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BROWNFIELD PROGRAMS

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You asked for information on state brownfield programs, including program criteria, funding, and any changes from legislation passed during the 2011 session.

SUMMARY

There are several state programs that provide funding through grants, loans, or other forms of assistance for remediating brownfields. Table 1 below provides information about these programs. There are also several programs providing tax incentives for remediating brownfields. These programs are summarized in Table 2.

While eligibility criteria for the programs varies, many of the programs are tailored to projects that will generate significant economic activity or create jobs. Many of the programs are specifically tailored to brownfield remediation (e.g., the Urban Sites Remedial Action Program), but funding may also be available through programs that provide funds for other economic development purposes. The programs are primarily administered by the Department of Economic and Community Development (DECD) and the Department of Environmental Protection (DEP), but the Connecticut Development Authority (CDA), a quasi-public state agency, also operates brownfields funding programs through its subsidiary, the Connecticut Brownfield Remediation Authority (CBRA).

In addition to providing funds for investigating and remediating brownfields, the state provides liability protection and regulatory relief to developers who do not receive funds but still perform these tasks according to state standards. As Table 3

shows, the liability protection programs vary depending on whether the protection applies to state or third party actions or extends to parties that subsequently acquire a property remediated under these programs.

Brownfield redevelopers must apply to participate in these programs to receive their benefits. Participation requires submitting investigation reports and remediation plans and certifying that the remediation met state standards. But, as Table 4 shows, some protections are available as a matter of policy. For example, the law, under certain conditions, protects developers from third party liability for contamination that existed on a property before they acquired it (Third Party Liability Protection, CGS § 22a-133ee).

Besides providing liability protection, the law also offers brownfield owners relief from various regulatory requirements. As Table 5 shows, these range from exemptions from DEP fees and the Transfer Act to the use of licensed environmental professionals and covenants not to sue.

Brownfield developers may also benefit from several generic regulatory relief policies and programs we did not include in the tables. For example, DECD's Office of Permit Ombudsman can help developers obtain necessary state permits. They may also benefit from a law requiring the DEP commissioner to adopt regulations specifying goals for completing specific tasks in the permitting process (PA 10-158, codified at CGS §§ 32-376 and 22a-6p, respectively).

More information about many of the programs listed below is available from the website of DECD's Office of Brownfield Remediation and Development: <http://www.ctbrownfields.gov/ctbrownfields/site/default.asp>. Information about CDA's programs is available at the following link: <http://www.ctcda.com/Financing/>.

BROWNFIELD PROGRAMS

Table 1: State Brownfield Remediation Funding Programs

<i>Program and Statutory Cite</i>	<i>Administering Agency</i>	<i>Description</i>	<i>Eligibility Criteria</i>	<i>Funding</i>
Urban Sites Remedial Action Program (CGS § 22a-133m)	DECD/DEP	Funding for identifying and remediating contaminated sites with commercial potential in distressed municipalities, targeted investment communities, or state-acquired properties	DECD commissioner selects the sites in consultation with the DEP commissioner based on: <ol style="list-style-type: none"> 1. estimated cost and complexity of evaluating the site, 2. estimated schedule and cost for cleaning up the site, 3. extent to which the restored site will benefit the state's economy, 	General Obligation (GO) Bonds: FY 11 = none FY 12 = \$ 10.0 million (authorized but not yet allocated)

			<p>4. whether the site would be remediated absent the program's assistance, and</p> <p>5. any other factors the commissioners believe are relevant.</p>	
<p>Special Contaminated Properties Remediation And Insurance Fund (SCPRIIF) (CGS §§ 22a-133t, u)</p>	<p>DECD/DEP</p>	<p>Low-interest, five-year loans to towns, businesses, and developers to assess sites, demolish structures, or remediate pollution</p>	<p>DECD-determined criteria, including:</p> <ol style="list-style-type: none"> 1. property's anticipated commercial value, 2. potential tax revenue and community or economic development benefit to the municipality, 3. environmental or public health risk of the contamination, 4. status of previous loans under the program, and 5. potential for restoration of an abandoned property. 	<p>GO bonds, historically</p> <p>FY 11 and 12: \$ 916,775 balance</p>
<p>Municipal Brownfield Grant Program (CGS § 32-9cc)</p> <p>This was originally a pilot program. As of July 1, 2011, sHB 6526 (§§ 1-3) makes the program permanent and makes other changes to it.</p>	<p>DECD</p>	<p>Grants for towns (or their economic development agencies) with untreated brownfields that hinder economic development</p> <p>Innocent third party designation for participants, protecting them from liability to DEP for clean-up costs if they meet specified requirements (see below)</p>	<p>Starting July 1, 2011, the DECD commissioner selects up to six towns annually to receive the grants, within available appropriations. She must choose four brownfields based on population criteria and two without regard to population.</p> <p>DECD must consider the following criteria:</p> <ol style="list-style-type: none"> 1. the economic opportunity that redevelopment and reuse provide, 2. project feasibility, 3. environmental and public health benefits, and 4. contribution to the town's tax base <p>Effective July 1, 2011, sHB 6526 expands the program from five to six grants per year and extends eligibility to sites (1) with contaminated buildings and (2) where contamination prevents them</p>	<p>GO bonds</p> <p>FY 11 and FY 12</p> <p>\$ 8 million in unallocated funds</p>

			from being expanded, redeveloped, or reused.	
<p>Targeted Brownfield Development Loan Program (CGS § 32-9kk(f))</p>	<p>DECD</p>	<p>Low-interest loans (up to \$ 2 million per year for two years) to applicants seeking to develop property for retaining or expanding jobs in the state or for developing housing for first-time home buyers. Loans can be for manufacturing, retail, residential or mixed-use developments, expansions or reuses.</p> <p>Loan proceeds can be used for any purpose, including site investigation, assessment, remediation, abatement, and numerous others</p>	<p>Program is open to (1) potential brownfield purchasers with no direct or related liability for the site conditions and (2) existing property owners who (a) are in good standing and compliant with the DEP's regulatory programs, (b) demonstrate need for the funding, and (c) cannot retain or expand jobs due to site investigation and remediation costs.</p> <p>Eligibility criteria include:</p> <ol style="list-style-type: none"> 1. project merit and viability, 2. economic and community development opportunity, 3. municipal support, 4. contribution to community's tax base, 5. number of jobs and commitments to maintain or retain jobs, 6. applicant's experience, 7. compliance history, 8. ability to pay, and 9. other factors set by the commissioner. 	<p>GO bonds</p> <p>FY 11: none</p> <p>FY 12: \$ 25 million (authorized but not yet allocated)</p>
<p>Dry Cleaning Establishment Remediation Fund (CGS § 12-263m)</p>	<p>DECD</p>	<p>Grants to dry cleaning business owners or operators, or owners of sites previously occupied by dry cleaning establishments, for containment, removal, mitigation, or prevention of environmental pollution</p>	<p>Program is open to dry cleaners "engaged in the cleaning of clothing or other fabrics using tetrachlorethylene, Stoddard solvent, or other chemicals" or a business that accepts items to be cleaned by another establishment using such chemicals.</p> <p>Establishment must have been in business at the site for at least a year, and applicant must be up to date on state and local taxes.</p> <p>The applicant must (1) demonstrate need; (2) certify that there is no outstanding litigation involving it or its representatives; and (3) identify the</p>	<p>Funded through 1% surcharge on dry cleaning gross retail receipts</p> <p>Program is currently oversubscribed by \$ 450,000 and suspended; it last accepted applications in 2009.</p>

			responsible party to complete the site investigation and remediation.	
Economic Development and Manufacturing Assistance Act -- Environmental Insurance Program (CGS § 32-222)	DECD	Funds for purchasing insurance policies and paying deductibles for insurance policies to cover remediation costs	Open to towns, businesses, and nonprofit developers for manufacturing and other economic base business activities. A business qualifies based on the types of goods or services it makes or provides, whether it is an economic base business, or whether it belongs to a DECD-designated industry cluster.	GO Bonds provided the Manufacturing Assistance Act (MAA) Total MAA Funding available FY 11: \$ 16.23 million FY 12: \$ 40 million (authorized but not yet allocated)
Underground Storage Tank Petroleum Clean-up Program (CGS § 22a-449a et seq.)	DEP	Reimburses responsible parties for remediation costs they incur because of leaking diesel and gasoline fuel tanks	Federally regulated petroleum underground storage tanks (USTs) for which financial responsibility is required. State-owned petroleum USTs are eligible, while federally-owned USTs are not. USTs storing heating fuel used on the premises are not eligible.	State Operating Appropriations FY 11 = \$ 3,156,104 FY 12 = \$ 1,303,410
Connecticut Brownfield Revolving Loan Fund (40 C.F.R. Part 31)	DECD	Grants or loans for environmental clean-up of non-residential properties	Open to non-profit organizations, municipalities, or for-profit businesses. Applicants or owners must not be the responsible party of the contamination. Priority for properties in distressed municipalities. Among other criteria, property must have been purchased after September 11, 2002.	Environmental Protection Agency (EPA) Federally funded grants FY 11 and FY 12: \$ 820,008 balance remaining
CT EPA Site Assessment Program (40 C.F.R. Part 31)	DECD	Funds for environmental assessment and preparation of a work plan so that remediation and redevelopment can occur	Open to municipalities, regional planning commissions, and non-profits that partner with a municipality and are not potentially liable for the contamination or affiliated with any party that is.	EPA Federally funded grants FY 11 and FY 12: \$ 149,586 balance remaining
Tax Increment Financing (TIF)	CBRA/ CDA	CDA-issued bonds backed by incremental property tax revenues for cleaning up and	Any brownfield site whose remediation will generate future incremental property tax revenues.	Bonds issued by CDA

(CGS §§ 8-134 and 8-134a, 32-23zz)		redeveloping brownfield projects HB 6221 eliminated the sunset date for this program		
Direct Loans (CGS § 32-11a)	CBRA/ CDA	Senior and subordinated loans for specified purposes, including brownfield remediation and redevelopment	Economic base businesses that will maintain or create employment. Not available for residential, non-owner occupied real estate, retail or personal services, or non-profits.	Bonds/ CDA operating funds
Loan Guarantees (CGS §§ 32-11a, 22b)	CBRA/ CDA	Loan guarantees to help private-sector lenders meet their borrower's financing requirements. Available for specified purposes, including brownfield remediation and redevelopment.	Companies that contribute to state's economic base, where the borrower is unable to satisfy the lender's standard loan underwriting criteria. Not available for residential; non-owner occupied real estate; retail or personal services, or not-for-profits	Bonds/ CDA operating funds
Environmental Assistance Revolving Loan Fund (CGS § 32-23qq)	CDA	Grants, loans, and loan guarantees for remediating and developing contaminated properties	Towns and businesses with annual gross revenues under \$ 25 million and no more than 150 employees	Program no longer used

Table 2: State Brownfield Remediation Tax Benefit Programs

<i>Program and Statutory Cite</i>	<i>Agency</i>	<i>Description</i>	<i>Eligibility Criteria</i>
Urban and Industrial Sites Reinvestment (UISR) Tax Credit (CGS § 32-9t)	DECD	Up to \$ 100 million in corporate business tax credits over 10-year period to businesses that build, expand, or rehabilitate new facilities	An eligible industrial site investment project is one made in a property that has been subject to environmental contamination. The investment must return the property to a viable business condition that will add significant new economic activity, increase employment and generate additional tax revenue to the state and the municipality in which the property is located. Effective July 1, 2011, sSB 1216 aligns some of the UISR rules with the ones for federal new markets tax credits for projects receiving investments eligible for both credits. It requires these projects to meet the state and federal

			eligibility criteria and subjects them to the federal recapture rules.
Property Tax Abatement or Forgiveness program (CGS § 12-81r)	Not applicable	Towns can (1) forgive back taxes on potentially contaminated abandoned properties, (2) abate the taxes on remediated sites, and (3) fix the assessment of a property as of the last assessment date before the clean-up activities began	Need legislative body approval and compliance with its specified conditions.
Property Tax Assessment Deferral (CGS § 12-65e)	Not applicable	Effective October 1, 2011, towns can defer an increased property tax assessment on a property in a designated rehabilitation area if the property is a brownfield site.	Property owner must agree to build a new common interest community or mixed-use or commercial structure on the site. Brownfield-related provisions were added by HB 5585 , effective October 1, 2011

Table 3: Brownfield Remediation Liability Protection Programs

<i>Program</i>	<i>Administering Agency</i>	<i>Description</i>	<i>Eligibility Criteria</i>
Abandoned Brownfield Cleanup (ABC) Program (CGS § 32-91l, as amended by sHB 6526 , §§ 9-11)	DECD	Exempts participants from investigating and remediating contamination that emanated from the property before they acquired it	Property qualifies if it: <ul style="list-style-type: none"> ● Has been unused or significantly underused for at least five years before application to the program (sHB 6526 eliminated the requirement that the property had to be in this condition since 1999) and ● Party that contaminated it must clean up, is unable to do so, can no longer be identified, or no longer exists Applicants qualify if they: <ul style="list-style-type: none"> ● Plan to acquire title to redevelop property, ● Did not create or cause contamination, ● Are unaffiliated with party that did, and ● Are not obligated by law or regulation to remediate contamination

			(sHB 6526 extended eligibility to municipalities and entities acting on their behalf)
Liability Protection Program (New) (sHB 6526, § 17)	DECD	<ul style="list-style-type: none"> ● Liability protection from the state and third parties for cleaning up brownfields according to specified procedure ● Limited to 32 brownfields per year 	<p>Property qualifies if:</p> <ul style="list-style-type: none"> ● Its redevelopment benefits economy and ● Contamination levels exceed DEP standards for protecting environment, health, and public welfare <p>Applicant qualifies if it:</p> <ul style="list-style-type: none"> ● Is an “innocent landowner” (i.e., a party who acquired a property that someone else contaminated), ● Is “bona fide prospective purchaser” (i.e. a party that can, among other things show that it acquired a brownfield after it was contaminated and is complying with environmental protection requirements), or ● Owns property contiguous to the brownfield (i.e., “contiguous owner”)
Voluntary Remediation Program for Property Located on Contaminated Ground Water (CGS § 22a-133y)	DEP	Parties voluntarily cleaning up a brownfield may use a licensed environmental professional to investigate and remediate it	<p>Property qualifies if it is:</p> <ul style="list-style-type: none"> ● Located in areas where DEP determines the ground water is affected by contamination and ● Not subject to DEP order, consent order, or stipulated judgment regarding a spill
Voluntary Remediation Program for Contaminated Property Regardless of Location (CGS § 22a-133x)	DEP	Same as above	Party must submit DEP Environmental Condition Assessment Form and pay \$ 3,250 application fee
Municipal Brownfield Program, Innocent Third Party Status (CGS § 32-9ee)	DECD	Protects program participants from liability to DEP for clean-up costs	<p>Applicants qualify if they:</p> <ul style="list-style-type: none"> ● Investigated and remediated a brownfield with Municipal Brownfield Program funds; ● Did not cause, contribute to, or exacerbated contamination; and ● Complied with DEP requirements <p>Municipal development agencies must also show that they did not contaminate the property</p>

Table 4: Brownfield Remediation Liability Protection Policies

<i>Program</i>	<i>Administering Agency</i>	<i>Description</i>	<i>Eligibility Criteria</i>
Protection from Liability when Acquiring Municipally Remediated Property (CGS § 32-9dd)	DEP	Protects parties acquiring municipally remediated brownfields from liability to DEP	Party did not contaminate the property or was not related to the one that did DEP approved the clean-up
Third Party Liability Protection (CGS § 22a-133ee)	DEP	Protects developers from liability to third parties (but not government) for contamination that existed the developers acquired the property	<ul style="list-style-type: none"> ● Developer is protected if it: <ul style="list-style-type: none"> ○ Did not pollute state waters or create any other pollution or pollution source, per DEP, and ○ Is not affiliated with party that contaminated the property ● DEP approved developer's investigation and remediation reports

Table 5: Brownfield Remediation Regulatory Relief Policies

<i>Policy</i>	<i>Administering Agency</i>	<i>Description</i>
Fee Exemptions (New) (CGS § 22a-6, as amended by sHB 6526 , § 8)	DEP	State, municipal, and private organizations exempted from paying DEP fees for permits needed to remediate brownfields
Certifying Party's Responsibility Under Transfer Act (sHB 6526 , § 4, codified at CGS § 22a-134a)	DEP	Certifying party exempted from investigating and remediating contamination that occurs after it cleaned up a brownfield
Transfer Act Exemptions for Private Entities (CGS § 22a-134, as amended by sHB 6526 , § 10)	DEP	<p>The law sets conditions exempting specified parties acquiring brownfields from complying with the Transfer Act's reporting requirements</p> <p>sHB 6526 added these exemptions:</p> <ul style="list-style-type: none"> ● Title transfers from a municipality or bankruptcy court to nonprofit organizations,

		<ul style="list-style-type: none"> ● Property participating in Liability Protection Program, and ● Property remediated under DECD's Municipal Brownfield Program
Licensed Environmental Professionals (CGS § 22a-133v)	DEP	DEP program licensing environmental professionals to investigate and remediate contaminated property according to DEP standards
Interim Verification under the Transfer Act (CGS § 22a-134)	DEP	<p>When brownfield contamination affects groundwater, licensed environmental professionals (LEPs) may certify to DEP that:</p> <ul style="list-style-type: none"> ● the soil has been remediated according to its standards, ● the ground water is being remediated under a long-term remedy, and ● there is no pathway allowing polluted ground water to escape
Environmental Use Restriction (EUR) Waivers (CGS § 22a-133o, as amended by sHB 6526 , §12)	DEP	<p>Easements recorded in land records prohibiting specific uses or activities harmful to human health and environment</p> <p>sHB 6526:</p> <ul style="list-style-type: none"> ● Requires DEP commissioner to permit an EUR to be recorded without the agreement of other parties with an interest in the property if EUR has little or no effect that interest ● Allows DEP commissioner to temporarily suspend EUR restrictions without requiring full remediation for temporary releases
Regulated Activities in Aquifer Protection Areas (CGS § 22a-354h)	DEP	<p>Regulated activities allowed in aquifer protection areas if they:</p> <ul style="list-style-type: none"> ● are being conducted on municipally-owned site undergoing remediation and ● did not substantially begin, or actively operate for five years before area's designation <p>Also, anyone conducting the activity for 10 years register it on DEP form</p>

<p>Covenants Not to Sue (CGS §§ 22a-133aa—22a-133bb)</p>	<p>DEP</p>	<p>Agreement exempting parties from further remediation if they initially remediated the property according to DEP standards and subsequently discovered more contamination</p> <p>Party qualifies if it:</p> <ul style="list-style-type: none"> ● Did not contaminate property or was not involved with the party that did and ● Agrees to clean up and redevelop property
<p>Redeveloping Mills in Floodplains (CGS § 25-68d)</p>	<p>DEP</p>	<p>Makes it easier for agencies to use or allow others to use mills on contaminated floodplain sites by exempting the agencies from certifying that project meets specified criteria</p> <p>Use or activity must:</p> <ul style="list-style-type: none"> ● Meet DEP standards ● Be limited to site of mill's historic use ● Comply with National Flood Insurance Program ● Also, residential structures must be above 500-year flood elevation