

Legislative History for Connecticut Act

HB 5347	PA 113	1996
Senate :	2714 - 2721, 2820 - 2821	(10)
House :	1440 - 1441, 2544 - 2557	(16)
Environment :	118 - 119, 135 - 139, 153 - 154, 162 - 165, 240 - 251	(25)
		Total 51

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

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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1996

VOL. 39
PART 8
2399-2764

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Senate

Tuesday, April 30, 1996

Senator Bozek.

SEN. BOZEK:

Thank you Senator Kissel. Thank you Madam President.

THE CHAIR:

Will you remark further on the bill? Will you remark further? Senator Kissel.

SEN. KISSEL:

If there are no further questions, I would move this to the Consent Calendar.

THE CHAIR:

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

THE CLERK:

Page 13, Calendar 497, Substitute for HB5347, File 569, 724. AN ACT CONCERNING THE HAZARDOUS WASTE ESTABLISHMENT TRANSFER ACT AND REMEDIATION OF CONTAMINATED PROPERTY. Amended by House Amendment "A". Favorable Report of Committee on Environment, Judiciary, and Finance.

THE CHAIR:

Senator Cook.

SEN. COOK:

Thank you very much Madam President, and good afternoon. I would urge acceptance of the Joint

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

THE CHAIR:

Question is on passage in concurrence. Will you remark?

SEN. COOK:

Thank you very much, Madam President. This is one of the handful of major bills this session coming out of the Environment Committee. It is part of the Governor's urban agenda, and certainly part of the bipartisan effort of the Environment Committee to make sure that we can get voluntary clean ups going on in the urban sites that are contaminated, and to provide further clarification for the Transfer Act.

The House "A" makes several minor and technical changes, including requiring the covenant fees to be based on the value of the property assessed as if it is remediated, but just the part of the property that has been remediated, not the entire parcel, requiring all covenant fees to be deposited into the Special Contaminated Property Remediation and Insurance Fund, establishing certain standards leading, lending institutions must satisfy to be eligible for qualifications for a covenant, and narrows the definition of vehicles for the purposes of the Transfer

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Act, and makes the bill effective upon passage instead of October 1st 1996.

The bill, as it has been amended in the House, is intended to address the number of issues which arose as a result of a comprehensive revision of the Property Transfer Law, and enactment of Public Act 95-190 last session.

The Department of Environmental Protection believes that those legislative initiatives will significantly expedite and enhance the process for remediating contaminated sites in our state.

And in doing so will contribute substantially to the economic revitalization of Connecticut. Specifically, the bill makes minor clarifications to the definitions and fee structure in the Act. It consolidates and broadens the Commissioner's authority to enter into a covenant not to sue, concerning polluted properties.

The bill will also streamline the process of recording an environmental land use restriction by placing the Commissioner's approval of subordination agreements with a certificate of title attesting to the execution of the required agreements.

This bill has been a major effort of the Chairman of the Committee in Environment, and I hope that the

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new process that is being put in place by this bill will go a long way toward getting sites that are served by our infrastructure, but have experienced pollution in the past, in our urban areas in particular, back into useful economic development for our state. And I would urge its passage.

THE CHAIR:

Question is on passage. Will you remark further?

Senator Bozek.

SEN. BOZEK:

Thank you Madam President. Senator Cook, this particular bill, where it speaks to it broadens their, the DEP's authority to enter into covenants, does that mean that where they have determined a site has some contamination...

THE CHAIR:

Senator Bozek, one moment please. Will the Senate please come to order?

SEN. BOZEK:

Thank you. Where it has determined that there is some contamination, is the concept here that they can assist in development so the project can move forward? And that the remediation of the difficulty would be done during the project, or after the project is done, is completed?

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THE CHAIR:

Senator Cook.

SEN. COOK:

Thank you. The bill that we have before us is a further clarification of the Act that we passed last session. The DEP commissioner's authority to enter into covenants not to sue, has been more specifically defined in the bill before us today from the law that we passed last session.

What it will do is give the Commissioner more ability to say to a company that is being a good corporate citizen and saying, we want to clean up our property. We know that there is some contamination there. And that the Commissioner can then enter into a commitment by the State of Connecticut not to sue that company if the Commissioner is satisfied that the remediation plan is one that is going to comply with the needs of the state at that time.

And essentially what the owner of the property is purchasing when the fee is paid for the covenant not to sue, is rather like an insurance policy that ten years later if regulations change, and something's different, they are not liable, because they cleaned it up to the standard that was available that day, ten years before, and if the Commissioner was satisfied that the

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remediation plan was one that was going to comply with the standards at the time.

If you will recall, last session we passed new standards for industrial purposes that are clean to the, with an environmental use restriction saying that we can't put day care centers and residences on certain properties once they're cleaned up, we're going to clean them up to an industrial use standard.

So this provision gives the Commissioner a little more latitude to enter into those covenants not to sue. It is meant to be an incentive to get companies to voluntarily clean up polluted properties.

THE CHAIR:

Senator Bozek.

SEN. BOZEK:

Through you Madam President. Does that mean, Senator Cook, that the covenant normally would only be entered into if the good corporation intended to proceed and had a commitment of some sort of calendar or contract. That is, it's not, the legislation's not designed such that if I know, or I guess that I may be found out to have some contaminants, that I'm going to come up with some covenant that's kind of not defined, but allows me till eons from not to clean it up, that I can escape any future environmental laws.

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Or am I correct in the first statement saying that it's only designed so that if I have a program and a commitment, the covenant the contract is entered into.

THE CHAIR:

Senator Cook.

SEN. COOK:

That's correct. The covenant not to sue, as is further clarified in today's bill can only be entered into following the procedure of the form, form 4, which is the specific permit that's evolved in the Department of Environmental Protection that would specify what the remediation is to be, when it is to be completed, how it is to be done, who is going to do it.

And if the Commissioner of Environmental Protection is satisfied that all of the parts of that plan are being adhered to, and will be adhered to, then the Commissioner may, at his discretion, enter into a covenant not to sue that company because the remediation plan is in place.

THE CHAIR:

Senator Bozek.

SEN. BOZEK:

Thank you Senator Cook. Thank you Madam President.

THE CHAIR:

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You're very welcome. Will you remark further?

Will you remark further? Senator Cook.

SEN. COOK:

If there's no further discussion, I would urge my colleagues to place this on the Consent Calendar.

THE CHAIR:

Is that in the form of a motion, Senator Cook?

SEN. COOK:

And I would move, so move.

THE CHAIR:

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

THE CLERK:

Page 14, Calendar 502, Substitute for HB5643, File 202 and 711, Substitute for HB5643, AN ACT CONCERNING STATE EMPLOYEE PAYROLL DEDUCTION SLOTS, as amended by House Amendment Schedule "A". Favorable Report of Committee on Labor, and Government Administration and Elections. Clerk has one Amendment.

THE CHAIR:

Senator Guglielmo.

SEN. GUGLIELMO:

Thank you Madam President. I move adoption of the Joint Committee's Favorable Report and passage of the bill in accordance with the House.

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Senate

Tuesday, April 30, 1996

to Consent Calendar.

THE CHAIR:

Motion is to refer this item to the Consent Calendar. Without objection, so ordered. Senator Upson.

SEN. UPSON:

Yes, Madam President, could we call the Consent Calendar, please.

THE CHAIR:

We would be honored to do that sir. Would the Clerk please call the Consent Calendar.

THE CLERK:

An immediate roll call in the Senate on the Consent Calendar. Will all Senators return to the chamber. An immediate roll call in the Senate on the Consent Calendar. Will all Senators please return to the chamber.

Page 4, Calendar 326. Page 6, Calendar 426. Page 8, Calendar 445. Page 9, Calendar 478. Page 10, Calendar 483. Page 11, Calendar 485 and 488. Page 13, Calendar 495, 497. Page 14, Calendar 502. Page 15, Calendar 505. Page 16, Calendar 510, 511. Page 17, Calendar 154, 181, and 182. Page 20, Calendar 325. Page 22, Calendar 373. Page 25, Calendar 163, 170, 177. Page 26, Calendar 240, 286, 304. Page 27,

Handwritten: SB 402, SB 605, HB 5699, HB 5365, HB 5486, HB 5368, HB 5622, HB 5813, HB 5347, HB 5643, HB 5312, HB 5521, HB 5621, SB 228, SB 458, SB 532, SB 399, SB 569, SB 452, SB 417, SB 422, SB 556, SB 597, SB 291.

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Tuesday, April 30, 1996

SB 492
Calendar 319.

THE CHAIR:

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

THE CLERK:

Total Number Voting	35
Necessary for Passage	18
Those Voting Yea	35
Those Voting Nay	0

THE CHAIR:

The Consent Calendar is adopted. Senator Upson.

SEN. UPSON:

I move for immediate transmittal to the Governor of Calendar 304, SB291, AN ACT CONCERNING STUDENT USE OF TELECOMMUNICATION DEVICES AND THE ESTABLISHMENT OF GRADUATION DATES.

THE CHAIR:

Without objection, so ordered.

SEN. UPSON:

Thank you.

THE CLERK:

Page 17, Calendar 185, Substitute for SB475, File 226. Substitute for SB475 AN ACT CONCERNING GRANTS FROM CULTURAL HERITAGE DEVELOPMENT ACCOUNT. Favorable

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House of Representatives Wednesday, April 17, 1996

SPEAKER RITTER:

Representative Godfrey.

REP. GODFREY: (110TH)

Mr. Speaker, I would move that Substitute for
House Bill Number 5454, be referred to the Committee to HB 5455
the Committee on Public Health.

SPEAKER RITTER:

So ordered. Clerk, please call Calendar 439.

CLERK:

On page 16, Calendar 439, House Bill 5802, AN ACT
REVISING ARTICLE 5 OF THE UNIFORM COMMERCIAL CODE
CONCERNING LETTERS OF CREDIT. Favorable Report of the
Committee on Judiciary.

SPEAKER RITTER:

Representative Godfrey.

REP. GODFREY: (110TH)

Thank you, Mr. Speaker. I would move that House
Bill Number 5802 be referred to the Committee on Banks.

SPEAKER RITTER:

So ordered. Clerk, please call Calendar 440.

CLERK:

On page 16, Calendar 440, Substitute for House
Bill Number 5347, AN ACT CONCERNING THE HAZARDOUS WASTE
ESTABLISHMENT TRANSFER ACT AND REMEDIATION OF
CONTAMINATED PROPERTY. Favorable Report of the

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House of Representatives Wednesday, April 17, 1996

Committee on Judiciary.

SPEAKER RITTER:

Representative Godfrey.

REP. GODFREY: (110TH)

Mr. Speaker, I would move that Substitute for
House Bill Number 5347 be referred to the Committee on
Finance, Revenue and Bonding.

SPEAKER RITTER:

It will be so ordered. Clerk, please call
Calendar 443.

CLERK:

On page 17, Calendar 443, Substitute for House
Bill Number 5813, AN ACT CONCERNING A TECHNICAL
REVISION OF THE ADOPTION STATUTES. Favorable Report of
the Committee on Judiciary.

SPEAKER RITTER:

Representative Godfrey.

REP. GODFREY: (110TH)

Mr. Speaker, I would move that Substitute for
House Bill Number 5813 be referred to the Committee on
Human Services.

SPEAKER RITTER:

It will be so ordered. Clerk, please call Calendar
444.

CLERK:

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House of Representatives

April 25, 1996

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 voting by roll call. Members to the
Chamber, please.

SPEAKER HYSLOP:

Have all members voted?

If all members have voted, the machine will be
locked. The Clerk will take a tally. The Clerk will
announce the tally.

THE CLERK:

SB No. 335, as amended by Senate A in concurrence
with the Senate.

Total number voting, 144.

Necessary for passage, 73.

Those voting "yea", 144.

Those voting "nay", 0.

Absent, not voting, 6.

SPEAKER HYSLOP:

Bill as amended passes.

Clerk, please call Calendar 440.

THE CLERK:

On page 33, Calendar 440, Substitute for HB No.

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April 25, 1996

5347, An Act Concerning the Hazardous Waste
Establishment Transfer Act and Remediation of
Contaminated Property. Favorable report of the
Committee on Finance, Revenue and Bonding.

SPEAKER HYSLOP:

The Honorable Representative Jessie Stratton.

REPRESENTATIVE STRATTON: (105th)

Thank you, Mr. Speaker.

I move acceptance of the Joint Committees
favorable report and passage of the bill.

SPEAKER HYSLOP:

Questions on acceptance and passage. Will you
remark?

REPRESENTATIVE STRATTON: (105th)

Yes, Mr. Speaker. The Clerk has an amendment, LCO
5934. Would he call and I be allowed to summarize?

SPEAKER HYSLOP:

Will the Clerk please call LCO 5934, designated
House A?

THE CLERK:

LCO No. 5934, House A, offered by Representative
Stratton.

SPEAKER HYSLOP:

Representative Stratton.

REPRESENTATIVE STRATTON: (105th)

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Thank you, Mr. Speaker.

This amendment clarifies the language for what is and what is not subject to the Transfer Act and establishes the parameters for covenants not to sue. And I would urge adoption of the amendment.

SPEAKER HYSLOP:

Questions on adoption of House A. Will you remark on House A?

REPRESENTATIVE STRATTON: (105th)

Yes, Mr. Speaker.

SPEAKER HYSLOP:

Representative Stratton.

REPRESENTATIVE STRATTON: (105th)

Thank you, Mr. Speaker.

Last year this Chamber started a process to facilitate the redevelopment of what are know as brown fields back into productive use in the state.

And in that process, one of the major concerns and one of the things that has impeded such redevelopment has been the potential liability for anyone assuming responsibility for one of those properties.

Through our changes in the Transfer Act last year, we tried to clarify what was and what was not subject to the Transfer Act and what an establishment was. This amendment makes some minor changes to clarify

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those definitions.

And then more importantly, repeals the rather narrow covenant not to sue that was a part of one of the bills we did last year and establishes or replaces it with a specific kind of covenant that relates to all circumstances and specifies what those are.

In sum, we have established two different kinds of covenants not to sue; one for a prospective purchaser who has had nothing to do with that property and is willing to come in and either have it remediated or do that themselves or has made arrangements with another party to do that to protect them from changing standards from the possibility that there is contamination on that property that they don't discover in what is considered to be a thorough investigation.

That covenant would stay with the land. It gives it a great deal of value as it is transferred from one property owner to another and because of that value and because of the potential liability that the state is assuming upon receipt of such a covenant, the individual receiving it would pay a fee to the state, three percent of the value of such.

And that money would then be available to cover the cost of remediating unknown contamination or changing standards or whatever.

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The second covenant that is established is one that is available to an individual who currently owns the property and seeks to increase its value by cleaning up that contamination.

That covenant is limited to that current owner, yet when that property would be sold, the prospective purchaser could obviously seek a covenant under the earlier covenant provisions.

The second covenant does not have the fee attached to it. It does have a review fee of \$5,000 to enable the Department of Environmental Protection to oversee the remediation of that property.

I think by establishing these procedures, we really do enable some private -- the private sector, including lending institutions which can also be party to these covenants to have the kind of confidence that has been lacking and therefore to further the redevelopment of these properties and put them back into productive use, primarily in our urban centers, but that's not where all of them are. But without provisions like these, I think we will not see the kind of progress in cleaning up these properties that we so desperately need in terms of our cities.

And so I urge the Chamber's adoption of the bill.
Thank you.

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SPEAKER HYSLOP:

Will you remark further on Senate -- I mean, House Amendment A? Representative Nystrom.

A VOICE:

Thank you, Mr. Speaker.

Mr. Speaker --

SPEAKER HYSLOP:

Representative Nystrom I called.

REPRESENTATIVE NYSTROM: (46th)

Thank you, Mr. Speaker.

A question through you to the proponent, please?

SPEAKER HYSLOP:

Representative Stratton, prepare yourself for the question. Proceed.

REPRESENTATIVE NYSTROM: (46th)

Thank you, Mr. Speaker.

Through you, Representative Stratton, let me first say that I rise in support of this amendment and this bill. I think it's a very important bill for our department and for municipalities in particular.

But in specific, on lines 128 through lines 131, it's the reference to the three percent value of the property for which the covenant's issued. There's a provision there that the appraised value must reflect that it's being appraised as if it is uncontaminated.

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And I'm just wondering, through you, Mr. Speaker, will that work? Through you, Mr. Speaker.

SPEAKER HYSLOP:

Representative Stratton.

REPRESENTATIVE STRATTON: (105th)

Thank you, Mr. Speaker.

Through you, the process of real estate appraisal is something that an appraiser can determine what the value of that property is with all of the liability from the contamination. But on the basis of its obvious potential for redevelopment, if it were clean it did not have that. That is something that the private sector in terms of real estate evaluation can certainly do.

I think it's also important to note in that part, because there has been discussion about it, that the value of the property appraised as clean is, for whatever part of that property is subject to the covenant.

So it could well be that a property was, you know, 25 or 30 acres and the owner only sought or the prospective owner only sought the covenant on the five acres that was the site of the establishment or something. And hence, that three percent would be for the value of that portion of the property that is

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subject to the covenant provisions.

SPEAKER HYSLOP:

Representative Nystrom.

REPRESENTATIVE NYSTROM: (46th)

Thank you. And through you, Mr. Speaker, the person who's completing the appraisal, do they incur any -- what is the -- through you, Mr. Speaker, what is their responsibility once they render an appraisal as far as the value of the land? Through you, Mr. Speaker.

SPEAKER HYSLOP:

Representative Stratton.

REPRESENTATIVE STRATTON: (105th)

Through you, Mr. Speaker, the process of real estate appraisals is something that is standing practice, as a part of the whole real estate industry. And I think an appraisal under this provision would be subject to the same kinds of -- what I want to say, standards of conduct that any other real estate appraisal would be subject to. Through you, Mr. Speaker.

SPEAKER HYSLOP:

Representative Nystrom.

REPRESENTATIVE NYSTROM: (46th)

Thank you, Mr. Speaker.

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Well, Section 12 of the bill, at the very end, refers to the ability for the Commissioner to receive sufficient information for them to make a determination should a covenant not to sue be sought by under these two policy decisions; one for the current owner and one for a prospective buyer.

Can you give a little bit more information as to what kinds of information the Commissioner will be able to receive and/or require? Through you, Mr. Speaker.

SPEAKER HYSLOP:

Representative Stratton.

REPRESENTATIVE STRATTON: (105th)

Thank you, Mr. Speaker.

Through you, the purpose of that information is to determine that the party seeking the covenant does not fit any of the exclusionary categories, primarily that that party was not responsible for creating the contamination on the property or is not associated with it.

And so it would be a demonstration that the individual or the party seeking the covenant had no such connection. Through you, Mr. Speaker.

SPEAKER HYSLOP:

Representative Nystrom.

REPRESENTATIVE NYSTROM: (46th)

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Thank you, Mr. Speaker.

So then that information, it's premise is based on the fact that the land was polluted and it's not -- you're not looking for a complete history of the individual's character and/or whether or not they have passed run-ins with the law, that kind of information and/or whether or not they have been, in fact, a good business that's operated, whether it's within the state or outside the state. It's solely limited to the question of whether or not a covenant not to sue can be granted under the premise of this language. Through you, Mr. Speaker.

SPEAKER HYSLOP:

Representative Stratton.

REPRESENTATIVE STRATTON: (105th)

Through you, Mr. Speaker.

It deals with the provisions solely that deal with whether that party is eligible to receive such a covenant. Through you, Mr. Speaker.

SPEAKER HYSLOP:

Representative Nystrom.

REPRESENTATIVE NYSTROM: (46th)

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

Again, I'd like to say that I support this bill

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and this amendment, in particular, first of all. Thank you.

SPEAKER HYSLOP:

Representative Prelli.

REPRESENTATIVE PRELLI: (63rd)

Thank you, Mr. Speaker.

Mr. Speaker, I too, rise in support of this amendment and the amount of work that Representative Stratton has put into this.

I do have a couple questions I would like to ask the good Chairman of the Environment Committee, through you, Mr. Speaker.

SPEAKER HYSLOP:

Proceed.

REPRESENTATIVE PRELLI: (63rd)

Representative Stratton, are there guidelines built into this amendment or into the bill that doesn't allow someone to sell the property to an intermediary and a year later after the covenant is granted buy the property back. Through you, Mr. Speaker.

SPEAKER HYSLOP:

Representative Stratton.

REPRESENTATIVE STRATTON: (105th)

Through you, Mr. Speaker, the short answer to that is yes, there are such provisions that the covenant in

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the first case, the one with the three percent fee is transferable to a successor party, as long as that successor party also meets the criteria that the original covenant holder met to receive it, in that they were not responsible for the contamination or associated with that, with anyone who was and that they will keep the property in productive use. Through you, Mr. Speaker.

SPEAKER HYSLOP:

Representative Prelli.

REPRESENTATIVE PRELLI: (63rd)

Thank you, Mr. Speaker. And Mr. Speaker, again through you to Representative Stratton, every time the covenant is transferred, is the three percent fee then collected again? Or is it only a one-time three percent fee? Through you, Mr. Speaker.

SPEAKER HYSLOP:

Representative Stratton.

REPRESENTATIVE STRATTON: (105th)

Through you, Mr. Speaker, it is only collected the first time the covenant is issued. Through you -- thank you.

SPEAKER HYSLOP:

Representative Prelli.

REPRESENTATIVE PRELLI: (63rd)

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Thank you, Mr. Speaker.

And I, too, echo the words of Representative Nystrom and urge everyone to support this amendment.

SPEAKER HYSLOP:

Will you remark further on House A? Will you remark further on House A?

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

ASSEMBLY:

Aye.

SPEAKER HYSLOP:

Those opposed "nay". Ayes have it. House A is adopted.

Will you remark further on the bill as amended?

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, please.

SPEAKER HYSLOP:

Have all members voted? Have all members voted?

If all members have voted, please check the

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machine, make sure that your vote is properly recorded.

Have all members voted? If all members have voted, the machine will be locked. Clerk will take a tally. Clerk will announce the tally.

THE CLERK:

HB 5347, as amended by House A.

Total number voting, 145.

Necessary for passage, 73.

Those voting "yea", 145.

Those voting "nay", 0.

Absent, not voting, 5.

SPEAKER HYSLOP:

Bill as amended passed.

Clerk, please call Calendar 151.

THE CLERK:

On page 23, Calendar 151, substitute for HB No. 5426, An Act Concerning Inaccurate Billing by Public Utilities. Favorable report of the Committee on Planning and Development.

REPRESENTATIVE OREFICE: (37th)

Mr. Speaker?

SPEAKER HYSLOP:

Representative Orefice of the 37th.

REPRESENTATIVE OREFICE: (37th)

Mr. Speaker, I move for the acceptance of the

JOINT
STANDING
COMMITTEE
HEARINGS

ENVIRONMENT
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pea ENVIRONMENTAL COMMITTEE February 26, 1996

Section 3 would change the environmental assistance revolving loan fund to allow assistance to small business to assist them with any aspects of the Clean Air Act. Right now it's being used for stage 2 vapor recovery.

Section 4, the department would propose to increase our sale of tree seedlings grown at our state forest nursery. At one time the other New England states all had their own forest nurseries. Now New Hampshire is the only one that does. We would like to be able to sell out of state to nonprofit conservation organizations and others. This would be done at market and would bring in more revenue that would more than pay for the cost of operating the nursery.

At the same time it will serve a very beneficial environmental role in that we would be promoting the planting of trees. What we grow at Patchog are just seedlings, we don't grow full size trees. They are not the kind of thing that you typically would want to buy just one of and we don't sell just one of them and plant in your yard. They are quite small and they are basically used in conservation situations for farmers or people wanting to establish wind breaks or with substantial amounts of property.

The next bill on the agenda is 5346, AN ACT CONCERNING FUNDING FOR REMEDIATION OF ENVIRONMENTAL POLLUTION.

The special contaminated property remediation and insurance fund that was established under Public Act 95-190 was a very innovative approach to dealing with properties that otherwise might fall between the cracks in terms of having funding available for remediation and the department was very pleased to serve on the task force that developed the ideas that formed the basis for this proposal, and we look forward to working with you to help ensure that this fund is funded so that we can proceed with the clean up of sites.

The last bill before you is RB5347, AN ACT CONCERNING REVISIONS TO THE HAZARDOUS WASTE

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pea ENVIRONMENTAL COMMITTEE February 26, 1996

ESTABLISHMENT TRANSFER ACT AND REMEDIATION OF
CONTAMINATED PROPERTY.

This is the longest, most complex bill before you today. It does a number of things. It revises fee structure to make it more understandable. It sets out in a simplified approach for dealing with subordination agreements. It also allows the commissioner to get sufficient information from applicants who are interested in a covenant not to sue. It also makes the fee, establishes a fee for covenants not to sue under 95-183, that is consistent with Public Act 95-190.

And it deletes the requirement that property transfer law fees be deposited in the fund created under 190 until that fund is up and operating.

We also revised the definition of establishment. We eliminate service stations from the purview of the act. That's more of a clarifying change since they were really never in the act.

We also have some more specific language about how and when subdivisions of property are to be reviewed and there are a variety of other more technical changes in the bill.

Thank you very much. If there be any questions, I'd be glad to answer them.

REP. STRATTON: Thank you very much, David. Are there questions? Representative Maddox.

REP. MADDOX: Yes, hi David. I have a couple. Let's see, first starting with SB263. On basically changing from volume to weight on meeting the recycling goal. I guess this is what my concern is and maybe you can address it.

Currently my own town, for example, on its own decided two or three years ago to add plastic in. And as we know, plastic doesn't weigh anything, whereas, for example, glass weighs quite a bit.

If we start to go originally by volume, I understand it may be easier for the department to

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Property taxes for certain properties in distressed municipalities are already subsidized 40% by these municipalities because they're receiving tax abatements under the urban jobs or enterprise zone programs.

Because of that, many times property taxes are not paid, we would like this 20% contribution to be based on taxes collected rather than on taxes assessed for the property.

Also there's some question whether all remediated properties should be included in that pool of properties to be assessed this 20% to go into the fund or to support the bonding for the fund. Regardless of the extent of the cost of remediation, perhaps properties requiring only a minimal amount of remediation shouldn't be counted among those properties. Say if it's \$25,000 worth of remediation and yet the city will have to contribute 20% of the total assessed value. That seems to be a bit extreme and could end up being an imposition on the cities.

Now I'd like to speak on RB5347, AN ACT CONCERNING REVISIONS TO THE HAZARDOUS WASTE ESTABLISHMENT TRANSFER ACT AND REMEDIATION OF CONTAMINATED PROPERTY.

The city supports the clarifications that are included in this bill. There's just a few questions that we have.

Section 1 of these revisions adds the requirement of filing an Environmental Condition Assessment Form when transferring an uncontaminated portion of a larger parcel to exempt such a transfer from the requirements of the Transfer Act.

But it's not clear whether the filing of the ECAF would require payment of the \$2,000 fee that's otherwise required to accompany such an assessment. We feel that if it if required it might be more appropriate to waive the fee under these circumstances.

Section 9 of the revision adds the imposition of a

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fee of 3% of the value of the property appraised as if it were uncontaminated on any person receiving a covenant not to sue. The city is concerned that the imposition of a fee for the covenant not to sue will deter developers from addressing these sites, from redeveloping these sites.

Section 12 of the revision discusses the Special Contaminated Property Remediation and Insurance Fund and states for what the funds can be used. Subsection (b) (1) allows for loans to municipalities, individuals and firms for investigation of the environmental condition of real property, and for any cost of demolition undertaken to prepare such property for development.

This is a very important inclusion for the cities. So many of our properties have these old contaminated buildings that are totally outmoded and can't be used for anything and must be demolished in order that the properties be reused, but we're not sure in this language whether the cost of demolition include, and we feel they should be made to include, if they don't the cost of preparing the building for demolition including, not necessarily limited to addressing the presence of asbestos, lead paint or other environmental hazards contained within the building as well as the disposal of all materials including these hazardous materials. Thank you.

REP. STRATTON: Thank you very much, Helen. As you well know, New Haven was involved in developing this and I guess I have a question was to whether the concern behind the proposals to change sort of what the tax is calculated on.

Is the city's concern losing against existing tax revenues or not getting as much of the new tax revenues?

HELEN ROSENBERG: Well, it could be both. Actually we had a meeting this morning so my concerns represent the concerns as well of Norwalk, Norwich and Stamford directly, but I'm sure other communities as well.

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There is some concern that some cities won't take advantage of the loan fund as much, but then we'll be losing revenue, tax revenue, and perhaps existing because it's possible that the assessment of property will not increase significantly after a clean up is done, particularly if it's a small clean up.

And I also don't know how this addresses, how reval is taking into account it's possible that the value of a property will decline after revaluation and in the middle of this 5-year term we're at the beginning of it, I guess then the payment will have to be readjusted.

But there was concern that if the value of the property does not increase then it will be existing, existing tax income, and certainly increase tax income.

REP. STRATTON: I guess I see those as two very different issues.

HELEN ROSENBERG: Yeah, they are different issues.

REP. STRATTON: I would hope that we could continue to communicate about that because obviously and I think the assumption of the group when it was working was that this was, you know, cities were going to get 80% of something that they weren't going to get otherwise.

HELEN ROSENBERG: Yeah, and I had thought of it that way and it was pointed out this morning well, it's possible that just by cleaning up a property, the way the assessments work that in every case the value might not increase, especially if there's negative value. It would just less a negative.

REP. STRATTON: Thank you. Representative Maddox.

REP. MADDOX: Just picking up on Chairman Stratton's point. I have no problem in saying the state will take back for this fund 20% of your tag of taxes collected. But then, of course, if it's a nonpaying tax and it would ultimately be sold at a tax foreclosure sale, we get 20% of the revenue too

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or the fund does.

But it would seem to me that it would be fair to put the building and all improvements to the property there because you have the choice up front of whether or not to enter into the fund. Now if it wasn't economically viable to enter in, you simply wouldn't do it. If it's a small cost of clean up, you simply wouldn't enter into the fund. It would be stupid to enter into the fund.

HELEN ROSENBERG: Is there an option there? I didn't think so. It's all properties remediated and signed off by the DEP.

REP. MADDOX: Okay, I didn't --

REP. STRATTON: I think the issue of future or nonexistent tax revenues versus existing tax revenues and changes in them is something that we certainly can look at.

HELEN ROSENBERG: To tell you the truth, I don't think -- I think the majority of cases will involve an increase in tax revenue.

REP. STRATTON: Any other?

REP. MADDOX: The only other thing I guess I will just respond to, I mean, that obviously if you wanted to do it and just to equalize taxation, I mean, I don't even know how you could calculate that. You're asking us to take 20% of your share, but then equalize it to other towns. It just doesn't work because you're going to have to keep 80%. I mean, that just doesn't work.

HELEN ROSENBERG: I'll have to think that one out. I'm sure there's a way. Just it would be New Haven with our 61 point mill rate, we would be at a distinct disadvantage --

REP. MADDOX: Well, the hope is that you would bring back a lot of properties that may be contaminated and either are not paying now for whatever reason or, you know, eventually when you do a reval the market is going to reflect that if you've got 20

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acres of land that's totally contaminated and not buildable, the assessment is virtually nothing on it anyway.

HELEN ROSENBERG: Well, I do see, I mean that's why we're certainly in favor of some sort of city participation in this because I think ultimately we'll gain. Thanks.

REP. STRATTON: The last person to testify in this section of the public hearing, Rita Lomasney from the Hazardous Waste Management Service.

RITA LOMASNEY: Good afternoon, Chairman Stratton and members of the committee.

My name is Rita Lomasney and I'm the manager of ConnTAP, the Connecticut Technical Assistance Program, which is a division of the Connecticut Hazardous Waste Management Service. I'd like to comment on SB263, AN ACT CONCERNING VARIOUS SOLID WASTE PROGRAMS.

The bill would authorize DEP to use funds from the solid waste account for the purpose of pollution prevention.

Our organization strongly supports the concept of pollution prevention and believes that cost effective pollution prevention solutions can bring Connecticut businesses into compliance with environmental regulations.

We believe there is a role for DEP to play in encouraging pollution prevention solutions. We support the use of funds from the solid waste account for DEP's pollution prevention program.

We look forward to continuing to work cooperatively with the commissioner and his staff to find ways to implement DEP's new program without duplicating the assistance ConnTAP provides.

We currently provide a variety of free services to the state's businesses to assist them in identifying an implementing pollution prevention solutions. One of these is customized, on-site

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damage, which again would be incompatible with the purpose of the statute.

Also, lines 370 through 374, as consistent with the others should be deleted and could I just mention about the remedial courses.

The people I know in the last two years who have taken the hunting safety courses required for new hunters have in spite of DEP assurances for several years, never been required to so much as touch a gun. So we do wonder and we have some concern as to what the remedial course would consist of and hope would be a very serious one.

REP. STRATTON: Thank you, Julie. Are there questions? Thank you. Tom Turick followed by Bob Crook.

TOM TURICK: Senator Cook, Representative Stratton, members of the environment committee, good afternoon. My name is Tom Turick. I'm environmental manager with the Connecticut Business and Industry Association. I'm here before you this afternoon to speak briefly on two bills: HB5346 and 5347. I prepared to pieces of written testimony. I trust the clerks have distributed to you.

First of all, with HB5347, REVISIONS TO THE HAZARDOUS WASTE ESTABLISHMENT TRANSFER ACT. We have no problems with this bill. Most of the changes seem to be technical and minor in nature. But we would offer one friendly amendment and it's an important one we think.

It's in section 9, lines 338 and 339, which deal with the fee for anyone seeking a covenant not to sue. As you remember, a covenant not to sue as a mechanism was incorporated into last year's major clean up bill, 95-190, and it indeed is a major incentive for a company to go forward and do remediation.

I'm pleased to say that DEP is in the process of implementing the covenant not to sue component into its clean-up programs. It issued a major covenant not to sue a short while ago, and we anticipate in the year to come and in years to come it will be a

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widely used mechanism, which gets me to the fee.

The language in 95-190 which again, is going to possibly be incorporated here in 5347, speaks to a 3% of the value of the uncontaminated property. There's two problems there. Property, do we mean the total property or do we mean that portion of the property that is contaminated. And I believe we're speaking of the entire property.

When the bill was put together last year, I think it presupposed that contaminated property had no value so it would be going from zero to some value and then 3% of that would be taken as a filing fee for a covenant not to sue.

But many properties indeed do have value. You may have \$100,000 property that a \$25,000 clean up goes forward and the property becomes worth \$125,000. We think it's fair that the 3% be assessed on the difference between the property, the entire property, not just the contaminated parcel, prior to clean up as it relates after clean up.

So we would like to see some language to clarify what we see as an ambiguity there.

Also, 5346, the special fund for remediation. CBIA was happy to participate on the task force which did a lot of good work, which resulted in four major sources of potential funding to this fund. I won't go on about how important this fund is and for the various reasons it is the insurance fund so to speak, so that covenants not to sue can be issued and, of course, it's very valuable for anyone, be it municipality or business or an individual who wants a low-interest loan to do investigatory work, leading up to remediation.

We wholeheartedly support 5346. Thank you. If there's any questions.

REP. STRATTON: Thank you very much, Tom. Are there any questions? Representative Mushinsky.

REP. MUSHINSKY: Thank you Madam Chair. I don't know if I'm the only one that got testimony for the energy

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that we would certainly favor a properly structured statute in that regard.

SEN. COOK: Thank you. We'll get back to you.

BOB WRIGHT: Thank you, Senator.

GREG SHARP: Senator Cook, Representative Stratton, members of the environment committee, my name is Greg Sharp. I'm an environmental lawyer at Murtha, Cullina, Richter and Pinney and some of you may recall I was on Commissioner Holbrook's Transfer Act Task Force last year.

I have a few comments on RB5347. What I'd basically like to do is offer some minor, well, small drafting, major impact, friendly amendments to that bill.

The amendments I'd like to offer deal with the definition of establishment, which is the key term that drives the transfer act. One of my changes has already been picked up by the department in the amendments to their bill, so I won't go into the syntactic change I was going to propose.

The two important changes that I would like the committee to consider, number one are an express exclusion from the definition of establishment for a victim of pollution.

In other words, under the statute that exists today you could read it to mean that if your property is contaminated from pollution that comes onto your land, that that site is a site where disposal of hazardous waste from another person has occurred as passive disposal. I have given you language attached to my two-page statement that would carve out an exception for people in that situation.

I believe this is consistent with the way the department reads the statute, but we should make it clear in the legislation that that's how it works.

Second change is with respect to the word vehicle. As the committee may recall last year, the original statute talked about auto body repair and painting

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shops. The task force has a number of questions about what that meant. We put in the word vehicle body repair and vehicle painting shops to make it clear that we were talking about painting of vehicles as opposed to just painting.

And to make it clear the reason we use vehicle was we wanted to make it clear that it covered both cars and trucks. In other words, an auto body repair shop could be read to mean to exclude a collision shop that worked on only trucks.

That's how the word vehicle got in the amendments last year. Unfortunately if you look at the definition of vehicle in the motor vehicle statutes, it's so broad that it includes almost anything under the sun.

What I'm suggesting is that the committee should define vehicle specifically for purpose of the establishment definition to mean an automobile, bus, truck or truck/tractor, but exclude aircraft, boats, rail cars, farm tractors.

I think that was the intent. The intent was to deal with commercial collision repair shops and this would do that.

At the present time there is concern that aircraft painting, boat painting and so on could be covered by this statute and that was never the department's intention or the task force.

SEN. COOK: Thank you very much, Greg. Are there questions? Representative Norton.

REP. NORTON: The recommended change in your testimony that talks about which and the innocent victims. Is that for the area that you already said has been resolved? The last page of your hand out?

GREG SHARP: The innocent victim part has not been changed, but the which issue has been changed. The department has submitted the clarifying amendment to its bill that would deal with that in much the same way I did.

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REP. NORTON: I did want to ask cause I don't know what they proposed unfortunately. When I look at this last page 3, then there's A, B and C?

GREG SHARP: Yes.

REP. NORTON: And is that -- you're no longer offering that recommendation?

GREG SHARP: Well, I guess what I'm saying is I'm offering, I think it clarifies it better if you do the A, B, C, D, E. The department's change effectuates the same result without having an additional subsection or subparagraph.

But, the department's version does not have the exception for the innocent victim.

REP. NORTON: Okay. Which is to say the language beginning except that any real property or business operation?

GREG SHARP: That's right.

REP. NORTON: I just wanted to ask. In your version A and B, does the fact that on or after November 19, 1980 is included in A, but isn't a preface or preparatory remark to B, mean that the B category might not have that date restriction?

GREG SHARP: That's correct. And it's my understanding, I did check with the department on this before I wrote it and their interpretation is that the part of the definition that deals with recycling, re-use, reclaiming and so on, has never been subject to the date restriction.

And so I didn't want to get into a policy issue with them so I left it that way myself.

REP. NORTON: I see. Thank you, Madam Chairman.

REP. STRATTON: Any other questions? Thank you, Greg. Al Smith followed by Rita Lomasney. Rita, do you want to -- no. I just didn't know whether you were just eager to talk to us a lot. Greg will be followed by Tim and I can't read the last name.

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Beaulieu, I think.

AL SMITH: Good afternoon. My name is Al Smith. I'm a partner of Greg Sharp's at Murtha, Cullina, Richter and Pinney and I also serve as a member of the board of directors of the Greater New Haven Chamber of Commerce and I'm offering comments on RB5346 today on behalf of the Chamber.

I had the privilege of serving on the Site Remediation Committee, co-chaired by Senator Cook and Representative Stratton, whose work resulted in the proposal contained in 5346.

By way of background, the Site Remediation Committee was established to recommend the funding mechanism for the Special Contaminated Remediation and Insurance Fund established under Public Act 95-190. The establishment and financing of that fund is critical to the redevelopment and remediation of contaminated property in the state, particularly in distressed municipalities because it provides for loans to municipalities and property owners for site investigation and demolition activities, and also to encourage the use of the innocent land owner statute and covenants not to sue.

I believe that the funding mechanism contained in 5346 is adequate to jumpstart the program, although I guess that most on the committee would like to see as much money as possible made available. I think this is an adequate start and I think it's particularly important to note that it provides funding without the necessity of any new taxes or of the time honored tradition of raiding other funds.

With that I ask for your support for 5346 and thank you for the opportunity to comment.

REP. STRATTON: Thank you, Al. Again, thank you for your participation too in the task force. Are there any questions. Thank you. Tim Beaulieu, is he still here? If not, Dot Hayes followed by Captain Kehlenbach. Is Dot here?

DOT HAYES: Representative Stratton and Senator Cook,

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TESTIMONY OF
THOMAS J. TURICK
CONNECTICUT BUSINESS AND INDUSTRY ASSOCIATION
BEFORE THE
ENVIRONMENT COMMITTEE
LEGISLATIVE OFFICE BUILDING
HARTFORD, CONNECTICUT
FEBRUARY 23, 1996

Good Morning. My name is Thomas J. Turick. I am environmental manager for the Connecticut Business and Industry Association (CBIA). CBIA represents over 9,000 companies in the state. Our membership includes many of the state's largest employers, but over 90 percent of our members are small businesses with fewer than 50 employees.

Thank you for the opportunity to comment today on **HB 5347- An Act Concerning Revisions to the Hazardous Waste Establishment Transfer Act and Remediation of Contaminated Property.**

HB 5347 proposes to make a variety of changes to the Transfer Act. Most of these changes appear to be minor and technical in nature and are intended to clarify provisions found in a more major Transfer Act bill passed last legislative session.

CBIA, however, as a friendly amendment and also for purposes of clarification suggests that in sec. 9, lines 338 and 339 be reworded so as to more fully explain that the covenant not to sue fee be equal to three percent of the difference in the appraised value of the entire parcel of which the contaminated property is a part before and after it is remediated.

Such a change removes the ambiguity as to what is meant by "property" and it sets out a more direct formula for calculating "value" upon which the fee will be based.
Thank you.

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STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Public Hearing - February 26, 1996
Committee on the Environment

Testimony submitted by Commissioner Sidney J. Holbrook
Department of Environmental Protection

R.B. 5347 - An Act Concerning Revisions to the Hazardous Waste Establishment Transfer Act and Remediation of Contaminated Property
LCO No. 1415

The Department of Environmental Protection urges you to support this proposal, which is intended to address a number of issues which arise as a result of the comprehensive revision of the property transfer law and the enactment of P.A. 95-190 last session. The Department believes that those legislative initiatives will significantly expedite and enhance the process for remediating sites in Connecticut, and in doing so will contribute substantially to the economic revitalization of the State.

A detailed section-by-section summary of the bill is set forth below. In general, however, the majority of the changes focus on refining definitions of terms and clarifying specific language in light of the Department's experience in implementing the revised property transfer law. The most comprehensive of these changes is a revision of the language associated with the fees for property transfer filings under the new law, in an effort to make that language more understandable. The bill does not change the fees for property transfer filings. The legislation also proposes simplifying the procedure for handling the subordination agreements associated with environmental land use restrictions. The legislation contains language which would ensure that the Commissioner has sufficient information to evaluate a request for a covenant not to sue under P.A. 95-183, and proposes imposition of a fee for covenants not to sue issued under said P.A. 95-183 consistent with the fee imposed for such covenants under P.A. 95-190. The legislation delays the use of the Special Contaminated Property Insurance and Remediation Fund until a pledged revenue source has been identified, and in the proposed language changes to this bill, the Department recommends deletion of the requirement that property transfer law fees be deposited in that Fund.

Section 1.

This section contains several revisions to the definitions contained in section 22a-134 of the General Statutes.

- o Revises the definition of "transfer of establishment" to: (1) require that an environmental condition assessment form be submitted with a notice of

subdivision, to give the Commissioner sufficient information to determine whether the proposed subdivision raises any environmental issues; and (2) add language explicitly excluding the conveyance of a service station from the definition. It is important to note that the conveyance of a service station has never been subject to the requirements of the property transfer law; however, this exclusion was also never explicitly stated.

- o In the recommended changes to the specific language of this bill, we propose that the definition of "establishment" be revised to eliminate a grammatical problem which could create ambiguity.
- o As discussed above, because the "transfer of a service station" has never been subject to the property transfer law, it is unnecessary to have a definition of that term in the statute. Accordingly, this proposal would delete that definition.
- o In the recommended changes to the specific language of this bill, we propose that the definition of "party associated with the transfer of an establishment" be revised to specify that the owner of the parcel upon which the establishment is located falls within this definition. This will eliminate confusion in those situations where the owner of the establishment which is being transferred (i.e. the business) is different from the owner of the subject real property.
- o The definition of "party associated with a transfer" is proposed to be revised to clarify that the owner of a subject parcel, where different from the owner of the establishment, falls within the definition and therefore may sign a Form III or Form IV.
- o In specific language changes to the bill, we recommend that the definition of "Form II" be clarified to indicate that any verification by a licensed environmental professional used as the basis for a Form II must be in writing and submitted with the Form II, and further that the definition of "verification" be revised to clarify that any verification by a licensed environmental professional must be in writing.

Section 2. Prior to last year's revision of the property transfer law, it was clear that a person filing a Form III was required to provide the transferee with a copy of such form. The purpose of this section is to clearly specify that the transferee must be provided with a copy of a Form III or Form IV.

Section 3. The purpose of this section is to revise the definition of "cost of remediation" which is used to calculate the full fee for a Form III or Form IV to make explicit that the definition encompasses the total cost of the investigation and remediation of the parcel.

Section 4. Subsection (e) of section 3 of P.A. 93-183 provides that the \$2000 fee paid at the time of submission of an environmental condition assessment form to the Commissioner in conjunction with the voluntary remediation of a parcel pursuant to that section shall be credited against any fee required to be paid if the subject parcel is transferred within 3 years of the date of that environmental condition assessment form. Because of a drafting error, this language

requires a refund in some cases where the balance of the transfer fee is less than the \$2000. The changes in this section are intended to correct that drafting error. In addition, in specific language changes to this section, the Department recommends changes to make the fee provisions for transfers easier to understand. The complexity of these provisions impose a substantial burden on Department staff to answer questions about the applicable fees and schedule for payment of those fees. It is important to note that these revisions do not change the amount of the fees.

Section 5. In light of last year's changes to the procedures for processing a form filed under the property transfer law, this bill would delete the language in section 22a-134e(e) referring to the Commissioner's approval of a remediation pursuant to an administrative order, since the Commissioner will not, under the revised law, be required to issue an administrative order to bring closure to a remediation under the property transfer program.

Section 6. This proposal would specify that the Commissioner may take enforcement action for any violation of the property transfer law. The law presently specifies that enforcement action may be taken for improperly filing a Form I or II or for failing to carry out any actions specified in a Form III or Form IV.

Section 7. The purpose of this change, if revised in accordance with the recommended language changes attached hereto is to specify that with respect to voluntary remediation under section 3 of P.A. 95-183, "municipality" means the 169 municipal subdivisions of the state.

Section 8. The purpose of this change is to specify that any person requesting a covenant not to sue from the Department must investigate the environmental condition of the parcel which is proposed to be the subject of the covenant. Without the information, it is not possible for the Commissioner to evaluate the extent of the State's potential liability in the event that the parcel is not remediated adequately.

Section 9. The covenant not to sue provision in P.A. 95-190 requires the payment of a fee to the Commissioner, and the purpose of this change is to create a similar fee for a covenant not to sue under P.A. 95-183. Such fee would be deposited into the Environmental Quality Fund, until identification of a pledged revenue source for the Special Contaminated Property Insurance and Remediation Fund created by P.A. 95-190, after which time the fee would be deposited to that fund.

Section 10. The purpose of this change is to make it clear that nothing in P.A. 95-190 exempts any person from the requirement to comply with the property transfer law. This change is necessary because the revision of the property transfer law last year eliminated the requirement that the Commissioner approve property transfer remediations pursuant to an administrative order, creating a potential ambiguity as to the effect of P.A. 95-190.

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Section 11. The purpose of this section is to simplify the procedure for gaining approval of and recording an environmental land use restriction. Although licensed environmental professionals may approve environmental land use restrictions, only the Commissioner can approve the subordination agreements which are required to accompany environmental land use restrictions. The subordination of other interests in the subject property is fundamental to the success of the environmental land use restriction. This proposal would streamline this portion of the process by replacing the requirement for the Commissioner's approval of the subordination agreements with a requirement that such agreements be recorded simultaneously with the environmental land use restriction, and that a certificate of title be submitted to the Department indicating that all such other interests have been subordinated.

Section 12. The purpose of this section is to specify that the authority to expend monies from the Special Contaminated Property Insurance and Remediation Fund is not effective until a pledged revenue source for such fund has been identified.

Section 13. The recommended language changes submitted with this testimony would revise this section to delete the requirement that fees from the property transfer program be deposited in the Special Contaminated Property Insurance and Remediation Fund. In the absence of that requirement, such fees will continue to be deposited in the Environmental Quality Fund.

R.B. 5347
LCO No. 1415

Recommended Language Changes

- Line 62: Revise to read as follows: "any one month or THERE WAS HAZARDOUS WASTE GENERATED BY ANOTHER PERSON OR MUNICIPALITY [which] recycled, reclaimed, reused, stored,"
- Lines 63-4: Insert brackets around the words "hazardous waste generated by another person or municipality"
- Line 120: Revise to read as follows: "establishment" means (A) the owner of the PARCEL [establishment], (B) the
- Line 139: After the word "22a-133z" insert "IN A WRITING ATTACHED TO SUCH FORM"
- Line 184: Insert brackets around the the word "an" and before the word "opinion" insert the words "A WRITTEN"
- Line 208: Revise to read as follows: "include TOTAL costs related to THE COMPLETE investigation of pollution on-site"
- Lines 216-231: Delete and substitute in lieu thereof:
- (m) ON AND AFTER OCTOBER 1, 1995, THE FEE FOR FILING A FORM III OR FORM IV SHALL BE DUE IN ACCORDANCE WITH THE FOLLOWING SCHEDULE. [On and after the effective date of this act,] an initial fee of two thousand dollars shall be submitted to the Commissioner with the filing of a Form III or Form IV. If a licensed environmental professional verifies the remediation of the parcel and the Commissioner has not notified the certifying party that the Commissioner's written approval of the remediation is required, no ADDITIONAL [subsequent] fee shall be due. If the Commissioner notifies the certifying party that the Commissioner's written approval of the remediation is required, [any subsequent fee shall be due] THE BALANCE OF THE TOTAL FEE SHALL BE DUE thirty days after the Commissioner issues his final approval of the remediation.
- (n) ON AND AFTER OCTOBER 1, 1995 THE [The subsequent] TOTAL fee for FILING a Form III shall be as follows [and the subsequent fee for a Form IV shall be fifty percent of the following amounts]: (1) [twenty-one] TWENTY-THREE
- Line 236: Delete the word "THIRTEEN" and replace with the word "FOURTEEN".
- Line 239: After the words "FOUR THOUSAND" insert the word "FIVE HUNDRED".

Line 247: Revise to read as follows:

(o) ON AND AFTER OCTOBER 1, 1995, THE TOTAL FEE FOR FILING A FORM IV SHALL BE AS FOLLOWS: (1) ELEVEN THOUSAND FIVE HUNDRED DOLLARS IF THE TOTAL COST OF REMEDIATION IS EQUAL TO OR GREATER THAN ONE MILLION DOLLARS; (2) TEN THOUSAND DOLLARS IF THE TOTAL COST OF REMEDIATION IS EQUAL TO OR GREATER THAN FIVE HUNDRED THOUSAND DOLLARS BUT LESS THAN ONE MILLION DOLLARS; (3) SEVEN THOUSAND DOLLARS IF THE TOTAL COST OF REMEDIATION IS GREATER THAN OR EQUAL TO ONE HUNDRED THOUSAND DOLLARS BUT LESS THAN FIVE HUNDRED THOUSAND DOLLARS (4) TWO THOUSAND TWO HUNDRED AND FIFTY DOLLARS IS EQUAL TO OR GREATER THAN FIFTY THOUSAND DOLLARS BUT LESS THAN ONE HUNDRED THOUSAND DOLLARS (5) TWO THOUSAND DOLLARS IF THE TOTAL COST OF REMEDIATION IS LESS THAN FIFTY THOUSAND DOLLARS.

[(n)](p) Notwithstanding any other provision of this section, the

Line 253: Insert brackets around "(m)" and insert "(n)"

Lines 301-3: Revise to read as follows: "THE PURPOSES OF THIS SECTION, "MUNICIPALITY" SHALL MEAN ANY OF THE 169 MUNICIPAL SUBDIVISIONS OF THE STATE."

Line 334: Revise to read as follows: "the Environmental Quality Fund, until the date of identification of a pledged"

Lines 390-1: Revise to read as follows: "THE COMMISSIONER A CERTIFICATE OF TITLE INDICATING THAT EACH INTEREST IN SUCH LAND OR ANY PART THEREOF IS IRREVOCABLY SUBORDINATED TO THE ENVIRONMENTAL USE RESTRICTION IN ACCORDANCE WITH SAID SUBSECTION (b)

000247

Testimony of the City of New Haven
In Regard to Raised Bill No. 5347:
An Act Concerning Revisions to the Hazardous
Waste Establishment Transfer Act and Remediation
of Contaminated Property

February 26, 1996

The City of New Haven supports in large part the clarification of the Transfer Act which is accomplished by these proposed Revisions. However, the City does have a few concerns regarding the Revisions.

Section 1 of the Revisions adds the requirement of filing an Environmental Condition Assessment Form when transferring an uncontaminated portion of a larger parcel to exempt such a transfer from the requirements of the Transfer Act. It is unclear whether the filing of this form would require payment of the \$2000 fee otherwise required to accompany such an Assessment. The City believes it might be appropriate to waive this fee in this limited circumstance.

Section 9 of the Revisions adds the imposition of a fee of 3% of the value of the property appraised as if it were uncontaminated on any person receiving a covenant not to sue. The City is concerned that the imposition of a fee for a covenant not to sue will be a deterrent to a private parties' willingness to redevelop these sites and is inappropriate.

Section 12 of the Revisions discusses the Special Contaminated Property Remediation and Insurance Fund and states for what the funds can be used. Subsection (b)(1) allows for loans to municipalities, individuals and firms for investigation of the environmental condition of real property and for "any costs of demolition undertaken to prepare such property for development." The City requests that the costs of demolition be clarified and made to include the costs of preparing the building for demolition including, but not necessarily limited to, addressing the presence of asbestos, lead paint, or other environmental hazards contained within the building which must be addressed prior to actual demolition and be made to include the removal and disposal of demolition debris, including contaminated demolition debris.

000248



CONNECTICUT BANKERS
ASSOCIATION

To: Environment Committee Members
From: Connecticut Bankers Association
Contacts: Gerry Noonan/Tom Mongellow
Re: H.B. 5347 - AN ACT CONCERNING REVISIONS TO THE HAZARDOUS
WASTE ESTABLISHMENT TRANSFER ACT AND REMEDIATION OF
CONTAMINATED PROPERTY.
Position: Support with Revision

The Department of Environmental Protection currently has clean up standards that define what the maximum allowable level of hazardous waste may be on a property. If these levels are at or below the maximum allowed, the property is deemed to be cleaned up.

Section 12 starting on line 143 requires a party to complete a Form III certification even when the property is at or below DEP applicable cleanup standards.

This is an unnecessary issuance of a Form III. It automatically suggests a "problem" property when it's actually clean, which puts the owner at a disadvantage when attempting to sell it.

To correct these situations from continuing, Raised Bill H.B. 5347 should read as follows:

[Line 147]

Waste has occurred AT LEVELS ABOVE APPLICABLE CLEANUP STANDARDS at the parcel or the

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000249

MURTHA, CULLINA, RICHTER AND PINNEY

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GREGORY A. SHARP
(860) 240-6046

February 26, 1996

Senator Catherine Cook, and
Representative Jessi Stratton
Co-Chairs, Environment Committee
General Assembly
Legislative Office Building
Hartford, Connecticut 06106

Re: Proposed Amendments to Raised Committee Bill No. 5347

Dear Senator Cook and Representative Stratton:

As you know, the Department of Environmental Protection has proposed certain revisions to the Hazardous Waste Establishment Transfer Act in Raised Bill Number 5347.

Unfortunately, the Bill does not clarify several important issues which arose from last year's Transfer Act amendments. As a member of the Commissioner's task force which worked with the Department in proposing a comprehensive revision of the statute, and as a practitioner who deals with the Transfer Act on a daily basis, I would propose the following changes which are consistent with Department policy, consistent with the changes made last year, and clarify the critical definition of "Establishment" contained in Section 22a-134(3), which is set out between lines 58 and 68 of the Raised Committee Bill.

First I would propose to change the establishment definition to clarify that a site which is otherwise not an establishment, does not become one by virtue of the existence of contamination at the site which originates from an off-site source. It is my understanding that the Department has not interpreted the Transfer Act to make the victim of pollution an establishment, but the language should be clarified, as this issue is frequently raised.

Second, I would propose to make a minor change to the second part of subparagraph (A) which begins "or which recycled, reclaimed, reused..." This language is at line 62 of the Raised Committee Bill. Unfortunately, the changes made to the first part of the establishment definition last year renders the

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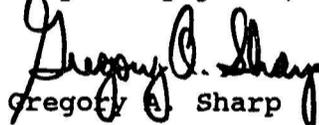
Senator Catherine Cook, and
Representative Jessi Stratton
February 26, 1996
Page 2

"which" in that phrase essentially meaningless. I have proposed language to remedy that problem.

Third, last year's amendments changed subparagraph (D) of the establishment definition concerning auto body repair shops to read "vehicle body repair shop or vehicle painting shop." This language is at lines 66 and 67 of the Raised Committee Bill. The purpose was to make it clear that shops which perform collision repairs or painting of trucks was included in the definition. Unfortunately, however, vehicle was not defined in last year's amendments, and the motor vehicle statutes contain an extremely broad definition of vehicle, which would include aircraft, boats, railcars, etc. This definitional problem has caused a great deal of concern among lawyers, clients, and lenders about the breadth of activities which are covered. Accordingly, I have proposed to limit the term "vehicle" for purposes of the vehicle body repair or vehicle painting shop definition to vehicles which are automobiles, buses, trucks, or truck tractors. For clarification, I have specifically proposed to carve out aircraft, boats, railroad cars or engines, or farm tractors. I believe this definition of vehicle is consistent with the Department's interpretation of what was intended last year and reflects the realities of the kinds of facilities which have the greatest likelihood of posing contamination issues, i.e. commercial collision repair shops.

Enclosed with my testimony is the language which I have proposed to effect these changes. Thank you for considering these proposals.

Very truly yours,


Gregory A. Sharp

Enclosures

cc: Ms. Elsie B. Patton
Mr. Betsey C. Wingfield
Ms. Pamela P. Sucato

000251

ATTACHMENT TO TESTIMONY OF GREGORY A. SHARP
RE: REVISIONS TO TRANSFER ACT

Proposed Amendments to Raised Committee Bill 5347, which revises
Section 22a-134 et seq. of the General Statutes:

Section 22a-134:

(3) "Establishment" means any real property at which or any business operation AT OR from which (A) on or after November 19, 1980, there was generated, except as the result of remediation activities, more than one hundred kilograms of hazardous waste in any one month, [or which] (B) HAZARDOUS WASTE GENERATED BY ANOTHER PERSON OR MUNICIPALITY WAS recycled, reclaimed, reused, stored, handled, treated, transported or disposed of [hazardous waste generated by another person or municipality], EXCEPT THAT ANY REAL PROPERTY OR BUSINESS OPERATION WHICH IS NOT OTHERWISE AN ESTABLISHMENT SHALL NOT BE CONSIDERED TO BE AN ESTABLISHMENT IF HAZARDOUS WASTE HAS MIGRATED THROUGH THE AIR, SOIL, GROUND WATER OR SURFACE WATER ONTO, UNDER OR THROUGH SUCH REAL PROPERTY OR BUSINESS OPERATION FROM A SOURCE NOT LOCATED ON SUCH REAL PROPERTY OR AT SUCH BUSINESS OPERATION, [(B)] (C) the process of dry cleaning was conducted on or after May 1, 1967, [(C)] (D) furniture stripping was conducted on or after May 1, 1967, or [(D)] (E) a vehicle body repair shop or vehicle painting shop is or was located on or after May 1, 1967.

(NEW) "VEHICLE" MEANS AN AUTOMOBILE, BUS, TRUCK, OR TRUCK TRACTOR, BUT DOES NOT MEAN AN AIRCRAFT, BOAT, RAILROAD CAR OR ENGINE, OR FARM TRACTOR.

Note: Deletions indicated by brackets ([]).
Additions indicated by ALL CAPS.