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Mr. Clerk.

THE CLERK:

Calendar Page 23, Calendar Number 722, Files  
Numbers 314, 956, and 1027, substitute for House  
Bill 6097, AN ACT CONCERNING BROWNFIELDS DEVELOPMENT  
PROJECTS, favorable report of the Committees on Energy  
and Technologies, Planning and Development,  
Appropriations, and Judiciary.

THE CHAIR:

Senator LeBeau.

SENATOR LeBEAU:

Thank you, Mr. President. I move acceptance of  
the joint committees' favorable report and passage of  
the bill, in concurrence with the House.

THE CHAIR:

Acting on acceptance and approval of the bill,  
sir, would you remark further?

SENATOR LeBEAU:

Yes, Mr. President. Very briefly, this bill  
empowers municipalities to better control their own  
destinies by allowing them to identify, investigate,  
and ultimately remediate, for tax benefits, properties  
that have been deemed as "brownfields." It also  
establishes timelines to help move the process along.

Mr. President, the Clerk has an amendment,

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LCO Number 9129. I would ask that he call it and I be allowed to summarize.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 9129, which will be designated Senate Amendment Schedule A. It is offered by Senator LeBeau, of the 3<sup>rd</sup> District, et al.

THE CHAIR:

There's a motion on the floor for summarization. Seeing no objection, please proceed, sir.

SENATOR LeBEAU:

Thank you, Mr. President. I move the amendment.

THE CHAIR:

There's a motion on moving adoption. Without objection, please proceed.

SENATOR LeBEAU:

Thank you, Mr. President. The most important part of this amendment is that it strikes Section 5 of the original bill, which had led to some discord. And I believe that with this section out, the Senate can act on this in unanimity. Thank you, Mr. President.

THE CHAIR:

Thank you, sir.

Will you remark further on Senate Amendment A?

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Senator DeBicella.

SENATOR DEBICELLA:

Thank you, Mr. President. Mr. President, I'd like to stand in support of both the amendment and the underlying bill. Mr. President, I think that Senator LeBeau has done a fantastic job, not just this year but in previous years, as well, moving forward the cause of brownfield remediation.

And, Mr. President, what the amendment and the bill before us tonight actually does is, it is going to make it easier for us to remediate properties throughout the State of Connecticut that are brownfields or for those watching at home, fields that have historical pollution in them. And, Mr. President, the bill before us tonight, and after this amendment passes, actually will enable municipalities to be protected from liability that they might not be responsible for.

So very often there are polluters who, back in the 1950s and '60s, actually had polluted the ground or from before that. And so in order to have new businesses come in, we need to actually have a -- have the DEP go through a regulatory review cycle. In doing so, a part of that is to determine if there's any liability that a company might have had towards

cleaning up that brownfield. In doing that, this bill would actually ensure that municipalities would not have as broad a scope of liability as they otherwise would have if they were actually the company who had done the polluting. Therefore, Mr. President, this bill is going to, by limiting liability, actually help us to remediate more brownfields in Connecticut.

And, Mr. President, this is something that, you know, is very near and dear to my heart. In my own district, we have quite a few brownfields, whether it is the Army Engine Plant, in Stratford, or a number of properties along the Housatonic River, in Shelton, that used to have factories in them and significant amount of pollution. And this is an area where actually government agencies, including the Army, in the case of the Army Engine Plant, have actually taken over the properties. And in taking over the properties, Mr. President, this bill, if I understand it correctly, would actually ensure that we did not hold those municipalities or government bodies liable for the pollution that may have occurred at a previous time.

So, Mr. President, in looking at the amendment -- which the amendment before us strikes several portions of the bill -- I believe, again, Senator LeBeau has

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done an admirable job in crafting this to ensure that we are making the limitations of liability that are within this bill as workable as possible.

And, Mr. President, if you actually look at this amendment, it is largely technical in nature, although in Line 727 of the bill -- which it's a rather large bill -- does insert language around certifying the verification that the Commissioner of DEP is actually doing, through the course of the remediation work, certifying that the parties' making reasonable progress. In doing this, Mr. President, I believe that the amendment is improving the bill in insuring that the Commissioner, when doing such reviews, is doing them in such a way that they are collaborating with the municipality or the quasi-governmental agency that might have ownership over the brownfield in managing its remediation.

Now, Mr. President, in looking at the other aspects that Senator LeBeau brought out, one of which was where he had mentioned that the amendment strikes Section 5 in its entirety, and, Mr. President, looking at the underlying bill, the Section'5, the section that we are actually striking from the bill, in reviewing, it seems to say that, you know, no person, firm or corporation shall be liable for reimbursement

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costs unless that person is -- received notice and given the opportunity to participate. And my assumption, Mr. President, in looking at this is that this is likely to be redundant with existing practice that is within DEP, in terms of actually pursuing a collaborative effort with municipalities or quasi-governmental agencies to clean up the brownfields.

So, Mr. President, I believe this amendment is a positive one towards making the bill an even better bill that Senator LeBeau fully intends it to be. And, Mr. President, my hope is that with this bill and with the passage of this bill tonight -- and passage of this amendment and passage of the bill tonight, that we will actually make significant progress on many of the projects around our state.

Again, as I had mentioned, there are projects personally in my district that I believe will benefit from having a bill such as this. And as we are moving forward with the remediation projects, such as probably the largest one, in my district, being the Army Engine Plant, in Stratford, this bill is going to help us move through that remediation process faster so that we can get more businesses moving into Connecticut, that we can actually have more jobs

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created.

And I just, once again, want to thank Senator LeBeau for this, for actually taking a leadership position on brownfields. I was lucky enough to serve on the Commerce Committee -- in my first term -- with him, and he's done a fantastic job with this. So, again, thank you, Senator LeBeau, and I support the amendment.

THE CHAIR:

Thank you, sir.

Will you remark further on Senate A?

Senator Boucher.

SENATOR BOUCHER:

Thank you, Mr. President. Mr. President, I also rise to support this amendment.

Connecticut is an amazing state. It has an amazing diversity of landscape, but it also has had an interesting industrial background that spans its very origins from the Revolutionary War days, to the Civil War days, to the two Great Wars as well as being the provider of munitions, of grass, of bullets, and as a result, over those many years, has polluted a good portion of some of Connecticut's most beautiful valleys.

And, in fact, one of the things that I found that

really help to make those long drives, those hour-and-a-half -- as you well know, Mr. President, as you do that as well -- from the lower-Fairfield County to here, that hour-and-a-half drive one way and the hour-and-a-half back -- that's three hours every day -- is the ability to read a number of books-on-tape. And the latest one that I picked up was The War, The Great War, that is a PBS series. And it chronicles the Second World War, seen through the eyes of residents from four small communities throughout this country: Mobile, Alabama, a town in Minnesota, Sacramento, and Waterbury, Connecticut.

It's fascinating to listen to the stories about Scovill Manufacturing, that's located in Waterbury, and how instrumental it was in trans -- quickly transforming itself from the manufacturers of certain goods to wartime needs, on 24-hour shifts. And as they were producing these, they were in those days not very much aware of the kind of waste materials that they were pouring into the Naugatuck River bed, which is something I'm keenly familiar with because along that Naugatuck River bed is also what was once located, the Naugatuck Chemical and Uniroyal.

And, in fact, many might not realize that in Connecticut we had one of the largest tire

manufacturers in the world located right here in our very State of Connecticut. But unfortunately during that period, a great deal of pollution would pour into the Naugatuck River, and it would turn into various colors on any give day; you can practically cut the air with a knife until such time as antipollution devices were required to change that.

But in those riverbeds and in many part of Connecticut now lay a number of brownfields that are critical to reclaiming some of those very important and very beneficial assets to the State of Connecticut. And in order to reclaim them, we need to provide some amount of liability relief to any new purchasers of those particular pieces of property. And as I said, they span the entire State of Connecticut, in almost every one of our districts. And that is usually a barrier to any new purchaser of property or someone that's willing to invest their businesses in our state.

We have a good model for this, in fact, in the State of Massachusetts, just one of our neighboring states, that has had landmark brownfield legislation for many years and has really taken the lead, and something that the State of Connecticut has tried to model, I think, over the period of time. We've come

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close and maybe this legislation brings us even closer, so that we can have competitive parity, so that we also can attract and grow investment in our state. Because, of course, no one would invest if they thought that in buying an impacted property like this, they would also then assume untold liability with regards to the property, making their investment subject to a lot of risk going forward. It's very, very important.

I'm sure my colleagues that are in the Naugatuck and the Waterbury region understand this very keenly, as they tried to transform the -- my goodness, I'm getting a number of hand gestures coming across the aisle that I'm not quite sure --

THE CHAIR:

Senator Boucher, are you having --

SENATOR BOUCHER:

-- how to interpret.

THE CHAIR:

Senator Boucher, you having some issues with some of the members of the chamber?

SENATOR BOUCHER:

Well, only in -- from the respect it's so late at night that one can be easily distracted, of course. Thank you. Thank you, Mr. President. But --

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THE CHAIR:

Thank you, ma'am.

SENATOR BOUCHER:

-- back to the point, though, that I was really trying to make, which is very important for our state, very important for its future development, for its future economic viability, is this type of legislation, the kind of legislation that would allow us to transform some of our very largest brownfields into new urban centers of growth, of vitality with smart growth, and so forth.

So I am very pleased to see this amendment come before us this evening. It is a major step that we need to take and hopefully will allow us to become much like the corridors around the Boston area, that have done quite a bit of this and have had many of our construction companies and developers, that have mentioned it to me in the past, that this is something they would like us to do as well so that they can grow right here in Connecticut instead of going outside to our neighboring town -- states where they have a little bit better protection on the liability issue.

Through you, Mr. President, I wonder if I could ask just a little -- just a -- just one question, if I could, to the proponent of this legislation,

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Mr. President?

THE CHAIR:

Senator LeBeau.

A VOICE:

(Inaudible.)

SENATOR BOUCHER:

Oh. Mr. President, I'll withdraw my question. I think that the late -- the hour is very, very late and I think we -- we've discussed this, this bill quite enough. And I'll save the good Chairman any more time and deliberation on the bill -- this bill. Thank you, Mr. President.

THE CHAIR:

Thank you, ma'am.

Senator Looney, for what purpose do you rise, sir?

SENATOR LOONEY:

Yes, Mr. President. Thank you. If this item might be passed temporarily.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Yes. Thank you, Mr. President. Mr. President, as a final item of business before concluding, would having removed a number of items from the foot of the

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Calendar 256, Senate Bill 877 is marked go. Calendar page 25, Calendar 312, Senate bill 1129 is marked go. Calendar page 32, Calendar 227, Senate Bill 920, marked go. Calendar page 32, Calendar 313, Senate Bill 947 is marked passed temporarily. Calendar page 33, Calendar 354, Senate Bill 499 is marked go. Calendar page 33, Calendar 378, Senate Bill 1048 is marked go. Calendar page 33, Calendar 504, Senate Bill 939 is marked go. So those are the action items at this time, Mr. President.

THE CHAIR:

Thank you, sir. Mr. Clerk, could you please call the order of the day, Calendar number 722.

THE CLERK:

Calling Senate Calendar for Wednesday, June 3rd, 2009, Calendar page 19, order of the day. Calendar number 722, files 314, 956 and 1027, Substitute for House Bill 6097, AN ACT CONCERNING BROWN FIELDS DEVELOPMENT PROJECTS, Favorably Reported, Committees on Commerce and Export, Planning and Development, Appropriations and Judiciary. The bill was last before us, LCO 9129 was called and designated Senate Amendment Schedule A.

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THE CHAIR

Senator LeBeau.

SENATOR LEBEAU:

Thank you, Mr. President. I believe I have to move acceptance of the Joint Committee's Favorable Report and passage of the bill, one more time.

THE CHAIR

Acting on approval and acceptance, sir, would you like to remark further?

SENATOR LEBEAU:

We have in front of us Amendment LCO number 9129, which I believe is a very good Amendment, it takes out some of the problems in the bill that some of the major cities were having and I recommend it to the Chair.

THE CHAIR

Remark further on Schedule A, 9129, Senate Amendment Schedule A? If not, let me try your minds. All those in favor, please signify by saying, aye.

SENATORS:

Aye.

THE CHAIR:

Opposed, nay. The Ayes have it. Senate Amendment

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A is adopted. Will you remark further, Senator  
Looney.

SENATOR LOONEY:

Yes, Mr. President, if we might pass this item  
temporarily, we hope very briefly. Thank you.

THE CHAIR

Without objection, so ordered.

SENATOR LOONEY:

If we might stand at ease for a moment, Mr.  
President, thanks.

THE CHAIR

The Senate will stand at ease.

(SENATE AT EASE)

THE CHAIR

Senator Looney.

SENATOR LOONEY:

Yes, Mr. President. Thank you. Mr. President, if  
the Clerk would call as the next item, Calendar page  
23, Calendar 256, Senate Bill 877.

THE CHAIR

Mr. Clerk.

THE CLERK:

Calling Calendar page 23, Calendar number 256,

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There's a motion on the floor to immediately transmit Calendar688. Without objection, so ordered.

Mr. Clerk.

THE CLERK:

Calendar page 19, Calendar number 722, files number 314, 956, 1027, substitute for House bill 6097, AN ACT CONCERNING BROWN FIELD DEVELOPMENT PROJECTS AS AMENDED BY SENATE AMENDMENT SCHEDULE A, Favorably Reported, Committees on Commerce and Export.

THE CHAIR:

Senator LeBeau.

SENATOR LEBEAU:

I move acceptance of the Joint Committees' Favorable Report and passage of the bill as amended.

THE CHAIR:

Acting on acceptance and approval of the bill as amended, sir, would you like to discuss it further?

SENATOR LEBEAU:

Thank you, Mr. President. I'm going to very briefly say a few words about the bill. A lot of work done on this bill over the last year by the brown fields task force. And this empowers municipalities to better control their own destiny by allowing them

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to identify, investigate and ultimately, remediate for the tax benefit bringing properties back on tax rolls. It establishes time lines and that is it.

THE CHAIR:

Thank you, sir. Remark further on House bill 6097? Remark further on House bill 6097. If not, Mr. Clerk, please call for a roll call vote. The machine will be open.

THE CLERK:

A Roll Call has been ordered in the Senate. Will all Senators please return to the Chamber. Immediate Roll Call has been ordered in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

Have all Senators voted? Senator Gomes, could you please vote? Have all Senators voted? If all Senators have voted, please check your vote. The machine will be locked and the Clerk will call the tally.

THE CLERK:

The motion is on passage of House Bill 6097 as amended by Senate Amendment Schedule A.

Total number voting 36

Those voting Yea 36

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Those voting Nay 0

Those absent and not voting 0

THE CHAIR:

The bill passes. Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, would move for immediate transmittal to the House of Representatives of Calendar page 19, Calendar number 722, House Bill 6097 as amended.

THE CHAIR:

There's a motion on the floor to immediately transmit Calendar number 722. Without objection, so ordered. Mr. Clerk.

THE CLERK:

Calendar page 35, Calendar number 683, File number 632, House Joint Resolution number one. A RESOLUTION EXPRESSING PROFOUND REGRET OF THE CONNECTICUT GENERAL ASSEMBLY FOR THE HISTORY OF WRONGS INFLICTED UPON BLACK CITIZENS BY MEANS OF SLAVERY, EXPLOITATION AND LEGALIZED RACIAL SEGREGATION AND CALLING ON ALL CITIZENS TO TAKE PART IN ACTS OF RACIAL RECONCILIATION, as amended by House Amendment Schedule A, Favorably Reported, Committee on Government

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Have all the Members voted? Have all the Members voted? Please check the Roll Call board to make sure your votes are properly cast.

If all Members have voted, the machine will be locked and the Clerk will please take a tally.

Will the Clerk please announce the tally.

THE CLERK:

House Bill Number 6676 as amended by House "A".

Total Number Voting	138
Necessary for Passage	70
Those voting Yea	136
Those voting Nay	2
Those absent and not voting	13

SPEAKER DONOVAN:

The Bill as amended is passed.

Representative Olson.

REP. OLSON (46th):

Good evening, Mr. Speaker.

SPEAKER DONOVAN:

Good evening, madam.

REP. OLSON (46th):

Mr. Speaker, I move for immediate suspension of our rules for consideration of Senate Bill Number

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6097, House Calendar 238. Oh, I'm sorry, House Bill.

Pardon me.

SPEAKER DONOVAN:

The motion is on suspension of the rules for immediate consideration of House Bill Number 6097. Is there objection to suspension? Is there objection? Hearing no objection, the rules are suspended for immediate consideration of House Bill 6097.

Will the Clerk please call--

The Chamber will stand at ease.

(Chamber at ease.)

The House will come back to order. Will the Clerk please call House Bill Number 6097.

THE CLERK:

Substitute for House Bill Number 6097 AN ACT  
CONCERNING BROWNFIELDS DEVELOPMENT PROJECTS.

Favorable Report of the Committee on Judiciary.

SPEAKER DONOVAN:

The Chairman of the Commerce Committee,  
Representative Berger, you have the floor, sir.

REP. BERGER (73rd):

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Good evening, Mr. Speaker, and thank you. I move for acceptance of the Joint Committee's Favorable Report and passage of the Bill.

SPEAKER DONOVAN:

The question is on acceptance of the Joint Committee's Favorable Report and passage of the Bill.

Will you remark?

REP. BERGER (73rd):

Yes, Mr. Speaker. Just as a point of background. Shortly I'll be calling an Amendment--

SPEAKER DONOVAN:

Hold on, Representative, waiting to get it on the board here.

The Chamber will come back to order.

Representative Berger, you have the floor, sir.

REP. BERGER (73rd):

Yes, thank you, Mr. Speaker. Shortly I'll be calling an Amendment, which will be a strike-all Amendment but for the purposes of a short background, certainly the Commerce Committee and this General Assembly as a whole over the last four years has moved to expand, in the State of Connecticut, brownfields remediation and development.

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And by so expanding and improving brownfields remediation development, through DECD and the establishment of the Office of Brownfield Remediation and Development, this General Assembly certainly working in a bipartisan manner has worked to bring properties on the tax rolls, create jobs, create tax revenue and clean up blighted, unused properties in all of our municipalities, or mostly all of our municipalities in the State of Connecticut, Mr. Speaker.

This work continues this evening, and with that, if the Clerk could please call LCO Number 8797 and I be allowed to summarize.

SPEAKER DONOVAN:

Will the Clerk please call LCO Number 8797, which will be designated House Amendment Schedule "A".

THE CLERK:

LCO Number 8797, House "A", offered by  
Representatives Berger, Grogins, et al.

SPEAKER DONOVAN:

The Representative seeks leave of the Chamber to summarize the Amendment. Is there objection to summarization? Hearing none, Representative Berger, you may proceed with summarization.

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REP. BERGER (73rd):

Thank you, Mr. Speaker, and for the Chamber, I had the short version, the mid-version and the long version of the explanation of this Bill, so I am going to go with the medium short version, just about my height.

The Bill continues the Commerce Committee's efforts to make brownfields safe and productive, both the Commerce Committee and this General Assembly.

The Committee this year has moved on three fronts, increasing funds and tax incentives for remediating brownfields, focus and coordinating state agencies remediating and developing brownfields, reducing regulatory hurdles without compromising public health and safety.

The Bill also advances the regulatory front. It improves regulatory relief, developing mills in flood plains, municipal agencies requiring and conveying brownfields for private development and brownfields requiring ongoing groundwater monitoring and remediation.

It promotes regulatory reform by establishing procedures and deadlines for cost recovery, allowing

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more parties to complete environmental site  
assessments.

It extends different forms of liability  
protection to municipal agencies and private  
developers, and it authorizes new technologies and  
techniques.

I move adoption.

SPEAKER DONOVAN:

The question is on adoption of House Amendment  
Schedule "A". Will you remark? Will you remark  
further? Representative Mazurek.

REP. MAZUREK (80th):

Thank you very much, Mr. Speaker, and first of  
all, ladies and gentlemen, I'd like to thank the  
Chairman of Commerce, Representative Berger and his  
crack team on the Commerce Committee, Ranking Member  
Mike Alberts and Vice-Chairman Bruce Zeke Zalaski.  
You did a terrific job on this, and we really  
appreciate the short version that you gave us,  
Representative Berger.

For the purposes of legislative intent, Mr.  
Speaker, I do have one question that I would like to  
ask the Chairman.

SPEAKER DONOVAN:

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Please proceed, sir.

REP. MAZUREK (80th):

Thank you. Regarding the eight-year timeframe concerning verification or interim verification of a site as referenced in Line 697 and 728, the Amendment states,

Representative Berger, unless the Commissioner has specified a later date in writing.

Can you clarify the mechanism that the certifying party would use to get an extension in writing, sir.

SPEAKER DONOVAN:

Representative Berger.

REP. BERGER (73rd):

Yes, thank you, Mr. Speaker. And through you, it is the intent of, for that extension, if the individual had, is going through the process of the remediation process and site testing, if they had proceeded in a timely fashion as the Bill implies, if they have met and conformed to all of the requirements of, that the Bill and current law guides them, then it would be under the Commissioner's discretion, of which she would then grant, or he, would grant an extension for that specific site.

Through you, Mr. Speaker.

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SPEAKER DONOVAN:

Representative Mazurek.

REP. MAZUREK (80th):

Thank you, Mr. Speaker, and I thank the gentleman for that answer. It was very concise. Thank you, sir.

SPEAKER DONOVAN:

Thank you, Representative. Representative Johnston.

REP. JOHNSTON (51st):

Thank you, Mr. Speaker. A question through you to the proponent of the Bill.

SPEAKER DONOVAN:

Please proceed, sir.

REP. JOHNSTON (51st):

To the honorable Chairman of the Commerce Committee, Representative Berger. In Section 2, there's language on Lines 131 through 134 and again on Lines 140 and 141 that reference a power of a municipality by resolution authorizing the acquisition through eminent domain.

For legislative intent, does either of these references to eminent domain create a new power of eminent domain for any municipality or they merely

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reference that if a municipality, which already has this power utilizes it, that it's not subject to the transfer act.

SPEAKER DONOVAN:

Representative Berger.

REP. BERGER (73rd):

Through you, Mr. Speaker, this does not extend the ability of, or increase the benefits of eminent domain for that municipality under the transfer act.

REP. JOHNSTON (51st):

I appreciate the answer. Good Bill. Ought to pass. Thank you.

SPEAKER DONOVAN:

Thank you, Representative. Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. If I may, a couple of questions to the proponent.

SPEAKER DONOVAN:

Please proceed, sir.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. In reviewing the OFA note, looking at Section 1, as I understand it, this actually would result in a cost savings to DECD of

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perhaps as much as \$300,000. Is that not correct?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Berger.

REP. BERGER (73rd):

Through you, Mr. Speaker, that is correct.

SPEAKER DONOVAN:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. In looking at Section 7, actually there could be additional cost savings because the process of going forward if this Bill is accepted is basically going to be streamlined and municipalities will actually be able to recoup money they might not otherwise be able to. Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Berger.

REP. BERGER (73rd):

Through you, Mr. Speaker, that is correct. It will also increase municipal protection and liability sections of that property.

SPEAKER DONOVAN:

Representative Alberts.

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REP. ALBERTS (50th):

Thank you, Mr. Speaker. I, too, would join in with my colleagues in liking to commend the Chairman of the Commerce Committee for doing an excellent job and leading us to this point tonight.

There are 139 municipalities in our state that have identified brownfields and the Bill that is before us right now, the Amendment that is before us, is going to allow us to make progress, and this is much needed right now to help get the state going from an economic stimulus side, so I urge acceptance.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative. Will you remark further on the Amendment. Remark further on the Amendment? Representative Sharkey.

REP. SHARKEY (88th):

Very briefly, Mr. Speaker. I, too, rise in support of the Amendment, and I want to applaud the Chairman of the Commerce Committee, too, for his hard work on this. This is a good smart growth proposal for redeveloping our brownfields properties particularly in our urban areas, and I urge its support.

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SPEAKER DONOVAN:

Will you remark further on the Amendment before us? Will you remark further on the Amendment?

Let me try your minds. All those in favor please signify by saying Aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

Those opposed, Nay. The Ayes have it. The Amendment is adopted. Will you remark further on the Bill as amended? Will you remark further?

If not, staff and guests come to the Well of the House. Members take their seats. The machine will be opened.

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 DONOVAN:

Have all the Members voted? Have all the Members voted? Have all Members voted? Have all Members voted? Please check the Roll Call board to make sure your votes have been properly cast.

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If all Members have voted, the machine will be locked and the Clerk will take a tally.

And the Clerk will please announce the tally.  
The Clerk announce the tally.

THE CLERK:

House Bill Number 6097 as amended by House "A".

Total Number Voting	137
Necessary for Passage	69
Those voting Yea	137
Those voting Nay	0
Those absent and not voting	14

SPEAKER DONOVAN:

The Bill as amended is passed.

Will the Clerk please call Calendar Number 445.

THE CLERK:

On Page 12, Calendar Number 445, Substitute for  
House Bill Number 6007 AN ACT CONCERNING THE MERGER OF  
THE PROBATE DISTRICTS OF SOUTHBURY AND ROXBURY AND THE  
MERGER OF THE PROBATE DISTRICTS OF LITCHFIELD, KENT,  
MORRIS, HARWINTON AND WARREN. Favorable Report of the  
Committee on Judiciary.

SPEAKER DONOVAN:

Representative Gerald Fox.

REP. FOX (146th):

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Have all the Members voted? Have all the Members voted? Please check the Roll Call board to make sure your vote has been properly cast.

If all the Members have voted, the machine will be locked and the Clerk will please take a tally.

Will the Clerk please announce the tally.

THE CLERK:

House Bill Number 6592 as amended by Senate "A" in concurrence with the Senate.

Total Number Voting	150
Necessary for Passage	76
Those voting Yea	150
Those voting Nay	0
Those absent and not voting	1

SPEAKER DONOVAN:

The Bill as amended is passed.

Will the Clerk please call Calendar Number 238.

THE CLERK:

Calendar Number 238, House Bill Number 6097 AN

ACT CONCERNING BROWNFIELDS DEVELOPMENT PROJECT.

Favorable Report of the Committee on Judiciary.

SPEAKER DONOVAN:

Representative Berger, you have the floor, sir.

REP. BERGER (73rd):

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I move for acceptance of the Joint Committee's  
Favorable Report and passage of the Bill.

SPEAKER DONOVAN:

The question before the Chamber is acceptance and  
passage. Will you remark, sir?

REP. BERGER (73rd):

Yes. The House recently passed House Bill Number  
6097. The Clerk is in possession of an Amendment, LCO  
Number 9129. Would he please call and I be allowed to  
summarize.

SPEAKER DONOVAN:

The Clerk please call LCO Number 9129.

THE CLERK:

LCO Number 9129, Senate "A", offered by Senator  
LeBeau et al.

SPEAKER DONOVAN:

The Representative seeks leave of the Chamber to  
summarize. Any objection? Representative, you may  
proceed with summarization.

REP. BERGER (73rd):

Yes, Mr. Speaker. There's an Amendment I will  
call, and I have called. It deletes changes to the  
House Amendment made to the Recovery Act. I move  
passage.

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SPEAKER DONOVAN:

The question is on the adoption of Senate "A".  
Will you remark further? Will you remark further?  
Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. Can the proponent of the  
Amendment please review the changes? Thank you.

SPEAKER DONOVAN:

Representative Berger.

REP. BERGER (73rd):

I didn't hear it.

SPEAKER DONOVAN:

Representative Alberts, could you please repeat  
that question. I was so fast I couldn't hear it.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. If the proponent of the  
Amendment could please review the changes as a result  
of this Amendment.

SPEAKER DONOVAN:

Thank you, Representative. Representative  
Berger.

/ REP. BERGER (73rd):

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Yes. The short version will be, it extends the municipal transfer act exemptions to property taken under the community development statutes.

Secondly, it deletes the changes the House Amendment made to recovery.

And thirdly, it sets conditions for extending the House Amendment's eight-year deadline for completing an interim verification.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. It's my understanding as well. I support the changes. Through you.

SPEAKER DONOVAN:

Will you remark further on the Amendment? Remark further on Senate "A"? If not let me try your minds.

All those in favor please signify by saying Aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

All those opposed, Nay. The Ayes have it. The Amendment is adopted. Will you remark further on the Bill as amended?

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If not, staff and guests come to the Well of the House. Members take their seats. The machine will be opened.

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.

SPEAKER DONOVAN:

Have all the Members voted? Have all the Members voted? Please check the Roll Call board to make sure your vote is properly cast.

If all Members have voted, the machine will be locked and the Clerk will take a tally.

Will the Clerk please announce the tally.

THE CLERK:

House Bill Number 6097 as amended by House "A" and Senate "A" in concurrence with the Senate.

Total Number Voting	151
Necessary for Passage	76
Those voting Yea	151
Those voting Nay	0
Those absent and not voting	0

SPEAKER DONOVAN:

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SPEAKER DONOVAN:

The Bill as amended is passed.

Are there any announcements or introductions?

Any announcements or introductions? Representative  
Ken Green.

Representative Green, for what reason do you rise?

REP. GREEN (1st):

Thank you, Mr. Speaker. I rise for a point of  
personal privilege.

SPEAKER DONOVAN:

Please proceed, sir.

REP. GREEN (1st):

Thank you, Mr. Speaker. Mr. Speaker, I'm glad to  
have this opportunity to be able to announce the  
winners of the Ken Green Well Fashioned Best Dressed.

For female Legislator the winner is  
Representative Themis Klarides.

(Applause.)

For male Legislator, the incumbent,  
Representative Lawrence Cafero.

(Applause.)

Female staff, Sarah Holbrook.

(Applause.)

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February 26, 2009  
10:00 A.M.

REP. BERGER: So you're well rested today, Senator.

SENATOR LEBEAU: You can -- you can do anything today. Bryan, Representative Hurlburt, thank you for appearing today and testifying on this important bill.

Are there any dollars in the stimulus plan that might be applicable that -- are you aware of anything that might be applicable to help them move this bill along or help with any of these pieces of this?

REP. HURLBURT: As of right now, I do not know. I have asked Representative Godfrey, who's kind of our -- the stimulus guru for the House Democratic Caucus, if he could help locate those funds through CSG or NCSL or some other organization to see what we can -- so we can -- if there are funds out there that we can access, that we go after them so we are not using up funding allocation from the state, for this purpose.

SENATOR LEBEAU: Okay. Well, thank you. Thank you very much.

REP. HURLBURT: Thank you.

REP. BERGER: Are you all set?

Thank you, Representative.

REP. HURLBURT: All right. Thank you very much, and I appreciate you're -- you're making room for me this morning.

REP. BERGER: You're welcome.

Ann.

ANN CATINO: Thank you and good morning.

SB 969  
HB 6097

My name is Ann Catino and I am Cochair of the state's Task Force on Brownfields Strategies. Right now, we have provided to Representative Berger, four copies of our task force report. We had a bit of a snag in the production of these reports this year, and I expect probably 20 more copies to be delivered very shortly, with an additional, probably, 50 copies to be delivered by -- by noon.

Yes. It is Senator LeBeau, we have a green report this year. We've color-coded our reports every year to keep them straight. We started with the brown for brownfields. We moved over to blue. As we weren't -- although we've made a number of recommendations that were enacted, not all of our recommendations were enacted. So we felt a little blue our second year, as we continued to study the issues. And then our third year, we've got the wonderful color of green, because in order to provide for green development in this state, we really do need to focus on brownfield redevelopment. And that's largely the thrust of this report. In order to become a greener Connecticut, we have to implement the recommendations that we have made in our prior two reports.

For those of you who may not be aware, the task force was formed three years ago. This is our third year. Each year we have convened several meetings and looked at the brownfield redevelopment issues in the state and why our brownfields are not being readily developed, and are laying barren and isolated. This causes a tremendous burden upon municipalities for lost property taxes, as a result. It's an environmental issue because contamination is not being cleaned up. We don't have the jobs and the growth, or the housing, as a result of

the lack of brownfield redevelopment.

So when we step back and we try to explore the reasons why, it largely falls upon public policy reasons and the lack of the instruments and incentives, that are or have been available in Connecticut.

One of the things that is become striking, very striking to us, and validates many of our recommendations is a report that was recently released, albeit in draft form, by the Northwest -- Northeast Midwest Institute. They looked at, and did an economic analysis of brownfields redevelopment entitled, "The Environment and Economic Impact of Brownfield Redevelopment." They fully evaluated a number of municipalities. They relied upon studies being performed by the council of governments, in order to demonstrate the economic stimulus that occurs to a state and to a municipality, from state investment in brownfields.

Two years ago, we recommended 250 million be funded and be provided to the Commissioner of the DECD, in order to implement a robust brownfield redevelopment grant and loan funding program. The programs have been enacted. However, the funding, unfortunately, has fallen woefully behind. We certainly haven't come close to the task force's initial recommendation.

And to show how, in fact, little is being spent, we -- in prior years, the Legislature authorized 14 and a half million dollars for brownfield redevelopment, and 2.25 million was recommended to fund the entire state programs for two years. And an additional 4 and a half million for two years was authorized to fund the two pilot programs. That made it quite far, until it came to the state bond

commission, which authorized only 2.25 million be provided for the pilots. Fortunately, DECD has awarded five grants to municipalities for the pilot programs. But the brownfield issues that lie across the state require substantial more investment.

When we look at the dollars -- and we are requesting and asking you to take seriously, our request for additional funding of the 250 million set forth over several years, the return is quite great. According to the Institute's report, one dollar of public money leverages eight dollars total investment. One dollar of public money for site preparation costs leverages \$20 total. Even in weak markets, \$360 is invested that would not otherwise be invested.

As far as jobs are concerned, it takes 10 to \$13,000 in brownfield public investments to produce one job. Compared to HUD and the Commerce Department investments, it takes \$335,000 to produce one job. It is much easier to produce a job with the funding of brownfields, than it is through HUD and other programs.

Property values within three quarters of the cleanup area increase 5 to 15 percent. Public investments in brownfields are recouped through local taxes in five years. The external societal costs associated with transportation issues are estimated to be \$26,968 per acre, per year less for brownfield sites than for greenfield sites. Some of this is summarized in our -- our report. And it -- it just underscores the importance to a local economy and to a state economy, what an investment in brownfield's redevelopment means.

When we talk about jobs -- and later on, one of our recommendations has to do about making sure that when public monies are spent, job programs -- jobs created through job-training programs occur. All sorts of jobs are created through investment in brownfields. We have site engineers. We have surveyors. We have environmental consultants. We have contractors -- subcontractors, who do the work on the site and their specialized areas, well drillers. There is a variety and a myriad of jobs during the redevelopment and construction process that often gets lost in the equation when you look only at -- well, how many jobs is this development going to ultimately lead to? That's a very important question, as well. But as far as stimulating early -- early job creation, brownfields redevelopment funding goes a long way to bringing jobs into the state and giving people something to do.

We had recommended in prior years, tax credits. I think that should be put back on the table and -- and discussed further, particularly, if we don't have a robust funding program. Typically, as we testified last year, many states either have a robust funding program, or they rely on tax credits in order to stimulate investment. We right now have neither. In fact, there is a proposal out to eliminate the historic tax credit.

We would recommend continuing it and extending it beyond housing to mixed-use and commercial development, as well as, creating a brownfield tax credit. A balance needs to be struck between funding and tax credits, in order to provide the necessary stimulus.

In addition to our financial recommendations, this year we also focused on -- I'll call the

nonmonetary recommendations that are equally important to redevelopment because they remove the barriers that the private sector sees to investment in brownfields.

Impediments also exist at the municipal level. So we're looking to, again, remove impediments that municipalities exist, who all -- who are the first place where the impact of the lack of property tax revenues and the -- and the property owner complaints, and quality of life is a serious, meaningful issue.

The first recommendation we have identified has to do with, we need to have some limitations on investigation and remediation. We refer to, white knights, in the past. These people are individual companies who've had no connection to a site whatsoever, nor are they affiliated with anybody who had a connection with a site, and they're coming into the state in order to redevelop a piece of property and they are required to clean up that property.

There are proposals on the table and -- and -- that require them not only to look at the existing property but to chase contamination off site. We think that, from a policy perspective, it makes sense that you do hold the brand new property owner or the municipality who may be foreclosing on a piece of property or taking it through eminent domain, responsible for prior companies' legacies. They should be required -- particularly if they receive state funding -- or definitely if they receive state funding -- that is one of the primary conditions we think is important here, to just look at the four corners of the site and remediate the site, and not chase it down rivers, or in sediments, or off site.

When you remediate a site, and clean up that site, you are capping the migration of contamination going off site. So you're really focusing on limiting the source. And we think that's important. And it's too uncertain, costly, and risky to any municipality whose looking at acquiring a site, or any brownfield redeveloper coming in looking at a site, to impose these additional costs and requirements on them.

Another recommendation we have is -- involves making certain statutory changes to make sure, frankly, that polluter pays.

In Connecticut, we do have -- we have been sending a message for a very long time, that in the private sector, sometimes the polluters and the prior property owners or operators, tenants who cause the contamination and have shut down, and are not paying to clean up the site. And it's very difficult for private parties to pursue claims against them if they take over a site. It is very difficult for a municipality who takes over a site to pursue the past owners or operators. That's an impediment because the responsible party isn't -- is not paying its fair share. And that's what we're looking, is to have parties pay their fair share. This is called your cost recovery actions. And we had mentioned it in our report in prior years. It makes sense to modify the statutes.

Right now, there are, as I indicated, very little, private parties can do to pursue the costs of their cleanups from prior responsible parties. The state DEP can. They have a lot of tools in their toolbox, where they can go after private property owners or operators. But private parties and municipalities, who

are working diligently on these sites, do not have the same tools. The reason being is our existing Cost Recovery Statute 22a-452, has been interpreted by courts with a lot of limitations.

First, of which, it has a very short statute of limitations associated with it, which is unworkable in the property investigation remediation contacts because you don't even know what you're dealing with and the cost of what you're dealing with, for several years -- several years to perform a phase 1, 2, 3 and implement a remedial action plan, so that you can recover your costs. This statute of limitations is largely blown by the time you have expended all of your costs, or a good chunk of your costs, so that you know that litigation makes sense, which leads to the second point, which is, you have to have expended your costs in order to recover them.

The third is a standard the courts have read into the statute that recalls -- requires negligence or other actions to be proven. That is a very difficult standard in order to -- for a municipality to make or any private party to make, who is brand new to the site. We want to streamline the approach. There is a corollary under the Comprehensive Environmental Response, Compensation, and Liability Act, which is CERCLA, and we propose that 22a-452 be modeled upon CERCLA. So there is an existing statute, existing body of case law that we can incorporate into our existing cost recovery act. And I think that in the proposed -- the bill that that -- has been achieved.

Another area, again, along with statutory changes, in order to allow private parties and municipalities to recover, is to provide a

statute of limitations for transfer act claims between private parties. Again, the courts have interpreted it to be two years. That is a very short period of time, particularly when municipalities may come into a site, a property, foreclose the site, and they're -- they're sitting on it. And -- because they don't know what to do and they don't have the funds in order to address what needs to be done on that property. A -- a two-year statute of limitations is a very short period of time, if you do have failures and transfer act, previously.

The next area has to be, again, relating to municipalities, providing municipal and liability protections. A couple years ago, the legislature enacted some very good changes allowing municipalities to take title through foreclosure or tax warrant sale, without compliance with the Transfer Act, and it was the pilot program. We would recommend that the sections be amended to allow municipalities to take the acquisition through eminent -- make the acquisition through eminent domain. And we also recommend that it be expanded more broadly, to include all municipalities.

At the -- at the back end, because that just gets you out of the Transfer Act at the front end, when you take title, at the back end when you go to convey the title to another party, we believe that some modifications also need to be made to take it out of the Transfer Act, itself. We are not suggesting, however, that no one be responsible for the cleanup.

More reports have arrived. Thanks.

In order to take it -- take this subsequent transfer out of the Transfer Act, but we want

to make sure that the property is still being cleaned up. So what we would suggest is that either the municipality, or the property -- subsequent purchaser is involved in a voluntary program with DEP. It is important because we don't want -- we don't want properties to not be cleaned up. We definitely do. However, we do want to make sure that there -- some of the regulatory hurdles are made easier for properties in this position.

Another area where we recommend change this year, and it appears in the bill, is in floodplains. Several -- a couple of years ago, we had recommended and the legislature enacted the change, in order to prioritize redevelopment of brownfields and floodplains. And that, unfortunately, is -- is not -- not everything we need in order to streamline this development.

We have worked -- in fact, we have worked very cooperatively -- and I should say -- the DECD staff, the commissioner, the DEP staff and commissioner, they have been terrific assets. They have been on the task force with us, CDA, as well. And -- and the staff has been wonderful working with us, in order to try to create some solutions to these problems because they have heard our concerns, and they really do want to try to resolve them. We still may have our differences, but I think that we have been working quite well and cooperatively, and I do want to congratulate them all, for participating with us because we can be a tough bunch.

And floodplains is one of those issues. They did hear us and, in fact, DECD and DEP worked on an internal memorandum -- not an internal memorandum but a memorandum between the

agencies, which laid out how they thought that redevelopment of our old mills in floodplains should occur. And we welcomed that memo. We spent a whole day talking about floodplain redevelopment because we do have a number of mills in floodplains, in 100-year and 500-year floodplains. And they knew -- they -- they are ripe for commercial, retail, mixed-use, housing, redevelopment. And we don't want them bogged down unnecessarily. So they -- they came up with an approach. We largely agree with the approach that they have taken. It is reflected in the proposed bill.

I think one of our concerns, however, has to do with whether you build in an existing footprint or -- in order to get the -- the expedited priority treatment. I think that from the task force standpoint, we would like to see some flexibility, albeit it, not having the development encroach further into the floodplains but if you have a 100,000 square foot building and you want to build two 50,000 square foot buildings, if it's generally around the footprint of the existing building, or if it doesn't go further into the floodplain, we would like to see some additional flexibility built in.

I had mentioned jobs earlier. One of our task force members, Frank Moore, from the Workplace, Inc., has received a number of grants over the years from EPA, in order to train workers to work in brownfields. In fact, I think he recently got -- they recently got another \$2 million grant. They're -- when they train workers for this type of work, EPA requires them to track the success of the program, and whether or not these individuals who have been trained still are employed within one year after the training and -- and ultimate accession to a job. They have a

terrific rate of over 75 percent.

These job training programs work very well to train a workforce in a very specialized area. And we would -- we believe that this should be encouraged and, in fact, any grants or loans provided by DECD or OBRD, or DEP, or CDA, we think that there should be a commitment on the part of the recipient to hire contractors who have hired individuals who have gone through these job-training programs. Again, it's a commitment, as opposed to an absolute requirement because there always are exceptions. But we do find that these programs work well.

Finally, one of the things that the task force looked at that may be a little outside the purview of -- of a statutory change is DEP is looking at modifying its remediation standard regulations and its solid waste regulations. And we will be -- we do want to make sure -- and we've met with them -- that any changes to the regulations do address problems on brownfields, such as urban fill, maximizing flexibility for brownfield redevelopment. And they have heard our concerns. Gary O'Connor, my cochair and I, are following it. Members of our task force will still follow it and likely provide comments or testimony when those regulations go out to public comment.

But I think one thing -- and it's to the cochair's credit and your all committee's credit -- is the dialogue has been raised these past three years on brownfields, and we have been making some really needed changes.

The changes we recommend this year rely upon our brown reports and our blue reports and they will be met with some controversy. And you will likely hear some outcries. It's due

largely, because the status quo for several -- several years -- decades -- in the state has not worked. And you have the forethought, in 2006, to create the task force, to not only acknowledge, your right, it's not working but to make some recommended changes.

We have to change the status quo in order to move forward. I think it's good for our state, good for the citizens, good for our local economies if many of these changes are made and we move forward.

On behalf of the entire task force, and Gary will join us, later hopefully. He unfortunately, had a meeting and is not yet able to attend. We really do thank the committee for giving us the opportunity to serve on this task force. We have learned a lot. We have hopefully have provided you all with valuable information and we really appreciate it. Thank you.

REP. BERGER: Thank you, Ann, for your testimony. And, you know, the list of individuals, I was just speaking with the Senator, and the Senator was speaking to me, is very impressive on a task force. It goes across a wide range of talent and expertise. And, you know, this committee, and certainly the General Assembly, as a whole, is very thankful for your devoted work to this important cause for the state, for our municipalities.

And your right, you know, we took up this charge several years ago and, you know, we've raised the -- raised the perception of, you know, the brownfields and the importance of it, and the contributions that we can make as a committee to cleaning them up, working in conjunction with farmland preservation, and open space. And, you know, achieving a lot of

smart growth initiatives that are going forward, not only in this committee, but also planning and development. So again, we thank you for your expertise and knowledge. And there are going to be several hurdles. One area that --- and the bill this year is -- is a little bit more technical. We have an additional funding source mechanism through Faces of Connecticut, additional funding source. And we also have another bill, which this committee will hear, which looks at another funding source access for brownfields development that the Senator was good enough to come up with a great idea on. So this committee will hear that also.

So, you know, moving all those entities together, and synergy, we are hopeful that, you know, we'll make additional progress this year. But, very technical this year, in the brownfields bill on negotiations between insurance entities, trial lawyers, DEP, and we have some work ahead of us here to get everybody on the same page.

One area on the flood plain management which is new to the bill this year, how has your conversations been with -- with DEP -- and I know you've touched on a little bit of it. Where do you see our major hurdle at?

ANN CATINO: I think, probably, the major hurdle and hopefully, it's -- it's more of a minor hurdle, is how to address the question of -- of not simply reconstructing on the existing footprint because it restricts the ability of developers to have some flexibility. Some developers may come in and just want to rehab the existing facility and that's fine. But sometimes, you do have developers, because you have a crumbling structure and architecture, may want to take it down. You know, it

doesn't work in a -- in the configuration that was laid out or cobbled together over a century. Because a lot of these old sites have been cobbled together. You start with 50,000 square feet. You add 10,000 here, 25,000 there, and another 30 here. Trying to create some additional flexibility for the developer, I think, makes sense. We do understand the department's concern however, of not wanting to further encroach or get closer to the water body and the water source. So I think that there may be some issues and discussions to be had on that issue.

REP. BERGER: We're -- we'll probably hear testimony from the insurance industry on our third party liability clauses. So within the context of the existing document, they -- I believe will have some concerns on the liability side. You know, what's your feeling on -- where we are in the proposed bill, on third party liability and flexibility, that we may or may not have, to move forward this year with some gains, within the existing language?

ANN CATINO: For several years, very few entities utilized the Connecticut Cost Recovery Statute, largely -- and largely went to federal court. Because as I had indicated, we have mirrored the Federal Cost Recovery Statute. This is came to a head -- I think it was in 2006, when the United States supreme court, basically, changed a 20-year interpretation of how the law worked. For two decades, there were cost recovery actions that were working and the Supreme Court through -- turned the tide backwards.

The insurance industry may be concerned because they may have to fund claims they would not otherwise fund, or not. What has happened however, is that the Supreme Court

ultimately reversed itself about a year and a half to two years later. And so, cost recovery claims are again viable to the United States -- in the federal system. Going to the federal system can be daunting for municipalities, generally, adds additional costs. We could ignore the state statute and just turn to the federal system, but then we are subject to the peculiarities of -- of what may happen, as it winds its way through. And there's added costs when you go to the federal system as opposed to the state system. We do want to create a body of law in this state and not continue to send the message that historical operations can basically get off scot-free. And I think that that's -- that needs to be changed.

In large part, we're talking about claims of coverage on policies that existed decades and decades ago. We will be -- somebody have to find that policy, does that policy even cover the claim? Ninety percent of the time, it won't cover the claim. So property owners are not availing themselves of -- of coverage. There are additional issues that are associated with it. This is -- this is a start. We -- this is mirrored upon a bill that was proposed in 2006, that was the product of a bunch of environmental lawyers from the Connecticut bar working with the DEP commissioner and the staff, and representatives from the Attorney General's office to come up with a solution that -- that we felt worked. And the bill incorporates the solution that the parties came to grips with.

REP. BERGER: We have a new section, Section 7, of the existing document. There's a -- there's a section that talks --- and we've talked about this in the past on the tax credit side -- and adding some stimulus, not only for

municipalities, private developers, economic development entities, you know, the tax credit component -- where -- how do you see the benefit of that, in the clean-up side, and maybe some of the potential impact that we may have as far as a state government in allowing those credits?

ANN CATINO: Well, because it takes time for a site to be investigated and cleaned up, the impact to the state likely will not occur for several years.

REP. BERGER: Okay.

ANN CATINO: But it's important for the developers planning horizon, when they're looking at and they're projecting their costs and their returns on their investments, to know what -- what their return will be, what they will have to pay out over the long run of the project. So where would the impact to the state be, would we see an impact next -- well, next year?

REP. BERGER: Uh-huh.

ANN CATINO: No. It'll take awhile before these credits to start to -- I'll say mature, for lack of a better word, so they can be recovered.

REP. BERGER: Okay. Well, I'm -- I'm sure that we're -- we'll continue this dialogue with all the placeholders. And -- and we'll have our continued meetings on the bill. We're very hopeful in this committee to put forward an aggressive document that addresses all of the issues that you've outlined. And I want to thank you again for your service for this committee and Senator LeBeau also extends his thanks. He had to go testify at another

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COMMERCE COMMITTEE

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meeting. And we'll continue the dialogue going and we'll lock ourselves in my office and we'll come up with some ideas and plans eventually.

ANN CATINO: Excellent. Thank you.

REP. BERGER: And -- just one quick question too, on the Steering Committee. Have you been appointed yet, Ann, to that and have you received any kind of input or documentation as to the possibility of when, or when we would not meet, given -- given the Governor's proposal?

ANN CATINO: Yes, I have been appointed. Thank you. And I have not received any follow up, as far as any meetings or any documentation. No.

REP. BERGER: Well, on the legislative side, you know, we'll follow up, and, you know, make sure we're on that. Any other comments or questions from Committee members? I think your presentation was very comprehensive. So I think it gives a good base to start with. So, okay. Thank you.

ANN CATINO: Great. Thank you all very much.

REP. BERGER: Okay. Thank you.

Next in the public portion on this, Paul Brady. Just for the record, on the public side, we will be timing you for three minutes in your testimony to this Committee.

PAUL BRADY: Good morning. My name is Paul Brady. I am the Executive Director for the American Council of Engineering Companies of Connecticut and for the Connecticut Society of Professional Engineers. I'm here today

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licensed by the state be allowed to do the certification. We see that a -- we could see that a potential that it -- this process could expedite completion of local economic development projects and relieve the logjam within state agencies. Thank you.

REP. BERGER: Thank you, Kachina. Just for your information, in reference to 969, there is some debate amongst the Committee here that, you know, where we want to go with that. And, you know, it's my intent -- there is really to increase the fee by \$10.

KACHINA WALSH-WEAVER: Okay.

REP. BERGER: And then disperse amongst the five entities now that would be up from four, so increasing the pool and then dispersing it. So, you know, we're not taking away from one to give to the other, but increasing that to allow us to disperse.

KACHINA WALSH-WEAVER: That's great. And I think -- and I would think that at that point CCM would certainly support it.

REP. BERGER: Yeah. So -- I mean there is some discussion on that, certainly, you know, we have your testimony, and I've made some notes on that. So, thank you. Any questions or comments for Kachina?

KACHINA WALSH-WEAVER: Great. Thank you.

REP. BERGER: Thank you.

KACHINA WALSH-WEAVER: Thank you.

REP. BERGER: David Fink.

DAVID FINK: Good morning. Thank you, Chairman

H36097

Berger, members of the Committee. I have submitted -- excuse me -- testimony, so I'll be brief here. We are here -- I am David Fink. I'm the Policy Director for the Partnership for Strong Communities. We are a statewide housing policy organization. And we care deeply about advocating and educating about the creation of affordable and mixed income homes for workers, families, young professionals, disabled, and elderly residents of the state.

We are here to support 6097, at least the spirit of it. We are not engineers. We are not environmental experts. As I said, we care about housing creation. And old mills, in particular, and other brownfields sites in the state present a great opportunity to do that. What we do care about is environmental protection. We care about smart, responsible growth and -- and land use. And these sites provide a terrific place to -- to create housing.

I would direct your attention to the map that I gave out to all of you. You will note that under the Home Connecticut program which this legislature, we believe, was quite wise in adopting a year and a half ago that over sixty towns around the state will have applied for technical assistance and planning grants to create higher density housing.

Many of those towns are seeking to use old mills along rivers in town centers and smart growth locations. The problem, as you know better than I do, is that the state's disinclination to provide funding for clean-up or housing development gap financing on projects that were in 500-year floodplains is a problem.

Again, as I say, we are not engineers and environmental experts. We care about preventing the selling of rivers and -- and the wildlife, and -- and plant life along the rivers. What -- what we would say though -- and we would urge you to work with everyone. It's hard in this building sometimes to be a cheerleader for all sides. We are here. We would hope that you would work together and see if you could come to an accommodation that satisfies the environmental community and the development community because these are great opportunities to create housing.

Many of these towns would like to develop these old mills. They stand empty. They are eyesores. They can be put back on the tax rolls and provide exactly the kind of housing that we need. The state, unfortunately, as you know, has lost more 25 to 34 year old population than any state in the country, since 1990. We need a workforce to come back here or to stay here.

We also have a quarter of the renters in the state that earn 50 percent of median income or less, and spend more than half of that income on housing. Those people are this close to homelessness. We need rental housing in the state. We need condos. We need multi-family housing. These are great spots because the density is already there for the taking. So we urge you to come to an accommodation. Thank you. And I will be happy to answer your questions.

REP. BERGER: Yes. Thank -- thank you for your testimony, David. And, you know, it's a -- it's a great program you have and it's -- it's a need, you know, this state, you know, has to pursue. And -- and, you know, I'd like to see them pursue it a little bit more in Waterbury.

And we've had a discussion about it. But, you know, sometimes new ideas and change are difficult to settle in. But it's a great program. And, you know, it's -- it's a great opportunity for municipalities, really, to gain some -- gain some ground and -- and, you know -- and I like when you say affordable, everybody says, oh well, you know it's just the low income housing. It really isn't. It's -- it's really addressing those that are mostly middle income, single, young couples that, you know, just can't find housing. And they -- and transportation has a lot to do with that when we look on expanding transportation centers in our big municipalities, and rail service, you know, it all ties in.

DAVID FINK: It -- it does. And actually, a lot of these towns, and a lot of these mills are along rail lines. And you will note, I think, that Senator Williams has talked about reinstating rail service between Worcester and New London. Well, we have towns like Thompson, and Putnam, and Killingly, and Brooklyn, all the way down to New London that have mills. They want to redevelop these mills. Unfortunately, a lot of them need clean-up and they need state investment. So we need to clear those barriers out of the way.

REP. BERGER: Yeah. Certainly it's -- it's a big disaster. And, you know, we've been slow to respond to it but, hopefully, we're gaining some ground here, year after year. And, David, if you have some -- after you go through the Brownfield Bill 6097, you -- kind of look that over. If you have some recommendations, specifically on language, you know, certainly, I'd love to have you at the table here to make some suggestions and

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plugging some things in. So, you know, moving forward here, if you do have some language specific to the bill that you'd like us to insert and see how we can shake it out, you know, please do that.

DAVID FINK: Well, thank you.

REP. BERGER: Okay. Questions from the Committee members? Okay. Thank you, David. Heidi Green.

HEIDI GREEN: Good morning, Representative Berger, and members of the Commerce Committee. My name, for the record, is Heidi Green. I am the President of 1000 FRIENDS of Connecticut, a statewide smart growth education and advocacy organization.

Our mission is to promote and shape growth throughout Connecticut's cities and downtowns ensuring a prosperous economy, healthy natural environment, and distinctive, integrated, and walkable communities. We advocate for smart growth policy and policies that afford incentives to invest in brownfields redevelopment, green buildings, transit-oriented development, and provide affordable housing options. In addition, it was my pleasure to serve as one of three co-chairs on the Economic Development Subgroup of the Smart Growth Working Group.

1000 FRIENDS of Connecticut is -- is very happy to be here today to speak in support of the following bills 969, An Act Concerning Brownfields Funding, 6097, An Act Concerning Brownfields Development Projects, 6504, An Act Concerning Recommendations of the Face of Connecticut Steering Committee, and 6506, An Act Streamlining the Approval Process.

Clearly, we think redeveloping brownfields in Connecticut is a good idea. We think investing in brownfields in Connecticut is a good idea, and an idea that has long been due.

A couple of comments on the specific bills, you have my written testimony so I won't read through everything. But in 6097, we are particularly interested in the -- we like the process for exemption. We think that it is -- it's iterative. It is citizen and developer friendly. We suggest that in -- in exempting properties that you look at the commercial, as well as the residential above the -- the floodplains. That -- that if you're a downstream neighbor, it doesn't matter if it's an office that's coming at you, or somebody's apartment, it's still coming at you. We also, in response to Ann Catino's testimony, we think that maintaining the existing footprint is -- is desirable.

In Bill 969, we like the idea of tax credits for cleaning up brownfields. In 6504, we think that -- that investment in all of these areas is very important. And we think that there should be a smart growth filter on investments in -- in the state. And -- and I think, you know, that -- that's essentially the -- the crux of our comments.

Redeveloping brownfields and investing strategically to support smart growth principles is key to our efforts to move forward an ambitious vision to transform Connecticut's cities and downtowns. Our advancement of sustainable communities should not be delayed, especially, in the context of the national recession. It creates jobs now and a more competitive state into the future. Thank you so much.

know, we'll try to plug that in and have some debate on that.

DAVID SUTHERLAND: Great.

REP. BERGER: Okay.

DAVID SUTHERLAND: Thanks very much.

REP. BERGER: All right. Thank you.

Any questions or comments from the committee members? Thank you.

Nicholas Harding.

NICHOLAS HARDING: Mr. Chairman, I'm Nicholas Harding. I'm a resident of Windsor, Connecticut. I'm here on behalf of myself, but I'm also an environmental professional. I'm a lawyer. I've been admitted to practice in the State of Connecticut since 1979. And since about 1986, all of my practice has been devoted to environmental issues. I'm here to speak today about Raised Bill 6097, in particular, Section 4 and Section 5.

In my pre-filed testimony, I offer a -- a slight to change to Section 5 of the bill. The current Section 5 simply provides a statute of limitations for private party actions under the Transfer Act, and I think that the change that is proposed is great. I offer another change.

The current liability scheme allows only a transferee to bring an action against a transferor. So when the New York stock exchange company sells its division to a Rhode Island company and the company --- the transferee takes the assets to Rhode Island, and the New York company signs a Transfer Act

form as a transferor and does nothing to clean up the property, the landlord who owns the property has no right of action today under the Transfer Act against that New York stock exchange company. And I look at that, and I say, well that explains --- I know at least five vacant buildings along I-95, in Bridgeport, and in other cities, because the landlord can't chase that person under the act. So that's what my pre-filed testimony does.

With respect to Section 4 of the act, Section 4 of the act is a lot like SB 415 that was raised a couple of years ago, that got through all the committees, and the insurance industry and the trial lawyers killed it at the end. I would have thought that it would have passed because those two industries were against it. And I thought that it would have passed with a unanimous vote, but it -- it didn't. The Connecticut Trial Lawyers Association, as I understand it, or least some of their members -- I ended up not renewing my membership because of their position -- seek, or would prefer to have, a much broader liability scheme than the one outlined in Section 4 of the bill. The change in Section 4 is necessary. I can recount tales where citizens have had their -- their oil company fill their basement with oil, and since we have a reimbursement statute, the widow who owns the house does not get any recovery because she can't afford the \$350,000 to get her property remediated, and she has no relief under the statute.

I see my time has run out. I could, if I had the opportunity, I would explain to the Commission or the -- excuse me, the committee why the Section 4 version is preferable to the federal statute. I use the federal statute

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frequently in my practice but I -- I really think that what has been proposed by -- in -- by whoever drafted 6097, is preferable. Thank you.

REP. BERGER: Good. And we have your written testimony --

NICHOLAS HARDING: Yes.

REP. BERGER: -- so, you know, we can -- we can work off of that. And, you know, I appreciate you coming down and testifying, because of your expertise, it is important to us. So, thank you.

NICHOLAS HARDING: Thank you.

REP. BERGER: Any questions or comments from the committee?

Jiff Martin.

JIFF MARTIN: Good morning, members of the Commerce Committee, and Representative Berger. I'm here on behalf of the Working Lands Alliance. It's a statewide coalition of farmers, land trusts, and anti-hunger groups, all of whom agree that the state ought to do more to increase it's investment in farmland preservation.

HB6504  
SB969

I'd like to start by -- by saying that those of us in the farmland preservation community, the advocates, have actually faced many of the same obstacles it seems that supporters of brownfields are currently facing. We faced erratic support for our -- our cause. We faced gross program inefficiencies and delays, under staffing, and many years of unfulfilled bonding commitments. And we've really only seen some substantial changes in the farmland

GRANT WESTERSON: Thank you.

REP. BERGER: Thank you. Thank you for your testimony.

GRANT WESTERSON: Thank you very much.

REP. BERGER: Eric Brown.

ERIC BROWN: Good morning, Chairman Berger, members of the committee. My name is Eric Brown. I'm an Associate Counsel with the Connecticut Business and Industry Association.

I wanted to testify on two bills, just first orally, to give support also to Bill 6506. I've submitted written testimony on 6097, where I'd like to comment for the remainder of my time.

We're supportive of -- of the intent of this bill -- I guess I shut it off -- I'm sorry -- Mills and brownfields. It's also attempting to clarify municipal liability and to change some of the third party action possibilities to be more consistent with federal law.

However, we think this year is an important opportunity that to this point is being missed, an opportunity to address a very key and fundamental impediment to getting brownfields developed in Connecticut. And that is really a perspective on what were called, white knights, earlier. I will call them brownfield investors. We really need to view these folks, as, if the term hadn't already been used for another -- another purpose, I would call them angel investors, because they provide the opportunity for us to get environmental clean-up, economic development, and jobs.

Now on the administrative level, I think DECD and DEP have -- have sort of progressed in this area and are -- and are seeing the value of these kinds of developers and trying to create tools, such as one stop shopping, and the OBRD, to help them through process. What we haven't done though, is change the laws to recognize the importance of these guys. And so our view is that we ought to take the opportunity, as earlier was stated, in Connecticut, the polluter pays, is the fundamental premise, and these folks, under the law, are considered polluters once they take control of a property. And that we need to change, we think.

So we've provided with our testimony some draft -- conceptual -- an outline if you will, for either a -- a separate bill or perhaps an amendment to this bill, that would essentially, create -- it's just a suggestion. It's not -- not necessarily the best approach, but it's one approach for changing the laws to reflect that we value the -- value these kind of investors, and that we really need to do more to incent them to come in, rather than just giving them road maps, and say, here's the state of our law, here's the six agencies you may have to deal with, and here's the context and we can help you through that process. We need to go beyond that, and change the laws, and reduce the bureaucratic and legal pitfalls that -- that have developers and even insurance companies environmental insurance companies, look at our state and say, no. It's too complicated. It's too uncertain. We don't want to do it here. We're going to go to some other state to do brownfields, or we'll look to greenfields.

So, I'll conclude there. I'd be happy to try



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## Testimony to the Commerce Committee

February 26, 2009

Senator LeBeau, Representative Berger, and members of Commerce Committee, for the record, my name is Heidi Green. Thank you for the opportunity to speak with you today. I am the President of 1000 FRIENDS of Connecticut, a statewide smart growth education and advocacy organization. Our mission is to promote and shape growth throughout Connecticut's cities and downtowns, ensuring a prosperous economy, healthy natural environment, and distinctive, integrated and walkable communities. 1000 FRIENDS advocates for smart growth policies that afford incentives to invest in brownfield redevelopment, green buildings, transit-oriented development, and provide affordable housing options. In addition, it was my pleasure to serve as one of three co-chairs of the Economic Development Subgroup of the Smart Growth Working Group.

Achieving smart, sustainable and viable growth in Connecticut requires significant policy changes at the state, regional and locals to: 1) reduce the state's reliance on the regressive property tax; 2) increase regional cooperation for economic development and land use; 3) modernize the state's zoning codes; 4) encourage long-term investments that will engender benefits to Connecticut's cities and metropolitan regions: investment in transit, transit oriented development, brownfield remediation and reuse, affordable housing and preservation of lands and water resources, critical wildlife habitats and prime soils that sustain our agricultural economy.

1000 FRIENDS of Connecticut supports bills 969 An Act Concerning Brownfields Funding, 6097 An Act Concerning Brownfields Development Projects, and 6504 An Act Concerning Recommendations of the Face of Connecticut Steering Committee.

We believe that an even distribution of funds obtained from the Land Protection, Affordable Housing and Preservation account are essential for encouraging smart growth in Connecticut, as they fund and sustain brownfield development projects, the agricultural sector, environmental and historic preservation initiatives. These are responsible and forward-thinking investments, beneficial to all of our communities and citizens.

Found in **Bill No. 6097**, we support increasing the flexibility to remediate and adapt older industrial properties in flood plains. The process spelled out for exemption is iterative and citizen- and developer-friendly. We suggest that

*commercial* as well as residential redevelopment should be above the five hundred year flood mark with parking and entryways, etc. on the lower levels. As many industrial sites are located within the flood plain, we believe this will encourage redevelopment while protecting citizens and properties downstream. The liability relief section is reasonable and represents a good compromise between developers' needs for certainty and citizens' right to due process.

We support creating a nonlapsing fund for smart growth purposes as seen in Bill 969. We also support business tax credits to clean up brownfields. Strong incentives to renew and redevelop property will afford more vibrant landscapes, help control substance-contaminated sites and stabilize municipalities' tax bases and neighborhood property values.

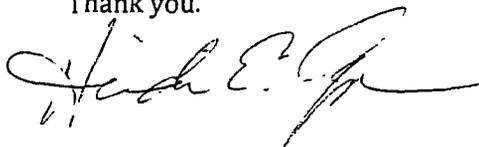
As stated in Bill No. 6504, 1000 FRIENDS supports bonds to be directed toward funding for investment gaps in historic preservation, brownfields development, small farm preservation and other multi-purpose projects. Pursuant to smart growth principles, funding for these projects helps address and meet community needs, allows for healthier redevelopment and offers job opportunities that sustain the economy.

Lastly, we support the establishment of the process for applicants to request a preapplication review of proposed economic development projects, which comports with smart growth criteria, standards and timelines. We believe giving investment priority to projects that meet smart growth principles, will help us weed out unsustainable development we can't afford and create new, healthy and aesthetically pleasing projects. A preapplication review process will allow for greater certainty and more complete and timely filings and findings.

Redeveloping brownfields and investing strategically to support smart growth principles is key to our efforts to move forward an ambitious vision to transform Connecticut's cities and downtowns. Connecticut's advancement of sustainable communities should not be delayed, especially in the context of the national recession. It creates jobs now and a more competitive state in the future.

I encourage your support for Proposed Bills 969, 6097, and 6504.

Thank you.





**STATEMENT REGARDING**  
**Senate Bill 969: AAC Brownfields Funding**  
**House Bill 6097: AAC Brownfields Development Projects**

**Commerce Committee**  
**February 26<sup>th</sup>, 2009**

The MetroHartford Alliance is Hartford's Chamber of Commerce and the region's economic development leader. Our investors include businesses of all sizes, health care providers, institutions of higher education, and 34 municipalities. The Alliance's mission is to ensure that the Hartford Region competes aggressively and successfully for jobs, talent and capital so that it thrives as one of the country's premier places for all people to live, work, play, and raise a family.

At this time of intense global competition for jobs, capital and talent, it is important for us to begin to implement an aggressive strategy to attract *new* jobs and investment to our cities and our state, while also retaining the quality workforce we are fortunate to have. As an economic development organization and the capital city's chamber of commerce, we ask that you consider the positive message that Senate Bill 969 and House Bill 6097 send to potential investors within and outside our borders.

The return on investment of these funds can be dramatic. A prime example of this is the new Goodwin College campus along the Connecticut River in East Hartford. Utilizing approximately \$60,000 in Federal EPA Brownfield Assessment Grant funds and \$3 million in State of Connecticut Brownfield funds, Goodwin College has transformed this highly visible and environmentally sensitive area into a state of the art campus. To date, Phase One has invested over \$50 million in capital improvements, created 400 construction jobs and 32 additional

permanent jobs (22% minority). Subsequent phases will bring the total investment to more than \$100 million and 400 total jobs while creating resources that will educate and train the workforce of tomorrow.

Recently, Connecticut received unfortunate notoriety in both *Forbes* and *Expansion Management*, magazines widely read by corporate site selectors. Consistent with a corresponding *CNBC* poll, our state is ranked at or near the bottom of such lists with regard to the cost of doing business, the cost of living in general and transportation infrastructure statewide. Given the current economic climate, other states across the nation are endorsing aggressive policies to encourage investment and job growth, policies we need to pursue in order to reverse our reputation as one of the least business friendly states. We should view the current economic crisis as an opportunity for Connecticut to stand out as a business friendly state and to take steps that make us more competitive. By passing the legislation before you today to facilitate access to brownfields funding, we will encourage new investment in our state at a time when it is most critical.

As an economic development organization and the capital city's chamber of commerce, we hope you will continue to work with us to help Connecticut stand out as a premier place to do business and create jobs by supporting Senate Bill 969 and House Bill 6097.

Thank you for your consideration.

TESTIMONY OF GARY B. O'CONNOR  
BEFORE THE COMMERCE COMMITTEE  
OF THE GENERAL ASSEMBLY

FEBRUARY 26, 2009

IN SUPPORT OF COMMITTEE BILL 6097

Good afternoon. My name is Gary O'Connor. I am a partner at the law firm of Pepe & Hazard, LLP and I have had the wonderful opportunity of serving as one of the Co-Chairs of the General Assembly's Brownfields Task Force. I would like to thank the Commerce Committee for the opportunity to speak today on the 2009 Brownfields Task Force Report and more specifically in support of Committee Bill 6097. This Bill incorporates many of the recommendations made by the Task Force in its 2009 report to the General Assembly. We look forward to working with the Commerce Committee to refine this Committee Bill to incorporate some of the suggestions offered by stakeholders, today.

Before I address some of the specifics of Committee Bill 6097, I would like to briefly comment on the 2009 Task Force Report. The 2009 Task Force Report largely reflects our recommendations in the 2007 and 2008 Reports with a few notable additions including recommendations to provide incentives for cost recovery actions, increased liability protection for municipalities and their development agencies who take title to contaminated property, and additional access rights for municipalities and their development agencies to perform environmental assessments on brownfield sites.

Perhaps more importantly, the Task Force—I want to make clear that the public sector members, as has been their policy, abstained from the vote approving the Report—has expressed its

extreme disappointment that despite all the good work of its members, this Commerce Committee and many of the members of the General Assembly, the brownfields program in the State of Connecticut remains an opportunity lost. As you may recall in 2007 and 2008, the Task Force proposed an initial capitalization of \$75 million, with an additional \$25 million per year for the next five years. As of this date, only \$2.25 million has been authorized by the State Bond Commission.

Please understand that the Task Force appreciates the extremely difficult situation facing the members of the General Assembly. The Task Force understands that it is no small task of eliminating an estimated deficit of \$9 billion over the next two fiscal years. At a first glance, it would appear untimely—perhaps in politics—to seek additional funding. However, the Task Force respectfully submits that in these tough economic times, rather than abandon a bona fide brownfields initiative, the State should embrace it. A comprehensive brownfields program is the lynch pin for many of the State's policy priorities: smart growth, economic development, urban revitalization, open space and job creation. When coupled with Federal programs, a State brownfields program will promote economic stimulus both in the short term and the long term.

The Federal Government has recognized the vital role of brownfields remediation and development as an economic stimulus. The \$787 billion American Recovery and Reinvestment Act signed into law on February 17<sup>th</sup> includes funding to create green jobs using a variety of mechanisms including \$100 million for competitive grants to evaluate and clean up Brownfields. This program will be administered by EPA. Our federal government recognizes the fact that Brownfields cleanups create jobs not only through the workers needed to do the cleanups

themselves, but subsequently with the new businesses that occupy the property and that the money invested in Brownfields cleanups is returned not just through job creation but also through increased tax revenue. Jobs created by Brownfields cleanups--both before and after--are taken by locally available workers, further stimulating local economies. Connecticut has the opportunity to capitalize on the federal program by demonstrating it is prepared to facilitate the development of Brownfields sites. Given the emphasis being placed on efficiency, transparency, and speed, it is critical that we adequately fund our state programs and enact the improvements necessary to expedite development. If we do not, we may see our neighbors winning grant monies that should be coming here for Brownfields projects.

The 2009 Task Force Report offers a number of very important reasons why investment in brownfields remediation and development makes good economic sense. It refers to a draft prepared by Paull Evans entitled, "*The Environmental and Economic Impacts of Brownfield Redevelopment*" which was promulgated by the Northeast Midwest Institute in July 2008. The Institute's Report offers a number of important findings:

- \$1.00 of public money leverages \$8.00 total investment.
- \$1.00 of public money for site preparation costs leverages \$20.00 in total.
- \$10,000 to \$13,000 in brownfields public investments produces one additional job.
- Property values within three-quarters of a mile of the cleanup increase 5 to 15%.
- Public investments in brownfields are recouped from local taxes in five years.
- 4.5 acres of greenfields are saved for every one acre of brownfields developed.

In short, investment in brownfields is an effective tool in creating jobs and spurring economic development.

The recommendations of the Task Force are set out in detail in the 2009 Report, so I won't burden you with a further explanation of every recommendation. I would, however, like to address a couple of the major recommendations.

Funding. The Task Force continues with its 2007 and 2008 quests for initial capitalization of \$75 million with an additional \$25 million per year for the next 5 years. Over the past 2 years, the Legislature has created an excellent brownfields grant and loan program under the auspices of the Commissioner of Economic and Community Development. This program, if funded, would be a major catalyst for economic growth and revitalization. Unfortunately, it has not received a dime, while industrial states have spent hundreds of millions of dollars. We continue to send the wrong message to stakeholders throughout the country, namely, that there are no brownfield opportunities in Connecticut.

Staffing. In 2006, the Legislature created the Office of Brownfields Remediation and Development ("OBRD"). OBRD's duties are quite broad. It must assist stakeholders, streamline the brownfield remediation and development process, identify potential sources of funding, develop procedures for expediting the application of funds, identify and prioritize statewide brownfields development opportunities, provide assistance and information concerning the State's technical, funding, regulatory and permitting programs and develop a communication and outreach program to educate municipalities, property owners, economic development agencies

and other organizations regarding the State's brownfields programs. OBRD must also administer the State's Brownfields Pilot Program. Critical to the success of the OBRD is the appointment of a director. A nationwide search for a director has been underway for over a year. In addition, adequate staffing of program managers, fiscal analysts, planners, project managers and program educators dedicated to brownfields development is essential. Accordingly, the Task Force again requests additional staffing and funding for the OBRD as well as the DEP and DECD, all of whom carry out the State's brownfields initiatives.

Tax Credits. Although not financially feasible this year, the Task Force wants to acknowledge the important role tax credits play in brownfields remediation and development. As we stated in our 2008 Report, states with robust brownfields programs rely on strong funding programs and comprehensive tax credits and incentives. Currently, Connecticut has neither.

Cost Recovery Actions. The Task Force recommends a revision of the current statutes to increase costs recovery rights against parties who have polluted sites in our State. Presently, the white night, or municipality, who wants to come in and remediate a property, for all practical purposes, has very little ability to collect from wrongdoers. Under Section 22a-452, there is a very short statute of limitations, a negligence standard which creates an almost insurmountable burden of proof, and a requirement that costs be advanced before a claim can be made. These factors effectively bar white nights and municipalities from costs recovery, which, in turn, only creates an additional disincentive to remediate and revitalize brownfields.

The Task Force has recommended that the State level the playing field by: (i) extending the statute of limitations to 6 years, (ii) creating a strict liability standard similar to that under CERCLA and (iii) allowing white nights and municipalities to file suit and recover prior to advancing the costs of funds for cleanup.

The Task Force believes that this is a cost effective tool which will incentivize municipalities and developers to invest in brownfields sites without costing the State any additional dollars.

On behalf of the members of the Brownfields Task Force, I would like to congratulate the Commerce Committee on its commitment to brownfields revitalization. Committee Bill 6097 is vitally necessary to provide for a meaningful State brownfields program. Let's send a strong message that the State is committed to brownfields remediation and redevelopment. I urge you and other members of the General Assembly to pass Committee Bill 6097.


  
**CBIA**


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 Connecticut Business & Industry Association

**TESTIMONY OF  
ERIC J. BROWN  
BEFORE THE COMMERCE COMMITTEE  
FEBRUARY 26, 2009**

Good morning. My name is Eric Brown and I am associate counsel for the Connecticut Business and Industry Association (CBIA). CBIA's membership is comprised of thousands of Connecticut businesses from the largest to the smallest with the collective goal of making Connecticut a more attractive place for businesses to invest and thereby grow jobs and our economy.

CBIA appreciates this opportunity to provide comment on **HB-6097, AN ACT CONCERNING BROWNFIELDS DEVELOPMENT PROJECTS.**

CBIA supports the intention of this bill. However, we believe it is critical for this committee to advance additional measures (please see attached) to foster brownfield development in Connecticut.

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CBIA appreciates the efforts of this committee and the Brownfields Task Force to focus attention on environmental liability and the significant role it often plays in deterring investment in brownfield redevelopment in Connecticut.

HB-6097 attempts to expand opportunities for the redevelopment of mills and brownfields located in floodplains, clarifies municipal liability in cases where they take control of brownfield sites, and modifies opportunities for cost-recovery from responsible parties to be more consistent with federal law.

However, the bill does not address what we see as the most pressing liability reform needed to spur investment in brownfield redevelopment: providing liability protection for developers willing to invest in remediating and revitalizing contaminated brownfields in Connecticut.

Connecticut's liability scheme for contaminated properties is most fundamentally premised on the concept of "the polluter pays." This simple

moniker makes sense at first glance. Unfortunately, under Connecticut law, the term "polluter" includes the property owner – regardless of whether that owner had any role in the property's history of contamination.

**Connecticut must change its frame of reference with respect to brownfield redevelopment and how it relates to developers interested in investing in brownfield properties. These investors should be enthusiastically welcomed for their unique ability to deliver environmental improvement, economic growth and job creation.**

Unfortunately, with every intention of fostering successful redevelopment projects, Connecticut presents brownfield developers with a maze of multi-agency regulations and administrative hurdles. We consider it progress when we're able provide the developer with a map of the maze – believing this will make our state a more attractive place for investment.

Unfortunately, the maze is like the old game where one uses two knobs on either side of a box to guide a marble through a maze that includes many holes through which the marble can drop.

CBIA believes the time is now to address a major fundamental roadblock to revitalizing our brownfields by instituting an "off-ramp" from the "polluter pays" policy for brownfield developers that have no connection to the contamination associated with the site.

Accordingly, we offer the language attached to this testimony for your consideration. Adoption of our suggested concepts would, without meaningful fiscal impact to the state, significantly advance our state's goal of cleaning up contaminated properties and replacing them with vibrant, job-creating economic development projects.

Thank you for this opportunity to comment.

**CONCEPTUAL OUTLINE ESTABLISHING CRITICAL LIABILITY RELIEF FOR BROWNFIELD REDEVELOPERS.**

No later than January 1, 2010, the Department of Environmental Protection shall adopt regulations establishing the following policies and procedures with respect to brownfield redevelopment:

Section 1

(a) Eligibility - Eligible Parties and Eligible Sites must qualify with the Department to participate in the program. The following parties shall be Eligible Parties under the Program:

- i. An Innocent Landowner, including municipalities;
- ii. A Bona Fide Prospective Purchaser ("BFPP" as defined under federal CERCLA); or
- iii. A party who receives property from either an Innocent Landowner or a BFPP and has no prior relationship to the site.

(b) An Eligible Party who wishes to participate in the program may only do so if the site in question is also eligible. Eligible Sites must meet the following requirements:

- i. The site must have suffered a release of regulated substances that exceed RSRs;
- ii. The site must have potential for productive re-use, as determined by the Department;
- iii. The site may be nominated by municipalities; and
- iv. The Department may select sites not already subject to application by a private party or nominated by a municipality.

(c) Notwithstanding the foregoing, sites undergoing enforcement action by DEP under any current DEP program or on NPL, are not Eligible Sites. Sites currently in Transfer Act process, if otherwise eligible, may participate in this program.

Section 2.

Sites that are selected for inclusion in this program by the Department shall adhere to the following requirements:

(a) Transactions for properties that have completed cleanup under this program will be conditionally exempt from the requirements of the Transfer Act, as follows:

- i. Completion of program makes site eligible for a Form II filing under the Transfer Act, or
- ii. Completion of remediation exempts the site from future obligations under the Transfer Act, provided that no future activities would make the site an "Establishment" under the Transfer Act.

(b) Assessment and remediation of all Eligible Sites accepted into program may be led by a licensed environmental professional, unless the Department specifically requires Departmental lead of the site.

(c) Eligible Sites shall not be liable for contamination emanating to offsite properties, however, applicant must remediate source of contamination if the Department determines upon additional investigation that a continuing significant environmental endangerment exists pursuant to CGS 22a-6u.

(d) Eligible Party must take "reasonable steps" and "appropriate action" as required under CERCLA for liability protection.

Section 3.

Process for application. To apply for the program, the following process shall be used:

(a). The Department, acting in conjunction with the Office of Brownfield Remediation and Development ("OBRD") shall be solely responsible for eligibility determination, liability/cleanup, supervision, and funding, if appropriate.

(b). The Department and/or OBRD shall act as ombudsman for applicant in expediting permitting, so long as applicant is complying with remediation schedule ("Site Agreement")

(c) An Eligible Party or a municipality shall submit a program nomination to the Department with an Environmental Condition Assessment Form and all documentation demonstrating all eligibility criteria for the site and all parties.

(d). The Department (with consultation with OBRD and other state agencies as appropriate) to have 90 days to respond as to completeness of application and initial eligibility both for participation in the program and any funding from the state.

(e). If site and parties accepted into program, then the parties shall work with the Department to establish deadlines for submission by the Eligible Party of a schedule for any further site characterization work required by the Department, and for Departmental response. Once the site characterization is accepted, the Eligible Party and the Department shall develop a schedule for submission by the Eligible Party of a Remedial Action Plan and for a response by the Department.

(f) Site Characterization and Remedial Action Plans shall include both interim status or other appropriate interim target dates and a target date for project completion (with ability to extend for good cause).

(g) Funding applications, if appropriate, shall be submitted within specific time after approval of entry into program.



**STATE OF CONNECTICUT**  
**OFFICE OF POLICY AND MANAGEMENT**

TESTIMONY SUBMITTED TO THE COMMERCE COMMITTEE  
 FEBRUARY 26, 2009

Robert L. Genuario, Secretary  
 Office of Policy and Management (OPM)

**Concerning Committee Bill No. 6097**  
**AN ACT CONCERNING BROWNFIELDS DEVELOPMENT PROJECTS**

Senator LeBeau, Representative Berger and distinguished members of the Commerce Committee, I thank you for the opportunity to submit written testimony concerning Committee Bill No. 6097, the intent of which is to facilitate the development of brownfields projects.

As you know, Governor M. Jodi Rell supports the redevelopment of brownfields and vacant mills, whether they are located in our cities or our smaller towns. We all know how important the reclamation and reuse of brownfields is in terms of reducing urban sprawl and serving, indirectly, to preserve open space and agricultural lands.

Since 2006, staff of the Department of Economic and Community Development's Office of Brownfields Remediation and Development (OBRD) has been working diligently with various communities and developers to bring brownfields back to a productive reuse. In October 2008, Governor Rell announced that five brownfield sites across the state that would receive a total of \$2.25 million to assist in redevelopment efforts under the brownfields pilot program.

Although we support the concept of rehabilitating existing vacant and contaminated sites, we must oppose various sections of Committee Bill No. 6097.

While well-intentioned, the amount of the appropriation in Section 9 and the 100% tax credit that Section 7 would establish are simply not affordable, especially given the current economic crisis. By providing a 100% tax credit against either the corporation business or personal income tax an organization undertaking remediation would not have any incentive to control clean-up costs as it would ultimately pass those costs on to the state's other taxpayers. Also, we have long opposed the precedent of allowing credits against the personal income tax; maintaining a simplified personal income tax structure helps to protect this important revenue source. Moreover, there is a component of the Urban Industrial Site Reinvestment credit that is applicable to brownfields.

Most of our other concerns have to do the language in Sections 2 through 6 of Committee Bill No. 6097. We believe the intent of these sections is to clarify liability issues. They are confusing, however, in that they appear to broadly define who may be liable, while establishing an absolute defense for those encompassed within that broad definition. Rather than clarifying the issue of litigation, the ambiguous nature of these provisions may actually encourage more lawsuits which could serve as a disincentive to reclamation efforts. Although supportive of reforming statutory provisions concerning liability, especially those that may impede brownfield reclamation by municipalities, we do not believe these sections will achieve the desired affect. Instead, the Commerce Committee may wish to consider providing for a reduced apportionment of municipal liability, so as to encourage their efforts at reducing the number of brownfield properties.

Lastly, we also feel that there is more appropriate language that would clarify provisions regarding contaminated properties in floodplains, and I intend to ask staff of the Department of Environmental Protection (DEP) to provide you with such language, which staff developed in concert with the Department of Economic and Community Development.

Thank you for affording me the opportunity to submit this testimony regarding our opposition to the appropriation and tax credit provisions of Committee Bill No. 6097 and our concerns with the potential unintended consequences of other sections of this bill. I encourage you to continue working with the OBRD and DEP on the liability concepts encompassed within this bill, as well as other issues related to the reclamation of brownfields. These agencies have staff members with the expertise to assist you in the important task of facilitating brownfields reclamation.

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**Statement****Insurance Association of Connecticut**

Commerce Committee

February 26, 2009

HB 6097, An Act Concerning Brownfield Development

The Insurance Association of Connecticut is opposed to HB 6097, An Act Concerning Brownfield Development, in that it unnecessarily expands a party's liability exposure.

Since the formation of the Brown Fields Task Force, the task force has heard from numerous parties that something had to be done to limit one's exposure to liability. Unfortunately, the provisions in HB 6097 do the exact opposite of what was asked of the task force.

HB 6097 appears to provide finer parameters limiting a municipality's liability exposure. However, the well intentions of the act are negated by making a municipality legally responsible for any condition which it may have exacerbated. A town simply entering onto a property could stir up sediment exacerbating the condition of the contamination. A responsible party would simply have to allege the town worsened the condition and the town is now embroiled in a legal controversy. Additionally, it is well established that clean-up procedures frequently do aggravate underlying contamination. So by making a town legally responsible for such conditions does nothing to neither shield it from liability nor encourage it to undertake clean-up.

Under current law the liability exposure to potentially responsible parties is already quite extensive. Section 4 of HB 6097 seeks to unnecessarily expand the

definition of a potentially responsible party by incorporating provisions similar to the most onerous provisions of the federal government's Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). CERCLA has resulted in increasing the barriers to brownfield redevelopment since businesses have been unwilling to invest in redeveloping sites that could later subject them to federal enforcement actions. Although, CERCLA is at least limited to direct government action or recovery of costs after government action, HB 6097 CERCLA like liability principles expand the basis for private causes of action. As such, HB 6097 will only serve to deter businesses further because of the threat of government enforcement actions coupled with the expanded threat of private causes of action.

Additionally, the inclusion of a CERCLA-like definition of a potentially responsible party exponentially expands the realm parties that may be sued. HB 6097 also removes Connecticut's current negligence standard, replacing it with CERCLA's strict liability standard. Pursuant to the amended provisions of HB 6097, a party who may have had even the slightest connection to a contaminated property may be held responsible for contamination. The mother who had her minivan's oil changed at a repair facility may be held responsible. The trucker, who delivered a load of supplies some thirty years ago, may be held responsible under the expanded definition. What does HB 6097 do for the responsible property owner who wants to do the right thing and clean up its property but would be exposed to limitless litigation? Adopting the CERCLA-like liability standard completely ignores the pleas of the parties that appeared before the task force seeking meaningful liability reform.

HB 6097 also invents a statute of limitation that would result in the potential for neverending liability. The statute of limitations created by HB 6097 allows the statute of

limitations to run once the later of two events occurs: six years from the initiation of the physical on-site construction of remedial action or three years after the completion of containment, removal or mitigation activities. Statutes of limitations are designed to provide a finite time in which a person can assert their rights and protect parties from limitless litigation. Statute of limitations ensures that information is available and evidence does not become stale. In essence, the statute of limitations created by HB 6097 is in fact no real limit at all, with the result that the statute may never begin to run or may only start to run some decades after an alleged wrongful event. For example, even if site discovery, investigation and remediation took place and were concluded promptly, post-remedial monitoring could extend the statute of limitations by 20 to 30 years, or more. Pursuant to the terms of HB 6097, those engaged in cleanup may still be subject to suit decades after they last had contact with the piece of property. How are those parties to defend against a claim? The involved parties would need to locate witnesses, if alive, and would have to find evidence that may no longer exist, or that has been destroyed in conjunction with the clean-up, or which they may have no knowledge of.

The IAC urges your rejection of HB 6097 as it fails to adopt meaningful liability reform.

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Before the Committee on Commerce, Committee Bill Number 6097  
Testimony of Nicholas J. Harding

My name is Nicholas Harding; I am a resident of Windsor, Connecticut, and am admitted to the bar of the State of Connecticut and have practiced law in Connecticut since 1979.

I appear today not on behalf of any of my clients, but as a concerned citizen, who has an interest in the development of environmental laws in the state of Connecticut. Since 1987 I have limited my practice to environmental issues. I have represented private parties in a variety of roles in state courts, federal courts and in administrative proceedings before both the US EPA, the Connecticut DEP and other agencies.

I come to speak today to provide my support to Committee Bill Number 6097, an Act Concerning Brownfields Development Projects.

I endorse all aspects of the bill and have come to speak as to section 4 and section 5 in particular.

With respect to Section 4, I would like to put forward the following observations. CGS §22a-452 is the Connecticut private party cost recovery statute that allows a property owner whose property has been contaminated by others to seek a remedy for such contamination. The statute is long overdue for amendment to provide an effective remedy to any private party who has had his or her property contaminated by the actions of others with a good strict liability statute, not unlike the federal statute, but at far less cost than the federal statute found at 42 USC §9601 *et seq.* It cures many problems with the current statutory scheme.

In my practice I have come across a line of cases for which the current statute provides no remedy. The current statute is a reimbursement statute. That means that the injured party must first spend the money to clean up the contamination and then sue to be reimbursed. There is no provision in current law to allow the court to award a declaratory judgment as to future costs and liability for future costs. Thus, when the oil delivery truck driver fills the basement with fuel oil and the property owner is given an estimate of \$350,000 to remediate the contamination, the owner needs to first spend that money and then sue to recover out of pocket expenses. When there is no \$350,000 on hand, there is no remedy under the existing statute.

This is a large impediment to the remediation of contaminated sites. By adopting the amendments to CGS §22a-452 this problem and similar problems arising with the remediation of Brownfields sites will be eliminated. Owners or developers who wish to acquire contaminated sites to restore them face the same problem as the homeowner. Amendments to section 22a-452 will cure that problem. The amendments parallel the federal statute or are superior to the federal statute. I will not bore you with the details unless you ask.

The proposals outlined in section 5, are designed to provide a cure for a decision handed down last year in a case dealing with Transfer Act compliance. In that case the transferor did not

comply with the Transfer Act at the time of sale of the property. The transferee did not learn of the failure, that is learn that the property was a Transfer Act property, until more than three years had passed from the sale of the property. Why was that significant? The Transfer Act does not have its own statute of limitations. The court, recognizing the traditional rule that the violation of a statute is a tort, applied a tort statute of limitations of three years, and thus the transferor was able to escape compliance with the Transfer Act.

The proposal in section 5 adopts a rule like that found for tax returns. If no tax return is filed the statute of limitations does not run. Under the proposal, if no Transfer Act form is filed, or if the wrong Transfer Act form is filed, then the statute of limitations does not begin to run until the correct form is filed. Once the correct form is filed the transferee is allowed to commence an action up to six years from the date of filing. Under this statutory and regulatory scheme the transferor is to complete its investigation of the property within two years after the filing and commence its plan of remediation within three years.

The simple change of providing for a statute of limitations will be useful. But I find that that amendment does not go far enough. Let me explain.

CGS §22a-134b limits the class of people who can chase the transferor for Transfer Act non-compliance to the transferee. That limitation is far too restrictive.

I am aware of at least one property which was leased by a landlord to a tenant. At the end of the lease term, tenant, a New York Stock Exchange traded company, sold the assets of the business to another party, and filed a Form III under the Transfer Act, promising to clean up the site. The purchaser/transferee of the assets immediately took the assets to Rhode Island.

The transferor of course has done nothing to remediate the site. The statute allows the transferee to enforce the obligations under the Transfer Act, but does not allow the landlord or other injured party to seek redress. Today the property sits vacant. Three different prospective purchasers have inspected the property, done their due diligence, and have decided to move on. The property is another vacant building off Interstate 95 in Bridgeport.

Are there other ways to try and enforce the Transfer Act in this case? Perhaps, there are. Are they as simple and as workable as expanding the class of people who are entitled to bring suit for violation of the Transfer Act? No. Can the legislature solve this problem? Yes. I recommend that House Bill 6097 be amended as follows:

Sec. 5. Section 22a-134b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) The failure of the transferor or certifying party to comply with any of the provisions of sections 22a-134 to 22a-134e, inclusive, as amended by this act, entitles ~~the transferee~~ anyone suffering damages from such noncompliance to recover damages from the transferor and certifying party, and renders the transferor

and certifying party of the establishment strictly liable, without regard to fault, for all remediation costs and for all direct and indirect damages.

(b) An action to recover damages pursuant to subsection (a) of this section shall be commenced not later than six years after the later of the (1) due date for the filing of the appropriate transfer form under section 22a-134a, or (2) the actual filing date of the appropriate transfer form.

(c) This section shall apply to any action brought for the reimbursement or recovery of remediation costs and all direct and indirect damages provided this section shall not apply to any action that becomes final and is no longer subject to appeal on or before October 1, 2009.

Expanding the universe of people who can seek a remedy under the Transfer Act from the transferor or the certifying party for failing to comply can only benefit the redevelopment of Brownfields sites throughout the state. Allowing landlords and others injured by those who ignore their Transfer Act obligations will benefit the state by providing private developers the tools they need to recover costs of remediation.

These changes, the amendments to CGS §22a-452 and CGS §22a-134b, do not cost the state treasury a dollar. They do not call for the expenditure of state monies. They will have the long-term benefit of returning properties to use, to the remediation of Brownfields by private parties, and at no out-of-pocket cost to state or local governments. The benefit over the long haul will be the return of property to tax rolls.

Do you have any questions?

Thank you for your time and attention to this matter.

Respectfully submitted,



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Commerce Committee  
 February 26, 2009 Hearing  
 Testimony by David Fink, Policy Director, Partnership for Strong Communities  
 Re: **HB 6097, An Act Concerning Brownfields Development Projects**

Respected Chairmen and Members of the Committee,

My name is David Fink and I am the policy director of The Partnership for Strong Communities, 2011 a statewide housing policy organization dedicated to raising awareness and advancing solutions to create affordable housing and build healthy and economically vital communities, and end chronic homelessness. I am testifying on this bill because of the importance of brownfield redevelopment to our state's housing efforts.

It remains critical that Connecticut boost its supply of housing that low- and moderate-income families and workers can afford. Despite softening housing prices, Connecticut is not seeing the dramatic drops in housing prices that most other states have. This is because we have a chronic undersupply of housing, which is propping up prices. Connecticut is 47<sup>th</sup> among the states in its per capita rate of housing production since 2000. Our slow rate of housing creation – and the resulting high housing costs - puts us at a competitive disadvantage in attracting and retaining the workers and businesses our economy and quality of life rely upon. In fact, Connecticut has lost its 25-34 year old population faster than any other state, largely due to our high housing costs. Meanwhile, many of the service workers who remain are facing huge housing obstacles. Despite a 9.2% decline in median housing prices in 2008, the state's median sales price is still \$268,000. One fourth of all households earns less than 80% of median income and spends more than 30% of that income on housing, while one fourth of all renters earn less than 50% of median income and spend more than half of it on housing.

To remedy our housing undersupply and high housing costs, and enhance our economic competitiveness, Connecticut must aggressively pursue a variety of development opportunities, including brownfields. The Blue Ribbon Commission on Housing and Economic Development studied brownfield issues and found it to be an important element in addressing the state's housing needs. There are several examples in Connecticut of mills and factories that have become excellent housing, but many more could be possible with reasonable policy changes. Further, housing represents a unique opportunity to get brownfields redeveloped. In a sluggish economy where industrial, retail and office developments are unlikely to sell or rent right away, housing might be a use of these building that find traction, because we know there is still demand for housing. Realtors and homebuilders report that moderately-sized, moderately-priced housing units are still selling and renting. Housing can help relieve communities of these eyesores, while putting them on the tax rolls and helping them contribute to the economy again.

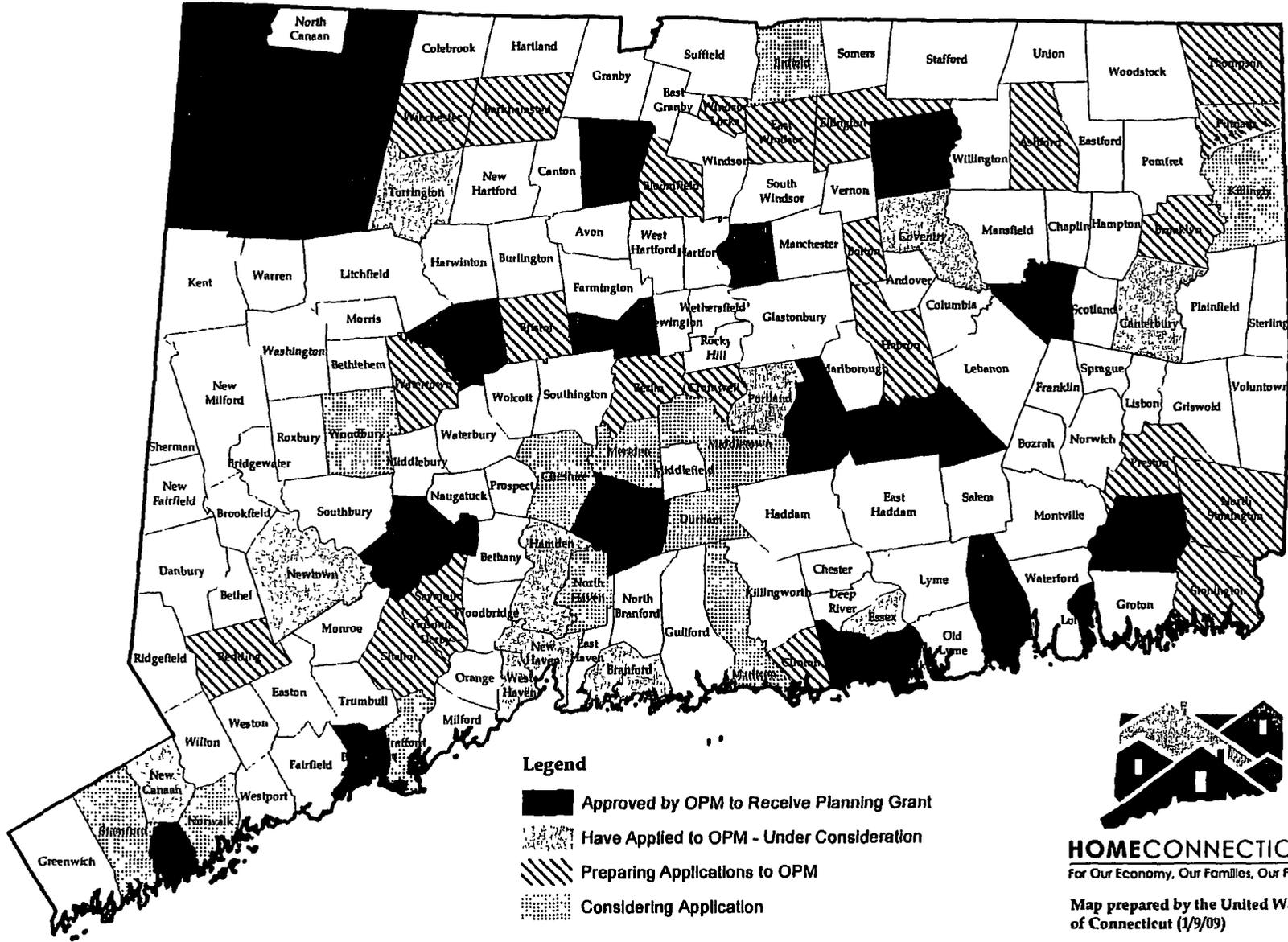
In the bill before you, HB 6097, An Act Concerning Brownfields Development Projects, we are most interested in the effort to allow redevelopments within the 500-year floodplain. Because many mills were built near rivers, many of them fall within the floodplain. A restrictive floodplain policy then puts these redevelopment possibilities off-limits.

As written at the moment, the bill requires a brownfield redevelopment within the 500-year floodplain to get a waiver from the state if the project would go at all beyond the footprint of the existing structure, or if housing units were to be within the 500-year floodplain elevation. These two provisions on footprint and housing within the 500-year elevation affect many of the potential mill redevelopment possibilities. But adding additional review burdens on state agency staff in an era of budget cutbacks could end up slowing down developments.

A promising approach neighboring states have taken to this issue is to not rely heavily on agency review, but to have state policy align with federal policy that already lays out guidelines for redevelopment between the 100-year and 500-year plain. Massachusetts, Maine and New Hampshire simply defer to the Federal Emergency Management Agency (FEMA) National Floodplain Insurance Program. This approach is being taken by a similar bill being considered by the Environment Committee – SB 271, An Act Concerning Flood Plain Management and Mill Properties. It strikes us as an easy and efficient way to adjust Connecticut policy on this front, while still ensuring public safety and sound land use.

In general, we urge the Committee to move assertively to enable easier redevelopment of brownfield properties, and to ensure that our state's housing situation receives full consideration in policy decisions in this area.

# Housing for Economic Growth Program Technical Assistance Grants: Status 2009



### Legend

-  Approved by OPM to Receive Planning Grant
-  Have Applied to OPM - Under Consideration
-  Preparing Applications to OPM
-  Considering Application



**HOMECONNECTICUT**  
For Our Economy, Our Families, Our Future

Map prepared by the United Way of Connecticut (1/9/09)



**CONNECTICUT  
CONFERENCE OF  
MUNICIPALITIES**

900 Chapel St., 9th Floor, New Haven, Connecticut 06510-2807  
Phone (203) 498-3000 • Fax (203) 562-6314 • [www.ccm-ct.org](http://www.ccm-ct.org)

**THE VOICE OF LOCAL GOVERNMENT**

5

**TESTIMONY**  
of the  
**CONNECTICUT CONFERENCE OF MUNICIPALITIES**  
to the  
**COMMERCE COMMITTEE**

February 26, 2009

CCM is Connecticut's statewide association of towns and cities and the voice of local governments - your partners in governing Connecticut. Our members represent over 93% of Connecticut's population. We appreciate this opportunity to provide testimony to you on issues of concern to towns and cities.

**CCM has concerns with Committee Bill 6097 "*An Act Concerning Brownfields Development Projects*" as currently drafted.**

This proposal appears to seek to make strides toward improving the brownfield remediation process and limiting the liability of entities seeking to take on such projects but who is not responsible for the contamination.

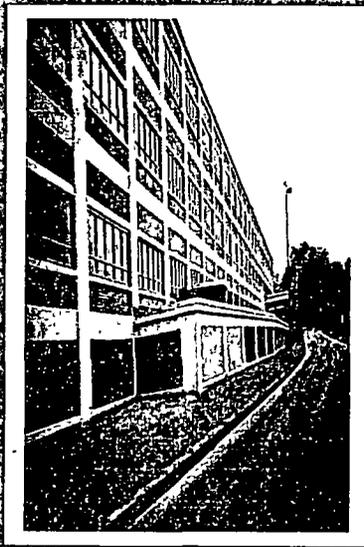
However, lines 177-180 significantly expand the liability of municipalities or economic development agencies that "exacerbate" the conditions of a brownfield. The very nature of remediation requires disturbing soil and can exacerbate the situation in the short term while working toward a clean-up. In addition, there is always the potential that the extent of contamination cannot be fully understood until soil is disturbed, which can also lead to an exacerbation of the situation.

Passage of such an expansion of liability on entities seeking to clean-up these properties will only serve to create a chilling effect on undertaking such projects.

CCM urges the committee *amend this bill to alleviate any additional liability being imposed, before taking any action* on this bill.

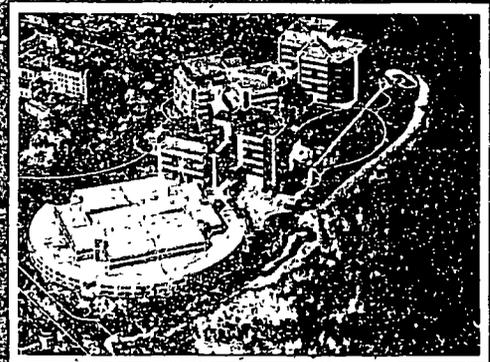
## ## ##

If you have any questions, please contact Kachina Walsh-Weaver, Senior Legislative Associate of CCM via email [kweaver@ccm-ct.org](mailto:kweaver@ccm-ct.org) or via phone (203) 498-3026.



Veeder Place, Hartford, CT

Third report of the State of Connecticut  
**TASK FORCE ON  
BROWNFIELDS STRATEGIES**



Pfizer Global Development Facility, New London, CT

**THIRD**  
**REPORT OF THE**  
**STATE OF CONNECTICUT**

**TASK FORCE**  
**ON**  
**BROWNFIELDS STRATEGIES**

*Submitted to the*  
**Commerce Committee**  
**&**  
**Environment Committee**  
*of the*  
**Connecticut General Assembly**

**FEBRUARY 2009**

## PURPOSE OF THE REPORT

The purpose of this report is to respond to Public Act 08-174, "An Act Concerning the Face of Connecticut Steering Committee, the Preservation of Farmland, a Municipal Grant Program for Development Projects, Loans for Brownfield Purchasers and Tax Exemptions for Open Space Land Held by or for Certain Corporations". By way of background, the Brownfields Task Force was created through Public Act 06-184, "An Act Concerning Brownfields" and was continued through Public Act 07-233, "An Act Implementing the Recommendations of the Brownfields Task Force." The Task Force was created to develop long-term solutions for cleaning up Brownfields and to propose new incentives to stimulate investment and rehabilitation of Brownfields. The Task Force issued its first Report to the Environment and Commerce Committees in February 2007 and its second Report to the Environment and Commerce Committees in February 2008. This is its Third Report.

In the 2006 Act, a Brownfield has been defined as "any abandoned or underutilized site where redevelopment and reuse has not occurred due to the presence of pollution in the soil or groundwater that requires remediation prior to or in conjunction with the restoration, redevelopment and reuse of the property." The Task Force has continued in its mission to "study strategies for providing long-term solutions for the state's Brownfields".

Each year, the Task Force issued a number of recommendations, many of which were enacted by the Legislature and signed by Governor M. Jodi Rell in 2007 and 2008. However, many were not. In this Report, the Task Force urges the Legislature and the Governor to consider the recommendations that were previously offered and to enact new, vibrant and innovative programs to stimulate the redevelopment of our State's Brownfield properties. A strong Brownfield program can provide economic stimulus to a municipality and to the state in a time when such stimulus is sorely needed.

The Task Force has continued to look at the existing state programs, the modifications made in 2006, 2007 and 2008, and whether the issues and impediments to successful Brownfields redevelopment that were raised by the Task Force have been addressed. The Task Force in 2007 and 2008 proposed incremental changes, when sweeping ones were really necessary. Each year the Task Force has evaluated the changes that were made in accordance with its recommendations. We chose to prioritize changes to address: organizational reform, funding and financing initiatives, regulatory programs, liability relief. As to organizational reform, the Task Force saw many changes. And, each year the legislature responded to creating new funding programs albeit without the necessary funding. This year, in this Report, we are revisiting some of our prior recommendations and using them as a scorecard to judge the changes that have been made. And, we are also moving forward on some of our prior recommendations and urging reform in the

state's liability relief and cost recovery programs. In our opinion, these programs are absolutely necessary and fundamental in order to spur new development and redevelopment on these sites.

As we stated in 2007 and 2008, the recommendations in this Report will undoubtedly require accepting significant and, in some cases, controversial changes to existing programs, structures and philosophies. These changes and the recommendations the Task Force has made are significant economically to our state as new jobs are created and new revenue streams are developed, which is needed in these uncertain times. On the environmental side, Brownfield redevelopment is "green" as it saves land, reduces the effect of contamination on our soil and water resources, and provides redevelopment where existing infrastructure exists. Since our last report, the Northeast Midwest Institute has issued a report entitled: "*The Environmental and Economic Impacts of Brownfields Redevelopment*" (July 2008) which substantiates the initiatives the Task Force has proposed.

The Task Force members are grateful to the staff of the Departments of Economic and Community Development and Environmental Protection, and the Connecticut Development Authority, which spent the time with us and assisted us in our meetings, researching issues, inviting various representatives to testify, responding to our various questions and in engaging in lively debate and discussion. We believe we have been successful collaborating and working together on a number of issues. Through the process, we do believe that we have made progress but more has yet to be accomplished.

The Task Force members also thank the General Assembly and the appointing authorities for the opportunity to serve on this Task Force and make recommendations for what we believe is the continuation of a very important initiative for determining the future of Connecticut Brownfield properties.

Finally, the Task Force specifically recognizes the Co-Chairs of the Commerce Committee, Representative Jeffrey Berger from Waterbury and Senator Gary LeBeau from East Hartford, who recognized early on the importance of Brownfields revitalization to municipal economic and community development and public health and safety. We thank them for their leadership, support and tenacity as they have embraced Brownfield redevelopment as the key for turning around our communities, restoring a property quality of life, and restoring a municipality's tax base.

**A strong Brownfields program will provide a needed economic stimulus to our state.**

## **ADOPTION OF REPORT**

**On Tuesday, February 24, 2009, the Task Force members adopted and voted in favor of this report and its recommendations. In keeping with the separation of power between the Executive Branch and Legislative Branch of Government, the public officials who are members of the Agencies that serve on the Task Force and who were present at the Task Force meeting on February 24, 2009, appropriately abstained from the final vote on the Task Force's Report.**

## MEMBERS OF THE BROWNFIELDS TASK FORCE

<u>Member</u>	<u>Position/Occupation</u>	<u>Appointing Authority</u>
Ann M. Catino, Co-Chair	Partner, Halloran & Sage, LLP	President Pro Tempore of the Senate
Gary B. O'Connor, Co-Chair	Partner, Pepe & Hazard, LLP	Speaker of the House of Representatives
Robert Genaurio	Secretary, Office of Policy & Management	Statutory Member
Gina McCarthy	Commissioner, Department of Environmental Protection	Statutory Member
Joan McDonald	Commissioner, Department of Economic & Community Development	Statutory Member
Ronald F. Angelo, Jr.	Deputy Commissioner, Department of Economic & Community Development	Governor
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**THIRD BROWNFIELDS TASK FORCE REPORT**  
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## I. EXECUTIVE SUMMARY

In 2007 and 2008, the Task Force approached Brownfields reform from two different angles: (1) Evolutionary and (2) Revolutionary. Many of our prior recommendations were a combination of both. However, despite passage of Public Acts No. 07-233 and 08-174, we believe that our growth remains firmly entrenched in geologic time. Significant progress has not yet been made. And, today, many projects are now stalled do to the economic realities of our time. Financial and credit support from traditional lending sources for even the best of projects has been lacking and/or stalled. Brownfield projects, which are usually more risky for development and require greater scrutiny due to the environmental considerations, are few (if any) in existence today. Consequently, many of our downtown and main streets continue to deteriorate. Jobs are lost. Municipalities see a shrinking tax base. The State is seeing record deficits. Brownfield projects can provide a needed economic stimulus. And, they provide an added environmental justice benefit especially to our urban areas which carry the heavy weight of a disproportionate number of Brownfield properties.

With the laudable goals of creating green corridors, transit-oriented development and responsible growth, Brownfield redevelopment is the missing link that ties all of these programs together. As we stated last year: “[t]o promote development where infrastructure exists, transportation corridors accessible, mass transit readily available and utilities pre-existing, the municipal core centers and urban areas that once fueled Connecticut’s economy are ripe for restoration in accordance with smart and responsible growth principles.” Brownfield redevelopment serves these needs and can provide the beneficial economic injection that Connecticut needs. But Brownfield initiatives are falling woefully behind. With some exception, Brownfield redevelopment does not readily occur – it takes state support. The State must take the lead and create the funding and financing programs, administrative support, and regulatory programs to encourage and incentivize such Brownfield redevelopment.

This Report largely reflects our recommendations in 2007 and 2008. We strongly urge the legislature to consider our prior recommendations and act upon them. In our last report we stated that “[t]he time is now for us to turn the corner or we are going to be left behind.” The reality is that we have been left behind – by other states, by the federal government, by developers and now by economic realities. Connecticut could and should be a leader in this area and show how real economic stimulus packages can turn an economy, provide jobs, raise revenue, and restore an urban area. As we have stated unequivocally in our prior reports – financial support, programmatic changes, liability relief, and meaningful opportunities for property owners and developers are needed in order to spur development. We recommend that all our recommendations from our prior two reports be adopted in 2009. We also request that particular attention be paid to providing meaningful funding and financing, providing liability relief to municipalities and new property purchasers/developers, creating easier redevelopment in flood plains, providing for meaningful cost recovery actions by parties who clean up sites against the responsible parties or parties who fail to comply with the Transfer Act, creating a tax credit for Brownfield redevelopment and permitting CDA to continue its tax increment

financing program, loan guarantees and loan programs. More specifically, we ask the legislature to consider:

- Making floodplain development easier;
- Allowing municipalities to transfer properties without the Transfer Act if it took title through eminent domain, foreclosure or a tax warrant sale, provided that the property has been remediated or is undergoing remediation under a DEP program;
- Clarifying municipal immunity for any town that receives funding through OBRD rather than just the pilot municipalities;
- Shielding "white knight" developers from pursuing investigation and remediation of contamination outside of the Brownfield property boundary in streams and sediments;
- Allowing meaningful cost recovery actions by parties who clean up sites against responsible parties;
- Allowing meaningful claims under the Connecticut Transfer Act for damages incurred by transferees against sellers who fail to comply with the Transfer Act;
- Clarifying municipal immunity when municipalities perform an environmental investigation/assessment;
- Creating a tax credit for Brownfield development;
- Asking for \$200 million in funding for the OBRD programs;
- Taking away CDA TIF's sunset date.

It is incumbent upon the legislature, the Administration and all of us to make Connecticut a better place. Consistent with the laudable responsible growth initiatives currently being mapped, Brownfields redevelopment is an integral part. Indeed, responsible growth cannot happen without a meaningful Brownfields program. To promote development where infrastructure exists, transportation corridors accessible, mass transit readily available and utilities pre-existing, the municipal core centers and urban areas that once fueled Connecticut's economy are ripe for restoration in accordance with smart and responsible growth principles. Similarly, existing, but long neglected ghosts of the state's manufacturing past that exist along waterways and channels or that served as a central hub for a community can be resurrected and restored for a variety of uses rather than standing as good soldiers keeping the secrets of what lies in the building, the soil and groundwater resulting from an era long gone. As a state, this marriage has to be recognized and Brownfields programs supported, in terms of policy, staffing, funding and programmatic changes. In Public Act 07-07, the Responsible Growth Incentive Fund, was funded in an amount not exceeding \$ 10,000,000, with up to \$5,000,000 to be used for grants-in-aid and of up to \$ 1,000,000 to each of the participating municipalities or regional planning organizations for implementation of transit-oriented plans and strategies in designated pilot program areas. Brownfields, which are the lynchpin to the success of this initiative, are falling woefully behind. Responsible Growth policies will not be successful unless attention and support is given to Brownfields.

The Task Force respectfully submits that in these tough economic times, rather than abandon a Brownfields initiative, the State should embrace it. A comprehensive

Brownfields program is the nucleus for many of the State's policy priorities: responsible and smart growth, economic development, urban revitalization, job creation and open space preservation.

The Federal Government has recognized the vital role of Brownfields remediation and development as an economic stimulus. The \$787 billion American Recovery and Reinvestment Act signed into law on February 17<sup>th</sup> includes funding to create green jobs using a variety of mechanisms including \$100 million for competitive grants to evaluate and clean up Brownfields. This program will be administered by EPA. Our federal government recognizes the fact that Brownfields cleanups create jobs not only through the workers needed to do the cleanups themselves, but subsequently with the new businesses that occupy the property and that the money invested in Brownfields cleanups is returned not just through job creation but also through increased tax revenue. Jobs created by Brownfields cleanups--both before and after--are taken by locally available workers, further stimulating local economies. Connecticut has the opportunity to capitalize on the federal program by demonstrating it is prepared to facilitate the development of Brownfields sites. Given the emphasis being placed on efficiency, transparency and speed it is critical that we adequately fund our state programs and enact the improvements necessary to expedite development. If we do not, we may see our neighbors winning grant monies that should be coming here for Brownfields projects.

## II. TASK FORCE BACKGROUND

### A. Creation & Membership

Public Act 06-184 created the Brownfields Task Force to study strategies for providing long term solutions for the state's Brownfields. The goal of the Brownfields Task Force was and remains to make recommendations to refine the current statutory framework and programs so that Connecticut may be one of the country's leaders in restoring our Brownfields to productive economic and community reuse. Under 06-184, the Task Force concluded its work upon submission of its Report to the Environment and Commerce Committees, which occurred on February 15, 2007. Two bills were raised during the 2007 session of the Connecticut General Assembly implementing the recommendations of the Task Force and Substitute House Bill No. 7369 emerged. Substitute House Bill No. 7369 passed both the House and Senate chambers of the General Assembly unanimously, on June 4 and June 6, 2007, respectively. On July 6, 2007, this bill was signed by Governor M. Jodi Rell and became Public Act No. 07-233.

Pursuant to section 15 of Public Act No. 07-233, the Task Force on Brownfields Strategies was reestablished and it reconvened in September 2007. All members appointed previously pursuant to section 11 of Public Act 06-184 remained on the Task Force and, in accordance with section 15 of Public Act 07-233, two additional members were added: the Commissioner of Economic and Community Development and the Secretary of the Office of Policy and Management. The Task Force issued its Second Report to the Environment and Commerce Committees on February 25, 2008.

During the 2008 session of the Connecticut General Assembly, several bills were introduced regarding Brownfields funding and HB 5589 was raised by the Commerce Committee implementing the recommendations of the Task Force. The Task Force bill ultimately was joined with other redevelopment bills and it emerged as Public Act 08-174, which also reauthorized the Task Force for another year with no changes to the Task Force membership. At times, for the Commissioners and the Secretary, their designees as authorized under the Act, participated in their stead. Those designees were Elizabeth Appel for the Commissioner of Economic and Community Development, and Graham Stevens for the Commissioner of Environmental Protection.

The Connecticut Development Authority also participated in the meetings through Cynthia Petruzzello, who provided valuable assistance as to CDA's programs, role, and successes in its efforts to stimulate Brownfield redevelopment.

In addition, DECD and DEP graciously provided staff to conduct research for us and update the Task Force on the development of the Office of Brownfields Remediation and Development (OBRD). The Task Force extends its special thanks to representatives Jan Czczotka and Tracy Iott of DEP who came and spoke to us regarding the draft Remediation Standard Regulations; Diane Duva, also from DEP, who spoke to us on the proposed changes to the solid waste regulations; and Jeff Caiola from DEP who spoke to us on the floodplains statute.

B. Meetings & Public Participation

Upon reauthorization, the Task Force convened on October 28, 2008, November 10 and 25, 2008, December 9 and 23, 2008, January 6 and 27, 2009, and February 24, 2009. As in prior years, the Task Force heard from the agencies and stakeholders; however, most of the time the members considered the changes that still need to be addressed from the first two Task Force Reports.

On Tuesday, February 24, 2009, the Task Force members adopted and voted in favor of this report and its recommendations. In keeping with the separation of power between the Executive Branch and Legislative Branch of Government, the agency representatives in attendance appropriately abstained from the final vote on the Task Force's Report. The agencies' participation in the Task Force and development of this report does not imply the agencies' endorsement of any recommendations contained herein.

C. Objectives

In large part, the Task Force reevaluated the progress that had been made over the last several years to address the state's Brownfields. Most of the recommendations in this Report are based upon prior year recommendations that have yet to be achieved. Therefore, the Task Force focused on three primary areas: First, whether the changes encompassed in Public Acts 07-233 and 08-174 sufficiently provided the tools deemed necessary to (i) stimulate Brownfields redevelopment, (ii) change the existing programs in a meaningful way to enhance investment in these properties, (iii) restore developer confidence in Connecticut, (iv) attract new investors to our state, (v) encourage existing property owners to remain and (vi) encourage municipalities, regional and municipal economic and community non-profit corporations to take action to take title and/or redevelop the properties themselves.

Second, during 2008, we heard from DEP representatives regarding changes to the Remediation Standard Regulations (RSRs), which set the clean up standards and the Solid Waste Regulations, which also impact Brownfield redevelopment. Through these meetings, we exchanged concerns and ideas for new Brownfield sites should be treated. Certainly, the dialogue has increased on Brownfields such that the agencies have become quite responsive. The proposed regulations have not yet been released yet for notice and comment; however, we have set forth some preliminary recommendations and concerns. It is the intent of the Task Force members to continue to participate in the process and offer recommendations to the agencies and as needed based upon our service on the Task Force.

Our observations and recommendations for 2009 are set forth in the next Section.

### III. RECOMMENDATIONS

#### A. FUNDING AND FINANCIAL TOOLS ARE NEEDED, WHICH WILL STIMULATE BROWNFIELD REDEVELOPMENT AND THE ECONOMY

In each of the two prior Task Force Reports, the Task Force recommended that (1) Brownfield development programs be funded in the amount of \$75 million to provide the financial assistance programs established in Public Acts 07-233 and 08-174, with \$25 million each year for the next five years; (2) the Bond Commission shall fully allocate all funds to the Brownfield remediation and development account and allow the funding to be administered by the Commissioner of DECD (through a capital account) without returning to the Bond Commission; (3) the sunset date for the CDA Brownfield Tax Incrementing Financing program be eliminated; and (4) a tax credit be established for developers to utilize for Brownfield projects. These recommendations remain necessary in order to stimulate Brownfields redevelopment and, also, our economy.

This year, a report was released that further buttresses the rationale for a robust funding program. The Northeast Midwest Institute ("Institute"), the primary think-tank for Brownfield issues, issued a draft report prepared by Evans Paull in July 2008 entitled *The Environmental and Economic Impacts of Brownfield Redevelopment*. The conclusions in this report buttress the Task Force's position that public funding and financial tools are not only necessary for Brownfield redevelopment but also serve to strengthen the economy. In the Institute's Report, a number of key findings are made. First, they state that the average clean up cost is approximately \$600,000 - \$1,000,000 (excluding gas stations/petroleum cleanup sites). Second, the Report reiterates that every year, the U.S. Conference of Mayors reports that "funding for cleanup" ranks as the top impediment for redeveloping Brownfields. From its survey, they project that redeveloping Brownfield sites could lead to \$2.2 billion in local tax revenue annually. Third, 4.5 acres of "greenfields" are saved for every 1 acre of Brownfield developed. Fourth, jobs are created. For a prototypical 5 acre Brownfield site, with \$24 million in site investment, **90 jobs** are created. The Institute further reports that for the \$1.3 billion invested under the EPA Brownfields program, 48,200 jobs are created and \$11.3 billion in new investment is initiated. In summary, they report that:

- \$1 of public money leverages \$8 total
- \$1 of public money for site preparation costs leverages \$20 total
- \$1 of public money in weak markets leverages \$3.60 total
- it takes \$10,000-13,000 in Brownfields public investments to produce ONE job compared to HUD and Commerce Department investment, which takes \$35,000 to produce one job
- property values within ¼ mile of the clean up increase 5-15%
- public investments in Brownfields are recouped from local taxes in five years
- the external societal costs associated with transportation issues (e.g., parking) are estimated to be \$26,960 per acre per year LESS for residents of Brownfield sites relative to Greenfield sites.

**Funding is needed.** In 2007 and 2008, the Task Force proposed a Brownfield program with an initial capitalization of \$75 million, with an additional \$25 million/year for the next five years. While Public Act 07-233 §§ 3-5 did create a new program and Public Act 08-174 clarified and expanded the types of programs available (which the Task Force applauds), the new programs are primarily funded "subject to the availability of funds." From Public Act 07-07, it appears that this program *for the entire state* was proposed to be funded at \$2.5 million a year for two years, which is significantly below the Task Force's recommendation and well below what other states are doing and what the federal government has and is doing. In addition, the Task Force proposed that the pilot program established almost two years ago in Public Act 06-184 be funded at \$16 million. But, only \$4.5 million a year for two years was authorized.

The reality of the funding is that out of the \$14.5 million the legislature did authorize, only \$2.25 million was ultimately provided to the agency by the State Bond Commission. These funds were awarded in October 2008, through a competitive bid process, to five Brownfield sites in the state.

Such lack of funding will not spur new investment in the state, create jobs or restore a tax base. *Rather, the message that is sent is that no business opportunities exist in this state.* Therefore, the Task Force recommends meaningful funding, consistent with other states, the federal programs, and consistent with the recognition that Brownfields remediation is an important economic stimulus initiative.

**Tax Credits are needed.** Alternatively, or in combination with funding, tax credits should be provided to developers. As we stated in our 2008 report, states with robust Brownfield programs rely on either strong funding programs or comprehensive tax credits and incentives. Currently, Connecticut has neither. Brownfield tax credits, historic tax credits focused on commercial and industrial development, mixed use and housing will play an important role in stimulating development. The historic tax credit program should not be eliminated; rather it should be extended to cover commercial and mixed use in order to stimulate growth. Such credits provide incentives that lead to construction jobs and the restoration of property and should be retained and expanded so that Brownfield sites are part of the package.

**Staffing is needed.** OBRD's scope is quite broad. It has to assist developers, municipalities, streamline the process, identify potential sources of funding and develop procedures for expediting the application of funds, identify and prioritize state-wide Brownfields development opportunities, provide assistance and information concerning the state's technical assistance, funding, regulatory and permitting programs, and develop a communication and outreach program to educate municipalities, property owners, economic development agencies, and other organizations on the state's Brownfields programs. To date, it has administered the pilot programs and the other programs, it has sought and received funding from EPA. A \$1,000,000 grant from the EPA was previously awarded to provide funds for the cleanup of environmental contamination and the OBRD is currently seeking \$1.75 million from EPA for its revolving loan program.

Currently, OBRD has three full time staff people from DECD and DEP has designated one liaison. A nationwide search has been underway for a director for over a year. For this office, its mission, and the program to be effective, adequate staffing with program managers, fiscal analysts, planners, project managers and program educators dedicated to Brownfields development is essential. In our 2007 & 2008 reports we requested \$3.5 million, adjusted on an annual basis, for purposes of hiring the appropriate personnel and implementing the marketing, education and outreach programs. The Task Force again requests additional staffing and funding to the DEP, DECD and OBRD to carry out the Brownfield programs.

B. INCENTIVES ARE NECESSARY TO ENCOURAGE INVESTMENT BY THE PRIVATE SECTOR

***Limitations on Investigation and Remediation.*** In addition to funding and tax credit programs, other incentives are needed to encourage investment by the private sector. In our prior reports, we recommended that individuals and companies who have no prior connection to a property be shielded from liability from third party claims and DEP action provided that they enter a program and clean up the property in accordance with the state's remediation standard regulations. The Task Force, however, believes that this "white knight" developer be shielded not only from this liability but from chasing contamination emanating from the site to other parcels or to sediments or following downstream river impacts. For a new company evaluating the cost and risks of a site, these costs (and the uncertainty associated with chasing contamination in a riverbed when there are likely upgradient and downgradient sources) is too much to bear. This requirement is too much for the state to ask of a new property owner. A developer is already asked to investigate and clean up the site, redevelop the property, bring in jobs, pay taxes, etc. Through the cleanup, the source of pollution will be addressed, therefore, the Task Force does not believe that any more should be asked of this "white knight". Therefore, we recommend that Section 22a-133aa(f) be amended to include the following:

(f) A "Brownfield investigation plan and remediation schedule" means a plan and schedule for investigation, and a schedule for remediation, of any abandoned or underutilized site where redevelopment and reuse has not occurred due to the presence of pollution on the soil or groundwater that requires remediation prior to or in conjunction with the restoration, redevelopment and reuse of the property. The commissioner may determine for each property whether the commissioner will oversee the investigation and remediation of the property or whether such oversight will be delegated to a licensed environmental professional. For each property subject to a covenant under this section based on an approved Brownfield investigation plan and remediation schedule, the owner or prospective purchaser shall perform all investigation and remediation activities under the direction of a licensed environmental professional, and shall ensure that all documents required to be submitted contain a written approval of a licensed environmental professional, even at properties for which the commissioner has

not delegated oversight to a licensed environmental professional. Each investigation plan and remediation schedule shall provide a schedule for activities including, but not limited to, completion of the investigation of the property in accordance with prevailing standards and guidelines, submittal of a complete investigation report, submittal of a detailed written plan for remediation, completion of remediation in accordance with standards adopted by said commissioner pursuant to section 22a-133k, and submittal of a final remedial action report. At a minimum, the detailed written plan for remediation shall be submitted, pursuant to the schedule, for the commissioner's review and, as appropriate, approval. In any detailed written plan for remediation submitted under this section, the owner or prospective purchaser shall only be required to investigate and remediate conditions existing within the property boundaries and shall not be required to investigate or remediate any pollution or contamination that exists outside of the property's boundaries, including any contamination that may exist or has migrated to sediments, rivers, streams or off site. If the commissioner approves the detailed written plan for remediation, the plan shall be considered incorporated by reference into the covenant not to sue. The commissioner may require submittal of other plans and reports for the commissioner's review and approval.

***Insuring that the Polluter Pays. (a) Cost Recovery Actions.*** Right now, under the existing statutes, the message that is currently sent in Connecticut is that the property owner -- existing or new -- is the one that pays to clean up contamination that occurred years or decades ago. That message is sometimes sent through an action by DEP but mostly it arises in the context of a transaction that occurs under the Connecticut Transfer Act. Rarely, under Connecticut law, does the polluter or historical property owner or operator pay. The Task Force believes that the polluter should be held responsible and accountable for remediation in Connecticut.

Many sites that have become Brownfields are currently held or were once owned or leased by still viable organizations who have intentionally vacated the site. Particularly for municipalities, these sites are quite problematic. Municipalities (as well as any new developer) should have the tools available to pursue cost recovery actions against the responsible parties. Such actions provide contribution costs to the cleanup and defray the cost to the municipality or a developer who has to solely bear the cleanup cost. For too long these parties have escaped responsibility. Therefore, in the Task Force's prior reports, we recommended that the state's private party cost recovery statute be modified so that these parties are held accountable. Meaningful opportunities for individuals who clean up properties should be afforded to recover costs from the individuals/companies who polluted those properties.

Currently, such claims exist under section 22a-452 of the Connecticut General Statutes and such actions have been barred by the courts under a variety of reasonings. First, a very short statute of limitations period has been found to exist, a strict reading of the "negligence or other actions" standard is often made, and the costs must first be

expended by the "white knight" or municipality. Advancement of costs has been determined to be a condition precedent to any such claim. Given that these properties take time to assess, investigate and remediate, the statute of limitations is unworkable as not enough time is allowed for a claim to be analyzed and fully understood. Second, since the statute requires reimbursement only, a site that takes 10 years to cleanup would require the party to return to court several times, and may ultimately be time barred claim. Third, proving negligence in such actions places a very high (and further costly) burden on the "white knight". Fourth, requiring the municipality (or developer) to expend funds first and to undertake litigation costs places an unfair and inequitable burden on the municipality (or developer).

Therefore, in our 2007 Report, we recommended that Connecticut should revise its cost recovery statutes to provide meaningful opportunities for developers, property owners, and municipalities to recover the costs of cleanup from the responsible parties. In 2006, a bill was introduced that resolves these outstanding issues (SB 415) but it was never enacted. That bill was the product of a working group formed by DEP and members of the Environmental Law section of the Connecticut Bar Association. The Task Force recommends that this bill or its elements be resurrected in order to allow municipalities and other parties the ability to recover from the responsible party (i.e., the polluter) the costs of clean up. In brief, this bill was based upon the standard, strict liability scheme previously existing under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 USC § 9601 et seq, which we believe should be used as guidance to Connecticut judges when they are reviewing these claims.

We believe, however, that the cost recovery mechanism must be tempered to insure that "white knights" and municipalities that take over these properties are not ensnared in the liability web. It remains the Task Force's position that these individuals should be shielded from liability if they are undertaking such clean up diligently and were not otherwise responsible for the existing conditions. As far as municipalities are concerned, a municipality should not be held responsible unless it was the direct responsible polluter.

(b) Transfer Act Actions. Similar to the state adopting a viable cost recovery action, a statute of limitations allowing for meaningful claims under the Transfer Act is needed. Recently, the courts have adopted a very short statute of limitations, which does not recognize the reality of the length of time it takes to investigate and remediate a site. In one recent private party case, a judge ruled that a plaintiff could not recover under the strict liability provisions of the Transfer Act because the Transfer Act was governed by the three-year statute of limitations provided by §52-577 or the two-year statute of limitations provided by §52-577c. In large part, the court adopted a standard tort statute of limitations because no other limitations period was provided for these actions. Therefore, our proposal is to provide a six year limitation for such claims directly in section 22a-134b. Any action to recovery such damages should be commenced not later than six years after the later of either the due date for filing the Transfer Act form or the actual date of the filing.

C. ALL MUNICIPALITIES SHOULD BENEFIT IF THEY SEEK TO ADDRESS & REDEVELOP BROWNFIELDS

***Municipal Transfer Act exemptions.*** In our prior reports, the Task Force recommended that municipalities involved in the pilot program be offered liability relief. However, given the pace of this program, we believe that liability relief and relief from the Transfer Act be extended to all municipalities who receive state funds for cleanup. In addition, if a municipality acquires the property by eminent domain, no transfer act filing should be required for either the acquisition or the subsequent transfer of the property, provided that the buyer is not related to any predecessor in title or former site operator (i.e., is a "white knight") and the property is in and remains in one of the voluntary remediation programs administered by DEP. Therefore, we recommended the following changes to Connecticut General Statutes Section 22a-134 (1):

(1) "Transfer of establishment" means any transaction or proceeding through which an establishment undergoes a change in ownership, but does not mean (A) conveyance or extinguishment of an easement, (B) conveyance of an establishment through the exercise of eminent domain by a municipality, a foreclosure, as defined in subsection (b) of section 22a-452f or foreclosure of a municipal tax lien or through a tax warrant sale pursuant to section 12-157 or[, provided the establishment is within the pilot program established in subsection (c) of section 32-9cc,] a subsequent transfer by such municipality that has acquired the property through the exercise of eminent domain, foreclosed municipal tax liens or that has acquired title to the property through section 12-157, provided that (i) the party acquiring the property from the municipality did not establish or create the condition at the establishment and is not affiliated with such responsible person and (ii) the establishment enters or remains in the one of the voluntary remediation programs administered by the Commissioner. For purposes of this section, municipality includes any entity created or operating under chapter 130 or 132 of the general statutes, (C) conveyance of a deed in lieu of foreclosure to a lender, as defined in and that qualifies....

***Municipal Access Rights.*** During 2008, the Task Force recommended that certain clarifications be made to section 22a-133dd of the general statutes regarding the ability of municipalities to access property without incurring liability for purposes of investigation prior to taking title. Some clarification was provided in Public Act 08-174, however, further clarification is needed as the statutory changes do not provide the necessary relief to municipalities. Therefore, we recommend that Section 22a-133dd (a) & (b) of the general statutes is amended as follows:

(a) Any municipality, any entity created or operating under chapter 130 or 132 of the general statutes, or any licensed environmental professional employed or retained by such municipality or entity may enter, without liability [to any person other than the Commissioner of Environmental Protection], upon any property within such municipality for the purpose of performing an environmental site

assessment or investigation on behalf of the municipality or entity created or operating under chapter 130 or 132 of the general statutes if: (1) the owner of such property cannot be located; [or] (2) such property is encumbered by a lien for taxes due such municipality; [or] (3) upon a filing of a notice of eminent domain; (4) the municipality's legislative body finds that such investigation is in the public interest to determine if the property is underutilized or should be included in any undertaking of development, redevelopment or remediation pursuant to chapter 130, 132, 445 or 581; or (5) any official of the municipality reasonably finds such investigation necessary to determine if such property presents a risk to the safety, health or welfare of the public or a risk to the environment. The municipality or entity created or operating under chapter 130 or 132 of the general statutes shall give at least forty-five days' notice of such entry before the first such entry by certified mail to the property owner's last know address of record.

(b) A municipality or entity created or operating under chapter 130 or 132 of the general statutes accessing or entering a property to perform an investigation pursuant to this section shall not [incur any liability pursuant to section 22a-432 of the general statutes for any preexisting contamination or pollution on such property, provided, however, a municipality may be liable for any pollution or contamination resulting from a negligent or reckless investigation] be liable under section 22a-432, 22a-433, 22a-451 or 22a-452 of the general statutes as long as the municipality or entity created or operating under chapter 130 or 132 of the general statutes did not cause or contribute to the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material, waste or pollution; does not exacerbate the conditions; and complies with reporting of significant environmental hazard requirements in section 22a-6u of the general statutes. To the extent that any conditions are exacerbated, the municipality or entity created or operating under chapter 130 or 132 of the general statutes is only responsible for responding to contamination or conditions directly caused by its activities.

#### D. BROWNFIELD REDEVELOPMENT IN FLOODPLAINS SHOULD BE STREAMLINED

Changes to the floodplain statutes regarding funding by DECD need to recognize further that redevelopment of existing Brownfield sites in floodplains should be readily encouraged. In prior years, the Task Force recommended changes to section 25-68d, which we believed limited the state's ability to provide funding for Brownfield projects in a 500 year flood plain. Many of our state's Brownfields are in floodplains as mills and factories were constructed close to rivers for power production and other such uses. Depending upon the type of development and the source of funds, a project may or may not have to be scrutinized under section 25-68d. For example, projects funded under CHFA or CDA do not have to follow these requirements. Only projects funded by state agencies have to follow this heightened standard of review, which is in addition to review

under the National Flood Insurance requirements. The bottom line is that Brownfield properties in floodplains should be able to be restored to a variety of uses utilizing the state programs and the statute needs to be made clearer to eliminate confusion. ..

Representatives from DEP and DECD understood the Task Force's concerns and prepared a guidance memo to try to alleviate these issues. We believe that a more formal approach is needed and the guidance should be codified to provide necessary certainty. The Task Force wants to make sure that if the historic foot print of a building is restored to either approximately the same square footage or less on a Brownfield site, that is permitted. Additionally, if the redevelopment varies slightly from the historic foot print (i.e., two or more buildings are developed where one once stood) the Task Force requests that the new facility be permitted as long as it does not go closer to the waterbody.

#### E. JOB TRAINING

The Task Force believes that job training is an important economic stimulus initiative. A number of Brownfield job training programs exist in the state funded primarily by EPA funds. These people should be put to work once trained. We believe that any Brownfield grant/loan fund recipient should be required to demonstrate a commitment to hiring people who are qualified and trained through a Brownfield job training program (e.g., the EPA Job Training Program). Therefore, we recommend that as a condition of receiving state funding by OBRD, the recipient be required to demonstrate that it is committed to hire and use individuals qualified and trained through a Brownfield job training program (e.g., the EPA Job Training Program).

#### F. PROPOSED REGULATORY CHANGES

*Changes to the Remediation Standard Regulations (RSRs).* DEP is developing modifications to the RSRs, which have not yet been released for public notice and comment. However, DEP provided the Task Force with a preview of the draft. The Task Force believes that any changes should reflect the need to spur investment in and the redevelopment of the state's Brownfield sites and that clarity should be provided to developers. In addition, DEP should recognize the ubiquity of urban fill in many areas in the state and its prevalence at Brownfield sites. Potentially, a different approach is recommended for Brownfield sites (and, particularly, those sites with urban fill). The Task Force expects that it will provide comments during the notice and comment period.

One area of concern for the Task Force is the proposal to require property owners to address contamination in sediments, downstream in rivers and streams, and to address off-site impacts. The Task Force is very concerned with the effect that these requirements will have on new property owners looking to redevelop Brownfield sites. Therefore, we believe that the "white knights" and municipalities should not be required to perform any investigation or remediation outside the boundaries of the existing site and that this is an overall policy direction that is required statutorily. The discussion and proposed language in section B above addresses this concern.

*Changes to the Solid Waste Regulations.* DEP is developing modifications to the solid waste regulations, which have not yet been released for public notice and comment. However, DEP provided the Task Force with a preview of the draft. Changes to the solid waste regulations should permit materials (urban fill, polluted fill or otherwise) to be reused on a Brownfield site. In the proposed definitions, DEP has developed three categories of fill: clean fill, regulated fill and conditional fill. We believe that maximum flexibility should be given to the reuse of all types of fill on Brownfield sites. Conditional fill should be able to be reused at any type of Brownfields site, including residential or mixed use sites, with the appropriate controls. In addition, the Task Force knows that ash is often mixed with soils and the other components identified in regulated fill. Therefore, ash should be included in the definition of regulated fill. The Task Force comments to the solid waste regulations are regulatory in nature and we expect to provide comments during the notice and comment rulemaking process.

#### IV. CONCLUSION

The Task Force is grateful to serve the interests of the State of Connecticut. It has been an honor for each of the Task Force members to participate in these important discussions and to make its recommendations each year.

In a couple of years, once the statutory changes have been vetted through experience by the agencies, the municipalities, the regulated community, the stakeholders and affected parties, we believe it makes the utmost sense to have a Task Force reconvened to benchmark whether the changes are effective and are working and/or whether another approach is needed. We do have hope that the OBRD will ultimately function as a true "one stop shop" and that complex Brownfields redevelopment will occur more readily and quickly. Such a goal, however, can only be achieved if the recommendations we set forth in this report and our prior two reports are enacted.

If the recommendations are not enacted, we believe that wholesale changes may be necessary – a new and comprehensive, programmatic approach may be warranted. For example, the State may be very well served to consider the adoption of a purely voluntary brownfield remediation program separate and apart from the state's existing property clean up programs. We outlined this program in our first report. We have mentioned revolutionary change as opposed to evolutionary change in our reports, and the day may be approaching for such revolutionary change.

But, the Task Force fully supports the existing structure that has been created as it has much potential. We respectfully request the Legislature to adopt the recommendations set forth in this report (and all our reports), which will allow OBRD to achieve its potential and allow Brownfields to be redeveloped in this state and restored to a productive use.