



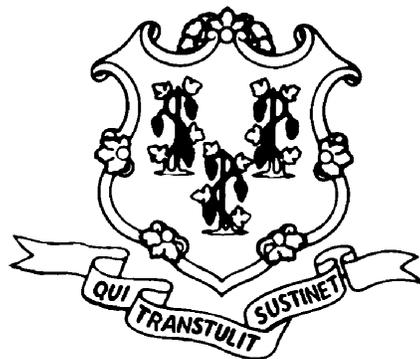
**CONNECTICUT DEPARTMENT OF ECONOMIC &  
COMMUNITY DEVELOPMENT**

**LEGISLATIVE SUMMARY**

**2008**

**M. Jodi Rell  
Governor**

**Joan McDonald  
Commissioner**



## LEGEND

AAC	“An Act Concerning...”
CCCT	“CT Commission on Culture and Tourism”
CDA	the “Connecticut Development Authority”
CHFA	the “Connecticut Housing Finance Authority”
CII	“Connecticut Innovations, Inc.”
Commissioner	Unless otherwise defined, is the Commissioner of DECD
CTSB	“Connecticut Transportation Strategy Board”
DECD	the “Department of Economic and Community Development”
Department	“DECD”
DEP	the “Department of Environmental Protection”
DHE	the “Department of Higher Education”
DOT	the “Department of Transportation”
DPH	the “Department of Public Health”
DPW	the “Department of Public Works”
DSS	the “Department of Social Services”
DSR	the “Division of Special Revenue”
DRS	the “Department of Revenue Services”
HB	“House Act”
JSS	“June Special Session”
LLC	“limited liability company”
MAA	the “Manufacturing Assistance Act”
MME	“Manufacturing Machinery and Equipment”
OPM	the “Office of Policy and Management”
OSS	“October Special Session”
OWC	the “Office of Workforce Competitiveness”
PA	“Public Act”
SA	“Special Act”
SB	“Senate Bill”
SDE	“State Department of Education”
SSS	“September Special Session”

## Sources of Information

*The following summaries have been compiled from the Office of Legislative Research and Office of Fiscal Analysis and tailored specifically for the Department of Economic and Community Development. Only Public Acts affecting, or of interest to, the Department are included in this summary.*

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**AN ACT CONCERNING CERTAIN PROGRAMS ADMINISTERED BY THE OFFICE OF POLICY AND MANAGEMENT, THE DEFINITION OF "BIOMASS", THE ESTABLISHMENT OF PRIVATE DEVELOPMENT DISTRICTS WITHIN ADRIAEN'S LANDING, AND MUNICIPAL OPTIONS TO PROVIDE CERTAIN PROPERTY TAX EXEMPTIONS AND TO MAKE ANNUAL ADJUSTMENTS IN REAL PROPERTY VALUATIONS**

**EFFECTIVE DATE:** Upon passage, except for the provision concerning the Board of Accountancy, which takes effect July 1, 2008, and the provision allowing municipalities to adjust property values between revaluations, which takes effect October 1, 2008. The provision concerning the effective dates of property tax exemptions for property acquired by tax-exempt organizations applies to assessment years starting on or after October 1, 2007.

**SUMMARY:**

This act:

1. extends the Capital City Economic Development Authority's (CCEDA) powers and duties relating to certain Hartford economic development projects for an additional five years;
2. establishes a process for designating a "private development district" on the Adriaen's Landing site in Hartford;
3. allows municipalities to make property tax exemptions for additional types of tax-exempt organization property effective on the date the organization acquires the property, rather than only at the start of the next assessment year;
4. allows municipalities to adjust real property values in the assessment years between revaluations, if their legislative bodies approve;
5. modifies what counts as "sustainable biomass" for purposes of the state's renewable portfolio standard (RPS), which requires electric companies and competitive electric suppliers to get part of their power from renewable resources; and
6. requires the Auditors of Public Accounts to perform and pay for the required annual comprehensive audit of accounts associated with Rentschler Field that contain state funds.

The act also eliminates a requirement that the Board of Accountancy be within the Office of Policy and Management (OPM) for administrative purposes and makes a minor change in the approval procedure for temporary leases of the New London State Pier or other state-owned or- controlled navigation property.

## HARTFORD ECONOMIC DEVELOPMENT PROJECTS

### § 3 — *CCEDA's Authority*

This act extends CCEDA's powers and duties relating to certain Hartford economic development projects for an additional five years, until July 1, 2013. They were scheduled to expire on July 1, 2008. The projects are (1) a convention center, (2) a downtown higher education center, (3) up to 1,000 newly constructed or rehabilitated housing units, (4) the Civic Center (XL Center) and coliseum renovations, (5) expanded downtown parking, and (6) riverfront infrastructure and improvements.

Under the act, CCEDA exercises the following authority for an additional five years with regard to the Hartford projects:

An applicant requesting state funds for a project must submit a copy of its application, along with supporting documents, to OPM and CCEDA. CCEDA has 90 days to give the funding agency its written recommendations, which may include contractual performance standards and project timelines. The agency cannot spend funds until it receives these recommendations or until the 90 days expire, whichever is sooner. It does not have to implement CCEDA's recommendations, but must give CCEDA a written explanation about any spending decision that is inconsistent with them.

CCEDA cannot issue any funding recommendations until Hartford has created a municipal parking authority and transferred or scheduled the transfer (in a legally binding way) of its authority over all municipally owned or operated parking facilities to the new authority. CCEDA must coordinate all state and municipal planning and financial resources for projects, and all state and municipal agencies must cooperate with the authority in its efforts.

### § 5 — *On-Site Related Private Development at Adriaen's Landing*

The act expands the scope of the convention center component of the Adriaen's Landing project to include any on-site related private development that CCEDA owns, develops, or operates according to a determination by the authority and the OPM secretary that it is necessary and in the public interest. By law, "on-site related private development" means housing, entertainment, recreation, retail, and office development contemplated in the Adriaen's Landing master development plan. (It is unclear if the expansion includes the convention center hotel. The act incorporates a statutory definition of "on-site related private development" that includes the hotel but also retains an existing exclusion for the hotel from the scope of the convention center facilities project. ) By extending the scope of the convention center facilities, the act gives the private development projects expedited permitting and exempts them from several environmental and public works laws.

The act also makes the inclusion of a central heating and cooling plant a mandatory rather than an optional part of the convention center facilities.

### §§ 6 & 7 — *Adriaen's Landing Private Development District*

The act allows CCEDA and the OPM secretary to jointly designate land on the Adriaen's Landing site in Hartford as a "private development district," meaning that it is available for certain types of private

development but needs an inducement to encourage it. Although the types of private development allowed in a district are the convention center hotel and other housing, entertainment, recreation, retail, and office development contemplated in the master development plan for Adriaen's Landing, the secretary and the authority may only designate land for the district on which construction of a building or improvement is to start on or after July 1, 2008.

The act gives CCEDA the authority to negotiate, and with the OPM secretary's approval conclude, an agreement with a private developer or an owner or lessee of any building or improvement in the district for payments in lieu of real property taxes (PILOT) to CCEDA. The act makes any private development rights within the district conditional on such a PILOT agreement. It also requires the agreement to include a requirement that the developer, owner, or lessee make a good-faith effort to achieve the goal of using available and qualified minority businesses to provide construction services and materials equal to 10% of the total services and materials costs of improvements to be built in the district.

PILOT payments to CCEDA have the same lien and payment priority and can be enforced in the same way as municipal real property taxes. CCEDA must use the payments to carry out its statutory purposes relating to encouraging economic development in Hartford.

#### *§ 8 — Exemption From Municipal Laws, Ordinances, And Regulations*

The act extends the exemption from municipal ordinances, laws, and regulations that already applied to the overall Adriaen's Landing project to the operation of any improvements in the private development district. The exemption applies to the improvements to the extent they are covered by the laws governing the Adriaen's Landing project, CCEDA's authority, or any other state law.

The act further limits Hartford's authority over the Adriaen's Landing project and the private development district by barring any municipality from imposing indirectly, as a condition of the project receiving state or local funding that the municipality administers, any requirement that it cannot impose directly. The prohibition does not apply if federal law requires the municipality to impose the condition.

#### *§ 9 — State PILOT Payments to Hartford*

The act requires the state to make PILOT payments to Hartford for land and improvements within the designated Adriaen's Landing private development district as long the designation continues. Under the act, Hartford's authority to negotiate and fix property tax assessments for retail, commercial, and residential uses for certain capital city projects and projects located within the Adriaen's Landing site for up to 15 years does not apply to land and improvements within the designated private development district while the designation continues.

#### **§ 11 — PROPERTY TAX ON PROPERTY ACQUIRED BY TAX-EXEMPT ORGANIZATION**

In general, the property tax exemption for any property acquired by a tax-exempt organization after the first day of October may not take effect until the following October 1 (CGS § 12-89). But the law allows a municipality to establish, by ordinance, that a property tax exemption for certain types of tax-exempt organizations becomes effective on the date the organization acquires the property. This

act extends this municipal authority to cover property acquired by, or held in trust for, three additional types of organizations: (1) a bona fide war veterans' organization, (2) a Connecticut Grand Army post, and (3) the American National Red Cross.

The municipal option authority already covered:

1. property used for scientific, educational, literary, historical, or educational purposes;
2. college property;
3. personal property loaned to tax-exempt educational institutions;
4. property owned by agricultural or horticultural societies;
5. property held for cemetery use;
6. personal property of religious organizations devoted to religious or charitable use;
7. houses of religious worship;
8. property of religious organizations used for certain purposes;
9. houses used as dwellings by officiating clergy; and
10. hospitals and sanitoriums.

By law, the municipal ordinance must establish a procedure for reimbursing the tax-exempt organization for any tax it paid for any period after the acquisition date, as well as for any tax for which the exempt organization reimbursed the prior owner on the transfer of the title.

## § 12 — ADJUSTING PROPERTY VALUES BETWEEN PROPERTY TAX REVALUATIONS

### *Authorization*

The act allows municipalities to adjust real property values in the assessment years between revaluations, if their legislative bodies approve. It allows them to do so by calculating an average annual adjustment based on sales data instead of performing an annual revaluation based on the methods the law authorizes. Municipalities that choose to adjust the values in this manner must continue doing so until the next revaluation. The act specifies that this practice does not exempt municipalities from revaluing property every five years as the law requires.

### *Timing*

It appears that municipalities may begin doing annual property value adjustments with respect to grand lists following revaluations implemented on or after October 1, 2007, even though one of the act's provisions explicitly allows them to begin doing so with respect to the first grand list following

any revaluation implemented after October 1, 2005. To comply with the act's other provisions, a municipality that implemented a revaluation in 2005 year would have to begin adjusting the values on the October 1, 2006 grand list and continue doing so in each subsequent assessment year until the next revaluation. But the act does not explicitly allow municipalities to retroactively adjust the values for the October 1, 2006 grand list.

The act's other provisions specify that municipalities may begin adjusting values in the assessment year following the assessment year in which they implemented the revaluation. Consequently, this provision appears to limit this option to assessment years following revaluations implemented on or after October 1, 2007. For example, a municipality that implemented a revaluation on that date could begin adjusting the values for the assessment year beginning October 1, 2008. One that implemented revaluation after that date could begin adjusting values for the assessment year commencing the subsequent October 1.

### *Adjustment*

The act allows municipalities to annually adjust the values resulting from the revaluation and specifies the data they must use to make the adjustments, but does not state how they must calculate them. Municipalities that choose to adjust the values must:

1. divide property into categories OPM created to comply with the law's grand list reporting requirement and
2. adjust the values in each category to reflect the "average annual adjustment in value" for each category. (The act does not specify the data municipalities must use to calculate the average. )

They may further adjust the values by geographic areas. In other words, a municipality may designate zones and adjust the values for each category in that zone.

Municipalities that choose to adjust the values must do so based on the average percent of change in the values, up to 5%. But it is not clear if they must adjust each property's value based on (1) the average change in value for all property, (2) the average change in value for each property class, or (3) the average change in value for each property class in each specified geographic area.

Municipalities must adjust the values based on a compilation of all fair market sales within their respective jurisdictions during the year before the October 1 assessment date. If there were not enough sales during that period to accurately adjust the values, assessors may use sales data from a prior period or base the adjustment on other types of data they use to determine property values.

### *Administration*

By law, tax assessors must notify property owners when they increase the value of their property. The act exempts them from this requirement when a property's value increases solely from the annual adjustment method the act allows.

The law requires assessors to assess property that was constructed after the October 1 assessment date as of the date the property received its certificate of occupancy or the date it is actually used for its intended purpose. The act explicitly subjects assessors to this requirement.

#### § 4 — SUSTAINABLE BIOMASS

Under the RPS, electric companies and competitive electric suppliers must get part of their power from renewable resources, with specific mandates for obtaining power from class I and II resources. By law, sustainable biomass used in facilities that meet specified emission or size limits is considered a type of class I resource. Sustainable biomass used in facilities that meet less stringent emission limits is considered a class II resource. The power from class I and II resources qualifies for renewable energy certificates that are bought and sold on the regional wholesale electric market.

By law, four types of biomass generally do not count as sustainable biomass. These are: (1) construction and demolition (C&D) waste; (2) finished biomass products from sawmills, paper mills, or stud mills; (3) organic refuse fuel derived separately from municipal solid waste; and (4) biomass from old growth timber stands.

Prior law provided three exceptions to this exclusion. It permitted the four types of biomass to count as a class I or II resource if:

1. the biomass was used in a gasification plant funded by the Clean Energy Fund before May 1, 2006;
2. the energy from the biomass was the subject of a long-term contract entered into before May 1, 2006 between an electric company and a renewable resources generator under a program commonly known as Project 100; or
3. the biomass was used in a renewable energy facility certified as a class I renewable energy resource by the Department of Public Utility Control (DPUC).

By law, the third exception runs until DPUC certifies that the gasification plant described in the first exception has become operational and is accepting the biomass.

The act modifies the third exception by (1) limiting the amount of the four types of biomass that can be used at the facility to 140,000 tons per year; (2) requiring DPUC to have certified the facility as a class I renewable energy resource before December 31, 2007; and (3) requiring that the facility use biomass, including C&D waste, from a Connecticut transfer station and volume-reduction facility that generated biomass during calendar year 2007 that was used during that year to generate class I renewable energy certificates.

The act adds a new exception under which the four types of biomass can count as sustainable biomass. Under the act, if no facility described in the first or third exceptions is accepting such biomass, up to 140,000 tons of the biomass can be used each year in one or more other renewable energy facilities certified as a class I or II renewable energy resource by DPUC. These facilities must use the biomass (including C&D waste) from a Connecticut transfer station and volume-reduction facility that generated biomass during calendar year 2007 that was used during that year to generate class I renewable energy certificates.

The act's 140,000-ton annual limit does not apply to gasification plants funded by the Clean Energy Fund before May 1, 2006.

## § 2 — AUDITS OF RENTSCHLER FIELD ACCOUNTS

The act requires the Auditors of Public Accounts to perform and pay for the required annual comprehensive audits of accounts associated with Rentschler Field that contain state funds. Under prior law, audits had to be conducted by an independent accounting firm chosen by the OPM secretary from a list of at least four such firms provided by the state comptroller. The cost of the independent audit was treated as a stadium operating expense. The audit requirement applies to the Stadium Facility Enterprise Fund, the revenue account, the operating expense fund, and any other account containing state money associated with the stadium.

The act also eliminates an obsolete requirement that the Auditors of Public Accounts conduct an audit of the stadium facility operation's internal controls between August 8 and November 30, 2003.

## § 10 — TEMPORARY AGREEMENTS FOR LEASING STATE PIER

PA 08-101 authorizes the transportation commissioner to lease or grant any interest at the State Pier in New London or any navigation property the state owns or controls with the approval of the State Properties Review Board (SPRB), OPM, and the attorney general. It also allows the commissioner, after requesting SPRB and attorney general approval, to execute a temporary lease that would be effective only until the full agreement has received final approval. This act requires the OPM secretary to approve any such temporary lease. It also specifies that OPM, as well as the attorney general and the SPRB, make the final decision on the final lease or grant of interest.

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**Public Act# 08-34**

**SB# 390**

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## **AN ACT CONCERNING TECHNICAL CHANGES TO ECONOMIC DEVELOPMENT STATUTES**

**EFFECTIVE DATE:** Upon passage

**SUMMARY:** This act makes changes to the statutes governing the Manufacturing Assistance Act (MAA) program, which provides financing for developing property, acquiring machinery and equipment, training employees, and providing other business support services. MAA is administered by the Department of Economic and Community Development (DECD).

The act changes the basis for determining if a business qualifies for MAA funds. The law bases eligibility on whether a business is in a specified business sector or contributes to the state's economy by selling most of its products and services to customers outside Connecticut (i. e. , economic base business). The act designates more sectors, thus expanding the types of businesses that qualify for funds without having to meet the economic base criterion. It also eliminates certain sectors, thus requiring the affected businesses to meet the economic base criterion.

The act consolidates and reorganizes the criteria for determining if a project qualifies for MAA funds. In doing so, it makes it easier for specific types of projects to qualify for these funds.

The act eliminates obsolete statutes and makes many conforming technical changes.

The act also repeals the statute authorizing the state to provide financial assistance, staff support, or other in-kind contributions specifically to the nonprofit Connecticut Economic Resource Center (CERC). That statute allowed DECD or any other state agency, government entity, or the private sector to do these things within available funds (these entities can still contract with CERC under their procurement statutes). CERC conducts economic research for local, regional, and state economic development entities. It is mostly funded by the utility companies.

## ELIGIBLE BUSINESSES

### *Reorganized Statute*

The act reorganizes the statutory criteria for determining if a business qualifies for MAA funds. By law, a business qualifies based on its legal form (e. g. , sole proprietorship) and the degree to which it contributes to the state's economy. Prior law placed these criteria in separate sections. The act consolidates them in one section.

In doing so, it also expands the types of forms that qualify for funding to reflect current practice. Prior law limited funding to partnerships, sole proprietorships, and corporations, but DECD provided funding to limited liability companies (LLCs) proposing otherwise eligible projects. The act makes LLCs eligible for funding.

### *North American Industrial Classification System (NAICS)*

The act also changes the basis for determining if a business qualifies for funds. By law, 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. (Industry clusters are groups of interrelated business that provide the same products or services, use similar processes and techniques, have similar workforce needs, and tend to buy supplies or support services. )

Under prior law, a manufacturer qualified for MAA funds based on the Standard Industrial Classification System (SIC), a federal classification based on the goods businesses make, the services they provide, or the methods and techniques they use. The federal government replaced SIC with a different classification scheme—NAICS. The act updates the law to reflect this change.

In doing so, it retains the manufacturing category, but also adds many nonmanufacturing business categories and subcategories, including film making, banking, and child care services. Many businesses in these categories qualified for funds under prior law if they were economic base businesses or met other criteria. Consequently, they now qualify for funds regardless of whether they meet these criteria.

The act drops agriculture, aquaculture, and wine making from the list of businesses eligible for MAA funds, but they may still qualify for funds under the economic base criterion. A business meets this criterion if it:

1. creates or retains jobs,
2. exports products or services outside the state,
3. encourages innovative products and services,
4. adds value to them, or
5. supports or enhances existing activities important to the state's economy.

## PROJECT ELIGIBILITY

### *Consolidation and Reorganization*

The act consolidates and reorganizes the criteria for determining if a project qualifies for MAA funding. By law, a project qualifies for funding if it meets at least one of 10 criteria, which prior law divided into three categories. Some criteria include eligible development activities, such as acquiring and developing land and constructing facilities. Others describe how the project must benefit the economy, and include outcomes such as creating new jobs or diversifying a region's economy. One criterion specifies a program—creating workshops for developing and marketing new products or production techniques.

### *Reduced and Eliminated Criteria*

The act makes it easier for projects to qualify for funding under the eligible activities criteria. Under prior law, a project qualified for MAA funds if it involved the purchase or lease of an existing facility that had been idle for at least one year (unless the DECD commissioner waived this requirement). Leases had to be for a minimum five-year term, with an option to renew the lease or purchase the facility. The act eliminates these requirements.

The act similarly eliminates some of the criteria for qualifying projects involving machinery and equipment purchases. Under prior law, they qualified only if:

1. the business acquiring the machinery and equipment had been operating continuously in Connecticut for at least five years;
2. the machinery and equipment would be used for manufacturing and had been purchased as part of a technological upgrade; and
3. the acquisition cost was at least \$200,000 or 200% of the business' average annual machinery and equipment expenditure over the past three years at the facility where the new machinery and equipment will be used, whichever is greater.

The act eliminates these conditions. Consequently, projects involving machinery and equipment purchased or leased for any purpose qualify for funding, regardless of the cost or how long the business has operated in the state.

Lastly, the act eliminates a criterion that applied when a business proposed to acquire, improve, demolish, or dispose of real property. Under prior law, the business had to show that it could not undertake or complete these activities without MAA funds. The bill eliminates this criterion.

Under prior law and the act, the criteria for projects involving the purchase of facilities or machinery and equipment determine only whether a project qualifies for funds. Consequently, the businesses implementing these projects can use the funds for these and other purposes. Furthermore, a project that does not meet the criteria may still qualify for funds under the laws other criteria. If it does, it may use MAA funds for a wide range of activities, including leasing or acquiring facilities and purchasing office equipment.

#### *New Project Eligibility Criteria*

The act allows the DECD commissioner to use MAA funds to create and support organizations providing technical and engineering assistance to small manufacturers and other economic base businesses. The organizations may use the funds to help these businesses design, test, manufacture, and market new products and adopt and implement new techniques and technology. The act also allows MAA recipients to use the funds to develop their workforces. (Arguably, both of these activities qualified for funds under prior law as business support services, a criterion the act retains.)

#### OBSOLETE STATUTES

The act repeals several obsolete MAA statutes. It repeals the statutes authorizing MAA funding for defense diversification projects and establishing a DECD office to develop and support these projects. The authorization for these activities expired June 30, 1996.

The act also repeals the statutes authorizing funding for inventors' workshops. The authorization to request proposals for these workshops was limited to FY 93.

#### BACKGROUND

##### *Industrial Classification Systems*

SIC and NAICS are systems for classifying businesses. SIC was developed during the 1930s. It initially consisted of separate codes for manufacturers and other types of businesses. It was periodically revised to reflect changes in the way goods were made and services delivered. But despite the revisions, users and analysts criticized SIC as outmoded and out of sync with the economy.

The North American Free Trade Agreement with Canada and Mexico underscored the need to develop a classification system that reflected the broader North American market. NAICS was developed in cooperation with these nations. It groups businesses that use the same or similar

processes to make goods or deliver services. Consequently, NAICS reflects the greater role service businesses play in the economy.

For example, SIC was divided into 10 divisions, five of which were service related. NAICS, on the other hand, is divided into 20 sectors, 16 of which are service related (U. S. Census Bureau, *Development of NAICS*).

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**Public Act# 08-82**

**SB# 391**

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## **AN ACT CONCERNING THE INSURANCE REINVESTMENT ACT**

**EFFECTIVE DATE:** October 1, 2008

**SUMMARY:** This act redefines “insurance business,” for purposes of the Insurance Reinvestment Fund, by limiting it to insurance and other businesses providing insurance-related services with a North American Industry Classification code of 524113 through 524298. These codes include (1) insurance and reinsurance carriers; (2) insurance agencies and brokerages; and (3) other insurance-related activities, such as claims adjusting, third-party administration, and advisory and rate-making services. The redefinition limits the types of businesses eligible for investments through the Insurance Reinvestment Fund program.

### **BACKGROUND**

#### *Insurance Reinvestment Fund*

PA 94-214 created the Insurance Reinvestment Act as a way to leverage private investment in insurance and other businesses providing insurance-related services. It does this by authorizing premium, corporate, and personal income tax credits for people and businesses that invest in these businesses through state-registered fund managers. Businesses receiving the investments must occupy facilities and create new jobs. Investors may claim a portion of the tax credits over a 10-year period according to a statutory schedule.

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**Public Act# 08-162**

**SB# 392**

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## **AN ACT CONCERNING FINANCING FOR INFORMATION TECHNOLOGY AND REMEDIATION PROJECTS AND THE TAX INCREMENTAL FINANCING PROGRAM, AND MAKING A TECHNICAL CORRECTION**

**EFFECTIVE DATE:** Upon passage

**SUMMARY:** This act extends the sunset dates for two Connecticut Development Authority (CDA) programs that provide financing for large-scale development projects. Both programs use the new or incremental tax revenues the projects generate to repay the bonds CDA issued to finance the projects (i. e., tax increment financing (TIF)). Prior law would have ended the authorization for both programs on July 1, 2008. The act extends this date to July 1, 2010.

The programs use different tax revenues to finance different types of projects. One uses incremental sales, dues, cabaret, and admission tax revenues to finance large-scale projects that create jobs, stimulate economic activity, and meet other statutory criteria (i. e. , sales tax TIF). Under prior law, CDA only had to notify specific legislators before using these revenue sources. Under the act, it must obtain the Commerce and Finance committees' approval before doing so.

Although the act restricts CDA's ability to use incremental sales, dues, cabaret, and admission tax revenues to finance a project, it also allows CDA to use incremental hotel tax revenues for this purpose. It requires CDA to only notify specific legislators before doing so.

The other program uses incremental property tax revenues a completed project generates to repay the bonds issued to finance it (i. e., property tax TIF). These revenues can be used to repay bonds issued to clean up and redevelop contaminated property or for certain information technology projects.

## SALES TAX TIF

### *Sales, Dues, and Admission Tax Revenue*

Prior law required CDA to notify specified legislators if it intended to use incremental sales, admission, cabaret, and dues tax revenues to repay a bond it issued to finance a project. The act, instead, requires CDA to obtain legislative committee approval if it intends to use these revenue sources and specifies the process for obtaining that approval.

The process requires CDA to submit specific information to the Commerce and Finance, Revenue and Bonding committees about a project. The information consists of the application for assistance, independent financial assessments, revenue impact assessments, and the financial assistance CDA proposes to offer. CDA must provide the information in these documents in a way that protects the confidentiality of the project sponsor's financial information.

Both committees must act on the information within 45 days after receiving it. They must notify CDA about whether they approve the project or approve it with modifications. If the committees fail to meet this deadline, the project is deemed approved.

If the committees disagree, their respective chairpersons must appoint a conference committee to resolve the matter. The chairpersons of each committee must appoint three members, one whom must be a minority party member. The conference committee must report to each committee, which may vote to accept or reject the report, but may not amend it.

The proposed financial assistance for the project is approved unless both committees reject the conference report. If the committees accept the report, the Finance, Revenue and Bonding Committee must notify CDA to that effect. In doing so, it must also notify CDA about any modifications the committees made to its proposal. CDA must comply with any of the committees' modifications.

## *Hotel Tax Revenue*

The act allows CDA to use the hotel tax revenue a project generates to repay the bonds issued to finance it. But CDA's executive director must first notify certain legislators to that effect at least 72 hours before submitting a proposed project to his board for approval. This is the same procedure CDA had to follow under prior law when it intended to use incremental sales, cabaret, admission, and dues tax revenues to repay a bond it issued to finance a project.

The procedure requires CDA to notify the Senate president pro tempore, the House speaker, the Senate and House minority leaders and the chairmen and ranking members of the Commerce and Finance, Revenue and Bonding committees. Any of these legislators can ask CDA's board to delay its decision for 30 days.

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**Public Act# 08-18**

**HB# 5318**

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### **AN ACT CONCERNING TECHNICAL REVISIONS TO THE FREEDOM OF INFORMATION ACT**

**EFFECTIVE DATE:** Upon passage

**SUMMARY:** This act makes a technical change to the Freedom of Information Act (FOIA), moving the requirement that public agencies make, keep, and maintain records of their meetings from one section of FOIA to another.

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**Public Act# 08-123**

**SB# 2**

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### **AN ACT CONCERNING THE NEXT STEPS INITIATIVE**

**EFFECTIVE DATE:** Upon passage

**SUMMARY:** This act authorizes the Department of Mental Health and Addiction Services (DMHAS) to provide an additional 500 "Next Steps" supportive housing units mainly for people with mental illness. Funding for these units comes from mortgages, tax credits, and grants from the Connecticut Housing Finance Authority (CHFA) and the Department of Economic and Community Development (DECD). The act authorizes the state to provide annual debt service payments on an additional \$35 million in bonds CHFA may issue to finance these units. It also makes technical changes.

#### **SUPPORTIVE HOUSING**

The act increases the number of units authorized under the Next Steps supportive housing program. The program serves:

1. people or families affected by psychiatric disabilities, chemical dependencies, or both and who are homeless or at risk of becoming homeless;

2. families who qualify for federal temporary assistance;
3. 18- to 23-year olds who are homeless or at risk for becoming homeless because they are transitioning out of foster care or other residential programs; and
4. community-supervised offenders with serious mental health needs who are under Judicial Branch or Correction Department jurisdiction.

The law initially required the DMHAS commissioner to provide up to 650 units in a pilot program. It subsequently required him to provide an additional 500 units in the Next Steps Initiative. He had to develop the units under a memorandum of understanding with several state agencies, including the Office of Policy and Management (OPM), DECD, and CHFA, that allowed DECD and CHFA to help finance the units.

The act requires DMHAS to provide up to 500 additional units. It also increases the amount that OPM and the treasurer can pay for annual debt service on the bonds CHFA issues to finance the additional units. Prior law authorized them to pay up to \$70 million; the act increases this total by \$35 million, to \$105 million.

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**Public Act# 08-10**

**SB# 495**

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## **AN ACT CONCERNING ELIGIBILITY FOR THE PUBLIC HOUSING PILOT PROGRAM AND THE LOW AND MODERATE INCOME HOUSING TAX ABATEMENT**

**EFFECTIVE DATE:** July 1, 2008

**SUMMARY:** This act allows the economic and community development commissioner to continue reimbursing municipalities for property tax abatements and exemptions granted to low- and moderate-income housing. It does so by changing provisions specifying the circumstances under which she must end these reimbursements, which are authorized under two statutory programs.

One program allows municipalities to abate property taxes on privately-owned multifamily housing if the owner agrees to keep the rents affordable for low- and moderate-income people. Under prior law, the commissioner could reimburse municipalities for these abatements for up to 40 consecutive years. The act eliminates this sunset provision.

The other program exempts public housing authorities (PHA) from paying property taxes on moderate rental housing projects they developed with state funds. Prior law allowed the commissioner to reimburse municipalities for the revenue loss as long as the PHAs owned the projects. Under the act, she may continue reimbursing a project after a public or private entity acquired and redeveloped it with her approval.

**AN ACT CONCERNING PAYMENT IN LIEU OF TAXES FOR PUBLIC HOUSING AND THE LOW AND MODERATE INCOME TAX ABATEMENT PROGRAM**

**EFFECTIVE DATE:** Upon passage

**SUMMARY:** This Act transfers funds from the Department of Social Services Housing/Homeless Services appropriation in PA 07-1, June Special Session, to the Department of Economic and Community Development (DECD) for the payment in lieu of taxes (PILOT) and low- and moderate-income tax abatement programs. Under the act, DECD receives \$ 2,204,000 for the PILOT program and \$ 1,704,890 for the tax abatement program in FY 08.

**BACKGROUND***PILOT*

This program allows the commissioner of DECD to enter into a contract with a municipality and its housing authority to make payments in lieu of taxes to the municipality on land and improvements owned or leased by the housing authority or the Connecticut Housing Finance Authority.

*Low- and Moderate- Income Housing Tax Abatement Program*

This program provides annual reimbursement for local tax abatements of up to \$ 450 per low- and moderate-income housing unit for 40 years, in certain private or non-profit developments.

*Explanation*

The amendment requires municipalities, housing authorities, and housing owners to refund any tax, assessment or charge in lieu of the state reimbursement under the moderate rental housing Payment-in-Lieu of Taxes (PILOT) and Tax Abatement programs, provided a specified level of funding is available for such programs in FY 08. Since the act provides an appropriation for these programs, the amendment would not result in a cost or loss of revenue to municipalities if they had collected any payments made by housing authorities and were required to refund such payments.

*Background*

In FY 07, 22 municipalities received a total of \$1.7 million in state assistance under the Tax Abatement program, and 14 municipalities received a total of \$2.2 million under the moderate rental housing PILOT program.

**AN ACT ADOPTING THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT****EFFECTIVE DATE:** October 1, 2009**SUMMARY:** This act, with respect to documents eligible to be recorded in municipal land records, authorizes town clerks to:

1. receive, index, store, archive, and transmit electronic documents;
2. provide electronic access to, and search and retrieval of, documents and information;
3. convert paper documents accepted for recording into electronic form;
4. convert into electronic form information recorded before they began to record electronic documents;
5. accept electronically any fee or tax that they are authorized to collect; and
6. agree with federal and other state and local officials on (a) procedures or processes to facilitate the electronic satisfaction of prior conditions on recording and prior approvals by other officials, and (b) the electronic payment of fees and taxes.

The act requires town clerks who exercise the authority the act grants to (1) comply with regulations adopted by the State Librarian under the act and (2) continue to accept paper documents as authorized by state law after beginning to accept electronic documents for recording and place entries for both types of documents in the same index.

**CONDITIONS FOR RECORDING**

The act specifies that if a law requires, as a condition for recording, that a document be a signed original, on paper, another tangible medium, or in writing, the requirement is satisfied by an electronic document complying with the act's requirements.

The act also specifies that:

1. a requirement that a document or a signature associated with it be notarized, acknowledged, verified, witnessed, or made under oath is met if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature and
2. a physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

## STATE LIBRARIAN DUTIES

The act requires the state librarian to (1) establish a Real Property Electronic Recording Advisory Committee and (2) in consultation with the committee and the public records administrator, adopt implementing regulations.

The act also requires the state librarian, consistent with the act's purposes, policies, and provisions, to consider in adopting, amending, and repealing regulations:

1. standards and practices of other jurisdictions;
2. the most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association;
3. the views of interested persons and government officials and entities;
4. the needs of municipalities of varying sizes, population, and resources; and
5. standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved and resistant to tampering.

The act specifies that the purpose of this requirement is to harmonize the standards and practices of Connecticut town clerks with those of recording offices in other jurisdictions that enact legislation substantially the same as this act.

## ELECTRONIC RECORDING ADVISORY COMMITTEE

The committee consists of:

1. three town clerks, one from a town with a population under 20,000, one from a town with a population between 20,000 and 60,000, and one from a town with a population of at least 60,000;
2. three attorneys experienced in real estate law;
3. the secretary of the state, or a designee;
4. the public records administrator, or a designee;
5. an individual experienced in mortgage banking;
6. someone experienced in the title insurance business;
7. a notary public;
8. an individual with experience performing title searches of real property; and

9. a licensed real estate broker.

The committee members must be appointed by, and serve at the pleasure of, the state librarian. The members must serve without compensation, but must be reimbursed, within available appropriations, for expenses necessarily incurred performing their duties. The committee must advise the state librarian with respect to adopting, amending, and repealing regulations.

#### APPLYING AND INTERPRETING THE ACT

When applying and construing the act, consideration must be given to the need to promote uniformity of the law among states that enact uniform provisions.

#### FEDERAL LAW

The act specifies that it modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 USC 7001 et seq). But the act also specifies that it does not modify, limit, or supersede consumer protections specified in federal law (15 USC 7001(c)), nor does it authorize electronic delivery of the notices described in 15 USC 7003(b) (see BACKGROUND).

#### CONNECTICUT UNIFORM ELECTRONIC TRANSACTIONS ACT

Prior law exempted certain land transaction laws from the Connecticut Uniform Electronic Transaction Act (CGS §§ 1-266 to 1-286). This act removes this exemption, thus making the recording of deeds subject to this act (see BACKGROUND).

Specifically, it removes the exemption for the following laws.

<i>Citation</i>	<i>Title</i>
47-10	Conveyance to be recorded
47-12	Change in name or status of real estate owner
47-12a	Affidavit of facts relating to title or interest in real estate
47-14g	Divorce or marriage dissolution of husband and wife joint tenants
47-14j	Conveyance to effect change in interests among tenants
47-14k	Conveyance or devise creating a joint tenancy
47-15	Certificate of taking land by appraisal to be recorded
47-16	Lost deed of land in two or more towns, copy recorded
47-17	Records of documents as notice of equitable rights
47-18a	Notice of listing of historic structure on National Register of Historic Places
47-19	Leases for more than one year

## BACKGROUND

### *Connecticut Uniform Electronic Transaction Act (CGS §§ 1-266 to 1-286)*

The Connecticut Uniform Electronic Transaction Act establishes as state law a version of the Uniform Electronic Transaction Act (UETA), which provides uniform rules governing electronic commerce transactions.

Connecticut UETA establishes a legal foundation for the use of electronic communications in transactions where the parties, including state and local governmental agencies, have agreed to conduct business electronically. It validates the use of electronic records and signatures and places electronic commerce and paper-based commerce on the same legal footing. An “electronic record” is one created, generated, sent, communicated, received, or stored by electronic means. E-mails, faxes, and Internet messaging are examples of electronic records. “Electronic signatures” are electronic sounds, symbols, or processes that people attach to or logically associate with a record to indicate their signature.

### *Federal Electronic Signatures in Global and National Commerce Act*

The Electronic Signatures in Global and National Commerce Act facilitates the use of electronic records and signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically (15 U. S. C. § 7001 *et seq.* ).

This law (15 USC 7002) allows a state statute to modify, limit, or supersede it only if the state law:

1. constitutes an enactment or adoption of UETA or
2. specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability if they satisfy certain standards and the state law makes specific reference to this act.

### *Consumer Protections in 15 USC § 7001(c)*

If a statute, regulation, or other rule requires that information relating to any transaction in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such information satisfies the requirement that the information be in writing if the following conditions, among others, are satisfied:

1. the consumer has affirmatively consented to such use and has not withdrawn such consent;
2. the consumer, before consenting, is provided with a clear and conspicuous statement that satisfies certain requirements, and is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

3. the consumer consents or confirms consent electronically, in a way that reasonably demonstrates that he or she can access information in the electronic form that will be used to provide the information that is the subject of the consent.

**AN ACT CONCERNING RESPONSIBLE LENDING AND ECONOMIC SECURITY**

**EFFECTIVE DATE:** July 1, 2008, except for the CT FAMILIES program, state assistance for the Emergency Mortgage Assistance Program, the establishment of the mediation program, and nontraditional mortgage commission provisions, which are effective upon passage.

**SUMMARY:** This act specifically authorizes the Connecticut Housing Finance Authority (CHFA) to (1) continue the CT FAMILIES refinancing program and (2) implement mortgage refinancing and emergency mortgage assistance programs. It allows CHFA to develop and implement a program for it to purchase foreclosed Connecticut property and turn the property into supportive and affordable housing. The act requires the WorkPlace, Inc., in conjunction with the other regional workforce development boards and one-stop centers, to establish a mortgage crisis job training program.

The act requires the chief court administrator, by July 1, 2008, to establish a foreclosure mediation program in each judicial district. The program ends in 2010. The act establishes a number of requirements for mortgage loans (mainly for nonprime loans) and for mortgage professionals making those loans. It defines “nonprime loans.” The act makes a number of additional regulatory changes, including increasing bond requirements for lenders and brokers. It also combines first and second mortgage professionals and makes a number of changes to the National Mortgage Licensing requirements adopted under PA 07-156. The act establishes a commission on nontraditional loans and home equity lines of credit.

Finally, the act makes a number of technical and conforming changes.

§§ 1-14, 80 — MORTGAGE PROGRAMS/CHFA PROVISIONS

§ 1 — *CT FAMILIES*

The act specifically authorizes CHFA to continue to develop and implement its program for adjustable rate home mortgage refinancing for homeowners (the Connecticut Fair Alternative Mortgage Lending Initiative and Education Services or CT FAMILIES program). It does this by adding to CHFA's statutory purposes. It specifies that the program must be undertaken, consistent with and subject to its contractual obligations to its bondholders, in an initial amount of \$40 million under CHFA-determined terms and conditions.

§ 2 — *HERO Program*

The act authorizes CHFA to develop and implement the Homeowner's Equity Recovery Opportunity or HERO loan program as one of its purposes under the statutes and consistent with its contractual obligations with its bondholders, in an initial amount of \$30 million. The act requires CHFA to

implement the HERO program adopt and relevant procedures by July 1, 2008. Under the program, CHFA must, within available funds, purchase mortgages directly from lenders and place eligible borrowers on an affordable repayment plan.

For HERO program purposes, the act defines a borrower as the owner-occupant of one-to-four family residential real property located in this state, including condominiums, who has a mortgage encumbering the real property. It defines a mortgage as an instrument which constitutes a first or second consensual lien on such property, securing a loan made primarily for personal, family, or household purposes. Finally, it defines a lender as the original lender under a mortgage or its agents, successors, or assigns.

Under the act, borrowers are eligible for the program if the HERO loan is in the first lien position and borrowers have:

1. made an effort to meet their financial obligations to the best of their ability;
2. sufficient and stable income to support timely repayment of a HERO loan;
3. legal title to the mortgaged property and reside in these as a permanent residence; and
4. the ability to account for cash flow if they have stopped making monthly payments by showing how the funds were escrowed, saved, or redirected.

Borrowers must apply for HERO loans on a CHFA approved form. Borrowers must give CHFA full disclosure of all assets and liabilities, whether singly or jointly held, and all household income regardless of source. The act specifies what counts as assets.

The act states that assets include the sum of the household's savings and checking accounts; market value of stocks; bonds, and other securities; other capital investments; pensions and retirement funds; personal property; and equity in real property, including the subject mortgage property (the act defines equity as the difference between the market value of the property and the total outstanding principal of any loans secured by the property and other liens).

Assets also include lump-sum additions to family assets such as inheritances; capital gains; and insurance payments included under health, accident, hazard, or worker's compensation policies and settlements, verdicts, or awards for personal or property losses or transfer of assets without consideration within one year of the time of application (pending claims for such items must be identified by the homeowner as contingent assets).

The borrower must complete and sign the application subject to the penalty for false statement. Any borrower who misrepresents any financial or other pertinent information in conjunction with the filing of an application for a HERO loan may be denied assistance. CHFA must make an eligibility determination within 30 days of receiving the borrower's application. All approved borrowers must attend in-person financial counseling at a CHFA-approved agency. HERO loans must be a mortgage of up to 30 years, as determined by CHFA, and include property taxes and insurance in the borrower's monthly payment amount. CHFA determines the interest rate and services the loan.

### *§ 3 — Uninsured CHFA Mortgages*

The act increases, from \$1 billion to \$1.5 billion, the aggregate amount of mortgage purchases and loans that CHFA can make that are not insured or guaranteed by a U. S. instrumentality or agency; a public U. S. - or congressionally-chartered corporation (e. g. , Freddie Mac); a Connecticut state agency, department, or instrumentality; a Connecticut-licensed insurance company authorized to underwrite mortgage insurance; or CHFA.

### *§ 4 — Foreclosed Property and Affordable/Supportive Housing*

The act allows CHFA to develop and implement a program for it to purchase foreclosed Connecticut property and turn the property into supportive and affordable housing, by making this one of CHFA's powers under statute. It appears to allow them to report on the program and plans for implementing it to the Banks, Housing, and Planning and Development committees by January 1, 2009.

### *§§ 5-12, 80 — EMAP Changes*

The act amends the existing Emergency Mortgage Assistance Program (EMAP) statutes. The program is currently unfunded. The act makes participation in the program mandatory, rather than voluntary, as under prior law. It also expands its scope (1) to cover one-to-four family rather than just one-to-two family owner-occupied homes and specifically include single-family units in a condominium, cooperative, or other common interest community and (2) by expanding the “financial hardship due to circumstances beyond the mortgagor's control” eligibility requirement to include a 25% reduction in aggregate family income due to a significant increase in the periodic payments for a mortgage (including principal, interest, taxes, insurance, and, if applicable, condo fees. ) By law, the homeowners also qualify if they have lost their job, had their hours reduced, or suffered a disability, illness, or death of another homeowner. They also qualify, by law, if a member of their household or dependent (1) loses or has transfer payments cut or delayed, (2) loses or has retirement or other private benefits cut or delayed, (3) has been divorced or lost support payments, (4) suffered uninsured damage to their home requiring costly repairs, or (5) incurred medical or burial expenses.

Starting July 1, 2008, the act requires a lender to comply with the EMAP statute if it wants to foreclose on a mortgage on a one-to-four family owner-occupied residence where the property is not Federal Housing Administration (FHA) insured and the borrower (1) has not mortgaged the property for commercial or business purposes, (2) has not previously received EMAP assistance (except if the person has reinstated the mortgage and has not been delinquent for six consecutive months since the reinstatement), and (3) is not in default under the mortgage except for the monetary delinquency.

This means the lender must send a notice to the borrower stating that he or she has 60 days, rather than the 30 previously required, to (1) have a conference with the lender or a face-to-face meeting with a credit counseling agency to attempt to resolve the default and (2) contact CHFA about EMAP if they are unsuccessful in doing so. Under the act, if the parties reach an agreement, but the borrower still cannot pay due to financial hardship, he or she can still apply for emergency assistance within 30 days of any default. If the borrower fails to comply with the deadlines or CHFA fails to approve the EMAP application within 30 days of its filing, the foreclosure proceeding can continue. However, the lender must file an affidavit to that effect. The act provides that EMAP participants can still exercise

their rights under the foreclosure mediation program the act creates, but the concurrent exercise of those rights cannot delay the EMAP eligibility determination.

Additional changes to the EMAP statutes include:

1. increasing the repayment period from 36 to 60 months (and similarly limiting participation to people who have a reasonable prospect of being able to repay within that time period);
2. requiring borrowers to have, except for the current delinquency, a favorable mortgage credit history for the lesser of the period of ownership or the previous two, rather than five, years; and
3. increasing the limit on the number of times a person can be more than 30 days in arrears to four or more times in the previous year from two or more times in the previous two years, before the person is ineligible for the program.

The act appropriates \$14 million from the State Banking Fund to CHFA for EMAP for FY 09. It specifies that repayments will be revolving instead of going into the General Fund.

It requires the Office of Policy and Management secretary and the state treasurer to make an agreement (“contract”) by July 1, 2008 with CHFA obligating the state to pay debt service (principal, interest, and other bond-related expenses) on up to \$50 million of CHFA bonds issued for EMAP. It allows CHFA to use the state's promise to pay the debt service as security when it sells the original bonds or any refunding bonds the authority issues to refinance them. The act pledges the state's full faith and credit to pay the agreed-upon debt service but specifies that the underlying bonds are not state general obligations. It appropriates \$2.5 million to the state treasurer from the State Banking Fund for FY 09 for these purposes.

#### *§§ 13- 14 — The Workplace, Inc. Mortgage Crisis Job Training*

The act requires The WorkPlace, Inc. , in conjunction with the other regional workforce development boards and one-stop centers, to establish a mortgage crisis job training program. For purposes of the program, at least three mortgage crisis job training teams must be established for different areas of the state. The WorkPlace, Inc. and Capital Workforce Partners must manage the teams, which, in cooperation with the regional workforce development boards and one-stop centers, must ensure the provision of rapid, customized employment services, job training, repair training, and job placement assistance to borrowers who are unemployed, underemployed, or in need of a second job. The WorkPlace, Inc. must arrange with CHFA for financial literacy and credit counseling for program participants.

Borrowers are eligible for the program if they are at least 60 days delinquent on their mortgages and (1) are referred by their CHFA lender or (2) demonstrate an imminent need to increase earnings in order to avoid delinquency or foreclosure. Borrowers can also access the program through the one-stop centers.

The act requires The WorkPlace, Inc. and CHFA to submit a joint report on the implementation of the mortgage crisis job training program to the Banks, Housing, and Planning and Development

committees by January 1, 2009. The act appropriates \$2.5 million to the Labor Department from the State Banking Fund for the program for FY 09.

## §§ 15-20 — FORECLOSURE MEDIATION

The act requires the chief court administrator, by July 1, 2008, to establish a foreclosure mediation program in each judicial district and appropriates \$2 million to the Judicial Branch for the program from the State Banking Fund for FY 09. The program is available to owner-occupants of one-to-four family residential real property in Connecticut who are also borrowers under a mortgage encumbering the property and who use the property as their primary residence. The program must address all issues of foreclosure and be conducted by foreclosure mediators who:

1. are employed by the Judicial Branch;
2. are trained in mediation and all relevant aspects of the law, as determined by the chief court administrator;
3. have knowledge of the community-based resources that are available in the judicial district in which they serve; and
4. have knowledge of the mortgage assistance programs.

The mediators can refer participating borrowers to community-based resources and to the mortgage assistance programs the act establishes.

Under the act, until July 1, 2010, if a lender starts a foreclosure action on a one-to-four family dwelling occupied as a residence by a borrower with a return date on or after July 1, 2008, it must give notice of the foreclosure mediation program to the borrower by attaching to the front of the foreclosure complaint, in a chief court administrator-approved form, (1) a notice of the availability of the foreclosure mediation program and (2) a foreclosure mediation request form. This applies to a lender, including the original lender or servicer under a mortgage or its successors or assigns.

Borrowers can request mediation by submitting the form to the court and filing an appearance within 15 days of the return date. The court can extend this period by up to 10 additional days for good cause shown. The court must notify all appearing parties in the action of the request. If the court determines that the notice requirement has not been met, it can, on the borrower's or its own written motion, issue an order delaying judgment for 15 days, during which time the borrower can submit a request for mediation. The borrower's submission of a request does not waive either the borrower's or lender's rights in the foreclosure action. No requests can be accepted on or after July 1, 2010, and the program ends when mediation for applications submitted prior to that date have concluded.

The mediation period starts when the court sends notice of the borrower's request to the appearing parties. This notice must be sent within three business days of the court's receipt of the completed request form. The mediation period ends 60 days after the return date for the foreclosure action. However, the court can extend this period for up to 10 days or shorten it for good cause shown on the court's own motion or the motion of any party. The first mediation session must be held within 10 business days of the court sending the notice. The borrower and lender must appear in person at each

session and can agree to a proposed settlement. The lender's attorney can appear instead if he or she has the authority to agree to a proposed settlement and if the lender is available by telephone or electronically.

Within two days of the end of the first mediation session, the mediator must determine if further mediation is useful in a report that must be filed with the court and mailed to the parties. The mediation terminates automatically if the mediator does not think it will be beneficial to continue. If mediation continues, the mediator must file a second report within two days after mediation ends, but no later than 60 days after the return date in the foreclosure action. The report must describe the proceedings and the issues resolved and not resolved. This filing automatically terminates the mediation period. If certain issues have not been resolved, the mediator can refer the borrower to community-based services in the judicial district, but this cannot delay the mediation process. It is not clear how the referral would delay the process, as submission of the report terminates the mediation. The mediator can also refer the borrower to the HERO program or EMAP at any time during the mediation, but this does not stop the lender from going to judgment if it has satisfied mediation requirements. A court cannot enter a judgment of strict foreclosure or foreclosure by sale if a borrower has submitted a timely request for mediation and the mediation period has not expired.

The chief court administrator must establish policies and procedures for the mediation program. The program's policies and procedures must at least include provisions requiring the mediator to advise the borrower at the first mediation session that (1) the mediation does not suspend the borrower's obligation to respond to the foreclosure action in accordance with the court's rules and (2) a judgment of strict foreclosure or foreclosure by sale can cause the borrower to lose the residential real property to foreclosure. The act specifies that it does not require the lender to modify the mortgage or changes the terms of payment without its consent. Additionally, determinations issued by mediators cannot form the basis of an appeal of any foreclosure judgment.

#### §§ 21-30, 81-82 — LOAN REQUIREMENTS AND MORTGAGE PROFESSIONALS' DUTIES

The act establishes requirements for mortgage loans (mainly for nonprime loans) and for mortgage professionals making those loans. These requirements apply to nonprime home loans and mortgages for which applications are received on or after August 1, 2008. The requirements apply to lenders. The act defines a lender as any person engaged in the business of making mortgage loans who is required to be licensed by the banking department, or its successors or assigns, and also any bank; out-of-state bank; Connecticut, federal, or out-of-state credit union; or an operating subsidiary of a federal bank or a federally chartered out-of-state bank where the subsidiary makes mortgage loans, and their successors and assigns. The term specifically excludes mortgage brokers and originators.

The requirements also apply to brokers. The act defines a mortgage broker as any person, other than a lender, who (1) for a fee, commission, or other valuable consideration negotiates, solicits, arranges, places, or finds a mortgage and (2) is required to be licensed by the banking department under the licensing statutes, or its successors or assigns.

## § 21 — *Nonprime Loan Definition*

The act defines a “nonprime loan” as any loan or extension of credit when:

1. the borrower is an individual;
2. the proceeds are primarily for personal, family, or household purposes;
3. it is secured by a mortgage on a one-to-four family residential property located in this state which is, or when the loan is made intended to be, used or occupied by the borrower as a principal residence;
4. the principal does not exceed (1) \$417,000 for loans originated between July 1, 2008 and June 30, 2010 and (2) the then current conforming loan limit, as established from time to time by the Federal National Mortgage Association (Fannie Mae) for loans originated after July 1, 2010; and
5. the interest rate exceeds specified thresholds.

Nonprime loans do not include CHFA loans, open-end lines of credit, and reverse mortgage transactions.

With regard to interest, nonprime loans are those where the difference between the annual percentage rate (APR) for the loan or extension of credit and the yield on United States Treasury securities having comparable periods of maturity is either 3% or more on first mortgage loans, or 5% or more on second mortgage loans. The act requires the difference between the APR and the yield to be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirement of the federal Home Mortgage Disclosure Act. The yield on United States Treasury securities must be determined as of the 15th day of the month before the application for the loan.

Additionally, nonprime loans are those where the difference between the APR for the loan and the conventional mortgage rate is either equal to or greater than 1.75% if the loan is a first mortgage, or 3.75% if it is a second mortgage. The act specifies that the conventional mortgage rate is the most recent daily contract interest rate on commitments for fixed-rate mortgages published by the board of governors of the Federal Reserve System in its statistical release H. 15, or any publication that may supersede it, during the week in which the interest rate for the loan is set.

Although the act sets interest rate parameters for identifying nonprime loans, it allows the banking commissioner to increase them after considering relevant factors. The authority of the commissioner, and any increases or decreases he makes under this authority, expires on August 31, 2009. (The act does not specifically authorize him to make decreases). The act specifies that the relevant factors to be considered include, but are not limited to, (1) the existence and amount of increases in fees or charges in connection with purchases of mortgages by the Federal National Mortgage Association (Freddie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) and (2) increases in fees or charges imposed by mortgage insurers and the impact, including the magnitude of the impact, that such increases have had, or will likely have, on APRs for mortgage loans in this state. Increases

to a particular percentage cannot exceed .25%, and the total of all increases the commissioner authorizes to a particular percentage cannot exceed .5%.

When considering the factors, the commissioner must focus on those increases that are related to the deterioration in the housing market and credit conditions. The commissioner can choose not to increase the percentage if it appears that lenders are increasing interest rates or fees in bad faith or if increasing the percentages would be contrary to the purposes of the act's nonprime provisions. No increase can be made unless (1) the increase is noticed in the Banking Department Bulletin and the Connecticut Law Journal and (2) a 20-day public comment period is provided. Any increase must be reduced proportionately when the need for the increase diminishes or no longer exists. The commissioner may authorize a percentage increase with respect to all loans or to a certain class or classes of loans.

### *§ 22 — Duties in Making Nonprime Loans*

The act prohibits lenders from engaging in any misleading, deceptive, or untruthful conduct in any transaction, practice, or course of business in connection with making a nonprime loan.

It imposes a duty of good faith on mortgage brokers and lenders concerning a nonprime home loan contract with a borrower. The act specifies that the duty (1) is the same as the one imposed for contracts under the Uniform Commercial Code, (2) includes the observance of reasonable common standards of fair dealing, and (3) cannot be waived.

For nonprime first mortgage home loans, the act requires lenders to give borrowers (1) a notice or letter that generally describes the transaction's terms within three business days of the closing and (2) within a reasonable time period, notification of any subsequent material changes to the terms of the transaction. The requirement does not apply if the borrower expressly requests an expedited closing and the lender, in good faith, has not provided the letter or notice. This requirement cannot be waived.

### *§ 23 — Ability to Pay*

The act prohibits lenders from making nonprime home loans, excluding FHA loans, unless they reasonably believe, when the loan is consummated, that one or more of the people who are incurring the debt will be able, individually or collectively to (1) make the scheduled payments and (2) pay the related taxes and insurance. This must be based on consideration of:

1. current and expected income;
2. current and expected obligations as disclosed by the borrower or otherwise known to the lender, including contemporaneously made subordinate mortgages;
3. homeowner's fees;
4. condo fees;
5. employment status; and

6. other financial resources, excluding the equity in the mortgaged dwelling.

In the case of a bridge loan, the act specifies that the lender can consider the equity in the dwelling as a source of repayment for the loan. The act does not define the term “bridge loan,” but it is generally considered to be a short-term loan made in anticipation of intermediate or long-term financing.

The act allows lenders to use commercially recognized underwriting standards and methods to determine an obligor's ability to repay, including automated underwriting systems. The lender must take reasonable steps to verify the accuracy and completeness of information provided by or on behalf of the borrower using tax returns, consumer reports, payroll receipts, bank records, reasonable alternative methods, or reasonable third-party verification. When the lender is determining the ability to repay a nonprime loan with an adjustable rate feature, the lender must underwrite the repayment schedule assuming that the interest rate is a fixed rate equal to the fully indexed interest rate when the loan is made, or within 15 days afterwards, without considering any initial discounted rate.

The act defines “fully indexed rate” as the interest rate that would have been applied had the initial interest rate been determined by applying the same interest rate formula that applies under the terms of the loan documents to subsequent interest rate adjustments, disregarding any limitations on the amount by which the interest rate may change at any one time. In determining a borrower's ability to repay a nonprime home loan that is not fully amortizing by its terms, the lender must underwrite the loan based on a fully amortizing repayment schedule based on the maturity set out in the note.

#### *§ 24 — Special Mortgages*

The act prohibits lenders from making nonprime home loans where any of the proceeds are used to fully or partially pay off a special mortgage on the same property unless it receives written certification that the borrower has received counseling from an independent U. S. Department of Housing and Urban Development (HUD)-approved non-profit organization. The act defines a special mortgage as a loan originated, subsidized, or guaranteed by or through a state, federal, tribal, or local government or nonprofit organization. However, this requirement does not apply when the borrower gives the lender a statement from the organization on its letterhead stating that the counseling is not available for at least 30-days from the date of the request for counseling.

The lender must make a good faith effort to determine whether the loan is a special mortgage, but does not have to get the certification if it does not get an affirmative response to a good faith inquiry to the borrower and the loan's holder or servicer as to whether the loan is a special mortgage.

#### *§ 25 — Additional Requirements for Nonprime Home Loans*

For first-mortgage nonprime loans originated on or after January 1, 2010, the act requires lenders to collect a monthly escrow for payment of property taxes and homeowner's insurance. The provision does not apply to FHA loans and home equity loans and a nonprime home loan product which, in good faith, is generally designed and marketed to the public as a subordinate lien home equity loan product secured by a first mortgage loan.

The act also requires lenders to mail or deliver to applicants, within three business days of receiving a completed application for a nonprime home loan, a notice containing a toll-free number that can be

used to obtain a list of HUD-approved nonprofit housing counselors. The act provides that borrowers do not have a private right of action for the lender's failure to deliver notice on a timely basis.

#### *§ 26 — Provisions Prohibited in a Nonprime Loan Agreement*

The act prohibits lenders from offering nonprime loans that contain a:

1. prepayment penalty (except in FHA loans);
2. provision increasing the interest rate after default, except when it results from failing to maintain an automatic electronic payment feature that resulted in a rate reduction and the increase is not more than the reduction; or
3. provision requiring the borrower to assert a claim or defense in a nonjudicial forum that uses principles inconsistent with common or statutory law, limits a borrower's claims or defenses, or is less convenient, more costly or more dilatory than going to court.

A loan that violates these provisions is void and unenforceable.

#### *§§ 21 & 27 — Bad Faith Structuring and Division of Loans*

The act prohibits lenders and brokers from acting in bad faith to divide a loan into separate parts or structure a residential mortgage loan, in bad faith, as an open-end loan to avoid the act's protections. This prohibition applies to situations where the loan would have been a nonprime home loan if it had been structured as a closed-end loan. The act defines an open-end line of credit as a mortgage extended by a lender under a plan where (1) the lender reasonably contemplates repeated transactions; (2) the lender may periodically impose a finance charge on an outstanding unpaid balance; (3) the amount of credit that may be extended to the consumer during the term of the plan, up to any limit set by the lender, is generally made available to the extent that any outstanding balance is repaid; and (4) none of the proceeds are used at closing to purchase the borrower's primary residence, or refinance a mortgage loan that had been used by the borrower to purchase the borrower's primary residence.

#### *§§ 28 & 29 — Mortgage Provisions and Mortgage Broker Duties Applicable to All Mortgages*

The act prohibits lenders from making, and brokers from offering, a nonprime home loan that refinances a mortgage unless the loan provides the borrower a tangible net benefit. (The act does not define this term.) The act prohibits lenders and mortgage brokers from taking any action that recommends or encourages a default on an existing mortgage or other debt prior to, and in connection with, the closing or planned closing of a new nonprime home loan that refinances all or any portion of the existing loan or debt. It also prohibits lenders from financing, in connection with a mortgage, any life or health insurance or any payments for any debt cancellation or suspension agreement or contract (except for those calculated and paid on a monthly basis or using periodic payments).

The act imposes the following unwaivable duties on mortgage brokers, in addition to any other duties imposed by federal, state, or common law:

1. to use reasonable care, skill, and diligence and act in good faith and fair dealing with the borrower;
2. to make reasonable good faith efforts to secure a mortgage that is in the borrower's reasonable best interests considering all the circumstances reasonably available to the broker, including the rates, points, fees, charges, costs, and product type;
3. to ensure that the cost of credit is reasonably appropriate considering the borrower's level of credit worthiness and other bona fide underwriting concerns; and
4. if more than one mortgage is to be made by different lenders, to notify the other lenders of the payment obligations before closing.

For these sections, the act defines the term “mortgage” as a mortgage deed or other instrument that constitutes a first or secondary consensual lien on any interest in one-to-four family residential real property located in this state, that is, or when the loan is made, intended to be occupied by the borrower as a principal residence. It includes nonprime loans.

#### *§ 28(d) — Right to Reinstatement*

The act requires lenders to terminate foreclosure proceedings or other actions if all defaults in connection with a nonprime loan are cured before a judgment is entered. The lender can require the borrower to pay any of its reasonable actual costs associated with the default and protecting its rights in the property. Cure of default reinstates the borrower to the same position as if the default had not occurred and nullifies any acceleration of any obligation under the security instrument or note arising from the default as of the date of the cure. The borrower can only use this right twice over the course of 24 consecutive months.

#### *§ 30 — Private Right of Action*

The act establishes a private right of action for violations of the act's provisions on loan requirements and mortgage professional duties (sections 22 through 29 only). The borrower must sue in court within three years of the mortgage closing for (1) the greater of actual damages or \$1,000 and (2) attorney's fees, unless:

1. within 90 days of the closing and before any action against the lender, it notifies the borrower of the noncompliance, provides appropriate restitution (the act does not specify what is appropriate), and (a) makes the loan comply with the nonprime provisions or (b) changes the loan terms so that it is no longer a nonprime loan; or
2. the lender shows by a preponderance of the evidence that the noncompliance was unintentional and resulted from a bona fide error despite the fact that it maintained procedures to avoid the errors; or
3. the lender and borrower reach a mutual agreement on an appropriate remedy or curative action.

The act specifies that a bona fide error includes a clerical, calculation, printing, computer malfunction, or programming error, but does not include an error of legal judgment with respect to a lender's obligations under the act's nonprime provisions. In actions where the compliance failure has

caused material injury to the borrower, the lender must also be able to show that it cured the compliance failure or otherwise undertook reasonable remedial steps to address or compensate for the injury.

The act allows the court to grant an injured borrower equitable relief and allows the borrower or mortgagor to assert fraud and any violation of these provisions causing material injury as a counterclaim or defense in a foreclosure action within six years of the mortgage closing date. However, the act specifies that it does not create a cause of action or defense or counterclaim against an assignee of a nonprime loan or other mortgage for the original lender's or broker's violations.

#### *§§ 81 - 82 — Influencing Residential Real Estate Appraisals*

The act prohibits mortgage brokers, real estate brokers, and real estate salespeople from influencing residential real estate appraisals. For brokers, the act specifies that this includes refusal or intentional failure to (1) pay an appraiser for an appraisal that reflects a fair market value estimate that is less than the sale contract price or (2) utilize, or encouraging other mortgage brokers not to utilize, an appraiser based solely on the fact that the appraiser provided an appraisal reflecting a fair market value estimate that was less than the sale contract price.

For real estate brokers and salespeople, this includes refusal or intentional failure to refer a homebuyer, or encouraging other real estate brokers or salespeople not to refer a homebuyer, to a mortgage broker or lender, as defined in the act's loan provisions, based solely on the fact that the mortgage broker or lender uses an appraiser who has provided an appraisal reflecting a fair market value estimate that was less than the sale contract price.

#### **§§ 31-84 — NATIONWIDE MORTGAGE LICENSING SYSTEM AND OTHER REGULATORY CHANGES**

#### *§§ 32, 38 — First and Second Mortgage Professionals*

The act subjects first and second mortgage professionals to the same provisions and repeals separate provisions governing secondary mortgage professionals. It eliminates references to first and second mortgage professionals by combining definitions (i. e. , mortgage lenders, mortgage broker, and mortgage originators). However, the act retains the definitions of first and secondary mortgage loans. The act excludes the term “correspondent lender” from the definition of “mortgage lender” and defines it separately.

Specifically, the act defines a “mortgage broker” as a person who, for a fee, commission, or other valuable consideration, directly or indirectly, negotiates, solicits, arranges, places, or finds a mortgage loan that is to be made by a mortgage lender or mortgage correspondent lender, whether or not that lender is required to be licensed in Connecticut.

It defines a “mortgage lender” as a person engaged in the business of making mortgage loans in such person's own name using such person's own funds or by funding loans through a warehouse agreement, table funding agreement, or similar agreement. Finally, it defines a “mortgage correspondent lender” as a person engaged in the business of making mortgage loans in the person's

own name where the loans are not held by such person for more than ninety days and are funded by another person through a warehouse agreement, table funding agreement, or similar agreement.

#### *§§ 31-33, 35 & 39 — Nationwide Mortgage Licensing System*

The act moves up, from September 30 to July 1, 2008, the effective date of the National Mortgage Licensing System provisions of PA 07-156 and changes the name of the system to the Nationwide Mortgage Licensing System. The act converts existing “first” and “second” mortgage professional licenses to the combined license on July 1, 2008. The act requires those licensed on that date to transition to the system before October 1, 2008. All filings must be submitted exclusively through the system starting on July 1, 2008. (Initial applications submitted on the system between October 1 and December 31, 2008 cannot be approved before January 1, 2009.)

#### *§ 37 — Examination Fees*

The act allows, rather than requires, the commissioner to suspend a license for failure to pay the cost of any examination of the licensee within 60 days, rather than 30 days, of the demand.

#### *§§ 38 & 40 — Business of Making Loans*

The law requires those engaged in the business of making loans to be licensed (with exceptions). The act provides that a person, other than a licensed originator acting on behalf of a lender or broker, that employs or retains the mortgage loan originator, is deemed to be engaged in the business of making mortgage loans if the person advertises, causes to be advertised, solicits, offers to make, or makes mortgage loans, either directly or indirectly. The act specifically expands the definition of advertisement to include any announcement, statement, assertion, or representation that is placed before the public in a newspaper, magazine, or other publication; or in the form of a notice, circular, pamphlet, letter, or poster; or over any radio or television station; by means of the Internet or by other electronic means of distributing information; by personal contact; or in any other way. Under prior law, it included the use of media, mail, computer, telephone, personal contact, or any other means.

The act allows an originator or lender licensee to file a notification of the termination of an originator with the nationwide system. Prior law requires both the originator and the broker or lender licensee to do so with the commissioner.

The act specifies that licenses must be obtained for each main office (the address filed with the nationwide system) and branch office (any other location).

#### *§ 41 — Exemptions from Licensure*

The act exempts operating subsidiaries of federal banks and federally chartered out-of-state banks from license requirements. In a conforming change, it removes the exemption for secondary mortgage licensees who made less than 12 first mortgage loans in 12 months and instead limits the exemption to people owning real property who take back from the buyer a secondary mortgage. Finally, it moves the existing secondary mortgage exemption for relatives to this section.

## § 42 — *Licensing Requirements*

The act increases the tangible net worth requirement for brokers and correspondent lenders from \$25,000 to \$50,000 starting on March 1, 2009.

The act also requires lenders and brokers to have a qualified individual at a main office and a branch manager at a branch office, with supervisory authority over the lending or brokerage activities, who has at least three years of experience in the mortgage business in the previous five years to be present at each office. (Prior law required lenders and brokers to have a person with supervisory authority at each location with those experience requirements. ) The act defines this experience to include paid experience in the origination, processing or underwriting of mortgage loans; the marketing of such loans in the secondary market or in the supervision of such activities; or any other relevant experience as determined by the commissioner. The term was not defined in prior law.

Starting on July 1, 2008, the act requires an application that was previously filed with the commissioner to be filed instead with the nationwide system. However, it requires applicants to submit supplementary information directly to the commissioner, some of which had to be included on the application under prior law. First, as required under prior law, applicants must submit a financial statement with the banking department. However, under the act, the statement must be as of a date not more than 12 months prior to the filing, rather than the six months required by prior law. The act also requires the submission of the required bond and, as under prior law, evidence that the experience requirements are met. The act specifies that the qualified individual or branch manager meets the experience requirements and provides that such evidence includes:

1. a statement specifying the duties and responsibilities of the person's employment, the term of employment, including month and year, and the name, address and telephone number of a supervisor, employer or, if self-employed, a business reference; and
2. if required by the commissioner, copies of W-2 forms, 1099 tax forms, or, if self-employed, 1120 corporate tax returns; signed letters from the employer on the employer's letterhead verifying the person's duties and responsibilities and term of employment including month and year; and if the person is unable to provide the letters, other proof satisfactory to the commissioner that the person meets the experience requirement.

Finally, as under prior law, the act requires the submission of any other information about the applicant, its activities, and the background of the applicant and its principals, employees, and, although not required under prior law, originators.

## § 44 — *Notifications*

The act changes the way licensees update their name and address to reflect use of the nationwide licensing system. It extends the notice required before a change from 21 to 30 days. It also eliminates provisions (1) specifying what must be stated on the license and (2) requiring the license to be maintained at the location and available for public inspection. The act also specifies that licensees must use the legal or fictitious name approved by the commissioner.

It requires licensees who will cease doing business for any reason to file a surrender of the license on the nationwide system within 15 days of cessation. However, this requirement does not apply when licenses have been suspended. Finally, the act requires licensees to file with the system or notify the commissioner if certain things occur.

For lenders and brokers, these things include:

1. filing for bankruptcy, or the consummation of a corporate restructuring, of the licensee;
2. filing of a criminal indictment against the licensee in any way related to the lending or brokerage activities of the licensee, or receiving notification of the filing of any criminal felony indictment or felony conviction of any of the licensee's officers, directors, members, partners, or shareholders owning 10% or more of the outstanding stock;
3. receiving notification of the institution of license denial, cease and desist, suspension, or revocation procedures, or other formal or informal regulatory action by any government agency against the licensee and the reasons for it;
4. receiving notification of the initiation of any action by the attorney general of this or any other state and the reasons for it;
5. receiving notification of a material adverse action with respect to any existing line of credit or warehouse credit agreement;
6. suspension or termination of the licensee's status as an approved seller or servicer by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Government National Mortgage Association;
7. exercise of recourse rights by investors or subsequent assignees of mortgage loans if such loans for which the recourse rights are being exercised, in the aggregate, exceed the licensee's net worth exclusive of real property and fixed assets;
8. receiving notification of filing for bankruptcy of any of the licensee's officers, directors, members, partners, or shareholders owning 10% or more of the outstanding stock of the licensee; or
9. any proposed change in control in the ownership of the licensee or among the officers, directors, members, or partners of the licensee on a form provided by the commissioner. (The act provides that the commissioner can investigate the change as if it were a new license and it defines "change in control.")

For originators, notification is required upon:

1. filing for bankruptcy of the mortgage loan originator licensee;
2. filing of a criminal indictment against the mortgage loan originator licensee;

3. receiving notification of the institution of license or registration denial, cease and desist, suspension, or revocation procedures or other formal or informal regulatory action by any government agency against the mortgage loan originator licensee and the reasons for it; or

4. receiving notification of the initiation of any action against the mortgage loan originator licensee by the attorney general of this or any other state and the reasons for it.

The act also allows a licensee to use its legal or fictitious name if allowed by the commissioner. Prior law required a licensee to use the name stated on its license.

#### *§ 45 — License Expiration Dates and Fees*

The act changes the expiration date for licenses and designates licensing fees. Under PA 07-156, starting October 1, 2008, all licenses must expire on December 31st of the year following issuance and all licensees must pay the required licensing and processing fee to the national system. For lender and broker licenses that expire on September 30, 2008, the act extends the expiration date to December 31, 2008. Starting on July 1, 2008, lender and broker licenses must expire at the close of business on December 31st of the year in which they are approved, unless the license is renewed. However, licenses approved after November 1st expire on December 31st of the following year. The act requires a renewal application to be filed between November 1st and December 31st of the year in which the license expires, provided a licensee may file a renewal application by March 1st of the following year together with a late fee of \$100. Any filing by that date with the fee is deemed timely and sufficient.

The act specifies that the licensing fee for lender licenses is \$800 and for broker licenses is \$400. However, lenders licensed on September 30, 2008 must submit a renewal fee of \$900 and brokers licensed on June 30, 2008 must submit a renewal fee of \$450. Each mortgage loan originator license expires when the associated lender or broker license expires. The act requires the lenders or brokers to pay \$100 for each originator. However, for those lenders and brokers licensed on September 30, 2008 who submit a renewal application for a mortgage loan originator, the fee is \$125. Starting on January 1, 2010, the fee is \$100.

The act specifies that fees paid in connection with a withdrawn or denied application are nonrefundable, but provides that fees paid for an originator license where the originator is not sponsored by a lender or broker can be refunded.

#### *§§ 46 & 47 — Lender and Broker Bond Requirements*

The act increases the bond amount for lenders and brokers from \$40,000 to \$80,000 starting on August 1, 2009 and allows borrowers or prospective borrowers who are damaged by a licensee's failure to satisfy a judgment against a licensee from the making of a nonprime loan to collect from the bond. The act also allows the commissioner to proceed on the bond for unpaid examination costs, as well as for civil penalties, as is permitted under prior law.

The act eliminates language requiring the commissioner to automatically suspend a license on the date a surety bond is cancelled and the associated due process requirements.

### *§§ 48 & 49 — Records*

By law, lenders and brokers must maintain adequate records of each loan transaction. The act requires lenders and brokers to send loan transaction records to the commissioner within five business days of his request by certified mail, return receipt requested, or by an express delivery carrier that provides a dated delivery receipt. On request, the commissioner can grant additional time to comply with this requirement. The law already required licensees to make the records available to the commissioner within that time frame. The act requires the record to include a copy of the initial and final loan application and a copy of all information used in evaluating the application. The act also requires the retention of copies of the note and the settlement statement or other records that can verify compliance with the licensing statutes.

### *§ 50 — Suspension, Revocation, or Refusal to Renew Originator Licenses*

The act adds to the circumstances under which the commissioner can suspend, revoke, or refuse to renew an originator license to include situations where a licensee has concealed, suppressed, intentionally omitted, or otherwise intentionally failed to disclose any of the material particulars of any loan transaction.

### *§ 51 — Referrals from Unlicensed Brokers or Originators*

The act specifies that mortgage lending licensees cannot accept applications or referrals from, or pay fees to, any broker or originator who was not licensed at the time he or she “originated” or “brokered” a loan, as opposed to at the point of the application acceptance, referral, or fee payment.

### *§ 53 — Mortgage Trigger Leads*

The law prohibits first and second mortgage lenders and brokers from engaging in any unfair or deceptive act or practice when soliciting a mortgage secured by residential property in Connecticut if the solicitation is based in any way on a mortgage trigger lead. The act extends this prohibition to originators. A “mortgage trigger lead” is a consumer report that is (1) obtained in accordance with the provisions of the federal Fair Credit Reporting Act (FCRA) governing the issuance of consumer reports when the transaction is not initiated by the consumer and (2) issued as a result of an inquiry to a consumer reporting agency (CRA) in connection with a consumer's credit application. It excludes from the definition a consumer report obtained by a lender that holds or services the applicant's existing debt.

### *§ 54 — Prepaid Finance Charges in Secondary Loans*

The act prohibits in a secondary loan (1) prepaid finance charges in excess of 8% of the principal amount of the loan and (2) in a loan agreement where prepaid finance charges have been assessed, any provision that allows the lender to demand payment of the entire loan balance before the scheduled maturity (unless there is a default of more than 60 days or if any other condition of default set forth in the mortgage note exists).

The act makes any lender or broker who fails to comply with this liable to the borrower in an amount equal to the sum of: (1) the amount by which the total of all prepaid finance charges exceeds 8% of

the principal amount of the loan; (2) the lesser of 8% of the principal amount of the loan or \$2,500; and (3) the costs incurred by the borrower in bringing an action, including reasonable attorney's fees, as determined by the court. However, no broker or lender can be liable for more than these amounts in a secondary mortgage loan transaction involving more than one borrower.

#### *§ 54 — Recording in Land Records*

The act requires any mortgage deed to secure a secondary mortgage loan that is recorded in the land records of any town to contain (1) the word “Mortgage” in the heading, either in capital letters or underscored and (2) the principal amount of the loan.

#### *§ 55 — Mortgage Releases*

The act requires licensed lenders and brokers to deliver a release of a secondary mortgage to the borrower upon receiving the outstanding balance of the obligation secured by the mortgage (1) in cash or a certified check or (2) in a check that is payable to the licensee or its assignee from the payor bank. Licensees must advise any person designated by the borrower of the outstanding balance of the obligation secured by the secondary mortgage granted to the licensee by the second business day after it receives a request for the information.

#### *§ 56 — Mortgage Loan Policy*

The act requires lenders to annually adopt a mortgage loan policy for subprime and nontraditional loans made by the lenders. The act does not define the term subprime loan. The policy must be based on and consistent with the most current version of the (1) Conference of State Bank Supervisors, (2) American Association of Residential Mortgage Regulators and National Association of Consumer Credit Administrators Statement on Subprime Mortgage Lending, and (3) Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators Guidance on Nontraditional Mortgage Product Risks. Licensed lenders must comply with the policy and develop and implement internal controls that are reasonably designed to ensure compliance. The mortgage loan policy and any mortgage loan made under the policy are subject to examination concerning prudent lending practices by the banking commissioner.

#### *§ 58 — High Cost Loans*

The act requires lenders making secondary mortgage loans of up to \$15,000 with an interest rate, charge, or other consideration higher than 12% to be licensed as small loan lenders. Such lenders were exempt from this requirement under prior law.

#### *§ 64 — High Cost Loans*

The act bans, in a high cost loan, (1) prepayment penalties and (2) a provision requiring the borrower to assert a claim or defense in a nonjudicial forum that uses principles inconsistent with common or statutory law; limits claims or defenses; or is less convenient, more costly or more dilatory. It removes the provision banning mandatory arbitration clauses and exceptions that allowed certain prepayment penalties.

§ 77 — *Commission on Nontraditional Loans and Home Equity Lines of Credit*

The act establishes, from the date of its passage, a 13-member Commission on Nontraditional Loans and Home Equity Lines of Credit. The commission must determine:

1. the number of homeowners in Connecticut who have nontraditional loans and home equity lines of credit;
2. the number of Connecticut residents who have nontraditional loans or home equity lines of credit which are in default or who have been affected by foreclosure action or are likely to face such action over the next four years;
3. the types of nontraditional loans and home equity lines of credit that pose a high risk of loan default or foreclosure and the characteristics or features of such loans that are possible factors in defaults or foreclosure; and
4. the circumstances under which nontraditional loans and home equity lines of credit are appropriate for borrowers.

The act defines a nontraditional mortgage in the same way it is defined in the “Interagency Guidance on Nontraditional Mortgage Product Risks,” 71 Federal Register 58609 (Oct. 4, 2006), as amended from time to time. It specifies that a “home equity line of credit” is a mortgage extended by a lender under a plan in which: (1) the lender reasonably contemplates repeated transactions; (2) the lender may impose a finance charge from time to time on an outstanding unpaid balance; (3) the amount of credit that may be extended to the consumer during the term of the plan, up to any limit set by the lender, is generally made available to the extent that any outstanding balance is repaid; and (4) none of the proceeds of the open-end line of credit are used at closing to purchase the borrower's primary residence or refinance a mortgage loan that had been used by the borrower to purchase the borrower's primary residence.

The commission must consist of the banking commissioner and the Banks Committee chairpersons and ranking members, or their designees. Additionally, it must include:

1. two people appointed by the governor, one who must represent state chartered banks and one who is a housing advocate who represents low-income residents;
2. one person appointed by the House speaker who represents mortgage bankers;
3. one person appointed by the Senate president pro tempore who is an attorney who represents homeowners who are defendants in foreclosure actions;
4. one person appointed by the Senate majority leader who is a consumer who has been a defendant in a foreclosure action related to a nontraditional mortgage or home equity line of credit;
5. one person appointed by the House majority leader who is an attorney who represents the banking industry;

6. one person appointed by the Senate minority leader who represents a nonprofit organization that advocates for people affected by predatory lending; and

7. one person appointed by the House minority leader who represents federally chartered banks.

All appointments to the commission must be made by August 1, 2008 and a vacancy must be filled by the appointing authority. The banking commissioner must serve as chair of the committee. The Banks Committee staff must serve as the commission's administrative staff.

The commission must report its findings and recommendations to the Banks Committee by January 1, 2009. Its recommendations must include recommendations on measures that address nontraditional loans and home equity lines of credit that have a high incidence of defaults and foreclosures and possible restrictions on such loans or certain features of such loans that increase the likelihood of foreclosure or default. When making the recommendations, the commission must give consideration to the impact that such measures and restrictions might have on responsible lending activities that can help to serve the credit needs of Connecticut residents, including the impact on the secondary market and credit costs and availability. The commission must terminate on the date it submits the report or January 1, 2009, whichever is later.

#### *§§ 78 & 79 — Agreements for Supervision*

The act allows the commissioner to enter cooperative, coordinating, and information-sharing agreements with other state and federal supervisory agencies for examinations, exam fees, and other supervision of not just banking department licensees, as is allowed under existing law, but also for any mortgage and certain other banking activity it regulates under statute. As under prior law, the act provides that any such agreement may include provisions concerning the assessment or sharing of fees for such examination or supervision.

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**Special Act# 08-2**

**HB# 5615**

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### **AN ACT CONCERNING BACON CONGREGATE HOUSING**

**SUMMARY:** This act concerns Bacon Congregate Housing, a 23 unit congregare housing facility owned by Sheldon Oak Central, Inc. in the South end of Hartford, which provides housing for elderly and disabled residents. Bacon is funded with a combination of the Housing and Urban Development (HUD) Section 8 subsidies through the Moderate Rehabilitation Program and the Department of Economic and Community Development (DECD) Congregate Subsidy Program.

Bacon Congregate has admitted residents under the age of 62 since the building opened in 1984. This was a requirement of the Section 8 funding Bacon received. This posed a conflict with DECD's regulations and legislation was passed in 2000 with the permission of HUD that allowed current residents under 62 to remain in their homes while restricting the housing residents over 62 in the future. No residents under 62 have been admitted to Bacon since the legislation was passed in 2000. There were eleven residents under 62 when the legislation was passed and today there are three. The other residents have either died, moved out of Bacon or have turned 62.

This act extends the original expiration date set by legislation passed in 2000 (Special Act 00-11) of June 30, 2006 to allow the three current residents under 62 to remain at Bacon until they relocate or become age eligible.

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**Public Act# 08-117**

**SB# 25**

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**AN ACT CONCERNING A REPORT ON BOND ALLOCATIONS AND BOND AUTHORIZATIONS FOR THE CONNECTICUT HIGHER EDUCATION SUPPLEMENTAL LOAN AUTHORITY**

**EFFECTIVE DATE: July 1, 2008**

**SUMMARY:** This act increases, from \$170 million to \$300 million, the aggregate amount of outstanding Connecticut Higher Education Supplemental Loan Authority (CHESLA) bonds that may be secured by special capital reserve funds. CHESLA makes loans to college students and their parents to help them finance the cost of undergraduate and graduate education.

The act also eliminates an annual report from the Office of Policy and Management secretary to the Finance, Revenue and Bonding Committee that updates, for all outstanding bond allocations, (1) the full completed cost of the project or purpose that received the allocation and (2) the estimated operating costs of any structure, facility, or equipment being built or acquired. The report was due by January 1 each year starting in 2007.

**BACKGROUND**

*Special Capital Reserve Funds*

Although bonds secured by special capital reserve funds are not backed by the state's full faith and credit, the state undertakes a contingent liability for the bonds by authorizing an issuing entity to establish such funds. Subject to any exceptions in the law authorizing establishment of a particular fund, money credited to and held in a special capital reserve fund must be used solely to buy, or pay interest or principal on, the bonds the fund secures or to pay redemption premiums on them if they are redeemed before maturity.

The minimum capital reserve amount is usually the maximum principal and interest payments due on the bonds for a single year. The state's liability is to maintain the minimum reserve on an annual basis and restore it to the minimum if it falls below the required amount in any particular year.

**AN ACT ESTABLISHING A SPORTS ADVISORY BOARD**

**EFFECTIVE DATE:** Upon passage

**SUMMARY:** This act requires the Connecticut Commission on Culture and Tourism's (CCCT) executive director to appoint a Sports Advisory Board within CCCT to advise her about how to promote the state's sports industry. The board members must include state officials and representatives of specified organizations that sponsor or conduct sporting events. The director may add more members. She must appoint the board, by October 1, 2008 and CCCT must provide the staff to support it.

The board must convene its first meeting by November 15, 2008 and meet at least quarterly thereafter. The board members may appoint a chairperson from among themselves whose duties include scheduling and conducting meetings. The director must report annually to the Commerce Committee on the board's activity. The report is due within 30 days before each regular legislative session.

**PURPOSE**

The board must advise the director how to:

1. effectively use state resources to promote, attract, and market in-state professional and amateur sports and sporting events;
2. develop methods to coordinate the way information is disseminated in the state and the Northeast about in-state sports and sporting events; and
3. coordinate the use of state-owned facilities to enhance sports-related tourism in Connecticut.

The board must submit any recommendations on these topics to the director within 30 days after it meets.

**COMPOSITION**

The act requires the director to appoint one representative each from the:

1. athletic departments of the University of Connecticut and the Connecticut State University System;
2. XL Center (formerly the Hartford Civic Center);
3. Northland AEG (a company that manages sports facilities);
4. Traveler's Championship Golf Tournament;
5. Pilot Pen Tennis Tournament;
6. Special Olympics;

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|---|--|
| 7. Mohegan Sun Arena;                                 | 15. Capital City Economic Development Authority;     |
| 8. Foxwoods Resort Casino;                            | 16. Nutmeg State Games;                              |
| 9. Lime Rock Park Race Track;                         | 17. Connecticut Interscholastic Athletic Conference; |
| 10. Arena at Harbor Yard;                             | 18. Fairfield University;                            |
| 11. New Britain Stadium;                              | 19. Quinnipiac University;                           |
| 12. Connecticut Marine Trade Association;             | 20. Sacred Heart University;                         |
| 13. Office of Policy and Management;                  | 21. Connecticut State Golf Association; and          |
| 14. Department of Economic and Community Development; | 22. Dodd Stadium.                                    |

The director may also appoint additional members representing entities involved in sports or sporting events she deems appropriate.

#### ANNUAL REPORTS

The director must report annually to the Commerce Committee about the board. The report must include (1) the status of the board's activities, (2) any of the board's recommendations being implemented, and (3) any legislative recommendations.

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**Public Act# 08-105**

**HB# 5113**

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### **AN ACT CONCERNING PROFESSIONAL EMPLOYER ORGANIZATIONS AND EMPLOYEE MISCLASSIFICATION**

**EFFECTIVE DATES:** January 1, 2009, except the definition section is effective October 1, 2008; the provisions on the act's relationship to state labor law and the creation of the employee misclassification enforcement commission are effective July 1, 2008; and the provision authorizing implementing regulations is effective on passage.

**SUMMARY:** This act requires professional employer organizations (PEOs) to register with the Labor Department (DOL) and creates standards for them, including financial capacity standards. It defines the organizations as businesses that provide employer services for their clients and have entered coemployment agreements with their clients' employees. It sets application requirements and allows more than one PEO to form a group and meet the reporting and financial requirements as a group.

The act sets standards for the contracts between the organizations and their clients.

It prohibits the organizations from, among other things, committing willful violations of its provisions and authorizes the labor commissioner to discipline violators.

The act states its relationship to other labor laws and laws creating certain economic development programs.

The act also establishes a permanent enforcement commission to coordinate prosecutions of employers who misclassify their employees in order to avoid state and federal labor, employment, and tax law obligations.

#### §§ 1 & 3 — REGISTRATION REQUIRED

The act prohibits anyone from providing, advertising, or otherwise holding oneself out as providing professional employer services without being registered as a PEO with the Labor Department.

It requires each PEO not operating in this state on January 1, 2009, to complete its initial registration before providing services.

It requires each PEO operating in this state on or before January 1, 2009 to register by March 1, 2009. The initial registration is valid until 180 days after the end of the organization's first fiscal year that is more than one year after March 1, 2009. Each PEO or PEO group must file with the commissioner the beginning and ending date of its fiscal year and notify and file any changes in dates with the commissioner.

The act requires the Labor Department to (1) keep a list of registered PEOs and (2) develop forms necessary to promote the efficient administration of the registration requirements. All registered PEOs must notify the commissioner of the address of their principal place of business and each office or proposed office in the state. The commissioner must also be informed of any address change within five working days.

Under the act, the initial registration fee must be no more than \$1,500 and the renewal fee must be no more than \$1,000.

#### *Definitions*

The act defines a “professional employer organization” as any person engaged in the business of providing professional employer services, regardless of whether the person uses the term or conducts business as a PEO, staff leasing company, registered staff leasing company, employee leasing company, administrative employer, or any other name. The act defines “person” as any individual, partnership, corporation, limited liability corporation, association, or other legal entity.

“Professional employer services” means entering into coemployment relationships in which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees.

A “coemployment relationship” is an ongoing relationship in which the rights, duties, and obligations of an employer are allocated between a PEO and a client pursuant to a professional employer

agreement. A “client” is any person who, as an employer, enters into a professional employer agreement with a PEO. A “covered employee” is an individual who (1) is an employee of a client that has a coemployment relationship with a PEO, (2) has received written notice of the coemployment, and (3) has received a written summary of the obligations and responsibilities of the client and the PEO under the professional employer agreement.

Under the act, a PEO does not include:

1. arrangements in which a person, other than a person whose principal business activity is entering into professional employer arrangements, shares employees with a commonly owned company within the meaning of Section 414(b) and (c) of the Internal Revenue Code;
2. independent contractor arrangements in which the contractor assumes responsibility for the product produced or service performed and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied; or
3. temporary help services that employ individuals directly to furnish part-time or temporary help to others.

#### *Initial Application Requirements*

An application for an initial PEO registration must include:

1. the name or names under which the applicant will conduct or has conducted business before the application date;
2. the addresses of the business's principal office and each office in Connecticut;
3. the applicant's federal and state taxpayer and employer identification numbers;
4. a list by jurisdiction of any name under which the applicant operated in the five years before the application date, including any alternative names, names of predecessors or immediate successor businesses, and, if known, any other successor businesses;
5. an ownership statement that includes the name and business experience of any person that, individually or with others, owns, controls, or will control, directly or indirectly, 25% or more of the applicant's equity interests;
6. a management statement that includes the name and business experience of any person who serves or will serve as president, chief executive officer, or otherwise has or will have the authority to act as senior executive officer; and
7. a statement of the applicant's financial condition.

The act requires each applicant engaged in the business of providing professional employer services before January 1, 2009 to submit its most recent audit, which must have been conducted within 13 months before the application date.

If an applicant has not had sufficient operating history to have audited financial statements based on at least 12 months of operating history, the act requires the applicant to meet financial capacity requirements (specified below) and submit financial statements prepared by an independent, licensed certified public accountant. In the statement, the accountant must attest that:

1. it is the applicant's most recent financial statement,
2. the accountant reviewed the statement within six months of the registration,
3. the applicant is not delinquent in paying state or federal taxes, and
4. the applicant meets the financial capacity standards set in the act.

All information obtained from a PEO or PEO group under the act is subject to disclosure in accordance with the state Freedom of Information Act.

#### *Renewal Application*

The act requires registrations to be renewed annually. A PEO may apply for renewal by submitting, not later than 180 days after the end of its fiscal year (1) an audit for the preceding fiscal year and (2) a notice of any changes from the information provided in its immediately preceding application. An applicant may apply for an extension with the department, but this request must be accompanied by a letter from its auditor stating the reasons for the delay and the anticipated audit completion date. The financial statement must be:

1. prepared in accordance with generally accepted accounting principles,
2. audited by an independent and properly licensed certified public accountant, and
3. without qualification as to any increase in the going concern status of the PEO.

#### §§ 1 & 3 — PEO GROUPS

A “professional employer organization group” is two or more PEOs that are majority-owned or commonly controlled by the same entity, parent, or controlling persons. The act allows PEOs in a PEO group to satisfy the act's reporting and financial requirements on a combined or consolidated basis if each member of the group guarantees the obligations under the act of each other group member. In the case of a group that submits a combined or consolidated audited financial statement including entities that are not PEOs or that are not in the PEO group, the controlling entity of the PEO group must guarantee the obligations of the PEO in the group.

PEOs or PEO groups are required to notify the commissioner of their controlling entity's name and address.

### § 3 — LIMITED REGISTRATION

The act allows the labor commissioner to issue a limited registration to a PEO that provides sufficient evidence that it:

1. is domiciled outside this state and is licensed or registered as a PEO in another state,
2. does not maintain an office or directly solicit clients located or domiciled within Connecticut, and
3. does not have more than 50 covered employees employed or domiciled in this state at any time.

Limited registrations are valid for one year and must be renewed annually at the completion of the registrant's fiscal year. The fee for limited registrations and renewals is established by the commissioner and must not be more than \$1,000.

### § 4 — FINANCIAL CAPACITY REQUIREMENTS

The act requires PEOs or PEO groups to meet one of two financial capacity standards. The first is to maintain a minimum of \$150,000 in working capital, as defined by generally accepted accounting principles, as reflected in the financial statements submitted to the department with the initial registration or annual renewal.

A registrant with less than \$150,000 in working capital at renewal has 180 days to attain the \$150,000. During the 180 days, the registrant must submit quarterly statements accompanied by the chief executive officer's attestation that all wages, taxes, workers' compensation premiums, and employee benefits have been paid.

The second way of demonstrating financial capacity is to provide a bond, irrevocable letter of credit, or securities to the Labor Department with a minimum value of \$150,000. The bond must be held by a depository designated by the commissioner, securing payment by the organization of all taxes, wages, benefits, or other entitlements due to or with respect to covered employees.

In lieu of these requirements, the act authorizes the commissioner to accept an affidavit or certification of a bonded, independent, and qualified assurance organization approved by the commissioner certifying qualifications of a PEO.

The act exempts a PEO with a limited registration from the financial capacity requirements.

### § 5 — PROFESSIONAL EMPLOYER AGREEMENT

The act requires PEOs and their clients to allocate their rights, duties, and obligations in an agreement and specifically requires the agreement to:

1. provide for the (a) allocation of employer rights and obligations between the client and the PEO with respect to the covered employees and (b) PEO and the client to assume the responsibilities required by the act and
2. require the PEO to (a) pay wages to covered employees; (b) withhold, collect, report, and remit payroll-related and unemployment taxes; and (c) make payments for employee benefits for covered employees to the extent the PEO has assumed responsibility in the agreement.

Unless the agreement expressly states otherwise, the act provides that:

1. a client is solely responsible for the quality, adequacy, or safety of the goods or services produced or sold by the client's business;
2. a client is solely responsible for directing, supervising, training, and controlling the covered employees' work with respect to the client's business activities, and for the acts, errors, or omissions of the covered employees with regard to such activities;
3. a client is not liable for the acts, errors, or omissions of a PEO or of any covered employee of the client when the covered employee is acting under the express direction and control of the PEO;
4. a PEO is not be liable for the acts, errors, or omissions of a client or its covered employees when they are acting under the client's express direction and control; and
5. a covered employee is not, solely as the result of being a covered employee of a PEO, an employee of the organization for purposes of general liability insurance, fidelity bonds, surety bonds, employer's liability that is not covered by workers' compensation, or employer's liability insurance carried by the PEO, unless the covered employee is included by specific reference in the PEO agreement and applicable prearranged employment contract, insurance contract, or bond.

## § 2 — EXISTING RIGHTS

The act provides that it does not, and professional employer agreements must not, (1) diminish existing rights between covered employees and a client existing before the effective date of either the act or the professional employer agreement or (2) create any new or additional enforceable right of a covered employee against a PEO that is not specifically provided by the professional employer agreement or the act.

## § 6 — DISCIPLINE

The act subjects PEOs and their controlling persons to discipline by the labor commissioner for:

1. willfully violating the act's registration, financial capacity, and written agreement provisions;
2. being convicted of a crime that relates to (a) the operation of a PEO, (b) fraud or deceit, or (c) the ability of the PEO or its controlling person to operate a PEO;

3. knowingly making a material misrepresentation to the Labor Department or other governmental agency;
4. misappropriating any funds of a client employer; or
5. using fraudulent or coercive practices to obtain or retain business or demonstrating gross financial irresponsibility.

The act authorizes the labor commissioner, after notice and opportunity for hearing, upon finding that a PEO or its controlling person has committed a prohibited act, to:

1. deny a registration application;
2. revoke, restrict, or refuse to renew a registration;
3. impose an administrative fine up to \$1,000 for each material violation;
4. place the PEO or its controlling person on probation for a period determined by the commissioner, subject to reasonable conditions he specifies; or
5. issue a cease and desist order.

In addition to the above mentioned penalties, a PEO or PEO group or its officers or agents found in violation of the act's PEO provisions is liable to DOL for a civil penalty of \$300 for each violation. Upon complaint of the commissioner, the attorney general must institute a civil action to recover any penalties the act creates that are due to the state. Any amounts recovered by the civil action must be deposited in the General Fund.

#### § 6 — GENERAL FUND DEPOSITS

Registration and renewal fees and penalties collected under the act must be deposited in the General Fund and credited to a separate, nonlapsing appropriation to the Labor Department for other current expenses. The department may use the funds for the cost of administering and enforcing the PEO registration program.

#### §§ 2 & 7 — RELATIONSHIP TO EXISTING LAWS

The act specifies that it does not eliminate or diminish (1) employee protections and employer responsibilities under the state labor law, regulations, or DOL policies or (2) DOL's ability to enforce them. It also does not diminish any other rights of covered employees and clients that existed before the PEO agreement or give covered employees enforceable rights against PEOs other than those the agreement or the act establishes.

The act specifies that a covered employee who must be licensed, registered, or certified under any provision of the general statutes must be deemed to be solely an employee of the client for credentialing purposes. Further, a PEO must not be deemed to engage in any occupation, trade,

profession, or other activity subject to licensing, registration, or certification requirements, or otherwise regulated by a governmental entity, solely by entering into and maintaining a coemployment relationship.

For the purpose of determining tax credits and other economic incentives provided by this state or another government and based on employment, the act deems the client's covered employees to be solely employees of the client.

Under the act, a client's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business is not affected by entering a professional employer agreement.

## § 8 — REGULATIONS

The act permits the commissioner to adopt implementing regulations by July 1, 2009. It requires the regulations to include:

1. guidelines for electronic filing of applications, documents, reports, and other filings by bonded, independent, and qualified assurance organizations approved by the commissioner to satisfy the act's requirements;
2. criteria for notice and written summaries to covered employees of the PEO arrangement, including whether all or part of a client's employees are covered; and
3. required notice of who is the controlling entity of a PEO or PEO group.

## § 9 — EMPLOYEE MISCLASSIFICATION ENFORCEMENT COMMISSION

The act establishes a joint enforcement commission to address the problem of employers avoiding state and federal labor, employment, and tax law obligations by misclassifying their employees. The commission must meet at least quarterly and (1) coordinate the civil prosecution of state and federal employment law violations involving employee misclassification and (2) report any suspected violation of state criminal statutes to the chief state's attorney or the state's attorney serving the district where the violation allegedly occurred. The most common form of misclassification involves an employer treating employees as independent contractors to avoid paying workers' compensation insurance premiums and unemployment taxes.

The commission members are the labor and revenue services commissioners, workers' compensation commission chairperson, attorney general, and chief state's attorney, or their designees.

By February 1, 2010, and every following year, the commission must submit its report, with recommendations, to the governor and the Labor and Public Employees Committee.

## BACKGROUND

### *Related Public Act*

PA 08- 156 also creates a joint employment misclassification commission for the same purpose and with the same membership.

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**Public Act# 08-149**

**HB# 5123**

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## **AN ACT CONCERNING THE CONNECTICUT STUDENT LOAN FOUNDATION**

**EFFECTIVE DATE:** July 1, 2008

**SUMMARY:** This act reduces the size of the Connecticut Student Loan Foundation's board of directors from 15 to 14 members and changes its composition. Under prior law, the House speaker and minority leader and the Senate president pro tempore and minority leader each appointed a legislator from their respective chambers to the board. The act eliminates this requirement and instead requires that each legislative leader appoint a person knowledgeable in business or finance.

It also eliminates the governor's appointment of a financial aid officer at an eligible institution and changes one of the governor's appointees from a representative of the private colleges to a representative of an eligible higher education institution.

By law, an eligible institution is any institution that satisfies the eligibility requirements for participation in the Federal Family Education Loan Program authorized under Title IV, Part B of the 1965 Higher Education Act. This includes public or private nonprofit, proprietary, and postsecondary vocational institutions.

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**Public Act# 08-182**

**HB# 5324**

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## **AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE STUDY OF REGIONAL PLANNING ORGANIZATIONS**

**EFFECTIVE DATE:** October 1, 2008 except, for the changes affecting the regional performance incentive grants which take effect July 1, 2008.

**SUMMARY:** This act expands the capacity for state and regional planning. It requires the Office of Policy and Management (OPM) secretary to (1) rank the state's policies for developing and conserving land and (2) track the extent to which the state's principles for managing growth are being implemented. These policies and principles are specified in the State Plan of Conservation and Development (Plan of C&D), which serves as the basis for state agency decisions whether to fund major physical development projects.

The act also requires the secretary to reassess the boundaries of the state's planning regions at least once every 20 years and change them if necessary. The law allows towns within these regions to form

three types of regional planning bodies. The rules governing these bodies vary. The act gives them largely the same powers and duties and refers to them collectively as regional planning organizations (RPOs). It also makes many conforming technical changes regarding RPOs.

By law, most RPOs must prepare a 10-year regional plan of development. These plans do not have to be consistent with the state plan, but the law requires the secretary to review them. The act requires him to develop uniform criteria for doing so. Lastly, the act expands the range of projects eligible for regional performance incentive grants, which are available for delivering an existing municipal service on a regional basis. The act extends eligibility to new services that are not being provided anywhere in the region. It also drops the requirement that proposed projects increase local purchasing power or lower tax rates but requires the secretary to give priority to those that do.

## STATE PLANNING

### *§ 10 — State Plan of C& D*

By law, the OPM secretary must prepare the Plan of C& D and revise it every five years. The plan contains policies and growth management principles for managing the state's physical development. State agencies must consider them when deciding whether to fund sewers, roads, public facilities, and other large-scale infrastructure that could affect where private developers build homes, stores, and office parks.

The act expands the plan's capacity as a decision-making tool. It requires the secretary to rank the plan's policies and adopt standards for determining if they are being met. Specifically, he must:

1. assign a priority to each policy,
2. estimate how much it would cost to implement it and identify potential funding sources,
3. identify the entities that must implement it, and
4. specify the schedule for doing so.

The secretary must also track the extent to which the plan's principles are being met. He must do so by developing three standards or benchmarks for each principle. Each set of benchmarks must include one that measures the principle's financial effects.

### *§§ 8 & 9 — Designating Planning Regions*

By law, the OPM secretary must divide the state into logical planning regions. Specifically, he must designate and redesignate the region's boundaries, but the law neither specifies the number of regions he must designate nor the times for reconsidering the current designations. The 15 existing planning regions were designated during the late 1950s.

Starting by January 1, 2012, the act requires the secretary to analyze regional boundaries at least once every 20 years and redesignate them if necessary. Before doing so, he must develop criteria to

evaluate how urban centers affect neighboring towns. At a minimum, the criteria must evaluate environmental and economic development trends, including housing, employment levels, commuting patterns for the most common types of jobs, traffic patterns on major roads, and changes in how people see social and historic ties. The criteria must also specify a minimum size for logical planning areas based on the number of municipalities, total population, and total square mileage.

The act requires the secretary to notify municipalities about the revisions he proposes before January 1, 2012 and specifies the process he must follow for notifying them. The notice must go to the chief executive officer (CEO) of each municipality in a region affected by the revisions. If a municipality's legislative body objects to the revision, the CEO must petition the secretary to attend a meeting with the legislative body to hear its objections. The CEO must do so within 30 days after receiving the notice. The petition must specify the meeting's place, date, and time.

The CEO must propose holding the meeting no later than 45 days after submitting the petition. The secretary or his designee must make every reasonable effort to attend this meeting or a meeting held on another date, which must also fall within 45 days of the petition. If the secretary cannot make this meeting, he and the CEO may schedule the meeting for another date and time, which must fall within 120 days of the secretary's notice to the CEO.

The legislative body must use the meeting to inform the secretary about its objections. The secretary must consider the legislative body's oral and written objections. Within 45 days after the meeting, he must notify the CEO about his decision regarding the proposed boundary changes. In doing so, he must state his reasons for the decision.

Any changes to the regional boundaries take effect on July 1 following the date when the secretary finished analyzing or modifying the boundaries.

## §§ 1, 6, & 7 — REGIONAL PLANNING ORGANIZATIONS

Just as the law requires the secretary to prepare the Plan of C& D, it requires regional planning bodies to prepare similar plans for their respective regions. The act refers to these bodies as “regional planning organizations” (RPOs). The law allows towns to form three types of RPOs: (1) regional planning agencies (RPAs), (2) regional councils of elected officials (RCEO), and (3) regional councils of governments (RCOGs). Their powers and duties vary, and so do the rules for forming them.

Towns can establish an RPA to prepare the statutorily required regional plan of development. Their representatives on the RPA's board are not limited to each town's chief elected official (CEO). Consequently, the CEOs may form a RCEO where they can air mutual concerns and interests. This council may perform the RPA's duties if the region does not have one.

Lastly, the towns can put the policymaking and planning functions under their chief elected officials by establishing a RCOG that automatically supplants and assumes the duties of the RPA. This council includes a regional planning commission consisting of one representative from each local planning commission.

The act places RCEOs on the same footing as the other RPOs. By law, two or more towns in a region can form an RCEO. Consequently, they are easier to form than RPAs and RCOGs, which require the approval of at least 60% of the region's towns. The act gives RCEOs the same powers as RCOGs in regions where the latter do not exist. This allows them to acquire real estate (CGS § 4-124r), advise the transportation commissioner about alternative standards for roads and bridges (CGS § 13a-13a), and advise the economic and community development commissioner about strategic economic development plans (CGS § 32-1o).

Under the act, RPAs' bylaws must include provisions requiring the RPA and the chief elected officials of the RPA's member towns to hold quarterly meetings on regional issues. By law, each participating town gets two seats on the RPA's board, and those with more than 25,000 people get an extra representative for each 50,000 people. But, as noted above, the representatives need not be the towns' chief elected officials (CGS § 8-31a).

## REGIONAL LAND USE COORDINATION

### *§ 12 — Regional Plans of Conservation and Development*

The act requires the OPM secretary to adopt regulations for reviewing regional plans of development, which the act renames regional plans of conservation and development. The law requires RPAs and RCOGs to prepare a regional plan at least once every 10 years. RCEOs must comply with this requirement if they choose to exercise regional planning powers.

In either case, the law requires these bodies to submit the plan to the secretary at least 65 days before the hearing on the plan. The secretary must determine the degree to which a regional plan corresponds to the State Plan of C&D and the state strategic economic development plan. The regional plan must be consistent with the state plans in how they define and address mutual issues and concerns. But a regional plan may also address other issues without being inconsistent with those plans. By October 1, 2011, the act requires the secretary to adopt regulatory criteria for reviewing these plans and issuing his findings.

### *§§ 3, 4, & 5 — River Protection Plans*

The act includes RCEOs exercising regional planning powers in the review of river protection plans. By law, the OPM secretary must coordinate the review of these plans and related documents, which are prepared by organizations that manage river resources. These organizations are river committees, which the Department of Environmental Protection commissioner may establish for state-designated river corridors, and river commissions, which two or more towns may establish for a river that forms their boundaries or flows through them (CGS §§ 25-203 and 25-232).

The act requires the secretary to include RCEOs exercising regional planning duties in the reviews he coordinates of river management plans. Prior law limited the RPOs' participation to RPAs and RCOGs.

## § 11 — FUNDING FOR REGIONALLY DELIVERED SERVICES

### *Grants for New Services*

The act makes new services eligible for regional performance incentive grants. The law allows the secretary to provide grants for delivering an existing municipal service on a regional basis. Only RPOs may apply for the grants. Under prior law, a service qualified for a grant only if a town in the RPO's region delivered the service alone and not with other towns on a regional basis. The town did not have to be a member of the RPO.

The act limits the grants to services provided only by towns belonging to the RPO. As under prior law, the service qualifies only if (1) it is not already being delivered regionally and (2) two or more towns will jointly deliver it. The act makes planning studies eligible for grants. A study may examine delivering an existing or new service on a regional basis.

The act also opens the grants up to more proposals in other ways. It does so by dropping the requirement limiting proposals only to those that increase the participating towns' purchasing power or that lower costs to the point where towns can reduce tax rates. Although the act eliminates this requirement, it requires the secretary to give priority to proposals that will produce these effects.

### *Application Requirements*

The act changes the grant application requirements. Under prior law, an RPO had to submit a proposal to the secretary describing:

1. at least one service currently provided on a municipal rather than a regional basis;
2. how the service would be delivered regionally, including which entity would deliver it and how the population would continue to be served;
3. how the service would achieve economies of scale and how much would be saved; and
4. the mill rate reduction for each municipality due to the resulting savings and how this reduction would be implemented.

The proposal also had to include:

1. a cost/benefit analysis of providing the service on a regional versus municipal basis,
2. a plan for implementing the service regionally,
3. an estimate of the savings for each municipality, and
4. any other information the secretary requests.

Under prior law, the proposal had to include an attachment certifying that there are no legal obstacles to regionally delivering the service. The act drops this provision and the one requiring each town to estimate cost savings and other information the secretary requires. It requires the proposal to explain the need for the service and the potential legal obstacles to delivering it regionally.

By law, each participating town's legislative body must adopt a resolution endorsing the proposal, and the resolution must be attached to it. The act specifies that the legislative body is the board of selectmen in towns with a town meeting form of government.

### *Funding Criteria*

The act changes the criteria for awarding the grants. Under prior law, the secretary had to give priority to proposals that involved at least half of an RCOG's member towns. Under the act, he must give priority to those that involve all of an RPO's member towns.

The act also requires the secretary to give priority to proposals that increase the municipalities' purchasing power or that cut costs and consequently lower tax rates. As mentioned above, prior law allowed RPOs to submit only proposals that produced these effects.

Starting in 2008, the act pushes back the deadline for submitting grant applications from December 1 to December 31.

### *Reporting Deadline*

The law requires the secretary to report annually about the grants to the Finance, Revenue and Bonding Committee. Under prior law, the report was due February 1. The act pushes back the deadline to March 1 and requires the reports to identify the extent to which the grants helped reduce property taxes.

**BACKGROUND**

*Regional Planning Organizations*

Table 1 shows the types of RPOs operating in the state.

**Table 1: Regional Planning Organization**

<i>Regional Councils of Governments</i>	<i>Regional Planning Agencies</i>	<i>Regional Councils of Elected Officials</i>
Capitol Region Council of Governments	Central Connecticut Regional Planning Agency	Housatonic Valley Council of Elected Officials
Council of Governments of the Central Naugatuck Valley	Connecticut River Estuary Regional Planning Agency	Litchfield Council of Elected Officials
Northeastern Connecticut Council of Governments	Greater Bridgeport Regional Planning Agency	
South Central Regional Council of Governments	Midstate Regional Planning Agency	
Southeastern Connecticut Council of Governments	Southwestern Connecticut Regional Planning Agency	
Valley Council of Governments		
Windham Region Council of Government		

**AN ACT CONCERNING THE CONNECTICUT IDA INITIATIVE**

**EFFECTIVE DATE:** October 1, 2008.

**SUMMARY:** This act expands the purposes of the Individual Development Account (IDA) program that the Labor Department administers. The IDA program encourages low-income people or qualified people with disabilities to save money for: (1) education and job training, (2) buying a home, (3) starting their own business, (4) buying a car to get to work, or (5) making a lease deposit. The act also allows the accounts to be used to save for education or job training for a dependent child of the IDA account holder.

It encourages saving by matching the money that individuals deposit in the account. The maximum match ratio is \$2 for every \$1 a participant deposits, up to \$1,000 per calendar year and \$3,000 for the program's duration. Someone is eligible for the program if he or she (1) has earned income and belongs to a household whose adjusted gross income is no more than 80% of the area median income or (2) has no earned income solely because of a qualified disability

## **AN ACT CONCERNING CHILD PRODUCT SAFETY**

**EFFECTIVE DATE:** October 1, 2008, except for the provisions concerning the certificate of disposition and the interstate clearinghouse, which are effective upon passage.

**SUMMARY:** This act establishes limits for lead in children's products by amending the State Child Protection Act, the state's counterpart to the Federal Hazardous Substances Act (FHSA) (see BACKGROUND). With certain exceptions, it makes children's products that fail to comply with the limits banned hazardous substances. It also prohibits the sale of toys or other articles marketed for children under age 16 that contain asbestos.

The act requires retailers and other businesses selling a banned hazardous substance to complete a certificate of disposition to account for its disposal. It requires the Department of Consumer Protection (DCP) commissioner, who administers the State Child Protection Act, to post on the department's website a list of toys and other articles intended for use by children that are banned hazardous substances. The commissioner must also consult with the departments of Public Health (DPH) and Environmental Protection (DEP) to compile a list of other toxic substances and safer alternatives. The commissioner may adopt regulations requiring certain consumer products to have warning labels if they bear lead-containing paint.

The act also:

1. increases related criminal and civil penalties;
2. requires stores to post notices when DCP designates an article as a banned hazardous substance, making failure to do so an unfair trade practice; and
3. makes failure to allow a DCP inspector or investigator to inspect an establishment where hazardous substances are manufactured or obtain a sample an unfair trade practice.

The act authorizes the DEP commissioner to take part in an interstate clearinghouse to classify chemicals according to the risks they pose.

Finally, the act makes technical changes.

PA 08-122 amends this act (see BACKGROUND).

## **LEAD LIMITS FOR CHILDREN'S PRODUCTS**

The State Child Protection Act prohibits placing a banned hazardous substance in the stream of commerce. Beginning July 1, 2009, this act establishes limits for lead in children's products. Products that fail to comply with these limits are banned hazardous substances and thus subject to the prohibition. The act defines "children's product" as a consumer product designed or intended primarily for children under age 12, including toys, jewelry, decorative objects, clothing, candy, food,

dietary supplements or other chewable items, furniture, or other articles used by or intended to be used by children.

Under the act, a children's product is considered a banned hazardous substance if:

1. (a) from July 1, 2009 to June 30, 2011, any part of the product contains more than 300 parts per million (ppm) total lead content by weight and (b) on and after July 1, 2011, any part of the product contains more than 100 ppm total lead content by weight;
2. on and after July 1, 2009, it bears lead-containing paint with more than 90 ppm total lead content by weight; or
3. on and after July 1, 2009, it bears lead-containing paint containing more than .009 milligrams of lead per centimeter squared.

The act authorizes the DCP commissioner to adopt regulations on and after July 1, 2011 if he determines that it is feasible for a children's product to comply with a stricter standard than 100 ppm total lead content by weight for any part of the product. Under these regulations, the commissioner may require a children's product to comply with a limit as low as 40 ppm total lead content by weight.

Prior law did not establish limits for lead in children's products. However, the DCP commissioner has, by regulation, declared lead-containing paints with 0.06% lead by weight or more (600 ppm) to be banned hazardous substances (Conn. Agencies Regs. § 21a-336-1).

The act defines "lead-containing paint" as paint or other similar surface coating materials containing detectable lead or lead compounds. "Paint and other similar surface-coating materials" means a fluid, semi-fluid, or other material applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. It does not include printing inks, materials that become part of the substrate (e. g. , pigment in a plastic article), or materials that are bonded to the substrate (e. g. , through electroplating or ceramic glazing).

### *Exceptions*

*Inaccessible Components.* The act creates an exception for a children's product containing a component that exceeds the act's limits if the component (1) is not accessible to a child because it is enclosed by a covering or casing and (2) will not become physically exposed through normal and reasonably foreseeable use and abuse of the product. Under the act, paint, coatings, or electroplating cannot be considered barriers that would make the substrate inaccessible to a child through normal and reasonably foreseeable use and abuse.

*Electronic Devices.* The act creates a temporary exception for children's products that are electronic devices, including batteries, if the DCP commissioner determines that it is not feasible for such products to meet the act's standards by July 1, 2009. It requires the commissioner, through regulation, to (1) set interim standards to reduce the exposure of, and accessibility to, lead in these electronic devices and (2) establish a schedule for the devices to comply fully with the act's stricter standards applicable to all other children's products.

## PROHIBITED ACTS

The act prohibits introducing or delivering for introduction into commerce any toy or other article for sale in Connecticut containing asbestos and marketed for use by children under age 16.

The act also prohibits manufacturing; distributing; selling at wholesale or retail; contracting to sell or resell, lease, sublet, or otherwise place in the stream of commerce any children's product that:

1. is a banned hazardous substance under state law or FHSA;
2. is the subject of voluntary or mandatory corrective action taken under the direction of, or in cooperation with, a federal agency but the defect in the product has not been corrected; or
3. does not otherwise conform to applicable consumer product safety standards under the State Child Protection Act, any similar state law, or any similar federal laws or regulations.

## DISPOSITION CERTIFICATE

By law, manufacturers, distributors, and retailers must repurchase an article they sell that is a banned hazardous substance, whether or not the article was banned at the time of sale. The act requires retailers and other businesses in the state selling a banned hazardous substance to account for its disposal.

Under the act, the DCP commissioner must develop a certificate of disposition by October 1, 2008 for retailers and wholesalers prohibited from selling or placing into the stream of commerce any children's product that is subject to a recall or voluntary corrective action. The certificate must require these retailers and wholesalers to (1) specify the make, model, type, quantity, and final disposition of the affected children's products and (2) sign an affidavit verifying the authenticity of the information. The certificate must contain any other information the commissioner requires.

If a retailer or wholesaler receives notification or information that a children's product has been recalled or subject to voluntary corrective action, the act requires it to inspect its premises and immediately dispose of all such products in its possession. Retailers and wholesalers must complete the certificate of disposition within seven calendar days after receiving the notice or information concerning a recall or voluntary corrective action. They must maintain signed and dated certification forms, which are subject to inspection by the commissioner or his designated agents, for at least three years.

The act subjects retailers or wholesalers to the penalties of the State Child Protection Act, as amended by the act, if they fail to (1) dispose of products properly, (2) complete the certificate of disposition, or (3) maintain certification forms (see below).

## LISTS

### *Banned Children's Products Internet List*

The act requires, rather than allows, the DCP commissioner to compile a list of toys and other articles that are intended for use by children and that are banned hazardous substances. It additionally requires the commissioner to post the list in a conspicuous place on DCP's website. The list must be publicly accessible and searchable.

### *Other Toxic Substances List*

The act also requires the DCP commissioner, in consultation with the commissioners of DPH and DEP, to compile and amend from time to time, a list of other toxic substances and the recommended maximum amount that may be present in children's products. The DCP commissioner must establish and update a corresponding list of safer alternatives to the toxic substances.

## WARNING LABELS FOR CERTAIN CONSUMER PRODUCTS

The act defines "consumer product" as any article that is used primarily for personal, family, or household purposes. The act allows the DCP commissioner to adopt regulations requiring certain consumer products to carry warning labels.

Under the act, the commissioner may identify consumer products with which a child may reasonably or foreseeably come into contact and that bear lead-containing paint and, on a case-by-case basis, require them to carry such a warning label. The act prohibits anyone engaged in commerce, including individuals, firms, and businesses, from having, offering for sale, selling, or giving away any consumer product identified in the regulations that bears lead-containing paint, unless the product has a warning label required by federal regulation or the state warning label.

If federal regulations do not prescribe a warning label, the act specifies how the state-required warning label must read. For products with lead-containing paint, the warning label must read:

**"WARNING—CONTAINS LEAD. DRIED FILM OF THIS SURFACE MAY BE HARMFUL IF EATEN OR CHEWED. See Other Cautions on (Side or Back) Panel. Do not apply on toys, or other children's articles, furniture, or interior or exterior exposed surfaces or any residential building or facility that may be occupied or used by children. KEEP OUT OF THE REACH OF CHILDREN. "**

For products with a form of lead other than lead-containing paint, the warning label must read:

**"WARNING CONTAINS LEAD. MAY BE HARMFUL IF EATEN OR CHEWED. MAY GENERATE DUST CONTAINING LEAD. KEEP OUT OF THE REACH OF CHILDREN. "**

### *Exemptions*

The act exempts from its warning label requirement (1) children's products and (2) consumer products with lead-containing components that are not accessible to children because they are not

physically exposed due to a covering or casing and they will not become physically exposed through normal and reasonably foreseeable use and abuse.

## UNFAIR TRADE PRACTICES

### *Notice Requirements*

The act authorizes the DCP commissioner to require retail stores to post notices informing the general public when DCP adopts a regulation designating an article a banned hazardous substance. Notices must be posted in a location visible to the general public and remain up for a period of time the department specifies.

### *Inspections and Obtaining Samples*

By law, DCP inspectors and investigators, upon presenting appropriate credentials, must be allowed to:

1. enter, at reasonable times, any factory, warehouse, or establishment in which hazardous substances are manufactured or held for introduction into commerce, or held after introduction into commerce;
2. enter, at reasonable times, any vehicle used to transport or hold hazardous substances;
3. inspect, at reasonable times, within reasonable limits, and in a reasonable manner any factory, warehouse, establishment, or vehicle, and all equipment, finished and unfinished materials, and labeling; and
4. obtain samples of such materials, packages, or labeling.

### *Violations*

The act makes it a violation of the Connecticut Unfair Trade Practices Act (CUTPA) to fail to (1) follow the posting requirement or (2) permit an inspector or investigator to carry out his or her duties as described above. CUTPA generally allows the DCP commissioner to investigate complaints, issue cease and desist orders, order restitution, enter into consent agreements, and ask the attorney general to initiate legal proceedings. It also allows individuals to file civil lawsuits. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for restraining order violations.

## STATE CHILD PROTECTION ACT PENALTIES

Under prior law, violations of the State Child Protection Act were either (1) class C misdemeanors, punishable by imprisonment for up to three months, fines of up to \$500, or both or (2) for repeat offenses or those committed with the intent to defraud or mislead, unclassified misdemeanors punishable by imprisonment for up to one year, fines of up to \$3,000, or both.

Under the act, the former become class B misdemeanors, punishable by imprisonment for up to six months, fines of up to \$1,000, or both. And the maximum fine for the unclassified misdemeanor offense increases to \$5,000.

The act also authorizes the DCP commissioner to levy a civil penalty of up to \$100 for a violation of the State Child Protection Act, except for a violation that involves removing or disposing of tags affixed to embargoed items since the law already authorizes DCP to levy civil penalties of up to \$500 per item for such a violation. Each violation, and each day it continues, constitutes a separate and distinct offense. The act requires the department to give alleged violators notice and a hearing and directs that these penalties be deposited into DCP's consumer protection enforcement account. It also requires that fines for tagging violations be deposited in that account.

## INTERSTATE CLEARINGHOUSE

The act authorizes the DEP commissioner, within available appropriations, to participate in an interstate clearinghouse to (1) classify chemicals used in commercial products according to whether they are of high, moderate, low, or unknown concern and (2) organize and manage available data on chemicals. The data must include information on their use, hazards, and environmental concerns. The commissioner, through the clearinghouse, may also (1) produce and inventory information on (a) safer alternatives to specific chemical uses and (b) model policies and programs related to these alternatives and (2) provide technical assistance to businesses and consumers regarding safer chemical alternatives. She may participate in other related activities.

## BACKGROUND

### *Federal Hazardous Substances Act*

FHSA is one of five federal laws that the Consumer Product Safety Commission (CPSC) administers. It authorizes the CPSC to identify hazardous and potentially hazardous substances, ban certain toys and articles marketed for use by children, require certain substances and toys to bear cautionary labeling, and set conditions and standards for that labeling. It authorizes states to adopt identical requirements, thereby gaining enforcement authority, and supplement federal law in areas the CPSC does not regulate. States are prohibited from adopting different requirements protecting against the same risk of illness or injury already regulated by CPSC action.

### *Parts per Million and Milligrams of Lead per Centimeter Squared*

There are two methods for measuring lead in paint. One is called "total lead" and involves traditional laboratory testing. The paint is weighed and dissolved in acid to determine how much lead is present. The result is rendered in milligrams of lead per milligram of paint, expressed as ppm. The current CPSC paint standard is 600 ppm.

The alternative is an X-Ray Fluorescence (XRF) analyzer. XRF analyzers emit X-rays through a small window and measure the amount reflected back, identifying how much lead is present immediately below the window. The result is rendered in milligrams or micrograms per square centimeter.

*Normal and Reasonably Foreseeable Use and Abuse*

The CPSC establishes by regulation test methods for simulating use and abuse of toys and other articles intended for use by children under age eight. The regulations describe specific tests for simulating normal use of toys and other articles intended for use by children, as well as the reasonably foreseeable damage or abuse to which the articles may be subjected. The tests are intended to expose potential hazards that would result from normal use or reasonably foreseeable damage or abuse of the articles (16 CFR §§ 1500. 50 to 1500. 53).

*Related Acts*

PA 08-122 amends this act by (1) requiring DCP to implement the act's requirements within available appropriations; (2) exempting certain drugs from the recall provision; and (3) revising the list of toxic substances that must be compiled by the commissioners of consumer protection, environmental protection, and public health.

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**Public Act# 08-124**

**SB# 127**

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**AN ACT CONCERNING THE LEGISLATIVE COMMISSIONERS' RECOMMENDATIONS FOR TECHNICAL REVISIONS TO THE ENVIRONMENTAL STATUTES AND THE OPEN SPACE AND WATERSHED GRANT PROGRAM**

**EFFECTIVE DATE:** Upon passage

**SUMMARY:** The act allows applicants for the open space and watershed grant program to use other state funds as matching grants. It specifies that they may use other state and federal funds to fund up to 70% of their projects. Prior law required these recipients to match the grant with their own funds.

The act also makes technical changes to the environment statutes.

**BACKGROUND**

*Open Space and Watershed Grant Program*

This program provides grants to (1) municipalities and nonprofit land organizations to acquire land or permanent interests (e. g. , easements) in it, (2) water companies (including municipal utilities) to acquire land that protects drinking water supplies, and (3) distressed municipalities and targeted investment communities to restore or protect open space land they already own.

If the state acquires a partial interest in a property, an easement must provide (1) permanent preservation, (2) public access, and (3) any Department of Public Health restrictions necessary to protect a public drinking water source.

**AN ACT CONCERNING ENVIRONMENTAL JUSTICE COMMUNITIES AND THE STORAGE OF ASBESTOS-CONTAINING MATERIAL**

**EFFECTIVE DATE:** January 1, 2009, except for the provision concerning asbestos-containing materials, which is effective October 1, 2008.

**SUMMARY:** This act requires applicants seeking a new or expanded permit, certificate, or siting approval for certain facilities (an “affecting facility”) in an environmental justice community from the Department of Environmental Protection (DEP) or the Connecticut Siting Council to (1) file and receive approval of a meaningful public participation plan, including an informal public meeting, with DEP or the Siting Council and (2) consult with officials of the town or towns where the facility will be located or expanded to evaluate the need for a community environmental benefit agreement.

Under the act, DEP and the Siting Council must wait at least 60 days after the informal public meeting to act on the applicant's request. The act specifies that any municipality, owner, or developer may enter into a community benefit agreement in connection with an affecting facility.

The act also restricts where people or government agencies may place, store, dispose of, or deposit certain asbestos-containing materials.

**REQUIREMENTS FOR APPLICANTS FOR NEW OR EXPANDED AFFECTING FACILITIES***Affecting Facilities*

The act applies to applicants seeking permits, certificates, or approval from DEP or the Siting Council, starting January 1, 2009, for certain new or expanded facilities. These affecting facilities are:

1. electric generating facilities with capacities above 10 megawatts;
2. sludge and solid waste incinerators or combustors;
3. sewage treatment plants with a capacity over 50 million gallons per day;
4. intermediate processing centers, volume reduction facilities, or multi-town recycling facilities with a combined monthly volume over 25 tons;
5. new or expanded landfills, including those that contain ash, construction, and demolition debris or solid waste;
6. medical waste incinerators; and
7. major sources of pollution under the federal Clean Air Act (e. g. , large factories).

The act excludes from the definition of affecting facilities (1) portions of electric generating facilities that use non-emitting and non-polluting renewable resources such as wind, solar, and hydropower or that use fuel cells; (2) any facility that received a Siting Council certificate on or before January 1, 2000; and (3) any facility under the control of the state higher education system that has received a satisfactory environmental impact evaluation.

### *Environmental Justice Communities*

The act applies to affecting facilities in environmental justice communities. An environmental justice community is (1) a U. S. census block group (part of a census tract) for which 30% or more of the population consists of low-income people who are not institutionalized and have an income of less than 200% of the federal poverty level or (2) a distressed municipality. This definition affects 59 municipalities (see BACKGROUND).

### *Public Participation Plan, Including Informal Public Meeting*

The act requires the applicants to file and receive approval of a meaningful public participation plan from the appropriate agency or council. Under the act, meaningful public participation occurs when:

1. potentially affected residents have an appropriate opportunity to participate in decisions over permits, certificates, or approvals when proposed facilities or the expansion of existing facilities may harm their environment or health;
2. public input may influence the agency or council; and
3. the applicant seeks out and facilitates the participation of those potentially affected.

Applicants must certify that they will carry out the meaningful public participation plan. As part of the plan, they must organize an informal public meeting at a time convenient to the residents of the environmental justice community.

The act also requires the plan to identify methods by which the applicants will publicize the meeting's date, time, and nature. These may include posting a reasonably visible sign on the proposed facility in English, posting signs in any language spoken by at least 20% of the population residing within one-half mile of the facility, or notifying neighborhood and environmental groups and local and state elected officials in writing.

Between 10 and 30 days before the informal public meeting, applicants must publish a notice stating its date, time, and nature in a general circulation newspaper in the environmental justice community or other appropriate newspaper. The notice must be at least one-quarter page in the Monday issue of a daily publication, or in any day's issue in a weekly or monthly publication. The applicant must also publish this information online, if it has a website.

At the informal public meeting, the applicant must make a reasonable and good faith effort to provide clear, accurate, and complete information about the proposed facility or the proposed facility expansion and its potential environmental and health impacts on the public.

If the Siting Council approves a meaningful participation plan for a new or expanded affecting facility, and the municipality holds a public meeting regarding a community benefit agreement, DEP may waive the requirement for an additional informal public meeting in its approval of the meaningful participation plan.

### *Community Environmental Benefit Agreement*

The act also requires the applicant to consult with chief elected official or other officials of the town or towns in which the affecting facility will be located or expanded to determine the need for a community environmental benefit agreement. Under the act, “community environmental benefit agreement” means a written agreement between the potentially affected municipality and the owner or developer of the affecting facility, whereby the owner or developer agrees to develop the property and provide financial resources to mitigate environmental and health impacts, including traffic, parking, and noise, on the community.

Mitigation may include both on-site and off-site improvements, programs, and activities, including funding for environmental education, diesel pollution reduction, construction of biking and walking trails, staffing for parks, urban forestry, support for community gardens, or any other negotiated benefit to the environment in the environmental justice community.

Prior to agreement negotiations, the municipality must provide a reasonable and public opportunity for affected residents to voice concerns about the agreement and its terms.

### HAZARDOUS WASTE

The act restricts where people and government agencies may place, deposit, dispose of, or store certain asbestos-containing material. By law, asbestos-containing material is material composed of any type of asbestos in quantities greater than 1% by weight, either alone or mixed with other fibrous or non fibrous material (CGS § 19-332).

Specifically, the act requires the approval of two-thirds of a municipality's legislative body, to move more than 1,000 cubic yards of soil that consists of asbestos-containing material from another site to one that abuts or adjoins residential property at a height of more than four feet above the existing grade of the land.

### BACKGROUND

#### *Distressed Municipalities*

In 2007, the federal Department of Housing and Urban Development designated the following municipalities as distressed:

Ansonia	East Hartford	Naugatuck	Norwich	Torrington
Bridgeport	Enfield	New Britain	Plainfield	Waterbury
Bristol	Hartford	New Haven	Plymouth	West Haven
Brooklyn	Killingly	New London	Putnam	Winchester
Derby	Meriden	North Canaan	Sprague	Windham

*Other Affected Towns*

The Environmental Coalition for Justice, with the Capitol Region Council of Governments, performed an analysis that shows that several additional municipalities are also affected municipalities under the act. The following municipalities are not distressed, but have census block groups with 30% of their population living below 200% of the federal poverty level:

Ashford	Griswold	Norwalk	Stamford	West Hartford
Bloomfield	Groton	Plainville	Stonington	Westbrook
Danbury	Hamden	Salisbury	Stratford	Wethersfield
East Haven	Manchester	Shelton	Thompson	Willington
East Windsor	Mansfield	Southbury	Vernon	Windsor
Fairfield	Middletown	Southington	Wallingford	Windsor Lock
Greenwich	North Haven	Stafford	Waterford	

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**Public Act# 08-174**

**HB# 5873**

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**AN ACT CONCERNING THE FACE OF CONNECTICUT STEERING COMMITTEE, THE PRESERVATION OF FARMLAND, A MUNICIPAL GRANT PROGRAM FOR DEVELOPMENT PROJECTS, LOANS FOR BROWNFIELD PURCHASERS AND TAX EXEMPTIONS FOR OPEN SPACE LAND HELD BY OR FOR CERTAIN CORPORATIONS**

**EFFECTIVE DATE:** Upon passage, except for the open space property tax exemption, which takes effect on or after the October 1, 2007 assessment year, and the per acre cap on development rights purchases, which take effect October 1, 2008.

**SUMMARY:** This act establishes new programs and policies for preserving different types of land and cleaning up and redeveloping contaminated land (i. e. , brownfields). It establishes a separate, non-lapsing General Fund account for acquiring, restoring, and maintaining open space, urban parks, farmland, and historic resources. The account must contain any money the law appropriates to it plus any public and private contributions. To oversee how the funds in this account are used, the act creates a 15-member committee within Department of Environmental Protection (DEP) for administrative purposes only.

The act allows the agriculture commissioner to acquire development rights to more types of farmland. Existing law limits his authority to do so under the Farmland Preservation Program to farmland meeting specified criteria. The act allows him to establish a separate program to acquire up to 100% of the rights to farmland that does not meet these criteria. He may purchase these rights jointly with a municipality.

But it also caps the amount the agriculture commissioner can spend to buy development rights under the existing program at \$20,000 per acre. He must also adjust the regulatory payment schedule to reflect this change and consult with the Farmland Preservation Board when developing the program's regulations. The act makes other technical changes.

The act exempts a nonprofit organization from paying property taxes on open space land it holds and preserves for that purpose. A recent Superior Court decision found that a land trust must use the open space land for a charitable purpose to qualify for the statutory tax exemption (see BACKGROUND). The act specifies that it does not affect any stipulated judgment on the imposition of property taxes.

The act revamps the multipurpose brownfield clean-up and redevelopment program into separate grant and loan programs, each with its own eligibility criteria and administrative requirements. But it also retains most of the old program's criteria and application procedures. The Department of Economic and Community Development (DECD) remains the administering agency. The act allows the DECD commissioner to use up to 5% of grant and loan amounts to cover reasonable administrative expenses.

The act expands the circumstances under which a municipality can enter and investigate or assess contaminated property and specifies the extent to which it is immune from liability when it does so. It requires the municipality to notify the owner before entering the property, and sets narrow grounds under which the owner can appeal the municipality's intention to do so.

The act reestablishes the Brownfields Task Force and requires it to recommend additional Brownfield remediation options to the legislature by January 1, 2009.

#### FACE OF CONNECTICUT STEERING COMMITTEE

The act creates the Face of Connecticut Account for acquiring, restoring, or managing specific types of property. The account can be used to fund these activities if doing so conserves open space, renovates or enhances urban parks, preserves active agricultural land, or restores historic assets. The steering committee determines how the DEP commissioner may spend the account's funds.

The committee consists of the DEP and agriculture commissioners, the DECD commissioner or her designee, the executive director of the Connecticut Commission on Culture and Tourism (CCCT), the Office of Policy and Management (OPM) secretary, and 10 other appointed members representing different organizations. Table 1 identifies these organizations and the appointing authorities.

Table 1: Appointed Face of Connecticut Members

<i>Appointing Authority</i>	<i>Appointed Member Must Represent</i>
House speaker	a local historic preservation organization the legislative Brownfields Task Force
Senate president pro tempore	a nonprofit farmland preservation organization the environmental law section of the Connecticut Bar Association involved in brownfields remediation
House majority leader	a local or regional nonprofit open space preservation organization
Senate majority leader	a water company actively involved in land preservation
House minority leader	the agricultural industry
Senate minority leader	a state-wide nonprofit open space preservation organization
Governor	a state-wide nonprofit historic preservation organization a community redevelopment organization

All the appointments must be made by September 1, 2008. Each member's term is coterminous with the term of the appointing authority or until a successor is chosen, whichever is later. The committee must meet quarterly, and the chairmanship must rotate every two years. The DEP commissioner serves as the first chairperson, followed by the agriculture commissioner, the CCCT executive director, and the DECD commissioner or her designee. Should one of these positions be vacant, the two other commissioners or the executive director must serve as chairperson until the vacancy is filled.

## FARMLAND PRESERVATION

### *Per Acre Cap on Development Rights Acquisition*

Under the Farmland Preservation Program, the agriculture commissioner may acquire a farmer's right to develop his or her agricultural land if the farmer agrees to preserve that use. The commissioner secures that agreement by placing a permanent easement on the land prohibiting it from being developed for nonagricultural uses but allowing the owner to continue operating it as a farm.

The act places a \$20,000 per acre cap on the amount the agriculture commissioner may pay to acquire those rights and requires him to incorporate that cap in the program's implementing regulations. It also requires him to correspondingly increase the regulatory schedule for determining the maximum amount he can pay when he and a municipality jointly purchase development rights.

### *Community Farms Program*

The act allows the agriculture commissioner to create a new program to acquire the development rights to agricultural land that does not meet the Farmland Preservation Program's criteria but could still contribute to the local economy through agricultural production. He may do this subject to the appraisal and review requirements contained in regulations the act implicitly requires him to adopt.

If the commissioner chooses to establish the program, he must establish its criteria in consultation with the Farmland Preservation Advisory Board. The criteria must give preference to farms that produce food or fiber, and consider:

1. the probability that the land will be sold for nonagricultural purposes;
2. the current and future productivity of the land;
3. the suitability of the land for agricultural use, including soil classification; and
4. the level of community support for preserving the land.

The commissioner must consider means to encourage the continued availability and affordability of agricultural production on the land for future generations of farmers. These means include deed restrictions or stewardship requirements.

#### PROPERTY TAX EXEMPTION FOR LAND PRESERVED AS OPEN SPACE

The law exempts nonprofit organizations from paying property taxes on land they own or is held in trust for them. Under prior law, a corporation qualified for the exemption only if it used the land for a scientific, educational, literary, historical, or charitable purpose or any combination of these. Under the act, the corporation also qualifies if it preserves the land for open space to:

1. maintain and enhance conservation of natural and scenic resources;
2. protect natural streams or water supplies;
3. promote soil, wetlands, beach, or tidal marsh conservation;
4. enhance the public value of neighboring open spaces;
5. enhance public recreation opportunities;
6. preserve historic sites; or
7. promote orderly urban or suburban development.

#### BROWNFIELD REMEDIATION AND DEVELOPMENT PROGRAM

##### *Generic Brownfield Program*

The former generic brownfield remediation and development program offered a wide range of financial assistance to public, nonprofit, and private entities. The act divides this program into separate grant and loan programs each with its own criteria and administrative requirements. But the act also retains much of the former program's criteria and requirements. In some cases, these work in

conjunction with the new programs' requirements; in others, they are superseded by the new requirements.

For example, the DECD commissioner must determine grant and loan amounts under the new programs based on the factors she had to consider when determining these amounts under the former generic program. These factors are:

1. the funds available;
2. the estimated assessment and cleanup costs, if known;
3. the town's relative economic condition;
4. the project's need for financing relative to that of other projects;
5. the extent to which the financing is needed to induce the applicant to undertake the project;
6. the project's environmental and public health benefits;
7. the project's relative economic benefit to the town, region, and the state;
8. when the site became contaminated;
9. the applicant's relationship to the party that contaminated the site; and
10. the other criteria the commissioner establishes, which must be consistent with the program's purposes.

The act specifies that the project's relative economic benefits include its contribution to the municipality's tax base. It also adds more factors the commissioner must consider. These are the length of time the property has been abandoned, the taxes owed on it, the revenue the developed property may restore to the community, and the types of financing the applicant may request.

Just as the act retains the factors the commissioner must consider when determining grant and loan amounts, it retains the types of financing the commissioner could have provided under the generic program. These are grants, loans, loan guarantees, credit extensions, participation interest in Connecticut Development Authority loans, or any combination of these types of assistance. But the provisions governing the loan program limit the commissioner to offering only low-interest loans.

The act also narrows the types of nonprofit organizations that can apply for grants or loans under the new programs. The former program was open to nonprofit organizations or entities; the new programs are opened to qualified nonprofit community and economic development corporations, but the act does not specify criteria for determining if a corporation qualifies for a grant or loan.

## *Remedial Action and Redevelopment Municipal Grant Program*

*Eligible Applicants.* The act creates a separate grant program and allows only municipalities, local and regional economic development authorities, and qualified nonprofit community and economic development corporations to apply for the grants. Municipalities qualified for grants and loans under the former program, along with for profit and nonprofit organizations, local and regional economic development authorities acting on a municipality's behalf, and any combination of these organizations acting jointly.

*Grant Amounts.* Applicants qualify for up to \$4 million grants, but the DECD commissioner may supplement them with funds from other state programs. She may do this if the project's eligible costs exceed that amount.

*Eligible Projects.* The act expands the range of activities that qualify projects for grants. Under prior law, a project qualified if it planned to assess, clean up, and redevelop contaminated property. Under the act, the project also qualifies if it plans to foreclose on or investigates contaminated property.

The act allows the applicants to redevelop the property for a wide range of eligible uses. Those uses are manufacturing, retail, residential, municipal, educational, parks, community centers, and a mix of these.

*Eligible Costs.* The act explicitly allows applicants to use the grants to cover the same range of eligible costs prior law authorized. But it also expands this range to include the cost of:

1. abatement;
2. soil, groundwater, and infrastructure investigation;
3. environmental land use restrictions; and
4. building and structural issues, including demolition, asbestos abatement, polychlorinated biphenyls removal, contaminated wood, paint removal, and other infrastructure remedial activities.

*Lending Grant Funds.* The act allows grant recipients to lend grant funds to redevelopers at low interest rates. A recipient may do so if

1. a "private party" is a coapplicant,
2. there is an agreement between the applicant and the redeveloper (presumably about how the property will be reused), and
3. the applicant knows the property's intended reuse.

The act does not define redeveloper. Consequently, it appears that any type of organization qualifies for loans from grant recipients. Nor does the act define private party or specify whether it must be a

coapplicant on the recipient's grant application or the redeveloper's loan application. Presumably, the private party is the entity that will own or operate the cleaned up and redeveloped property.

When lending grant funds, the recipient must require the redeveloper to participate in DEP's voluntary program for investigating and remediating contaminated property. The recipient may secure the loan with a state or municipal lien on the property. It must keep 20% of the loan principal and interest payments and return the rest to the account the law established for the generic program.

*Grant Award Process.* The act requires the commissioner to award the grants based on a request for applications. She must request applications at least once annually, issuing the first request by October 1, 2008 and any subsequent requests by June 1. She must award the grants by the following January 1. The commissioner may do these things more frequently, depending on the number of applications and the amount of available funds.

*Immunity from Liability.* The act gives applicants the same degree of immunity from liability the law provides to municipalities participating in DECD's brownfields pilot program. Consequently, it designates applicants as innocent third parties and protects them from liability for clean-up costs. An applicant enjoys this protection if it did not cause, contribute to, or exacerbate the contamination and complies with DEP's reporting requirements for significant environmental hazards.

The immunity also applies when an applicant acquires interest in real property and subsequently conveys it to a purchaser. The applicant and the purchaser enjoy the immunity if the property was cleaned up under DEP's voluntary investigation and remediation program or under a DEP clean-up order. The purchaser qualifies for the immunity if it was not liable for the contamination. The cleanup must meet DEP standards or be verified by a licensed environmental professional (LEP) and affirmed by a subsequent DEP audit.

*Property Resale.* The act allows applicants to sell property after they develop it. But it also requires them to return the grant amount, minus 20%, which they may keep to cover oversight, administration, and development costs and, if applicable, lost tax revenue. The grant repayment must go into the special account the law established for the generic program.

#### *Targeted Development Loan Program*

*Eligible Applicants.* The act establishes a low-interest loan program for parties who currently own or plan to purchase contaminated property. Eligible applicants are those who qualify for financing under the former generic program: municipalities, for and nonprofit organizations, local and regional economic development corporations acting on a municipality's behalf, and combinations of these organizations acting jointly. Organizations that may purchase a contaminated property (i. e. , potential purchasers) qualify if they are not liable for the contamination. Organizations that own contaminated property (i. e. , existing owners) qualify if:

1. they are in "good standing" and comply with DEP's regulatory programs,
2. show that they do not have the funds to investigate and clean up the property, and
3. cannot keep or create new jobs because of the investigation and remediation costs.

*Eligible Projects.* Projects qualify for loans if they will retain or create jobs or develop housing for first-time homebuyers. They may involve manufacturing, retail, residential, or mixed-use developments, expansions, or reuses. Applicants applying for loans over \$50,000 must submit a redevelopment plan that describes how the property will be used or reused and how it will stimulate new jobs and investment for the community.

The commissioner may lend funds for these purposes based on:

1. the project's merit and viability;
2. economic and community development opportunity;
3. municipal support;
4. contribution to the municipality's tax base;
5. the number of jobs involved; and
6. the applicant's past experience, compliance history, and ability to pay.

The act requires the commissioner to review and approve loan applications based on the same criteria she uses to approve grant applications.

*Eligible Costs.* Applicants may use the loan funds for any purpose, including several authorized under the generic and grant programs. They can use the loan proceeds to cover present and past costs of:

1. investigating, assessing, abating, and remediating property;
2. disposing of hazardous materials and waste;
3. long-term groundwater or natural attenuation monitoring;
4. environmental land use restrictions;
5. attorney fees;
6. planning, engineering, and environmental consulting costs; and
7. building and infrastructure issues, including demolition, asbestos abatement, polychlorinated biphenyls removal, contaminated wood or paint removal, and other infrastructure remedial activities.

*Loan Amounts.* The act caps loan amounts at \$2 million per year for two years, subject to DECD's underwriting and performance requirements. If a project requires additional funds, the commissioner may recommend bond funding from the State Bond Commission.

*Environmental Assurances.* Potential purchasers and existing owners must comply with certain environmental clean-up assurances. Potential purchasers must comply with the Transfer Act or participate in DEP's voluntary investigation and remediation program if the loan amount is over \$30,000 or the applicant intends to perform a Phase II environmental site assessment. (Phase II assessment uses chemical analyses to identify hazardous substances or petroleum hydrocarbons. ) Existing property owners must participate in the voluntary program.

*Loan Terms and Conditions.* The act authorizes the commissioner to determine the terms and conditions for the loans, but specifies that they must include performance requirements and job retention or creation goals. The loan repayment terms must coincide with the property's restoration to a productive use or the completion of its expansion. The loan term cannot exceed 20 years. The applicant must repay the loan with interest if he or she sells it before the repayment period, unless the commissioner waives this requirement. The commissioner may carry the loan forward as an encumbrance on the purchaser with the same terms and conditions imposed on the original loan.

Applicants receiving loans for residential developments must agree to address the housing needs of first-time homebuyers or recent college graduates who want to stay in Connecticut. They must also agree to retire the loan when they sell units for homeownership. Those receiving loans for business uses must agree to retain or add jobs during the loan's term, unless DECD, the Connecticut Development Authority, and the Brownfield Redevelopment Authority agree otherwise.

## MUNICIPAL INSPECTION POWERS

The act expands the circumstances under which a municipality may, without liability, enter and investigate contaminated or potentially contaminated property or assess its environmental status. Prior law allowed it to do so only by hiring or retaining an LEP to perform these tasks. It also protected the LEP from liability when acting on the municipality's behalf.

The act allows the municipality to enter and investigate or assess the property without hiring an LEP and do so with limited liability. The municipality is not liable for any preexisting contamination or pollution on the property but it is liable if it causes the contamination or pollution to spread by negligently and recklessly investigating the property. This could happen, for example, if the municipality removes the contaminated soil without securing it and that soil subsequently washes into a river or stream. In any case, the municipality or its LEP are always liable to the DEP commissioner.

The act adds more conditions under which the municipality or an LEP working on its behalf may enter and inspect or assess contaminated property. Prior law allowed the municipality to hire an LEP for this purpose only if it could not find the property's owner, placed a lien on the property, or filed a notice of eminent domain. The act also allows it or the LEP to enter and investigate or assess the property if:

1. the municipality's legislative body finds the public interest would be served by determining if the property is underutilized or should be included in a redevelopment or remediation project; or
2. any municipal official reasonably determines that these steps are necessary to determine if the property poses an environmental or public health, safety, or welfare risk.

The act requires the municipality to notify the owner before it or the LEP can enter the property. It must do so by sending notice by certified mail to the owner's last known address at least 45 days before entering the property.

The act allows the owner to appeal the municipality's decision to Superior Court, but only if the owner represents that it is diligently investigating the property in a timely manner and will fully pay any delinquent property taxes. The owner may bring the appeal by filing an action in Superior Court within 35 days after receiving the municipality's notice.

## BROWNFIELD TASK FORCE

The act reestablishes the Brownfields Task Force and requires it to prepare and submit more recommendations to the legislature on how to clean up contaminated property. The report is due January 1, 2009. The task force terminates on that date or the date when it submits the report, whichever is later (this provision appears to keep the task force operating if it misses the January 1 reporting deadline).

## BACKGROUND

### *Farmland Preservation Advisory Board*

PA 07-162 created a 12-member board to help agriculture department with its purchase of development rights program and other efforts to preserve agricultural lands. The board is within DOAG for administrative purposes only. The board must provide comments and recommendations on the purchase of development rights. The board may also submit recommendations on preservation programs for legislative action.

### *Recent Superior Court Decision Concerning Land Trusts*

On March 3, 2008, the Bridgeport Superior Court ruled that a land trust was liable for property taxes for the 2005 tax year on certain land it owns because it did not conduct any charitable activities with respect to the property during that year. The court found that land preservation can be considered a tax-exempt charitable use of property only if it is “coupled with some minimal educational or other charitable activity on or near the location” (*Aspetuck Land Trust, Inc. v. City of Bridgeport*, No. CV 06 4016847S).

**AN ACT CONCERNING CAPTIVE INSURANCE COMPANIES**

**EFFECTIVE DATE:** January 1, 2009, except for the provision authorizing the insurance commissioner to use the Insurance Department's Utilization Review Fund to implement the act, which is effective October 1, 2008.

**SUMMARY:** This act permits a captive insurance company (“captive”) to be licensed and domiciled (have its principal place of business) in Connecticut to transact life insurance, annuity, health insurance, and commercial risk insurance business. A captive insurance company is, in its simplest form, an insurance company that is a wholly-owned subsidiary whose primary function is to insure all or part of the risks of its parent company.

The act enumerates requirements for a captive's formation, capital and surplus, local office presence, ability to meet policy obligations, payment of certain fees and premium taxes, and annual reporting, among other things. The captive may form as a pure captive, an association captive, an industrial insured captive, or a risk retention group (RRG). (By law, an RRG can already domicile in Connecticut, and RRGs domiciled in other states can transact business in Connecticut if they register with the Insurance Department.)

The act requires the insurance commissioner to regulate captives and examine each at least once every five years. It also authorizes him to suspend, revoke, or refuse to renew a captive's license or impose a fine up to \$10,000 for cause. It applies some, but not all, insurance laws to captives.

It authorizes the insurance commissioner to use the money in the Insurance Department's Utilization Review Fund as necessary to implement the act. Prior law required him to use that fund exclusively to regulate utilization review companies. (By law, utilization review companies must each pay the department \$2,500 annually to maintain their operating licenses. The department deposits these fees in the Utilization Review Fund. )

The act prohibits a captive from joining or contributing to the state insolvency guaranty funds. It also prohibits a captive and its insured and their affiliates from receiving benefits from the guaranty funds if the captive becomes impaired or insolvent.

**§ 1 — CAPTIVE DEFINITION**

Under the act, a captive insurance company domiciled in Connecticut can be set up as a pure captive, an association captive, an industrial insured captive, or an RRG. A pure captive insures risks of its parent and affiliated companies or controlled unaffiliated businesses. An association captive insures risks of its member organizations and their affiliated companies.

An industrial insured captive insures risks of the insured comprising the industrial insured group and their affiliated companies. An industrial insured is a business that (1) obtains insurance through a full-time employee insurance manager, (2) has total annual insurance premiums of at least \$25,000, and (3) has at least 25 full-time employees. An industrial insured group is any group of industrial

insured that together (1) own or control all outstanding voting securities of a captive formed as a stock insurer, (2) have complete voting control over a captive formed as a mutual insurer, or (3) are all of the subscribers of the captive formed as a reciprocal insurer.

An RRG is a captive organized under state law pursuant to the 1986 federal Liability Risk Retention Act.

§§ 2, 9, 18 — LICENSE

#### *Application, Fees, Issuance, Renewal*

A captive cannot engage in any insurance business in Connecticut until it obtains a license from the Insurance Department. To request a license, a captive must send the insurance commissioner (1) organizational documents; (2) a financial condition statement; and (3) a coverage description, including deductibles, limits, and rates. A captive must inform the commissioner of any material change in rates within 30 days of adopting the change.

It must maintain capital and surplus as the act specifies and give the commissioner evidence of (1) asset liquidity relative to its assumed risk; (2) adequate management expertise, experience, and character; (3) a sound operation plan; and (4) the adequacy of its insured's loss prevention program. It must also pay an \$800 application fee plus reasonable legal, financial, and examination expenses that the commissioner incurs when retaining outside application review services.

The information provided is confidential and can be made public only with the captive's written consent, with two exceptions. The information is discoverable in a civil action in which the captive is a party if it is relevant and necessary to the case; unavailable elsewhere; and, for non-RRG captives, is the subject of a subpoena that a judicial or administrative judge issues. The commissioner can also give the information to insurance regulation officials in another state if the other state's (1) officials agree in writing to keep the information confidential and (2) laws require confidentiality.

If the commissioner approves the application, he issues a license to the captive, which must pay a \$300 initial license fee. The license expires on the next April 1, and the captive can annually renew it by paying a \$300 fee.

#### *Civil Immunity*

The commissioner may outsource the application review. As under law for other insurers, no cause of action can be brought or any liability imposed against him, his authorized representatives, or appointed examiners for (1) any good faith statements or conduct in connection with the review or (2) communicating or delivering information in good faith and without fraudulent or deceptive intent. All common law and statutory privileges or immunity remain. The commissioner, representative, or examiner can receive attorney's fees and costs if they prevail in a libel, slander, or any other relevant tort case if the moving party did not have a reasonable basis in law or fact for initiating it.

### *Suspension and Revocation*

The commissioner may, for cause, (1) suspend, revoke, or refuse to renew a captive's license or (2) in addition to, or instead of, license suspension or revocation and after notice and hearing, fine the captive up to \$10,000. A captive may appeal the commissioner's action to New Britain Superior Court.

### §§ 4 & 5 — CAPITAL AND SURPLUS

To receive or retain a license, a captive must maintain unimpaired paid-in capital and surplus of at least (1) \$250,000 if a pure captive, (2) \$500,000 if an industrial insured, (3) \$750,000 if an association captive, or (4) \$1 million if an RRG. The commissioner may adopt regulations for additional capital and surplus requirements based on the type, volume, and nature of insurance transacted. The required capital and surplus can be cash or an irrevocable bank-issued and commissioner-approved letter of credit.

A captive may not pay dividends from, or other distributions with respect to, capital and surplus without the commissioner's prior approval. His approval of an ongoing distribution plan must be conditioned on the captive keeping, when it makes each payment, capital and surplus levels above those approved.

### §§ 2, 3, 6 — CAPTIVE FORMATION

#### *Organizational Structure and Company Name*

A pure captive can form as a stock insurer, nonprofit corporation, or a manager-managed limited liability company (LLC). An association captive, industrial insured captive, or RRG can be an LLC or a stock, mutual, or reciprocal insurer. A captive, if a stock insurer, may authorize capital stock with no par value. Each captive must have at least three incorporators or organizers, one of whom must be a state resident. A corporation's articles of incorporation or bylaws and a reciprocal insurer's organizing documents can permit a quorum of at least one-third of the directors or members.

A captive's name cannot be the same as, or similar to, that of an existing registered business.

#### *Certificate of General Good*

A captive formed as a corporation, reciprocal insurer, or LLC must ask the insurance commissioner for a certificate finding that the proposed company or association will promote the state's general good. To make this finding, the commissioner must consider (1) each incorporator's character, reputation, financial standing, and purposes; (2) each officer's and director's character, reputation, financial responsibility, insurance experience, and business qualifications; and (3) other things he deems advisable.

A captive formed as a corporation must give this certificate, along with its articles of incorporation and organization fee, to the secretary of the state. The act does not specify what, if anything, a reciprocal insurer or LLC needs to do with its certificate. But an LLC must request a certificate before filing articles of incorporation with the secretary of the state.

### *Types of Insurance Permitted*

A captive can (1) provide annuities and life, health, and commercial-risk insurance; (2) reinsure a parent's or affiliated company's qualified self-insured workers' compensation plan, unless prohibited by federal law; and (3) accept or cede reinsurance, but only as the act specifies. It cannot provide private passenger motor vehicle or homeowners' insurance.

### §§ 2 & 6 — LOCAL OFFICE PRESENCE

A state-domiciled captive must have (1) its principal place of business and one annual management meeting in Connecticut; (2) at least one resident incorporator or organizer; (3) at least one resident corporation board member, reciprocal insurer advisory committee member, or LLC manager; and (4) a resident agent for service of process.

### §§ 6 & 16 — MERGERS AND CONVERSIONS

The act specifies that state laws concerning mergers, consolidations, and conversions that apply to insurers generally also apply to captives.

It authorizes an association captive, RRG, or industrial insured captive formed as a stock or mutual corporation to convert to, or merge with and into, a reciprocal insurer. The transaction must provide a fair and equitable plan (1) for purchasing, retiring, or extinguishing stockholders' or members' and policyholders' interests and (2) that provides rights and remedies for dissenting stockholders, members, and policyholders.

The commissioner must approve articles of merger or a conversion plan if he finds the transaction promotes the general good of the state. To make this finding, the commissioner must consider (1) each incorporator's character, reputation, financial standing, and purposes; (2) each officer's and director's character, reputation, financial responsibility, insurance experience, and business qualifications; and (3) other things he deems advisable.

### *Mergers*

Under the act, a reciprocal insurer's advisory committee is equivalent to a stock or mutual insurer's board of directors. Its subscribers are equivalent to a mutual insurer's policyholders. If the advisory committee does not have a president or secretary, its officers with equivalent duties are the president and secretary.

The commissioner can permit the formation of, without surplus, a captive organized as a reciprocal insurer, into which an existing captive can merge, except there can be only one authorized surviving insurer.

The act allows an alien insurer (chartered outside the United States) to be party to a merger, subject to the insurance laws applying to mergers of domestic and foreign insurers. (A foreign insurer is organized under the laws of another U. S. state or territory. ) In this instance, the alien insurer is treated as the foreign insurer.

If the commissioner approves the merger, the surviving insurer must give the articles of merger to the secretary of the state.

### *Conversions*

A conversion to a reciprocal captive insurer must take place in accordance with a plan that the commissioner approves. He can approve a plan only if, in addition to meeting the above other requirements, it (1) notifies affected people of a hearing to be held at their request concerning the plan; (2) includes a fair and equitable plan for converting stockholder, member, or policyholder interests into substantially proportionate subscriber interests; (3) does not prevent the resulting reciprocal insurer from applying underwriting criteria that could affect ongoing ownership interests; and (4) was approved by a majority of voting interests at a meeting with a quorum.

The commissioner must amend the converting insurer's certificate of authority if he approves the conversion. The conversion is effective when the commissioner issues the amended certificate to the company's attorney. The converting insurer's corporate existence ceases on that day, and the resulting reciprocal insurer must inform the secretary of the state of the conversion.

## § 7 — ANNUAL FINANCIAL REPORT

A captive must give the insurance commissioner a financial report prepared under two executive officers' oaths by March 1 each year. The report must be prepared using (1) generally accepted accounting principles, unless the commissioner approves the use of statutory accounting principles, and (2) any modifications or adaptations he requires or approves, depending on the insurer and type of insurance.

An association captive and RRG must prepare its report based on the National Association of Insurance Commissioners' (NAIC) annual statement instructions. The commissioner may adopt regulations on how pure and industrial insured captives must report.

A pure or industrial insured captive can ask in writing for the commissioner's permission to file the report at its fiscal year end instead of March 1. If he agrees, (1) the report is due by 60 days after the fiscal year end and (2) the captive must give him information that supports its premium tax return under two executives' oaths by March 1 each year.

The commissioner must keep confidential any supplemental compensation exhibit or stockholder information filed by a nonprofit with fewer than 150 employees, except for information related to the company's three most highly compensated officers.

## § 8 — EXAMINATIONS

The commissioner or his designee must visit and examine each captive at least once every five years or more often as he deems prudent. The examination must determine the captive's (1) financial condition, (2) ability to fulfill its obligations, and (3) compliance with this act and any applicable insurance code provisions. The commissioner, when determining the scope and frequency of examinations, and examiners must follow the guidelines and procedures in the NAIC examiner's

handbook for financial examinations, which they also follow when examining other insurance companies. The commissioner may also adopt other guidelines or procedures he deems appropriate.

The commissioner may appoint examiners and engage the services of attorneys, appraisers, actuaries, accountants, and other professionals as examiners. A captive that refuses to be examined or does not comply with any reasonable written request of the examiners may be subject to license suspension, refusal, or nonrenewal.

In general, a captive must pay the costs associated with an examination. But a domestic captive that is required to pay the statutory assessment that funds the department's operations does not have to pay the portion of examination costs associated with Insurance Department examiners' salaries, fringe benefits, traveling, and maintenance expenses. However, it must pay the examiners' traveling and maintenance expenses when the exam occurs out-of-state.

The commissioner and examiners are immune from liability for their statements or conduct when performing their examination responsibilities in good faith.

Examiners must issue an examination report within 60 days after the exam concludes, and the captive has 30 days to respond to the report. The commissioner then has 30 days to (1) consider the report and response and (2) issue an order adopting the report, rejecting it with direction to the examiners, or calling for an investigatory hearing to obtain additional information and testimony. If he adopts a report that shows the captive violated the law, he may order the captive to take necessary and appropriate action to cure the violation. The act establishes procedures for investigatory hearings. The commissioner's findings, conclusions, and orders are subject to a further hearing and court appeal.

Examination working papers, recorded information, and documents are confidential, not subject to subpoena, and cannot be made public. But it appears that the commissioner may give the NAIC access to the information if it agrees in writing to keep it confidential (although the act reads "unless" it agrees in writing).

The commissioner also has the authority to (1) use and, if appropriate, make public, any final or preliminary examination report, any examiner or company work papers or other documents, or other information discovered or developed during the course of the examination in any legal or regulatory action; (2) publish examination results or reports in Connecticut newspapers if he deems it in the public interest; and (3) disclose examination results and reports to another state's or country's public officials with insurance regulation jurisdiction or state and federal law enforcement officers if they agree in writing to keep the information confidential.

## § 11 — REINSURANCE

A captive can reinsure another insurer's risks, but only those risks that the captive is authorized to insure directly. It can also take credit as an asset or deduction from liability for ceding risks to a reinsurer that is:

1. a state-licensed insurer or reinsurer;
2. a state-accredited reinsurer;

3. domiciled and licensed in, or if a U. S. branch of an alien reinsurer, conducts business through, a state with reinsurance standards similar to Connecticut's; or
4. maintaining a trust fund in accordance with state law for U. S. policyholders' and ceding insurers' claim payments.

If the reinsurer does not meet any of these criteria, the captive can still reduce its liability if the reinsurer holds securities in an amount adequate to cover claims that could arise under the reinsurance contract. It can also take credit if the reinsurance is on risks located in a jurisdiction whose laws or regulations require such reinsurance.

A captive can take credit for ceding risks to a reinsurer that is not state-licensed or accredited if the reinsurer agrees that, if it fails to meet its financial obligations and at the request of the ceding insurer, it will:

1. submit to the jurisdiction of any U. S. court,
2. comply with requirements necessary to give such a court jurisdiction,
3. abide by the court's final decision, and
4. appoint the commissioner or an attorney as agent for service of process in any lawsuit instituted against it by the ceding insurer.

A captive's insurance of its parent's or affiliate's qualified self-insured workers' compensation plan is deemed to be reinsurance.

## § 12 — RATING ORGANIZATION

A captive is not required to join a rating organization.

## § 13 — GUARANTY FUND

A captive is prohibited from joining or contributing to the state insolvency guaranty funds. And if the captive becomes impaired or insolvent, it and its insured and their affiliates are prohibited from receiving benefits from the funds.

## §§ 14 & 19 — PREMIUM TAXES

A captive licensed under the act must pay premium taxes on its direct-written premiums to the revenue services commissioner annually in February. It must pay at least \$7,500, but no more than \$200,000, based on the calculation described below. For policies issued on a multiyear basis, premiums are prorated to determine the annual tax liability. No other taxes may be levied on or collected from a captive, except taxes on real and personal property used to produce income.

Two or more captives under common ownership and control are taxed as though they were a single captive. Common ownership and control means the direct or indirect ownership of 80% or more (1) of the outstanding voting stock of two or more corporations by the same shareholders in the case of a stock corporation or (2) of the surplus and the voting power of two or more corporations by the same members in the case of a mutual or nonprofit corporation.

Existing law subjects RRGs to a 4% premium tax rate. The act exempts captives formed under its provisions (i.e., domiciled in Connecticut) from the 4% tax. Thus, RRGs domiciled outside of Connecticut must still pay it.

#### *Premium Tax Calculation*

A captive must pay premium tax on its direct-written premiums minus any premiums returned to policyholders, including dividends paid and deposits returned or credited. No tax is due on money received for an annuity.

The tax owed is 0.38% of the first \$20 million of direct-written premiums collected or contracted for in the preceding calendar year plus 0.285% of the next \$20 million, plus 0.19% of the next \$20 million, plus 0.072% of each additional dollar.

#### *Failure to Pay Tax*

A captive that files a tax return but does not pay the premium tax it owes on time is subject to a penalty of 10% of the unpaid tax due or \$50, whichever is greater, plus 1% interest for each full or partial month that the tax remains unpaid.

If a captive does not file a tax return within three months of its due date, the revenue services commissioner may make the return based on the best information available. In addition to the tax due, the captive must pay a penalty of 10% of the tax due or \$50, whichever is greater. Interest of 1% on the tax due accrues for each full or partial month that it remains unpaid.

#### § 17 — CONTROLLED UNAFFILIATED BUSINESS

The commissioner may adopt regulations establishing standards for a pure captive's parent or affiliated company to control the risk management functions of a controlled unaffiliated business insured by the captive. Until such regulations exist, he can approve a pure captive's coverage of such risks.

#### §§ 2, 6, 10, 15 — OTHER APPLICABLE LAWS

In addition to its provisions, the act applies certain other laws to captives.

A captive transacting life insurance, annuity, or health insurance business must comply with all applicable state and federal laws.

Unless the act conflicts, captives formed as:

1. corporations, except for LLCs and nonprofits, are subject to state corporation laws;
2. LLCs are subject to the Connecticut Limited Liability Company Act;
3. nonprofits are subject to applicable provisions of state corporation laws; and
4. reciprocal insurers are subject to state insurance laws.

Association captives and RRGs are subject to state insurance company investment laws. Pure and industrial insured captives are not subject to investment restrictions, except the commissioner can limit or prohibit any investment that threatens the company's solvency or liquidity.

A pure captive cannot loan or invest in a parent company or affiliate without the commissioner's prior written approval of the transaction and documented evidence of approval. The captive is prohibited from loaning any minimum required capital and surplus funds.

The act makes the following insurance statutes apply to captives:

1. § 38a-16 (investigations by the insurance commissioner);
2. § 38a-17 (commissioner's authority regarding improper business conduct);
3. § 38a-54 (audited reports);
4. § 38a-55 (hypothecation of assets (using them as collateral));
5. § 38a-56 (false returns to the commissioner);
6. § 38a-57 (retention of records and assets in Connecticut);
7. § 38a-59 (change of domestic insurance company's name);
8. § 38a-69a (confidentiality of financial work papers and operating and financial condition reports);
9. §§ 38a-250 through 38a-266 (risk retention groups);
10. §§ 38a-903 through 38a-961 (Insurers Rehabilitation and Liquidation Act); and
11. §§ 38a-962 to 38a-962j (commissioner's administrative supervision).

## BACKGROUND

### *Domicile*

A company's domicile is the jurisdiction under whose laws the company is organized and in which it has its principal place of business.

### *Risk Retention Group (RRG)*

An RRG domiciled in Connecticut must comply with all state insurance laws and must submit a plan of operation or feasibility study to the commissioner. However, because of federal law, Connecticut cannot require an RRG to become licensed in the state before it does business here.

Connecticut has limited regulatory authority over RRGs licensed in other states. Such an RRG must provide the commissioner information on its domicile licensure, its plan of operation, and a registration statement designating the commissioner as the agent for service of legal process in the state. It must also submit its financial statement and a copy of each financial examination and audit performed on it.

All RRGs, whether domiciled in Connecticut or another state, must pay premium taxes on business written in the state and give insureds notice that insurance insolvency guaranty funds are not available should the company fail. An RRG that does not comply with Connecticut's RRG requirements is subject to fines and penalties, including revocation of its license and its right to conduct business in the state.

### *Stock, Mutual, and Reciprocal Insurers*

A stock insurer is an insurance company conducted for profit that its stockholders own and control. A mutual insurer is an insurance company that its policyholders own. A reciprocal insurer is an unincorporated association organized to write insurance for its subscribers, who each agree to be liable for a proportionate share of total liabilities and can be assessed for any needed additional funds.

### *Reinsurance*

Reinsurance is a transaction between two insurers to apportion risk so that a large loss does not fall on one company. The insurer transferring part of its risk to another is the ceding insurer. The insurer accepting part of the risk is the assuming insurer or reinsurer.

**AN ACT MODERNIZING INSURANCE DEPARTMENT FINES AND MAKING MINOR TECHNICAL REVISIONS TO THE INSURANCE STATUTES****EFFECTIVE DATE:** October 1, 2008

**SUMMARY:** This act generally increases fines the insurance commissioner may assess against insurance companies, related companies, and people for violating Connecticut's insurance laws, including those related to utilization review, unauthorized insurers, producer and company licensing, unfair and prohibited practices, and fraud. It leaves unchanged most fines enacted since 1996, including those related to privacy, preferred provider networks, and self-insured workers' compensation laws.

The act requires insurers to pay claims from Department of Public Health-licensed emergency medical service personnel and organizations in accordance with the law's prompt claim payment requirements. An insurer's failure to pay claims as specified by law is an unfair and deceptive insurance act, for which the commissioner may assess fines as shown in the table below (see § 39).

It also makes technical changes.

**BACKGROUND***Prompt Claim Payment*

Connecticut law requires insurers to pay claims within 45 days after receiving a (1) claimant's proof of loss (i. e. , claim form) or (2) health care provider's request for payment. When the insurer determines a deficiency in the claim or request prevents it from processing the claim, it must (1) send the claimant or provider written notice of all alleged deficiencies within 30 days of receiving the claim and (2) pay the claim within 30 days after receiving the requested information.

An insurer that fails to pay a claim in a timely manner must include 15% interest with the claim payment. The interest payment is in addition to other penalties that may apply by law. For any interest payments under \$1, the insurer must instead deposit the interest in a separate, interest-bearing account and donate the account balance to the University of Connecticut Health Center at year end.

The law already includes as a "health care provider," for purposes of prompt claims payment, physicians and surgeons, chiropractors, naturopaths, podiatrists, athletic trainers, physical therapists, occupational therapists, alcohol and drug counselors, radiologists, midwives, nurses, nurse's aides, dentists, dental hygienists, optometrists, opticians, respiratory care practitioners, perfusionists, pharmacists, psychologists, marital and family therapists, clinical social workers, professional counselors, massage therapists, dietician-nutritionists, and acupuncturists.

It also includes licensed health care institutions such as hospitals; residential care homes; health care facilities for the handicapped; nursing homes; rest homes; home health care agencies; homemaker-home health aide agencies; mental health facilities; substance abuse treatment facilities; student

infirmaries; facilities providing services for the prevention, diagnosis, and treatment of human health conditions; and Medicaid-certified residential facilities for the mentally retarded.

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**Public Act# 08-168**

**HB# 5724**

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**AN ACT CONCERNING ENERGY SCARCITY AND SECURITY, RENEWABLE AND CLEAN ENERGY AND A STATE SOLAR STRATEGY**

**EFFECTIVE DATE:** Upon passage

**SUMMARY:** This act requires that three studies be conducted on the state's energy future.

It requires the Office of Policy and Management (OPM) to conduct a petroleum sensitivity study of state agencies. The study must include a statewide assessment and inventory of state departments and agencies and their activities and corollary need to consume petroleum. OPM must consult with the state's Clean Energy Fund in conducting the study. It can use up to \$250,000 from the fund for this purpose and contract with a consultant to perform the study. OPM must report the study findings to the Energy and Technology Committee by December 1, 2008.

The act establishes an eight-member task force to study energy scarcity and sustainability. The task force must conduct scenario planning for long-term petroleum and natural gas scarcity, steep price increases, and supply disruptions. The study must examine the impacts of natural gas and petroleum price and scarcity on the economy, food supply, transportation, education, health, and emergency response, and can address other issues. The task force must submit its report to the Energy and Technology Committee by January 1, 2009.

The act requires the Renewable Energy Investment Board (the group that determines how the Clean Energy Fund is spent) to contract with the Connecticut Academy of Science and Engineering to study how other states promote and increase the use and supply of renewable energy and clean energy. The board must report its findings to the Energy and Technology Committee by January 1, 2009.

The act also requires the board to convene a working group to develop a plan to maximize the use of solar power and create a self-sustaining solar industry in the state to help meet renewable portfolio standard requirements and the greenhouse gas emissions limits of the Regional Greenhouse Gas Initiative. The portfolio standard requires electric companies to get part of their power from renewable resources. The initiative is an agreement among northeastern states to limit emissions of carbon dioxide and other greenhouse gases.

**TASK FORCE ON ENERGY SCARCITY AND SUSTAINABILITY**

The Senate president pro tempore, House speaker, Senate majority leader, Senate minority leader, and House minority leader must each appoint one member to the task force. The other members are the OPM secretary, the environmental protection commissioner, and the executive director of Connecticut Innovations, Inc. , (CII) or their respective designees. (CII administers the Clean Energy Fund. ) The appointed members can be legislators. All appointments must be made within 30 days of the act's passage. Any vacancy must be filled by the appointing authority. The House speaker and the

Senate president pro tempore must select the chairpersons of the task force from among its members. The chairpersons must schedule the first meeting of the task force within 60 days of the act's passage.

By January 1, 2009, the task force must submit its report with findings and recommendations to the Energy and Technology Committee. It must include long-term and short-term response to potential scarcity disruptions and cost increases. The task force will terminate on the date it submits the report or January 1, 2009, whichever is later.

## RENEWABLE ENERGY STUDY

The study must at least include an examination of the funding for and mission of renewable energy and clean energy funds and departments in other states. It must analyze the extent to which creating a department of renewable energy or clean energy would (1) ensure that future oil shortages and price increases do not jeopardize the living standards and food security of state residents and farms; (2) maximize economic opportunities for state workers in emerging clean energy industries; (3) reduce carbon emissions through greater reliance on renewable energy and clean energy sources; and (4) promote energy independence, local energy production, and distributed generation.

## SOLAR PLAN

The board, in consultation with the Department of Public Utility Control, must convene a working group to develop a plan to maximize the use of solar power and create a self-sustaining solar industry in the state that will help meet renewable portfolio standard requirements and the greenhouse gas emissions limits of the Regional Greenhouse Gas Initiative.

The working group consists of:

1. one representative from each electric company;
2. two representatives of environmental nonprofits with expertise in clean energy policy;
3. two representatives of the solar industry, one representing the residential solar industry and one a large commercial integrator;
4. one representative of a solar trade association;
5. one representative of renewable finance; and
6. one representative of a community college offering solar training.

The environmental protection and economic and community development commissioners and the CII executive director or their respective designees also must serve on the working group.

The plan must describe the benefits of and the costs associated with achieving a self-sustaining solar industry and maximizing the use of solar power, including (1) types and amounts of incentives to maximize in-state solar installations; (2) methods of residential solar financing; (3) estimated energy

production; and (4) solar benefits, including avoided fossil-fuel combustion, reduced congestion (apparently on the electric transmission system) and peak power production, job creation, air quality, and reduced global warming emissions. The plan must (1) identify a target for the amount of generation and a timeline for achieving this target and (2) include recommendations on (a) workforce development and job training needed to build an in-state solar workforce and (b) coordination with other programs where appropriate.

By October 15, 2008, the board must approve the plan and submit it to the Connecticut Energy Advisory Board and the Energy and Technology and Commerce committees.

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**Public Act# 08-101**

**SB# 5746**

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## **AN ACT CONCERNING THE DEPARTMENT OF TRANSPORTATION**

**EFFECTIVE DATE:** October 1, 2008, except for the provision for electronic transmission of DOT permits, which is effective on July 1, 2008; and the temporary State Pier lease, harbor improvement project, and road and bridge name correction provisions, which are effective upon passage.

**SUMMARY:** This act: 1. establishes an enhanced penalty for certain traffic violations that occur in traffic incident management zones, and defines these zones;

2. authorizes the Department of Transportation (DOT) to temporarily lease use of the State Pier or other navigation property DOT owns or controls, pending the required approval of other state officials, and makes related changes;

3. authorizes the DOT commissioner to initiate harbor improvement projects on behalf of the state, creates a special account to fund the projects, and removes limits on state grants to municipalities for harbor improvement projects;

4. requires certain key individuals involved in a completed highway or bridge project to certify in writing that it has been constructed in substantial compliance to the project's plans and specifications;

5. makes several changes relating to bicyclist safety and funding bicycle and pedestrian access projects;

6. makes the DOT commissioner rather than railroads responsible for notifying municipalities about certain issues relating to rail crossings;

7. exempts buildings DOT acquires but does not use for office space from indoor air quality protocols enacted for state-owned or -leased buildings in 2007;

8. expands exemptions from certain state laws for tow trucks that are towing disabled trucks from the highway;

9. exempts vehicles operated by or through a community-based regional transportation system for the elderly established pursuant to PA 05-280 from regulation as livery motor vehicles (§ 11);

10. authorizes DOT to permit temporary signs, displays, or other devices along state highways for 60 days or less (§ 12);

11. extends for one year, until April 15, 2009, a requirement that DOT suspend the realignment of Route 113 between Access Road and Dorne Drive in Stratford (§ 16);

12. allows DOT to issue vehicle over-dimension permits (length, width, height, and weight) electronically and, for such electronically-issued permits, eliminates the requirement that the permit holder possess a paper copy, facsimile, or telegraphic confirmation of the permit (§ 7); and

13. repeals an obsolete statute requiring all DOT contracts for work on a state bridge to prohibit anyone from working more than 48 hours in any week on the work specified in the contract, except in an emergency (§ 31).

The act also makes several technical changes and modifications to commemorative road and bridge designations previously adopted by the legislature and repeals one prior designation.

#### ENHANCED FINE FOR TRAFFIC OFFENSE IN TRAFFIC INCIDENT MANAGEMENT ZONE (§ 1)

By law, the court must impose an additional fee equal to 100% of the fine it imposes for certain designated traffic violations when they occur in a clearly designated and marked state highway construction zone or utility work zone. The act establishes a similar requirement when they are committed in a “traffic incident management zone.”

It defines a traffic incident management zone as an area of the highway where temporary traffic controls or measures are installed under the authority of the transportation or public safety commissioner, or a local traffic authority, in response to a motor vehicle incident, natural disaster, hazardous material spill, or other unplanned incident. The zone must be delineated by signs, cones, flares, or flashing or revolving lights.

#### TEMPORARY AGREEMENTS FOR STATE PIER (§ 2)

Under prior law, the DOT commissioner could make facilities at the State Pier in New London available to others to promote intermodal transportation. The act, instead, authorizes the commissioner to lease or grant any interest at the State Pier or any navigation property the state owns or controls with the approval of the State Properties Review Board (SPRB), the Office of Policy and Management (OPM), and the attorney general. It allows the commissioner to execute a temporary lease after requesting SPRB and attorney general approval that would be effective only until the full agreement has received final approval. The act specifies that any leases, with SPRB approval, may provide for building construction and that the commissioner may confer concessions privileges for goods, commodities, services, and facilities at the State Pier.

## HARBOR IMPROVEMENT PROJECTS (§§ 8-10)

### *New Projects*

The act authorizes the DOT commissioner to initiate harbor improvement projects on behalf of the state, or for the state on behalf of the federal government. It specifies that harbor improvement projects include the preparation of plans, studies, and construction to alter or improve state, municipal, and other properties in or adjacent to Connecticut waters, for the purpose of improving the state economy and infrastructure. These initiatives may be undertaken in addition to the municipal grants for harbor improvement projects authorized under existing law.

The act requires the Connecticut Maritime Commission to recommend and rank projects and submit them to the commissioner. DOT must contract to provide goods and services to harbors and waterways for these projects, and fund these contracts. The commissioner may enter into agreements with other state agencies or municipalities to provide this funding.

DOT must administer all the contracts, which are subject to final negotiation regarding the project's scope and budget. Under the act, contract periods may vary by contract. Payments must be made on a reimbursement basis no later than the dates of service of an executed contract, and appropriate documentation indicating that services have been rendered must be provided with payment requests. DOT may choose to release all or part of the funds as an upfront payment, provided funds are held in a non-interest-bearing account and spent no later than 60 days after it provides them.

### *Harbor Improvement Account*

The act creates the harbor improvement account, as a separate, non-lapsing General fund account. Deposits to the account must include (1) the proceeds of notes, bonds, or other obligations issued by the state for the purpose of harbor improvement or dredging projects; (2) General Assembly appropriations for such projects; and (3) any other funds required or permitted by law.

The commissioner must use the account to fund harbor improvement projects and for federal dredging projects. Funds used for the latter must (1) support, in full or in part, local or state matching requirements; (2) cover incremental costs for environmental regulatory requirements or management practices, including beneficial use; or (3) cover all or part of the costs where federal funds are inadequate. If the account is used to cover inadequate federal funds, the commissioner must pursue reimbursement from the federal government.

### *Removal of Limits on Municipal Grants*

The act removes two restrictions on the state's existing program for grants to municipalities for harbor improvement projects, specifically (1) a per-project requirement of two-thirds of the net cost of the project as approved by the commissioner and (2) a \$1 million limit on the total allowable state funding per municipality.

## CERTIFICATION OF COMPLETED HIGHWAY AND BRIDGE PROJECTS (§ 17)

Upon completion of a highway or bridge project, the act requires a signed certification from the following individuals involved in the project:

1. the general contractor;
2. the DOT project engineer; and
3. either the DOT chief inspector, consultant resident engineer or chief inspector, or the municipal chief inspector or official.

The certification must be on a DOT-prepared form and must state that the individual certifies, to his or her best knowledge, information, and belief, that the completed project has been constructed in substantial compliance with the project's contract plans, specifications, and any approved change orders.

## BICYCLE-RELATED PROVISIONS (§§ 13-15)

### *Funding Bicycle and Pedestrian Access Projects*

The act makes improving bicycle and pedestrian access throughout the state transportation system eligible for funding previously authorized by law for implementing priority transportation strategy projects and initiatives (i. e. , “Tier 1” strategy projects).

### *Public Awareness Campaign*

The act requires the transportation commissioner, within available appropriations and in consultation with bicyclist advocacy groups, to develop and implement a statewide “Share the Road” public awareness campaign to educate the public about the rights and responsibilities of motorists and bicyclists using the highways together.

### *Safe Passing of Bicyclists*

By law, any vehicle overtaking another vehicle proceeding in the same direction must pass to its left at a safe distance and not move right until safely clear of the overtaken vehicle. The act specifies that in the case of a vehicle overtaking and passing a bicyclist, a safe distance is at least three feet.

## NOTIFICATION REGARDING RAIL CROSSINGS (§ 3)

Prior law required railroads to notify the appropriate town or DOT annually, in writing, about rail crossings in the town and the town's obligations to inspect and correct any malfunctioning gates, signals, or pavement markings that the town must maintain. The act makes the DOT, instead of the railroads, responsible for this notification and eliminates a requirement that DOT provide a list of towns to be notified to each railroad, private party, or corporation.

## INDOOR AIR QUALITY PROTOCOL EXEMPTION (§ 4)

The act exempts DOT-leased or -owned buildings that it does not use for office space from provisions of a 2007 law that requires development of protocols for periodic indoor air quality assessment and possible remediation. In practice, DOT frequently acquires structures as part of a proposed transportation improvement and leases them until completion of the construction when final disposition of the building is made. The leases make the tenant responsible for maintaining the buildings' mechanical systems.

## BACKGROUND

### *Connecticut Maritime Commission (CMC)*

The 15-member CMC in DOT must (1) advise the commissioner, governor, and legislature on maritime policy and operations; (2) develop and recommend maritime policy to the governor and legislature; (3) support development of Connecticut's maritime commerce and industries, including its deep water ports; (4) recommend investments and actions, including dredging, required to preserve and enhance deep water ports; (5) conduct studies to make recommendations on maritime issues; and (6) support Connecticut port development, including identifying new opportunities, analyzing the potential for and encouraging private port investment, and recommending policies that support port operation.

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**Public Act# 08-113**

**JSS** *Vetoed but overturned*

**SB# 55**

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## AN ACT CONCERNING THE TIP CREDIT

**EFFECTIVE DATE:** October 1, 2008

**SUMMARY:** Effective January 1, 2009, this act increases the minimum wage tip credit for hotel and restaurant employers from 8.2% to 11% for bartenders and from 29.3% to 31% for service employees (e.g., waiters and waitresses). The tip credit allows hotels and restaurants to pay service employees and bartenders, who customarily and regularly receive tips, less than minimum wage as long as tips make up the difference. Under the act, a hotel or restaurant can pay (1) a bartender 11% less than minimum wage and (2) a waiter or waitress 31% less than minimum wage.

### HOTEL AND RESTAURANT TIP CREDIT

Table 1 shows how the prior tip credit and the act each reduces the minimum wage a restaurant or hotel must pay a service employee as long as the employee's tips bring his or her wage up to the minimum state hourly wage.

**Table 1: Tip Credit Impact on Minimum Wage**

	Minimum Hourly Wage	Hourly Wage with Tip Credit	
		Prior Law	Under the Act
Bartenders	\$7.65	\$7.02	\$6.81
Waiters, waitresses, & other service employees	\$7.65	\$5.41	\$5.28

**Public Act# 08-02**

**JSS**

**SB# 1000**

***AN ACT CONCERNING ADJUSTMENTS TO CERTAIN PETROLEUM PRODUCTS TAXES, PETROLEUM FRANCHISE AGREEMENTS, GASOLINE DISCOUNTS FOR CONSUMERS, HOME HEATING OIL AND PROPANE GAS CONTRACT DEPOSITS AND THE FUEL OIL CONSERVATION ACCOUNT***

**EFFECTIVE DATE:** Upon passage

**SUMMARY:** This act eliminates a scheduled July 1, 2008 increase in the petroleum products gross earning tax rate from 7% to 7.5%, thus maintaining the 7% rate until the next scheduled increase to 8.1% on July 1, 2013.

The act declares that competitive pricing is essential to the functioning of a fair and efficient free market economy in the petroleum industry and bans gasoline franchise contracts from prohibiting gasoline dealers and distributors from offering discounts for using any method of payment.

The act modifies (1) the receivership and post-judgment remedy laws by increasing the amount that a receiver may pay for certain consumer deposits and (2) the receivership laws by increasing the amount that a court may pay for wages owed. It specifies that “consumer deposits” include deposits made to a home heating oil or propane gas dealer under a prepaid or capped price per gallon contract.

By law, part of the growth in revenues from the petroleum products gross receipts tax above 2006 levels goes into a special account which will be used to fund fuel oil conservation programs. The act modifies when funds are transferred into this account and makes minor changes to the board that administers the account.

**§§ 1 & 2 – PETROLEUM PRODUCTS GROSS EARNINGS TAX**

The act eliminates an increase in the petroleum products gross earnings tax rate from 7% to 7.5% currently scheduled to take effect on July 1, 2008. It freezes the tax at 7% until July 1, 2013, when under both current law and this act, the rate is scheduled to increase to 8.1%.

The petroleum products gross earnings tax applies to the gross earnings from the first sale of petroleum products in Connecticut by petroleum products distributors. Taxed products include gasoline, aviation fuel, kerosene, benzol, distillate fuels, residual fuels, and crude oil. The tax also applies to products made from petroleum or petroleum derivatives, such as paint, detergents, antiseptics, fertilizers, nylon, asphalt, and plastics. Many petroleum products and uses are exempt, including most diesel fuel, home heating oil, and propane gas used for heating.

#### §§ 3 & 4—CASH DISCOUNTS

The act declares that competitive pricing is essential to the functioning of a fair and efficient free market economy in the petroleum industry. It finds and declares that (1) certain petroleum product franchise agreements prohibit gasoline retailers and distributors from offering discounts based on a buyer's payment method and (2) these provisions constitute unreasonable restraints on competitive pricing and inhibit the fair and efficient functioning of a free market economy within the petroleum industry. The act declares that such provisions in franchise agreements are void and without effect because they are contrary to public policy. Further, it specifically prohibits existing and future contracts from including such provisions and voids them.

The law states that it does not prohibit sellers of anything, not just gasoline, from offering a discount to induce a buyer to pay by cash, check, or similar means. The act specifies this also includes debit cards. The law also prohibits sellers from imposing a surcharge on a buyer who chooses to use any payment method, including cash, check, credit card, or electronic means.

#### §§ 5 & 6—RECEIVERSHIP PROCEEDINGS AND POST-JUDGMENT REMEDIES

The law authorizes a court to appoint a receiver, after notice, and make other orders “as the exigencies of the case may require” (CGS § 52-504). It currently requires that any debt due an individual for a deposit made in connection with the purchase, lease, or rental of goods purchased for personal, family, or household purposes that were not received before an application was made to appoint a receiver to be paid in full up to \$ 900. The law sets the same requirement and cap in court proceedings involving (1) the termination of an entity, (2) the insolvency of a person or entity, or (3) the inability of a person or entity to pay all creditors in full. The act raises both caps to the amount that federal bankruptcy law sets for paying the unsecured claims of individuals arising from deposits made for the same reasons, currently \$ 2,425. The act specifies that the covered deposits include payments made by a consumer to a home heating oil or propane gas dealer under a prepaid or capped price per gallon contract.

The law currently caps at \$ 600 payments made by a receiver for debts due for wages for work performed within the three months before an application was made to appoint a receiver. The act raises this cap to the cap in federal bankruptcy law, which is currently \$ 10,950 for such debts due for wages. The law requires wages to be paid in full in court proceedings involving (1) the termination of an entity, (2) the insolvency of a person or entity, or (3) the inability of a person or entity to pay all creditors in full.

Federal law requires the caps in bankruptcy law to be adjusted every three years in accordance with changes in the Consumer Price Index for All Urban Consumers; they were last adjusted in 2007.

§ 7—FUEL OIL CONSERVATION BOARD AND PROGRAMS

The law establishes a 13-member board to administer fuel oil conservation programs, which are funded from growth in revenue from the petroleum products gross receipts tax above the revenue generated in 2006 which goes into a special account. The act requires that one of the governor's appointees to the board be a representative of an in-state biodiesel distributor rather than in-state generators. It places the board with the office of the state comptroller for administrative purposes only. It requires that the fuel oil conservation account be within the Restricted Grant Fund rather than the General Fund.

By law, the amount of money in the account is capped at \$ 10 million in FY 08 and \$ 5 million thereafter. The act eliminates a provision that requires the comptroller to deposit the money in the account before the accounts for the General Fund are closed each fiscal year. Instead, it allows the comptroller to deposit up to \$ 2. 5 million into the fuel oil conservation account upon the act's passage. It requires that any remaining amount due the account for FY 08 be deposited as determined by the comptroller at the close of the fiscal year, but no later than October 1, 2008.

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**Special Act# 08-1** **JSS** **HB# 6501**

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**AN ACT MAKING DEFICIENCY APPROPRIATIONS FOR THE FISCAL YEAR ENDING JUNE 30, 2008**

**SUMMARY:** The act reduces FY 08 General Fund appropriations by \$42,870,617 and makes FY 08 General Fund deficiency appropriations of \$41,470,000. The amount of reductions to appropriations exceed the amount of deficiency appropriations contained in the act by \$1,400,617 in order to stay below the spending cap, as it corrects for the capped uses of un-capped appropriations.

*Projected FY 08 Deficiencies as of June 11, 2008*

University of Connecticut Health Center	FY 08 Deficiency Amount
	\$21,900,000

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**Public Act# 08-03** **JSS** **HB# 6502**

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**AN ACT CONCERNING COMPREHENSIVE ETHICS REFORMS**

**EFFECTIVE DATE:** October 1, 2008

**SUMMARY:** This act:

1. generally permits state courts to revoke or reduce any retirement or other benefit due to state or municipal officials or employees who commit certain crimes related to their employment;
2. makes it a class A misdemeanor for public servants to fail to report a bribe;

3. expands illegal campaign finance practices to cover certain solicitations by chiefs of staff;
4. makes several changes to state codes of ethics such as limiting gift exceptions, prohibiting state contractors from hiring certain former public officials and state employees, restricting the Office of State Ethics' (OSE) authority to issue subpoenas, prohibiting *ex parte* communications during OSE hearings on ethics complaints, limiting Citizens' Advisory Board members who can act on ethics complaints, and subjecting the governor's spouse to the code;
5. requires OSE to provide mandatory training to legislators on the Code of Ethics for Public Officials; and
6. requires public agencies to post, on available web sites, meeting dates, times, and minutes required by law to be publicly disclosed.

#### §§ 1-5 — CORRUPT OFFICIALS AND EMPLOYEES

The act generally permits state courts to revoke or reduce any retirement or other benefit due to state or municipal public officials or employees or quasi-public agency members and directors who commit certain crimes related to their employment.

The act requires the court to order payment of any benefit or payment that is not revoked or reduced.

#### *Exceptions to Reduction or Revocation*

Under the act:

1. no revocation or reduction may prohibit or limit benefits that are the subject of a qualified domestic relations order (e. g. , child support);
2. no pension may be reduced or revoked if the IRS determines that the action will negatively affect or invalidate the status of the state's or a municipality's government retirement plans under Section 401 (a) of the Internal Revenue Code of 1986; and
3. the pension benefits of a public official or employee who cooperated with the state as a whistleblower before learning of the criminal investigation may not be revoked or reduced if the court determines or the attorney general certifies that the official or employee voluntarily provided information to the attorney general, state auditors, or a law enforcement agency against a person more blameworthy than the official or employee.

Additionally, no pension may be revoked if the court determines that to do so would constitute a unilateral breach of a collective bargaining agreement. Instead the court may issue an order to reduce the pension by an amount necessary to (1) satisfy any fine, restitution, or other monetary order issued by the criminal court and (2) pay the cost of the official's or employee's incarceration.

#### *Crimes Related to Office or Employment*

The act requires the attorney general to apply to the Superior Court for an order to revoke or reduce the benefits of a public official or employee who, on and after the act's passage, is convicted of or pleads guilty or *nolo contendere* (no contest) in federal or state court to:

1. committing or aiding or abetting the embezzlement of public funds from the state, a municipality, or a quasi-public agency;
2. committing or aiding or abetting any felonious theft from the state, a municipality, or a quasi-public agency;
3. bribery connected to his or her role as a public official or employee; or
4. felonies committed willfully and with intent to defraud to obtain or attempt to obtain an advantage for himself or herself or others through the use or attempted use of his or her office.

The attorney general must notify the prosecutor in these criminal cases of the pension revocation statute and that the pension may be used to pay any fine, restitution, or other monetary order the court issues.

“Public officials” are (1) statewide elected officers, (2) legislators and legislators-elect, (3) judges, (4) gubernatorial appointees, (5) municipal elected and appointed officials, (6) public members and union representatives on the Investment Advisory Council, (7) quasi-public agency members and directors, and (8) people appointed or elected by the General Assembly or either chamber. The term does not include advisory board members or members of Congress.

“State employees” includes employees of quasi-public agencies.

### *Sentencing Considerations*

When determining whether to revoke or reduce a public official's or employee's benefits or payments, the act requires the court to consider:

1. the severity of the crime;
2. the amount of money the state, municipality, quasi-public agency, or anyone else lost as a result of the crime;
3. the degree of public trust reposed in the person by virtue of his or her position;
4. if the crime was part of a fraudulent scheme against the state or a municipality, the defendant's role in it; and
5. any other factors the court determines that justice requires.

After determining to reduce pension benefits, the court must consider the needs of an innocent spouse or beneficiary and may order that all or part of the benefits be paid to the spouse or beneficiary.

### *Pension Contributions*

If an official's or employee's pension is revoked, the act entitles the person to the return of any contributions he or she made to it, without interest. But, the repayment cannot be made until the court determines that the official or employee has fully satisfied any judgment or court-ordered restitution related to the crime against the office. If the court determines that he or she has not, it may deduct the unpaid amount from the individual's pension contributions.

### *Collective Bargaining Agreements*

Beginning October 1, 2008, the act prohibits collective bargaining agreements from containing any provision that bars the revocation or reduction of a corrupt state or municipal employee's pension.

### §§ 6 & 7 — BRIBERY

The act makes it a class A misdemeanor for public servants to fail to report a bribe (see BACKGROUND). Public servants commit this crime when they do not report to a law enforcement agency as soon as reasonably practicable that (1) another person has attempted to bribe them by promising, offering, transferring, or agreeing to transfer to them any benefit as consideration for their decision, opinion, recommendation, or vote or (2) they knowingly witnessed someone attempting to bribe another public servant or another public servant committing bribe receiving. By law, a person is guilty of bribe receiving if he or she solicits, accepts, or agrees to accept any benefit for, because of, or inconsideration for his or her decision, opinion, recommendation, or vote.

The act expands the definition of “public servant” that applies to existing bribery and bribe receiving crimes, as well as this new crime. The act expands the public servants covered by these crimes to include quasi-public agency officers and employees. Elected and appointed government officers and employees and people performing a government function, including advisors and consultants, are already covered.

### § 12 — CAMPAIGN FINANCE

The act makes it an illegal campaign practice for chiefs of staff to solicit contributions from certain people on behalf of, or for the benefit of, any state, district, or municipal office candidate. Under the act, the chief of staff (1) for a legislative caucus cannot solicit an employee of the caucus, (2) for a statewide elected official cannot solicit a member of the official's office, and (3) for the governor or lieutenant governor cannot solicit from any member of the official's office or from any state commissioner or deputy commissioner.

By law, it is an illegal campaign finance practice for, among other things, state department heads and their deputies to solicit political contributions at any time, and for anyone to knowingly and willfully violate a campaign finance law. Campaign finance violators are subject to criminal penalties of up to five years in prison, a \$ 5,000 fine, or both for knowing and willful violations. They are also subject to civil penalties of up to \$ 2,000 per offense.

### STATE ETHICS CODE

### *§§ 16 & 17 — Ethics Complaint Enforcement*

By law, when an ethics complaint is filed with OSE, the office conducts probable cause investigations, including hearings. If probable cause is found, OSE's Citizens' Advisory Board initiates a hearing to determine whether there has been a violation. A judge trial referee conducts the hearing. Both OSE and its advisory board can subpoena witnesses and records during their respective proceedings.

*Subpoenas.* The act restricts OSE's authority to issue subpoenas by requiring it to get (1) approval from a majority of the advisory board members or (2) the chairperson of the board to sign the subpoena. It authorizes the vice chair to sign the subpoena if the chair is unavailable.

*Ex Parte Communications.* During the hearing on whether a violation has occurred, the act prohibits ex parte communications about the complaint or respondent between the board or any of its members and the judge trial referee conducting the hearing or a member of OSE's staff.

*Voting on Existence of Violation.* By law, the Citizens' Advisory Board, at the conclusion of the hearing, determines whether a violation occurred and, if so, imposes penalties. The act restricts the board members who can vote on whether a violation occurred to those who were physically present during the entire violation hearing.

The act makes a technical change by specifying the number of board members, rather than the fraction of the board, necessary to find a violation of the State Code for Lobbyists. The act requires six members, rather than two-thirds of the board, to find a violation. By law, there are nine board members.

### *§§ 13 & 14 — Gifts*

With several exceptions, the law prohibits public officials, candidates for public office, and state employees from accepting gifts (generally anything of value over \$ 10) from lobbyists. It also prohibits public officials and state employees from accepting gifts from people doing, or seeking to do, business with their agency; people engaged in activities regulated by their agency; or prequalified state contractors. The law also prohibits these people from giving gifts to public officials and employees.

The act caps at \$ 1,000 the exception for gifts provided at celebrations of major life events by people unrelated to the recipient. Major life events include a ceremony commemorating an individual's induction into religious adulthood such as a confirmation or bar or bat mitzvah, a wedding, a funeral, and the birth or adoption of a child. It does not include any event that occurs on an annual basis such as an anniversary (Conn. State Agency Regulations § 1-92-53).

### *§ 15 — Employment Restrictions*

The act prohibits a party to a state contract or agreement from employing a former public official or state employee who substantially helped negotiate or award a contract valued at \$ 50,000 or more or an agreement for the approval of a payroll deduction. The prohibition applies to employees or officials who resign within one year after the contract or agreement is signed and ends one year after

the resignation. The law already prohibits former officials and employees from accepting the job. The penalty for violations is a fine of up to \$ 10,000. First-time intentional violations are punishable by up to one year in prison, a \$ 2,000, or both. Subsequent intentional violations are punishable by up to five years in prison, a \$ 5,000 fine, or both.

#### *§§ 9 & 10 — Governor's Spouse*

The act makes the governor's spouse subject to the State Ethics Code by extending the definition of “public official” to include him or her. Currently, “public officials” are statewide elected officers, legislators and legislators-elect, gubernatorial appointees, public members and union representatives on the Investment Advisory Council, quasi-public agency members and directors, and people appointed or elected by the General Assembly or any house thereof. The term does not include judges, advisory board members, or members of Congress.

#### § 8 — TRAINING

By December 31, 2010, the act requires OSE to establish and administer a program for providing mandatory training to legislators on the Code of Ethics for Public Officials. The program must provide for mandatory training of (1) newly elected legislators and (2) all legislators every four years beginning in 2011. However, the Legislative Management Committee must request OSE to train all legislators before the next regularly scheduled training if it determines that there has been a significant revision to the Code of Ethics for Public Officials.

#### BACKGROUND

##### *Penalties for Class A Misdemeanors*

A class A misdemeanor is punishable by up to one year in prison, a \$ 2,000 fine, or both.

<b>BILLS VETOED BY THE GOVERNOR</b>		
<b>Public Act Number</b>	<b>Bill Number</b>	<b>Title</b>
<b>08-179</b>	<b>HB 5936</b>	<b>AN ACT CONCERNING THE GREENWAY COMMONS IMPROVEMENT DISTRICT IN SOUTHLINGTON, THE WAYPOINTE PROJECT IN NORWALK, NAUGATUCK ECONOMIC DEVELOPMENT CORPORATION, DONATION OF OPEN SPACE LAND BY WATER COMPANIES, AND THE AUTHORITY OF MUNICIPAL DISTRICTS OVER THE WATER QUALITY IN LAKES.</b>
<b>08-90</b>	<b>SB 599</b>	<b>AN ACT CONCERNING A PRE-RETIREMENT SPOUSAL BENEFIT UNDER THE STATE EMPLOYEES RETIREMENT</b>
<b>08-165</b>	<b>SB 678</b>	<b>AN ACT ESTABLISHING A COMMUNITY-BASED HEALTH AND HUMAN SERVICES CABINET</b>
<b>08-183</b>	<b>HB 5536</b>	<b>AN ACT ESTABLISHING THE CONNECTICUT HEALTHCARE PARTNERSHIP</b>