

Legislative History for Connecticut Act

PA 14-88

HB5573

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2014**

**VOL.57
PART 7
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then on to be our auditor, Kevin Johnston, and who came along with Kevin for some support and much-needed guidance, his father, David Choquette, from Putnam and Pomfret.

A VOICE:

Bravo.

REP. ROVERO (51st):

Thank you, Madam Speaker.

DEPUTY SPEAKER RITTER:

Are there any other announcements?

Will the Clerk please call Calendar Number 249.

THE CLERK:

On page 14, Calendar 249, Favorable Report of the joint standing Committee on Commerce, Substitute House Bill 5573, AN ACT CONCERNING BROWNFIELD RECLAMATION (sic) AND DEVELOPMENT.

DEPUTY SPEAKER RITTER:

Representative Perone.

REP. PERONE (137th):

Thank you, Madam Speaker.

I move for acceptance of the joint committee's Favorable Report and passage of the bill.

DEPUTY SPEAKER RITTER:

The question is on acceptance of the joint

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committee's Favorable Report and passage of the bill.

Representative Perone, you have the floor.

REP. PERONE (137th):

Thank you, Madam Speaker.

The Clerk has an amendment, LCO 3999. I would ask the Clerk to please call the amendment and that I be granted leave of the Chamber to summarize.

DEPUTY SPEAKER RITTER:

Will the Clerk please call LCO 3999, which will be designated House Amendment Schedule "A."

THE CLERK:

House Amendment Schedule "A," LCO 3999,
Representative -- or offered by Representative Berger,
et al.

DEPUTY SPEAKER RITTER:

The Representative, the Representative seeks leave of the Chamber to summarize the amendment. Is there objection to summarization? Is there objection?

Seeing none, Representative Perone, you may proceed with summarization.

REP. PERONE (137th):

Thank you, Madam Speaker.

Essentially, this is a strike-all; this becomes the -- the bill. And I just want to summarize the --

the key sections for people's edification and future questions.

Section 1 essentially refers to the Voluntary Cleanup Program. By law, this program allows property owners to have their sites investigated and cleaned up before they decide to convey or transfer it. Owners who choose to do so must have a licensed, environmental professional, LEP, to verify the investigation and remediation. The bill allows, essentially, the LEP to verify that a portion of the site was investigated and remediated according to DEEP standards instead of waiting until the entire site is investigated and remediated, interim verification meaning that LEP can verify that the site was investigated and remediated according to DEEP standards.

Section 2 and 3 refer to the Transfer Act exemptions, which by -- so by law, contaminated or potentially contaminated property cannot be transferred or conveyed unless the state was notified, its environmental condition assessed, and any contamination remediated. Current law exempts certain property from this requirement, including property a municipality acquires by eminent domain, under those,

under this law.

The bill extends the exemption to any property a municipality acquires under any statute allowing them to acquire the property by eminent domain. Current law also exempts the, from the Transfer Act a property where remediation activities generated hazardous waste.

Section 4 -- it's interim verification under the Transfer Act -- the bill allowed LEP to submit an interim verification for a site or part of a site that was investigated and remediated under the Transfer Act. The party responsible for investigating and the remediating -- the remediating of the transferred property may do so under the bill that -- recording an environmental land use restriction of it. And we get into detail which I'm sure, will happen later.

And Sections 5 and 6 are essentially conforming technical changes.

And Section 7 is a loan forgiveness under the Targeted Brownfield Development Loan -- Loan Program.

So that's a general overview, and I seek leave of the Chamber.

Through you, Madam Speaker.

DEPUTY SPEAKER RITTER:

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Representative Perone, might you be interested in moving adoption?

REP. PERONE (137th):

I would be very much interested in moving adoption.

Thank you, Madam Speaker.

DEPUTY SPEAKER RITTER:

The question before the Chamber is on adoption of House Amendment Schedule "A." Will you remark on the amendment?

Representative Lavielle.

REP. LAVIELLE (143rd):

Thank you, very much, Madam Speaker, and I thank Representative Perone for moving adoption because it's a good amendment.

And as in the Commerce Committee we have a, our primary preoccupation is economic development, and brownfield remediation is one very important way where we can actually promote and sustain economic development. And this is sort of our signature bill for this year.

The amendment complements what is already detailed quite extensively in the bill, in terms of voluntary remediation and exemptions from the Transfer

Act. It has some particularly interesting additions to the process of interim remediation, allowing a property owner to remediate property in stages. And we all know how difficult the permitting processes are at DEEP, so these are very good measures that will make economic development that much easier.

And I urge the Chamber to support the amendment.

Thank you, Madam Speaker.

DEPUTY SPEAKER RITTER:

Thank you, Representative.

Will you remark further on the amendment before us?

Representative Shaban, you have the floor, sir.

REP. SHABAN (135th):

Thank you, Madam Speaker.

I, too, stand in support of the bill. I -- I note for the Chamber there are actually two efforts working its, working their way through the Legislature this year; there's the one in the Commerce Department and one in the Environment Committee -- the Commerce Committee. I'm glad to see that both efforts were merged and through the leadership of, among others Representative Berger, Representative Perone, and -- and the other folks listed on the amendment.

This is a measure that's actually going to allow developers to both clean up their property as required but at the same time monetize some of their efforts so they can continue to clean up their property.

One of the problems with a lot of the brownfield redevelopments we've seen in the last five or ten years is it's impossible to actually cash out or get out. This is a method that will enable developers to do it. It'll enable us to clean up more and more properties, and all in all, I think at least to date, this may be the best piece of legislation I think that's come across our -- our desks.

So I urge adoption.

DEPUTY SPEAKER RITTER:

Thank you, Representative.

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

If not, let me try your minds. All those in favor, please signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER RITTER:

Opposed, Nay.

The Ayes have it and the amendment is adopted.

Will you remark further on the bill as amended?

Representative Perone.

REP. PERONE (137th):

Thank you, very much, Madam Speaker.

I'd also like to thank Representative Bergerer -- sorry -- Representative Berger, Representative Shaban, and Ranking Member Lavielle, as well as our State Senators, we have Senator LeBeau and -- and Senator Scott Frantz, up on the Commerce Committee. This is a, is a -- a lot of people worked very hard on this, and -- and it is a forward-looking effort that handling brownfields in -- in a way that encourages economic development, so I thank for everybody's support.

Thank you.

DEPUTY SPEAKER RITTER:

Will you remark further on the bill as amended?

Representative Berger.

REP. BERGER (73rd):

Thank you, Madam Speaker, and good afternoon.

Just in speaking on the bill as amended, which we have before us here, again, to reinforce the remarks -- as a way of a comments -- reinforce the remarks of

-- of Chairman Perone in thanking all the stakeholders that have been involved in the process of brownfield remediation, the Ranking Members of both the Environment Committee and the Commerce Committee, leadership of both the Environment Committee and the Commerce Committee in coming up with a document that builds on the seven years of work that this Chamber and this General Assembly has -- has achieved in brownfield remediation and development, and even more importantly, through you, Madam Speaker, the funding mechanism, which is a commitment of the State of Connecticut of a hundred million dollars, \$10 million over a ten-year period to remediate brownfield sites in all of our communities, 169 communities in the state of Connecticut.

And as Representatives have stated in this Chamber, this is one of the most if not the most important economic development tool that this Chamber and this General Assembly can use to remediate property, to put property on a, on the tax rolls, to create economic development, and to create jobs.

Look, if you get on the train in Fairfield County, you drive down through Fairfield County into New York or you drive on the tracks in Hartford, all

you look out the window is see abandoned factories, wasteland of a former day and age of the past. And what we have done over the last few years and continue to do with the leadership of both the Commerce Committee and the Environment Committee is create a path that allows those properties to be rehabbed and brought back on the tax rolls and create jobs.

The Office of Brownfield Remediation and Development is up and running now. It has a director, Tim Sullivan, very aggressive, young director who is committed to brownfield redevelopment. We have four brownfield programs, funding mechanisms that are both grant and loan that are consolidated into one fund that are there for us to utilize all, in all of our districts; 151 Representatives in this House, I urge you to use that as a tool. I urge that you, to use that as a way to bring your municipalities back to vibrancy, to economic growth, to help your constituents.

So I thank you, Madam Chair, for recognizing me. And, again, I thank both committees. Today is a day we are to be proud of, and today is the day of economic development in the state of Connecticut.

Thank you, madam.

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DEPUTY SPEAKER RITTER:

Will you remark further on the bill as amended?

Will you remark further on the bill as amended?

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

THE CLERK:

House of Representatives is voting by roll. The House of Representatives is voting by roll. Will members please return to the Chamber immediately.

DEPUTY SPEAKER RITTER:

Have all the members voted?

REPRESENTATIVES:

No.

DEPUTY SPEAKER RITTER:

Have all members voted?

Will the members please check the board to determine if your vote has been properly cast.

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

The Clerk will please announce the tally.

THE CLERK:

House Bill 5573 as amended by House "A."

Total number voting 144

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Necessary for passage	73
Those voting A -- Yea	144
Those voting Nay	0
Absent, not voting	6

DEPUTY SPEAKER RITTER:

The bill as amended passes.

Representative Cafero.

REP. CAFERO (142):

Thank you, Madam Speaker.

For purposes of an introduction.

DEPUTY SPEAKER RITTER:

Please proceed, sir.

REP. CAFERO (142):

Thank you, Madam Speaker.

Ladies and gentlemen of the Chamber, today we are honored to have in the Well of the House several dentists, who I'll introduce in a moment, who are here on behalf of the Connecticut Mission of Mercy or CTMOM, MOM, and they are hosting a two-day clinic to provide free dental care to the underserved and uninsured in Connecticut.

The clinic will be held tomorrow and Saturday at the XL Center, here in Hartford. And now listen to this: They expect to provide care to 2,400

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May 6, 2014

THE CHAIR:

The Senate will stand at ease.

(Chamber at ease).

THE CHAIR:

Senator Looney.

SENATOR LOONEY:

Yes, thank you, Madam President. Madam President, some additional items to mark at this point. They may -- may be skipping around the Calendar a little bit.

But Calendar page 10, Calendar 415, House Bill 5518,
move to place on the Consent Calendar.

THE CHAIR:

Yup.

SENATOR LOONEY:

And also, Madam President, Calendar page 18, Calendar 489, House Bill 5227,
move to place on the Consent Calendar.

Madam President, Calendar page 19, Calendar 494, House Bill Number 5573,
move to place on the Consent Calendar.

Calendar page 22, Calendar 513, House Bill 5353,
move to place on the Consent Calendar.

Calendar page 28, Calendar 550, that's 5-5-0, House Bill 5514,
move to place on the Consent Calendar.

Madam President, also moving back, Calendar page 20, Calendar 499, House Bill 5419,
move to place on the Consent Calendar.

Back under Favorable Reports, Madam President, Calendar page 11, Calendar 419, House Bill 5477,
move to place on the Consent Calendar.

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Opposed. Reconsideration is passed.

SENATOR LOONEY:

Right now since the matter is before us again, Madam President, I would move to mark it passed temporarily.

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President. Now if the Clerk would call those Consent Calendar items so that we might move to a vote on the Consent Calendar, and then we might proceed to the items that were marked go.

THE CHAIR:

Mr. Clerk.

THE CLERK:

On page 2 Calendar 166, Senate Bill 427.

Page 4 Calendar 300 Senate Bill 417.

Page 6, Calendar 331, House Bill 5248.

Page 7, Calendar 340, House bill 5273.

On page 10, Calendar 416, House Bill 5407. Calendar 415, House Bill 5518. Calendar 396, Senate Bill 114.

On page 11, Calendar 419, House Bill 5477.

Page 12, Calendar 426, House Bill 5023.

On page 18, Calendar 489, House Bill 5227. Calendar 470, House Bill 5506. Calendar 490, House Bill 5113.

On page 19, Calendar 494, House Bill 5573.

Page 20, Calendar 498, House Bill 5467. Calendar 499, House Bill 5419.

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And on page 22 Calendar 513, House Bill 5353.
Calendar 515, House Bill 5361.

And on page 24, Calendar 526, House Bill 5556.
Calendar 524, House Bill 5219.

Page 25, Calendar 4. -- sorry, Calendar 530, House Bill 5368,
page 27, Calendar 546, House Bill 5061.
Calendar 543, House Bill 5037.

On page 28, Calendar 550, House Bill 5514.

Page 29, Calendar 554, House Bill 5148.

Page 30, Calendar 563, House Bill 5554.

Page 31, Calendar 567, House Bill 5229. Calendar 565,
House Bill 5028.

And on page 42, Calendar 384, Senate Bill 442.

THE CHAIR:

Senator Looney, do you have any more good news for us?

SENATOR LOONEY:

Yes, thank you, Madam President. One additional item to add before we call for the actual vote on the Consent Calendar, and that is item an Calendar page 33, Calendar 575, House Bill 5359. With that one addition it would call for a vote on the Consent Calendar.

THE CHAIR:

Mr. Clerk, please call for a vote on the Consent Calendar, and the machine will be open.

THE CLERK:

Immediate roll call has been ordered in the Senate.
Immediate roll call on the second Consent Calendar
today has been ordered in the Senate.

THE CHAIR:

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If all members have voted? All membered voted, the machine will be closed. Mr. Clerk, will you please call the tally.

THE CLERK:

On the second Consent Calendar for today.

Total number voting	35
Those voting Yea	35
Those voting Nay	0
Absent not voting	1

THE CHAIR:

Consent Calendar passes. Senator Looney.

SENATOR LOONEY:

Thank you, Madam President. If the Clerk would call the first item marked go to follow the Consent Calendar.

THE CHAIR:

Mr. Clerk.

THE CLERK:

On page 33, Calendar 579, Substitute for House Bill Number 5348, AN ACT CONCERNING THE PAYMENT OF DELINQUENT PROPERTY TAXES. Favorable Report of the Committee on Planning and Development.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Thank you. Thank you, Madam President. Pursuant to Rule 15 of the Joint Rules, I am recusing myself from consideration of this bill.

THE CHAIR:

Thank you, sir. Please leave the Chamber.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**ENVIRONMENT
PART 3
1066 – 1779**

2014

We do provide them a wonderful salad with our groomed lawns and manicured shrubs and trees, so they have a great food source and cars are probably their biggest enemy in those neighborhoods.

REP. P. MILLER: Thank you for the answers, everyone. Thank you, Madam Chair.

REP. GENTILE: Thank you. I don't see any other questions, so thank you very much. Now, we've moved through our, we've actually burned through our first hour so we'll begin alternating.

Just a few rules. Again, I need to keep the doors open. There is an overflow room in 1A. If you do not have a seat in this room, please feel free to take a seat in there, and just a few comments.

Again, we're going to limit your speaking because there are a number of individuals who would like to speak, so in fairness, we want to give them a chance to speak.

We will ask you to wrap up at the end of three minutes when the bell rings, and we will ask you to be respectful of the process. If you are not respectful, I will have you removed from the room.

Moving right along, the first one that we have for sign up with the public is Anne Catino. Is Anne in the room? Good afternoon.

HB 5544

HB 5573

ANNE CATINO: Good afternoon, Representative Gentile and members of the Committee. My name is Anne Catino. I am a partner at the law firm of Halloran and Sage and I've been practicing environmental law for over 25 years.

Many of you know me because I also coach here the state's working group on brownfields

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ENVIRONMENT COMMITTEE

March 17, 2014
1:00 P.M.

redevelopment. I have provided you written testimony and I will just touch on a few highlights.

I'm here today to speak about H.B. 5544. Five, five, four, four is a brownfields and a remediation bill as it does allow for what's called interim verifications of portions of sites.

What I want you to know is that the brownfields working group supports the concept of interim verifications for portions of site and has been working on developing this concept more fully so that it can release from DEEP's remediation programs those portions that have been remediated.

There is a companion bill, House Bill 5573 that will be heard at the Commerce Committee tomorrow. We are certainly, as a working group, willing to continue to work with DEEP. We view both bills as works in progress and we look to continue a good working relationship with members of this Committee, the Commerce Committee and DEEP. Thank you.

REP. ALBIS: Thank you. Are there any questions from the Committee? Representative Moukawsher.

REP. MOUKAWSHER: I assume that one of the reasons this is being proposed is there are properties right now that would qualify for this or that would, is there any number you could give us, or just a sense of that?

ANNE CATINO: No. We don't know how many sites could potentially qualify. What we do know are that there are potentially 5,000 to 7,000 properties within the department's either transfer act or volunteer remediation programs.

We don't know how many could take advantage of the interim verification, and that's actually a

benefit to this bill. We'll find out if property owners who have been remediating their property have cleaned up parts of them. We'll find out what parts there are and those pieces will be able to be put back into productive use, or the owner will be able to, as Deputy Commissioner McCleary likes to say, release the value of that property so that value could be leveraged for purposes of bank financing that potentially could be used to clean up the remaining balance of the property.

At this point, though, we don't know. There is not regular updating with the agency.

REP. MOUKAWSHER: I would imagine this would also encourage some efforts at remediation that may not be covering a whole property but it could get some increments of remediation done that aren't being done now.

ANNE CATINO: Absolutely. It provides a benefit and advantage to brownfield sites and those owners and developers who are working on cleaning up their property.

This particularly impacts the larger properties where you can take, you know, two or three acres, clean it up and release the value of that property and then work on the next two to three acres. If you have a larger site, it starts to chip away at cleaning up portions of properties. Thank you.

REP. ALBIS: Thank you, Representative. Any other questions? If not, thank you very much.

ANNE CATINO: Thank you.

REP. ALBIS: Next up is Representative Kupchick.

SB 445
REP. KUPCHICK: Good afternoon, Representative Albis. The Chairs aren't here, so I will dispense with my cute, you know, my regular

Testimony of Ann M. Catino, Esq.
Halloran & Sage LLP
And
Co-Chair, Brownfield Working Group

Environment Committee
March 17, 2014

HB 5573

HB 5544

My name is Ann Catino and I am a partner at the law firm of Halloran & Sage in Hartford. I have practiced for over 25 years in the area of environmental law. For the past several years, together with Gary O'Connor, I have been pleased to serve as co-chair of the Brownfield Working Group; formerly the State's Task Force on Brownfield Strategies.

I want to first thank Representative Gentile and Senator Meyer and the members of the Environment Committee for their leadership and support for the brownfield initiatives in this State that have been proposed by the Brownfield Working Group. Beginning in 2006, new laws were passed every year that broke ground on many new and innovative programs. The Office of Brownfield Remediation and Development was established and now we have a new director, Tim Sullivan. New programs were developed and are administered by the Department of Economic and Community Development. Municipal grant and loan programs were established, funded and multiple projects in many municipalities are underway. Flexibility was added to the programs administered by the Department of Energy & Environmental Protection and some obstacles relating to the standard liability schemes were removed for certain types of brownfield redevelopment, particularly relating to municipal liability relief.

Last year, was groundbreaking, in moving forward with a new initiative. The DEEP's transformation process has begun and a candid assessment of DEEP's remediation programs is underway. A consultant was hired to evaluate the State's remediation programs with a focus on evaluating risk based decision making in our State and in comparison to other States. While this initiative is far from over and may provide the framework for a new remediation program in our State, it is at its early stages right now and no one can predict with certainty what any new program will look like. This initiative is an excellent one, but we cannot ignore the sites that are entangled in the programs that exist today. Many sites and site owners/developers require assistance now so that they can, with some certainty, remove their sites or portions of their sites from the existing regulatory program, whether it is the Transfer Act or a voluntary clean-up program.

HB 5544 is a step in that direction. Simply stated, HB 5544 allows parts of properties that have been remediated to be closed out in accordance with the interim verification standard definition set forth in 22a-134. Under existing law, remediation of an entire site needs to occur and be completed before an interim verification can be provided. For larger and potentially more complicated sites, this framework often creates hardship for the property owner. For example, if

a 10 acres of a 20 acre site is remediated, that 10 acre portion should be allowed to receive an interim verification. Such a designation would allow that 10 acre site to be either sold or, quite importantly, leveraged and financed. This release of value from the site, to adopt the nomenclature Deputy Commissioner McCleary has used, would put that portion back into productive use. And, it could generate additional funds that may be needed for the other 10 acres. This change encourages remediation and I, personally, support such a concept.

The concept of providing an interim verification for a portion of a site has been discussed by and supported by the nonpublic members of the Brownfield Working Group. The Working Group has proposed a companion bill, HB 5573, which was introduced last week by the Commerce Committee. Like HB 5544, HB 5573 also serves to expand the use of interim verifications for portions of sites. In addition to these changes, in order to avoid any potential ambiguity that may emerge as to who is eligible to provide an interim verification, I would also recommend including in the beginning of 22a-134a(g)(2) the following language:

(2) Notwithstanding the date the Form III or Form IV were submitted, [I] if a certifying party completes the remediation for a portion of an establishment, such party may submit an interim verification by a licensed environmental professional, in accordance with subdivision (1) of this subsection, or a verification by a licensed environmental professional for any such portion of an establishment. The certifying party shall be deemed to have satisfied the requirements of this subsection for that portion of the establishment covered by any such verification. If any portion of an establishment for which a verification is submitted pursuant to this subdivision is transferred or conveyed or undergoes a change in ownership before remediation of the entire establishment is complete that would not otherwise be subject to the provisions of sections 22a-134 to 22a-134e, inclusive, as amended by this act, the certifying party shall provide notice to the commissioner of such transfer, conveyance or change in ownership not later than thirty days after any such transfer, conveyance or change in ownership

The Working Group has continued to work with DECD, DEEP, and various other stakeholders and interested parties. We are committed to developing, with the regulatory agencies, a better program and to address the concerns the regulatory agencies may have with HB 5544.

While a new frontier is being developed by DEEP due to legislation created two years ago and last year as part of the brownfield package, our work continues. The theme this year that has emerged is to help properties that have been remediated exit the regulatory programs. There are thousands of properties in the Transfer Act and the voluntary remediation programs. If portions of those properties can take advantage of an interim verification, the potential exists that they can either be put back into productive use and their value released. Whether a new program is developed next year or not, we need to continue to find solutions that allow properties to exit the regulatory programs. HB 5544 does that. We look forward to working with DEEP and with the members of this Committee.

Thank you.
Ann M. Catino

**JOINT
STANDING
COMMITTEE
HEARINGS**

**COMMERCE
PART 2
512 – 1012**

2014

Thank you very much.

REP. RITTER: Thank you very much.

REP. PERONE: Representative Berger, followed by Representative Srinivasan.

REP. BERGER: Mr. Chairman, if I could also be joined by the co-chairs of the Brownfield Working Group to expedite your public hearing processes as best I can; if it is agreeable to you and the Committee?

REP. PERONE: That was very thoughtful.

Thank you very much. Not a problem.

REP. BERGER: Thank you, Mr. Chairman.

For the purposes of the record, I am Representative Jeffrey Berger, representing the 73rd Assembly District in Waterbury.

And let me start again. I am seated here with Ann Catino and Gary O'Connor, Co-Chairs of the Brownfield Working Group that this Committee formed several years ago.

HB 5573
HB 5576
HB 5544

Also let me acknowledge the Committee and the Committee's leadership in the area of brownfield remediation and development and the importance of the work that this Committee does in working with the Office of Brownfield Remediation and Development in DECD, and the importance that this Committee really forms for the target goal of seeing Brownfield Remediation and Development as an economic driver in the state of Connecticut and the importance of that throughout all our communities.

Today we are going to speak in favor of House Bill 5573, and House Bill 5576. I'll give you a brief overview and then the co-chairs will go a little bit more in depth.

It also -- the Committee should also be advised that Environment Committee has a Brownfield Bill 5544, and it's hopeful that we can through negotiation with the Environment Committee have a consensus bill that will come out of Commerce and hopefully bring together the issues of both 5573 and 5544.

And I'll defer to the leadership of the Committee the best course and action within the time constraints of your JF deadlines.

H.B. 5573 just to make a point of the highlight of it, it has a threefold purpose. It is to make it clear that properties that generate hazardous waste as a result of building demolition alone are not subject to the Transfer Act.

It will allow for properties to exit either their Transfer Act, or voluntary programs if a portion of the property is remediated. Under that guideline this will assist those property owners and developers who have remediated a portion of their property under either the Transfer Act or voluntary programs.

This becomes a large benefit to owners and those who are doing the right thing in cleaning up their properties. It will also allow for an accelerated audit period for those parcels that have filed an interim verification.

And finally, it will provide municipalities who exercise the general power of eminent domain to do so without triggering the Transfer Act. The Brownfield Working Group continues to work with

DEEP and DECD on reaching common ground on these issues.

I also am in favor of House Bill 5576, that is a bill -- a funding bill for the Brownfield Remediation Grant and Loan Programs. And if you remember correctly several years ago, and I believe part of the 2011 Jobs Bill, this Legislator -- Legislature committed \$10 million a year on a maximum of a hundred million dollars over a ten-year period. That funding bill continues the \$10 million-a-year funding.

If I could, Mr. Chairman, I will now turn it over to Ann and Gary.

REP. PERONE: Thank you.

GARY O'CONNOR: Thank you, Representative Berger.

HB5573

Good morning. My name is Gary O'Connor and I'm a partner with the law firm of Pullman & Comley, in a practice for more than 30 years, concentrating in the areas of environmental and real estate development. And I had the great pleasure of serving with Ann Catino as Co-Chair of the Brownfields Working Group.

At first I'd like to acknowledge and thank not only my friend, Jeff, but Senator LeBeau and Representative Perone, and the entire Commerce Committee for their support and leadership of the Brownfields Initiative.

You folks have really taken to heart the importance of Brownfield revitalization and you understand how it is an important catalyst for revitalizing our communities, restoring properties to the beneficial reuse, and enhancing the quality of life in Connecticut.

Since 2006 when the original when the original

Brownfields Working Group, then known as the Brownfield Task Force, was created, we tried to make recommendations to this Committee, which would eliminate a lot of the barriers to brownfield redevelopment.

And what we've proposed and made recommendations on over the years; creating certainty in the process, streamlining regulatory requirements, providing certain liability immunities, reducing the cost and time of remediation and providing cleanup to eligible businesses, developers, and municipalities.

And many of these recommendations you've taken and the General Assembly has passed. And these laws have greatly assisted stakeholders in revitalizing Connecticut's brownfields.

Last year we worked with DEEP very closely in providing additional liability immunities for municipalities, and we passed the Municipal Liability Relief Act. More importantly, we passed the piece of legislation that hired -- required DEEP to hire a national expert on risk-based decision making, and that process is ongoing and in conjunction with DEEP's transformation process.

We're hopeful that we will create a more appropriate, comprehensive, and flexible cleanup program for the state; one that balances and protects human health and the environment, and balances that with the advancement of Connecticut's economic development.

The fruits of DEEP's efforts in the transformation may be several years away. So it's important we continue our incremental improvements to the Brownfields Initiative and

certainly Raised Bill No. 5573 is intended to do that. The bill is a work in progress.

We're still meeting with DEEP to clarify some language. And DECD has some interest in the bill as well. In fact, they have considered a small revision that would allow the Commissioner to modify the terms of any loan made pursuant to the Brownfields Targeted Loan Program to provide forgiveness of interest, principle, or both; or delay the repayment of interest, principle, or both, and when the Commissioner determines that such forgiveness or delay is in the best interest of the State.

We wholeheartedly support this idea and if DECD continues to pursue this matter, we will support a revision of this kind to our raised bill.

Given the complexity and uncertainty of any brownfields project and given the State's interest in the revitalization of brownfield sites, the Commissioner should have the maximum flexibility with respect to loans under the Brownfields Programs.

So, as I said, the bill is a work in progress. And at this time I'd like to introduce my Co-Chair, Ann Catino, to talk about the specifics of the bill.

Thank you.

REP. PERONE: Thank you.

ANN CATINO: Thank you, Representative Perone, Senator LeBeau, and members of the Committee.

HB5573

It's really been gratifying to work with Representative Berger and all of you over the years as we have really changed the landscape

on brownfield redevelopment and several of our programs, our grants and loans program and consolidation of the DECD programs into one office.

You're probably aware that we do have a new director of the Office of Brownfield Remediation Development, Tim Sullivan. That's been a tremendous asset and hire, and we look forward to working with him as we continue to refine the programs.

As Gary indicated, we are looking to tweak the DECD programs moving forward. I'm happy too that we do have our own chapter finally, which was great so that we can all go in. Municipal officials, town attorneys can go to one chapter and see what our programs are rather than all over the place.

As far as 5573 is concerned, as Gary said, it is a work in process. But what's really important about this bill is to get properties out of DEP programs, to get them out of the Transfer Act, get them out of the voluntary program; that's the purpose of the bill. It provides for what's called interim verifications of portions of sites.

So if you have, say a 10 or 20-acre site in one of DEP's programs, and you have stepped up, remediated a part of that site, it's a process where that parcel can be removed from either the Transfer Act or the voluntary program.

Deputy Commissioner Matthew McCleary from DEP is talking about the releasing of the value of sites. This is a good step to release the value of the sites so that it can either be sold, redeveloped, or it can be used as leverage for further financing so that it could potentially complete the rest of the site.

This is a missing piece of our existing programs and that's why this is an important bill that the Brownfields Working Group has discussed quite a bit. And that's what we want to do is move existing sites through the existing programs.

Secondly, we also do not believe that sites should get entangled in the programs if hazardous building materials are present and the site becomes an establishment because of the demolition activity itself.

And therefore, we would look to exclude from the Transfer Act those sites that would become establishments simply by virtue of tearing the building down. And we believe that should also be excluded.

A couple of other minor modification; you have my written testimony and I really thank you for your support.

And I need to echo what Representative Berger said. Yesterday I testified in front of Environment on 5544. There are similarities between these two bills and I look forward to working with both of the Committees to try to consolidate them into one.

Thank you.

REP. PERONE: Thank you very much.

I just had a quick question looking at this, and I guess it falls under the area of losing a value relative to municipalities.

This is in Section 2; the right of municipalities to exercise the power of eminent domain may be so that triggering the Transfer

Act.

If that does go into place who would then be -- it's a little murky for me.

Who would be responsible for remediating the property going forward?

ANN CATINO: If a municipality were to take a property through eminent domain, then it would have to respond to any significant environmental hazards.

But when the property is then sold or transferred to another developer, it would be addressed through the transaction, through the transfer to the next developer.

REP. PERONE: Okay. And also, are there any substantive differences between the bill in Environment and this bill?

ANN CATINO: I'm sorry, I didn't --

REP. PERONE: Are there any major differences between the bill in Environment and this bill that we're talking about?

ANN CATINO: The one in Environment focuses more on sites in the existing Transfer Act Program. This bill focuses more on the Voluntary Program. So putting them both together and marries them makes sense.

Similarly, we're conscious of making sure that both bills deal with sites that enter the Transfer Act Program before October 1st, 2009 and after October 1st, 2009. We need to make sure that both types of properties are covered. And that is ambiguous in the 5544, in the Environment Committee Bill.

So we've got to make it perfectly clear that all these sites, because all sites will benefit from an interim verification on a parcel, on a portion of a parcel.

REP. BERGER: I might add also, Mr. Chairman, that there is some history on this Committee working with Environment Committee on combining those two documents and keeping it, so to speak, in the Commerce Committee as an important document in working DECD, which is the lead agency and the committee of cognizance for this Committee.

REP. PERONE: I appreciate that and I agree philosophically and (inaudible) expediting in a responsible way. Brownfield Development is good for our cities; it's good for the economy.

So good luck with merging that into two concepts (inaudible) but it sounds like you're heading in the right direction.

Are there any other questions?

SENATOR LEBEAU: I just wanted to follow-up, Ann. It's good to see you. Thank you for being here today and I'm sorry I had to step out for two moments.

What's the significance of October 1st, 2009? Can the bills be -- certainly programs before and programs after (inaudible). You just mentioned it so I wanted to respond to your testimony.

ANN CATINO: Absolutely.

Several years ago we proposed an audit program and worked with DEP on developing a timeframe for purposes of new sites entering the Transfer Act. And it was an eight-year period in which those new sites were going to have to be

remediated.

We received as a result too of benefit that we'd have a shortened audit period for those sites. Sites who were already in the Transfer Act Program we didn't believe we could after the fact impose a deadline for those sites to be remediated and subject them to the eight years of remediation. But they were already going through a process and we shouldn't affect that process. So the cutoff date was October 1st, 2009.

GARY O'CONNOR: Senator, just one more point on that is the significance of that deadline change was that we found that out-of-state companies and international companies that owned brownfield sites would just go through the process of doing the investigation. And with no deadline on the remediation they would just mothball these properties, which was a huge harm to our inner cities and other communities throughout the state.

So we felt that there needed to be a deadline, which the Commissioner can extend, you know, if necessary. But this was one way we were able to push corporations into doing the right thing in remediating those brownfield sites.

SENATOR LEBEAU: Thank you, Gary.

REP. BECKER: Thank you, Mr. Chairman. Thank you for coming and testifying this morning.

I have one very specific question and then kind of a general question.

The specific question is focusing on Section 2, as Chairman Perone alluded to. And I'm just wondering when it talks about eminent domain that the insertion of the phrase by a

municipality obviously is limiting, right, because eminent domain could be exercised by the State as well?

So I'm curious to know why if eminent domain is already in here, why are you adding or why are you seeking to add by a municipality to this section?

GARY O'CONNOR: Originally the intent years ago was to allow municipalities pursuant to eminent domain to be exempt from the Transfer Act.

This actual -- was missing here after municipality the word, or, which is a revision that we'll have to do because these sections are sections under the development act; for development agencies, renewal agencies. And for some reason municipality had been left out before. So we wanted to make it clear, which is the assumption everyone has been operating under, that municipalities were in fact --

REP. BECKER: Included.

GARY O'CONNOR: They have other ways of obtaining properties through eminent domain other than through development agencies. So it should read by a municipality or pursuant to section.

REP. BECKER: Now I understand because otherwise it would appear just from that, without knowing what those other sections say that it would only be the municipality, that and it would leave out the statements. So by adding --

GARY O'CONNOR: Right, those statutes involve economic development agencies, development agencies.

REP. BECKER: So the or would be added in?

GARY O'CONNOR: Yes.

REP. BECKER: Okay. Now my second question, which is more general and may be an impossibility for you is: For those of us sitting on the Committee, I think it's probably all of us, who are not environmental lawyers or necessarily deeply familiar with the Transfer Act, can you as briefly as you can, kind of give us an overview of why it's important for these transactions to be exempt from the Transfer Act?

What would be entailed if it were subject to it? And what are we freeing the property from or the municipality from by taking it outside of it?

GARY O'CONNOR: What we're trying to do is incentivize property owners to do the right thing to clean out their properties. And one component of that is in removing and abating hazardous building materials. And that may be knock down and unsafe building, or just remove those things in the building so it can be rehabbed.

So right now you can have a property that isn't subject to the Transfer Act. It's not an establishment. But if the owner goes in and does the right thing and removes all these hazardous building materials and disposes them properly at an appropriate landfill, all that waste that he pulls out of the building is considered hazardous waste and could trigger the Transfer Act.

And if the Transfer Act is -- it now becomes an establishment. And there's a whole slew of obligations that that owner now has when he transfers or she transfers that property to fully investigate the property, fully remediate

it.

And our feeling was that there are a lot of properties that are not necessarily in the Transfer Act. We should not dis-incentivize owners of those properties to do the right thing environmentally to work at them to clean them up. So that was the reason for the exemption.

There already is an exemption for remediation soils. If someone goes in and voluntarily cleans up their property and removes those soils, that is not considered, you know -- that's exempt from the Transfer Act or the definition of establishment. So we just wanted to make it consistent and say, okay, if you're removing hazardous building materials that won't trigger you becoming an establishment.

REP. BECKER: Right. I appreciate that. I think I unartfully asked my question.

I think it's really a follow-up on what Representative Perone had asked, which is maybe you could just expand a little bit more on how the environmental liability will be treated in the case of a taking by eminent domain or what happens when a tax lien is foreclosed since it's exempt from -- if I understand this correctly, it's exempt from the definition of a transfer of an establishment. So when -- I think the answer was it's worked out in the eventual transfer from municipality.

Can you just kind of give me an example of how is that worked out? So it's all put on the new owner to do this cleanup and what sorts of different rules might apply there? Is it a longer period of time? How does that work?

GARY O'CONNOR: The whole body of brownfields laws,

including these exemptions from the Transfer Act, are basically designed to allow municipalities maximum flexibility.

We found that there are a lot of sites that need to be assembled, at least assessed if not cleaned up. And this gives municipalities some assurance that they can take those actions without being held liable by third parties or the State.

And while they're exempt, the transfer to the next party that is not exempt unless the municipality is going through the Voluntary Cleanup Program and effectively cleaned up the property. So generally what happens here is a municipality can assemble properties. They can start the process of identifying, assessing the property, and even start the process of remediating.

But the way things are and the way the tools are designed, it doesn't make any sense to remediate the property until you know what the end user is because you can use the new building as a cab for a lot of this contaminated soil.

So the answer is that the municipality will start the process and it's usually the purchaser that ends it.

ANN CATINO: If I can just add to it.

When properties are transferred under the Transfer Act, the point at which a property gets basically cleaned up in a state is a result of the purchase and sale to another entity.

Here it's similar, but we want to stimulate and encourage municipalities who may have to take

the property through eminent domain to put that property back into productive use quicker, because otherwise it just may stay there and stagnate.

So it's consistent with the theme of the Transfer Act. When properties are transferred, that's when they get cleaned up. This allows a municipality to go and take the property through eminent domain and then transfer it to the developer or another user, and that's when it will be cleaned up.

So it is consistent with the theory of when there's a transfer and there's monies being brought to the table, the property gets remediated under the Transfer Act.

And just to add to it, an establishment; a property has to be an establishment to be subject to the Transfer Act.

Basically, on or after November 1st, 1980 if you generated 100 kilograms or more of hazardous waste in any one month, or you are a drycleaner or furniture stripping operation, you're in the Transfer Act.

A lot of properties unintendedly end up in the Transfer Act by virtue of hazardous building material generation, so that's why we want that excluded as well.

REP. BECKER: Thank you. Thank you very much.

REP. PERONE: Any other questions?

Okay; thank you very much.

Representative Srinivasan.

HB5577

REP. SRINIVASAN: Good morning, Chairman. Senator



Testimony of Eric Brown
Connecticut Business & Industry Association
Commerce Committee
March 18, 2014

H.B. 5573: AN ACT CONCERNING BROWNFIELD REMEDIATION AND DEVELOPMENT.

CBIA's Position: Support

Good morning and thank you for this opportunity to provide comment in support of the above referenced bill. My name is Eric Brown and I serve as associate counsel and director of energy and environmental policy for the Connecticut Business & Industry Association (CBIA). CBIA represents approximately 10,000 businesses in Connecticut of all sizes and our core mission is to help advance policies that make Connecticut an attractive choice for investment creating more opportunities for our citizens to have good jobs and high quality of life for themselves and their families.

Accordingly, CBIA appreciates the Commerce Committee raising H.B. 5573 and is pleased to support this measure because we believe it will help accelerate the remediation and revitalization of contaminated properties that are all too common in our state, largely due to our significant and proud history of contributing to our nation's preservation and prosperity during the industrial revolution.

Unfortunately, economic and regulatory conditions in our state are not yet such that we can wholly rely on attracting private capital to invest in cleaning up these properties. One positive measure taken by the legislature several years ago was the creation of a Licensed Environmental Professional program (LEP) whereby experts in the private sector could certify to the state that cleanups had been conducted in accordance with state requirements.

In reality, the source of contamination can often be remediated more quickly than groundwater impacted by the pollution. Under these circumstances, the LEP can submit an "interim verification" stating that the site has been cleaned-up except that the remedy for cleaning up the groundwater is in progress but not yet completed and that monitoring and reporting of progress on this component of the cleanup will continue, but that the property is otherwise ready for reuse. These interim verifications may be subject to an audit by the Department of Energy and Environmental Protection (DEEP).

This bill recognizes that some brownfield sites are very large and it is possible and appropriate in some cases to get them cleaned-up in phases. Specifically, the bill allows LEPs to submit

interim verifications for when a portion of such a site is cleaned-up and ready to be put back to productive use – even if the entire site will not be cleaned-up until a later time.

Further, since many of these cleanups are conducted only after significant interest, and sometimes significant investments are made by private entities interested in redeveloping the site, this bill provides a reasonable time from for the DEEP to determine, after submission of the interim verification, as to whether it will elect to conduct an audit.

These are very positive steps that will help our state advance the important goals associated with brownfield redevelopment and we respectfully urge the Commerce Committee to approve H.B. 5573.

Thank you for this opportunity to testify in support of H.B. 5573.

③

Testimony of Gary B. O'Connor
Co-Chair, Brownfield Working Group
Before the Commerce Committee of the General Assembly
In support of
Raised Bill No. 5573
An act concerning Brownfield Remediation and Development
March 18, 2014

Good morning, my name is Gary O'Connor and I am a partner at the law firm of Pullman & Comley. I have practiced law for over 30 years concentrating in the areas of environmental law and real estate development. I serve with Ann Catino as co-chair of the Brownfield Working Group appointed by the General Assembly. I would like to thank the Commerce Committee for the opportunity to speak today in support of Raised Bill No. 5573, An Act Concerning Brownfield Remediation and Development. I would also like to acknowledge and thank Senator LeBeau Representative Perone and the other members of the Commerce Committee for your leadership and support of brownfield redevelopment as an important catalyst for revitalizing our communities, restoring properties to beneficial reuse and enhancing the quality of life in Connecticut.

Since the creation of the Brownfield Working Group (f/k/a the Brownfield Task Force) in 2006, we have examined issues relating to the remediation and redevelopment of brownfields in this state, the regulatory scheme for remediating such properties, funding requirements and liability concerns. Over the years, we have made recommendations to the Commerce Committee on reducing the barriers to brownfield redevelopment by creating more certainty, streamlining regulatory requirements, providing certain liability immunities, reducing the cost and time of remediation and providing cleanup funds to eligible businesses, developers and municipalities. Many of these recommendations have become law and have greatly assisted stakeholders in revitalizing Connecticut's brownfields.

During last year's legislative session, the Brownfields Working Group worked closely with the Department of Energy and Environmental Protection ("DEEP") on additional incentives for municipalities, such as the Municipal Liability Relief Program. More importantly, we drafted legislation that called for the hiring of a national consulting firm to examine the State's risk-based decision making process as it relates to our cleanup laws and programs. The consultant has been charged with comparing Connecticut's risk-based decision making with best practices of other states, the Environmental Protection Agency ("EPA") and selected countries. The goal is to use the information from the consultant's report, in conjunction with DEEP's ongoing transformation process, to create a more appropriate, comprehensive and flexible cleanup program for the state; one which balances the protection of human health and the environment with the advancement of Connecticut's economic development. The fruits of DEEP's transformation process may be a number of years away, so it is critical that we continue to make incremental improvements to our brownfield programs and environmental laws. Raised Bill No. 5573 is intended to make such incremental changes.

Raised Bill No. 5573 makes revisions to Section 22a-133x, the statute which establishes the Voluntary Cleanup Program. The proposed revisions allow parts of properties under the

Voluntary Cleanup Program to be investigated, remediated and verified by a Licensed Environmental Professional ("LEP") under an interim verification as currently permitted under the Transfer Act. The goal is to incentivize an owner of a contaminated property to voluntarily remediate at least a portion of the property and be able to provide some assurance to prospective purchasers, bankers, investors and regulatory authorities that a property has been cleaned up in accordance with the remediation standards except for groundwater standards, which in many cases may take a number of years through natural attenuation in order to achieve compliance. The proposed bill also allows a verification or interim verification of a portion of a property. This will permit an owner with a large environmentally challenged parcel to concentrate on the remediation of one section of the parcel, subdivide it from the remainder of the parcel and sell it to a third party who, in turn, will be able to put this section of the original parcel back to productive use. The proceeds raised from a sale can be used to finance the investigation and remediation of other sections of the original parcel.

Raised Bill No. 5573 also requires DEEP, within sixty days of receipt of a final remedial action report, to give notice to a property owner if it intends to audit the report and to complete the audit within six months. The language needs to be revised to reference an audit of an LEP verification under 22a-133x not a final report as required under 22a-133y. The public policy rationale is very simple. If a property owner voluntarily cleans up a property under 22a-133x, the owner should receive some certainty that, except for extraordinary circumstances, DEEP cannot come back years after the submittal of the verification and conduct an audit. Potential purchasers and lenders will not be able to rely on a verification if there is no deadline on DEEP's ability to audit. DEEP has expressed certain concerns with an audit deadline and has suggested certain revisions to other proposed language to Section 22a-133x to provide additional clarity. We will be working with DEEP to resolve any differences and make appropriate changes.

Raised Bill No. 5573 makes certain changes to the Transfer Act. Specifically, it exempts the removal of Hazardous Building Materials from the definition of "Establishment." The non-public members of the Brownfield Working Group strongly believe that property owners should be encouraged to remove and abate Hazardous Building Materials on their properties. Under current law, the act of removing such materials from a property and disposing of them at an appropriate land fill might cause that property to become an "Establishment" under the Transfer Act. This, in turn, creates a major disincentive to property owners to go forward with such Hazardous Building Materials removal. DEEP has made a number of suggestions to clarify and limit the definition of Hazardous Building Materials as proposed. We agree. We will be working with DEEP to make those changes.

One other proposal being considered by the Department of Economic and Community Development ("DECD") involves a small revision to Section 32-765(H) to allow the Commissioner of DECD to modify the terms of any loan made pursuant to the brownfield grant and loan program, to provide for the forgiveness of interest, principal or both, or delay in the repayment of interest, principal or both, when the Commissioner determines such forgiveness or delay is in the best interest of the State. We wholeheartedly support this idea and, if DECD determines to pursue this matter, we will support a revision of this kind to Raised Bill No. 5573. Given the complexity and uncertainty of any brownfield project and given the State's interest in

promoting the revitalization of brownfield sites, the Commissioner of DECD should be given the maximum amount of flexibility with respect to loans made under the brownfield loan program.

In short, the Raised Bill No. 5573 is a work in progress. We believe that an additional meeting with DEEP and DECD is necessary to resolve issues and clarify language. Nevertheless, we believe a consensus can be reached and revisions can be made in the next two weeks. Thank you, again, for the opportunity to speak before your committee on behalf of Raised Bill No. 5573.



Environmental Professionals' Organization of Connecticut
 P.O. Box 176
 Amston, Connecticut 06231-0176
 Phone: (860) 537-0337

Testimony on behalf of
Environmental Professionals' Organization of Connecticut (EPOC)

Raised Bill No. 5573
 AN ACT CONCERNING BROWNFIELD REMEDIATION AND DEVELOPMENT

Commerce Committee

March 18, 2014

The Environmental Professionals' Organization of Connecticut (also known as "EPOC") was formed in 1996 to represent the interests of Connecticut's Licensed Environmental Professionals. LEPs are individuals authorized by the Connecticut Department of Energy and Environmental Protection to perform investigation and remediation of property in Connecticut and certify, through a Verification, that the property meets the Connecticut Remediation Standard Regulations. The LEPs are therefore directly affected by the policies and procedures established under the General Statutes and their associated regulations for investigation and remediation of contaminated sites in Connecticut, including abandoned or underutilized Brownfields properties. We appreciate the efforts in putting together this bill, because it will facilitate a transformed and improved regulatory program to sensibly protect human health and the environment.

EPOC supports passage of Raised Bill No. 5573. We believe that inclusion of language to the existing statute pertaining to submission of an "interim verification" by a licensed environmental professional to have satisfied the requirements of the Voluntary Remediation Programs (CGS Sec. 22a-133x and y) is appropriate and consistent with the purpose of the "interim verification" provision, that purpose being to document that investigation of a site has been completed in accordance with prevailing standards and guidelines, and that remediation has been completed in accordance with the Remediation Standard Regulations (RSRs), Section 22a-133k-1 through 3 of the Regulations of Connecticut State Agencies, with the exception that a selected remedy for groundwater pollution is in operation but has not achieved the remediation standards for groundwater. The interim verification identifies the long-term remedy that is being implemented; the estimated duration of the remedy; the ongoing operation and maintenance requirements of the remedy; and demonstrates that there are no current exposure pathways to the groundwater that have not yet met the remediation standards. Submission of an interim verification indicates that environmental conditions at a site no longer present a risk to human health or the environment, which is a milestone in the closure process and the ultimate goal of the investigative and remedial efforts.

EPOC also supports the proposed provision to allow submission of an interim verification as the basis for submitting a Form IV pursuant to the Property Transfer Act (22a-134 to 22a-134e, inclusive). We believe that this is appropriate, provided the proposed stipulations are met, and is consistent with other situations under which a Form IV can be submitted under the existing statute. Submission of a Form IV under these situations would indicate that the site has achieved a level of no significant risk to human health or the environment provided certain controls are instituted and maintained, which is required to support an

Web Site: www.epoc.org



Environmental Professionals' Organization of Connecticut

P.O. Box 176

Amston, Connecticut 06231-0176

Phone: (860) 537-0337

interim verification. It also indicates that ongoing actions are being taken, similar to existing circumstances under which a Form IV is currently allowed.

EPOC also supports the concept that a final report submitted to the Connecticut Department of Energy and Environmental Protection under section 22a-133y (Voluntary Remediation Program) by a licensed environmental professional be deemed approved unless the Commissioner of DEEP determines within 60 days that an audit of the verification is necessary. This provision will provide a level of certainty and closure that is critical to remediation and redevelopment of Brownfields and other properties in the state and would benefit economic growth and development.

We appreciate the opportunity to comment on the raised bill and hope that our comments are helpful in the on-going effort to improve Connecticut's environmental cleanup program. If you have any questions, please contact Seth Molofsky at (860) 537-0337.



State of Connecticut
 HOUSE OF REPRESENTATIVES
 STATE CAPITOL
 HARTFORD, CONNECTICUT 06106-1591

2

Representative Jeffrey J. Berger
 Deputy Speaker
 7th Assembly District

Points:

Legislative Office Building
 Hartford, Connecticut 06106
 860-240-8500 or 800-842-1902
 j.berger@cgfa.ct.gov

HB 5573 (Environment Committee bill is 5544)

1. Point of bill is three fold:
 - a. To make it clear that properties that generate hazardous waste as a result of building demolition alone are not subject to the Transfer Act. Many buildings (and not just manufacturing but commercial and retail buildings) contain asbestos, PCBs in window caulk or in paint, and other substances as a result of the manufacturing process. These substances also can migrate into adjacent building materials. The intent of the bill is to exempt these building materials that are manufactured with toxic or hazardous substances or have been contaminated by such products from triggering the Transfer Act when the buildings are torn down. From a public policy standpoint, these sites do not need to trigger the Transfer Act based upon that activity alone. (Sections 3 & 4)
 - b. To allow for properties to exit either the Transfer Act or voluntary programs if a portion of the property is remediated. (Sections 1 & 5)
 - i. Assists those property owners and developers who have remediated a portion of their property under either the Transfer Act or voluntary program. Allows them to file an interim verification rather than waiting for an entire parcel to satisfy the requirements of the interim verification.
 - ii. Large benefit to owners and those who are doing the right thing and cleaning up their properties.
 - iii. Allows for an accelerated audit period for those parcels that have filed an interim verification. Gets us to closure faster.
 - c. To provide that municipalities who exercise the general power of eminent domain may do so without triggering the Transfer Act. (Section 2)
2. Brownfield working group continues to work with DEEP on the reaching common ground on these issues. We may be there conceptually, but some fine tuning is needed.

HB 5576.

10 million continues the funding for the brownfield grant & loan program.



Testimony of **Ann M. Catino**, Esq.
Halloran & Sage LLP
And
Co-Chair, Brownfield Working Group

Commerce Committee
March 18, 2014

HB 5573 & 5576

My name is Ann Catino and I am a partner at the law firm of Halloran & Sage in Hartford. I have practiced for over 25 years in the area of environmental law. For the past several years, together with Gary O'Connor, I have been pleased to serve as co-chair of the Brownfield Working Group, formerly the State's Task Force on Brownfield Strategies.

I want to first thank Representative Perone, Senator LeBeau and the members of the Commerce Committee and former Chair Berger for all your leadership and support for the brownfield initiatives in this State that have been proposed by the Brownfield Working Group. Beginning in 2006, new laws were passed every year that broke ground on many new and innovative programs. The Office of Brownfield Remediation and Development was established and now we have a new director, Tim Sullivan. New programs were developed and are administered by the Department of Economic and Community Development. Municipal grant and loan programs were established, funded and multiple projects in many municipalities are underway. Flexibility was added to the programs administered by the Department of Energy & Environmental Protection and some obstacles relating to the standard liability schemes were removed for certain types of brownfield redevelopment, particularly relating to municipal liability relief.

Last year, was groundbreaking, in moving forward with a new initiative. The DEEP's transformation process has begun and a candid assessment of DEEP's remediation programs is underway. A consultant was hired to evaluate the State's remediation programs with a focus on evaluating risk based decision making in our State and in comparison to other States. While this initiative is far from over and may provide the framework for a new remediation program in our State, it is at its early stages right now and no one can predict with certainty what any new program will look like. This initiative is an excellent one, but we cannot ignore the sites that are entangled in the programs that exist today. Many sites and site owners/developers require assistance now so that they can, with some certainty, remove their sites or portions of their sites from the existing regulatory program, whether it is the Transfer Act or a voluntary clean-up program.

HB 5573 is a step in that direction. Simply stated, HB 5573 seeks to accomplish three things.

First, it excludes from the Transfer Act those properties that only become "establishments" under the Act due to the generation of hazardous building materials. This issue received considerable discussion during the Working Group meetings. Many buildings in this State did not house

businesses that generated hazardous waste. Those properties that did not generate hazardous waste should not become establishments when they are demolished, in whole or in part, because of the nature of the building materials. For example, when such building materials contain lead paint, asbestos or PCBs in window caulk or paint or other hazardous or toxic materials, those materials must be disposed of in accordance with law. If a property did not otherwise generate hazardous wastes, it should not become an establishment and subject to the Transfer Act. Section 3 & 4 of the bill addresses this issue. This change is also consistent with another provision already existing in the Transfer Act. That is, when soils, groundwater or sediments are remediated, and the property is not otherwise an establishment, it does not become one solely by the generation of the polluted materials. This proposed change incentivizes the demolition and renovation of buildings as the existing exclusion incentivizes the remediation of contaminated media. The Working Group is willing to further refine the language and work with DEEP as I believe we are in agreement conceptually with this approach.

Second, sections 1 & 5 would allow parts of properties that have been remediated to be closed out in accordance with the interim verification standard definition set forth in 22a-134. Section 1 addresses those properties in the voluntary remediation program and section 5 applies to those in the Transfer Act. I should note that HB 5544, introduced at the Environment Committee, also addresses the concept of interim verifications for portions of sites in the Transfer Act. Generally speaking, under existing law, remediation of an entire site needs to occur and be completed before an interim verification can be provided. For larger and potentially more complicated sites, this framework often creates hardship for the property owner. For example, if 10 acres of a 20 acre site is remediated, that 10 acre portion should be allowed to receive an interim verification – whether it is remediated under either the Transfer Act or the voluntary program. Such a designation would allow that 10 acre site to be either sold or, quite importantly, leveraged and financed. This release of value from the site, to adopt the nomenclature Deputy Commissioner McCleary has used, would put that portion back into productive use. And, it could generate additional funds that may be needed for the other 10 acres. This change encourages remediation and I, personally, support such a concept.

The concept of providing an interim verification for a portion of a site has been discussed by and supported by the nonpublic members of the Brownfield Working Group. The bill, however, remains a work in progress. I believe it can be consolidated with HB5544 and both improved and we are currently in discussions with DEEP on it and I am hopeful that we will be able to reach a consensus shortly. In addition, I am also mindful of creating ambiguities as to what properties are eligible for interim verifications on portions of a site. I believe all properties should be eligible regardless of what program they are in (Transfer Act or voluntary) or when the property was entered into such a program.

The Working Group has continued to work with DECD, DEEP, and various other stakeholders and interested parties. We understand that DEEP has concerns relating to the specific language of these sections and we are committed to continuing to work with them to develop a better and more workable program for those properties in the Transfer Act and those in the voluntary program.

Finally, section 2 should allow the general exercise of eminent domain by a municipality to be excluded from the Transfer Act. However, an "or" is missing between the word "municipality" and "pursuant to section 8-149 128, 8-169e or 8-193...."

While a new frontier is being developed by DEEP due to legislation created two years ago and last year as part of the brownfield package, our work has continued. The theme this year that has emerged is to help properties that have been remediated either in the context of the Transfer Act or the voluntary program to exit that regulatory program. There are thousands of properties in the Transfer Act and the voluntary remediation programs. If portions of those properties can take advantage of an interim verification, the potential exists that they can either be put back into productive use and their value released. Whether a new program is developed next year or not, we need to continue to find solutions that allow properties to exit the regulatory programs. HB 5573 does that.

As to 5576, DECD has been establishing a regular program for the award of grants to municipalities. And, since the grant and loan programs were initiated, there have been regular rounds announced, and the competition for the funding is growing. Multiple projects in many municipalities have been funded and are underway. With the addition of Tim Sullivan as the Director of OBRD, I think that outreach will certainly continue and there will be more and more municipalities seeking funding to revitalize their brownfields. I wholeheartedly support increasing the funding available to be awarded by \$10 million dollars.

We look forward to working with DEEP further on this bill, other interested stakeholders and with the members of this Committee. I sincerely thank you for your interest, support and leadership.

Thank you.
Ann M. Catino