1189 is the movement of a lot of properties out for economic development for our state.

And I think you've come up with a formula that's going to be able to do it without a huge infusion of state funds, to be able to move some of the properties and I hope that this will be the beginning point for further movement of properties for economic development, cleaning it up, probably the lower priority sites that are not part of the Transfer Act now will be able to benefit from having licensed environmental professionals

available now and we'll be able to move that along move expeditiously and use the department professionals for the more difficult and complex cases and still be able to accomplish a lot more with the expertise that we'll be able to build up within the department and the expertise in the new industry, actually, that we'll be able to build up in the state. So I'm very hopeful.

ATTY. PETER GILLIES: That's certainly our intent and we're very hopeful as well. I would like to express my thanks to you and Representative Stratton for taking such a real interest in the progress of the Committee and what we're doing and sort of helping shepherd it along. That's appreciated.

REP. STRATTON: I have another just technical question, and I don't know, maybe Greg can help me with it. But in lines 357 through 360, you deal with the status of someone who becomes an owner through judicial foreclosure and how that relates to the innocent landowner statutes. And if I sat and tried to do that, I kept going in a circle and I'm wondering if you can break the circle and tell me what it is you're trying to accomplish in this process.

GREG SHARPE: Sure. I'd be happy to. This is Greg Sharpe. Basically, there was a debate within the Committee as to whether all foreclosures should be specifically exempted. Foreclosures in Connecticut fall into two categories. A strict foreclosure and a foreclosure by sale.

In a strict foreclosure, the foreclosing party essentially takes title to the property through an order of the court. In a foreclosure by sale, there is actually an auction. And the concern of the Committee was, whether in a foreclosure by sale situation, since it's possible for a third party to end up acquiring the property, someone other than the foreclosing lender, should we provide protection to that person and the Committee bantered it back and forth and the bottom line was that as a practical matter in foreclosures by sale, at least on properties like the universe that we're

talking about, it's rare for any third party to actually pick up the property, actually outbid the bank for the property.

So the decision was made that we would exempt all foreclosures in the process, but that, so that people would be on notice in the rare case where you might have a third party bidding on the property. We wanted to make it clear that that third party situation would not be able to then claim later on that they were an innocent landowner.

In other words, if you were a third party bidding at a foreclosure auction, you should do the same kind of due diligence that you would if you were just negotiating an arm's length transaction in a voluntary context.

REP. STRATTON: Thank you. That does clarify it. Are there any other questions from any Committee members? If not, we thank you all very much.

ATTY. PETER GILLIES: Thank you.

REP. STRATTON: The next person to speak is Bob Smith who will be followed by Helen Rosenberg.

BOB SMITH: Good morning. I'm Bob Smith, Bureau of Water Management at DEP, to offer some brief comments on Committee HB6317 which is AN ACT AUTHORIZING THE CREATION OF REGIONAL WATER POLLUTION CONTROL AUTHORITIES.

And I might add at the outset that DEP works very closely with the Office of Policy and Management and the treasurer's office on the Clean Water Fund financing of projects throughout the state and with me here today to answer any questions that might arise is Bob Norwood, who is the Clean Water Fund manager with us at the DEP. Linda Savitsky and Bob Dakers from OPM who are with the Municipal Finance Services section of OPM. And Sharon Dixon Pay from the treasurer's office who manages the Clean Water Fund operations there.

The bill would allow for the voluntary creation of

REP. STRATTON: Thank you very much, Bob. This is a hefty bill, but it's my understanding, correct, that there is no embracing of new authority, what we are dealing with is taking authority that currently resides with an individual municipality system and just allowing them to bring those together.

BOB SMITH: Yes. I believe that's correct. They would have the same powers and duties of existing WPCAs but do it in a regional fashion.

REP. STRATTON: any other questions? Thank you very much.

BOB SMITH: That was very easy. Thank you.

REP. STRATTON: Not many people have read that whole bill. Thank you. Helen Rosenberg, followed by Mark Mininberg. Or, with Mark Mininberg.

HELEN ROSENBERG: Good morning, I'm Helen Rosenberg from the City of New Haven. I'm speaking for the City and we would like to stress the importance to New Haven and the state of passage of the proposed bills concerning industrial site remediation. That is HB6681 and SB1189.

Although the City doesn't have the same amount of industrial activity it did decades ago, it's still an attractive place for manufacturers and distributors to locate. This year alone, the City has had to turn away probably about 15 or 16 businesses because lack of modern buildings or clean sites on which to construct modern facilities.

The City has identified 20 sites, 20 properties, totalling about 82 acres, many containing obsolete factory buildings as good candidates for redevelopment if the site remediation issues can be expeditiously addressed.

New Haven has a limited capacity to expand its tax base, although expansion is needed to compensate for the existence of non tax paying institutions in the City and high service costs. We've estimated

that if the derelict sites were redeveloped, at least 1,300 jobs could be created and about $6 million in annual new property taxes generated.

The major issues which need to be addressed in order to realize development of these sites are the extensive time which is often involved in DEP review and certification of site remediation, buyer and lender reluctance to invest in contaminated sites, and the costs involved in site testing, clean up and demolition and disposal of obsolete buildings.

Their redevelopment is important to New Haven and communities statewide to achieve: increased taxes and job creation, protection of Connecticut's rural landscape, elimination of blight, reduction of crime and improvement of the environment, particularly in inner city neighborhoods, environmental improvements statewide through increased clean up of industrial sites.

We feel that these two bills contain the essential elements of a successful program to achieve these goals. The most important aspects of the bills is the creation of licensed environment professional system to oversee and certify remediation of certain sites. This will reduce the time lags currently hindering clean up. It is also essential that the issue of financing the costs involved with site remediation and redevelopment be addressed.

Therefore, instituting lender liability protections and creating the Contaminated Property Remediation and Insurance Fund are also crucial. Thank you. Mark Mininberg will continue to speak for the City.

REP. STRATTON: Thank you, Helen. You both go ahead, and then after, questions.

MARK MININBERG: Okay, thanks. Mark Mininberg and I'm speaking for the City of New Haven. I just have to speak about three or four technical points to HB6681 that we wanted to emphasize.

First is the bonding component and the revenue bonds which we think are really critical to making

this program work for municipalities and the reason for that is that most towns don't have, most towns have sites that are either abandoned or are subject to huge tax liabilities and they can't move the sites because there's no private capital to do it. And what's standing between the town of redevelopment of that site is a productive revenue generating and job creating facility, is the inability to do basic Phase I and Phase II environmental testing to be able to do site preparation work, and for the Town to support its own costs, its soft costs, its staff costs in trying to do that.

What the bonding provision would do is to allow funds to be available from the state for conducting these kinds of environmental site assessments and site preparation work.

It may seem kind of, I think if you're not involved in the process, you might ask, well, why doesn't the private sector just do it. Why isn't the money just there? And the reason is because nobody wants to take a risk on a site where you can't even yet quantify what the damage is.

And the City of New Haven, for example, is sitting on, I forget what it is, but some enormous percentage of its productive property, 15%, 20% of the industrial property in the City is a wasteland, completely unusable and will never come back unless the City, on its own initiative, and I don't mean private sector initiative, the City, must take the bull by the horns and make it happen.

And yet, the expertise isn't there within the City to be able to conduct the kind of site prep work and investigatory work that's needed, nor does the state have that kind of capability now. So without this revenue bond section, I don't think the rest of HB6681 will get done what we need to have happen right now.

Second is, excuse me, I'm still getting over the flu, with regard to the license site, or environmental professionals section, we strongly support that, of course. But we're concerned that

the board of oversight have broad based appointments from the different branches of government. We'd be concerned if one agency had complete oversight, excuse me, had the appointments, exclusive appointments to that board. We think it ought to be spread in a way that many board appointments typically are when the Governor gets a few, the Speaker, the President Pro Tem, what have you.

And obviously, DEP participation is both positive and necessary, but we just want to see that there's a broad based view of what the professionals are expected to do if they are truly able to function as independent entities and they are not, given that they need to practice in front of the DEP, there's a concern that if the entire board is made up of DEP staff, they may not be able to have that kind of independence that we think is necessary.

Now, with regard to the covenant not to sue, this is a pretty controversial one, because I think that there are those in the environmental community who are concerned that if the state issues a covenant not to sue to a landowner saying, if you're going to property up according to 1995 standards, we won't touch you in the year 2000, that somehow that's going to mean that if science tells us that the standards should change in the year 2000, we've lost our ability to control that site, for that owner.

And the flip side of the argument which is what the cities are really saying, is that if you don't have a covenant not to sue, you can't get new owners to come in and take over bad sites. So we're not talking about a covenant not to sue that allows the "polluter" to get away with something, but we're saying that if you're willing to step up and take the risk of turning this site around, we need to give you some protection, because you effectively are innocent of having created the problem in the first place.

The bill has a provision that the covenant would have to be paid for, there would be a fee for it. There would be something like 3% of the value of

the property. The City is pretty concerned about that provision and we were asked to go back and survey companies and find out how they felt about it. We only really spoke, or were able to speak with one company who had experience with it, and that's Walbro Corporation which is the company that has taken over the Meriden Rolling Mills site and is one of the, it's either the first or second depending on how you count, urban site success stories.

The state's put up $15 million to do the clean up and we had extensive negotiations. I look around the room, you can practically see the Walbro negotiating team is here. All the different sides of it. There are about eight different parties to it. And the director, we had represented Walbro Company and their environmental director would not close this deal unless he got some protection which said, we're going to convince a board in Michigan that we're going to take over a hazardous waste site in Connecticut that we've got some protection against past contamination.

We were unable to get a covenant not to sue because it didn't exist at the time. So we eventually worked it out by creating something called a compromise of claim and it took weeks to do and we had to go to the Governor to get it. It was a nightmare for everyone and we almost didn't close what is a facility that's going to create 500 manufacturing jobs for Meriden, as a result of this one issue.

So in your records, you'll see, I'm not going to go on and on, but in your records, you'll see that Carey Grover, who is the environmental director has written a very strong letter saying that in Michigan the covenant is something that is offered freely and willingly as a positive inducement to industry and it's something that is in, exists also in several other states as a positive inducement. And by attaching a price tag to it, you're asking, by asking Walbro to come up with another $15,000 to buy a protection that Connecticut should really be willingly giving, it creates a serious competitive issue to the state.

I mean, why shouldn't Carey just build the facility back in Michigan, which is what the alternative was. So in offering a package of incentives, I think that, I just would ask that the Committee look seriously at this and really read Carey's letter because he will explain this much more eloquently than I can.

The final issue, and then I'll relinquish the chair here, the seat, is a DEP approval process. I'm very concerned by just something in SB1189, the bill that the state just testified on, DEP testified on, and that's if you have a transfer act site, the state is still going to maintain a tremendous amount of control and oversight over the property, even if you have a licensed environmental professional involved in it.

In our view, the reason you get a licensed environmental professional involved is because you want to quick turn around, you want to move the site quickly. You want to have some level of confidentiality in the process and the state simply doesn't have the resources to handle all the sites.

If you compare SB1189 to HB6681, there's a big difference. In HB6681 it says, a licensed environmental professional can design the job and do it and then you submit the final plan to DEP and they have 30 days to approve it. And if they don't like what they've seen, then there's a six month audit process to make sure the public is protected. That makes a lot of sense.

I'm just concerned that we're going to exempt transfer act sites from what I think is the better process in HB6681 and somehow I think we need to put these two processes together. We strongly support the one in HB6681. I'm still concerned that the one in SB1189 doesn't go far enough in letting the licensed environmental professional really function as an independent professional in the way all other professionals due from engineers, architects, what have you.

I still am a little bit incredulous that we treat hazardous waste sites, that if engineers who build

bridges and doctors who perform surgery have less oversight than environmental professionals would, and yet I think the risks of those former professions making a mistake are greater than those of the LEPs. So I just want to see some parity if we can do that. Thank you for listening.

REP. STRATTON: Thank you very much, Mark. I'd just like to come back to the covenant a minute, because I think you did a very good job of sort of painting what the alternatives are out there. You've made a fairly strong case in terms of Walbro as to why someone who comes in and assumes responsibility for a site that they were not a part of in the ownership chain that was responsible for the contamination, wants that protection.

You've also made a statement about the fact that the fee attached to it in HB6681 which is there to try to cover potential costs for the state in assuming that risk for the private party would be a disincentive to doing it.

One of the other possibilities that has been thrown out is the idea that, okay, you don't do that at all, that you allow the private insurance sector to step into a situation which once we have a standard that is clearly achievable for people and you can go in that and you say, okay, this is what we're banking on, that the private sector would walk in and fill the gap both in the Walbro situation and in terms of anything that we went on to the future with.

My guess is that that would be more expensive than that 3%, since that's a one-time fee and anything else you would be doing on the long term, and I'm just wondering if you have any comment on the third alternative within that, or the need, I guess also in your mind as to whether you see a need for the state to, in a sense be insuring the risks that they're taking on in that process, or whether that seems unnecessary to you.

MARK MININBERG; Well, you're always going to have third party risk. I mean, you can't get away from, this is a think I think we've created this bi-polar

argument. Do we have a covenant or do we not have a covenant. Do we let people off the hook, or do we give them insurance? And I think the tort system already creates a serious disincentive for a company to allow pollution to off its, outside its boundaries because that third party suit from the neighbor who's drinking the ground water or exposed to it, it's a heavy hammer.

And all we're trying to do with the covenant is say that the state itself won't enter into costly and time consuming litigation if the state has found it worth its while to bring us into the state or into this community to try to turn a property around.

So we're not suggesting that insurance goes away or that it's not needed, and certainly not suggesting that parties who are really damaged or injured shouldn't be able to sue. But it's, entering into, having the attorney general serve papers is a whole other matter. It's almost like saying, great, we want you to come in and clean up, and then if there's a problem, we're going to force you to prove that it wasn't, I mean, it's almost creating a presumption that the party who's doing this good will work as I view it, is going to screw up and we ought to go after them again, you know.

Thanks for doing the clean up, oh, just kidding. You know, and it's scary. It's great for my profession, Hell, that's how many of us in this room make our living. But if you're sitting on a board back in Michigan, you ask, why shouldn't we stay here, why don't we go to Ohio or New York or Massachusetts where covenants are freely given.

REP. STRATTON: I was just going to ask you that question, what is your understanding of how readily available such a covenant is in other states, following remediation.

MARK MININBERG; Again, this is, Carey represents that Michigan has granted 30 to 40 of these in the past 18 months and they've set up a covenant not to sue unit. And there's actually a staff person who has something like the title Environmental Specialist/Covenant Not to Sue, you know, program.

Her job is to make sure that these covenants are issued and that the positive inducement is there for people to come in. I'd be interested in hearing the lending community more than the cities on this because I wonder, it's often the lenders who'll say, we're scared about getting that state sign off and if we can't get that, we don't care if the property is clean and meets the standards, if the state can change the standards tomorrow, then we're not protected. We're going to lose our investment.

REP. STRATTON: Thank you. Are there other questions? Just very quickly, Helen, do you have any average market value for the 20 properties you were talking about if those were clean?

HELEN ROSENBERG: Well, off the top of my head, because I keep track of all of those. They've gone down quite a bit, probably. I mean --

REP. STRATTON: What they would be --

HELEN ROSENBERG: They're now on average, they average about one and a half to three acres for $100,000, which is pretty cheap. And usually they have a building between 40 and 100,000 square feet on them.

REP. STRATTON: And if they were clean and no vacant building on them, what kind of value?

HELEN ROSENBERG: I'd say the land itself would be worth about $80,000 an acre.

REP. STRATTON: Any other questions? If not, thank you both.

MARK MININBERG; Thank you.

REP. STRATTON: Jonathan Rosenthal, followed by James Banks.

JONATHAN ROSENTHAL: I'd like to thank the Chair members of the Committee for allowing me the opportunity to speak this morning. I'm Jonathan Rosenthal. I'm the executive director of the Bristol Development

Authority. I'm here on behalf of the City of Bristol and its mayor, the Honorable Frank Nicastro. I'm here to speak strongly in favor of HB6681. The bill would accomplish several important things, including speed up of environmental clean up, allowing municipalities to access clean up funds and allow municipalities to return industrial and other contaminated sites of brown fields to the tax rolls.

Please allow me to illustrate with a few real life examples. On site one, an old industrial site built in the early 1900s was contaminated by more than 60 years of forging, heat treating and other metal finishing. Not only is there heavy metal contamination, but a tank firm has left a number of environmental problems.

The City

(GAP FROM SIDE A TO SIDE B)

contaminated buildings to be subdivided for sale, but 27 contaminated acres remain. The owner has not paid taxes in a decade and currently owes over half a million dollars in taxes and interest.

The bank will not take the property due to contamination and is not getting paid. And the City will not take the property for the very same reason. While the property continues to rent, neither the bank nor the City is receiving what is owed them and the property owner continues to do this with impunity.

On site two, an empty 100 plus year old manufacturing building which has been empty for eight years, has not paid taxes in that period, and was not taken in tax foreclosure due to environmental concerns. The building which had $300,000 in back taxes has recently suffered significant arson. The ability to sell the building has dropped substantially and probably when and if it is sold will not be a value sufficient to cover the taxes or other expenses owed on the building.

I would like to state that the City of Bristol, as with most cities, is not quick nor happy to foreclose, but the House Bill would allow municipalities the flexibility to foreclose without concern for being held responsible for environmental problems that it did not create.

Realistically, it is too expensive for the City to undertake environmental due diligence in order to foreclose on a property. Furthermore, there would be extreme difficulties to gain access to records and to the property itself in order to test and then foreclose on the property.

For this reason, we oppose the language in SB1189, lines 357 through 360 that would not hold a municipality as an innocent landowner.

We do support HB6681 for the reason that it holds the municipalities harmless.

We support the effort to speed site remediation. The licensing and professional environmental clean up personnel is very important. In economic development, we frequently hear the problems of potential buyers and current landowners of backlogs at DEP to oversee clean up.

The advent of licensed professionals would allow both public and private entities to expedite the clean up. While we support the need for environmental regulations, we can also speed the clean up of the contaminated sites.

With the shortage of suitable industrial sites in Bristol, and indeed around Connecticut, the return of ground sites to use should be a priority. The City also anticipates the availability of funds to help pay for site remediation and this is a critical element of this bill.

While the bill is promising in its other aspects, the availability of funds assures that clean up will indeed be undertaken. Thank you.

REP. STRATTON: Thank you very much for your testimony. Are there questions? Thank you. James Banks,

followed by Kip Bergstrom.

JAMES BANKS: Good morning, everybody. Thank you for letting me speak this morning. My name is James Banks and I'm an economic development professional working for the City of Norwalk. I'd like to speak briefly this morning in support of HB6681, AN ACT CONCERNING REMEDIATION OF AND LIABILITY FOR CONTAMINATED REAL PROPERTY.

A major problem that we face in Norwalk is the lack of modern flexible manufacturing space which we need in order to attract jobs to Norwalk. Much of the industrial space in our town, particularly within its Enterprise Zone, which is underutilized or vacant, cannot attract businesses due to environmental concerns, real or suspected and the inability to realize and revitalize, reuse this valuable property results in a serious loss of potential jobs and tax re venues and it contributes to the decline of the surrounding neighborhood.

Current owners, developers and potential new users avoid sites with known or suspected environmental problems for several reasons. One is the amount of time involved in dealing with the clean up. A second is the concerns regarding the process in determining if standards have been met. Third is the difficulty of obtaining financing. Fourth, concerns regarding liability. And lastly, the cost of remediation.

In my opinion, HB6681 provides a common sense approach to addressing the barriers to remediation while balancing the needs to protect both health of the public and the environment.

Several components of the bill which I particularly support are, number one, establishment of licensed environmental professionals who can in certain instances, independently conduct and approve environmental site assessments, prepare remedial action plans, supervise environmental remediation and approve final remedial action reports.

This would streamline the process of remediation in industrial sites in which ground water

contamination is not an issue. My only concern on this bill relates to the six month period permitted for DEP to conduct an audit when they have determined that it is necessary. That amount of time is severely detrimental to the turn around time industrial developers and users typically require in a project. We hope that that time frame can be tightened up.

Right now in Norwalk, we have an industrial site on Day Street in South Norwalk in our Enterprise Zone and it's a site considered high priority by the DEP and the City and it's had no resolution for over four years. So there's a site that's going unused and could be reused.

Another component of the bill that I support is authorization of the state to enter into a covenant not to sue with the owner of the property after remediation is completed and the extension of innocent landowner statutes. These components will address concerns regarding liability and enhance the ability of projects to obtain financing.

A third component I support is the establishment of a fund to assist municipalities in preparing Phase Ii assessments and demolition. This would greatly assist the cities with the redevelopment of industrial sites that no developer will approach without some preliminary work.

And the fourth thing that I support within this bill is the mechanisms for funding the components of the bill through owner fees, to fund the state's liability and a covenant not to sue, and an issuance of revenue bonds and heating oil tax to fund the special contaminated property and remediation fund.

The owner fees and oil tax are clearly related to the benefits. The revenue bonds for the remediation fund are an investment that will undoubtedly yield many jobs and increase tax revenues in our distressed inner city areas.

In sum, I urge your support for HB6681. It addresses many of the barriers that have prevented

the clean up and reuse of valuable industrial sites. It will help cities and their residents to become more self-sufficient. It will also help to preserve our rural areas from unnecessary industrial development.

And finally, I believe that it is vital that we move in this direction as Connecticut strives to rebuild its economy and compete effectively in attracting and retaining business in the state. Thank you very much.

REP. STRATTON: Thank you very much for your testimony. Are there questions? I'd just comment on the six month time frame that you focused on and I think that's something that really relates to, how do we strike a balance between the assumption that a licensed environmental professional's plan will be accepted and that time frame is really the 30 days and I think the assumption is that in most cases, that review period of time will be sufficient to determine that what was done is adequate and it's really saying that when the Department in the interest of protecting public health feels that it is important to conduct a more extensive review, that the kinds of documents we're talking about are not things that one can review real quickly.

But I understand where that concern comes from in being able to make properties available. Thank you very much for your testimony. Kip Bergstrom, followed by George Gurney.

KIP BERGSTROM: My name is Kip Bergstrom. I'm the economic development director in Stamford. I'm also the chairman of the Legislative Policy Committee of the Connecticut Economic Development Association which is a group of 100 front line economic development professionals in Connecticut representing my town of course at both the state and regional level, small town and big city.

The CEDA's board has discussed these bills extensively and is strongly in support of both, and I wanted to give you perspective of the City of Stamford which maybe you don't think of as a manufacturing center, but in fact, I think we're

the third or fourth largest manufacturing center in the state. We have some 10 million square feet of industrial space of which about a million square feet is vacant and we have another 50 acres of vacant land that's zoned industrial.

One of the key problems in the redevelopment of this land is the turn around time on DEP approval of environmental remediation plans. You heard Jim talk about a four year time frame on one of their pieces. I think that's the exception. But it's oftentimes much too long.

In Stamford, the majority of our properties are exactly the type of moderately contaminated properties that would be eligible for review by a licensed environmental professional and in our case the redevelopment of this land and this space would create 2,400 manufacturing jobs.

We also are interested in the opportunity that it afford to redevelop industrial sites in other parts of the state as we are in many ways the vestibule of companies entering Connecticut and the nursery bed for companies that start and grow elsewhere in the state.

For example, you might have a company who has its front office in Stamford, but has its factory in Bridgeport and a call center in New Haven and a data center in New Britain, and that gives us a competitive advantage to do that so that the CEO drives 30 minutes to see these other operations rather than going as many do now on a plane to the midwest or the southeast. We have a potential, I think, to keep a lot of the growth of our home based, Connecticut based companies here but it requires the redevelopment of the cheaper land in the state, or the potentially cheaper land in the state and our urban centers.

I sell the State of Connecticut every day. I'm on the front line of the tri-state border wars and I know that our major competitive advantage of the state is the quality of our lives, including a magnificent New England countryside unspoiled by industrial development and by redeveloping brown

fields rather than developing green fields, we have the opportunity to have our jobs in our environment, too.

One last point. These bills are an important part of the solution, but they're not a panacea. By passing this legislation, it's not going to magically clean up and redevelop the contaminated sites in Connecticut. There's a lot more to it than just the turn around time on environmental remediation plan approval, or even the funding of Phase II environmental analysis.

Equally a problem is the fact that banks, even if you got this obstacle out of the way, by and large are not financing speculative industrial development and more so even than in the office sector, the only way you get industrial development is to speculate on it. You have to have an empty cup quality building available for somebody while they're looking for it. They don't, the build to suit is the hardest sell we have. It happens occasionally, but generally if we're going to get this area redeveloped, their has to be speculative industrial development, certainly in Stamford but I would say it's true in other places.

The market right now at this point in time is not likely to do that on its own without some public sector role on that as well which has historically been a major program of the Department of Economic Development. So I think while we are strongly supportive of this legislation, you can't look at in isolation and one has to be concerned as well about the severe reduction in bonding and the Department of Economic Development. That's another piece of the whole, anyway. Thank you for the time.

REP. STRATTON: Thank you very much. Are there questions? Thank you for your testimony. George Gurney, followed by Helen Sahi.

GEORGE GURNEY: Hi. Thank you for this opportunity to speak. My name is George Gurney. I work for ERI. I manage their investigation group. I have nine years experience in investigating hazardous

professional, that's seven years experience. A CPG, what I am, a certified professional geologist, that's five years experience. So just by comparison, those are the other requirements for other agencies, other states.

In summary, I strongly support the bill. I do, however, recommend that the experience be slightly revised or at least be consistent between before and after the examination and be somewhat consistent with other states and certifying organizations. Thank you.

REP. STRATTON: Thank you. Are there any questions? Thank you for your testimony. Helen Sahi, followed by Clay Bassett.

HELEN SAHI: Good afternoon, Representative Stratton and members of the Environment Committee. My name is Helen Sahi and I am the manager of the environmental department at Shawmut Bank. I also had the opportunity to work in the advisory committee that came up with the new language for the raised SB1189 which deals with the Transfer Act.

Shawmut Bank supports, with comment, both bills SB1189 and HB6681, having to do with the transfer of hazardous waste establishments and the remediation of contaminated real property.

With respect to SB1189, I think the privatization of certain Department of Environmental's functions such as the LEP, or the licensed environmental professional will definitely help the verification process that a site has been cleaned up. It will have the effect of enabling loan transactions to go forward. Currently, because of the uncertainty of whether you'll receive a sign off on the DEP say, if you have a form 3 property which is a contaminated property that is cleaned up without a sign off or will be cleaned up. There is a real barrier to giving loans to those sites.

On the foreclosure side, the bill does offer some relief to lenders by clarifying that a Transfer Act filing is not required upon foreclosure. However,

it offers you no relief on the other end. You've now foreclosed on this property and you need to sell it. Yet when you go to sell it as the owner of the property and the bank, you need to fill out a form 3 again, which we would feel is a real hinderance.

We have never knowingly foreclosed on a form 3 property, although we do have form 3 properties in our real estate owned portfolio through foreclosure or through acquisition of other banks and have found it very difficult to sell if it we actually have to fill out that form 3. We either don't sell it, or we sell it at a greatly discounted rate.

We feel that all foreclosed properties should be exempt from any filings, not just judicial foreclosures. We do have two options. We have strict foreclosure and we have foreclosure by sale and yes, it's true, it's usually the bank that ends up bidding the highest price, but we always do the same amount of due diligence whether we feel we're going to bid the highest price or not.

Therefore, those potential buyers that come in, have every opportunity to take a look at the site assessments that have been performed and make their own judgment.

The new form 4 filing, I think will definitely help out also because there are those sites where you need to continue monitoring and as Greg and Peter had said, there is an amendment, I think that addresses Shawmut's issue about long-term monitoring and remediation.

With respect to HB6681, again, the privatization I think is very good. However, I have some concerns over the insurance requirements. I think that the insurance requirements may prohibitively increase the cost of doing business, of doing those site assessments, and more importantly, if that insurance suddenly becomes unavailable, we'll all be operating, or not operating in compliance with the law.

As was mentioned earlier, there is some

discrepancies between SB1189 and HB6681. For example, in SB1189, you can work on Transfer Act sites that are located in GA, GB or GC areas, yet in HB6681 it only allows you to work in the GB, GC areas and excludes the GA areas, which is the potable drinking water supply areas.

And one last comment is, we should all keep in mind that HB6681 and SB1189 can go forward if the clean up standards are actually finalized and we have those in place. Thank you.

REP. STRATTON: Thank you very much, Helen. If you could shed some light on the impact of really putting either of these systems into place and the availability of credit and the kind of comfort level that that starts to put into the banking community.

And I guess in particular, I would focus on two components. One is HB6681, the potential for a municipality to actually quantify the contamination on a site and come up with a figure on what it's going to cost to clean it up. That bill does not then provide remediation funds, but is it far easier than for a municipality to walk into some other scenario and in the private sector is what I'm trying to say, find the funds to do that.

And then secondly, also your read on the importance or non-importance of a covenant not to sue from the state.

HELEN SAHI: Well, the way a bank operates, or at least Shawmut bank operates is that we will quantify the risk at the site, be it a Transfer Act site or not a Transfer Act site.

If there's contamination on the site, we want to know how much it would cost to clean that site up, so yes, by quantifying the risk and coming in is one piece of the puzzle and does help out. The second piece of the puzzle is whether you have that form 3 filing or not that you don't know whether you'll ever get the sign off to a form 2 and now to a form 4 which offers a lot of comfort.

Because currently we consider form 3 sites to have no collateral value because you don't know what's going to happen in the future. By having an end point, you then have a property that you quantify the risk and your collateral value in essence, then, because you know you're going to get a sign off, or hope you get a sign off, is the appraised value minus that remediation cost. So yes, that would help.

And the covenant not to see, also, we find that it is working. We do a lot of work in Massachusetts. Obviously we have headquarters in Hartford and we have a large institution in Massachusetts also and we are finding that the licensed site professionals in Massachusetts and the covenants not to sue are definitely aiding in the loan side.

REP. STRATTON: On that subject, with regard to Massachusetts, has your bank had any hesitancy in dealing with the LSP sites both up front and secondly with regard to the fact that Massachusetts DEP is required to do a certain number of audits and has a fairly lengthy period of time to do that?

HELEN SAHI: Currently Massachusetts just has requirements for length of service and your degree requirements. There is not a test in place at which, it will come out in June, so yes, there is some uncertainty and I do feel slightly uncomfortable when those LSP reports come through my door.

Shawmut is fortunate that we have a staff of geologists and environmental professionals that we can actually review that and do a third party review. There are times where we don't agree and then we have to go back and forth, so in essence it is an audit, or a site overview from the bank's part. Once a test is in place and in conjunction with the oversight, I feel much more comfortable.

Now, the proposed SB1189 does not have that 20% such as Massachusetts does for the oversight, but it tries to compensate for that by having that initial check list that the Department would go through to determine whether your site actually had

to go through, so I think that is a good solution.

REP. STRATTON: From a bank's perspective you would see the process that's really set up in both of those bills as bringing the kind of closure that a lending institution would be looking for.

HELEN SAHI: That's right.

REP. STRATTON: Thank you. Are there other questions? Thank you very much. Clay Bassett, followed by Roger Boucher.

CLAY BASSETT: It says good morning here. I'd like to say good afternoon. Good afternoon. My name is Clay Bassett and I'm a resident of Simsbury. I'm the president of Capitol Fuel Incorporated, which is a heating company that markets from Rocky Hill to Windsor and from Vernon to New Hartford. I also serve on the board of directors and am a committee chairman of the Independent Connecticut Petroleum Association, an organization of about 350 independent, family owned heating oil retailers here in Connecticut.

We would like to voice our support for the majority of this bill. However, we are opposed to the residential home heating oil tax proposed to HB6681, which extends the petroleum products gross earnings tax to homeowners using heating oil.

Our industry feels it is grossly unfair to tax consumers on a necessity of life. Groceries are not subject to tax, and it's wrong to tax the people of Connecticut for the fuel they must have to heat their homes. It is not a luxury to stay warm.

We strongly oppose any tax on heating oil that would directly affect the consumers of Connecticut, even if it is being earmarked for a worthy purpose, the remediation of contaminated property.

I'd like to now digress from my written, submitted testimony which addressed the tax itself and I'd like to talk about whether there is really a need for that tax.

Our industry's statistics show that only 10% of oil heated homes have underground tanks. Of those tanks, half of one percent are found to be leakers. In addition to that, 30% of those leakers do not leak into the environment. They are found to be taking on water and they are removed.

Just yesterday the New York Times printed a rather large article that I'd like to quote from, which is on the replacement of oil tanks, and I'd like to quote from it. Over the years, government officials and experts have suggested that as many as one in three underground oil tanks might be leaking, yet it appears that when tanks are removed, the vast majority are sound.

We've taken out about 500 tanks, said David Dolinsky, president of Skasko Oil Company in Winsted, Connecticut. We found maybe three or four that were leaking. In addition, many of these underground tanks are at larger, more expensive homes. Those homeowners have several options. Their oil company can replace the underground tank with basement tanks. Many of these conversions have already taken place and are ongoing daily.

They are strongly encouraged by those of us in the business. After all, we don't want a customer to incur a costly clean up and then say to themselves, the heck with it, why don't we switch to a utility. We don't want that to happen and we are very pro-active in this area.

In addition, every time a house with an underground tank goes onto the real estate market, the agent, the lending institution, the lawyers involved, insist on its removal. Those removals are always done and tanks go into the basement. I think that Senator Fleming knows communities like Simsbury have enacted regulations which are systematically doing away with all underground tanks.

Another option is provided by the AIG Company, which is American International Group, one of the largest publicly held insurance companies in the United States. They provide service contract coverage through oil dealers like myself, to our

customers. It covers up to $100,000 of remediation coverage. Given that this is a small problem to start, and it gets smaller with each day that goes by, it seems grossly unfair to tax every homeowner using fuel oil for a problem that so few have.

If you tax every oil heat customer, they have no options. And, the free enterprise system isn't allowed to deal with the issue. Retired citizens with fixed incomes and modest homes with no underground tanks are going to pay more for a necessity of life and to many of those citizens, every penny counts.

This is a shrinking problem that I believe is being dealt with responsibly and effectively. I respectfully ask that you not vote the proposed tax into law. Thank you for allowing me to speak today and I'd be happy to try and answer any questions that you might have.

REP. STRATTON: Thank you very much for your testimony. I was going to ask you about Simsbury's ordinance. Are you in the process, does your company remove underground tanks?

CLAY BASSETT: Yes, we do.

REP. STRATTON: So that is something that you are in the process of actively doing right now.

REP. STRATTON: We deal with that daily.

REP. STRATTON: What is the cost if one's not dealing with a situation where it has leaked?

CLAY BASSETT: What would the removal cost be?

REP. STRATTON: Yes.

CLAY BASSETT: Approximately $1,000 to remove it and then approximately another $1,000 to get tanks into a basement, so the total cost, if there were no contamination, would be somewhere in the vicinity of $2,000.

REP. STRATTON: The AIG Insurance Fund that you spoke

of?

CLAY BASSETT: Yes.

REP. STRATTON: That is available, I assume, for also basement takes and leaking transmission lines and that kind of thing.

CLAY BASSETT: Yes, it is.

REP. STRATTON: What does that run? What does that cost the homeowner?

CLAY BASSETT: The cost on that, depending on what company is marketing it, what fuel oil company is marketing it, is usually $40 to $50 a year.

REP. STRATTON: And you're aware that the tax we're talking about would be in the neighborhood of about $8 a year for most homeowners?

CLAY BASSETT: Yes, I am. But that insurance coverage is only bought by homeowners who need it.

REP. STRATTON: Right. Right. I understand that. Is it, I guess what I'm also hearing you say is that you don't think the fund, that there's really a need for the state trying to make funds available to homeowners, either, in terms of removal.

CLAY BASSETT: I don't because I think this problem is shrinking every day. I think our industry is dealing with it responsibly. I think we realize that over a long period of time we should get these tanks out of the ground. We are encouraging our customers to do that. Our customers are doing that.

One of the things that AIG's plan gives them the option to is, is if they do have the coverage and they think it's a wise thing to do just from an environmental point of view to get that tank out of the ground, even though it may not be leaking, they might be reticent to do that, saying to themselves, maybe it is leaking. If we pull it out of the ground, then we've got a big bill to contend with.

AIG says to them if you want to pull a tank out of the ground and put your tanks in the basement, and if there is contamination, you will be covered, so it then gives those homeowners the freedom to go ahead and do what they think is the right thing to do and know that they have the backup of a company like AIG behind them.

REP. STRATTON: Just thinking about a scenario here, because I think one of the reasons that we've looked at this initially was that DEP still gets about 100 reports in a year of leaking tanks in the State of Connecticut.

Those individuals, often the Department takes no action because they know that that is essentially financial ruin for that homeowner. Could that individual after discovery of that go buy this insurance policy and take care of the problem that way, too?

CLAY BASSETT: I couldn't speak for them, but I don't think so. I think they would have to have signed up for it ahead of time.

REP. STRATTON: If I want to dig up my tank, I'll buy the insurance today and dig it up tomorrow, right?

CLAY BASSETT: But they do make you sign an affidavit that says you are not aware of any leaks at this time.

REP. STRATTON: Thank you. Are there other questions? Representative Graziani.

REP. GRAZIANI: Thank you. Can oil tanks be placed outside in New England?

CLAY BASSETT: Can they be? Yes. Every community does have their own regulations, but I would say in general, yes, they can.

REP. GRAZIANI: I mean, from a technical viewpoint, does the oil jell, or it can only be used, or it can only be stored safely outside?

CLAY BASSETT: One does need to be prudent about how it

is installed outside to make sure that it does not jell because that can happen. But I think the industry has learned how to deal with that. And we do put tanks outside for homeowners, inside vaults and that kind of thing and we know how to deal with it and it's not a problem. In some cases, that's what you have to do.

REP. GRAZIANI: If somebody isn't going to have a basement, there is an option to put it outside.

CLAY BASSETT: Yes.

REP. GRAZIANI: You might have to build a little structure.

CLAY BASSETT: @ell, you have to have containment. But it depends on the community again, but a community like Simsbury says you have to have containment under the tank that if it were to leak would hold 110% of the volume of the tank and things of that nature. We do know how to insulate the lines and that sort of thing to protect against freezing of the oil..

REP. GRAZIANI: How long do you think a tank should be in existence prior to being replaced?

CLAY BASSETT: In the ground?

REP. GRAZIANI: Yes.

CLAY BASSETT: That's a very difficult question to answer. I think most communities go with the warranty that the manufacturers supply with tanks which can be in the area of 25 to 30 years.

REP. GRAZIANI: Okay, thank you very much.

REP. STRATTON: Are there any other questions? If not, thank you.

CLAY BASSETT: Thank you.

REP. STRATTON: Roger Boucher, followed by Elizabeth Barton.

ROGER BOUCHER: Good afternoon. My name is Roger Boucher. I am the vice-president and general manager of Wesson, Incorporated, a third generation Waterbury based independent petroleum distributing company. We sell heating oil and diesel fuel as well as gasoline at both the wholesale and retail levels in the greater Waterbury area. We serve well over 10,000 residential customers.

I'm here this afternoon to speak in opposition of Section 6 of HB6681 which would extend the petroleum products gross earnings tax to residential heating oil.

In my position as vice-president and general manager of Wesson, I am very familiar with all the taxes and fees imposed on petroleum products and companies that well them. Right now, all petroleum products sold in Connecticut are subject to a 5% gross receipts tax at the point of sale in the state. The only exception is number two fuel oil sold exclusively for heating purposes.

If number two oil is used for any other purpose, such as in an emergency generator or to power off road machinery, it is subject to the gross receipts tax. It is also subject to the state's 18 cents per gallon diesel fuel excise tax and when used to heat a commercial building, oil is subject to the state sales and use tax.

Section 12-587 of Connecticut General Statutes which instituted the gross earnings tax became law on July 1, 1980. In 1985, the Legislature saw fit to accept number two oil used exclusively for heating oil from that tax because heat is a necessity of life.

I see no reason to change that logic now. In fact, with today's economy here in Connecticut, it makes even more sense to keep the tax off home heating oil. I understand the Environment Committee's intent for this tax in helping homeowners with potential underground tank leaks is an excellent idea. I don't believe it is fair to make every homeowner who purchases oil, especially those people who don't have underground tanks, to

shoulder the burden of a few cleanups.

For the last three years, Wesson's tank replacement program, rest in peace, has been helping homeowners remove their underground tanks and replace them with indoor tanks. We have done literally hundreds of such replacements because we feel it is better for everyone if the tanks come out of the ground before a leak occurs.

Also, as a member of the executive board of the Independent Petroleum Association, I know that many other companies have similar programs. One thing we have all found in removing old underground tanks that there are really very few that pose a threat to ground water.

I'd like to add a little bit to that is, in our experience over the last four years since we've been doing underground tank replacements, we've replaced literally about 430 tanks, 425 tanks and we've only had an experience with one tank that was actually leaking.

In addition, we have taken a pro-active approach and I'd like to leave this for the Committee. It's our brochure that we published back in 1991. It's outlines say, Our program on tank replacement is a pro-active approach advising the homeowner on all the details and the problems associated with leaking tanks. And it just kind of exemplifies the pro-active approach that our industry has taken and members of our organization have implemented since we've taken this pro-active approach.

There's other materials that we have published in the last four years to deal with underground tanks to make our customer more aware of what the problems associated with the tanks are.

Basically that's the end of my testimony.

REP. STRATTON: Thank you very much. Are there questions from the Committee members? If not, we thank you for taking the time to come up. Elizabeth Barton followed by Christina Pollock.

ELIZABETH BARTON: Good afternoon, Senator Cook, Representative Stratton and other members of the Environment Committee. I would like to thank you for the opportunity to testify before you today in connection with SB1189 and HB6681. My name is Beth Barton and I head the Environmental Practice Group at Updike, Kelly & Spellacy of Hartford and New Haven and I have been practicing in the field of environmental law for approximately 15 years.

While I support both of these bills in concept, primarily because I agree that there is a very real need for amendments to the Connecticut Transfer Act and also a very real need for an unambiguous procedure that will facilitate, not frustrate, environmental remediation of contaminated properties, I also believe that there are a number of technical difficulties with both of these bills.

In several respects, these bill do not, as presently drafted, adequately address significant concerns of many of those who are routinely involved in property transfers or in efforts to reuse contaminated properties and I would just like to give a couple of comments with respect to each of the bills to sort of illustrate the concerns that I have.

With respect to SB1189, my comments include the following. First of all, in an apparent effort to better define the types of transactions that are covered by the Transfer Act and specifically to clarify, I believe, I was not on the task force, but from reading the bill, to clarify what is meant by the phrase corporate reorganization not substantially affecting the ownership of the establishment. In Section 11 of this bill, the scope of the transactions that escape the Transfer Act requirements has been significantly and inappropriately narrowed.

For example, while historically those of us who have worked with the Act have believed and interpreted the language I quoted previously to not apply to stock dividend distributions or stock distributions in connection with a merger for a purchase or with the efforts on the part of the

the process, it would appear the Commissioner reserves the right to step into what would otherwise be an LSP review. I certainly understand that there has to be adequate discretion afforded, but it seems to never disappear and I would be fearful of a situation where someone would get very far down the path using the LSP process. At a minimum it seems the criteria should be set forth as to when at which step the Commissioner might then exercise the option to come into the process and require formal approvals.

But it's very broad, it's totally open-ended and presumably that ability again, without criteria attached to it, exists throughout the whole process.

A couple of very technical things which I'm just going to skip over for purposes, but they're in my written comments. We talk about notice to an abutting landowner. I think we have seen adequate evidence in other statutory provisions that absent some real clear direction as to what's meant by an abutting landowner, we're going to potentially create a real problem which is a reference to that section, so I think that's something that needs to be defined.

The, I next wanted to just provide a couple of comments with respect to HB6681. These comments include, first of all as to the definition of the eligible properties, I appreciate the apparent intent to be very narrow in terms of how eligible properties are defined, but it seems to me that there needs to be, if things are going to hinge upon the GBGC classification, there needs to be a defined clear process whereby for example, inappropriately classified properties can be reclassified, and that does not presently exist.

I think it's important to keep in mind that the original classification scheme was implemented, not for purposes of use with cleanup of properties, but rather for purposes of providing some guidance relative to future use of properties, a very major distinction. And therefore, I think we need to create some sort of mechanism whereby we can get

everything classified along the same guidelines. Again, I think there needs to be definition of historically industrial or commercial property also referenced in Section 2, another phrase that has led to considerable discussion and disagreement in connection with efforts to provide clean up of properties.

This bill has the same reliance as does SB1189 on the promulgation of remediation standards, so the comments I made previously would also apply there.

I guess one of my major concerns about this bill is with respect to its ability, even as to the narrowly defined set of circumstances, to adequately address the issue of potential liability that will be attributable to activities engaged in by someone who is otherwise unrelated to the property prior to the completion of the remedial actions.

Certainly, inherent in the ability to facilitate reuse of properties is the need to make it easier, i.e., create a lessor opportunity for liability, easier for unrelated persons, unrelated persons municipalities, a future property owner to come in and remediate the property so it can be put to good use, so it can be put back on the tax rolls and I'm very concerned about this bill in that regard in terms of it maximizing the means whereby it can facilitate the reuse of those contaminated properties.

I think this bill, as well as SB1189 should further expand on the concept of a covenant not to sue that would, subject to compliance with certain conditions, be, for example, effective upon an earlier point such as taking ownership of the property even if the remedial action has not yet been implemented, even if the investigation has arguably not yet been completed. So I have a concern about the covenant not to sue provision as presently in the bill from a timing perspective.

I also have a concern relative to it presently being limited to the owner or the lessor of the property, so presumably a prospective purchaser

would not be able to avail themselves of the covenant not to sue. And I'm also very concerned about the condition on the covenant not to sue that is that there be no continued monitoring required. I think many of us who have worked in this area realize that rare is the property that is not some post remedial monitoring that is required and I think it would be a shame to lose the benefit of this provision in those situations.

I won't repeat, but just endorse the comments that I heard earlier by Mark Mininberg relative to the covenant not to sue and specifically how it has been effectively employed in other settings both at the state and the federal level. EPA, as I'm sure you're aware has a document called the prospective purchaser agreement which does basically function the same as the covenant not to sue. It does give protection from third party contribution actions, something that I think would be very, very important, particularly for members of the lending community and also tenants of property.

Massachusetts also has a covenant not to sue program which I haven't done any sort of formal survey, but from all I understand, it has worked pretty well. That is the situation in Massachusetts where the protection of a covenant not to sue is available at an earlier point than when there's ownership of the property.

So while I endorse the efforts evidenced by these bills to address problems that certainly exist with the current arrangement, I believe the goals could be further advanced by revisions to the present language.

I think Connecticut has a very real opportunity here, an opportunity to distinguish itself in a very positive way. In a critical sense, we continue to lag behind even our New England counterparts in terms of economic recovery. It is possible, certainly, to protect human health and the environment and so promote and encourage, not just allow for responsible economic development.

The urban sites initiative that has been pursued by

DEP with this Legislature's direction, has in again, a very positive way, I think really put Connecticut on the map in Washington, among regulators and among our sister states and I think with legislation such as these two bills, with certain revisions, we have an opportunity to really build on that reputation. Thank you.

REP. STRATTON: Thank you very much, Beth. Appreciate your written comments, too. Are there questions? Representative Maddox.

REP. MADDOX: First, Beth, I'd just like to say I think this is our last public hearing and at least how appreciative I've been as a member, for you to come to many of our meetings and just share your knowledge with us. I hope your employer gets some tax cut or benefit for this, writing your services off.

ELIZABETH BARTON: Thank you.

REP. MADDOX: Ideologically, then, you don't have a problem with the covenant to sue. I mean, that's the first question I ask everybody, especially if you remember that fraternal organization known as the Connecticut Bar Association.

ELIZABETH BARTON: I certainly don't. I endorse the concept of covenant not to sue.

REP. MADDOX: I guess one of my things is, the state can't take action, but it doesn't prelude me from taking a private right of action. Do you have, correct as written?

ELIZABETH BARTON: That's correct. Except if there were to be provisions included which I would certainly encourage, I think, for very obvious reasons, to have their be protection against contribution actions as opposed to individual actions, individual personal injury.

As you know in the federal scheme with all the joint and several liability which certainly we follow to a large degree in the state, it's very important for someone who would otherwise be a

liable party, to be protected from contribution actions by third party as well as from an action that would be initiated by the state.

REP. MADDOX: I mean --

ELIZABETH BARTON: That is not presently though, in the bill.

REP. MADDOX: That's my concern. Because then what we end up doing is, somebody else becomes the environmental policeman if they're not happy with the clean up, whether it be an environmental organization, just a concerned neighborhood group or whoever, and then I think we went to a lot of trouble to only not really solve the problem.

I mean, the idea of this bill as I understand it, and it's a very good cause, is to say when we look at these sites, the only people making any money are the attorneys and the site's not getting cleaned up. That's why, I mean, do you think this will work, then, if we incorporate all the changes you said, will it work?

ELIZABETH BARTON: Well, one of the changes I recommended was protection against third party contribution actions.

REP. MADDOX: Okay.

ELIZABETH BARTON: I think that going on the experience of the other states, and going on the experience, albeit it's been admittedly, somewhat limited so far because these sorts of mechanisms are still relatively innovative. That's part of what's sort of attractive and exciting to the state. They can work, but I agree with your comments completely with respect to the third party liability.

I think that there does need to be protection and to me the fact that EPA has been able to see from where it sits, has been able to see how significant that protection is and to have it be an element of the prospective purchaser agreements just reinforces that.

REP. MADDOX: I mean, you just bring up a valid point there. We ask that our own state, the EPA wants to, that does not include the federal EPA from coming in over us, in fact --

ELIZABETH BARTON: That's correct.

REP. MADDOX: I don't even know if some primacy issues would even take into account. In other words, most of our environmental laws in the State, even the federal ones are enforced by our own DEP for the federal government, and we say well, I guess that would be a very interesting question.

In this case, if they are enforcing both state and federal, we're not suing you under the state laws, we're not taking you into the state courts, we're going to haul your butt to federal court. That's what we end up doing.

ELIZABETH BARTON: Well, there's no question about it. They have independent jurisdiction. However, I think what's important to keep in mind is that many of the things that we're discussing here are also being discussed at the federal level in the context of super fund amendments as well as EPA initiatives and Administrator Browner issued six initiatives to try to address some of the concerns with super fund and specifically on the list are the efficiency initiative, which really translates into coordinating better with the state so they're not duplicating efforts and also the beneficial reuse initiative, which gets us to these sorts of documents like these prospective purchaser agreements or covenants not to sue, or no action letters, things of that nature.

So it's really happening parallel. It is a challenge to try to have it all come together in sync because they definitely are independent jurisdictions.

REP. MADDOX: Do you think it would work, and my concern very honestly with this bill is that it leaves this Committee and it goes to the great beyond and it dies in Judiciary. Do any of your colleagues in that great fraternal organization of the

Connecticut Bar will just seem to think that this goes just a little too far.

Is there some way, would it work if we put a pilot program in place and each year the attorney general could give his blessing on 25 or 50 assorted cases to be presented to him? Do you think that would work or, so we don't kick the barn doors totally open when we say, listen, we're going to try this and each year the attorney general is authorized to basically give his stamp of approval on 50 cases or so a year?

ELIZABETH BARTON: I'd be concerned about an arbitrary limit. I think as a practical matter you have to sort of see what the traffic bears in terms of the sorts of situations that are appropriate through the use of it.

I mean, it's definitely not the sort of thing that you turn around in a form letter overnight. I mean, these are, as experience would show in other states and at the federal level, they're very actively negotiated documents. It's just like putting together a settlement document in a major case.

Sure they fall into patterns in terms of certain boiler plates but, boiler plate language, but they really are actively negotiated. In terms of the Bar, obviously I can't speak for the Bar, but you've heard from a number of members of the bar, a couple of whom I even heard speak directly to the covenant not to sue issue, in support of a covenant not to sue, so --

REP. MADDOX: Well, I'm wondering, from my perspective, they also support the third party. I think that that's even more important than the state. I sometimes find that you can reason with the state trying to get a hysterical bunch of neighbors who feel that they're being impacted, forget it. It won't happen. I think they're both (undiscernible).

ELIZABETH BARTON: Just one last comment. You talk about a pilot program. I guess in many respects, I

view this as a pilot program because it is so narrowly defining the types of sites as to which this tool, this mechanism would be available, even if expanded to encompass the sites under the SB1189, you're still talking about a subset of the total universe of sites where you might want to use this. So I guess I sort of see it as a pilot already.

REP. MADDOX: Thanks.

ELIZABETH BARTON: Thank you.

REP. STRATTON: Representative Metz.

REP. METZ: Thank you, Madam Chairman. I probably should have asked this question of Peter Gillies or someone who testified earlier, but I'm a little confused as to just why the concept of the concept of the covenant not to sue is included in the bill anyway. Why wouldn't approval of the plan and a sign off, as it were, by the DEP serve the same purpose? It seems to me the covenant not to sue might allow the state to overlook something that wasn't included in the plan, whereas if a complete plan is submitted and approved by the state, there would be some estoppel to taking an action against the property owner later on.

And I'm also not so sure that I'm comfortable with the idea of using the covenant not to sue to totally wipe clean the slate for the property owner leaving liability in place for that licensed professional. It does seem to me that since this is a manner of expediting the process, and essentially the state is in a way taking a chance on the good will and expertise of these licensed professionals rather than more direct oversight of its own, then we probably shouldn't be so free in giving up the liability of property owners who would be more inclined to choose more competent and perhaps more honest practitioners when they were making their choice. That's a lot of question, but could you comment on that, why we're using the covenant not to sue, why we are being so liberal in surrendering all liability under all circumstances.

ATTY. PETER GILLIES: Well, actually in our bill, the covenant not to sue is not included in our bill.

REP. METZ: Right. That's why I didn't ask you.

ATTY. PETER GILLIES: We are looking at that again to see whether or not it would be appropriate to consider such a covenant, but I think at least in preliminary discussions, we would be thinking only in terms of questions as to the conditions that exist today, that if there are changes in developments and whatever, it's those that the covenant would be looking to address. It is not the failure of the licensed professional to do his job appropriately. If in fact he has not done it appropriately, then the covenant to sue would not apply.

But it's really a very preliminary discussion from my committee's standpoint. It's something that we talked about very briefly. It's something we're going to revisit, but we conceptually, I think there is some sense that the, and I don't want to speak for my committee at this point, but conceptually I think it's fair to say that we have some concept that the purchaser should have some kind of release for future changes, if engineering and science is such that there have been improvements that he couldn't know about and didn't know about, the covenant ought to protect him.

But it's really very preliminary. But it's not in our bill.

REP. METZ: Okay. Then I'll go back to you. With respect to the bill that it is in, is there some magic of the vehicle of the covenant not to sue rather than just an approval or some other form of acceptance of the work that was done?

ELIZABETH BARTON: I think really, wherever it appears, what I hear to be your questions are, first of all, why do you need it and secondly, is it fair? I mean, that's kind of what it seems to me you're asking.

And in terms of why you need it, I think there are

probably three reasons. The first relates to timing. As I said, one of the concerns i had even in the present bill, is with respect to it not being an instrument that's available until after you've cleaned up the property, all monitoring has ceased and you have an environmental use restriction file. That troubles me. That's very far down the line and that's after an awful lot of money has been spent without knowing whether or not you're going to have a beneficial reuse of that property arguably.

So timing is one of the things, because obviously it could be tailored in a way so as to be available at an earlier point than would the final sign off by the Commissioner on the remedial action plan.

The next reason I see is in terms of it being a more formalized mechanism, an enforceable agreement as opposed to a letter of approval, which you're right. We can all craft nifty sort of arguments as to why there's estoppel, but the reality is, it's particularly when you're dealing with lending institutions, when you're dealing with prospective major tenants. It's always nice to have a formalized agreement that's got everybody's signatures on it pursuant to authority that's given by the Legislature.

So it facilitates the transactions. Maybe in that situation it's arguable not critical, but you're trying to make the whole process, you're trying to make these cleaned up sites appear desirable to even more risk averse type purchasers or lenders so you've got a larger universe from which to draw people that can make these productive properties.

The last part of your question, in terms of the, is it fair? I think you make a very good observation relative to having everything sit with the LSP. It seems to me that one possible way to deal with that could be to have the property owner be on the hook, if you will, or some description of the LSP's activities, you know, some supervision, they retain the LSP for example and then let the contracts between the parties sort of deal with the allocation of liabilities as between the new

otherwise innocent, if you will, property owner and the LSP. I think that's a valid point. I think you could address that.

REP. METZ: That would parallel (inaudible-not speaking into mike)

ELIZABETH BARTON: Sure.

REP. METZ: (Inaudible-not speaking into mike)

ELIZABETH BARTON: I think that's a valid point.

REP. METZ: Thank you.

REP. STRATTON: Further questions? If not, thank you, Beth.

ELIZABETH BARTON: Thank you.

REP. STRATTON: Christina Pollock, followed by Kathie Cyr.

CHRISTINA POLLOCK: Good afternoon. I appreciate this opportunity to speak with you. I had handed out written commentary, but rather than read that commentary, I'd like to just address some of the issues I have with both bills.

My name is Tina Pollock and I'm principal geologist and owner of Geo-Environmental Management Services. I have over seven years of direct experience with assessment and remediation and two years ago I started my own consulting company.

By and large, I think both personally and in terms of our industry, we all understand the need and quite frankly, look forward to registration of environmental professionals in the state and feel it's necessary and the concept of examination for professionals is very, very desirable.

Overall, the concept of both bills. HB6681 and SB1189, I'm in favor of, but there are portions of both bills that I feel can have some very significant impacts to both business and industry in the state as well as consultants. And although

well intentioned, I think that these particular issues, contrary to what they're thought to do, are going to do the opposite which is increase costs, put a number of consultants in the state out of business, virtually immediately, and in the process not necessarily keep incompetent practitioners from operating in the state.

And I'd like to address the three areas where I feel that this is applicable. The first is in the qualifications for licensed environmental professionals. The experience and educational requirements in HB6681 I think very accurately meet what the standard is for those people in the industry making significant decisions, is throughout the country with the exception of Massachusetts.

There is not to the best of my knowledge, any other state that licenses environmental professionals that requires more than seven years of experience with similar educational requirements of HB6681. Therefore, I think those experience and educational requirements are reasonable and within line.

The problem with the requirements in SB1186 is that SB1189
in requiring ten years experience until the exam comes into play and then allowing people at the time the exam comes into play to take the exam that have the same level of experience that somebody would have had in the intervening period between conception, or inception of this bill and the exam, I think is very discriminatory. And to be very honest in a very personal way, basically what this would do for me is say, well, I would have to go out of business.

Let's be optimistic and say that a test is ready in two years. I would have to go out of business so that I could take the test in two years, along with people who would have a level of experience that I would have met during the two years that I was out of business. And I feel that this is relatively unfair burden to place on people who are already in business and conducting business in a responsible way in the state.

The next issue is the professional liability insurance and this is a very, very touchy issue. And this is one of the things that's going to put virtually all the small to moderately sized consultants out of business in this state.

ENO insurance is incredibly expensive. It is outside of the ability of most small to moderate consulting firms to obtain. And contrary to, I think, the reason for putting it in place, it does not guarantee competency in any way, shape or form.

Basically, according to a minimum of four companies that I have spoken to that provide ENO insurance, the way that they determine your premium is by what your previous year's gross income was and that's in a category for instance from zero to $5 million the previous year, the minimum amount of coverage you can get is one million dollars. You can't get $250,000. The minimum is a million, and then if you make $10 million the premiums is higher for the same or more coverage.

But basically, if you can afford the premium, you can get ENO insurance. So it's feasible that someone who has a company who is making money or has a fairly large budget can get insurance and that does not assure their competency. The company sends you a very comprehensive form that you fill out and you attest to the fact that you are competent and that is the basis on which the contract is made out.

They don't come and evaluate your company's individual practices to determine whether or not you're competent and it ends up kind of being a non-issue because most consulting companies in their terms and conditions, limit the amount of their liability to the cost of the project or the amount of work that's been done up until the point of whatever the problem was.

The only way the client can recover more than what the terms and conditions limit, is if you are found to be grossly negligent. And according to the companies that I have spoken to who provide ENO insurance, since your agreement with them is you

certify that you were competent in the first place, if you are found grossly negligence, they're not going to pay off on the policy.

So this appears to me to be a situation that's going to put many consultants in a bind. They're not going to be able to afford ENO insurance and there's some question about what you're paying for to start with and whether or not that is going to serve either you, the client, or the state.

My recommendation is that this is also really a marketplace rather than a legislative issue. If a client wants you to have ENO insurance, you either have it or you don't. If you don't, they will not accept your proposal. They'll use someone who has ENO insurance. But I have many clients who are smaller businesses and industries and it's not important to them.

If I were to be able to afford it, I would have to pass the expense of that on to the clients who don't necessarily need or care whether I have ENO insurance, and I think that's an unfair situation also.

So one of the biggest problems I have with HB6681 is the requirement for the ENO insurance because I think it's sort of a red herring in terms of what anyone is actually getting out of it. And two, whether or not it indicates a decree of competency.

I think the educational and experiential requirements in conjunction with an exam are going to be much more critical in determining who's competent and who's not competent without putting anyone out of business.

The other thing that was spoken about previous to me is the issue of the covenant not to sue. And this is ultimately, if the covenant is included and the professional environmental person is on the hook for being liable in the long run, this is as a professional untenable for the entire weight of the responsibility and liability of the site to come back on to me because what we do is not an exact science.

There's no way we can do an investigation, no matter how well we do it, and say that we know absolutely, we've covered everything and everything attests that the site is absolutely perfect, or meets even certain standards. There's always the potential for non-negligent error in what we do. It's science and science is not perfect.

If the covenant not to sue is conveyed over to the licensed environmental professional, the effect that this is going to have is to turn every site that we work on into a little super fund site because what the environmental professional is going to have to do is so much work that may not be actually necessary but is simply cover your liability work that the expense of doing these investigations is going to be unbelievably expensive.

The concept of doing a minimum amount of defensible work is going to be right out the window and we're going to have to go in and instead of running 80/10, 80/20 analysis on a gasoline station, we're going to be running samples for the complete appendix 9 list just in case somebody brings it up or it's an issue or we're worried we're going to miss something and I think the increased cost is just, I don't think anybody even understands how much more expensive this work is going to turn into and there is, in many cases, not a good reason for this, other than it is simply like with doctors now having to do tests that aren't necessary just so you can say, well I did it, so I can't be held responsible.

In summary, I would just like to say I'm a lifelong resident of Connecticut. Two years ago I stuck my neck out professionally, personally and financially to try to start a business in this state. I think I've profited, I think I'm pretty good at what I do, but both of these bills as they stand, are going to have the effect of the minute they go into effect, putting me out of business.

And I'm not the only one. I'm not sure that's the intention. I'm not sure that's good for the state. I think leaving a small group of very large

consultants in place is also going to significantly increase the cost of doing environmental work in the state because there's going to be absolutely no competition on pricing.

I'm qualified to be certified in a number of other states by a number of other organizations and I would hate to have to leave the state and take my business elsewhere and try to develop it some place else, but that is basically going to be my only option if this goes through.

I have a significant problem having to go to my current clients and telling them as of October 1, or as of January 1st, I'm no longer competent to do your work and here's the address of XYZ Giganto Company and go to them. I think that for myself and other companies, this is really an unfair situation.

REP. STRATTON: Thank you. Representative Metz.

REP. METZ: Thank you, Madam Chairman. Can you give me an idea of the annual premium of a liability policy for someone in your profession that does, say under $5 million a year.

CHRISTINA POLLOCK: Well, I can tell you for me, the best quote that I got was $15,000 a year would be $2,000 up front and $888 a month, and that was the absolute best. And it was substantially less than many of the other quotes that I got.

REP. METZ: I would agree with you that that's fairly stiff, but frankly, I find your testimony remarkable because it seems to me that in this day and age, someone who's in the profession of evaluating information, making tests and rendering an opinion on that, almost of necessity would have to have insurance.

But what you're saying to me is, you believe you are competent, you're competent to do this work but in fact as of today, no one is competent to do this work. This is work that the state is responsible for.

CHRISTINA POLLOCK: Right.

REP. METZ: We are seeking to delegate that responsibility and to have people who we deem to be competent --

CHRISTINA POLLOCK: Right.

REP. METZ: -- and if they make an error, clearly not even an intentional error, but simply an error, which as you say, anyone, no matter how competent can make, we want the state to be protected and in that instance, we would almost certainly require insurance.

CHRISTINA POLLOCK: Well, the ENO insurance is not going to protect the state.

REP. METZ: It certainly would if we had an action against you.

CHRISTINA POLLOCK: Not if, according to the companies that I spoke to, if I am found to be grossly negligent, the ENO insurance will not pay off because my agreement, their agreement with you is that you're attesting when you get the insurance that you're competent, that you are competent.

In other words, they don't come and spend a week with you and audit your operation.

REP. METZ: I understand that. I think most professional liability insurances would be sold in the same manner, without coming and watching you for a year to make sure that you do what's supposed to be done.

But in the case of an innocent omission or error, if your policy covered you, that would be a protection to the state. If your policy says that it won't cover you if you perform your work while you're under the influence of alcohol then perhaps you are assuming a risk yourself that you wouldn't otherwise have, but that doesn't necessarily preclude the interest of having you insured.

It just strikes me as odd that you want to sit

there and say I am competent, I can do this work, but you don't, but if you're not, or if you make an error, then tough, there's no protection. Unless you happen to be independently wealthy.

CHRISTINA POLLOCK: What I'm saying is that the requirements of the bill, by taking into account your educational background, your experience and requiring you to pass a test that is generated by the state is what is far more useful in determining the competency of a consultant than the fact that they've been able to come up with enough money to get ENO insurance, which may or may not protect or be available if there's a judgment against the consultant.

REP. METZ: Well, I respectfully disagree and if the policies are deficient or defective in the way that you state, perhaps what we should do is just not entertain the notion of this program. That if there's no way to protect the state against incompetence, in which we are putting the trust of what has in the past been a state function, then maybe we ought to just forget the whole damned thing.

CHRISTINA POLLOCK: Well, I can't speak for the insurance companies or why they format their coverage. I don't know if it's different for other professionals, but this is strictly companies that are handling professional liability insurance for environmental professionals and it's been an ongoing, very touchy issue from the very beginning as to how insurance was going to be provided for people in our field.

But that, I mean, that's strictly up to the insurance companies as to what they, how they are, or are not going to cover you.

REP. STRATTON: Thank you very much for your testimony. Kathie Cyr, followed by Nick Shufio.

KATHIE CYR: Good afternoon. I'm Kathie Cyr, president of Connecticut Engineers in Private Practice, representing over 120 engineering firms in the state. I'd like to speak about substitute HB6681,

AN ACT CONCERNING REMEDIATION OF AND LIABILITY FOR CONTAMINATED REAL PROPERTY and Raised SB1189, AN ACT CONCERNING REVISIONS TO THE HAZARDOUS WASTE TRANSFER ACT AND HAZARDOUS WASTE SITE REMEDIATION.

I think at this point, I'm probably going to restate a lot of issues that other people have, but for what it's worth, reinforcing that opinion is always of value.

I do want to address in particular, the sections of each bill that establish requirements for and duties of licensed environmental professionals, particularly since many of the members of Connecticut Engineers in Private Practice would become the LEP community.

We understand and endorse the Committee and DEP's efforts regarding the clean up process and licensing environmental professionals. A number of revisions have been incorporated which address our earlier concerns. However, we remain concerned that the licensing requirements vary between the two bills and would recommend that the bills be made identical in that respect, or the requirements be defined in one and referred to by reference in the other.

Regarding Substitute HB6681, we're very concerned with unprecedented risk allocation and professional liability provisions which are in the bill. We recommend that Section 1c-3a regarding insurance requirements be deleted in its entirety and we do have a number of reasons for that.

The responsibility and the risk for an owner's property should not be shifted to the LEP. Insurance is not required by statutes for other professionals entrusted by the public such as professional engineers, architects or lawyers. This would put a new requirement on many small businesses.

Insurance coverage for professional acts are based on negligence. If the professional is not negligent, coverage will not apply, thus insurance will not go to accidental contamination of

property. Insurance is not and should not be used as a substitute for professional competence, or as a mechanism to transfer the risk properly belonging to a property owner to the LEP.

Further the insurance market is highly volatile. The insurance for environmental contamination was completely unavailable as little as five years ago, and there's no guarantee that it will exist in the future. Moreover, the risks that are presented by this new requirement are not readily measurable. Insurance rates could increase and availability of the insurance decrease as a result.

Representative Metz commented on another clause that's of concern to us and that's Section 3 of Substitute HB6681 regarding the covenant not to sue, and more importantly to us, that the state could bring an action against the LEP for any violation of Chapters 445 or 445k of the General Statutes.

Now, these clauses transfer all of the risks associated with hazardous waste and water pollution control to the LEP regardless of the LEP's ability to control those risks. We firmly believe that the best way to manage professional risks for the owner is to select a qualified consultant, a qualified professional, who will develop an adequate scope of work to do the job right.

While not specifically related to the LEPs, I'm going to digress for a second and just note that in Section 2d and 11a-3 of HB6681, an environmental use restriction would be required to be placed on a property unless specifically exempted by the Commissioner.

We'd simply like to note that this requirement is more stringent than the current version of DEP's draft proposed cleanup standards and could result in the very delays the bill is seeking to avoid.

Regarding Raised SB1189 in several sections of the act, language refers to verification of remedial action. Another section, language refers to verification that a property has been subject to

remedial action. We recommend that the language clearly state that the LEP could verify that remedial action has been taken for a defined problem. An LEP should not and could not verify that a parcel has been completely remediated since sub-surface conditions cannot be examined in the detail that surface features can.

Alternately, an LEP could render an opinion that in his professional or her professional judgment, no other remedial action was required based on public cleanup standards. That opinion would, of course, require adequate investigation of the parcel to have been completed.

Thank you and I'd be happy to answer any questions.

REP. STRATTON: Thank you very much, Kathie. Just a comment on the environmental use restriction part. That really was for seeing another category within the clean up standards that would be a lesser than residential standard for GB and GC areas, and hence the assumption that the properties that were being sort of carved out in HB6681 that limited number of properties would most likely be those properties if one was indeed achieving the standards that were residential standards within those areas, that's when the Commissioner would make the determination that you didn't need to file the use restriction.

KATHIE CYR: Right. I recognize that that would be applicable in some circumstances, but it would not necessarily apply to all circumstances. There are properties in GB areas that could be remediated to meet the residential direct contact criteria even though they may not meet other criteria for GA nor would they need to.

REP. STRATTON: Right.

KATHIE CYR: And by the (undiscernible-both speaking at once)

KATHIE CYR: But the assumption is there would be two standards within those GB and GC areas, both those that automatically require the use restriction and those that did not. And that if you were dealing

with the ones that automatically required the use restriction and that was the level that one had remediated to, then it would be required that that use restriction be recorded. I think we're probably talking around in circles, though.

KATHIE CYR: In practicality we find that it's often the decision of the owner. Some owners, or potential buyers, are more liability conscious than others and would, just simply don't want a use restriction ont he property and would rather clean the property up to residential criteria than have the use restriction. The option is very beneficial and I think would be tremendously helpful.

But to require the use restriction, even if they could meet a higher standard may be a problem.

REP. STRATTON: In that situation it wouldn't be, because that would be the situation where the Commissioner would say you met the other standards so you don't need it.

KATHIE CYR: But the Commissioner would be required to render a written thing and that's the slow up in the process.

REP. STRATTON: Okay. I understand. Are there other questions?

SEN. COOK: Could I just ask if there's a difference between malpractice insurance and the errors and omissions insurance that you're discussing?

KATHIE CYR: Errors and omission insurance cover us for professional activities errors and omissions. It does not cover us if we are engaged in fraudulent activity or misrepresentation or you know, other similar acts of gross negligence of the type that we're not honest.

The insurance does not cover us if we are not negligent. For example, we can do our jobs in accordance with the standard of care of the industry and problems may still result, but our insurance won't cover it because we haven't been negligent.

It is not a fund to solve the problems of the world or address contamination that we really had nothing to do with putting there, and our job is simply to investigate it and to, within our standard of care, clean it up.

SEN. COOK: Do engineers and other professionals carry malpractice insurance?

KATHIE CYR: Our errors and omissions insurance and then pollution liability in terms for those who also do clean up work, but again, that is based on negligence. Malpractice insurance in the form that you're referring to perhaps as a doctor may have?

SEN. COOK: Other professionals, lawyers, whatever?

KATHIE CYR: I'm not familiar with exactly what a malpractice insurance would say, but errors and omissions is designed for professional liability.

SEN. COOK: I'm just trying to get at, if the state is asking you to, or putting over on you the ability to bring closure to a site because we're going to accept a licensed site professional, a licensed environmental professional's work at this point, then what is the appropriate safeguard that the taxpayers should have that that work is more than just you saying I'm good at it?

KATHIE CYR: The way the two bills are structured, it's more than my saying I'm good at it. There are certain requirements for licensing and we do endorse the requirements for experience and education in, although we could quibble about the amount of experience, but the experience in the education and testing procedure.

One of the two bills, and I believe it's SB1189, has a provision in there to develop a code of ethics for the licensed environmental professionals and I think that's heading in the right direction.

I'm a professional engineer and I'm licensed in Connecticut and several other states. Licensed professional engineers do not have, by statute requirement for insurance, and yet we it sounds

very pompous to say you can't find a more upstanding group of individuals, but I happen to believe that's true. But we act under a code of ethics and professional standards that dictate how we behave and I think that same type of approach is one that would be very appropriate for a licensed environmental professional.

REP. STRATTON: Out of curiosity, I know that the statutes do not require professional engineers to carry insurance. Do you have any guesses to how many, what percentage of engineering firms actually do, or individual engineers?

KATHIE CYR: I would guess over 50% do, but I could not quote any particular statistics at you, or to you.

REP. STRATTON: Thank you. Representative Metz.

REP. METZ: Madam Chairman, I think we may be getting into some confusion here. While the statutes might not require every licensed professional engineer to have errors and omissions insurance, the entire function of a licensed environmental professional would be to render opinions to the state of Connecticut and if a professional engineer were working for the state or doing work on contract for the state, I assume that the state would require them to have insurance.

So if you want to take the test and spend the time in the field necessary to be a licensed environmental professional but you don't intend to ever submit your opinion to the State of Connecticut with respect to the clean up of a site, then you don't need the insurance.

But if you want to do the job that you take a license to do, then you need the insurance. That's what the bill says.

KATHIE CYR: The implication there is that our insurance would go to the state. In fact it wouldn't. Our insurance would be my contract, or our limit of liability, would be by contract between us and our client, so that if there were a claim of negligence against us by our client, the insurance would be

there to defend us.

REP. METZ: I think you are incorrect about that. Particularly since your client would have no responsibility to the state in the event they obtained a covenant not to sue.

KATHIE CYR: Our contract would be with our client.

REP. METZ: But you also would be submitting, if your document is to be acceptable to the State of Connecticut, you must have a license, that's not in your contract with your client. You must have a certain minimum amount of experience. That's not in your contract with your client. And you must have errors and omissions insurance, according to this bill.

Now if errors and omissions insurance does not exist, of the type that's contemplated by the bill, then perhaps someone's going to have to come up with it or there won't be any LEP. But the fact that you are asking for the special privilege of giving opinions to the state on which the state is going to ask, gives the state the right to say what the requirements for your qualifications will be and the insurance is one of them.

And to just sit there and say well, if I make an error, I'm not covered. If you make an error, you probably would be covered. But if you have a site evaluation and there are 10 steps that would be normal in the industry and if you perform those, then you have not been negligent. But on the basis of the 10 steps, or 10 tests, whatever, you come up with an opinion that is wrong, you've made an error In that case, your insurance would presumably cover you. Otherwise, who holds the bag for this? The state.

So the state is saying, we don't want to worry about whether you have the money to reimburse us for your error, although made in good faith, therefore you need insurance to protect you and to protect us.

KATHIE CYR: Such insurance for environmental

contamination is currently available. Our concern is that, or one of our concerns is, with the volatility of the market, it may not be in the future. And you put us all out of work.

REP. METZ: If that happens, then the program will go down the drain, based on the statute (inaudible).

KATHIE CYR: It would, but the program would also go down the drain in the requirements on a licensed environmental professional increased our risk so dramatically, and our liability so dramatically that prudent business practice would say we shouldn't do this.

REP. METZ: That's also a possibility. That is a legitimate comment. The fact that you shouldn't be required to stand behind your work is not. And if you are standing behind your work and the work is of a magnitude contemplated by this bill, then perhaps we should have insurance.

KATHIE CYR: I would stand with my comments but certainly recognize your concern. Questions?

REP. STRATTON: No. Thank you Kathie, very much. Nick Shufio, followed by and I'm afraid I can't read the name, but Kip Bergator, or someone of that sort? Good afternoon.

NICK SHUFRO: Good afternoon, Representative Stratton, Senator Cook and members of the Environment Committee. My name is Nick Shufro. I'm the manager of regulatory affairs and policy planning for United Technologies Environment Health and Safety.

I'm here today to represent my colleague Mr. Fred Johnson who is the director of environmental programs for United Technologies. Mr. Johnson was invited to participate on the task force that developed Raised SB1189. Mr. Johnson is on a business trip this morning, today, and could not make it and asked me to give the following testimony. I'll read directly from it. It's regarding SB1189, AN ACT CONCERNING REVISIONS TO THE HAZARDOUS WASTE ESTABLISHMENT TRANSFER ACT AND

industry. I'm an LSP in Massachusetts and have been active in that program since October 1993.

Bill Rizzo, the president and CEO of our company has been deeply involved in the development of the LSP legislation in Massachusetts. He was appointed by Governor Weld to be on the advisory committee which developed the regulations. He was also appointed by the Governor to serve on the board of licensed site professionals and has done so until his resignation last month.

I'm here to speak on three basic points. One is my support of SB1189 and its provisions to establish the LEP program. My support of SB1189 and its provision to develop the ranking process which will ultimately focus DEP's personnel on those sites which represent real problems and the need to revise HB6681 to eliminate the requirement for LEPs to maintain professional liability insurance.

Establishment of the LEP program with respect to this program, I'm here to tell you that the LSP program in Massachusetts is working and it's working very well. And I think that in this time of limited state resources, that the state needs to recognize that privatization of a portion of the clean up program, that portion for those sites which do not represent significant threats to human health or the environment would be very prudent and would result in significantly more clean ups in this state.

The provisions to develop a form in SB1189 which would create the ability for the Commissioner to determine whether a particular site would go into a DEP lead clean up or an LEP lead clean up is critical to the success of this program.

Also critical to the success of this program are the development of achievable clean up standards by the Department. I would suggest to you that the Massachusetts standards, or the Massachusetts program has worked and worked very well because a number of the standards, or the majority of the standards are very achievable in that they do protect human health and the environment.

Some of these standards, particularly the pollutant mobility criteria as currently under consideration by the DEP do not appear to be very achievable and may have substantial detriments to this program.

With respect to the professional liability insurance, I will echo the concerns of Kathie Cyr. No other professions are required by statute to maintain insurance. This may have significant and unintended consequences, namely the increasing the frequency of claims, increasing the cost of the insurance, decreasing the availability of the insurance and perhaps a full pull out of insurance companies who provide this insurance to firms in the State of Connecticut.

The Massachusetts program has been working for approximately 18 months and has functioned very well and does not have a provision which requires the professionals to maintain liability insurance.

In summary, I strongly urge your passage of SB1189 and also urge that you revise HB6681 to eliminate the insurance requirement. Thank you.

REP. STRATTON: Thank you, John. Are there questions? We don't need to go through all the same territory. Thank you very much for your testimony. Robert Stewart followed by Mark Peel.

ROBERT STEWART: Ladies and gentlemen of the Environment Committee, thank you for the opportunity to speak this afternoon. I'm here representing HRP Associates, an environmental consulting company based in Plainville, Connecticut, with offices in South Carolina and Albany, New York.

I'd like to speak in support of SB1189 which seems to closely parallel the recent revisions to Massachusetts general law, Chapter 21e of the Massachusetts Contingency Plan in requiring licensure of environmental professionals. I'm an LSP and also a registered professional geologist in several states.

Although I support the bill, I would also like to see revisions to the amount of professional

experience proposed for SB1189 in that the parallels with the Massachusetts plan should be incorporated into the Connecticut plan for licensed environmental profession in that a total of eight years of total professional experience would be more appropriate and of those five years in the form of relevant professional experience, or the investigation and remediation of waste site clean up.

Secondly, this digresses from my written comments somewhat, but the parallel House Bill also includes a provision for reciprocity or a comity with other states with comparable programs and I would like to add our support for those and that if somebody has already demonstrated to a state such as Massachusetts that they are capable of conducting and supervising waste site clean up that they ought to be able to obtain licensure in Connecticut without the undue burden of a parallel stream of paperwork as well. Thank you.

REP. STRATTON: Thank you very much for your testimony. Are there any questions? Thank you. Mark Peel, followed by Winthrop Hayes. I'm sorry, I skipped Robert Stewart.

MARK PEEL: I'm Mark Peel.

REP. STRATTON: Okay, Mark.

MARK PEEL: Representative Stratton, members of the Committee, good afternoon. Thank you for the opportunity to address the Committee in Proposed HB6681. My name is Mark Peel. I am vice-president of corporate operations at American Environmental Technologies, an environmental service contractor incorporated in the State of Connecticut.

Since 1988, AET has provided environmental contract services to Connecticut, New York, and in more recent years, Rhode Island and Massachusetts. The company employs 42 people and has offices in Bethel, Norwich, and Hamden, Connecticut and other facilities in Norwalk.

Today the company is a qualified environmental

contractor providing spill and waste transportation services under contract to the States of Connecticut, New York and Rhode Island, as well as to businesses and industries throughout the northeast. AET also holds a basic ordering agreement BOA, with the U. S. Coast Guard.

In 1989 I was hired by the owners of AET to manage the business office operations and to coordinate the company's training programs. I would note that this was before the federal OSH 1910.120 rule that established health and safety training standards for employees on hazardous waste sites. My qualifications for this responsibility include over 20 years of academic administration in colleges and universities and a doctorate in education administration.

AET supports the spirit of the bill related to professional standards, the quality of environmental services, the funding for remediation of real property and the requirements for appropriate levels and types of insurance. The environmental service industry in Connecticut has developed rapidly in the past decade in the absence of such regulation in these areas. The profession and the marketplace, as well as the state's environment will benefit greatly from reasonable regulation fully and fairly enforced.

The one area of concern I would like to address specifically today is the certification of licensed environmental professionals. The proposed bill seeks to establish a certification process and a set of standards involving experience and education for environmental professionals. In its most recent draft, the bill proposes that a licensed environmental professional have a certain number of years of practical experience and a college degree in a science or engineering field. A separate path to certification, as we just heard, would be through a comparable process in another state acceptable to the examining board.

The current version of HB6681 would deny certification to certain individuals who have played an important part in the state's

environmental service industry to date because they do not have a credential to meet certification requirements. Certainly some recognition of the historical development of the environmental marketplace seems appropriate. With minimal, but increasing state regulation over the past 15 to 20 years, the environmental service industry in Connecticut has evolved into a system of commercial providers working with business, industry, the public and the Connecticut Department of Environmental Protection to address environmental needs.

Individuals who entered the profession in its early days acquired their expertise largely through experience in the field supplemented by short term training programs and seminars. These individuals represent a qualified source of talent and skill who would be denied the opportunity for certification as a licensed environmental professional unless the process addresses competence through experience.

My company has long recognized the value of formal education combined with practical experience as model pre-service preparation for environmental work. In 1990, AET established a cooperative education program with the University of Connecticut to provide health and safety training and field experience to undergraduates interested in environmental careers. That program has produced several college graduates who are now working in environmental positions or who are continuing their education in environmental related studies.

AET also provides its employees a very liberal tuition reimbursement program for college courses related to their AET duties.

I suggest that there is more than one way to define professional standards. I believe the emphasis of certification should be on the knowledge and skill necessary to perform the services needed to protect the environment and the interests of the state.

In 1993, Massachusetts established a two track

certification system for licensed site professionals, LSPs. The standard track requires a combination of experience, some eight years total experience with five years of practical experience, and a college degree to qualify an individual to sit for the professional certification examination which we've heard today has yet to be given.

A second track, called the alternate track, is for professionals without degrees. It requires more extensive experience, fourteen years total professional experience with seven years of practical experience to quality an individual who may possess the competence but not the degree to sit for the examination.

I strongly recommend that the Committee consider an opportunity for the certification of qualified non-degree professionals in this bill. Thank you.

REP. STRATTON: Thank you very much for your testimony and the issue that you raise has been raised by others and you are familiar, obviously with the Massachusetts program. One of the things that I had wondered about was the kind of application form that they use that obviously has very expensive questioning about one's experience in the field that would the same purpose be accomplished rather than the coming up of yet one more set of credentials on the basis of experience even, but to allow individuals to demonstrate to a board their competency and then sit for the exam. And it sort of is an exception kind of rule rather than establishing a whole other category.

MARK PEEL: I'm not sure I totally understand what the difference --

REP. STRATTON: That upon the presentation of credentials in the form of something other than those required in the bill, that the board of examiners could determine that they felt you were qualified and then sit for the exam.

MARK PEEL: Through extensive documentation, yeah, yeah. The Massachusetts paper work is extensive to go the alternate track round. It's interesting that I,

in touching base with the LSP examining board, they have 420 individuals on their list, LSP list, as of yesterday, Friday, and they tell me that the majority are clearly standard track, qualified individuals, yet the door was still open and it has been used successfully to date.

REP. STRATTON: You don't have a sense of how many people have used the alternative route?

MARK PEEL: They don't. I asked them. They said they didn't keep track of that.

REP. STRATTON: Thank you. Are there other questions?

: Thank you, Madam Chair. Mark, the people that have the extensive amount of experience in your company, are they licensed professional engineers by any chance?

MARK PEEL: No.

: Okay. Also, have you looked at SB1189, because you're facing basically the same problem in that bill also.

MARK PEEL: I just saw that this morning.

REP. STRATTON: Just for the record, the two bills have been developed in sync but not completely and the qualifications will be

(TAPE STOPPED IN MIDDLE OF TESTIMONY)

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REP. STRATTON: Winthrop Hayes followed by Al Smith. No? Al? And he will be followed by Tom Turek.

AL SMITH: Good afternoon. My name is Al Smith. I'm an attorney with Murtha, Cullina, Richter & Pinney and I'm speaking today on behalf of the Greater New Haven Chamber of Commerce. The Greater New Haven Chamber of Commerce is a regional business organization representing over 1,000 member businesses throughout South Central Connecticut. I'm here to testify in support of HB6681.

I won't recount the many benefits associated with this bill but will rather address a couple of specific issues. The first, I guess I will join the growing group of attorneys for a covenant not to sue and say that I feel it to be a necessary part of the overall strategy of returning sites to productive use.

I would point out that the covenant provision in HB6681 is really very limited. It protects only the owner or operator/lessor of property that has been certified as cleaned by a private professional, contingent upon the approval of that certification by the DEP. It does not offer any comfort or shelter to entities which actually contributed to the contamination, nor does it protect the holder of the covenant for conditions that that owner or operator may have created after acquiring the property.

Obviously, it does not protect anyone from actual harms that third parties such as neighbors are subjected to. So we're really looking at a very limited scope of a covenant not to sue.

And while it is not inappropriate to be concerned about standards and advances in technology that may come about in the year 2000 or the year 2005, I think it more important to encourage the remediation of sites to 1995 standards, or even to 1965 standards. And the problem is, that under the current system, those sites are not being remediated. Any step in the right direction is helpful and experience suggests that a covenant not to sue will encourage the remediation of these contaminated sites.

Secondly, I would draw your attention to Section 2c of HB6681 which provides that the DEP may review a final remedial action report and either approve it or find it to be deficient. The current draft provides that a finding of deficiency may be the subject of a hearing in which the owner/operator of the property can challenge the DEP finding of deficiency.

I think this is a good step. I think that

hopefully it won't be used, because the work hopefully will get done well and in accordance with applicable standards and that minor deficiencies can be resolved through a cooperative process rather than through a hearing. However, I do think the hearing is important to allow property owners to have a forum for resolving the unresolvable issues and I would also suggest that the legislation be amended to provide that in such a hearing, the DEP would have the burden of establishing that there are deficiencies in the final remedial action plan.

I think we've got a process where we've got DEP certified professionals giving the opinion that clean up meets DEP adopted standards. I think that that opinion, those findings should be given a certain presumptive weight and forcing the DEP to identify and articulate those deficiencies I think can only move the process along.

Finally, the Chamber supports a funding provision such as the one proposed in HB6681, that as others have said, that fund would serve the very important purposes of allowing municipalities to do preliminary investigatory and preparation work at the sites.

It would also encourage the granting of these covenants not to sue by providing a pot of money so that the sites can be cleaned up, notwithstanding the fact that the innocent holder of the property is protected by a covenant not to sue. I think that concludes my comments. I'd be happy to answer any questions you may have.

SEN. COOK: I had a question. One of the things that's most difficult about this bill, albeit a wonderful idea and I hope we can get on with doing something, is that we're going to be adding a tax to a necessity of life, home heating oil. Am I correct in hearing that your testimony was that you felt that was an appropriate funding source.

AL SMITH: The Chamber takes the position that a funding pot is an important component of this bill. The Chamber has not offered an opinion as to what the

best vehicle for raising that money is.

SEN. COOK: It seems to be the thorniest part of this otherwise good idea.

AL SMITH: Absolutely.

SEN. COOK: And it may be something that causes difficulty here. I hope not. At least somewhere in the building someone's going to say what else can we think of, how else can we do it?

AL SMITH: Well, I guess I would only repeat that I think it crucial to find some vehicle for raising the monies so that this becomes something more than a good idea, something that has some meat on the bones that will allow the process to go forward.

SEN. COOK: Do you have any comments about SB1189, the other bill?

AL SMITH: No, I do not. Except to say that I think Greg Sharpe did a great job.

SEN. COOK: Thank you.

REP. STRATTON: Paid commercial. (Laughter) Tom Turick, followed by Lisa Santacroce.

TOM TURICK: Representative Stratton, Senator Cook, members of the Committee, my name is Tom Turick. I'm environmental manager of Connecticut Business and Industry Association. Good afternoon. I'm here to offer brief comments in general support of both SB1189 and HB6681.

When I came before the Committee a month ago, there was one bill on the table, HB6681 and if you remember, CBIA voiced great enthusiasm for this bill. We saw it as a far reaching one, one that contained many, many elements that would be new to Connecticut and would definitely, in our opinion, spur voluntary clean ups which was the basis of the proposal.

Our enthusiasm hasn't dampened. HB6681 has changed somewhat in the ensuing month, but it's still a

very excellent bill.

As to SB1189, there are many things in SB1189 that are very good, but obviously this bill coming forward at this time complicates the entire clean up picture, if you will, in that there are some overlaps in the bill and there's some treatments in SB1189 and HB6681 that use a slightly different approach.

As far as SB1189, i especially think some very solid work has been done as far as the definition section and getting rid of the ambiguities and also it appears the licensed environmental professional approach in SB1189 is similar and will be identical, eventually to HB6681.

Although SB1189 does, I know SB1189 is trying to streamline the property transfer program and indeed, I think it does with its process for LEP review and eventual remediation of sites. I think HB6681 in its treatment of voluntary clean ups even has a more streamlined approach. Maybe I'm getting a little ahead of myself.

I'm not saying SB1189 has problems, but SB1189 for property transfer properties will work very well but it does, it is a system, for instance in Section 2 where you will go to the Commissioner. The Commissioner will first determine which sites the state will have jurisdiction over and then there's a notification back to the property owner or person responsible for the site. That approach works very well.

But I like in HB6681 for the, again, the thousands, literally thousands of voluntary clean up sites that may be coming under HB6681, I like the even more streamlined approach that I see, I believe it's Section 2 whereby the criteria is laid out right up front as to what sites an LEP will have jurisdiction over.

Again, there's many things in HB6681 that are good and innovative. The covenant not to sue, the environmental use restrictions and especially Section 11. In my written comments, which I hope

you have before you, we are making suggestions in Section 11. As I said in testimony a month ago, no matter what you do here this session, it will all be contingent upon having good clean up standards in place.

Now we're working very closely with DEP. DEP's working very hard on clean up standards and we hope that that package comes along with this legislation. But we do feel that in Section 11 you can help the regulatory process of writing clean up standards by adding guidance that would be guidance to the Department as to the issues in Section 11.

First, what circumstances permanent clean ups, under what circumstances permanent clean ups will be expected to be achieved, realizing that permanent solutions to all clean ups, in all clean up cases may not be achievable. And also, under what ground water conditions a clean up may occur to a standard less than required for residential land use. There is language pointing to GB and GC areas. We think further definition talking about ground water not suitable for drinking without treatment or where it cannot reasonably be expected to be used as a drinking water supply should also be added to that section.

And also a third issue in Section 11, under what DEP administrative actions voluntary clean ups will be allowed to proceed as far as meeting this less stringent standard and we do not think language needs to address the issue of orders issued by the DEP in that orders are the mechanism, the standard mechanism the Department uses now to do a clean up. So irregardless, if you're under an order or not, of the Department, we feel you should be allowed to proceed with a voluntary clean up to a lesser standard provided you're in the areas enumerated earlier in Section 11.

Those are my comments. I'd be happy to answer any questions.

REP. STRATTON: Just very quickly on the last point, Tom. You were making that distinction not that the site would not be under DEP oversight if they were

under order, but rather that the lesser standard could apply to them.

TOM TURICK: That is correct.

REP. STRATTON: Okay. Are there other questions? Yes, Representative Mushinsky.

REP. MUSHINSKY: Tom, in the general category of remediation, do you have any advice for us on how to keep a new fund from being rated? Because we had years ago set up a spill response fund to do similar work, which was gradually raided over time to the point where it really no longer exists for clean up duties. Is there a way to keep this new fund from suffering the same fate?

TOM TURICK: I don't know. But I do share with you your concern that whatever fund or insurance mechanism is set up to do a lot of things, besides protect the covenant not to sue mechanism and also for funding for things listed in the bill. I agree with you. Unless it's fully protected, there's no sense trying to set it up and do the things you're trying to do here.

These are very ambitious kinds of things called for here that a fund is needed for and if it went the route of an emergency spill fund, for instance, this would be a disaster. But I don't know how you, I'm not familiar enough with how you can protect, I thought that there were protection mechanisms in HB6681. We didn't look very closely at the language, but I thought that this was set up in a way that those protections are there, but you know more about that than I do.

REP. MUSHINSKY: I'm just thinking. Maybe what we should do is just check with some of the folks who advise the Finance Committee and make it, I'm not sure how to do this, tie it in some way to a long-term plan such that you can't invade it. I know in the road monies, the reason we can't touch those is the bond covenant protect against a raid. I'm trying to think of something we could set up similar to a bond covenant that would protect this thing.

REP. STRATTON: For the record, that's why that is a revenue bond account. It is a contract.

REP. MUSHINSKY: Will that protect it?

REP. STRATTON: That's why the tax is there as a source of revenue so it creates a contract with the bond holders, exactly for that reason.

REP. MUSHINSKY: So this bill will have a contract?

REP. STRATTON: If a revenue source other than straight bonds stays in it, yes.

REP. MUSHINSKY: Yes.

REP. STRATTON: (Inaudible) here one year and gone the next.

SEN. COOK: I'm going to have to put you on record, Tom, and I hate to do this, because this is a good idea and the program has been well thought out and honed and so forth, but is this the year that we should be putting a new tax on homeowners?

TOM TURICK: I can't answer that. But as an environmental professional, I would say that it makes sense that the benefits should go to the people you tax and one thing I haven't heard anyone talk about today that's in HB6681 is that the fund would support the remediation, or correction of problems dealing with underground storage tanks owned by residences.

Connecticut has nothing like that. Maybe some municipal programs, I note that there are municipal programs but I'm not aware of anything helping the homeowner to correct underground tank problems and in my view, we as a state, have potentially very serious underground residential tank problems. And if this was a way to get some of those tanks investigated, and in cases where they are failing, to help homeowners to put an above ground tank in or something like that, I think you could justify a tax of this nature. That's just an opinion as far as the use of the tax in that regard.

SEN. COOK: CBIA hasn't taken a position on the revenue source?

TOM TURICK: No, not formally.

SEN. COOK: Thanks.

REP. STRATTON: Questions? If not, thank you very much, Tom. Lisa Santacroce, followed by Bert Sacco.

LISA SANTACROCE: Good afternoon, Senator Cook, Representative Stratton and members of the Committee. My name is Lisa Santacroce and I am director of environmental affairs for the Connecticut Audubon Society.

The Connecticut Audubon Society strongly supports efforts to improve the effectiveness of the contaminated sites remediation program. Currently, there are more than 300 contaminated sites awaiting remediation, mostly in urban areas. These sites need to be cleaned up as quickly as possible to prevent further contamination and to allow these properties to be sold and developed.

Our cities desperately need the revenue and jobs developed properties will generate and from a land use perspective, it is more efficient to develop in areas within existing infrastructure than to continue a pattern of sprawled development that consumes pristine open space and farm land and furthers our dependence on the automobile.

In light of the backlog of sites and the current reality of the DEP's limited resources, Connecticut Audubon supports many of the measures introduced in these two bills, including the establishment of licensed environmental professionals and voluntary clean ups.

These measures alone will increase the number of sites remediated and reduce the DEP's backlog. We also vigorously support the public notice provisions. It is essential to notify the people who live near these sites, as they are the ones most directly affected by the remediation.

However, we would like to offer the following comments and concerns regarding the two bills introduced. Regarding HB6681, under this proposal, the DEP is not involved until the LEP submits the final remedial action plan. At this point, the DEP< within 30 days can request an audit. We would like to see this changed to have the DEP involved right at the beginning of the process. They should review their earlier site assessment reports so they can make an informed decision as to whether or not to take control of the site.

The DEP must retain the right to clean up the most dangerous sites and they need information from the beginning to make that determination.

This proposal sets up a covenant not to sue arrangement between the state and the owner of the property. We have serious reservations about the state relinquishing liability of the property from the owners. However, we understand that this liability is of major concern to any parties undertaking site remediation.

But we must point out that SB1189, the proposed revision of the Transfer Act, does not make any changes in the liability status of the property. We do realize that one of the goals of HB6681 is to foster clean up of sites not covered under the Transfer Act, particularly for closure properties.

At the very least, we would like to see the language regarding the power of the state to bring action against an LEP expanded to include the owner of the property as well. Both parties should be liable for an improper clean up.

Regarding SB1189, we support the language regarding public notice, but it is not clear as to when that notice must be given. We feel strongly that notice needs to be given at the very start of the clean up process and would like to see the language reflect that. Also, we feel strongly that language needs to be provided for public notice of voluntary clean ups as well.

Regarding both bills, the Connecticut Fund for the

Environment is going to testify after me, but we support their recommendation of establishing a technical assistant grant program modeled after the federal super fund program to provide assistance to affected communities regarding technical clarification and the remediation process.

Connecticut Audubon supports the new ideas and proposed changes to the Transfer Act, included in these two bills. They are steps in the right direction to solving the problem of contaminated sites and their impediment to economic growth, particularly in urban areas.

While we support most of the content of both these bills, we strongly recommend adoption of our suggested changes to insure that public health and safety is never compromised in the remediation process.

I'd also just like to say I appreciate the willingness of authors of both these bills in their willingness to take input from the environmental community.

REP. STRATTON: Thank you very much, lisa. It's more a matter of just wanting you to be aware of one of the components of HB6681 that prior tax remediation in that, even though there isn't a DEP approval of that, there is a requirement that that plan for that remediation activity be filed with the Department and under existing statute, if the Department determined that there was a reason that was the site they wanted to be involved in, that they would have authority to go do that anyway.

LISA SANTACROCE: Are you referring to the site assessment, or the --

REP. STRATTON: No, before the, the purpose of HB6681 is to allow a volunteer to find out about the site without involving the DEP or anyone else. If, however, on the basis of that assessment the decision is made to proceed with remedial action prior to the initiation of any activity, there is a requirement that a plan be filed with the Department and hence if one was dealing with a site

that was for some reason something the Department would say, this is really a much more serious site and we would like to interject ourselves into that process, they certainly have authority under existing law to do that without requiring that they do it in every situation, which was the reason we went that way.

Any other specific questions? Thank you very much. Bert Sacco, followed by Curt Johnson.

BERT SACCO: Good afternoon and thank you for the opportunity to appear before you. My name is Bert Sacco. I am voluntary vice-chairman of the Greater New Haven Chamber and I also come before you as an engineer who has had the responsibility of developing remediated sites in five communities in Connecticut: Bridgeport, Bristol, Waterbury, New Haven and New Britain.

You've heard much of my testimony. The issue is not one of environment alone, it's an issue of economic development. You've heard about grand list situations. You've heard about communities full of dirty buildings and dirty sites. You haven't heard that trying to get zone changes in suburban communities for industrial development is nigh impossible and therefore the need for urban industrial sites is critical.

The added plus to this whole equation is the fact that a lot of these remediated sites or sites which could be remediated are located right in the middle of poverty areas and would have the added advantage of providing jobs in those areas, rather than just sitting there and continue to be contaminated.

From a business standpoint, our clients are concerned about two issues, the time of process, which brings a site from the beginning of its remediation plan to the time in which a person can start construction on the site, which tends to be a maximum of about seven months.

And secondly, the closure, or somehow cleaning up of the whole reliability issue. This is impeding many of the potential projects that we could begin

in Connecticut, and yet can't because the whole liability issue is still unclear.

The issue of Connecticut and its competitiveness has been brought up and I would say that we are still not competitive. We are not competitive in terms of companies looking to expand or to locate here. We are also not competitive in the fact that some of our surrounding states are getting ahead of us in terms of clean up of sites. There are a lot of things going on. There are a lot of bills being introduced and a lot of legislatures, in fact, even the City of Worcester, Mass. is coming up with its own program whereby it begins to insure over the liability problem with the remediated sites.

We are certainly in favor of both bills, hopefully as polished by some of the detailed comments you've heard earlier and are available for any questions you may have.

REP. STRATTON: Thank you. Thank you for your testimony, and are there questions? We've covered a lot of the waterfront by this point. Thank you very much for coming up. Curt Johnson, followed by Beverly Dawes.

CURT JOHNSON: Good afternoon. Thank you for this opportunity to speak before you. My name is Curt Johnson. I'm a staff attorney with the Connecticut Fund for the Environment.

I want to just first start out by saying that Bert Sacco, I think, more eloquently than I, pointed out all the reasons why we need to be moving forward with a well thought out system allows clean ups to occur at a faster rate and economic development to occur within our inner cities at a faster rate.

Having said that, I'm going to talk, give some specific comments about each bill, first Substitute HB6681. We at Connecticut Fund for the Environment give qualified support to that bill. When I say qualified, the main area of concern that remains is around the area of the covenant not to sue.

I think several people today have accurately

pointed out that there's two policy issues before you about a covenant not to sue. One is the question of whether, when a clean up is done and it is done improperly and the clean up standards that are in effect at that time are not met, whether liability for the owner of the property should somehow evaporate into thin air.

The second issue is the issue of whether owners can be held to some future standard that has not yet been adopted. I'll start out with the second one first, which is that while CFE is uncomfortable with the concept of letting people off the hook, so to speak, for future standards, we are not going to fight that one because we understand the needs of the regulated community to move forward with developing and having some certainty.

I want to return to the first one though, which I think is of primary importance and I think this Committee is in agreement, that in fact, if a site is not cleaned up properly through an LEP process, then in fact liability should remain with the owner.

Now, if that's the case, I don't believe that the bill now accurately reflects that. I may be mistaken and there's just one small amendment which I, in other words, right now, I believe that if you look at the area surrounding line 218, you'll see that the LEP remains liable. However, there's no mention of liability of the owner, or the paper holder in that situation.

And I just have one small amendment that I think could help clarify that, adding after the word property, the following: and the responsible owner, lessor or lending institution shall retain liability for any costs required to clean the site to the clean up standards for such property in existence at the time the remedial action plan was prepared as adopted by the Commissioner under Section 22a-133k of the General Statutes. With that clarification, CFE would support Substitute HB6681.

I just want to mention a few other friendly

amendments, and when I say friendly, it means that we'd like to see them but they're not ones that are do or die issues. One is that currently, you already heard this from Connecticut Audubon, currently under HB6681 there's an audit process. I think that that has some disadvantages over the system which is proposed in SB1189, and let me clarify.

Right now, under the current bill in HB6681 there would be the opportunity for an audit to occur way down the road at the time that the remedial action plan is submitted. In other words, far, far down the road in terms of a clean up, after tens of thousands of dollars were invested and hundreds of hours were invested by the LEP, I think that the concept in SB1189 is superior in the sense that DEP has a very early decision to make. They either will be the ones that will honcho this clean up or they will not and given the staff limitations at DEP, there will not be many sites that DEP stays involved with.

But I think it's important that DEP make that decision early on and that the process be directed so that DEP is forced to make that decision and that's the point at which they get involved.

A second comment about public notice, very much appreciate the author's inclusion of the public notice provision. After reflecting on it over the weekend, just a suggestion to consider the possibility in this statute of expanding public notice to all environmental remediations in the state that would include clean ups undertaken pursuant to an administrative order, consent order or as a result of a superior court enforcement action as well as changes or transfer of property under the Transfer Act. We already have included that notice for the most part in the Transfer Act bill that's before you now.

But just to include public notice for the entire universe of remediation site clean ups. The reason is sort of obvious. People who live close to sites should be informed and have the opportunity, if they should so choose, to give input and make some

comments and find out about the clean up that's occurring nearby. I think the danger of not doing that was well shown by the experience at the Hartford landfill where community groups were not informed and there's been a tremendous backlash due to feeling excluded from that process in terms of the expansion of the landfill.

The last comment related to Substitute HB6681 is the technical assistance grants to communities. Unfortunately, we live in a day, in an era when clean ups require a stack of technical documents, usually about a yard high. It's very, very difficult for a community group who is impacted by that site and by the potential clean up, to have any idea of what's going on technically at the site without the assistance of an expert.

Obviously, in urban areas, when you're talking, as Bert pointed out, that these are often sites surrounded by poverty, the ability of that community organization or those residents to come up with money to hire their own technical assistance is near impossible.

This is really a scaled back version of the tag program under super fund. The proposal would be that out of the funds incorporated within HB6681 you would add the possibility of grants of $20,000 per site, up to a total of $100,000 per year being expended for that purpose.

I want to move on just briefly to SB1189. I want to thank the, particularly Peter Gillies for his generosity in including environmental viewpoints at the task force. We support SB1189. We do offer one technical friendly amendment regarding public notice that is just purely timing, that it be clear that the person who has to give notice, has to give that notice prior to a final remedial action plan being submitted because to submit it after, excuse me, prior to remedial action occurring on the site. For there to be public notice after that point is counter-productive. In other words, everything set, all the decisions have been made, the bulldozer's on site for people to make comments about how the bulldozer moves around the site is

not helpful at this point.

So with that, I conclude my testimony. Thank you very much.

REP. STRATTON: Thank you very much, Curt. You know, I think the two bills are trying to deal with this whole issue of trying to both expedite a process, but still retain enough oversight and qualifications in the field to try to have a high level of public confidence in what's going on.

When you make the comment about HB6681 and DEP not having an expressed directive to review the actual plan prior to remediation, given the staffing things that you just talked about and the obvious desire there to enable as many sites as possible to proceed under the LEP program, I'm curious as to whether you have any thought about, are we better off giving the impression that there has been an oversight that realistically with the number of sites we hope may be able to be cleaned up, relatively small sites cleaned up under this, have we really accomplished the kind of extra security that I know is your goal in that process by mandating a review that we really don't have the staff and the time to do as opposed to allowing the opportunity for a department to interject itself because something about the site flags that.

CURT JOHNSON: Well, I think that there's a suggestion in the current bill, that an audit process, if it's going to occur, should occur further down the road. At least there's the opportunity for that. I believe that that could well be a more labor intensive journey than looking at a Phase II report, a single report, and making a determination of whether this is really a foul site where there's serious health concerns.

And I think that that is the attempt that's incorporated within SB1189 is to set up a process, like I said, at the front end. Whether it should be mandated, I am not sure whether it should be absolutely mandated. I think it should be recommended, or it should be directory to the Department to take such an early stage.

I mean, the difficulty with the concept in HB6681 I think is that you have the possibility by suggesting that audits should be done at the tail end of ending up with double management. In other words, the private entity has invested a lot of dollars in the LEP to bring them to that stage and then at that point, DEP jumps in. And I think that's sort of the worst of both worlds, frankly.

I think it's probably wiser to encourage DEP to take a look at the front end and make a determination of there's really serious health hazards here and that DEP should be requiring submissions and approvals all the way down the road, which is exactly what we have in place today.

REP. STRATTON: The function is to, whether, and I think both bills are trying to set up a process whereby, with standards in place and with guidance documents as to how you go about achieving those standards and what's required to do it that we're talking about the vast majority of cases, that's what's going to happen and obviously if one looked at that potential audit as something the Department would be consistently feeling it needed to do, we wouldn't have accomplished much. There's no question about that, but I take the comments to heart on the front part. Are there other questions?

SEN. COOK: Curt. I wanted to ask a couple things. First of all, I want to make sure I understood the end of your testimony where you were talking about wanting to have from this bond fund grants available of $20,000 to $100,000 to --

CURT JOHNSON: No.

SEN. COOK: Well, help me with that, than.

CURT JOHNSON: A total cap of $100,000 per year would be put on this classification of expenditures, and each individual grant would be no more than $20,000 to a community organization, or municipality that felt the residents around that area needed clarification and needed assistance in understanding what was going on at that clean up.

SEN. COOK: Would it be funds to allow community groups to sue?

CURT JOHNSON: That isn't, that's not the purpose that I brought to it. I think, though, technical assistance, people who provide that technical assistance generally also have a working knowledge of the administrative process at DEP and I think that they could be helpful in accessing that administrative system. But I did not intend for it to be used for bringing a suit in superior court.

SEN. COOK: I'll have to explore that further, I guess. Both bills talk about clean standards, sort of how clean is clean is the tricky question these days. Does the Connecticut Fund for the Environment concur that there ought to be standards of clean for industrial use are different than standards for residential use?

CURT JOHNSON: Let me first start out by saying that we strongly support the effort to develop clean up standards and believe the Department's done a lot of good work to date in establishing its draft regulations in general. In terms of the different standards for industrial v. residential use, I've already shared some of my concerns about that with Jessie Stratton and I think the concern is, is that when you say industrial use, there's the possibility for instance, that a day care could be located at that commercial property, as is the case, for instance, the Colt's site, there's a day care there and if that site had to be cleaned up, you'd have to question whether it's a true industrial use to allow a day care to exist there.

I'm just saying that our current economy calls for a much broader array of uses of what was traditionally industrial uses, and that has to be looked at carefully and I think that Jessie has incorporated some language now, which would, that those industrial uses will require some more clarification by the Department and through a process.

So, we have reservations about it, but we also understand that if, in fact, there was an

enforceable land use restriction that really occurred, if the definition of industrial use was very carefully thought out, that it could be a workable process and I'm now speaking as one attorney at CFE. I'm not sure you know, my board of directors would agree with that. The previous testimony though is something that CFE supports.

SEN. COOK: Okay. And I will ask you as I've asked others, the most difficult part of HB6681 is the funding mechanism and putting a tax on a necessity of life, home heating oil. I live in a house with 15 foot ceilings. Believe me, it's a necessity of life in my house. Does the Connecticut Fund for the Environment have a position regard the funding mechanism for this bill. SB1189 doesn't need a funding mechanism, but HB6681 does.

CURT JOHNSON: I would say that we certainly support the concept of a funding mechanism. This, I think the difficulty with funding mechanisms is that whatever one gets floated out there is going to be attacked by somebody because nobody likes to be taxed. And if it's really a question of a tax being involved, there probably will be some unpopularity with whatever scheme comes forward.

And having said that, I do think that we do believe that for the purposes of HB6681 to be accomplished, there needs to be an ongoing regular source of funds and that this is a mechanism which provides that and it does spread the cost over a wide number of people in the state, which I think is the design of any taxation scheme.

SEN. COOK: SB1189 doesn't, it only affects a certain number of properties in the state whereas HB6681 is designed to hit a bigger number of properties. Do you think that Connecticut should move forward with the licensed environmental professional program to a large group or should we start smaller and get bigger. Is there a learning curve that you've observed in other states on this concept that we should be joining?

CURT JOHNSON: That's a good question. I am not familiar enough with the experience of other

states. One thing I do know, that all the experience is quite recent, so I just question whether we can learn a tremendous amount about any program that's less than five years old. I mean, I think the general thing in any governmental scheme, it takes several years to sort of shake out and figure out whether it's been a success or not.

I don't have, I don't think CFE has a problem supporting both bills, if that's your question, as long as the changes we suggested to the covenant not to sue is clarified within Substitute HB6681.

REP. STRATTON: Thank you. Further questions? Thank you very much, Curt. Beverly Dawes, followed by Tom Armstrong.

THOMAS ARMSTRONG: Representative Stratton, Senator Cook and the rest of the Committee, my name is Thomas Armstrong. I'm here speaking as an individual today. I am also an environmental attorney but I have been working with a number of municipal governments primarily to reindustrialize our urban centers and to create job opportunities.

I want to speak in support of both bills, generally, but I do believe both would be improved by some corrections, and I'll try and address both of those bills together.

First, with regard to the Transfer Act exemptions. I think that the proposed bill by the DEP has overlooked a number of items that should be included in the exemption and some of these items might include the following.

I'm uncertain as to whether that bill addresses any kind of change in business organization, such as would be the case of a sole proprietor changing to a corporation, or the creation of a holding company. The bill clearly does not address the issue of a change in trustee. This situation under Connecticut law is a trustee is an owner of property and therefore, if the trustee resigns or is replaced, this creates a form of transfer under the act which probably should not, and was not intended to be included in the Transfer Act.

I would add, however, that the sale of property in trust would still be included under the current provisions.

Another area of concern, and I'd like to point it out is that many of our urban cities have very large manufacturing facilities that are abandoned and vacant and these facilities are really not conducive to bringing a manufacturer in of the same size. Here in Hartford you can look at the Veeder-Root building or the Colt building and it's unrealistic to expect that manufacturers would come in of the same size.

And what this means is that many of these buildings are going to be converted through subdivision and the like and that some of these subdivisions which will either convert them into industrial, commercial or residential purposes are likely to go into condominium ownership and that separate sales of condominium owners out of this, under the current proposals, would be subject to the Transfer Act bill.

I think this is probably not conducive to reindustrializing or converting some of these large factories and I might suggest that the Committee consider as to any subsequent sale of a condominium unit, the filing of the fact that the facility is an establishment on the land records and exempting them from further Transfer Act filings.

Under one of the bills there is a definition of spill or release that is quite a broad definition, but I would suggest that the Committee also give consideration to limiting the definition of a spill or release to a release to the environment and that would include, in my view, a release to soil, to ground water, or to surface water.

Under the lender liability provisions, I would ask that the Committee consider looking at those provisions which will enable and make it easier for the lenders to lend into an environmentally impaired asset. The protections offered lenders under 22a-452b have been potentially eroded under the recent Supreme Court decision in Connecticut of

Star. That decision uses the same language as it applied to innocent landowners as it does to the lender liability provision under 22a-452b. So I would suggest that consideration be given to protecting lenders so as to encourage their ability and willingness to loan to these environmentally challenged properties.

I do support the covenant not to sue which is offered to protect lenders, but that's only available when it's obtained.

With regard to clean up standards and the like, I'm very optimistic that DEP will continue to move forward. I am hopeful that they will be able to do so by the time that this bill becomes law, but I would ask that the Committee also consider a default provision and a default provision might include clean up standards pending DEP's finalization of the bill and I offer for consideration a federal clean up standard which can be found in the federal law, known as Sub part S.

Finally, while I would like to say that no aspect of funding is pleasurable in all cases, it's usually the difficult part of the bill. I think it is important that the bill's bonding mechanisms and the heating oil assessment, it does offer, in my view, minimal impact with maximum benefits to the recipients and particularly the Connecticut residents. I am confident that this Committee, while there has been some discussion to the contrary, but I'm confident this Committee can balance the needs of the heating oil industry with the needs of the homeowners.

REP. STRATTON: Thank you very much, Tom. Are there questions? Coming down the home stretch here, people are quieter. Dennis Waslenchuk followed by Greg Sharpe.

DENNIS WASLENCHUK: Ladies and gentlemen of the Environment Committee, thank you for this opportunity to address you today. My name is Dennis Waslenchuk. I am the president of the Connecticut Ground Water Association which has about 350 members from the environmental professions.

I'll limit my presentation here to the things that you may not have already heard today. My written testimony is more complete.

With regards to environmental professional qualifications, many members that I've talked to have expressed concern that there is special treatment afforded to licensed professional engineers, that that special treatment is unfair and unwarranted and the concern is that licensed professional engineers would not be required to have enough formal education in an environmentally related discipline, whereas all others seeking licensing would.

With regards to the treatment of standard of care to which environmental professionals would be held, there is general agreement within my membership that bills definitions of standard of care. However, there's grave concern over a contradictory provision in HB6681. Here the bill unfairly makes the LEP responsible for any violation of hazardous waste and water pollution regulations, whereas in observance in the standard of care, the LEP should be responsible only to the extent that he or she performs substandard work.

I have given you recommended substitute language in my written testimony that could be inserted at line 214 to limit the ability of the commissioners to take action against the licensed environmental professional to those circumstances stemming directly from the failure of the licensed environmental professional to perform up to the standard of care.

With regards to insurance, I cannot speak for the members to say that we do or do not support including them, but one comment is nearly unanimous. An informal poll of CGA members has confirmed that the personal insurance coverage specified in HB6681 is unavailable and it has confirmed that the accidental contamination coverage in HB6681 is unavailable to the most part. No insurance company now offers to underwrite the individuals within a firm and that is specified in the bill.

Only the largest firms are able to obtain environmental impairment insurance. As I read it, what you're asking for is general liability insurance without a pollution exclusion. All general liability insurance policies carry a so-called pollution exclusion. Only the largest firms can have those waived.

Even if these coverages were to become available, the bill would raise the cost of doing business in Connecticut. By my reckoning, insurance costs to a firm alone would approximately double.

Because the insurance requirements as written in HB6681 are problematic, the CGA members do recommend that those requirements be dropped from the bill.

There is a loophole in SB1189 in its intent to insure the site clean ups are done properly when not under the jurisdiction of the DEP. The loophole is due to the fact that a site clean up is only as good as the site investigation upon which it's based, yet the bill does not explicitly hold LEPs responsible for adequate investigations. Unless the bill specifically requires that site investigations meet the prevailing standards and guidelines, whether or not any clean up is performed, then many polluted sites will go unremediated.

The loophole can be minimized by explicitly incorporating the word investigation into the verification procedure followed by licensed environmental professionals. I have given you suggested language to add to two definitions in the bill; the definition of remediation standards which would reference applicable investigation standard practices and guidelines and the definition of remedial action which would mean the investigation and containment removal or abatement of pollution.

If the recommended language is incorporated in the bill, then it will be implicit in each use of verification by a licensed environmental professional that the site-wide investigation is also verified as meeting DEP's guidance and

standards.

Finally, the term verification in SB1189 is not defined, but I think it must be defined to avoid a predictable problem. Environmental professionals cannot provide certainty that a site is not polluted since pollution is most often hidden from view beneath the ground and since it is impossible, or at least impractical to turn over every stone. The limitations in our ability to detect pollution must be recognized.

Hence, I offer the following definition: verification or verify means the rendering of an opinion by a licensed environmental professional that an adequate site investigation has been performed in accordance with prevailing standards and guidelines, or that a clean up of a defined occurrence of pollution has been completed in accordance with the remediation standards. Thank you.

REP. STRATTON: Thank you very much, Dennis. I appreciate your comments along the process of all of this. Representative Norton.

REP. NORTON: Has anyone ever tried, would there be anything like enough money raised if in some way every environmental professional in the state were to try to form a mutual insurance set up. Like, I don't know, I think some docs do that and things like that?

REP. STRATTON: A lot of firms are self-insured, for the record.

REP. NORTON: And I would imagine that it would be plausible for at least most environmental firms to counter self-insurance in some ways. I would imagine there's significant dollar amounts involved. But if every licensed professional in the state, well, what will become every licensed professional in the state were to associated themselves, mutually, for the purpose of insuring themselves as class, do you think that it would be possible plausible for enough money to be raised to anticipate and take care of the dollar amounts that

might be involved is just too big a number for this community to take on?

DENNIS WASLENCHUK: I believe that's a reasonable solution worth looking into. One of the major insurance underwriters now called TERA began as a risk retention pool, I think nine firms began that. It's now national but with only nine firms and they were granted, relatively large engineering firms. They were able to set up what has become a very successful insurer. I think it could probably happen again.

REP. NORTON: Do you have any sense, I don't, and I'm sorry, this may have come up earlier, and I've been running around. I had a group of fourth graders come up and they trump everything. But they, one of them said the bass, but how many people in the state are in this, are men and women likely to become such a thing. Does anyone know that?

DENNIS WASLENCHUK: Based on my knowledge of my membership and the CGA is the major organization of professional, environmental professionals, I would say perhaps 60 people could qualify, notwithstanding the insurance requirements which they may not be able to meet now. They could qualify with respect to the education experience requirements and be able to pass the test.

REP. NORTON: Six zero.

DENNIS WASLENCHUK: Sixty people, yes, six zero.

REP. NORTON: In the state? Thank you.

REP. STRATTON: Are there other questions? If not, thank you very much. Greg Sharpe.

GREG SHARPE: Thank you. I'll keep this short. I know you've been here a long time. I did want to start by I guess I should introduce myself. I'm Greg Sharpe. I'm an environmental lawyer with Murtha Cullina Richter and Pinney and I've been working with the clean up, both the clean up standards task force and Commissioner Holbrook's Transfer Act task force.

I would like to thank the Commissioner, for openers, for setting up the task force. I think it's important that the Committee understand, this was probably a unique event in environmental history in Connecticut where the Commissioner actually set up a task force of virtually every interest group that's affected by the Transfer Act, instructed his people not only to speak and contribute, but to listen and I think the result is that we have a bill on a highly controversial topic that is virtually a consensus proposal from all the interest groups and I think that's a real first and shouldn't be overlooked. And thanks to the Commissioner for that.

One of the underlying premises of the Transfer Act Committee's work was to try to as much as possible, create a situation where the Transfer Act process is privatized. I was a participant on CEQ when we did the report in 92 that pointed out the backlog. CEQ's only solution at that time was more money for more staff to move the sites. In the nineties, more money doesn't seem like much of a likelihood.

This group tried to attack the same problem the back log problem and the service problem, with an innovative approach to privatization and there's no pride of authorship here or a claims to originality. We took the concepts that were incorporated in the early drafts of HB6681 and tried to take the best parts of that bill and put them into a free standing, Transfer Act reform bill, if you will.

I mean, that's really the way the Committee should look at it, that we tried to come up with a bill that maybe is not as innovative as HB6681 or as far reaching, but provides a vehicle to significantly reform the Transfer Act in a narrow focus with privatization as the underlying theme.

Just a few points that I know the Committee's struggling with hearing testimony today, that I'd like to throw some food for thought out on. One, the scope of the licensed environmental professional's jurisdiction, the HB6681 would, as I understand it, limit the environmental professional

to GB areas. Now it would not have any limits on who could pursue a clean up in a GB area using a site professional. The Committee took a slightly different approach. DEP felt that if it could make an initial determination of the conditions at the site through the filing of this environmental condition assessment form, that they would be willing to let site professionals look at sites in GA, GB, or GC areas. In other words, you theoretically have a much greater coverage of sites under the Committee's proposal by not artificially limiting it to GB, something the Committee might want to take into account.

Our voluntary program, I'm quick to add, our voluntary program, however, is somewhat limited. We have both a voluntary program and the regular Transfer Act program. The Transfer Act program applies to establishments, which is the defined term in the statute. The voluntary program would apply to establishments to sites on DEP's inventory which is about 750 sites where there are known releases of hazardous waste as well as any site proposed by a municipality. So that would be our coverage on the voluntary site, and I think the Committee will have to decide which vehicle is the best way to go.

With respect to DEP oversight of the process, there were some criticisms this morning to SB1189's approach. We were persuaded that there should be an effort to involve as much public participation as possible in these transfer act clean ups, and so what we did provide was that a party would have to submit a schedule to DEP for his clean up and would have certain time lines whereby he must proceed.

In other words, DEP didn't want to see a situation in the Transfer Act where you submit your form and the Commissioner says okay, you can go ahead and voluntarily clean it up and then nothing happens. And what I think the consensus view was that the limited follow up involvement of DEP was essentially a protection to the public.

For example, what happens when the Commissioner makes a determination that a site can go private

and then based on the work that is done, it becomes obvious that there's a major issue at that site. We didn't want to have the Commissioner be prevented from taking that site back and I think that was the rationale that drove us in the direction that we went.

With respect to the public participation element, Curt Johnson has spoken about that. We added that specifically to provide that people who lived in the area could find out what's going on. Now, and I know it's a long bill, but if you look in the voluntary part of the bill, you will see that public participation component is not there.

In other words, the public participation component in terms of notice and so on, is only in the Transfer Act part, not the voluntary part and frankly, the reason for that was, the people said look, if we're trying to get people voluntarily to clean up their sites, how are they going to feel if they have to post a sign that six feet by four feet by whatever, telling everybody they've got a contaminated piece of property.

And the sense in the Committee was, if we can get people to voluntarily clean up their sites, maybe we could forego that public participation element, if you will, or the public notice provision.

CFE has, however, indicated that the legislation should be clarified to give notice under the Transfer Act part prior to the actual undertaking of the remedial action and that can easily be drafted in. That's a technical change.

With respect to the insurance issues, you heard from the people in the business, and I won't belabor that, but I did want to indicate that we did not put in an insurance provision in the licensed environmental professional, specifically because we were concerned that if the insurance market changed as it has in the environmental area, a number of times in the last 15 years, and suddenly that insurance became unavailable, all of our efforts to privatize and streamline the program would be down the drain with no ability of anyone

in the State of Connecticut to do anything about it. In fact, Chairman Gillies was the one who pointed out that when he was Insurance Commissioner he came on a statute that required for any carnival or similar kind of activity, there was a legislative requirement that you have $10 million in coverage. The only problem was that no carrier offered $10 million in coverage, so you had a law that either went completely violated or nobody ever had a carnival.

So we're a little nervous about imposing an insurance requirement in a fairly volatile situation and we felt that there was sufficient protection in our bill by having the Commissioner be able to pull back some of these private clean ups if necessary, that the public would be protected should a site become a lot more complicated than was originally thought.

I should add, also, in the area of emerging markets, this licensed environmental professional clearly will create a market for some savvy insurance company to come up with a product. There is already a product for insuring site assessments and obviously, if a bill like either one of these bills became law, you will create a market where some underwriter is going to be willing to insure the clean up.

In other words, if a licensed environmental professional can satisfy the quality control objectives of the underwriter, the underwriter will offer insurance much like we have title insurance in Connecticut for title searches. So, my suggestion to the Committee would be, rather than dictate specific insurance requirements, let's let the market decide and let the buyers of these services ask the provider of the service, well, what is your insurance, how much do you have, what kind do you have, just as you would if you had a tree man come over. The first thing you ask him is, before you go up the tree is, are you insured? If so, how much, etc. etc.

Finally, with respect to covenants not to sue, at least I hope that's what you all do, with respect

to covenants not to sue, oh, a new question, sorry about that, I'm not here to talk on any tree bills, with respect to covenants not to sue, again, the Committee debated that issue and it was pretty, I would say, fair to say, controversial topic and the bottom line was, we did not include a covenant not to sue in our bill, even though there are many good reasons for it and certainly wearing an environmental lawyers hat who represents companies that would like to have one would be great in a number of circumstances.

But the Department had some significant concerns about just how it would work, what the scope would be, what happens for example, some of the issues. If the standards change after the Department's given the covenant, what happens? What happens if the, you have a situation where there's been contamination and the site professional was never investigated that part of the site. I think Dennis' comments address some of those concerns.

But it got to be an issue where it didn't seem to be absolutely essential for our bill and if it were to be done as Chairman Gillies indicated, it ought to be done very carefully so that everyone's interests are protected.

Finally, I would note for the Committee's benefit, a number of the technical concerns as opposed to the big policy ones, that is the scope of some of these exclusions and some of the fine tuning, will be the subject. Peter has convened another meeting of our group for tomorrow at 1:00 to see if we can't tweak some of these things and provide the Committee with some follow up input. I don't know what your voting, I know that you're ultimate deadline is April 7th, I don't know when you'll take it up but we will try to get to you as many of these minor, they're not minor, but as many of these detailed suggestions as has been made.

Because, frankly, listening to them, I don't think there are any policy issues involved. I think it's a matter of just putting the words in the right places. So with that, I'll let you have your lunch or do whatever, or I'd be happy to answer any

questions if anybody has any left.

SEN. COOK: Thank you, Greg. If you could get us some information after Tuesday's meeting, Wednesday morning would be a very good time for us to have it.

GREG SHARPE: We'll do it ASAP.

SEN. COOK: Thank you very much. Representative Norton.

REP. NORTON: I just wanted to say I took a course in which you were a guest professor for the day and I felt very good today not feeling obliged to take any notes. (Laughter) But it was a very good crash course in RCVA.

What I wanted to ask is, between the two bills, you're obviously involved with SB1189. Are there things in the HB6681 that we really ought to move forward with, are there things in that bill which aren't in yours, not because you didn't achieve consensus in that area, but you just didn't seek to tackle, and I'm wondering. And I'm not trying to pit one bill against the other, but I know that's sort of the effect.

What I'm just interested in knowing is, what in HB6681 is present that we should move forward with that you didn't in SB1189?

GREG SHARPE: Well, let me just turn it around for a second. What we did on SB1189 was, as I indicated, tried to come up with a Transfer Act reform bill that it would address the concerns that had clearly been expressed by the lending community by buyers and by sellers and by lawyers and consultants about what's technically, and to some degree, substantively wrong with the act.

We did not look at the overall issue of, for example, municipal brown fields properties and how to get those back in. Those things, we knew that Jessie's bill was addressing those. It was a whole parallel track and we just didn't focus on them. So, you know, for example, the stuff about the bonding and the heating oil tax and the fund and

all those things, you know, we had about eight weeks by the time we were convened to come up with what we came up with and you know, a lot of these other issues that I would say are much more far reaching and in many cases ambitious, we just couldn't get involved in.

What we tried to do is limit ourselves to, here we have this bill, here we have the Transfer Act as it exists now, how do we fix it?

REP. NORTON: May I ask another question? You were talking about how consensus wasn't reached or, and maybe it wasn't the goal to force a consensus in any case on contract not to sue, or covenant not to sue and you gave a couple examples. One being, what if standards changed about, I guess, cleanliness, subsequent to a covenant and what if, I don't know, one part of the site, were you giving a couple examples of problems with covenant not to sue or are those a pretty good part of, is there a long list. I mean, could these covenants be written pretty discreetly and take care of a lot of those problems and at the same time offer real liability protection?

GREG SHARPE: Could they be? Sure. I think that the difficulty the Committee had again, with our charge was, we could have spent especially, we didn't have that many lawyers on the Committee, but all it takes is two, you know, to create a real long process.

And one of the things that you want to be mindful of, for example, there are covenants not to sue that EPA uses. But when you look at those covenants not to sue in individual cases, these aren't legislative, when you look at these individual covenants not to sue, they've got all kinds of reopeners and but if, and you're not covered if, and what we were concerned about was trying to write legislative language that everyone, and when I mean everyone, I mean the DEP would be comfortable with, the environmental groups would be comfortable with, industry would be comfortable with, it was just a big job.

But could you do it? I'm just suggesting some of the things that you'd want to be mindful of before you gave the covenant. And the other thing, the other comment I heard that I really didn't understand was that it would cut off private rights of action and I think at least the way I heard the discussion today, it wouldn't, Beth's comments were that it ought to be extended to provide contribution protection. That's what EPA does in a super fund site, but that is a specific document that is tailored for the site with lots of reopeners and so on.

REP. NORTON: I've got to ask you a couple more question, if I may. There have been some comments, I think from the Connecticut Fund for the Environment and maybe others, about, concerns about the DEP not being, you seemed to say in your testimony that you wanted the DEP to be involved toward some later parts of the process to guard against a situation which developed maybe differently than you might anticipate or whatever.

One of my gut instincts when I was hearing the recommendation that DEP should be involved in the early part of the process is, and I don't mean to put this rudely, but it might defeat the whole purpose of the legislation to acquire action and what have you and reviewed by the DEP early on. That's just a concern.

And I was wondering, I think you were in the room and you heard some of the discussion about making sure DEP was there, and I forget some of the terms of art about the various to review plans to be part of remediation assessments, maybe it was some of the, could you comment on whether or not you see it as problematic to have the DEP involved in another earlier stage in this whole deal?

GREG SHARPE: Yeah, I can comment. And that was something that I think everyone in the Committee felt was a real strength of the proposal as it was advanced. That is, that DEP would be under a time deadline to review this initial environmental condition assessment form and make an early determination so that all the decision makers, the

banks, the buyer, the seller, whoever, would know, all right, this is going to be a DEP supervised clean up, or it can go the private route. And DEP indicated they were very confident that with this form, this will be similar but not the same as, the federal super fund form. EPA uses a similar form. It just takes them about 10 years to do it.

DEP felt that they could use that form and make an early determination and send people on their way if they were going to go the private route very quickly. Then the concern became, what if conditions change down the road. Don't we want some sort of protection for the public and so on, and that's why, I don't want to overstate the amount of DEP involvement.

What happens is, there's a requirement that as the studies go forward, they be submitted to the Department. There's no review requirement. On the other hand, let's take a for instance, a legislator is notified by his constituents about a clean up that's occurring on the voluntary track and the legislator asked the Commissioner, you know, from what I've heard, this seems to raise some concerns. Maybe things are more serious than we thought. Would you look into it?

Well, the Commissioner looks at the plans and the documents that have been submitted, he might say, oh, yeah, there's really, you know, we thought there were 10 parts per billion. It turns out the interim studies that have been done since the original filing indicate there's 10,000 parts per billion and we didn't think there were any wells in the area and it turns out there's a well next door, okay?

Now, do you want to have, the Committee felt, in a situation like that, you want the Commissioner to be able to say, I made my initial cut based on the information you provided, but for very good reasons, I now want to pull this back into the non-voluntary, into a DEP supervised clean up. So that all it is, is a safety net for those sites that turn out to be a little worse than everybody anticipated up front.

And we don't think that's going to have that chilling an effect on people because what will happen is, people are going to try to make their, for market reasons, they're going to want to make as detailed an assessment as they can up front, before they submit the forms to DEP> So the number of sites like that should be fairly small, but we did want to have that safety net.

REP. NORTON: You're talking about insurance for the people who would be the licensed environmental professionals. I mean, we get caught up, we had a bill a while back to make sure chiropractors got insurance because someone was, their child was in essence quite badly damaged by a chiropractor and this guy didn't have any insurance. This person won a $5 million case against him. And you're in the business. Do you really think that that's enough, sort of the market force of having, I guess, the person who's buying the site and going to be fixing it up or whatever, to just sort of caveat emptor is just sufficient for looking into whether or not there should be insurance. Do you think that is?

GREG SHARPE: I really do. Let me clarify that. Fortunately, the lawyers aren't allowed to sign these environmental verification forms, so we're not going to be on the hook for that.

The reason I say that is, there's already so much pushing the players into full disclosure. I mean, you have the banks, most of these deals, at least the major deals are going to involve a lending institution. The lending institutions will police, to some degree, the consultants that are used in the first place. Many of the larger banks have consultants on staff. Helen Sahi testified today about Shawmut and how they have people who look at these.

So you have many of the market forces, are pushing people in the direction of let's make sure this is a legit analysis and I think what will happen is, as I say, number one, you'll open up an insurance market that will be available to protect the consumer ultimately and in the short term, I think

people will clearly, if they're going to rely on an environmental professional to do the sign off, and the buyer, for example, knows that that's all the review that there is, that he's not going to be covered, a buyer's not going to be necessarily protected by a DEP reviewer, I think in most, well, certainly any client that comes to me, I will say, what kind of insurance does this guy have?

REP. NORTON: Well, that's what I'm wondering. But even if it doesn't, even if it's a remediation that is not that big of a project where you're not consulting Murtha, Cullina & Richter and Shawmut isn't involved, and you're not going to one of the bigger outfits in the state, but it's, I mean, maybe I'm missing the boat. Maybe none of these projects, maybe all of them involve pretty sophisticated counsel and bankers. But are there some at the lower end?

GREG SHARPE: No. Yeah, you're right. I mean, there are definitely some at the low end with the smaller deals. You may have some deals that, for example, don't involve a lending institution. You may have a cash deal with a small business person who takes a mortgage back. That could happen. But those things are happening now.

REP. NORTON: Okay.

GREG SHARPE: And all I'm concerned about is, to invoke an insurance requirement to apply to what I honestly believe to be a very small percentage of the sites, that runs the risk of killing the whole, you know, the whole reform. I just don't know that it's warranted.

REP. NORTON: Thank you, Madam Chairman.

REP. STRATTON: Very definitely. I have two quick things. You're going to have to indulge a minute more or walk out on me, too. One's a comment and the other is sort of a question, but the first is, I'm sure you're probably aware and while it doesn't relate to all the sites, that when the Department has gotten involved in the urban sites initiative, they have required insurance, I think, actually on

the performing arts center up here they required $15 million insurance of the people doing that investigation so that, you know, those are things that are clearly out there and that somebody has felt was important to come up with.

GREG SHARPE: But state money was involved there, I think, wasn't it?

REP. STRATTON: Yes. But we felt again, when state credibility and public health are involved in these issues.

GREG SHARPE: But I guess what I'm saying, the state at that point was the sophisticated investor in the project and wants to --

REP. STRATTON: Right. And that was the contract. The other really comes back to my misreading of SB1189, and I would like to delve into something here.

GREG SHARPE: Sure.

REP. STRATTON: Because as I went back after you said a municipality could undertake this voluntary process. If, however, a municipality under SB1189 were to decide they wanted to investigate or clean up a contaminated property that was not on the state's list, I had assumed that the whole process in SB1189 was dealing with sites the Department was already aware of because they were on that list.

Your reading is on Page 11 of the bill, on the bottom, lines 373?

GREG SHARPE: Right.

REP. STRATTON: If you have a situation where a municipality may undertake a voluntary clean up of a site that is not on that list, what is the legal status of their responsibility for that site in the Department's eyes if they have filed an environmental condition assessment form with the Department. Are they then potentially orderable to clean it up?

GREG SHARPE: Well, the legislation doesn't really attempt to change anybody's liability. That was one of the other things we tried to stay away from. All we were trying to do was make the voluntary process available to municipalities.

In other words, the way this evolved, we started off saying, anyone with a Transfer Act site could go through the voluntary process. Anybody who was on the list, the dynamic inventory, and then we realized one of the major players in this whole game are the municipalities. So we said, let's add municipalities as a potential applicant, if you will, for the voluntary process, but their liability would exist under the other statutes.

In other words, if the municipality were the owner of the property under 433, they'd be liable.

REP. STRATTON: And I guess the point and this really is a policy kind of issue, the point under HB6681 was to provide a mechanism where the municipality could determine whether to get involved in the process. They can conduct that site assessment, there's money available for them to conduct the site assessment prior to foreclosing or anything else. Or even if they are already the owner, they can go through the whole site assessment process without being any more on notice, or any more, what do I want to say, making the Department any more aware of that process.

And I think one of the rationales behind that was to say, if we're serious about wanting people to come forward and volunteer to clean up sites, we've got to give them the opportunity to find out what they're into and we dealt with this with the dry cleaners last year, that people don't investigate, because they don't want to find out.

GREG SHARPE: Right.

REP. STRATTON: And it seems to me that if we lump that category of sites into this process, you remove that sort of incentive that okay, you can go this far without making yourself worse off than you currently are and have the very good potential that

you'll be in a position to really undertake a voluntary clean up.

GREG SHARPE: I think that's a fair comment and our bill does not carve out, this bill does not carve out a safe harbor for the municipalities. In other words, they would take their changes. If they filed the environmental condition assessment form and it turned out the Commissioner said, whoa, this is a mess, then clearly he knows about site X,Y,Z that's a mess. And to that extent, the municipality would be subject to whatever enforcement action the Commissioner might otherwise want to pursue.

Although, frankly, my experience with the Department, municipalities are in sort of a favorite status when it comes to that. Usually those things get worked out voluntarily.

REP. STRATTON: Do you and I have wondered all along, and you have actually answered the question, which I should have asked a long time ago more specifically, what the site, the environmental condition assessment form would involve. Do you have any, I mean how in depth and how expensive a process is that? Or how does it compare with Phase II, I guess is what --

GREG SHARPE: There was a fair amount of debate on that, and what we tried to do with the Department's help was basically not require more information than would be available in a Phase II. That is, in most of these sites, you're going to have a Phase II done and that's the information you plug in.

We also had a default, excuse me, we also are not requiring that you answer every question on the form. In other words, if a party does not want to invest, you know, $300,000 to do a complete study, and fills out the form and says, unknown, unknown, he runs the risk, the Department says well gee, if you know that little, we're going to take the site.

But if it's clear from the context of the site, or the Department has other experience with the site, that there's really no harm in the site, then the

Commissioner can make that judgment and we put in some standards that would guide the Commissioner for making that determination. But the goal was not to make it, the goal was not to make it more extensive an investigation than a Phase II>

REP. STRATTON: But essentially could be the same Phase II that we were trying to make the funds available to carry out because of the cost of it. Are there other questions? Representative Maddox.

REP. MADDOX: Just one basic one, because it's been a while since I reviewed SB1189, I just skimmed it. My concern, I just want someone to put my mind at ease on this because I'm a very, let's say a very large corporation. We had one in earlier testifying in favor of this, who have several properties scattered about.

If we make these changes in SB1189, does this make it easier for them to take all their environmentally damaged properties, bundle them together under a separate holding company, separate corporation, they just sit it over there. It's my understanding then that they could just transfer all these assets to that separate corporation and then basically what they're attempting to do is sort of dump this property. Maybe they get that heavily mortgaged, they bankrupt it and they say, you know, because I believe you could turn it over to the bank, say here it is, your problem now and then if you will, protect all the other assets of their corporation. Do you see what my concern is with this bill?

GREG SHARPE: I do, and --

REP. MADDOX: Under existing law you can't do that, because if you go to transfer it, we'd say, nope, wait a minute, you've got to clear this up, you know what's going on.

GREG SHARPE: I'm not sure whether under existing law you can't do what you've just suggested anyway. But I think what we tried very hard to do was cover, the way the language is written, we cover all transactions involving changes in ownership

unless they're specifically excluded. So that what a lawyer has to do is find a specific exclusion that matches his transaction. Otherwise, he's subject to the act, okay? Number one.

REP. MADDOX: But we are adding the exclusions in.

GREG SHARPE: Yes, you're specifying the exclusions.

REP. MADDOX: The picture I painted for you is what my concern is with this?

GREG SHARPE: Yes.

REP. MADDOX: You know, I must admit that I have a certain amount of, no offense to you, but a certain amount of distrust with some fancy attorneys, not like yourself, you're training great ones like Representative Norton here who could think this up and

Cass. 4 (GAP FROM CASS. 3 TO CASS. 4)

million dollar liability out there, or a big corporation, will simply now, we've got this neat little thing through, we'll structure another corporation, we'll transfer all these assets into it, they're only worth $100 million but it will cost us a billion to fix them up to protect the rest of the assets of the corporation, if you will, and then we just basically walk away from it.

I'm interested in doing something for those people who really want to take care and clean up.

GREG SHARPE: Tot he extent that the ownership changes hands, you're caught in the Transfer Act. To the extent that the ownership of the establishment changes hands, any, we even got into intra and inter-corporated transfers. If you have a majority ownership of the stock changes hands, you're caught in the Transfer Act.

REP. MADDOX: All right. Let's make it personal. I, Bob Maddox, let's say have three properties. And you have it there. I have them all as sole proprietorships. I think one of the things you

have in here is, that if you transfer to a corporation.

GREG SHARPE: You don't.

REP. MADDOX: I incorporate. I form three corporations. Or we'll make it simple. I form two corporations. One corporation gets the parcel that I transferred to of the environmentally damaged property. The other corporation gets the rest of my assets.

: Your elephant farm?

REP. MADDOX: My elephant farm, yes. And then I basically, you know, the idea is to protect the rest of my assets from this environmentally challenged piece here and I just walk away from it.

GREG SHARPE: but you won't, what I'm saying is, at the point where you individually sell, transfer, however you want to express it, to the corporation, that's a change in ownership that is covered by the general statement and you will not find an exclusion for when an individual conveys to a corporation.

REP. MADDOX; I'm sorry, I guess I misread it then. I thought that was an exclusion if you changed class, maybe I'm confusing the two bills. But if you change classes of, I'm still 100% owner of two things, it's just that I changed it to a corporation.

GREG SHARPE: But the point is, the point is, that you have changed from your individual ownership to X,Y,Z Corp. That's still a transfer of ownership and there's no exclusion that would enable you to get out of that.

REP. MADDOX: I'm sorry, I may have misunderstood when I read it in there. I thought that somewhere along the way we had that ability to change status from sole proprietorship to a corporation or to partnership or whatever. I know you can change minority partnerships around without being kicked in.

GREG SHARPE: Right. The minority ownership would be excluded, but any majority ownership transfer would be --

REP. MADDOX: Well, I guess I could stick it to my brother or so, I could say, here, you --

GREG SHARPE: You could definitely sell it to your favorite sibling.

REP. MADDOX: -- can take care of that. But, okay, I'm sorry. UTC wanted it or something.

GREG SHARPE: Yeah, and all UTC was saying, what UTC was saying was that the Committee goofed by excluding, by listing as an exclusion, one of the exclusions that's already in the statute. Okay?

REP. MADDOX: Okay.

GREG SHARPE: The statute already excludes corporate reorganizations not substantially affecting the ownership and we goofed in not including that. We got so carried away with drafting our own stuff that we didn't look at that particular one.

REP. MADDOX: You understand what my concern is. Do you believe there are any exclusions there that are going to allow that to occur? That's a bottom line.

GREG SHARPE: Well, I mean, I'm not prepared to sit here and say that, you know, in a year or two, some highly intelligent corporate lawyer couldn't figure out a way to do what you've said, but we have really tried in this bill to prevent that from happening because by narrowly, by covering everything, unless it's excluded, and then drafting the exclusions very narrowly.

And I think the testimony here today was, we drafted the exclusions too narrowly because there are clearly some transfers that shouldn't be covered that aren't excluded in our version.

REP. MADDOX: Or even a developer. I buy 100 acre parcel knowing it's environmentally challenged but

I've been able to identify that's the 10 acres at one end of it. I get it for higher prices, and then subdivide it off.

GREG SHARPE: A division will be allowed, but it's got to be with notice to the Commissioner and so on. If you look in the definition of transfer of an establishment on Page 2 of the bill, line 49, any conveyance of a portion of a parcel upon which portion no establishment is or has been located and upon which there has not occurred discharge, blah, blah, blah. You could carve out the clean piece.

REP. MADDOX: Okay. But my thing is then, I can then, I can carve out the clean piece, sell that to my new corporation for $1, that is from there and then bankrupt the other one. I mean, that's my concern with this stuff.

GREG SHARPE: But see, you could do that anyway.

REP. MADDOX: How can I do it? I can't do it now in existing law.

GREG SHARPE: Sure.

REP. MADDOX: Why? Oh yeah, I can, but --

REP. STRATTON: At least here you have a notice of it and it's regulated to 50 --

SEN. COOK: That's why there's foreclosures in the municipalities in trying to decide whether to take them and clean them up or not.

GREG SHARPE: Okay, but if I attempt to do that, I can still touch my other assets, though. Because I'm 100% liable under the super lien, they're going to come after me.

REP. STRATTON: But you still would be here.

SEN. COOK: You still would be.

REP. MADDOX: You're still going to be?

GREG SHARPE: We haven't changed the liability.

REP. STRATTON: You'd have the assets if you sold it off. You could go play lawyerese outside the door.

GREG SHARPE: Yeah. I mean I can't say that we thought of every single permutation, but I can tell you the Committee spent a lot of time on this section trying to make it a very general applicability provision with very finely drawn exclusions.

REP. STRATTON: Are there other questions?

SEN. COOK: The last thing I'd like to just point out is, when you have your meeting tomorrow, would you bring up the concept of the covenant not to sue.

GREG SHARPE: Sure.

SEN. COOK: And perhaps there would be an incentive at this point to, since you have the new form, that would essentially let the licensed environmental professional do certain kinds of sites, but DEP could decide that there's a site that's too complex and that they don't want to spin it out but indeed want to keep it in, that may be a place where we could put the covenant not to sue in order to provide an incentive to get that site cleaned up.

If it's cleaned up to today's standards and the plan is approved and the ongoing monitoring and so forth is all in place, then the state may decide that that's where the narrow circumstances would exist that they could come in with a covenant not to sue.

GREG SHARPE: And that's what Chairman Gillies I think was indicating to the Committee and he and I talked about that outside, so I'm sure that will be definitely probably the first item of discussion tomorrow.

SEN. COOK: Okay. Thank you.

REP. STRATTON: Are there any other further questions?

SEN. COOK: Beware of being the last speaker, Greg.

REP. STRATTON: You've been very helpful. Thank you all

very much. And at this point I would adjourn the public hearing.

And the Democrats will remain in this room for a caucus if we can find them and Republicans are caucusing in the Senate conference room.

(Whereupon, the hearing was adjourned.)

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ERI

Comprehensive Environmental Services

April 3, 1995

Testimony on behalf of
ENVIRONMENTAL REMEDIATION, INC.
By George Gurney

with respect to **Proposed Bills 1189 and 6681**

Thank you for this opportunity to provide testimony regarding the above bills. By way of background information, I am a Certified Professional Geologist (CPG). I have worked as a hydrogeologist, investigating and cleaning up releases of hazardous waste for the past seven years in Connecticut and for almost nine years in the Northeast. I also have thirteen years work experience in the field (or sub fields) of geology. At present, I manage an environmental investigation group for Environmental Remediation, Inc., located in East Hartford.

I strongly support revisions to the current Connecticut Transfer Act and the associated proposed Licensed Environmental Professional (LEP) program. Under the current system, there are too many sites ("Establishments") and not enough Department of Environmental Protection people to handle the backlog of sites. The LEP program should help to solve this backlog problem.

There is one point regarding the proposed Transfer Act Revisions, however, with which I disagree. This is the proposed experience requirements of the LEP. Under the proposed regulations, ten years experience of investigating releases is required until an exam is developed. After the exam, the experience requirements are reduced to eight years. The investigation of hazardous waste sites did not take off until the middle 1980s, coincident with the re-enactment of Superfund. As a result, there are many people, such as myself, who conduct professional and thorough investigations, but because of the youth of the industry, do not have the requisite ten years of specific experience. The proposed LEP requirements appear to be selective and favor a small group of individuals, who have the requisite experience. The rest of us are excluded, in part, from making a living, at least until the exam is developed.

My recommendation is to make the experience requirements consistent before and after the LEP exam is developed. The experience requirements should also be consistent with other licensing institutions. For example, my CPG certification required that I have five years working as a geologist. The Massachusetts Licensed Site Professional (LSP) program mandates at least eight total years of experience. A professional engineer (P.E.) license, in comparison, requires only four years of work experience.

In closing, I believe that the revisions to the proposed Transfer Act are good. However, the interim LEP experience requirements of ten years would initially exclude many capable, experienced people from the licensing process.

Sincerely,

George G. Gurney, CPG

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Testimony on behalf of
Shawmut Bank Connecticut, National Association

with respect to **Raised Bills 1189 and 6681.**

Shawmut Bank Connecticut, National Association supports, with comment the above referenced bills having to do with the transfer of hazardous waste establishments and the remediation of contaminated real property.

With respect to **Raised Bill 1189,** the privatization of certain Department of Environmental Protection activities, and enabling mechanisms such as the creation of "Licensed Environmental Professionals" (LEPs), adds certainty and speed to the remediation and verification process. These mechanisms should have the effect of enabling loan transactions to move forward quickly with the certainty that the remediation has been performed in accordance with applicable regulations.

Although the bill allows some relief to lenders by clarifying that a Transfer Act filing is not required upon foreclosure, this filing exclusion does not eliminate the filing requirement upon the bank's transfer of that property to a buyer. We would prefer to see the exclusion extended to transfers by institutional lenders. Such an exclusion would facilitate the sale of foreclosed properties and generally assist in returning properties to productive use.

The new "Form IV" allows for a verification process of sites that have been remediated but are subject to long term monitoring. It does not, however, take into account those sites where sources of contamination have been eliminated, a remediation plan has been approved, but remediation as well as monitoring is long term. If the remediation and monitoring plans have been approved, a Form IV filing should be appropriate.

With respect to **Raised Bill 6681,** the privatization of certain Department of Environmental Protection activities and enabling mechanisms such as the use of LEPs and covenants not to sue, adds certainty and speed to the remediation and verification process. By legislatively mandating LEPs to maintain liability insurance, however, provisions of the Bill may prohibitively increase the cost of performing site assessments. The insurance may also not be available in the future thus making it impossible to comply with the law.

There are also discrepancies between Raised Bill 1189 and Raise Bill 6681. For example, LEPs may perform work at any Transfer Act site as per raised Bill 1189 should the Commissioner deem it appropriate, however, in Raised Bill 6681 precludes work in certain areas which overlap in Raised Bill 1189.

UNITED TECHNOLOGIES

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0026.4

Testimony of Fred Johnson
Director, Environmental Remediation
United Technologies Corporation
to the Environment Committee
Monday April 3, 1995

Re: Raised Bill 1189:"An Act Concerning Revisions to the Hazardous Waste Establishment Transfer Act and Hazardous Waste Site Remediation."

Dear Representative Stratton, Senator Cook and Members of the Environment Committee:

I have had the opportunity to be a member of the task group that has recommended the changes to the subject bill before the Committee today.

The task group was made up of a diverse, experienced and talented mix of stakeholders that included industry, banking, environmental groups, the DEP, environmental consultants, lawyers and municipal officials. in just two short months this group remained focused and dedicated to produce what I believe are well reasoned changes and additions to Connecticut's Transfer Act that are mindful to the views of all stakeholders.

RIZZO ASSOCIATES, INC.

ENGINEERS AND ENVIRONMENTAL SCIENTISTS

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Testimony by
John E. Adams, Vice President
Rizzo Associates, Inc.

With Respect to Raised Bills 1189 and 6689
April 3, 1995

Rizzo Associates, Inc. is an environmental sciences and engineering consulting firm with offices in Enfield, Connecticut and Natick, Massachusetts. As manger of the Connecticut office since 1989, I have worked in both Massachusetts and Connecticut and have witnessed the benefits and the drawbacks of both states hazardous waste clean-up regulations. I am an active Licensed Site Professional in Massachusetts. I strongly support the steps which Raised Bill 1189 would take to expedite the Transfer Act clean up program and create a Licensed Environmental Professional (LEP) program.

Raised Bill 1189 clarifies the definition of "Establishment" (Section 1(1)) and "Transfer" (Section 1(3)) thereby eliminating much confusion. It modifies the date after which generation of hazardous waste would qualify a property as an Establishment to a time which coincides with records maintained under the Resource Conservation and Recovery Act (RCRA) program resulting in greater certainty when determining the Establishment status of a property. These revisions to the Transfer Act will make the technical determination of "Establishment" and "Transfer" much more distinct and are strongly supported.

Raised Bill 1189 provides for the creation of an "Environmental Conditions Assessment Form" (Section 1(17)) which will contain information for the Commissioner to consider (Section 1(18)(e)) when determining whether the Establishment will be subjected to a DEP or LEP directed clean-up. I encourage the careful development of this form by the DEP and its usage to eliminate the vast majority of sites from direct oversite by the DEP. This provision, if properly implemented, will result in greater DEP oversite of clean ups for those sites which present real threats to human health or the environment. This approach will provide great benefit to the DEP and to the people of this state and is strongly supported.

LEP lead clean ups must be permitted in GA classified groundwater areas for sites of limited or no significant threat to human health or the environment. This is contrary to the position presented in Raised Bill 6681. Many Establishment sites in GA areas resent limited or no significant threat to human health or the environment, while some Establishments in GB area may pose a significantly greater threat. The provisions presented in Raised Bill 1189 must be adopted to promote the most efficient and effective clean up of Establishment sites.

The LEP program (Section 4) is a bold step which is necessary in these times of limited state resources to facilitate the clean up of hazardous waste sites. The program is similar to that adopted in Massachusetts in October 1993. The Massachusetts program has resulted in numerous high quality site remediation projects which have had little or no DEP oversite. Timely real estate transfers have occurred on contaminated properties as a result of this program. I believe this initial step to allow LEP lead clean ups is well considered and necessary to promote commerce in Connecticut.

Raised Bill 1189 creates a state board of examiners to oversee the LEP program. This is a proven effective means to monitor the performance of LEPs and will elevate the quality of work and submittals. I would, however, request the revision of the make up of the board to more accurately reflect the make up of the community of professionals performing hazardous waste site clean ups. Specifically, the requirement to set two of the LEP seats aside for professional engineers is not reflective of the professional community performing the work. The proportion of engineers in the assessment and remediation professional community would be better reflected by setting one seat aside on the board for the professional engineering community.

I do not believe either Raised Bill 1189 or 6681 will effectively promote real estate financing in Connecticut. Raised Bill 1189 exempts certain foreclosures from DEP filing requirements, however, still requires the filing upon subsequent sale or transfer of the Establishments. This will continue to create a significant burden on lenders and will most certainly limit the availability of financing for Establishment properties. Other states, such as Massachusetts, isolate lenders from the liability as long as they adhere to a set of requirements which are similar to FDIC requirements. I strongly recommend the revision of Raised Bill 1189 to exempt lenders from filing pursuant to the Transfer Act as a result of foreclosures and subsequent property transfers.

Raise Bill 6681 requires licensed environmental professionals to maintain professional liability insurance without regard for the availability and cost of the insurance. I am unaware of another profession which is required by statute to maintain professional liability insurance. This provision may have many unintended results including increasing the frequency of claims, increasing the premiums paid for this type of insurance and/or driving the insurance companies out of the Connecticut market. In the event of the latter situation, the highest quality regional and national firms will cease to do business in Connecticut. The residents of Connecticut would be the biggest looser under this scenario. The provision to require maintenance of professional liability insurance must not be included in any final bill.

I strongly support the efforts of the DEP Commissioner and the legislature to revise the Transfer Act and effectuate the clean up contaminated properties throughout the State. I urge the passage of Raised Bill 1189 with the revisions noted above.

TESTIMONY OF
ELIZABETH C. BARTON

S.B. 1189 ACC Revisions to the Hazardous Waste Establishment Transfer Act and Hazardous Waste Site Remediation

H.B. 6681 ACC Remediation of, and Liability for, Contaminated Real Property

Good morning Senator Cook, Representative Stratton and other Members of the Environment Committee. I would like to thank you for the opportunity to testify before you in connection with Senate Bill 1189 and House Bill 6681.

My name is Beth Barton. I head the Environment Practice Group at Updike, Kelly & Spellacy, P.C. of Hartford and New Haven. I have been practicing in the field of environmental law for approximately 15 years.

While I support these bills in concept, primarily because I agree that there is a very real need for amendments to the Connecticut Transfer Act and an unambiguous procedure that will facilitate, not frustrate, environmental remediation of contaminated properties, I believe there are a number of technical difficulties with both of these bills. In several respects, these bills do not, as presently drafted, adequately addressed significant concerns of those involved in such transfers.

Comments on Senate Bill 1189 include:

In an apparent effort to better define the types of transactions to which the Transfer Act requirements apply, and specifically clarify what is meant by the phrase "corporate reorganization not substantially affecting the ownership of the establishment", in Section 1.(1), the scope of the transactions not subject to these requirements has been significantly and inappropriately narrowed. For example, while historically the act was believed to not apply to stock dividend distributions, stock distributions in connection with a merger or purchase and subsidiarization, a question arises under the bill as drafted, since these activities are not expressly excluded.

With respect to lease transactions, it is not clear whether the exclusion in Section 1.(1) for certain lease transactions is limited to leases, which when, as allowed by the language, they are extended, are still, in total, for less than 25 years. Also, if a tenant operates an establishment for more than 25 years, is the tenant then the equivalent of the owner for the balance of the process?

The definition of "hazardous waste", while admittedly previously unclear, has not been clarified with the definition proposed in Section 1.(4).

While there has been confusion and disagreement concerning who is "a party to a transaction" and, therefore, eligible to sign a Form III under the present law, since "a person associated with the transfer of an establishment" in Section 1.(7) has not been defined, this confusion has not been eliminated. Is the lender such a person, for example?

Unless standards applicable pending the adoption of regulations pursuant to Section 22a-133k are identified, "remediation standards" has no practical meaning and it is not clear whether the legislation would have any impact in the interim.

The phrase "subject to remedial action" is used throughout the bill, but it is not defined. Is the intent that remedial action have been completed? initiated? What if the conclusion after investigation is that no remedial action is required? The provisions describing the process assume remedial action will be required, even though there are circumstances where it is anticipated by the language of the bill that "the environmental conditions at the parcel are unknown."

While Section 1.(13) refers to "post-remediation monitoring", there is no provision for further approvals after the conclusion of such monitoring. Also how does "post-remediation monitoring" differ from "monitoring of the effectiveness of remediation" referenced in Section 8.(a)?

In Section 2, at several points, it is required that a schedule for "taking remedial action" be submitted simultaneous with the schedule for investigating. At best, this is premature, since remedial action is dependent on the outcome of the investigation.

The fact that the Commissioner reserves the right throughout the process to put the transferred property into the formal approval process creates significant uncertainty.

The public notice provisions require further clarification. For example, there is no definition of an abutting landowner.

Should "progress reports" referenced in Section 2.(g) require the Commissioner's written approval?

Is there any need to refer to "removal" as opposed to "remediation" costs in Section 5, since remediation is earlier defined to include removal activities?

Comments on House Bill 6681 include:

If, as indicated in Section 2.(a), the ability to utilize the voluntary remediation process is going to be limited to GB and GC properties, there needs to be a defined and clear process, whereby inappropriately classified properties can be reclassified.

Section 2.(a) should include those properties where the groundwater is not suitable for drinking.

"Historically industrial or commercial property" in Section 2. should be clearly defined.

As with Senate Bill 1189, there is need to identify remediation standards, pending the adoption of regulations.

Section 3 does not address the issue of potential liability attributable to activities engaged in by someone otherwise unrelated to the property prior to the completion of remedial actions. What is the liability profile of a property owner where post-remediation monitoring is on-going?

To facilitate reuse of contaminated properties, either this bill or Senate Bill 1189 should further expand the concept of a covenant not to sue that would, subject to compliance with certain conditions, be effective upon taking ownership of the property, rather than after remedial action has been implemented. In addition, it would be viewed as essential by many parties to transactions, including financing institutions, to have such covenants afford protection from third party contribution suits.

While I endorse the efforts evidenced by these bills to address problems with the current arrangements, I believe the goals would be further advanced by revisions to the present language of both bills.

Senator Cook, Representative Stratton and members of the Environmental Committee, I am Peter Gillies, Chairman of the task force appointed by Department of Environmental Protection Commissioner, Sid Holbrook, to propose amendments to the Transfer Act. I am here to speak in favor of Senate Bill 1189, which incorporates those recommendations.

While maintaining the requirement that notice be provided to all parties to a transaction covered by this Act, our task force sought to clarify those provisions which had been subject of some controversy. By providing that clarification, and establishing additional means of certification that appropriate remedial action has been taken, certainty to the regulated community and lending institutions is provided. It is our considered opinion that as a result the transfer and redevelopment of contaminated properties can be more readily achieved.

The amendments to the transfer act recommended by our committee, and incorporated into this bill include:

1. Clarification of the term "establishment".

2. Clarification of the meaning of the term "transfer of establishment"

3. The introduction of the use of an "Environmental Condition Assessment Form"

4. Specific time frames for the submission of the the written declarations, Forms I,II,III and IV and response by the Department of Environmental Protection are established.

5. Provision for a voluntary submission of an environmental condition assessment form.

A significant part of the committees recommendations incorporates the use of a Licensed Environment Professional, authorized to verify to the Commissioner of Environmental Protection that a cleanup has been performed in accordance with the cleanup standards. The qualifications of such environmental professional shall be determined by a Board of Examiners within the Department of Environmental Protection.

The following is a brief summary of the provisions of the bill outlined above.

1. The term "establishment" is more particularly defined as any business or operation which, on or after November 19, 1980,

002643

Connecticut Ground-Water Association
P.O. Box 67
Amston, Connecticut 06231-0067

3 April 1995

Representative Jessie Stratton
House Chair - Environment Committee
Legislative Office Building, Rm. 3200
Capitol Avenue
Hartford, CT 06106

Subject: Raised Bill No. 1189 - "An Act Concerning Revisions to the Hazardous Waste Establishment Transfer Act and Hazardous Waste Site Remediation"

Substitute Bill No. 6681 - "An Act Concerning Remediation of, and Liability for, Contaminated Real Property"

Dear Representative Stratton:

Thank you for this opportunity to provide testimony regarding the referenced bills. My testimony is based upon my understanding of the interests and viewpoints of the membership of the Connecticut Ground-Water Association (CGA), of which I am President. My comments follow.

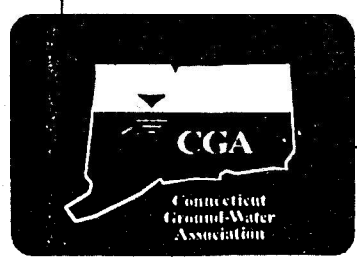
General

The scientists and engineers of the CGA have mainly expressed interest in the concepts of the bills regarding the privatization of certain Department of Environmental Protection activities, through the establishment of "Licensed Environmental Professionals" (LEPs) and a state Board of Examiners of Environmental Professionals.

Environmental Professional Qualifications

There is **wide confusion** over the conflicting overlap in environmental professional qualifications specified in the two bills. Members have recommended that you consider consolidating language concerning environmental professional licensing into just one bill.

There is agreement as to the general elements of qualifications for individuals seeking licensing under SB 1189, however some CGA members feel that requiring eight and ten years of experience is too burdensome (SB 1189, Lines 515 and 574), noting that the seven years specified in HB 6681 is more in line with national precedents. Also, some members feel that the special treatment afforded licensed professional engineers (Lines 522-523) is unfair and unwarranted, in that licensed professional engineers would not be required to have an environmentally-related degree while all other scientists and engineers would.



D[illegible] Waslenchuk, President
(203) 295-1377/FAX -1380

Standard of Care

There is agreement on the bills' definitions of LEP "standard of care". However, there is **grave concern** over the contradictory provision in HB6681, Section 3, Lines 213-214. Here the bill unfairly makes the LEP responsible for *any* violation of hazardous waste and water pollution regulations, whereas in observance of the standard of care, the LEP should be responsible only to the extent that he/she performed sub-standard work. The following substitute language, *in italics*, should be inserted at Line 214 to provide for a fair allocation of responsibility:

> "...action against the licensed environmental professional for any violation of chapter 445 or 446k of the general statutes *to the extent that the violation resulted from the licensed environmental professional having performed duties not consistent with the standard of care specified in Section 1(g) of this act."*

Insurance

An informal poll of CGA members has confirmed that the personal insurance coverage, and the "accidental contamination" coverage, specified in HB6681 essentially **are unavailable.** No insurance company now offers to underwrite the individuals within a firm. Only the largest firms are able to obtain environmental impairment insurance, i.e., coverage over accidental contamination (which is traditionally the coverage held by contractors, not professionals). Even if these coverages were to become available, the bill would **raise the cost of doing business in Connecticut.** Consider a firm with five senior Project Managers; whereas it now carries a single policy for one million dollars of professional liability insurance for $35,000, the five individual policies required for those individuals to become licensed would cost $60,000. The cost of waiving the "pollution exclusion" clause present in most general liability policies could more than double the cost of coverage.

Since other professionals are not required to carry specified insurances, and since the coverages specified in HB6681 are problematic, CGA members **recommend that the insurance requirement be dropped** from the qualifications for Licensed Environmental Professionals.

Investigation Loophole

There appears to be a potentially **large loophole** in SB 1189's intent to ensure that site cleanups not done under DEP review and approval are proper. The loophole is due to the fact that a site cleanup is only as good as the *site investigation* which precedes it, yet the bill does not explicitly hold LEPs responsible for adequate investigations. Unless the bill specifically

requires that **site investigations must meet the prevailing standards and guidelines**, whether or not any cleanup is performed, then many polluted sites will go un-remediated.

The loophole can be minimized by explicitly incorporating *investigation* into the verification procedure by Licensed Environmental Professionals, as follows:

> Lines 139 - 140. Add the *italicized* words:
>
> (8) "Remediation standards" means regulations adopted by the commissioner pursuant to Section 22a-133k , *and all other applicable investigation standard practices and guidelines prevailing in the state at the time the investigation and cleanup is conducted*;

[Note: applicable guidelines now in effect include the DEP's Transfer Act Site Assessment (TASA) Guidance Document, which describes the process of completing thorough investigations to support remediation decisions]

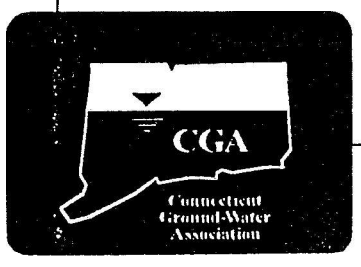
> Lines 184 - 187. Add the *italicized* words:
>
> (15) "Remediation" or "remedial action" means the *investigation, and* containment, removal or abatement of pollution, potential sources of pollution and substances in soil or sediment which *may* pose [s] an unacceptable risk to human health or the environment,...

If the recommended language is incorporated in the bill as above, then it will be implicit in each "verification by a Licensed Environmental Professional" that the site-wide investigation is also verified as meeting DEP's TASA Guidance.

Verification

SB 1189 does not define "verification", but should do so to avoid a predictable problem. Environmental professionals cannot provide certainty that a site is not polluted. Since pollution is most often hidden from view beneath the ground, and since it is impossible to turn over every stone, the limitations in our ability to detect pollution must be recognized. Hence, the following definition is recommended:

> *Section 1 (19) "Verification" or "Verify" means the rendering of an opinion by a Licensed Environmental Professional that an adequate site investigation has been performed in accordance with prevailing standards and guidelines, or that a cleanup of a defined occurrence of pollution has been completed in accordance with the remediation standards.*



DEP Ruling

Referring to SB 1189, some CGA members feel that the DEP backlog will not go away if the DEP Commissioner must rule on each case whether to allow oversight by Licensed Environmental Professionals; they recommend that sites in GB and GC areas automatically come under LEP oversight, unless the Commissioner can show a compelling need for DEP oversight, as provided in HB 6681.

Sincerely yours,

Dennis Waslenchuk

Dennis Waslenchuk
President

CGA
Connecticut Ground-Water Association

Testimony of Roger L. Boucher, Vice President of Wesson, Inc., a Waterbury Based petroleum distributor, submitted to the Environment Committee April 3, 1995, in opposition to Section 6 of HB 6681which would extend the Petroleum Products Gross Earnings Tax to residential heating oil.

My name is Roger Boucher and I am the Vice President of Wesson, Inc., a third generation Waterbury-based independent petroleum distributing company. We sell heating oil and diesel fuel as well as gasoline at both the wholesale and retail levels.

In my position as a Vice President of Wesson, I am very familiar with all the taxes and fees imposed on petroleum products and the companies that sell them.

Right now, all petroleum products sold in Connecticut are subject to a 5% Gross Receipts Tax at the point of first sale in the state. The only exception is #2 fuel oil sold exclusively for heating purposes. If #2 oil is used for any other purpose, such as in an emergency generator or to power off-road machinery, it is subject to the gross receipts tax. It is also subject to the state's 18¢ per gallon diesel fuel excise tax. And, when used to heat a commercial building, oil is subject to the state sales and use tax.

Section 12-587 of the Connecticut General Statutes, which instituted the gross earnings tax, became law on July 1, 1980. In 1985, the legislature saw fit to exempt #2 oil used exclusively for heating (Public Act 85-159) from that tax because heat is a necessity of life.

I see no reason to change that logic now. In fact, with today's economy here in Connecticut, it makes even more sense to keep the tax off home heating oil.

I understand the environment Committee's intent for this tax, and helping homeowners with potential underground tank leaks is an excellent idea. But I don't believe it is fair to make every homeowner who purchases oil, especially those people that don't have underground tanks, to shoulder the burden of a few clean-ups.

For the last three years, Wesson's tank replacement program, Rest In Peace, has been helping homeowners remove their underground tanks and replace them with indoor tanks. We have done literally hundreds of such replacements because we feel it is better for everyone if the tanks come out of the ground before a leak occurs.

Also, as a member of the Executive Board of the Independent Connecticut Petroleum Association, I know that many other companies have similar programs. On thing we have all found when removing old underground tanks is that there are really very few that pose a threat to groundwater.

Our association is committed to working with the legislature to help find solutions to the underground tank questions that have been raised. Let's work together to find a answers that will benefit the environment and homeowners alike.

If you have any questions, I would be happy to answer them.

Highlights of Testimony

Christopher L. Bergstrom
Stamford Economic Development Director

RE: House Bill No. 6681
"An Act Concerning the Remediation and Liability for Contaminated Real Property"

RE: Senate Bill No. 1189
"An Act Concerning Revisions to the Hazardous Waste Establishment Transfer Act and Hazardous Waste Site Remediation"

Before the Environment Committee
April 3, 1995

- Turnaround time on DEP approval of environmental remediation plans is one of the key obstacles to the redevelopment of industrial sites.

- Stamford has 1 million square feet of vacant industrial space and 50 acres of vacant industrial land. Most of this is the type of moderately contaminated site which will be eligible under the proposed bills for review by Licensed Site Professionals. Redevelopment of this space will create 2,400 manufacturing jobs.

- Stamford also benefits from redevelopment of industrial sites in the State's other urban centers, because it helps us to recruit and retain companies who, for example, might locate their front office in Stamford, their factory in Bridgeport and their data processing center in New Haven or New Britain.

- One of our major competitive advantages as a state is the quality of our lives, including a magnificent New England countryside unspoiled by industrial development. By redeveloping brown fields rather than developing green fields, we can have our jobs and our environment too.

- These bills are an important part of the solution, but they are not a panacea. Contaminated urban industrial sites will not be magically cleaned-up and redeveloped by the passage of this legislation. In many cases, industrial redevelopment will require a joint venture between the public and private sectors.

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TESTIMONY OF HELEN ROSENBERG
NEW HAVEN OFFICE OF BUSINESS DEVELOPMENT

AN ACT CONCERNING THE REMEDIATION OF
AND LIABILITY FOR CONTAMINATED REAL PROPERTY
HOUSE BILL NUMBER 6681

AN ACT CONCERNING REVISIONS TO THE
HAZARDOUS WASTE ESTABLISHMENT TRANSFER
ACT AND HAZARDOUS WASTE SITE REMEDIATION
SENATE BILL NUMBER 1189

BEFORE THE ENVIRONMENT COMMITTEE

To the Honorable Jessie Stratton, the Honorable Cathy Cook, and Members of the Environment Committee:

The City of New Haven would like to stress the importance to the City and the State of passage of the proposed bills concerning industrial site remediation, particularly HB 6681 and SB 1189. New Haven, once a vibrant manufacturing center, retains many vestiges of that history in 19th century factories scattered throughout the City. Many of these are multi-stored brick buildings, primarily on one to five acres, and most are vacant and in disrepair.

Although the City does not have the same amount of industrial activity it did decades ago, it is still an attractive place for manufacturers and distributors to locate. This year alone, however, the City has had to turn away at least half a dozen of them because of a lack of modern buildings or clean sites on which to construct modern facilities. The City has identified 20 properties, totalling about 82 acres, as good candidates for redevelopment if the site remediation issues can be expeditiously addressed.

New Haven has a limited capacity to expand its tax base, although expansion is needed to compensate for the existence of non-taxpaying institutions in the City and high service costs. We've estimated that if the derelict sites were redeveloped, at least 1,300 jobs could be created and about $6,000,000 in annual new property taxes generated.

The major issues which need to be addressed in order to realize development of these sites are the extensive time which is often involved in DEP review and certification of site remediation, buyer and lender reluctance to invest in contaminated sites, and the costs involved in site testing, cleanup, and demolition and disposal of obsolete buildings. Their redevelopment is important to New Haven and communities statewide to achieve:

- Increased taxes and job creation, especially in older cities where they are needed most.
- Protection of Connecticut's rural landscape from overdevelopment
- Elimination of blight, reduction of crime, and improvement of the environment, particularly in inner city neighborhoods.
- Environmental improvement statewide through increased clean-up of industrial sites.

We feel that HB 6681 and SB 1189 contain the essential elements of a successful program to achieve those goals. The most important aspect of the bills is the creation of a system of Licensed Environment Professionals to oversee and certify remediation of certain sites. This will reduce the time lags currently hindering cleanup. It is also essential that the issue of financing the costs involved with site remediation and redevelopment be addressed. Therefore, instituting lender liability protections and creating the Contaminated Property Remediation and Insurance Fund are also crucial.

Testimony of the City of New Haven
In Support of HB 6681 AAC Remediation
Of and Liability for Contaminated Real Property

Presented By Mark Mininberg
Mininberg & Goodbody
April 3, 1995

The need for a change in the system for remediating contaminated industrial and commercial properties is clear. Many of these sites in Connecticut are abandoned or not utilized largely because of the fact that they are contaminated with hazardous substances or oil. The contamination is an impediment to the development of these sites. And frequently when a business requires a site for industrial or commercial use, it looks to previously unused "greenfield" sites or to sites in other jurisdictions.

HB 6681 will result in the remediation and return to productive use of many industrial and commercial properties which presently are being neither remediated nor used. As such, it is both good for the environment in that it will cause the remediation of contaminated properties and it is good for the economy in that it will encourage redevelopment which will result in jobs and taxes. We support HB 6681 not only because it will have a positive effect on the City of New Haven but because it will have a positive effect on the entire State of Connecticut.

The successful implementation of the program set up in HB 6681 whereby private licensed environmental professionals can develop, implement and sign off on remediations of certain contaminated industrial and commercial properties requires certain elements

which are included in the bill. The dilution or elimination of these elements will undermine the success of the process established in the bill.

More specifically:

1. **Bonding**. HB 6681 includes provision for creating a special contaminated property remediation and insurance fund. This fund will be financed, in part, by revenue bonds. The fund will be used for a variety of purposes including remediation costs where the State, for various reasons, must conduct the remediation or as loans for parties conducting assessments and remediation of eligible properties. Without this funding it is unlikely that the program will be successful because many of the properties that will be eligible for remediation under this statute are abandoned or held by parties without adequate resources to address the contamination and other problems on the site. Therefore, the cities or towns in which these properties are located will require assistance to return these properties to productive use. Specifically, they will require funds to conduct Phase II environmental site assessments and demolition necessary to prepare the site for development. We also believe that the funds should be available for soft costs of redeveloping a site since most municipalities do not have the resources to manage redevelopment of properties on their own. We believe it would be appropriate to locate responsibility for this fund with the Department of Economic Development and the CDA.

2. **Licensed Site Professionals**. HB 6681 creates a category of licensed environmental professionals who will have the authority to plan, implement, and sign off on remediation of certain industrial and commercial contaminated properties. We strongly support this concept as it will result in the voluntary remediation of numerous sites by

private individuals. These are sites which the Connecticut Department of Environmental Protection (DEP) cannot reach because of limits of its own staff and other resources.

We support the addition to the bill of the establishment of a Board which will license these professionals. This Board should be broad based with appointments made from several branches of the State, not just the Governor or any single entity. The participation of the DEP on the Board is positive and necessary.

3. **Covenant Not to Sue.** HB 6681 includes a provision whereby the State may issue a covenant not to sue. We strongly support this concept as it is something developers who agree to remediate pursuant to this program and develop property or to develop property which has been remediated pursuant to this program will require. A developer likely would be unwilling to develop such sites unless it has some assurance that its potential liability for contamination that occurred on the property prior to that developer's ownership and for which that developer had no responsibility is limited to the maximum extent possible. Additionally, the fact that a lender to a party which has a covenant not to sue is protected by such covenant will encourage the lending institutions to become involved with these sites. This adds to the possibility of a site being redeveloped pursuant to this program.

By issuing a covenant not to sue, the State admittedly is accepting the risk of some future change in science which establishes the need to remediate to a more stringent standard than presently established standards. Without a covenant not to sue, the developer or a future owner of the property would be accepting this risk. Thus, the issue becomes which entity should assume this risk. Balancing this leads to the conclusion that

the State should. First, without such a covenant not to sue many developers will not become involved with these sites. Thus, the sites will not be remediated and will remain contaminated in excess of even today's standards. Second, without the incentive provided by the covenant not to sue the site likely will not be developed and the State eventually will have to take responsibility for these abandoned sites. Finally, the longer each of these sites remain undeveloped the longer the State does not have the potential tax revenues and jobs. Thus, we believe that a covenant not to sue is an essential element of the program established by the bill.

HB 6681 conditions the issuance of the covenant not to sue in such ways as to create impediments to a developer being able and willing to take on these properties. First, the bill provides that a covenant may not be issued until the Commissioner determines that the property is in final compliance with all standards and that no further monitoring is required. This will deter remediation and redevelopment of sites pursuant to this program. This condition may delay the issuance of a covenant not to sue until any remediation that requires treatment over a period of time is completed or until any required monitoring, which may go on for a number of years, is completed. Both ongoing treatment and monitoring frequently can occur during construction and use of the property. Thus, a developer will have to make its investment and commitment to the property prior to receiving the covenant not to sue. Without the assurance of such a covenant, many developers likely will abandon the project. Second, HB 6681 requires that the party to which such a covenant is to issue to pay a substantial sum for it. This requirement almost certainly will have a chilling effect on the involvement of a developer with a

specific property.

Many, if not all, of the States which have established a comparable program to encourage and expedite the remediation and development of these industrial and commercial sites have included in their legislation a provision for a covenant not to sue. No state of which I am aware has attached the conditions which HB 6681 presently attaches to its covenant not to sue. Most importantly both Massachusetts and New York provide for the issuance of a covenant not to sue to developers without the conditions proposed by HB 6681. Thus, two neighboring states make development of similar sites potentially more attractive.

The law in Massachusetts and the proposed bill in New York both include the right of a developer of such sites to obtain a covenant not to sue. Massachusetts' statute allows the state in its sole discretion to provide incentives to encourage voluntary cleanup efforts. This may include entering into a covenant not to sue concerning some or all of any liability to the State. The covenant not to sue must be in the public interest. New York's proposed bill provides that the commissioner shall issue a covenant not to sue upon issuance of a certificate of completion. If the remediation requires engineering controls that contain or control the contamination at or from the affected site, a certificate of completion may issue as long as there is a plan for the proper operation and maintenance of those controls.

Michigan's Environmental Response Act (MERA) gives the State the discretion to issue a covenant not to sue concerning any liability to the state under MERA including future liability resulting from a release or threatened release addressed by response

activities. The covenant not to sue must be in the public interest, must expedite response activity, and is conditioned on full compliance with the consent order for the response activities. Michigan has in fact issued many covenants and have found them so useful in encouraging these remediations that it is amending its legislation to make such covenants easier to issue. Ohio's statute provides that when a certified environmental professional submits a no further action letter a covenant not to sue shall issue except in certain instances set out in the statute. A no further action letter may be issued by a certified environmental professional when the applicable standards have been met through remedial activities or will be met in accordance with time frames set out in the operation and maintenance agreement. The statute provides that if the voluntary action requires the use of engineering controls that contain and control in order to comply with the applicable standards that: the party receiving the covenant not to sue enter into a operation and maintenance agreement to ensure that these controls are maintained.

Thus, none of the State require either waiting until all lengthy remediation action and/or monitoring is completed or require an eligible party to pay for the covenant not to sue.

4. **DEP Approval Process**. As stated above, this bill would allow Licensed Environmental Professionals to design and implement site remediation plans independent of the DEP. The final remedial action report would be submitted to the DEP and would be deemed acceptable within thirty (30) days of submission unless the DEP determines that an audit of the project is necessary to determine whether further remediation is required. The DEP then would have six (6) months to audit the project and to determine if further

action is required. If the DEP requires further remediation, the party who conducted the remediation would have the right to request a hearing. We support the proposed language in HB 6681 which gives this party the right to request a hearing, which further requires that the DEP articulate in writing with specificity the basis for its requiring further remediation and which allocates to the DEP the burden of proof of establishing this need. Such language will provide both comfort and protection to potential developers that audits will not be routinely conducted and that further action will not be routinely required.

002670

TESTIMONY IN SUPPORT OF HB 6681
James E. Banks
Director, Marketing and Business Development
4/3/95

I am an economic development professional working for the City of Norwalk. A major problem we face is the lack of modern flexible manufacturing space which we need in order to attract jobs to Norwalk. Much of the industrial space in Norwalk, particularly within our Enterprise Zone, which is underutilized or vacant, cannot attract businesses due to environmental concerns--real or suspected. The inability to revitalize and reuse this valuable property results in a serious loss of potential jobs and tax revenues and contributes to the decline of the surrounding neighborhood.

Current owners, developers and potential new owners avoid sites with known or suspected environmental problems for several reasons:

- -The amount of time involved in dealing with a clean-up
- -Concerns regarding the process in determining if standards have been met
- -Difficulty obtaining financing
- -Concerns regarding liability
- -The costs of remediation

In my opinion, HB 6681 provides a common sense approach to addressing the barriers to remediation while balancing the need to protect both public health and the environment. Several components of the bill which I particularly support are:

1. Establishment of Licensed Environmental Professionals who can, in certain instances, independently conduct and approve environmental site assessments, prepare remedial action plans, supervise environmental remediation and approve final remedial action reports. This will streamline the process of remediation in industrial areas in which ground water contamination is not an issue. My only concern relates to the six month period permitted for DEP to conduct an audit when they have determined that it is necessary. That amount of time is severely detrimental to the turnaround time industrial developers and users typically require in a project. We hope that time frame can be tightened up.

■ THE MAYOR'S ECONOMIC DEVELOPMENT INITIATIVE ■

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James E. Banks
4/3/95

2. Authorization of the state to enter into a covenant not to sue with the owner of the property after remediation is completed and the extension of innocent landowner statutes. These components will address concerns regarding liability and enhance the ability of projects to obtain financing.

3. Establishment of the fund to assist municipalities in preparing Phase II assessments and demolition. This will greatly assist the cities with the redevelopment of industrial sites that no developer will approach without some preliminary work.

4. Mechanisms for funding the components of the bill through owner fees to fund the state's liability in a covenant not to sue, and the issuance of revenue bonds and heating oil tax to fund the special contaminated property and remediation fund. The owner fees and oil tax are clearly related to the benefits. The revenue bonds for the remediation fund are an investment that will undoubtedly yield many jobs and increased tax revenue in our distressed inner city areas.

In sum, I urge your support for HB 6681. It addresses many of the barriers that have prevented the clean-up and reuse of valuable industrial sites. It will help cities and their residents to become more self-sufficient. It will also help to preserve our rural areas from unnecessary industrial development. And finally, I believe that it is vital that we move in this direction as Connecticut strives to rebuild its economy and compete effectively in attracting and retaining business in the state.

DEP file
PE DEP 1189
RC

TECHNICAL AMENDMENT TO SB1189

Line 263 Add: ANY PERSON WHO SUBMITTED A FORM III TO THE COMMISSIONER PRIOR TO THE EFFECTIVE DATE OF THIS ACT FOR A PARCEL WHICH IS NOT THE SUBJECT OF AN ORDER, CONSENT ORDER OR STIPULATED JUDGMENT ISSUED OR ENTERED PURSUANT TO SECTION 22A-134 THROUGH SECTION 22A-134E OF THE GENERAL STATUTES MAY SUBMIT AN ENVIRONMENTAL CONDITION ASSESSMENT FORM TO THE COMMISSIONER. THE COMMISSIONER SHALL WITHIN FORTY-FIVE DAYS OF RECEIPT THE ENVIRONMENTAL CONDITION ASSESSMENT FROM NOTIFY THE CERTIFYING PARTY WHETHER APPROVAL OF REMEDIAL ACTION BY THE COMMISSIONER WILL BE REQUIRED OR WHETHER A LICENSED ENVIRONMENTAL PROFESSIONAL MAY VERIFY THAT REMEDIAL ACTION HAS BEEN PERFORMED IN ACCORDANCE WITH THE REMEDIATION STANDARDS.

Line 174: Add after "POST REMEDIATION MONITORING," the following phrase, "OR NATURAL ATTENUATION MONITORING,"

Line 177: Add after "POST REMEDIATION MONITORING," the following phrase, "OR NATURAL ATTENUATION MONITORING,"

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4/3/95 8:02am

Connecticut Fund for the Environment

TESTIMONY BEFORE THE ENVIRONMENT COMMITTEE
REGARDING SUBSTITUTE BILL 6681 AND SENATE BILL 1189
April 3, 1995

Substitute Bill 6681

The Connecticut Fund for the Environment ("CFE") offers qualified support for Substitute Bill 6681 ("Bill 6681"). CFE believes that a carefully constructed system which utilizes licensed environmental professionals ("LEP") could greatly speed up site cleanups in Connecticut - which will be a benefit to the environment and economy. Bill 6681 calls for the establishment of such a system - which is positive.

However, Bill 6681 also allows the DEP in consultation with the AG to enter into a covenant not to sue the responsible owner or holder of financing. CFE strongly urges the incorporation of additional language included in endnote [1]. This will clarify that in accordance with our existing law, the owner, lessor or lending institution retains liability in the event that their consulting LEP fails to clean up the site to the level prescribed by the cleanup standards in effect at the time of the cleanup. CFE cannot support this bill unless this clarification is made.

In addition, CFE makes the following friendly recommendations:

1. Front-end DEP review. CFE suggests that Section 2(c), beginning on line 176 be deleted. This section allows for DEP to complete an audit after a final remedial action report is submitted to DEP. This would allow DEP to second guess a cleanup after tens of thousands of dollars are invested by the responsible party, and hundreds of hours are invested by the

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LEP. CFE suggests instead that DEP be given 45 days to review the Phase II assessment and determine, based on certain criteria, whether DEP will review and approve the cleanup or whether the cleanup may be completed by the LEP. This is similar to the provision included in Bill 1189, subsection (d) beginning at line 255. This will allow DEP to review the cleanup at the front end, giving the responsible party more certainty, preventing the potential of "double management" by the LEP and DEP, and give the public the knowledge that the State will be supervising cleanups of the truly dangerous sites.

2. Public Notice. CFE strongly supports the public notice provision has been incorporated within Section 2(b). CFE suggests that this public notice provision be required for any hazardous remediation cleanup pursuant to our hazardous waste laws, including cleanups undertaken pursuant to Administrative Order, Consent Order, or as a result of a Superior Court enforcement action. To this end, CFE recommends the adoption of language incorporated at endnote[2]. The reason for wide public notice is obvious. People who live near hazardous waste sites will be most directly affected by cleanup decisions. They deserve the right to know about the cleanup process and comment if they are concerned.

3. Technical Assistance Grants to Communities. CFE recommends establishment of grants of up to $20,000 per site, not to exceed a total of $100,000 per year, be made available from the contaminated property and remediation fund. This will allow municipalities or community organizations to hire professional assistance in interpreting technical information and accessing the decision-makers involved with the cleanup. This program is modeled after the

successful federal Superfund program. Without this technical assistance, community groups and residents will not be able to penetrate the meaning or process which can produce yards of technical reports for a single site. Grant applications would be made to DEP, Office of Environmental Equity. Criteria for selection would include: (a) The level of health risk the contaminated site may pose to neighbors; and (b) the degree of public controversy involved.

Senate Bill 1189

CFE support Senate Bill 1189. We believe the bill will result in more sites being cleaned up faster pursuant to the Transfer Act. We strongly support the concept of Licensed Environmental Professionals; DEP having a first cut at whether to supervise the cleanups; liability arrangements remaining the same under existing law; and the notion of public notice for cleanups.

CFE offers one technical friendly amendment regarding public notice. Please clarify that the public notice must be provided sometime prior to commencement of remedial work at the site. The current draft is ambiguous. It might allow public notice to be provided after the cleanup commences on site. Public comment must be timed so that it could influence the way the cleanup proceeds. Public notice becomes much less useful after the cleanup commences. To this end, CFE suggests the following language change at endnote[3]

1. Add after the word "property" on line 218, the following, "AND THE RESPONSIBLE OWNER, LESSOR OR LENDING INSTITUTION SHALL RETAIN LIABILITY FOR ANY COSTS REQUIRED TO CLEAN THE SITE TO THE CLEANUP STANDARDS FOR SUCH PROPERTY IN EXISTENCE AT THE TIME THE REMEDIAL ACTION PLAN WAS PREPARED AS ADOPTED BY THE COMMISSIONER UNDER SECTION 22a-133k OF THE GENERAL STATUTES."

2. Insert after the word "action" on line 148, the following, "IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (e) OF THIS SECTION." Within the new section (2)(e), include the following language, "PUBLIC NOTICE OF ANY ENVIRONMENTAL CLEANUP ENTERED INTO PURSUANT TO CHAPTER 445 OR 446k OF THE GENERAL STATUTES SHALL BY PROVIDED BY THE RESPONSIBLE PARTY OR PARTY COMPLETING THE CLEANUP PRIOR TO COMMENCEMENT OF REMEDIAL ACTION BY AT LEAST TWO OF THE FOLLOWING METHODS:"... Follow this phrase with the public notice provisions as incorporated within Bill 6681 from lines 149 through 161.

3. Insert the following language after the phrase " public notice of the remedial action" on lines 288 and 314, "PRIOR TO COMMENCEMENT OF REMEDIAL ACTION".

002676
CONNECTICUT CONFERENCE OF MUNICIPALITIES
900 Chapel St., 9th Floor, New Haven, CT 06510-2807 • Phone (203) 498-3000 • FAX (203) 562-6314

Testimony of the

Connecticut Conference of Municipalities

to the

Environment Committee
April 3, 1995

The Connecticut Conference of Municipalities is testifying on three bills before the Committee today.

Site Remediation

A CCM survey completed in January showed the need for comprehensive site remediation efforts throughout the state. Of the 73 municipalities that responded, 57% (41) indicated that they either (i) ***have sites in their communities that "are vacant or abandoned and that are not being developed" due to a pollution problem*** or potential pollution problem, or (ii) ***have abandoned or polluted properties for which taxes are delinquent*** and owed.

These problems affect municipalities of all types, including municipalities considered to be urban areas (Hartford, Norwich, New London, West Haven), mid-size communities (East Hartford, Enfield, Plainville, Madison), and smaller towns (Simsbury, Stonington, East Hampton, Willington).

Cities and towns are losing property tax dollars as polluted property sits idle. This means all other business and residential property taxpayers must make up the difference. Estimates of the amount of back taxes include $1,000,000 owed to Seymour, $500,000 owed to Stratford, $300,000 to Derby, $280,000 to Manchester, $250,000 to Berlin and $45,000 to Pomfret.

There are two bills before you today that deal with site remediation efforts and the transfer act. One, as drafted, is more sensitive to the specific needs of cities and towns for assistance with their site remediation and economic development efforts.

RB 6681, "AAC Remediation of, and Liability for, Contaminated Real Property." CCM appreciates the opportunity to reiterate our support for this important bill.

This bill would, among other things (a) create a "contaminated property remediation and insurance fund" to pay for a variety of site evaluation and remediation costs, (b) provide $30 million in revenue bonds for site remediation efforts, paid off by the new fund, (c) allow municipalities and others to use certified environmental professionals to conduct site evaluations,

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prepare remediation plans and prepare final remedial action reports to indicate that sites have been cleaned up to state standards, (d) provide that DEP enter into a "covenant not to sue" when remediation has been complete and approved by the department.

This bill would represent a giant step forward for site remediation efforts. The provision for environmental professionals to work with municipalities, developers and DEP holds out the possibility that sites will be evaluated and cleaned more quickly. As many as 300 sites identified as contaminated are awaiting DEP approval under the Property Transfer program.

The proposed contaminated property remediation and insurance fund would be an important new approach. It is an important component of this bill. The fund would help pay for the much-needed revenue bond appropriation. It would enable cities and towns to get funds to evaluate sites that may have pollution problems and would also enable them to demolish structures on such sites. (This provision should be clarified to provide that a municipality would only have to repay such a loan (a) to the degree that it has received revenue from the sale of such a property , and (b) that the revenue exceeds the amount of property taxes owed to the municipality.)

Another important component of this bill would allow licensed site professionals employed by municipalities to go onto property to conduct evaluations without incurring liability. This would give municipalities considering tax foreclosures on such properties (or trying to entice developers to purchase such properties) the opportunity to know what is on the site without incurring liability inappropriately.

The provisions concerning (1) the bond fund, (2) the covenant not to sue, and (3) the ability of municipalities to evaluate properties without incurring liability are all extremely important to cities and towns.

We urge you to favorably report HB 6681.

SB 1189, "AAC Revisions to the Hazardous Waste Establishment Transfer Act and Hazardous Waste Site Remediation."

This bill would make a number of revisions to the transfer act. However, it does not address the need to also revise site remediation processes as they affect municipalities and their attempts to turn abandoned properties into productive ones. It does not contain protection from liability for municipal evaluations of sites and it does not contain the bond fund provisions that are important to municipalities.

CCM is concerned with lines 357 to 360. This section would specifically provide that persons who become owners of establishments through foreclosure not be considered to be "innocent landowners" as defined by state statute. This would seem to include municipalities which foreclose on "establishments" as defined in the bill. If this is the case, it would create an unnecessary "chilling effect" on cities and towns whose most important tax collection power is foreclosure.

Also, ***almost half (47%) of the responding municipalities to a CCM survey conducted in January indicated that they had decided against foreclosing on polluted property for which back taxes are owed due to fear of the potential liability*** for pollution clean-up on the site. An additional "chilling effect" would hurt local governments.

This provision should instead provide for immunity from liability for cities and towns which foreclose on properties, as would be provided under SB 192 pending before this committee.

Regional WPCAs

CCM supports **CB 6317, "AA Authorizing the Creation of Regional Water Pollution Control Authorities".**

This bill would allow municipalities, at local option, to form regional water pollution control authorities.

One provision of this bill is particularly important. It would provide that grants paid under the clean water fund to such regional entities would be five percent more than those presently paid to individual cities and towns. This "bonus" would be a positive incentive to bring about regional cooperation that, in the long run, would save the State (and municipalities) money.

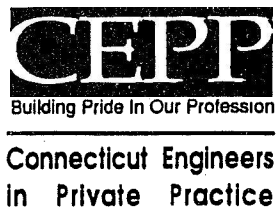
We ask that in moving forward with this proposal that the Committee provide that the five percent "bonus" not come at the expense of other projects which are already waiting for funding (and which may have to wait longer -- and become more expensive -- due to proposals which would not provide adequate amounts of new bonding for the clean water fund this session).

We urge you to favorably report this bill.

Thank you for your consideration.

# # # # # # # # # #

For more information, please call Gian-Carl Casa, Manager of Legislative Services, CCM.



Testimony Before the Environmental Committee
Concerning Proposed Substitute Bill No. 6681 and Raised Bill No. 1189

I am Kathie Cyr, President of the Connecticut Engineers in Private Practice, representing over 120 engineering firms in Connecticut. I would like to speak about Substitute Bill No. 6681, *An Act Concerning Remediation of, and Liability for, Contaminated Real Property* and Raised Bill No. 1189, *An Act Concerning Revisions to the Hazardous Waste Establishment Transfer Act and Hazardous Waste Site Remediation.* In particular, I would like to address those sections in each bill establishing requirements for and duties of Licensed Environmental Professionals (LEPs), since many of the members of CEPP would become the LEP community.

We understand and endorse the Committee and DEP efforts regarding improving the clean-up process and licensing environmental professionals. A number of revisions have been incorporated addressing our earlier concerns. However, we remain concerned that the licensing requirements vary between the two bills. We recommend that language in both bills be made identical, or requirements be defined in one and incorporated by reference in the other.

Regarding Substitute Bill 6681, we are very concerned with the unprecedented risk allocation / professional liability provisions.

We recommend that Section 1(c)(3)(A) regarding insurance requirements, be deleted in its entirety (lines 63-75). Our reasons are as follows:

- Responsibility and risk for the owner's property should not be shifted to the LEP. Insurance is not required by statute for other professionals entrusted by the public such as Professional Engineers, Architects, or Lawyers. This would put a new requirement on many small businesses.

- Insurance coverage for professional acts are based on negligence. If the professional is not negligent, coverage will not apply, thus insurance would not go to accidental contamination of property. Insurance is not, and should not be used as a substitute for professional competence or as a mechanism to transfer the risk properly belonging to a property owner to an LEP.

- The insurance market is highly volatile. Insurance for environmental contamination was completely unavailable as little as five years ago, and there is no guarantee that it will exist in the future. Moreover, the risks presented by this new requirement may not be readily insurable. Insurance rates could increase and availability decrease.

We are also very concerned that Section 3 of Substitute Bill 6681, indicates the Commissioner may enter into a covenant not to sue the owner or lessor of a remediated property, however, the State may bring an action against the LEP for any violation by Chapters 445 or 446K of the General Statutes. This clause transfers all of the risks associated with hazardous waste and water pollution control to the LEP regardless of the LEP's ability to control those risks. The best way to manage the professional risks is for the owner to select a qualified professional who will develop an adequate scope of work to do the job right.

While not specifically related to LEPs, we also note that Sections 2(d) and 11(a)(3) of Substitute Bill 6681, require an environmental use restriction be placed on property unless specifically exempted by the Commissioner. This requirement is more stringent than the current version of DEP's Draft Proposed Clean-Up Standards and would often result in the very delays this bill seeks to avoid for voluntary remediation.

Regarding Raised Bill 1189, in several sections of the act, language refers to verification of remediation action: in other sections, language refers to verification that the parcel has been subject to remedial action. We recommend that the language clearly state that the LEP could verify remedial action of a defined problem. An LEP could not verify that the parcel had been remediated since subsurface conditions cannot be examined in the detail that surface features can.

Alternatively, an LEP could render an opinion that, in his professional judgement, no other remedial action was required based on published clean-up standards. That opinion would require that adequate investigation of the parcel had also been completed.

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gems
geo-environmental management services

April 2, 1995

Representative Jessie G. Stratton
State of Connecticut
House of Representatives
State Capitol
Hartford, CT 06106-1591

RE: House Bills 6681/1186

Dear Representative Stratton:

As a geologist with seven years of management experience in site assessment and remediation, and as the owner of an environmental consulting firm for two years, I have several concerns with the two above referenced house bills. While I feel that registration of environmental professionals is very important, I also feel that these two bills are well intentioned but seriously flawed. The final affect of these bills will be to put an overwhelming number of small and moderately sized, competent consulting companies out of business as well as significantly increase the cost of environmental work. Numerous perfectly competent individuals will be prevented from performing environmental investigations. However, the bills will in no way preventing incompetent practitioners from conducting such investigations. The three portions of the proposed legislation which will precipitate such an outcome are itemized and explained below.

1.0 QUALIFICATIONS

Revised H.B. 6681 has made a reasonable adjustment in the educational and multi-disiplinary nature of practicing environmental professionals and requires seven years of professional experience. The proposed legislation now better reflects the level of experience and background of most environmental professionals currently in decision- making positions. In addition, since the bill provides for reciprocity of certification from professionals in other states, and to the best of my knowledge no states (or other certifying organizations such as American Institute of Professional Geologists or National Registry of Environmental Professionals) require more than seven years of experience for environmental certification, H.B. 6681 appears to be reasonable in this regard.

However, H.B. 1186 is unreasonable for several reasons. It will require ten years of experience for certification until an examination is developed. At that time persons with eight years of experience may take the exam There are very, very few people in the State of Connecticut who can honestly say they have ten years of experience as outlined in the proposed legislation. Most of the regulations covering environmental site work have only been in place since 1985. Few people came directly into this field at that time. Many engineers, for instance, may have environmental experience over this length of time but several years may have been spent working on waste water treatment systems. This clearly has nothing to do with sub-surface contaminant investigations or remediation. In fact, very few, if any, Department of Environmental Protection (DEP) personnel have ten years of direct experience, as defined. Few have even seven years of direct experience. It seems unreasonable to expect consultants to have more experience than the state regulators. In

SB1189

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addition, this will negate the reciprocity portion of the legislation because, as previously mentioned, no other states require more than seven years of experience.
My personal problem with this legislation is simple. If we are charitable and expect that the state will have an examination ready in say, two years, **I will have to go out of business for two years and then take a test that someone else can take with the same amount of experience that I would have had during the two years I was out of business.** I have a problem with this!

At the very least, consultants who will meet the minimum qualifications by the time the test is administered, and who are currently engaged in site assessment and remediation work in a senior management position should be grandfathered into the certification until the test is available.

2.0 LIABILITY/IMPAIRMENT INSURANCE

Professional Liability Insurance is prohibitively expensive for all but the largest environmental consulting firms. Therefore, requiring one-million dollars of coverage per individual or five-million per firm is far beyond the financial ability of most small to moderately sized firms. The majority of consulting firms in Connecticut will probably not be able to qualify for certification due to H.B. 6681's insurance requirement. In addition, it is not possible, based upon investigations into availability of professional liability insurance (E&O) from four companies, to obtain less than one-million dollars worth of insurance. The insurance is provided based upon what category your gross income fell into the previous year. The first category is based on a gross income of $0.00-$5,000,000.00. The starting coverage is one-million dollars.

With respect to environmental impairment insurance, most E&O insurance specifically prohibits the consultant from engaging in this type of activity. This is why sub-contractors are generally hired to actually *undertake* a clean-up that the consultant is *supervising*. The sub-contractors carry the liability insurance for acts which might result in contamination being released accidentally due to site clean-up activities.

There also appears to be some misunderstanding that professional liability is somehow an indication of competency. This is in fact not so. If you can afford the premiums, you can get E&O insurance the same way a bad driver can still get car insurance. The insurance companies require a long intensive investigation form to be filled out but do not review the actual practices of each individual firm. You are required to certify that you are competent and that is the basis on which the coverage is granted. This is why the issue of insurance is somewhat of a sham. Every consulting firm has a set of terms and conditions which clients must agree to, which limit the firm's exposure to the amount of the proposal cost or the portion of the project completed to date, no more, no less. The only way a client can obtain a larger judgment is if the firm is found to have been grossly negligent. However, as explained to me by several insurance companies, if you are found to be grossly negligent you have abrogated the E&O insurance contract which was based upon your certification that you are competent, and, the insurance company will not pay off. This is very good for the insurance companies but hardly assures the competency of companies with professional liability insurance. We all know of environmental companies currently operating in-state who have E&O insurance and do not do competent work.

Whether or not a consulting firm needs E&O insurance to work for a particular client is a market place not a legislative issue. If a client requires the consulting firm they use to have E&O insurance they are probably aware they are going to pay more for the environmental

work. However, if it is not an issue to a particular client, they should not be forced to pay for something that provides no benefit to them or to the state.

There is an additional problem in that the investigation and remediation of environmentally impacted sites is not an exact science. Non-negligent error is always a possibility in this process. A potentially better way to assure competency would be to have a board for **Peer Review** of projects falling under the jurisdiction of the proposed legislation. This could be a volunteer board of qualified environmental professional from consulting firms in-state. The members would serve on a rotating basis to assure impartiality and so members would not be reviewing work from their own companies. Instead of expensive insurance of questionable efficacy in assuring competency, I feel this would allow consulting companies to remain in business while providing a much better (and local) check on who is working within standard protocols. If necessary, fees could be assessed to the property owner for such a review. The cost to the client would still be less than what potentially must be added onto the cost of a project to cover E&O insurance.

If the requirement for E&O insurance is left in place, only two or three large consulting firms are going to be practicing in-state. To say that a monopoly of environmental work will occur is an understatement. These large consultants now have to compete with companies such as mine which keeps environmental costs in check. The only thing keeping some larger companies from charging $3,500.00 for a simple Phase I investigation is the fact that I do the same thing for $1,500.00. Without companies such as mine the cost for environmental work will be astronomical and the concept of a minimum amount of defensible work will be unheard of. While this might not adversely effect a Pratt & Whitney, much of the small business and industry in the state will have a harder time financially addressing their environmental problems than they do now.

3.0 SITE LIABILITY

I am not quite sure what to say with respect to the complete transfer of liability for a contaminated site from the owner and lender onto the consultant other than I feel it is unprecedented and unbelievably ridiculous. I am sure the state, lenders and property owners find this appealing. However, as mentioned above, there is always the possibility in site investigations and remediation of non-negligent error. The legislation of H.B. 6681 does not appear to take this into account. I know of no consultants who would be willing to agree to be solely responsible for the liability of a contaminated site they neither owned nor contaminated. I would be amazed if anyone in their right mind would agree to this. A resolution of this conflict might be found in the **Peer Review** proposed above. If final remedial action reports were screened through **Peer Review** prior to acceptance by DEP, reports found to be deficient could be sent back to the consultant with recommendations for further work. However, should the remediation be found complete the consultant would be released from further responsibility. Ultimate liability for the property must reside with the owner or responsible party.

Should this portion of legislation stay in the bill the result will be a significant increase in non-essential environmental work as well as a significant increase in cost simply so the consultant can cover their...liability. For instance, instead of placing three shallow monitor wells on a small gas station site and analyzing for gasoline components and petroleum hydrocarbons (approximately $200.00/sample), the inclination will be to place many shallow wells, deep wells, bedrock wells and doing a full appendix IX laboratory analysis (approximately $1800.00/sample) on every sample. Instead of sampling soils every five feet where called for, samples will be taken every two (2) feet. This will create a significant financial hardship for all but the largest business and industry in the state.

4.0 SUMMARY

As a life long resident of Connecticut I am intimately aware of the declining in business and industry in the state as well as the loss of population. None the less, two years ago I decided to take a personal, financial and professional chance and start my own business in this state. It has been quite an experience but I am just now beginning to find myself at a point where I can expand my business. I am proud of what I have accomplished, especially given the economic climate in Connecticut, and I am very good at what I do. However, if these two pieces of legislation are passed without addressing the issues I have raised I will be forced out of business for no good reason. If that happens, the chances I will stay in state and try again are nil. The only thing that keeps me in state is my business. Especially when I am "**qualified**" to obtain certification in other states such as; Massachusetts, Main, Pennsylvania, Delaware, South Carolina, Tennessee, Kentucky, Wyoming and California to name a few. In addition, I am afraid that the potential for me going to my current clients and telling them I am no longer "**competent**" to conduct their environmental work and they should go to the XYZ Consulting company falls into the very cold day in hell category! This is especially true as many of my clients are small "Mom & Pop" businesses and industries. By the time the larger consultants are done taking their fees from these companies there is frequently nothing left for clean-up, the clients are bankrupt and the property becomes a state problem.

As the bills stand I can see several ways I could get around the requirements and stay in business. However, I do not want to do business this way even though it is exactly what many consulting companies will do. I am not sure how well this will serve the state or the clients.

As I stated in my opening, I am sure the bills have been introduced with the best of intentions and no one disagrees with certification of environmental professionals. I hope that the legislation will meet its goals in a reasonable way without creating undue hardship to consultants, business or industry.

Sincerely,

Christina G. Pollock
Principal Geologist/Owner

cc: Senator Thomas P. Gaffey
Senate
State Capitol
Hartford, CT 06106-1591

Representative James Abrahms
House
State Capitol
Hartford, CT 06106

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Statement Presented to the Environment Committee
State of Connecticut Legislature
Legislative Office Building
Hartford, CT 06106
April 3, 1995

Proposed H.B. No. 6681
An Act Concerning Remediation of, and Liability for, Contaminated Real Property

Mark S. Peel
Vice President
Corporate Operations
American Environmental Technologies, Inc.
Bethel, CT

Thank you for the opportunity to address the Committee on proposed bill No. 6681.

My name is Mark S. Peel. I am vice president of corporate operations at American Environmental Technologies, Inc. (AET), an environmental service contractor incorporated in the State of Connecticut. Since 1988, AET has provided environmental contract services to Connecticut and New York, and in more recent years, in Rhode Island and Massachusetts. The Company employs forty-two people and has offices in Bethel, Norwich and Hamden, CT, and other facilities in Norwalk. Today, the Company is a qualified environmental contractor providing spill and waste transportation services under contract to the States of Connecticut, New York, and Rhode Island as well as to businesses and industry throughout the Northeast. AET also holds a Basic Ordering Agreement (BOA) with the U.S. Coast Guard.

In 1989 I was hired by the owners of AET to manage the business office operations and to coordinate the Company's training programs. I would note that this was before the Federal OSHA 1910.120 rule that established health and safety training standards for employees on hazardous waste sites. My qualifications for this responsibility include over twenty years of academic administration in colleges and universities and a doctorate in education administration.

Statement Presented to the Environment Committee
State of Connecticut Legislature
Legislative Office Building
Hartford, CT 06106
April 3, 1995

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AET supports the spirit of the bill related to professional standards, the quality of environmental services, the funding for remediation of real property, and the requirements for appropriate levels and types of insurance. The environmental service industry in Connecticut has developed rapidly in the past decade in the absence of such regulation in these areas. The profession and the marketplace, as well as the State's environment, will benefit greatly from reasonable regulation fully and fairly enforced.

The one area of concern I would like to address specifically is the certification of licensed environmental professionals. The proposed bill seeks to establish a certification process and a set of standards involving experience and education for environmental professionals. In its most recent draft (3/30/95), the bill proposes that a licensed environmental professional have a certain number of years practical experience and a college degree in a science or engineering field. A separate path to certification would be through a comparable process in another state acceptable to the examining board.

The current version of bill No. 6681 would deny certification to certain individuals who have played an important part in the state's environmental service industry to date because they do not have a credential to meet certification requirements. Certainly some recognition of the historical development of the environmental marketplace seems appropriate. With minimal, but increasing, state regulation over the past fifteen to twenty years, the environmental service industry in Connecticut has evolved into a system of commercial providers working with business, industry, the public, and the Connecticut Department of Environmental Protection to address environmental needs. Individuals who entered the profession in its early days acquired their expertise largely through experience in the field supplemented by short-term training programs and seminars. These individuals represent a qualified source of talent and skill who would be denied the opportunity for certification as a licensed environmental professional unless the process addresses competence gained through experience.

My company has long recognized the value of formal education combined with practical experience as model pre-service preparation for environmental work. In 1990 AET established a cooperative education program with the University of Connecticut to provide health and safety training and field experience to undergraduates interested in environmental careers. That program has produced several college graduates who are now working in environmental positions or are continuing their education in environmental-related studies. AET also provides its employees a very liberal tuition reimbursement program for college courses related to their AET duties.

I suggest that there is more than one way to define professional standards. I believe the emphasis of certification should be on the knowledge and skill necessary to perform the services needed to protect the environment and the interests of the State. In 1993 Massachusetts established a two-track certification system for licensed site professionals (LSP). The standard track requires a combination of experience (8 years total professional experience, 5 years practical experience) and a college degree to qualify an individual to sit for the professional certification examination. A second track, the alternate track, is for professionals without degrees. It requires more extensive experience (14 years total professional experience; 7 years practical experience) to qualify an individual who may possess the competence <u>but not the degree</u> to sit for the examination.

I strongly recommend the Committee consider an opportunity for the certification of qualified, non-degree professionals in this bill.

Thank you.

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ALFRED E. SMITH, JR.
(203) 240-6060

April 3, 1995

Committee on the Environment
Connecticut General Assembly

Re: HB 6681, An Act Concerning Remediation Of, and Liability For, Contaminated Real Property

Dear Environment Committee Members:

My name is Al Smith. I am an attorney at Murtha, Cullina, Richter and Pinney, and I am testifying today on behalf of the Greater New Haven Chamber of Commerce. The Greater New Haven Chamber of Commerce is a regional business organization representing over 1,000 member businesses throughout South Central Connecticut.

The Chamber strongly supports HB 6681 and the efforts of the Environment Committee to adopt legislation that will encourage the remediation of contaminated sites and the return of those sites to productive use. Such an approach would benefit the environment by remediating sites that would otherwise remain contaminated and would improve the economy by creating jobs and producing tax revenues to municipalities facing cuts in federal and state aid.

You have heard considerable testimony about the benefits of allowing qualified private sector professionals to certify the remediation of certain well defined sites. The sites eligible for private certification should be defined broadly to include areas where groundwater is not a source of drinking water, and where industrial activities have historically occurred. In this way the DEP would retain jurisdiction over the sites posing the greatest threat to health in the environment, while allowing the expeditious redevelopment of the most economically productive sites.

I wish to comment on a number of specific provisions of HB 6681.

1. Section 3 authorizes, but does not require, the Commissioner of Environmental Protection to enter into a covenant not to sue the owner or lessor of property

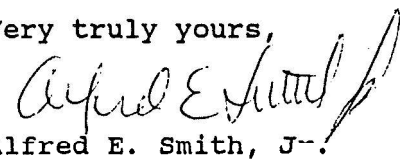
that has been remediated to applicable clean-up standards. Experience has indicated that prospective purchasers and lenders would be encouraged to return sites to productive use if they can be sure that they will not be sued by government agencies to remediate a site that has already been certified as clean by the DEP and a qualified professional. Please note that the recipients of a covenant not to sue would remain responsible for any conditions that they create. This covenant not to sue would protect only against suits based on an "after the fact" reconsideration of the site or by a change in law or standards. Of course, such a covenant not to sue would not extinguish claims brought by an injured third party, such as a neighbor.

2. Section 2(c) provides that the Department of Environmental Protection may review a final remedial action report submitted by a licensed environmental professional within specific time limits. The Chamber believes that any such reviews must be undertaken promptly. Otherwise, the fundamental purpose of this legislation will be frustrated. For this reason, the Chamber believes that the burden should be on the DEP to specifically identify the deficiencies in any final plan so that those deficiencies can be addressed quickly. Because review can delay redevelopment of the site and otherwise negatively affect the rights and opportunities of a property owner, a DEP finding of deficiency should be subject to an administrative hearing in which contested issues can be articulated and resolved. Further, the DEP should have the burden of showing that the conclusions of the DEP certified professional are erroneous.

Finally, the Chamber supports a funding provision such as the one proposed by HB 6681. Such a fund is needed to allow municipalities to identify and investigate sites for potential redevelopment, for costs of demolition undertaken to prepare sites for development, and for the remediation of contaminated properties subject to a covenant not to sue and those owned by "innocent landowners".

Thank you for this opportunity to present testimony.

Very truly yours,



Alfred E. Smith, Jr.

CBIA
Connecticut Business&Industry Association

TESTIMONY OF
THOMAS J. TURICK
ENVIRONMENTAL MANAGER
CONNECTICUT BUSINESS AND INDUSTRY ASSOCIATION
BEFORE THE ENVIRONMENT COMMITTEE
MONDAY, APRIL 3, 1995

Good morning. My name is Thomas J. Turick. I am environmental manager with the Connecticut Business and Industry Association (CBIA). CBIA represents approximately 7300 member companies, large and small businesses that employ several hundred thousand men and women in Connecticut.

I am here on behalf of CBIA to SUPPORT and offer recommendations on the two following bills:

H.B. 6681- An Act Concerning Remediation Of, And Liability For Contaminated Real Property.

S.B. 1189- An Act Concerning Revisions To The Hazardous Waste Establishment Transfer Act And Hazardous Site Remediation.

As CBIA testified in February before this Committee, **H.B. 6681** is arguably one of the most significant and important environmental proposals to come before the Connecticut legislature in the past ten years. The proposal is truly monumental in scope as it seeks to develop a more comprehensive approach to the remediation of contaminated sites throughout the state. It offers new approaches to issues such as the privatization of cleanup management, the extent of landowner and lender liability, municipal responsibility for urban cleanup and development, the use of a covenant not to sue mechanism to protect good faith cleanup efforts, and a host of other issues to numerous

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to list that have been roadblocks to the voluntary cleanup of contaminated sites since the state began its cleanup program in about 1980.

However, one critical issue has not been addressed in either **H.B. 6681** or **S.B. 1189**. Most importantly, the ultimate success of these two proposals in affecting the cleanup of contaminated sites in Connecticut largely depends on the existence of workable state cleanup standards. CBIA has long been a member of DEP's advisory group charged with developing cleanup standard regulations. While the DEP effort has been underway for more than two years now, we believe significant work remains to be accomplished before a workable set of standards can be finalized and adopted to answer once and for all the question, "How clean is clean?"

Because of the critical need to have workable standards in place as soon as possible to fully implement the comprehensive cleanup program embodied in these two proposals, CBIA recommends that the following attached language be added into Sec. 11 of **H.B. 6681**. This language will clearly establish state policy and give the necessary DEP guidance on how to further proceed in drafting its proposed cleanup standard as to:

a.) under what circumstances permanent cleanup will be expected to be achieved;

b.) under what groundwater conditions, a cleanup may occur to a standard less than required for residential land use, and;

c.) under what DEP administrative actions such voluntary cleanups will be allowed to proceed.

Thank you.

(a) The commissioner of environmental protection shall adopt regulations, in accordance with THE PROVISIONS OF chapter 54, setting forth standards for the [clean-up of hazardous waste disposal sites to] REMEDIATION OF ENVIRONMENTAL POLLUTION AT HAZARDOUS WASTE DISPOSAL SITES AND OTHER PROPERTIES WHICH HAVE BEEN SUBJECT TO A SPILL, AS DEFINED IN SECTION 22a-452c, WHICH REGULATIONS SHALL fully protect health, public welfare and the environment. In establishing such standards the commissioner shall (1) give preference to clean-up methods that are permanent, if feasible~~, and~~ AND ECONOMICALLY PRACTICABLE, [and] (2) consider ~~any factor he deems~~ appropriate FACTORS, including, but not limited to, groundwater classification of the site, FEASIBILITY, RELIABILITY, COST EFFECTIVENESS, NATURAL ATTENUATION, AND CLEANUP DURATION, [and] (3) [may] provide for standards which differ according to the present and future use of the property ~~] (3)~~ AND (4) PROVIDE FOR STANDARDS OF REMEDIATION, LESS STRINGENT THAN THOSE REQUIRED ~~FOR~~ AT RESIDENTIAL ~~LAND USE~~ PROPERTIES, FOR POLLUTED PROPERTIES WHICH (A) ARE LOCATED IN AREAS WITH AN EXISTING GROUND WATER QUALITY CLASSIFIED AS GB OR GC UNDER THE WATER QUALITY STANDARDS ADOPTED BY THE COMMISSIONER ~~FOR CLASSIFICATION OF GROUNDWATER CONTAMINATION,~~ OR WHERE GROUND WATER IS NOT SUITABLE FOR DRINKING WITHOUT TREATMENT OR CANNOT REASONABLY BE EXPECTED TO BE USED AS A DRINKING WATER SUPPLY, AND (B) WERE HISTORICALLY INDUSTRIAL OR COMMERCIAL PROPERTY AND WHICH SHALL BE LIMITED TO INDUSTRIAL OR COMMERCIAL USE BY A LAND USE RESTRICTION CONSISTENT WITH THESE LESS STRINGENT STANDARDS~~(C) ARE NOT SUBJECT TO AN ORDER ISSUED BY THE COMMISSIONER, CONSENT ORDER OR STIPULATED JUDGMENT~~.

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Connecticut Audubon Society

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Connecticut Audubon
Birdcraft Museum
314 Unquowa Road
Fairfield, CT 06430-5018
203-259-0416

Connecticut Audubon
Center At Fairfield
2325 Burr Street
Fairfield, CT 06430-7106
203-259-6305

Connecticut Audubon
Center At Glastonbury
1361 Main Street
Glastonbury, CT 06033-3105
203-633-8402

Connecticut Audubon
Ragged Hill Woods Program
139 Wolf Den Road
Brooklyn, CT 06234
203-774-9600

Sanctuaries

Birdcraft Sanctuary
Fairfield

Edward Steichen Memorial
Wildlife Preserve
Redding

Elsa Feiler Denburg
Woodland Conservation Area
Fairfield

Grace Robinson
Nature Sanctuary
Weston

H. Smith Richardson
Wildlife Preserve and
Christmas Tree Farm
Westport

Haddam Wildflower Gorge
Haddam

Hayes Meadow Tidal Marsh
Fairfield

Jane and George Pratt
Valley Preserve
Bridgewater

John W. Field Sanctuary
Fairfield

Milford Point
Milford

Morgan R. Chaney Sanctuary
Montville

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Pomfret Center

Richard G. Croft
Memorial Preserve
Goshen

Roy & Margaret Larsen
Sanctuary
Fairfield

Trail Wood:
The Edwin Way Teale
Memorial Sanctuary
Hampton

TESTIMONY BEFORE THE ENVIRONMENT COMMITTEE RE:

RHB 6681 - AAC REMEDIATION OF, AND LIABILITY FOR, CONTAMINATED REAL PROPERTY

RSB 1189 - AAC REVISIONS TO THE HAZARDOUS WASTE ESTABLISHMENT TRANSFER ACT AND HAZARDOUS SITE REMEDIATION

The Connecticut Audubon Society strongly supports efforts to improve the effectiveness of the contaminated sites remediation program. Currently, there are more than 300 contaminated sites awaiting remediation, mostly in urban areas. These sites need to be cleaned up as quickly as possible to prevent further contamination and to allow these properties to be sold and developed. Our cities desperately need the revenue and jobs developed properties will generate. And from a land use perspective, it is more efficient to develop in areas with an existing infrastructure (e.g. urban areas) than to continue a pattern of sprawl development that consumes pristine open space and farmland and furthers our dependence on the automobile.

In light of the backlog of sites and the current reality of the DEP's limited resources, Connecticut Audubon supports many of the measures introduced in these two bills including the establishment of Licensed Environmental Professionals (LEP'S) and voluntary cleanups. These measures alone will increase the number of sites remediated and reduce the DEP's backlog. We also vigorously support the public notice provisions. It is essential to notify the people who live near these sites as they are the ones most directly affected by the remediation. However, we would like to offer the following comments/concerns regarding the two bills introduced.

HB 6681

- Under this proposal, the DEP is not involved until the LEP submits the final remedial action plan. At this point the DEP, within 30 days, can request an audit. We would like to see this changed to have the DEP involved right at the beginning of the process. They should review the earlier site assessment report so they can make an informed decision as to whether or not to take control of the site. The DEP must retain the right to clean up the most dangerous sites and they need information from

ing the DEP's limited resources, we would like to see this scenario minimized and we feel that having the DEP review the very initial site assessment plan accomplishes that goal.

- This proposal sets up a "covenant not to sue" arrangement between the state and the owner of the property. We have serious reservations about the state relinquishing liability of the property from the owner(s). We understand that this liability is of major concern to any parties undertaking site remediation but we must point out that SB 1189, the proposed revision of the Transfer Act, does not make any changes in the liability status of the property. We do realize that one of the goals of HB 6681 is to foster clean up of sites not covered under the Transfer Act, particularly foreclosure properties. At the very least, we would like to see the language regarding the power of the state to bring action against an LEP expanded to include the owner of the property as well. Both parties should be liable for an improper cleanup.

SB 1189

- We support the language regarding public notice but it is not clear as to when that notice must be given. We feel strongly that notice needs to be given at the very start of the cleanup process and would like to see the language reflect that. Also, we feel strongly that language needs to be provided for public notice of voluntary cleanups as well.

Regarding both bills, we support the Connecticut Fund for the Environment's recommendation of establishing a technical assistance grant program, modeled after the federal Superfund program, to provide assistance to affected communities regarding technical clarification and the remediation process.

Connecticut Audubon supports the new ideas and proposed changes to the Transfer Act included in these two bills. They are steps in the right direction to solving the problem of contaminated sites and their impediment to economic growth, particularly in urban areas. While we support most of the content of both these bills, we strongly recommend adoption of our suggested changes to ensure that public health and safety is never compromised in the remediation process.

Statement of Clay Bassett before the Environment Committee of the General Assembly. Monday, April 3, 1995. Room 1D, Legislative Office Building.

RE: House Bill 6681

Good morning, for the record, my name is Clay Bassett. I am a resident of Simsbury and I am the president of the Capitol Fuel oil company. I also serve on the Board of Directors and am a Committee Chairman of the Independent Connecticut Petroleum Association, an organization of 350 independent family owned heating oil retailers here in Connecticut.

I appear here today to voice my opposition to the residential home heating oil tax proposed in House Bill 6681. As written, this proposal would extend a portion of the petroleum products gross earnings tax to homeowners using heating oil.

Our industry feels it is grossly unfair to tax consumers on a necessity of life. Groceries are not subject to tax and it is wrong to tax the people of Connecticut for the fuel they need to heat their homes.

We strongly oppose any tax on heating oil that would directly affect the consumers of Connecticut, even if it is being earmarked for a worthy purpose - the remediation of contaminated property.

The legislature, in their wisdom years ago, puposely exempted residential heating oil from taxes. However, in turn they have heaped a mountain of taxes on petroleum products in general which have more than made up for this exemption.

We do tax heating oil right now when it is used for commercial purposes, but not residential. The current gross receipts tax already brings in over seventy-five million dollars every year. Connecticut also has the highest gasoline tax of any other state.

If that isn't enough, heating oil retailers are subject to numerous other fees ranging from vendor registration fees to taxes on each meter to a fee for each separate tank compartment on a delivery truck.

It is also my experience that once a tax is instituted is keeps continuing to rise. The current gross receipts tax is 5%, it started out at 1%. Five years ago, our gasoline tax was less than 25¢ per gallon, today it is 32¢ per gallon and by 1998, it is scheduled to rise to 39¢ per gallon. I would hate to see the same thing happen to Connecticut's homeowners that need this fuel to keep warm in the winter.

And is it fair to tax every oil heat customer to create a fund for residential clean ups? Should a customer that has already removed their tank, and paid for it themselves, be forced to pay into a fund that they do not need? I deliver oil to apartment buildings in Hartford. Those renters often times have heat as part of their rent. I'm sure their rents would go up if a tax like this went through.

I would also like to add that our association has made great strides in removing tanks. I know you have heard from other members of ICPA on this issue and I am happy to hear that you are considering a bill right now that would study the issue of residential tanks in detail. ICPA has pledged to work

with you in coming up with workable solutions to these problems - both real and perceived.

Today, a home owner with an underground tank has several options. First, many oil companies across the state have tank replacement programs. In addition, they can buy insurance to cover their underground tanks.

The largest publicly held insurance company in the United States, American International Group (AIG) has just come out with a warantee sold through fuel oil dealers that covers the cost of clean-up from a residential oil leak. This is something new, unique and unusual.

In addition, just in the last two weeks, a huge multinational company based in Switzerland has announced plans to write riders for basic homeowners' insurance to cover leaks from underground tanks.

In closing, I would just like to say again, fifteen years ago the General Assembly, in their wisdom, saw a need to exempt home heating oil from all taxes in the interest of the consumers. Please don't make the mistake of reversing that decision.

Thank you for allowing me this time to speak.. If you have any questions, I would be happy to answer them.

JOINT
STANDING
COMMITTEE
HEARINGS

COMMERCE
PART 2
310-622

1995

kmg COMMERCE February 21, 1995
2:00 p.m.

PRESIDING CHAIRMAN: Representative Betkoski,
Senator Guglielmo

COMMITTEE MEMBERS PRESENT:

SENATORS: Gaffey, Somma, Cook,

REPRESENTATIVES: Caruso, Hess, Carter, Christ, Boukus, Giannaros, Hartley, Johnston, Kerensky, Mikutel, Orefice, Schiessl, Googins, Simmons, Ryan, Stripp, Ferrari, Stone, Young

REPRESENTATIVE BETKOSKI: ...committee members.

REPRESENTATIVE STRATTON: Are there other questions for Bob Calsuski? If not, then while our staff gets ready with the testimony or people's lists from the public hearing, Ed, why don't you go on with your presentation.

: Thank you Representative Stratton.

(gap in tape)

REPRESENTATIVE STRATTON: At this point we will then proceed with the other individuals who are signed up as state and municipal officials for the public hearing. First person on that list is Helen Rosenberg from the City of New Haven. And she will be followed by Mark Minnenberg. They can come together.

HELEN ROSENBERG: My name is Helen Rosenberg and I work for the City of New Haven's Office of Business Development, and I want to stress the importance to the city and the state of passage of the proposed bills, particularly HB6681, that will facilitate the remediation and reuse of contaminated industrial sites.

New Haven, once a vibrant manufacturing center retains many vestiges of that history in 19th century factories scattered throughout the city. Many of these are multi-storied brick buildings, primarily on one to five acres, and most are vacant and in disrepair.

Even though the city is not a manufacturing center any more, there are still a lot of manufacturers and distributors who want to move to this city, and I turn away at least half a dozen businesses a year because we have no modern facilities to put them in, and no sites for them to build on.

We've identified twenty properties, which represent about 82 acres as good candidates for redevelopment if the site remediation issues can be expeditiously addressed. New Haven has a limited capacity to expand its tax base, although that expansion is needed to compensate for the existence of non-taxpaying institutions in the city and its high service cost.

And we've estimated that if these derelict sites were redeveloped, at least 1,300 new jobs could be developed, and about six million in annual property taxes generated.

The major issues which need to be addressed in order to realize development of these sites are (1) the extensive time frame, which is often involved in DEP review and certification of site remediation, and (2) buyer and lender reluctance to invest in contaminated sites.

The redevelopment is important to New Haven and in communities statewide to achieve the following goals: increase taxes and job creation, especially in these older cities where they are needed most. And I just want to mention that I've been working with all the targeted investment communities on this specific issue.

We've been meeting about twice a month to work toward passage of a bill, or bills that will meet these goals. Second, protection of Connecticut's roll land, landscape from overdevelopment, which

you are all concerned about. Also, elimination of blight, reduction of crime, and improvement of the environment, particularly in innercity neighborhoods, which are most affected by these old, derelect sites.

And finally, environmental improvement statewide through increased cleanup of all these industrial sites. We feel that HB6681 contains the essential elements of a successful program to achieve those goals. Now, Mark will continue to speak for the city.

MARK MINNENBERG: Yeah, we, I think we're very pleased to see...

REP. STRATTON: Mark, could you just identify yourself for the record.

MARK MINNENBERG: Sure. My name is Mark Minnenberg, and I'm representing the City of New Haven. The city has been meeting with a number of other cities and industry groups for probably six months now. This is really an issue that's really of a top priority to most of the larger municipalities, and probably to many of the smaller towns.

And we had something of a wish list that we developed over the six months. And I think it's fair to say that most of, most of what this city's wished for is really in, in this bill. I think that the fundamental provisions of allowing certified environmental professionals to be involved in the cleanup process to apply the certifications that those professionals might render to the transfer act, the use of the activity use limitations, and the creation of a covenant not to sue, are all provisions that are critical to making, we think, to making it an urban redevlopment program work.

So, I think that as a whole, you'll probably, you'll see from New Haven, and probably the cities that will come after us, that we're very happy with the bill, and we want to see it make its way through the process.

We did have a couple of, and I think the reason I'm here is cause I'm the, I've litigated a few of these, and so we had, we had a few sort of lawyers questions about some of the provisions. So, overall I think we loved the bill.

But, having given me the mike, I had about, there are a couple of things that we just wanted to point out to you, and they're not things that, we necessarily have a, you know, a better answer to, but just things we wanted to highlight. And I'll try to do that in about a minute.

The first thing is that we were concerned that both large and small sites be included as part of this legislation. In other words, that certified environmental professionals would be able to work at sites regardless of whether they were a small machine shop, or a very large manufacturing facility.

And the way the bill is written, it, as I read it, it focuses on transfer act establishments. And transfer act establishments are limited to, you know, dry cleaners, auto body or paint shops, I can never quite, never figure that one out, wood working shops, or facilities that generate more than half a drum, 100 kilos of hazardous waste in a month.

Half a drum is actually quite, it's, the reason it was put in the transfer act is because that tends to demark a large facility, and smaller shops tend to not generate up to half a drum of hazardous waste in a month.

Also that's, when it comes to figuring out how much half a drum really is, it becomes a very difficult question of evidence. And I'm not sure that anyone, DEP, or the people in private industry, have ever figured out what that threshhold means.

In summary, what I'm trying to say is that, we want to see that Joe or Mary's small commercial establishment that may have been contaminated, can be part of this, and yet they may not be a dry cleaner, and they may not generate more than 100

kilos in a month, and so they'd be excluded. So, if you could, looking at this legislation, figure out a way to maybe broaden it a bit, either by broadening the transfer act, heaven forbid, or maybe, maybe allowing other sites to be included.

REP. STRATTON: Is that a full employment act recommendation?

MARK MINNENBERG: Well, as I mentioned to commission the other day, I hope to be out of this, this end of the business at some point soon. But, which means we'll have all clean sites. The other question is really, and I guess what's related is, how do we define what is an establishment, and I just wanted to note for the record that there's a lot of hesitation both, I shouldn't say that there's hesitation on DEP's side, but I'd say there's hesitation when DEP and the business community get together and try to figure out how we decide whether we've got an establishment or not.

And, certainly when you're making your business decision to participate in this program, whether you have a certified environmental professional or you have, I mean, if I think about my fellow legal counsel, none of us like ever declare on the record with our insurance policies on the line, that something is indeed an establishment or it's not, because if we're right or we're wrong, it could be a million dollar question.

And I'm sure certified environmental professionals are going to come up against this same problem. So if there's a way we can better define the universe of sites, it would be very helpful.

Third thing is that the transfer act doesn't include petroleum, and yet many, many of the sites we're dealing with are contaminated with petroleum products, with oil, especially in New Haven. I mean, if you go down to the harbor in New Haven, most of our sites are primarily contaminated with oil.

Because the transfer act doesn't include oil contaminated sites, it means that our certified

environmental professionals wouldn't be able to work on those sites. So if there's a way, again, if we could look at, not necessarily making the transfer act include oil, although there's an argument for that.

But if we could at least try to expand the definition of sites to allow, not just those that are contaminated with "hazardous waste" but those that are also contaminated with "Connecticut regulated waste" which is the DEP's definition.

The next thing is that the, there's a question about renewing whether we, someone who has leased a property, and then renews the lease would be included. I just plain didn't understand it. And that doesn't, shouldn't matter to the committee too much, but I passed it around to other counsel, and none of us could really get a handle on whether the committee intends leased property, if you lease property to someone new, whether that falls under the transfer act, or whether, if you just renew a lease to someone who already has it, that's included.

And, it may be that in a bill report, that could be laid out a little bit, cause it's something I can see there being a lot of litigation and fighting over. Requiring activity and use restrictions, makes sense in a lot of cases.

But there may be cases where you don't want an activity and use restriction because maybe the property's been cleaned up completely, and yet if it was part of this program, you'd be required to restrict the use.

At least as I read it. Now, again I may be reading it wrong, but that's just a question. Finally, with the covenant not to sue, I'm sure you're going to hear a lot of comments about this. But there is a provision to allow a covenant not to sue, which is desperately needed.

The DEP really, I think really needs authority to allow people who voluntarily clean up sites to enter into a covenant which says they won't be sued

later on for the work they did, as long as it was done right. The covenant not to sue though, has attached to it, a fee which would be 3% of the assessed value, assume assessed value of the property.

I understand that the committee is looking for ways to raise revenue, but I just want to suggest that when I polled a couple of my clients about it, it was an issue for them, because you're talking about if you're going to voluntarily clean up a property, you may not want to, if it's a million dollar property, you may not want to be putting up tens of thousands of dollars for the covenant not to sue.

Just because it's a disincentive, and I don't want to go on, make it a dissertation now about why that's an issue, but I'm just flagging it, it's not necessarily an objection that's written in stone from the city's perspective, which is something that raises some red flags.

Finally, there are no new lender liability provisions. I'm sure you're going to let the banks speak to that. But one of the big issues for the cities has been that lenders absolutely won't lend into these properties at all.

They're looking, the banks are looking for greater protection than they have now. We'll leave it to the banks to suggest some language to you, but there is nothing new in here other than what's on the books, and I'm sure, actually I, probably the chair of the committee and some of the committee members has talked more with the banks than I have, but it's just something that, the cities are really concerned about.

I mean, if we can't convince the banks to lend into these properties, there's nothing that the city's going to be able to do to be able to redevelop them, cause we don't have the money. I mean, the money resides with the Shawmuts and the, well I was going to say the Shawmuts and the Fleets, they're the same thing now, but they reside with, they reside with the big banks.

So, thank you. In summary, I think we're very happy with the legislation. And if we can be helpful in trying to work out some of the things that we've flagged, we'd be very happy to devote our time to it.

REP. STRATTON: Thank you both very much. Just one quick question, and I really appreciate the comments, because as you both well know, this is a process very much in the works.

With regard to the covenant not to sue, do you have the sense that the objection is primaily to the amount of the fee, or to the concept that the state or the public is assuming a potential liability for our continuing evolution of knowledge about contamination in the future, which it obviously would then have the responsibility for, which is the reason for trying to create a state liability insurance fund.

MARK MINNENBERG: I don't get the sense that this is an objection conceptually, but there is a mechanism, I mean this is one of the things we talked about, was, you know, there's a mechanism that was used in the Meriden Rolling Mills, I forget what we're calling them, an urban site renewal, which was very cumbersome and very difficult, and it involves the governor signing effectively a release of liability.

And, yet, see that was for free. It was for free. It cost a lot of staff time, there's no doubt, and it cost a lot of private legal time. But it was a mechanism that we thought brought a lot of, we thought that it brought a lot of benefit to the state.

It created several hundred, we believe it will create several hundred jobs, lot of tax revenue, and the company almost, I mean, we represented Walborough during that, and I don't want to bring them into this hearing exactly, but you know, we could have lost that deal if we didn't get a release from the government.

Cause there's no way an out-of-state company was

going to come in, take over a Connecticut property that was contaminated and potentially be liable for past contamination. And they wanted a covenant not to sue very desperately. The release that they got we had to really beat them up, excuse me, we didn't beat anyone over the head, but we had, it took a long time to convince the board out in Michigan to go with it.

And so the idea that if we had attached a price tag to it, I don't know how the board would have gone. They may have bought it. Conceptually, no one is objecting to the idea of raising the revenue, but it was just, we spent so many weeks on that, trying to close that thing, that I'm just especially sensitive to it. Is that helpful?

REP. STRATTON: I think if, it is helpful, I think if I might just throw back, sort of as a challenge and not really have you answer now, but that process which still would exist in any of these situations, is one that very extensively involves the department and the state.

And in trying to establish a program that can stand on its own, and proceed independently, there was a feeling, at least on my part, that there was an increased risk to the public at large, which you and I are both members of, and have some long term interest in how much that liability is, and hence the feeling that it needed to be dealt with somewhat differently than the very intensive scrutiny that certainly accompanied the kind of, I think at this point, two or three situations where the state has granted that covenant.

But it's just something that I would appreciate continued input from you and others on.

MARK MINNENBERG: Yeah, I mean, perhaps if, cause this is a long process. What I might do is poll some of the industrial people that we've worked with and just in theory see what they, you know, see what they, if that would be helpful to you.

REP. STRATTON: Are there other questions? Thank you both very much.

MARK MINNENBERG: Thank you.

REP. STRATTON: Liz Brown, followed by Beverley Dawes, or Davies.

REP. BETKOSKI: I hope you're not going to read all that.

LIZ BROWN: No, I hope you read it all. Good afternoon Representative Betkowski, and Representative Stratton and members of the committee. My name is Liz Brown, I work for the Connecticut Institute of Municipal Studies, and I'm here to talk about proposed bill SB192 and SB655, HB6681.

In the interest of time, I would, I think that the testimony, the previous testimony clearly outlined the critical issues facing our municipalities, in terms of being able to quickly reuse these properties that we're dealing with in terms of environmental remedies.

So I think they have done a great job in really telling you the, the enormous problem facing the municipalities. The Connecticut Institute of Municipal studies convened with the help of hundreds of volunteers throughout the state, neighborhood revitalization and reinvestment task force.

And we would offer that as a broad framework for looking at all of these issues that pose barriers, structural barriers to revitalization in our municipalities. Today you're talking about remediation of industrial sites, and I'd like the committee to keep in mind that a lot of these industrial sites are in neighborhoods, in our municipalities, where people live and walk by these vacant abandoned buildings.

So it is of the utmost urgency that we look holistically at these issues. The barrier of liability, nobody wants to take title, the banks won't lend, it's a Catch 22 and I think we need a new model for economic development in our cities.

Everybody's afraid of being sued. And that is the

most critical issue. We have got to figure out a way, and I think you're addressing that, of how to remove the ominous cloud of liability that keeps these properties in limbo, they become havens for vandalism, besides all the other extraneous issues.

So I would ask you to move forward on that. Basically, I'm going to submit testimony. We have in front of the Representative Davis' committee, and Senator Munns committee on neighborhood revitalization zones, that would allow a new model for local control that would allow local municipalities with neighborhoods, to do comprehensive planning, and to set up a process for streamlining waivers, for addressing holistically these issues, and I will submit that testimony.

I'm also offering something that I thought, and the task force thought was excellent, the competitive advantage of the innercity by the economist Michael Porter, that talks about the government and structural barriers that are killing our urban areas, and the cumulative effect of all the rules and regulations, and the bureaucracies that we have developed, for good reason, over the years, need to be put aside, if we are ever make these areas viable again.

So, I will submit that testimony, and I, this is kind of like the, the phone book that they're calling it, of the report of the task force. And I think it does identify some of the issues that you have been looking at today. Thank you.

REP. STRATTON: Thank you very much Liz, and it's a pleasure to have you here.

LIZ BROWN: Thank you.

REP. STRATTON: Are there questions? Thank you. Beverley Dawes, followed by Colin Brogan.

BEVERLEY DAWES: Hello, I'm Beverley Dawes, representing the City of Hartford in support of HB6681. I just want to make a comment pertaining to the targeted investment communities group that has been meeting over this period of time.

When we have to reach consensus as to what our number one issue would be, the number one issue was environmental site remediation. Hartford has many opportunities for development.

And our goal is to move quickly to develop our industrial sites. However, we're losing many of these opportunities due to delays encountered in the site remediation process.

Sites which remain undeveloped or underutilized translate into lost tax revenue and lost jobs. Hartford, as well as many other cities in Connecticut will benefit from a site remediation process that allows amending and development community to move through the remediation process with clarity as to requirements and certainty as to results.

We feel that legislation that is developed should address the following. Standards: differentiation in standards so that if properties are remediated or going to be reused for industrial, the property would not have to be remediated at the same level as if it were going to be reused for residential.

Activity and use limitation: to protect the local community if a site is remediated at the industrial level, then that needs to be recorded in the land records. Lenders fiduciary liability is very important. This would encourage lenders and other fiduciaries to get involved in the redevelopment of these properties.

There needs to be some assurance that their liability will be limited. And also, it's very important that in order to reduce the back log before DEP, that there be a process by which private engineers or some other source could go in, develop a remediation plan and actually execute that plan.

We feel that HB6681 contains the key elements that will move the site remediation forward. And we would very much appreciate the support, your support pertaining to this bill.

Hartford is beginning to look at the sites that are left unutilized, undeveloped, due to contamination. And we are looking now at twenty such sites just as a start. And what we have found is that with these twenty sites, there are 2,000 jobs that could be created that are not created at this point in time, and at least a million in tax revenue that's being lost.

We're going to continue to catalog the sites, the projected lost tax revenue and projected job loss. Environmental site remediation is very, very key to development of these urban areas and nonurban areas within the State of Connecticut.

REP. STRATTON: Thank you very much, appreciate that comment. Questions? Yes, Representative Hartley.

REP. HARTLEY: Thank you Madam Chairman. Just a question with respect to the bill. Would you consider in addition to industrial sites, commercial sites?

BEVERLEY DAWES: Yes. I was using that term, and I'm glad you asked that question. I was using that term broadly, commercial industrial.

REP. HARTLEY: And industrial?

BEVERLEY DAWES: Yes, exactly.

REP. HARTLEY: Thank you.

REP. STRATTON: Senator Gaffey.

SEN. GAFFEY: Yes, you mentioned that in remediating a site that is intended to be used for industrial or commercial purpose that we ought to remediate it to a different criteria than it was intended to be used for residential. Do you have any specific suggestions with regard to that, what that criteria should be?

BEVERLEY DAWES: No, I don't. But from my understanding, since within the urban areas, the, we are not dependent on well water, there should be a difference in terms of the standards. I would

think that maybe the committee might be able to put forth some suggestions in this area. I can bring it back to the groups of targeted industrial, the targeted investment community, to see if they have any specific suggestions in that regard.

REP. STRATTON: Are there other questions, if not we thank you very much for your testimony. Colin are you?

COLIN BROGAN: Good afternoon. My name is Colin Brogan, I'm the Economic Development Coordinator from the City of Norwich, and I'm here also to speak on behalf of HB6681. I'm also a member of the Coalition of Clean Cities, the members of the twelve-plus enterprise zone municipalities.

I want the largest cities represented here today, development of our industrial sites has not been greatly hindered in the past by current site or remediation process. This is mainly due to the relatively small amount of interest in developing our industrial sites in the past.

However, Norwich does have many big industrial sites, including twelve historic industrial mills that will benefit from any changes in the current process that will facilitate future development. Specifically, the use of certified environmental professionals to speed up site assessments and measures to reduce lender liability will be of great help as the city intensifies its effort to attract out-of-state businesses, and to revitalize our downtown and industrial areas.

The city views the issue of urban center remediation as a tax and jobs issue. Each building that is restored to a useful purpose brings jobs and tax revenue to the city, and this bill can only increase the liklihood that this will come to pass. And that's really all. Apart from the environmental benefit that will likely occur if more brownfields, so to speak, are developed rather than new greenfields.

REP. STRATTON: Thank you. Senator Cook.

SEN. COOK: Thank you Colin. Actually I wanted to get to that last point that you made. Norwich, being a relatively small city surrounded by lovely green areas. Is it your feeling then, that if we could put in a process that would facilitate the cleanup and the removal of liability for cleanup, for our urban sites that have been developed and have gone into disuse, and we can put them back into use, that we will probably avoid paving over some of the green spaces that are left in eastern Connecticut.

COLIN BROGAN: Absolutely. I mean there, it's going on now, to a small degree in the city. In fact, we're using up most of our developable land. And, really we're in favor of this bill not only from the city's perspective, just, also from a state perspective.

It's difficult to, to lure out-of-state businesses and industries with one more strike against the state.

SEN. COOK: Norwich is within 35 miles of New London, is that correct?

COLIN BROGAN: Yes.

SEN. COOK: So that you will be able to take these urban sites that could be developed, and historic mills, perhaps developed, and take advantage of the free trade zone designation in New London, within that 35 mile boundary, and be able to create satellite free trade zones.

COLIN BROGAN: Yes, at some point that is our hope. We have, we have a great amount of warehousing space for that purpose.

SEN. COOK: Right, thank you.

REP. STRATTON: Are there other questions? If not, we thank you both very much. Our timing must have been absolutely perfect, because it just about 3 o'clock, and we are concluded with the public official part of our public hearing, and we will move into the public portion. First speaker will be Tony Uzzo, followed by Bill Peterson.

ANTHONY UZZO: Good afternoon Representative Stratton, committee members. My name is Anthony Uzzo, Economic Development Specialist for the United Illuminating Company in New Haven.

As a professional engineer, licensed in the State of Connecticut with over fifteen years of environmental and economic development experience, I've also received a Master's Degree in environmental engineering.

My remarks today address proposed bill SB170, SB117, and HB6681. The United Illuminating Company is extremely aware of the issues supporting the administration of these acts. For several years redevelopment of industrial sites has showed, due to a myriad of environmental, legal and economic obstacles.

During my two-and-a-half year tour as an executive on loan from the United Illuminating to the Connecticut Department of Economic Development, I served as Regional Manager for the Greater New Haven region.

While in that position, I had direct daily involvement with the signing, permitting and formulation of financial assistance packages for several companies. Many of these companies were seeking to locate to industrial sites in urban areas so possible environmental liability was also an issue.

Many times the fear of addressing these issues were insurmountable. Enactment of the three proposed bills will significantly expedite the review process and ultimately the redevelopment of several industrial sites throughout the state.

Inclusion an issue of licensed site professional, who will also aid in expediting the environmental review process. Licensed professional engineers in the State of Connecticut already play a major role in determining the nature and extent of environmental contamination as well as recommending effective control technologies to mitigate contamination.

On many occasions the professional engineer is a requisite, is requested, by DEP to coordinate the environmental testing of impacted sites as well as follow up, and they are also requested to make recommendations for materials, methods and processes that will be needed to mitigate the contamination.

The use of licensed site professional is not an attempt to have the authority of DEP diminished, but rather to augment existing capabilities. Since the licensing of professional engineers in the state is already performed by the Connecticut Department of Consumer Protection, no governmental certification authority is needed.

What is recommended is increased utilization of a group already available and qualified individuals to expedite the process. The environmental and economic stakes are too high for procedural barriers to remain in place.

By continuing to extend the time for site review, clean up, environmental site contamination can only worsen and costs escalate. This does not serve the purpose of anyone. Where effective infrastructure is already in place, valuable urban resources continue to be underutilized.

Connecticut is a state that has dwindling land resources. In your attempt to balance budgetary, environmental and social needs, all the resources of the state must therefore be optimized. The potential economic benefit of this issue to the state, and its cities, is enormous.

Firms usually require six to eighteen months to occupy a site during which time they must make critical relocation and financial decisons. Experience shows that needless extension and complication of that project schedule often leads to flight on the part of many, not only to the suburbs, but to sites out of state as well.

Redevelopment, or site recycling of urban sites is an issue for all of Connecticut's communities. By not aggressively pursuing this issue, all

Connecticut communities are negatively affected. Therefore UI firmly supports the advancement of the three proposed bills.

REP. STRATTON: Thank you very much. Are there questions? Yes, Senator Gaffey.

SEN. GAFFEY: Thank you for your testimony. During your time at DED, did you experience any prospective companies coming into the area that were frustrated by the unpredictability of the timeframe of permitting in the state?

ANTHONY UZZO: Not the time of permitting from the state directly, because in interacting with DEP, those projects where DEP did become involved once a site was identified, moved along very well. Specifically I worked on the Miles Project in Orange, and DEP, through many of their different departments, moved very quickly along with DOT to expedite it.

But in situations where specific sites have not yet been identified, where a company is looking for three and four, at three or four different sites within an area, I'll reference a company I work with, public information at this point, Antell Corporation, was seeking a site in New Haven.

They already had a site where 150 employees already were working in New Haven. They specifically wanted to keep that workforce and stay in the city. They were looking for approximately ten to fifteen acres so that they could build a 250,000 square foot, state-of-the-art national distribution facility.

Working with the city we were only able to identify one area, which included three or four different parcels. But when they found out that the total time period between purchasing, clean up, land transfer costs and construction, would take approximately 3-1/2 years, they couldn't stick around.

They eventually relocated to Lexington, Kentucky. I use that as an example because it's symptomatic

of many companies, and I understand the success stories of Swiss Bank and Walborough, but those are companies that have time and opportunity to spend looking, because they know there is significant financial benefit to being in the state.

My concern is not with the very large companies, but it's with the much smaller sites that you see around the cities, Bridgeport, Hartford, New Haven, Norwich, Norwalk, to which I would hope that these bills are addressed.

REP. STRATTON: Are there questions? Thank you very much.

ANTHONY UZZO: Thank you.

REP. STRATTON: Next speaker is Bill Peterson, followed by Craig Snyder.

WILLIAM PETERSON: Good afternoon. I'd like to thank the Environment and Commerce Committees for the opportunity to speak here today. For the record, my name is William Peterson. I'm a resident of Portland, Connecticut. I am President of the William R. Peterson Oil Company, and I'm also President of the Independent Connecticut Petroleum Association.

The ICPA has over 300 members in Connecticut, and together we supply approximately 80% of the home heating oil sold in the state. Collectively, our companies employ about 10,000 people. I come before you today to talk about several bills, raised by your two committees, that address issues of the environment as they pertain to economic development. HB6681

First, let me start with the easy ones, the bills that ICPA supports. SB655, SB170 and SB192 as well as HB6147, all concern the issue of helping urban site remediation in SB117, proposes to help speed up DEP permit applications.

ICPA supports all of these bills as they are drafted. However, there are two bills before the committee, committees that I would like to talk HB5001

replacement can be done with the least amount of cost to the homeowner, and the greatest benefit to the environment.

Finally, HB6681 makes several proposals regarding remediation of and liability for contaminated real property. Proposals to certify remediation companies and protect innocent landowners, are excellent ideas and we support them.

However, Section 6 of HB6681 proposes to assess a tax of one cent per gallon on home heating oil delivered to residential customers to help fund cleanups. ICPA does not support the tax provision of this bill.

Such a tax is a burden that the consumers of Connecticut just don't need right now. It also seems unfair that homeowners who do not have underground oil tanks be forced to pay into a fund to clean up contamination on someone else's property.

HB5001 proposes to use money from the already existing petroleum products gross receipts tax. This is an excellent idea. That tax was established in 1988 to fund Connecticut's underground storage tank clean up fund.

To date, it has brought in over $100 million specifically dedicated to the fund. To date, however, it has paid out less than $20 million in total. The rest of the money is being diverted back to the General Fund.

It makes more sense to use money that is already there and dedicated for the purpose of petroleum spill cleanups, than to tax the already over-taxed consumers of Connecticut.

Thank you for allowing me to speak today. If you have any questions, I'd be happy to answer them.

REP. STRATTON: Thank you very much for your testimony. The bill with regard to the underground storage tanks is actually from the Commerce Committee, and having been through this with you last session, we HB5001

had already started to focus on what I think is a very good suggestion that you made in terms of a task force to deal with what is not a simple issue even though it's very tempting to try to make it that.

With regard to the proposed fund for liability cleanup, the underground storage tank fund that currently exists, depending on what happens to the budget, the Governor's budget and what form that is in. But the petroleum industry gross receipts tax that goes into that does not cover home heating oil. Is that true?

WILLIAM PETERSON: No it doesn't. It's only for the commercial tanks, okay, larger than 2,100 gallons.

REP. STRATTON: And what is that tax at this point?

WILLIAM PETERSON: It's five percent on the gross receipts of motor fuel sold, other than heating oil.

REP. STRATTON: Is there any, any taxation whatsoever on home heating oil? HB 6681

WILLIAM PETERSON: Home heating oil is taxed commercially but not residentially.

REP. STRATTON: So, if one's talking about a one cent a gallon tax on home heating oil at this point, any other petroleum product that basically any of us use has some tax on it that is significantly higher than that, is that true?

WILLIAM PETERSON: Yes, that's true.

REP. STRATTON: What is your guess as to the average home usage of how many gallons do they use a year?

WILLIAM PETERSON: In the state of Connecticut? I think around 600 million.

REP. STRATTON: No, I was meaning per home owner.

WILLIAM PETERSON: What's this, an average home owner.

REP. STRATTON: Per home owner, I'm sorry, the average homeowner.

WILLIAM PETERSON: Oh, okay, yeah. The average homeowner is 800 gallons.

REP. STRATTON: So that would be $8 a year, is that correct.

WILLIAM PETERSON: That would be correct.

REP. STRATTON: Thank you. Are there other questions? Senator Cook.

HB5001

SEN. COOK: Do we have a, does your organization have a handle on how many underground home heating oil tanks there are, and how many are out, you've taken out.

WILLIAM PETERSON: We have a good idea of the ones that are in member companies. Outside of member companies we do not know. We found that going out to the public and presenting with, and presenting them with the program, okay, that doesn't demand they take their tanks out immediately, but offers them that process.

That is painless, because I've seen it with seventy tanks coming out this last year. They were very receptive, and they were, most of them were very thankful after they got the tank out, even if they did have a lead, it didn't amount to very much in the way of, you know.

SEN. COOK: How much does it cost to essentially, do you pump it out and fill it with sand, if it's underground?

WILLIAM PETERSON: Well, we don't recommend that, okay.

SEN. COOK: What do you do?

WILLIAM PETERSON: We recommend in all instances, except if that tank is under concrete floor, or a deck or something that can't be removed, that it be removed, cleaned out, removed, disposed of properly, and a basement tank put in. And that

petroleum companies that are priced very different and have a very different philosophy on how to do business than some of the other companies that are considerably less in cost.

The risk to us is not the regular full service company as we are. The risk to us would be what we classify as a cash delivery type of company, coming in and taking that and really exposing price as an issue versus an overall package of products and services.

REP. STRATTON: Thank you. Other questions? Thank you very much. Tom Turick followed by Gian-Carl Casa.

TOM TURRICK: Representative Stratton, Senator Cook, members of the Environment Committee and members of the Commerce Committee, good afternoon, my name is Tom Turrick. I'm Environmental Manager with the Connecticut Business and Industry Association.

I'm here on behalf of CBIA to strongly support two bills in front of you today, SB117, and HB6681. First comments on SB117, what we call the timely permit action bill. For the newer members of both committees, I think Bob Calazuski, from DEP, gave a good overview of DEP's efforts in the last 2-1/2 to three years in permit streamlining.

And what I wanted to bring before you is the fact that early on in the debates as to what are the elements of a good permit streamlining bill, this issue came up about the issuance of timely permits. Timliness is a critical idea to the business community.

It doesn't matter if DEP ultimately denies or approves a permit, it does matter, but what I'm saying is the fact that they can do so in a timely matter is even more critical. And debates in those days did sort of center on this issue of giving DEP an incentive to issue, make decisions on its 29 permit programs in a reasonable amount of time realizing that from program to program the time line would be different.

Obviously a major resource recovery solid waste

Now, I'd like to address HB6681. I can say that CBIA strongly supports this bill. And I would say personally, I've been coming to the capitol for eight years now, and other than legislation such as the recycling legislation of half a dozen or more years ago, I can't think of another environmental bill of this kind of significance, not for the business community, whom I represent, but for all of Connecticut.

Not that I'm speaking, but you will be hearing today, as you have heard from municipalities, and I'm sure you'll get correspondence from developers and lending institutions. I think we have to step back on this bill as far as what does this bill really mean.

I think it's like all of us touching part of the elephant and trying to describe it. Well I'd like to kind of give you the picture of this pachyderm we're calling environmental clean up. And I'd like to take up where Mr. Parker of the DEP left off.

He told you, if you remember, that there are three major programs for environmental clean up in Connecticut and I'll run through them very briefly. Superfund, and I want you to remember, there's only ten sites on the Connecticut Superfund list, give or take one or two, I don't have the exact number. He talked about the urban site program.

And I'm not down-playing these programs. These are major, very important programs. He also told you Urban Sites Program, which DEP takes title to the property and does the cleanup, there are nine sites involved in that program that DEP is involved in.

So, we have the Superfund program and property transfer program, I'm sorry, Urban Sites Program, basically dealing with nineteen sites in the state. The Property Transfer Program, which is the third component of the state's cleanup program, deals with many more sites. I would admit that.

But what you must remember here is, that under this program, a site only comes into play when it is bought and sold. When the site changes hands in

the marketplace. What we have in this bill, in HB6681, is a fourth program. And I don't know what to call it. But I'll call it the voluntary cleanup component. There are many, many sites you heard from, and I'll give you examples.

You heard from the City of New Haven, and the City of Norwich. Sites that don't fall into DEP's three major programs. Sites where the town maybe took, the city took possession of the land through foreclosure and wants to get a developer involved and bring it back to productive use.

That's not, that's a whole new concept. Other sites, industrial sites, where there's an active, bonafide working facility there that wants to expand its operations. It's not in the buying/selling game, it's not under property transfer act, it's not under Superfund, it's not under Urban Sites.

But it wants to expand its operations and it finds contamination on its property. It wants to voluntarily come forth to the state, work cooperatively and clean up that site. There are hundreds of these sites not being attended to for various reasons.

I'm not going to go into those reasons, but I can tell you from my heart, that in HB6681, many of those roadblocks are addressed, and are addressed in detail. The Certified Site Professional Program, very, very important.

The fund to do assessments up front. The ability of a municipality or business to, to be granted a loan or an outright grant to do upfront assessments before taking title to the program. The liability provisions of HB6681.

This really is a monumental bill, let nobody kid you. And, it lacks one thing, and I'll get right into that in a second. But I really commend also, LCO, the staff at LCO, and Jeff Beckom, taking a difficult subject like this and putting it in, in clear English language.

It's written very well, besides the concepts themselves. So what does the bill lack? Actually, I equate this entire bill, and I'm not going to quibble with little, little things in it.

It's an excellent bill, and I equate it to having as I think your two committees have designed an automobile here. And it's all there and it's ready to go down the roll, go down the road, but it's lacking one thing -- and that's the key to the ignition. And the key to the ignition is the part that DEP plays with.

They are designing cleanup standards. These cleanup standards address the question, how clean is clean? This is the fundamental issue for volunteer cleanups. You may put up with delays in getting state agency approval on your plans.

You may put up with the uncertainty of liability should you go forward with the cleanup. But what you can't put up is not knowing when, once you get into these projects, where does it all end? Am I sinking $500,000 into this project? Am I sinking a million dollars into this project, two million?

How clean is clean? How much do I have to remediate the soils, how much do I have to remediate the ground water. DEP is working on the key in the ignition to your automobile. The problem is it's going to take DEP another year or two to come up with that essential component.

They are designing something, we sit on task forces with them, and we try to come up with easier, more streamline, more efficient approaches, and sometimes we're unheard. I have written testimony I passed out to the clerk. I hope you have it in front of you.

And I'll conclude by saying that the easiest solution to what to this cleanup standard problem should be that, that HB6681 include a provision that establishes through reference, cleanup standards be already developed and being promulgated by the Federal Environmental Protection Agency.

These standards EPA has deemed adequate to protect human health and the environment and they would be effective on passage of HB6681 if you adopt them, and they would be interim. They'd be in effect until such time as DEP cleanup standard regulations are formerly adopted.

So, here is a solution where you would not be treading on DEP turf. You would not be disrupting what they are doing, but you would be able to have a bill come June the 7th that is ready to get up and run as this bill is intended to do, and we would not be handcuffed waiting for cleanup standards for the next two years from the DEP. Thank you.

REP. STRATTON: Thank you very much Tom. Are there questions? Yes, Senator Gaffey.

SEN. GAFFEY: Thank you for your testimony Tom. I'd like to ask you, is someone from a perspective of having worked at DEP and also representing businesses now, that with regard to the permitting process, the frustration that I hear a lot along with how long it takes to get through the process and the unpredictability of the timeframe, is the fact that many times applicants will submit an application, DEP will come back and then say -- you're application is deficient, you know, in three or four, or five parts, whatever, and address those. SB117

And then when they do address those, they go back in with, with the completed application and what they thought would be the completed application and DEP then says, well now we have some more deficiencies that we've identified. We want some more information. And it seems to be this continuous process of deficiencies in the applications.

TOM TURRICK: I agree with you. That was the situation. In fact, one of the important situations three years ago that drew attention to permit streamlining. This upfront, when is an application complete.

REP. STRATTON: Other questions? If not, thank you very much Tom.

TOM TURRICK: You're welcome.

REP. STRATTON: Gian-Carl Casa followed by Tom Santa.
SB192 HB6147 HB6681 SB117

GIAN-CARL CASA: Thank you Madam Chairman, Senator Cook, members of the two committees here today. My name is Gian-Carl Casa. I'm Manager of Legislative Services for the Connecticut Conference of Municipalities, and we're here to testify on the issue of site remediation and economic development.

The need for a comprehensive state initiative for site remediation is one of CCM's eight state and legislative priorities for 1995. Abandoned commercial industrial locations that are badly polluted and environmentally degraded are major impediments to economic development throughout our state.

And you've heard extensive testimony today from other, specific as to how that affects cities and towns. Not only do these situations discourage economic development, but it is an incentive for sprawl.

And sprawling development then results in increased state and local expenditures for roads, bridges, sewers, and other types of infrastructure. One point I want to make, polluted sites are a statewide problem. And for that reason there has to be a statewide solution and approach to that problem.

CCN completed a survey in January that showed there is a need statewide. Three things kind of popped out in that survey. One, of the seventy-three municipalities that responded to our survey, 57% indicated that they either had sites in their communities that are vacant or abandoned, and they're not being developed due to pollution problems, or have been, or that they have abandoned the polluted properties for which taxes are delinquent and owed.

Secondly, cities and towns, because of that last point, losing property tax dollars as the polluted property sits idle. It means all other business and residential property taxpayers in the community have to make up the difference.

I'm just giving you a couple of examples. It's in the written testimony I've submitted, so I won't read them all. A million dollars in the Town of Seymour, $500,000 in Stratford, $280,000 in Manchester, $250,000 lost to Berlin, and $45,000 to Pomfret.

Almost half of the responding municipalities, 47% indicated they had decided against foreclosing on polluted property or potentially polluted property for which back taxes are owed, due to a fear of the potential liability for pollution cleanup at the site.

In the small Town of Coventry, there's the Kenyon Mills site which has been appraised at being worth about $450,000. Yet the tax sale of the property brought forth no bidders, and the town, a small town has lost $75,000 in property taxes. The property still remains polluted.

For these reasons we support the bills before you today. Senate, proposed SB192, which would help municipalities foreclose on properties without incurring liability for doing so. Proposed bill HB6147 which would increase bond funding for the urban sites remediation program, and we applaud Governor Rowland for recognizing the importance of the program, and recommending $10 million in bond funding for this program over the biennium.

I have to echo Tom Turick's comments about the importance of cleanup standards, and the way in which those cleanup standards can make bond money go all the further. We also support Raised Bill HB6681, the big bill before you today on which you've heard extensive testimony. It would represent a giant step forward for site remediation efforts, and we think that the proposed contaminated and remediation and insurance fund is an important new approach.

I also briefly want to mention our support for proposed SB117, the bill dealing with the timely action by DEP, environmental permit applications. We just want it to be clarified to ensure that the provisions of the bill apply to municipal permit applicants as well as business permit applicants.

Our membership is part of the regulated community as well, as being regulators themselves, and they too have expressed frustration with time delays in the granting of DEP permits. Thank you.

REP. STRATTON: Thank you very much. Are there questions? If not, we thank you Gian-Carl. Tom Santa followed by Jack Tamborra.

TOM SANTA: Good afternoon, my name is Tom Santa, with Santa Fuel, Incorporated, of Bridgeport. And I am also a member, I am the Chairman of the Environmental Committee of the Independent Connecticut Petroleum Association.

I am here today giving testimony regarding proposed bill HB5001, and the residential heating oil tax provision of bill HB6681. I would like to say that we support the concept of bill HB5001. As you've already heard from my fellow ICPA members, we have adopted a policy encouraging the removal of residential underground tanks where it is feasible.

Currently our committee is working with other, with the State Fire Marshall and other groups to put together guidelines for our, our members on the safe removal and abandonment of residential tanks, in conforming with the National Fire Protection and American Petroleum Institute regulations.

This afternoon you've heard from two of our other members who are actively engaged in tank replacement. There are many other oil companies in Connecticut that are doing the same thing. Santa Fuel is also very active in tank replacement and also tank testing.

Our company is currently replacing about one tank per day, usually with above ground storage. In addition, we have established a tank testing

know, a few hours of work of a couple of men, you know, a plumber and a helper to dig up the line and replace them. It shouldn't be more than a half-day job. So you're talking about a few hundred dollars.

REP. STRATTON: And replacing an above ground tank today, I mean a new above ground tank costs, what?

TOM SANTA: Certainly less than a thousand dollars, five hundred to a thousand dollars.

REP. STRATTON: Thank you. Are there other questions? Thank you. Jack Tamborra followed by Joe Erislano.

JACK TAMBORRA: Representative Stratton, Senator Cook, Representative Betkoski, members of the Commerce and Environment Committee. My name is Jack Tamborra, and I'm here today representing the Connecticut Chemical Council.

Our chemical and allied manufacturers employ some 22,000 people in the State of Connecticut, or roughly 8% of the manufacturing workforce, and generate payroll in the range of about $1.2 billion.

I am here today to support SB117, HB6681, and SB170. The issue I think is still jobs. In the period of December 1993 to December 1994, Connecticut ranked 47th in job growth, creating only some new, 11,000 new jobs.

In that same time period, Connecticut lost an additional 7,100 manufacturing jobs. The reasons for those are very complex and varied. With SB117 I think speaks to one of the historical kinds of problems complicating, complicating this issue, and that is the inability of the regulatory process to provide permit decisions within a predictable period of time.

Facility owners in Connecticut find it difficult to obtain management approval, or financial backing for expansion projects when the most critical element, the ability to operate, cannot be anticipated within a given time period.

As you've heard earlier the DEP has made, made some significant improvements in their permit streamlining program. And I agree and was a member of those task forces. It has done some things to resolve this problem by developing the tools and implementing those kinds of streamlining management systems.

Now they need to follow through by committing to provide permit decisions within published time periods. One agency that has followed that kind of example is the Massachusetts Department of Environmental Protection, who in 1992 developed what they called their money back permit program.

It is a program whereby the agency itself sets up time limits within the agency for specific permit programs, permit application fees are returned to the applicants should the agency go beyond these published dates.

The time lines are annually reviewed within the agency to see whether they can be shortened even more. And it's my understanding that the process is working well. The state permit backlog has all been but eliminated, industry contacts that I work with say that it is a predictable process now and permits can be obtained under that process.

And I think the other thing is that state employees feel better about their jobs. These kinds of small changes in our regulatory process can make significant improvements in our ability to attract new businesses.

In addition to SB117, I'd like to comment on HB6681, and SB170. These bills contain new and very innovative ideas aimed at getting the process of voluntary cleanups moving to actually clean up sites, and we support that wholeheartedly.

But I believe that there is one critical element that needs to be provided. And we need to supply the public policy guidance with the DEP, relative to the cleanup standards themselves.

These standards need to be protective of the public

health, and yet be flexible enough to consider local conditions. We should consider standards based on a range of risk. Such systems used within the State of Michigan, and the State of Texas allow for sites specific considerations consistent with future land use, because the one-size-fits-all standard is very costly and returns no real additional margin of safety. Thank you for the opportunity to testify.

REP. STRATTON: Thank you very much Jack. Are there questions? Yes, Representative McGrattan.

REP. MCGRATTAN: Jack, to your knowledge, did Massachusetts hire any additional personnel?

JACK TAMBORRA: No, they did not. It's my understanding that they, they did move some people for a temporary assignment from their enforcement area into their permits area. I believe that shift has been made back.

REP. STRATTON: Other questions? Thank you very much.

JACK TAMBORRA: Thank you.

REP. STRATTON: Joe Erislano followed by Bert Sacco.

JOE ERCOLANO: Good afternoon Representative Stratton, Senator Cook, members of both committees. My name is Joe Ercolano. I am with SACIA, the business council of southwestern Connecticut. We're an organization of about 500 member firms located in lower Fairfield county.

SB117

I'm here to strongly support bill HB6681. We encourage the concept of expediting the review and cleanup of contaminated property, particularly property in urban areas. In our area, we believe there are many sites, privately owned sites, in Norwalk and Stamford for example, that could benefit, and could be productively utilized for economic development and job creation.

We believe HB6681 contains incentives for voluntary remediation and faster processing, such as the certification of certain environmental

professionals for review, financial support for private assessment, revisions to liability rules, limits on lender liability, and a review of the state's property transfer law, which on total, and even separately are very important steps and deserve support.

We also support SB117 which would establish timely action schedules for state environmental permit applications. As some other speakers have noted, we applaud the progress DEP is making in the permitting process, but we continue to hear concerns from some of our members, and we see the potential for further delay as new regulations come on line. Thank you very much.

REP. STRATTON: Thank you very much for your testimony. Are there questions? Appreciate your coming up today.

JOE ERCOLANO: Thank you.

REP. STRATTON: Bert Sacco, followed by Fabio Sampoli.

BERT SACCO: Good afternoon and thank you for the (HB6681) opportunity to testify. My name is Bert Sacco. I'm an Engineer, I practice in New Haven, and I've been involved in major site remediation projects throughout the state, the Brian Project in Bridgeport, the Scoville Hallmark Project in Waterbury, the Winchester (inaudible) Project in New Haven and one in New Britain and one in Willimantic.

Many of the issues that are of concern, have already been spoken of by others, but I'd like to bring you the private sector, private practitioner side of some of these issues. There are many very healthy businesses and industries in Connecticut. Believe it or not, there are many manufacturing healthy industries in Connecticut.

There are over 400 of them in Bridgeport alone. One of the common problems that most of them face is that they have no where to expand. They're in old buildings. Many of them are multi-storied, they're jammed in close in neighborhoods, and there

is no land within the geographic area in which they serve to expand easily, therefore they stay where they are and some of them look elsewhere, out of the state for relocation possibilities.

Since there are no sites available in cities, cities have no way of generating tax income. You can't generate tax income unless you build something. If you can't build anything, if you don't have any land, and the land that is available is either dirty itself, or houses buildings that themselves are dirty.

Ironically a lot of those buildings and sites are located in the areas of highest poverty and highest unemployment in most of the older cities. So your bill is really very much favored by the private sector, and it's a win-win for everybody.

We clean up some dirty messes in the communities. We provide some place for business to expand. We provide jobs, and we take care of, hopefully, some of the poverty problems in the old urban centers. A couple of very specific things that the private sector, especially the development private sector is concerned about, deal with time and process.

I know that they're are a lot of legal ramifications and a lot of legal detail and a lot of funding detail that's contained in the bill. The one's we're most interested in is getting the process, speed it up and simplify it.

Let's agree on what constitutes clean. You've heard that from others already today. Let's get it closer to EPA standards. Our standards are much higher in many cases than EPA standards. And let's get that process down to a much shorter time.

And let me give you a time frame. Most manufacturers, when they're looking for a new site, have a magic number of six to seven months in mind. From the time that they decide to make a move, to the time they want to start construction, has got to be in six or seven months, or it will be in six or seven months in South Carolina, or Georgia or New Orleans.

So we've got to be able to get that process down to the point where a manufacturer or business feels comfortable that he knows where he's going within that six or seven month period.

Lastly, let me just state that Connecticut is not competitive for business and industry, not yet. We're getting closer, we've done some things through your activities over the last couple of years that have helped, but we're not there yet.

And the only way we're going to get there is to be able to redevelop some of these older sites in the urban areas. And in some of the communities that aren't so urban, but contain many of these buildings. And unless we can provide sites, unless we can provide sites in a timely manner, we are going to find more of the industries here in Connecticut, not new ones, but the ones here in Connecticut, that want to expand, going elsewhere.

So we've got to get a handle on that or we're going to continue to lose them. I would like to offer myself and my staff to any of you who wish to have any more detail work on this. And again, thank you very much for the opportunity to speak before you.

REP. STRATTON: Thank you very much for your testimony, and also the offer. We may well take you up on that.

BERT SACCO: Good.

REP. STRATTON: Are there questions? Thank you very much.

BERT SACCO: Thank you.

REP. STRATTON: Fabio Sampoli, followed by Dennis Waslenchak.

FABIO SAMPOLI: Good afternoon Representative Stratton, HB6681 Senator Cook and members of the Commerce and Environmental Committees. My name is Fabio Sampoli. I'm Senior Vice President for regional issues at the Greater New Haven Chamber of Commerce.

I've been in my present position for the past six years. Prior to 1989 I ran my own public policy consulting firm. I worked at several Washington-based think tanks, and I taught at Yale University where I received my Ph.D in economic history.

My remarks today address HB6681, AN ACT CONCERNING REMEDIATION OF AND LIABILITY FOR CONTAMINATED REAL PROPERTY. For many years the Chamber has been well aware of the impact of environmental issues on the economic vitality of our state businesses.

It is our firm belief that environmental protection and business profitability are not mutually exclusive but rather complementary notions. For this reason, we have established a Chambers Environmental Issues Committee and in 1991, developed the annual green ribbon awards program.

This program, which has been commended by Vice President Al Gore and acknowledged by the Federal Environmental Protection Agency, with a regional merit award, recognizes organizations which during the course of their business activities, go beyond the call to preserve and protect the environment.

At the same time, we at the Chambers, at the Chamber, have also become convinced that burdensome and time consuming environmental....

gap in tape 1b to 2a

Environmental regulations such as these serve little purpose. They are detrimental both to the conservation of our dwindling open spaces, and our overall environmental quality. It is the Chamber's strong belief that enactment of this proposed piece of legislation would expedite significantly the review process of site cleanup, and will ultimately lead to the redevelopment of several industrial sites in the state.

The potential economic benefit of recycling industrial sites is truly significant. It is on the magnitude of this economic benefit that I base my testimony this afternoon. After a quick analysis of the abandoned, or underutilized

industrial sites in the ten largest Connecticut municipalities, I have estimated that there are at least 1,000 acres of contaminated industrial sites in this state.

Notwithstanding the wish to see all of these sites put to productive use, the assumptions upon which I base my calculations are rather conservative. Once cleaned up, these 1,000 acres would allow for the development of 400 acres and buildings, or 60 million square feet of new industrial space.

At $40 per square foot, that will translate into 640 million in construction value. One can also safely assume that these new buildings will require equipment costing some $40 per square foot.

One would hope that most of these recycled industrial sites would be devoted to manufacturing and thus some of the equipment involved would be tax exempt. Even taking into consideration these exemptions, the new plans and equipment would add almost $675 million to the grand lists of Connecticut municipalities, resulting in almost eleven million in new tax revenues.

Assuming new job, assuming one new job for every 2,000 square feet of reclaimed industrial space, these new industrial plants would sustain some 8,000 new jobs, which at an average of $25,000 per job, would contribute over $200 million to Connecticut payrolls.

Not only the municipalities but also the state's coffers would benefit. The payroll taxes would net the state some $9 million. Then figuring corporate revenues at $65,000 per job, the state would derive over $5 million in corporate taxes, and over $31 million in sales taxes.

Let me recapitulate all these figures. If contaminating industrial sites in Connecticut were recycled, they would provide $650 million in construction value, at almost $675 million into towns grand lists, develop some $11 million in new municipal taxes, sustain some 8,000 new permanent jobs, contribute over $200 million to Connecticut

payrolls, and add almost $45-1/2 million to the state's annual tax receipts.

It is for the above stated reasons that the Chamber enthusiastically supports the enactment of this proposed bill. Thank you very much for your attention.

REP. STRATTON: Thank you very much for your testimony. Are there questions? Not, again, we thank you for waiting for waiting through a long afternoon. Dennis Wasen, I'm sorry, Dennis Waslenchak, and to my knowledge, there is no one else signed up. Is there anyone else here who wished to speak. Please go ahead Dennis. Thank you.

DENNIS WASLENCHAK: Good afternoon committee members. I am Dennis Waslenchak, and I'm speaking to you today in my capacity as the President of the Connecticut Ground Water Association. The CGA is a professional society of individual members, not firms, but the individual environmental professionals which constitute a pool from which the certified environmental professionals would be drawn under HB6681.

I would like to provide two pieces of information pertinent to HB6681. The first, given that environmental site assessment and cleanups provide the livelihood for many CGA members, it is important that the members be able to qualify for certification under the bill.

I would like you to know that the insurance requirements for individuals, and firms, in the bill, may be prohibitive. That is, to the specified levels simply may not be obtainable. For your information, $1 million of professional liability insurance per firm is the norm today. I am unaware of any individual holding professional liability insurance.

May I back up to say that the Connecticut Ground Water Association membership is between 300 and 400 individual members. It would be important to confirm that Connecticut's environmental professionals will be able to obtain affordable

insurance before the requirement becomes law. The second piece of information is that environmental site assessments and environmental cleanups are young technical fields.

There is very little professional experience. As a consequence there is currently common disagreement amongst senior environmental professionals regarding opinions on the adequacy of ESA's and the adequacy of cleanups.

Based on experience to date, it is easy to predict that there will be common challenges to opinions rendered by certified environmental professionals. It is important to foresee this, because it may be appropriate to incorporate a means to handle or better yet, to avoid, such predictable challenges.

One idea may be to incorporate a peer review process amongst certified environmental professionals prior to final opinions being rendered. To help the certified environmental professionals help themselves be correct, and to make privatization more palatable to a skeptical DEP.

Finally, I would like to say that proposed SB170, which specifies certification of professional engineers to the exclusion of professional scientists, would take away the livelihood of the professional scientists of the Connecticut Ground Water Association who currently perform industrial site cleanups. Thank you.

REP. STRATTON: Thank you very much for your testimony. Could you just comment on how you think the actual adoption of clean standards would effect the, sort of professional disagreement, you were just referring to.

DENNIS WASLENCHAK: It would reduce the amount of conflict and challenge. But by no means would it eliminate it. The decision as to how clean is clean, comes at the very end of a long process of science and engineering. And there are many points along that pathway that are currently challenged daily.

It comes down to the adequacy of the investigation done, for instance, to determine the distribution of contaminants. So even though there may be broad agreement on the cleanup level, if there's disagreement on the amount of work that was done to adequately characterize a site, we still have a challenge.

REP. STRATTON: I think your caution is a good one, and one of the questions, and I would be interested in your comment on it, is to what extent, in a sense the methodology of the investigation and process of going about should be a part of a legislative directive as opposed to the standards themselves.

DENNIS WASLENCHAK: It may be worth considering adopting some of the new ASTM standards that are being promulgated for site assessments of commercial properties. A phase one site assessment is out now, and has been tested for over a year and is thought to be quite adequate.

I'm personally involved in the writing of a phase two standard, which is being balloted at a subcommittee level currently. It probably has about six months to a year to go before it has been promulgated by that organization by ASTM.

And I can't tell you how well that will be accepted. Adherence to those standards will go a long way towards insuring adequate studies leading up to the opinions rendered as to whether a property is clean.

REP. STRATTON: I think the obvious issue in that is a process of trying to come up with something that is objective enough to enable something that is not directly under state supervision and constant assessment to go forward.

And I think any more detailed kind of information and the suggestions that you can give us on the degree of that, that needs to be incorporated legislatively, would be very, very helpful.

DENNIS WASLENCHAK: Well, because...

REP. STRATTON: That's really that balance we're looking for.

DENNIS WASLENCHAK: Because there's so much professional judgement necessary inherent in these studies, I point out the possible utility of the peer review process. If peer environmental professionals expect to have their work scrutinized by another private individual who doesn't have to work under the constraints of the government, then the DEP review process may be served, but in a timely way.

REP. STRATTON: That actually, I'm glad you brought that up. It was one of the ideas we looked at very, very coursely. Do you know of any states that actually have incorporated that process in a formal way?

DENNIS WASLENCHAK: None come to mind.

REP. STRATTON: No, okay. I think maybe it's me that has this interest in asking you these questions. So perhaps we could continue some of this afterwards too, but we very much appreciate your coming up. Are there other questions? Senator Guglielmo.

SEN. GUGLIELMO: I just had one. You mentioned that none of your members had any, had professional liability, and that's because there's no policy available in Connecticut I assume, is that right?

DENNIS WASLENCHAK: Professional liability insurance for errors and omissions on environmental matters.

SEN. GUGLIELMO: Right.

DENNIS WASLENCHAK: Matters of pollution have been extremely difficult up until just a couple of years ago. Now firms can generally obtain about $1 million worth of coverage. The very large national and international firms can get $5 million of coverage, but I, there are individuals that have professional liability insurance, but they are individual owners of a firm. They are one man or one person firms.

SEN. GUGLIELMO: Right.

DENNIS WASLENCHAK: But I'm unaware of any individual, any Dennis Waslenchak that carries professional liability insurance. I think because it's not required. It never has been. And I also question whether or not it's even available.

SEN. GUGLIELMO: Thank you.

REP. STRATTON: Representative McGrattan.

REP. MCGRATTAN: Do you feel that educational requirements (inaudible - microphone off).

DENNIS WASLENCHAK: May I speak as Dennis Waslenchak, and not as the Connecticut Ground Water Association. My day job is I am the President of Alta Environmental Corporation. That is a consulting firm that is engaged in these matters. I believe that the qualification requirements are too light, not too heavy.

REP. STRATTON: Thank you very much. If there are no other individuals who wish to testify, we will adjourn the public hearing, thank you.

(Whereupon, the hearing was adjourned.)

000367

WT public #7

TESTIMONY

COMMERCE COMMITTEE

FEBRUARY 21,1995 HB6681 SB170

My name is JACK TAMBORRA and I am testifying today on behalf of the members of The CONNECTICUT CHEMICAL COUNCIL. Our chemical and allied manufacturers employ some 22,000 people, approximately 8% of Connecticut's manufacturing workforce, and we generate payroll in excess of 1.2 Billion dollars per year.

I am here to support Senate Bill-117, An Act Promoting Economic Development By Establishing Timely Action Schedules For State Environmental Permit Applications.

THE ISSUE IS STILL JOBS!

In the period December 1993 to December 1994 Connecticut was ranked 47th in job growth, adding only11,000 new jobs. In that same time period we lost 7,100 more Manufacturing jobs.

The reasons for this are complex and varied. Historically, one complicating factor had been the inability of our regulatory process to provide permit decisions within a predictable period of time.

Facility operators in Connecticut find it difficult to obtain management approval or financial backing for expansion projects when the most critical element, THE ABILITY TO OPERATE, cannot

be reasonable predicted.

The DEP in recent years has significantly improved its ability to resolve this problem by developing the tools to implement these more streamlined management systems. Now they need to follow through by committing to provide permit decisions within published time periods.

One agency that has followed this example is the Massachusetts Department of Environmental Protection. In 1992 they implemented A MONEY BACK GUARANTEE PERMIT PROGRAM , where the agency set time limits for decisions on each of it's permit programs. Permit application fees are returned to the applicant, should the Agency go beyond it's published dates, and timelines are annually reviewed to see if further reductions can be accomplished. My understanding is that they have done well. The States permit backlog has all but been eliminated, Industry contacts tell me that the permit process is working well, the DEP has only had to return fees on a handful of applications, and the States employees feel better about their jobs. Small changes in our regulatory policy can significantly affect our ability to attract new business.

In addition I would like to support House Bill -6681 and Senate Bill-170 Concerning the Remediation of Contaminated Sites.

These bills contain new and innovative ideas aimed at getting the process of voluntary cleanups moving to actually cleanup sites.

One critical element that needs to be added is too provide public policy guidance to the DEP relative to THE CLEAN UP STANDARDS. These Standards need to be protective of the public health, and yet flexible enough to consider future land use. We should consider standards based on a range of risk,such as systems used in Michigan and Texas that allow for site specific considerations consistent with future land use.

The one size fits all standard is very costly and returns no real additional margin of safety.Thankyou for the opportunity to testify on these important business issues.

TAPE 1A, p. 2 UT P000374 #2

ESTIMONY OF WILLIAM PETERSON, PRESIDENT OF WILLIAM . ETERSON IL COMPANY AND PRESIDENT OF THE INDEPENDENT CONNECTICUT PETROLEUM ASSOCIATION - BEFORE THE ENVIRONMENT & COMMERCE COMMITTEES OF THE CONNECTICUT GENERAL ASSEMBLY, AT 2:00 PM, TUESDAY, FEBRUARY 21, 1995 ROOM 2E - LEGISLATIVE OFFICE BUILDING, HARTFORD, CT

REFERENCE: RAISED BILLS CONCERNING THE ENVIRONMENT AND ECONOMIC DEVELOPMENT HB 6681

Godd afternoon. I would like to thank the Environment and Commerce Committees for the opportunity to speak here today. For the record, my name is William Peterson and I am a resident of Portland, Connecticut. I am President of the William R. Peterson Oil Company. I am also President of the Independent Connecticut Petroleum Association. The ICPA has over 300 members in Connecticut and together, we supply approximately 80% of the heating oil sold in the state. Collectively, our companies employ about 10,000 people.

I come before you today to talk about several bills raised by your two committees that address issues of the Environment as they pertain to economic development.

First let me start with the easy ones, the bills that the ICPA supports. Senate Bills 655, 170 and 192 as well as House Bill 6147 all concern the issue of helping urban site remediation and Senate Bill 117 proposes to help speed up DEP permit applications. ICPA supports all of these bills as they are drafted.

However, there are two bills before these committees that I would like to talk about in more detail.

House Bill 5001 calls for the registration on land records of any installation, replacement or removal of an underground residential oil tank. This proposal is very similar to a bill raised last year. ICPA still objects to registering tanks on municipal land records and you will hear why in other testimonies this afternoon.

The second provision in House Bill 5001 would establish a fund to give grants to homeowners to help them with remediation of a leaking underground storage tank. This is an excellent concept and would be well receive by the DEP and Homeowners alike. However, the concept must be very carefully thought out.

For instance, if the state provides aid to homeowners only after contamination is detected, then it could actually discourage people from replacing old tanks until they start leaking. Many companies, like my own, have become very aggressive in replacing underground tanks before there is a chance for a problem. My company's program, "Tanks for the Memories" replaced over 70 underground tanks last year with tanks in those customer's basements. So far, of all the buried tanks we have replaced, a very small number have had any sign of contamination. And that contamination may not have come from a leaking tank, but from an overfill or, worse yet, a broken line from the tank to the house.

ICPA respectfully requests the committees here to establish a study to be made of the residential underground tank issue and have findings reported back to the committee before the next legislative session. ICPA and its member companies would like to help with such a study as we are the people that are out there removing tanks right now and have a very good idea as to how tank removal and replacement can be done with the least amount of cost to the homeowner and the greatest benefit to the environment.

Finally, House bill 6681 makes several proposals regarding remediation of and liability for contaminated real property. Proposals to certify remediation companies and protect innocent land owners are excellent ideas and we support them.

However, section six of House Bill 6681 proposes to assess a tax of one cent (1¢) per gallon on heating oil delivered to residential customers to help fund clean-ups. ICPA does not support the tax provision of this bill. Such a tax is a burden that the

consumers of Connecticut just don't need right now. It also seems unfair that homeowners who do not have underground oil tanks be forced to pay into a fund to clean up contamination on someone else's property.

House Bill 5001 proposed to use money from the already existing petroleum products gross receipts tax. This is an excellent idea. That tax was established in 1988 to fund Connecticut's underground storage tank cleanup fund. To date, it has brought in over 100 million dollars specifically dedicated to the fund. However, it has paid out less than 20 million dollars in total. The rest of the money is being diverted back to the general fund. It makes more sense to use money that is already there, and dedicated for the purpose of petroleum spill clean-up than to tax the already over-taxed consumers of Connecticut.

Thank you for allowing me to speak here today. If you have any questions, I would be happy to answer them.

000381

WT public #11

Testimony

of

Fabio Sampoli

of

The Greater New Haven Chamber of Commerce

before

The Commerce and Environmental Committees

on

HB 6681

AN ACT CONCERNING THE REMEDIATION OF AND LIABILITY FOR CONTAMINATED REAL PROPERTIES

February 21, 1995

Good afternoon Senator Looney, Representative Stratton and members of the Commerce and Environmental Committees.

My name is Fabio Sampoli, and I am senior vice president for regional issues at The Greater New Haven Chamber of Commerce. I have been at my present position for the past six years. Prior to 1989, I ran my own public policy consulting firm, I worked at several Washington-based think tanks, and I taught at Yale University, where I received my Ph.D. in economic history.

My remarks today address House Bill 6681, An Act Concerning Remediation of and Liability for Contaminated Real Property.

For many years, The Chamber has been well aware of the impact of environmental issues on the economic vitality of our state's businesses. It is our firm belief that environmental protection and business profitability are not mutually exclusive, but rather complementary notions. For this reason we established The Chamber's Environmental Issues Committee, and, in 1991, developed the Annual Green Ribbon Awards Program. This program, which has been commended by Vice President Al Gore and acknowledged by the federal Environmental Protection Agency with a regional Merit Award, recognizes organizations which, during the course of their business activities, go beyond the call to preserve and protect the environment.

At the same time, we at The Chamber have also become convinced that burdensome and time-consuming environmental regulations have hindered economic development while delivering questionable environmental benefits.

These environmental regulations, intended to protect and improve our environment, have often compounded and aggravated legal and economic obstacles with regard to the clean-up and redevelopment of former industrial sites.

The length of time required to obtain a review process of clean-up sites is much longer than site developers are willing to accept. On top of these delays, add the the constant fear of possible costly liabilities even if a site has been certified "clean". Because of these regulations, many companies considering relocating to Connecticut have choosen other locations around the nation. At the same time, many Connecticut businesses needing to expand have had to relocate out of state or build their new operations on pristine, undeveloped land. In a state such as Connecticut, where both land resources and jobs are scarce, environmental regulations such as these serves little purpose. They are detrimental both to the conservation of our dwindling open spaces and our overall environmental quality.

It is The Chamber's strong belief that enactment of this proposed piece of legislation will expedite significantly the review process of site clean-up, and will ultimately lead to the redevelopment of several industrial sites in the State.

The potential economic benefit of "recycling" industrial sites is truly significant. It is on the magnitude of this economic benefit that I base my testimony this afternoon.

After a quick analysis of the abandoned or underutilized industrial sites in the ten largest Connecticut municipalities, I have estimated that there are at least 1,000 acres of contaminated industrial sites in the State. Notwithstanding the wish to see all these sites put to productive use, the assumptions upon which I base my calculations are rather conservative.

Once cleaned-up, these 1,000 acres will allow for the development of 400 acres in buildings, or 16 million square feet of new industrial space. At $40 per square foot, that will translate into $640 million in construction value. One can also safely assume that these new buildings will require equipment costing some $40 per square foot. One would hope that most of these recycled industrial sites will be devoted to manufacturing, and thus some of the equipment involved will be tax expempt. Even taking into consideration these exemptions, the new plants and equipment would add almost 675 million dollars to the grand lists of Connecticut municipalities, resulting in almost $11 million in new tax revenues.

Assuming one new job for every 2,000 square feet of reclaimed industrial space, these new industrial plants would sustain some 8,000 new jobs, which, at an average of $25,000 per job, would contribute over $200 million to Connecticut payrolls.

Not only the municipalities', but also the State's coffers would benefit. The payroll taxes would net the state some $9 million. Then, figuring corporate revenues at $65,000 per job, the State would derive over $5 million in corporate taxes and over $31 million in sales taxes.

Let me recapitulate all these figures. If contaminated industrial sites in Connecticut were recycled, they would:

- provide $650 million in construction value
- add almost $675 million to towns' grand lists
- develop some $11 million in new municipal taxes
- sustain some 8,000 new permanent jobs
- contribute over $200 million to Connecticut payrolls
- add almost $45.5 million to the State's annual tax receipts

It is for the above stated reasons that The Chamber enthusiastically supports the enactment this proposed bill.

Thank you very much for your attention.

TAPE 1A 000384
P. 1

Testimony of The City of New Haven
In Support of HB 6681 AAC Remediation
of and Liability for Contaminated Real Property

Presented by Mark Mininberg
Mininberg & Goodbody
February 22, 1995

Much of the industrial real property in Connecticut is contaminated with oil and other hazardous substances. Many of these properties are underutilized or abandoned causing blight and the loss of tax revenues and jobs in the communities in which they are located. The fear of older industrial sites also causes businesses to seek previously unused "greenfields" properties for construction of new buildings. This results in a reduction in the state's open spaces and further contributes to the losses suffered in older manufacturing communities.

Furthermore, the Connecticut Department of Environmental Protection (DEP) is overwhelmed with the task of supervising remediation of the contaminated sites in Connecticut. As a consequence, completion of remediations are few, the process is difficult and unacceptably slow and the business and lending communities will not make investments in older industrial properties.

It is in the interest of all citizens of the State of Connecticut to address this problem. Part of the solution is promoting legislative and regulatory reform which will both privatize the procedure for private cleanups and will establish more certainty as to the expected results of a remediation. Such privatization will encourage private

cleanups of older sites. This will foster a better climate for Connecticut businesses without sacrificing human health and the environment.

Other states, including Massachusetts and Michigan have passed legislation addressing the issue of industrial sites and their remediation. This has involved both privatizing the cleanup process and establishing better, more definite cleanup standards. The results have been positive in each state.

In the interest of creating a better approach to the problem in Connecticut, legislative action is needed. The following is an outline of the major points which this legislation should include.

1. **Definition**. The legislation should be limited to sites in industrial use zones with no active drinking water supply well within a predetermined distance.

2. **Standards**. Industrial sites which will be reused for industrial purposes do not require the same high level of cleanup as sites which have residential uses. Therefore, the legislation should require DEP to formulate reasonable standards for remediation of these sites.

3. **Licensed Site Professionals**. Because the remediation process must be accelerated and the outcomes made more certain, DEP must be relieved of some of its burden of providing detailed oversight of all site remediations. Instead, the process should allow private engineers to certify under seal that a cleanup has been properly performed. This approach would parallel the system for approving construction of buildings bridges and other facets of land development. Massachusetts has already adopted a program by which licensed site professionals (LSPs) certify cleanups under

general DEP oversight. Environmental engineers and consultants from the private sector may apply to become LSPs under an independent Board of Registration of Hazardous Waste Site Cleanup Professionals. An LSP may then be permitted to develop and execute a remediation plan independent of the DEP. Upon completion of a remediation the LSP will issue a certification that the remediation is in compliance with the requirements of this program.

4. **Certification.**

a. **Review.** Because review of the remediation must be accomplished quickly and within defined guidelines, DEP's involvement must be limited and speedy. Therefore, the legislation should include a framework for review of the certification by the DEP. A certification by an LSP that the remediation is complete and is in compliance with the requirements of this statute would be subject to review by the DEP within a narrowly defined and strictly enforced timeframe. Rejection of a certification by the DEP would be subject to judicial review.

b. **Relation to the Transfer Act.** Because redevelopers must have certainty as to the cleanup and must have marketable property, the legislation should give the LSP certification force in relation to required filings pursuant to the Transfer Act, C.G.S. Sec. 22a-134. That is, subsequent to remediation and issuance of the LSP certification, a party transferring the property would be able to file a Form II stating that the property has been cleaned up in accordance with State guidelines.

5. **Lender and Fiduciary Liability.** To encourage lenders and other fiduciaries to finance redevelopment of these properties, there must be some assurance that their

liability is limited. Therefore, the legislation should include an exclusion from liability for lenders and other fiduciaries who take title only to protect their interest in the property.

6. **Covenant Not to Sue**. To encourage innocent parties to redevelop these sites, the State must provide some assurance that liability for pre-existing contamination is limited. Therefore, the legislation should authorize the DEP to enter into a Covenant Not to Sue the redevelopers of the remediated property if the site is remediated to the appropriate standards. Such a Covenant would be given when it is in the public interest and would be limited to purchasers of such remediated property who have no responsibility for the pre-existing contamination.

7. **Activity and Use Limitation**. To protect the local community and future owners from exposure to contaminants left in place at industrial sites, the public must be aware of the fact that the property was cleaned up under special industrial use standards. Therefore, the legislation should provide for an Activity and Use Limitation (AUL) being placed on the remediated property. This AUL would prohibit future use of the property for residential purposes and would allow the use of industrial standards for the remediation. The AUL would be recorded on the town land records.

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p. 1 -

TESTIMONY OF HELEN ROSENBERG
NEW HAVEN OFFICE OF BUSINESS DEVELOPMENT

AN ACT CONCERNING THE REMEDIATION OF
AND LIABILITY FOR CONTAMINATED REAL PROPERTY
HOUSE BILL NUMBER 6681

BEFORE THE ENVIRONMENT AND COMMERCE COMMITTEES

To the Honorable Jessie Stratton, the Honorable Cathy Cook, the Honorable Anthony Guglielmo, the Honorable John Betkoski, and Members of the Environment and Commerce Committees:

The City of New Haven would like to stress the importance to the City and the State of passage of the proposed bills concerning industrial site remediation, particularly HB 6681. New Haven, once a vibrant manufacturing center, retains many vestiges of that history in 19th century factories scattered throughout the City. Many of these are multi-stored brick buildings, primarily on one to five acres, and most are vacant and in disrepair.

Although the City does not have the same amount of industrial activity it did decades ago, it is still an attractive place for manufacturers and distributors to locate. The City has had to turn away many of them, however, because of a lack of modern buildings or clean sites on which to construct them. The City has identified 20 properties, totally about 82 acres, as good candidates for redevelopment if the site remediation issues can be expeditiously addressed.

New Haven has a limited capacity to expand its tax base, although expansion is needed to compensate for the existence of non-taxpaying institutions in the City and high service costs. We've estimated that if the derelict sites were redeveloped, at least 1,300 jobs could be created and about $6,000,000 in annual new property taxes generated.

The major issues which need to be addressed in order to realize development of these sites are the extensive time which is often involved in DEP review and certification of site remediation, and buyer and lender

reluctance to invest in contaminated sites. Their redevelopment is important to New Haven and communities statewide to achieve:

-Increased taxes and job creation, especially in older cities where they are needed most.
- Protection of Connecticut's rural landscape from overdevelopment
- Elimination of blight, reduction of crime, and improvement of the environment, particularly in inner city neighborhoods.
- Environmental improvement statewide through increased clean-up of industrial sites.

We feel that HB 6681 contains the essential elements of a successful program to achieve those goals. The most important aspect of the proposed bill is the creation of a system of private site professionals to oversee and certify remediation of cetain sites. This will reduce the time lags currently hindering cleanup. Activity use limitations will protect future users of land remediated for industrial use. The Covenant Not to Sue provision will assure buyers that they will not be sued by the state for contamination they didn't cause. Coupled with Lender Liability Protections, it will go a long way to securing site developers.

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TESTIMONY OF
THOMAS J. TURICK
ENVIRONMENTAL MANAGER
CONNECTICUT BUSINESS AND INDUSTRY ASSOCIATION
BEFORE THE JOINT COMMERCE AND ENVIRONMENT COMMITTEES
TUESDAY, FEBRUARY 21, 1995

Good afternoon. My name is Thomas J. Turick. I am environmental manager with the Connecticut Business and Industry Association (CBIA). CBIA represents approximately 7300 member companies, large and small businesses that employ several hundred thousand men and women in Connecticut.

I am here on behalf of CBIA to strongly **SUPPORT** and offer comments to improve H.B. 6681 An Act Concerning Remediation Of, And Liability For, Contaminated Property. This bill intends to provide for the certification of certain environmental professionals, to expedite the voluntary remediation of certain contaminated properties, to provide funds to business and others for the assessment of the extent of contamination on a site, to revise the limitation of liability for innocent landowners of contaminated property, to revise important provisions of the Property Transfer Act, and to propose a variety of other strategies to improve the state's program for the voluntary cleanup of commercial and industrial sites.

This ambitious bill is arguably one of the most significant and important environmental proposals to come before the Connecticut legislature in the past ten years. **H.B. 6681**

is truly monumental in scope as it seeks to develop a more comprehensive approach to the remediation of contaminated sites throughout the state. It offer new approaches to issues such as the privatization of cleanup management, the extent of landowner and lender liability, municipal responsibility for urban cleanup and development, the transfer of property subject to Sec. 22a-134 of the Ct. General Statutes, and a host of other issues that have been roadblocks to the voluntary cleanup of contaminated sites since the state began its cleanup program in about 1980.

In our enthusiasm for **H.B. 6681**, CBIA has at this time no recommendations for suggested changes to the bill with the exception of the critical one detailed below. CBIA would be happy to provide whatever help is necessary to ensure the passage of this bill with the recommended amendment as it makes its way through the 1995 legislative session.

Most importantly, the ultimate success of H.B.6681 in affecting the cleanup of contaminated sites in Connecticut largely depends on the existence of workable state cleanup standards. CBIA has long been a member of DEP's advisory group charged with developing cleanup standard regulations. While the DEP effort has been underway for more than two years now, we believe significant work remains to be accomplished before a workable set of standards can be finalized and adopted to answer once and for all the question, "How clean is clean"?

Because of the critical need to have workable standards in place now, **CBIA proposes that H.B. 6681 include a provision that establishes through reference, cleanup standards already developed and promulgated by the federal U.S. Environmental Protection Agency as being adequate to protect human health and the environment, and which provides that such standards will be effective upon passage of H.B. 6681 and until such time as DEP's cleanup standard regulations are formally adopted.**

CBIA is in the process of developing specific legislative language and gathering supporting documentation as may be necessary for such a provision and will provide these to your committees in the near future. Thank you.

Post-it® Fax Note 7671	Date 2/23	# of pages ▸ 1
To Rep. Stratton	From Amy Williams	
Co./Dept. Envi. Comm.	Co.	
Phone #	Phone # 635-9831	
Fax # 240-0023	Fax #	

23 February 1995

Representative Jessie Stratton
House Chair - Environment Committee
Legislative Office Building, Rm. 3200
Capitol Avenue
Hartford, Connecticut 06106

Subject: HB6681

Dear Representative Stratton:

I am writing to indicate my concern about HB6681. I am an environmental scientist at a small consulting firm in Connecticut, and have been working in Connecticut for the past 6+ years. Although I have a civil engineering degree, I have been practicing environmental science rather than engineering for the past 10 years, and am in the process of getting my Master's in Environmental Science from the University of New Haven. As the bill is currently written, I would be unable to be certified as an environmental professional, making my means of living somewhat in question. I am aware of numerous other environmental professionals, who have also been working for many years in the profession, who also would not be able to get certified.

In addition, requiring professional liability insurance in the amount of one million dollars for individuals in my profession, when similar requirements are not necessary even for Professional Engineers, is ludicrous. It is difficult enough for small consulting firms to get similar coverage, and I believe that insurance firms would be unwilling to insure individuals.

Thirdly, the bill imposes a standard-of-care upon environmental professionals which does not allow for human error, when again, Professional Engineers have allowances for errors which do not constitute negligence.

I believe that HB6681, as currently written, will put many environmental professionals and firms out of business, which I am sure is not the desired result of the people sponsoring the bill. While licensing of my profession is desirable, please reconsider the language in the bill to allow those same professionals to survive.

Sincerely yours,

Amy L. Williams
Senior Environmental Scientist
507A Main Street
Cromwell, CT 06416