

Note: In accordance with the changes made by PA 16-32, the Fiscal Note no longer contains information regarding the impact of the proposed regulation on small businesses. Each agency must separately complete the revised Regulatory Flexibility Analysis as published by the Office of Policy & Management.

FISCAL NOTE

Date: July 12, 2024

Agency Submitting Proposed Regulation: Department of Energy & Environmental Protection
Proposed

Regulation Title: Release-Based Cleanup Regulations

Regulations Statutory Authority: § 22a-6(a) and 22a-134tt of the Connecticut General Statutes

Other Agencies Affected: All agencies that have the capacity to create or maintain a release of various pollutants into the lands or waters of the state

Effective Date Used In Estimate: July 1, 2026

Estimate Prepared By: Brendan Schain

Telephone Number: (860) 424-3172

ESTIMATE OF COST OR REVENUE IMPACT OF PROPOSED REGULATION

Agency: Department of Energy and Environmental Protection

Fund Affected: General

	First Year	Second Year	Third Year
Number of Positions			
Personal Services	0	0	0
Other Expenses	0	0	0
Equipment	0	0	0
Grants	0	0	0
Total State Cost or Savings	GF – Potential Revenue Gain	GF – Potential Revenue Gain	GF – Potential Revenue Gain
Estimated Revenue Gain or Loss	GF – Potential Revenue Gain	GF – Potential Revenue Gain	GF – Potential Revenue Gain
Total Net State Cost or Savings	GF – Potential Revenue Gain	GF – Potential Revenue Gain	GF – Potential Revenue Gain

Explanation of State Impact:

This proposed Release Based Cleanup Regulations (“RBCRs”) implement Public Act 20-9 by sunseting the Connecticut Property Transfer Act (“Transfer Act”) - the primary program for the cleanup of pollution in Connecticut - and transitioning to a release-based cleanup program. This

transition will align Connecticut with 48 other states and will remove barricades to the redevelopment of parcels of real property subject to the Transfer Act. Creating this new alignment, and removing the barricades erected by the Transfer Act, will increase economic activity and redevelopment across the state, create new jobs, and generate new revenues for the state and its municipalities. The Department has worked with economists from the Department of Economic and Community Development (“DECD”) to assess the financial impacts of adopting the RBCRs and shifting to a release-based cleanup program.

The Transfer Act is a product of the era in which it was adopted; at that time, people had to be told to investigate property for pollution. The Transfer Act requires certain properties to be investigated, and sets a stringent standard for that investigation. The requirement to “prove the negative” and demonstrate that pollution is not present on Transfer Act sites is time consuming and expensive, and hampers the transfer and redevelopment of real property to which it applies. Today, market forces drive investigation. Developers and lenders routinely investigate for pollution. Neither Public Act 20-9 nor the RBCRs require investigation, and neither sets a standard for such investigation. Instead, both set out a process for addressing known pollution after it has been discovered. Removing the Transfer Act requirement to prove the negative is key to unleashing the economic activity anticipated by the DECD analysis.

In 2020, when considering the fiscal impacts of Public Act 20-9, the Office of Fiscal Analysis (“OFA”) [determined](#) that, “[t]o the extent that the bill facilitates the sale and redevelopment of real property, there is a potentially significant grand list expansion in municipalities where such sale and redevelopment occur. Any impact would vary based on the type of redevelopment that occurs.” This increased economic activity would benefit the state as well as its municipalities.

The adverse economic impacts of the Transfer Act have been well studied. In a March 2019 report, for example, the Connecticut Economic Resource Center (“CERC”) estimated that, between 2014 and 2018, the Transfer Act cost the state nearly 8,000 jobs and more than \$170,000,000 in state and local revenues “not collected” because of “foregone operations.”

Gains from vacant sites becoming active For purposes of preparing this fiscal note, economists from DECD updated the CERC analysis using current data. (Copies of the 2019 CERC report is attached for reference.) To perform their analysis, DECD used a published regional estimated industrial property vacancy rate of 3.6%. Assuming a best case scenario for economic activity generated as a result of the sunset of the Transfer Act and transition to a release-based cleanup program, DECD estimated the potential economic activity if all the vacant sites became active, including the economic impacts of adding 15 workers per site, would create 4,451 total jobs and generate \$23.1 million in net state revenues annually. The assumptions used likely result in overstating the impacts from increased activity on vacant industrial sites alone. But the Transfer Act also impacts other types of properties: commercial sites and sites being redeveloped for residential use. Applying that broader scope supports the conclusion that Transfer Act-related lost opportunities have cost the state and its municipalities tens of millions of dollars in tax revenue and thousands of new jobs—and that the transition to a release-based approach will do the reverse.

Additional jobs Analyzing only the economic impact of returning vacant properties to productive use may understate the positive economic impacts of the transition to a release-based cleanup system. The CERC also considered the economic impacts of forgone “operational” jobs - jobs that may have been created but for the Transfer Act. In DECD’s updated analysis of the 2019 CERC analysis, if sites were not stuck in the Transfer Act, it could have created 4,350 direct manufacturing jobs and generated \$113.8 million dollars in additional net state revenues over the last five years.

Savings from modernizing and streamlining the standards The RBCRs will also implement important, changes to Connecticut’s cleanup standards that will translate into savings for developers and, as a consequence, for the state. A release-based program applies common cleanup endpoints to all discovered pollution above a threshold that poses a risk to human health or the environment - not just such levels of pollution on the small universe of Transfer Act sites. These risk-based updates are both necessary and protective of human health. The proposed RBCRs introduce a series of new, risk-based approaches to addressing pollution intended to make redevelopment more efficient and less expensive while still protecting human health and the environment. For example, one new approach allows polluted fill – found in Connecticut’s cities and along its coast – to be managed in place on properties used for industrial and commercial activities using a “permit by rule.” Previously, the top four feet of polluted fill was required to be removed and replaced with four feet of clean material, and a costly and time consuming Environmental Use Restriction was required to prevent disturbance of the imported material. Limiting the excavation, disposal, and replacement of polluted soil will save developers significant amounts of money, and the switch from an Environmental Use Restriction to a permit by rule will save months and tens of thousands of dollars per site. Because Connecticut provides grant funding to remediation projects, this new fill provision will also save the state millions of dollars in grant funding that can be reallocated to support other redevelopment projects. Based on an analysis of the 20 recent remediation projects awarded some \$62,434,697 in loan and grant assistance since 2017, it is estimated that \$10,728,991 – or an average of \$536,450 per site – was spent to remove, dispose and replace polluted fill and prepare and record Environmental Use Restrictions to prevent the disturbance of the imported soil. It is estimated that the shift to managing polluted fill in place using a permit by rule will save approximately 17% across future DECD funded remediation projects.

No impact from changes to requirements for new releases The RBCRs also apply to new releases (or “spills”). The Regulations largely codify existing processes, while also creating unified endpoints and durable closure documents for those releases. To the extent the state (or a municipality) has operations that cause spills, significant fiscal impacts are not anticipated, given that reporting and response will largely remain unchanged.

No staff resource impacts The Department believes that the RBCRs can be implemented within its existing staff resources, although some realignment of staff will be necessary.

Some increase in revenues from fees collected For the years from 2017 to 2022, the Transfer Act generated just over \$500,000 annually in fees deposited in the General Fund. The proposed regulations assess fees at the end of the first year following discovery if releases have not yet

been remediated. Annual fees will be assessed thereafter until remediation is complete, and additional fees are assessed if extensions of remediation timelines are needed. The fees to be assessed have been set at levels that will encourage timely remediation and can be conservatively estimated to exceed the Transfer Act revenues deposited into the General Fund due to the broader applicability of the program, but at about half the corresponding fee in Massachusetts to ensure that such fees do not create a new barrier to economic development.

Municipal Impact:

The Transfer Act has burdened the state's municipalities with brownfields that are difficult to redevelop and detract from the vibrancy of our communities. The analysis above focuses on estimating impacts caused by sites subject to the Transfer Act, but many brownfields have sat – vacant and abandoned – because owners are avoiding the cleanup and investigation requirements imposed by the Transfer Act upon sale of such properties. When manufacturing moved to other regions or off-shore, some companies recognized that selling their Connecticut mills and factories would require a comprehensive and expensive investigation and cleanup. Many companies avoided the requirement to investigate pursuant to the Transfer Act by abandoning their mills and factories, allowing them to crumble rather than selling them for productive reuse. Some of these sites are in urban centers, others are community gateways, and others form the nexus of villages across the state. All are obstacles to creating vibrant, sustainable communities.

While, as OFA indicated at the time of adoption of Public Act 20-9, municipal impact would vary based on the type of redevelopment to occur, OFA and the Department agree that “[t]o the extent that the bill facilitates the sale and redevelopment of real property, there is a potentially significant grand list expansion in municipalities where such sale and redevelopment occur.”

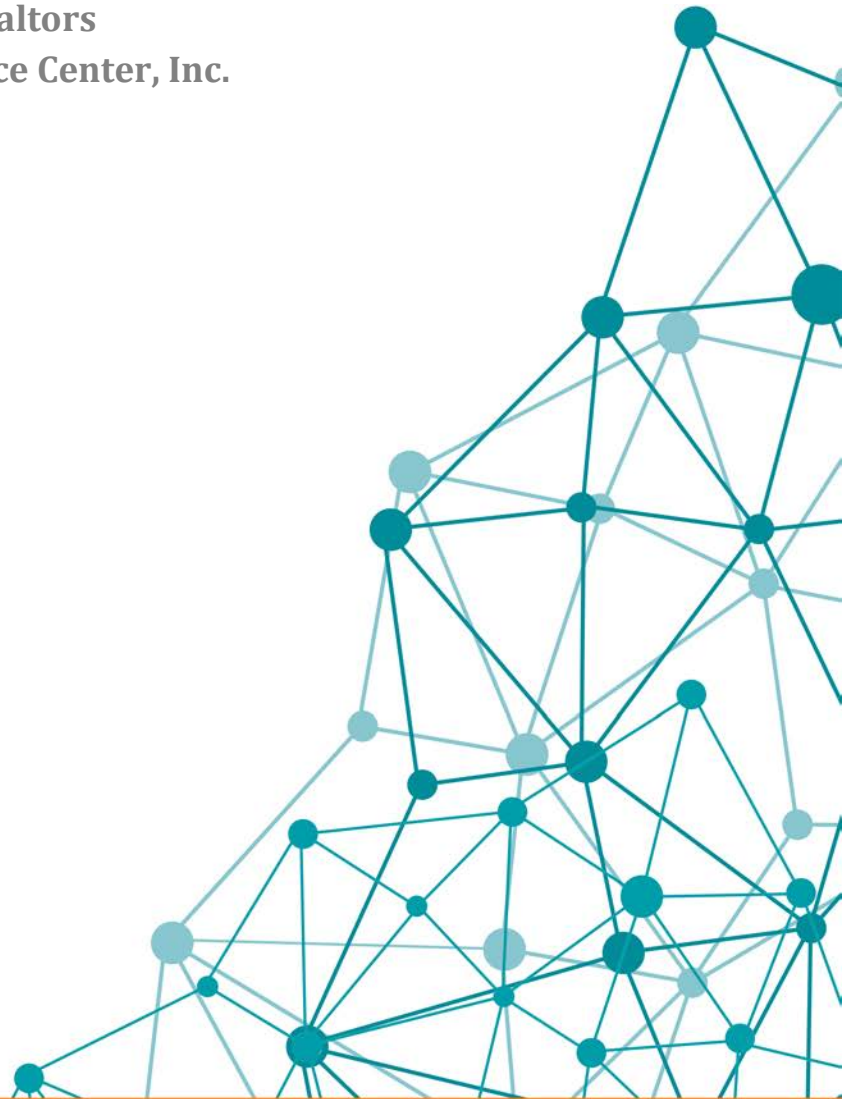
Municipalities also own polluted sites, in many instances to facilitate their redevelopment. Many of those sites are owned through the state's brownfield liability relief programs. Those programs would be unchanged, and PA 20-9 provides them with a safe harbor from the RBCRs. It is important to note, however, that sites in brownfields programs can take advantage of the new, risk-based, cleanup standards provisions, potentially saving municipalities and their partners millions of dollars.

As stated above, the RBCRs also apply to new releases (or “spills”). Given that reporting and response to these new releases will largely remain unchanged, significant fiscal impacts are not anticipated where a municipality owns a property upon which a new release occurs.

Connecticut Property Transfer Act: Economic Impacts and Effects

Prepared for Connecticut Association of Realtors
Prepared by Connecticut Economic Resource Center, Inc.

March 2019



Connecticut
Economic
Resource Center

Collaboration at work



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Resource Center

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805 Brook Street, Building 4, Rocky Hill, CT 06067-3403
p: 860.571.7136 f: 860.571.7150 www.cerc.com

The Connecticut Economic Resource Center, Inc. (CERC) is a nonprofit corporation and public-private partnership that drives economic development in Connecticut by providing research-based data, planning and implementation strategies to foster business formation, recruitment and growth. CERC has proven and relevant expertise providing clients with the knowledge and insight they need to gain a competitive advantage. CERC is a pioneer in the development of programs, technologies and capabilities to support effective economic development and offers a complete range of services from economic impact analysis, strategic planning, data gathering and communications, to outreach, site selection and business assistance. CERC has earned a reputation for excellence in Connecticut's economic development community through our accomplished, professional staff, commitment to customer service, and connection to a network of strategic partners.

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EXECUTIVE SUMMARY

Attracting businesses to locate in Connecticut cities and towns is critical to the economic growth strategy that will help solve the state's fiscal problems, according to the newly-elected Governor. All new economic activity in the state will occur on a piece of real estate. In Connecticut, and much of the industrial Northeast and Midwest sections of our country, there is a legacy of properties that have environmental challenges, often complicating or limiting real estate investment that creates new economic activity. It is important for the health and safety of Connecticut's citizens and for potential users of challenged properties that they be remediated. It is also important for the state to remove impediments to economic development when possible.

In Connecticut, the Property Transfer Act was enacted to encourage the clean-up of environmentally challenged properties. However, in current practice the statute has negatively impacted economic growth without achieving many of the desired environmental outcomes.

The Transfer Act, adopted in 1985 in response to hazardous waste conditions, has been amended over the subsequent years in attempts to ease compliance burdens while still maintaining adequate protections. The Transfer Act was also amended to recognize the creation of the brownfield remediation and revitalization program and its coverage of many possible Transfer Act sites.

Today, only Connecticut and New Jersey have this restrictive type of Transfer Act legislation. Transactions are being delayed or abandoned, as outlined in the report's data and case studies sections, even though they may present conditions that fall outside of the legislative intent, such as:

- An entire property may be subject to the Transfer Act because of a release, historic use, or disposal of waste on a selected portion;
- Clean properties may be subject to the Transfer Act because of a temporary use or one-time shipment of waste, requiring additional time and money to prove the site is clean; and
- Properties become establishments under the Transfer Act that would not otherwise be considered in need of remediation under existing environmental regulations (particularly when due to history of agricultural or other use), creating an unfair double-standard.

These stalled or lost deals can lead to significant lost opportunities for economic growth, as described in the economic impact section. Delays in needed environmental cleanup can also result.

The potential impacts of the Transfer Act are widespread: there were over 470 filings with the Department of Energy and Environmental Protection (DEEP) in the past five years (2014-2018), and 7,200 filings under the Transfer Act since its adoption. These filings are spread across 158 of Connecticut's 169 municipalities.

CERC collected dozens of case studies from local brokers, environmental attorneys, Licensed Environmental Professionals (LEPs), economic developers, commercial developers and real estate



professionals who have experience with the Transfer Act. These case studies estimated financial effects of the delays and halted deals. CERC then calculated economic impacts associated with these delays and losses of deals. Assuming the recent active filings in the Transfer Act program are not completed in 2019, CERC applied projected costs of the most conservative of the sample properties to show that the state would experience a loss of over 7,000 jobs that otherwise would have located in Connecticut. These jobs would have generated over 20,000 estimated jobs via direct, indirect, and induced effects, as other companies in Connecticut increased production to meet the needs of these initial businesses and as the employees spent their earnings on household consumption in the state. The businesses represented by these filings would have generated an estimated \$178 million in tax revenues for the state and local governments in 2019. Likewise, over 380 construction workers would have been employed at some point in the five years to make improvements to the properties represented by the filings in the DEEP database, with almost 400 additional jobs generated due to this construction work. The one-time tax impact of the construction spending would have been almost \$5 million for state and local governments.

Transfer Act amendments, to greatly reduce the turnaround time for verifications and approvals and to permit transfers to go forward once a notice of Transfer Act waiver has been filed, are being proposed and should be considered.

TRANSFER ACT CASE STUDIES

While it is certainly important to identify and remediate properties with environmental contamination, the Transfer Act currently captures a number of properties that are low risk, requiring a significant investment of time and resources to prove that no release occurred. Furthermore, the current regulations can result in significant expense and time delays, causing lost deals and impeding the cleanup (where applicable) and re-use or redevelopment of the properties. Anecdotally, some of the issues raised include:

- An entire property may be subject to the Transfer Act because of a release, historic use, or disposal of waste on a selected portion;
- Clean properties may be subject to the Transfer Act because of a temporary use or one-time shipment of waste, requiring additional time and money to prove the site is clean; and
- Properties become establishments under the Transfer Act that would not otherwise be considered in need of remediation under existing environmental regulations, creating an unfair double-standard.

The following examples illustrate the types of barriers to re-use and redevelopment that properties subject to the Transfer Act have encountered.



Entire property subject to the Transfer Act due to a release, historical use, or disposal of waste from a selected portion

A New York company won contracts with the two Connecticut casinos and needed 30,000-50,000 square feet of high-tech light manufacturing space for 25 employees. The first building they looked at on the shoreline was well suited, but it was subject to the Transfer Act because another building in the same condominium association had manifested over 100 kilograms of hazardous waste. The second building the company selected formerly housed a printing company and it was questionable whether it might also be a Transfer Act site. The company then requested that the broker show them buildings in Rhode Island, since the Transfer Act would not be an issue there.

A Bloomfield property was part of a multi-building development, with a surplus 10-acre parcel slated to be sold to an end-user for construction of a 20,000 square foot facility. The phase 1 study surfaced little concern for contamination but noted the property might be subject to the Transfer Act due to a historical use. Neither the buyer nor seller wanted to pay for the additional investigation that would be required under the Transfer Act nor did they want to go through the certification process, so the sale was cancelled.

Uncontaminated properties may be subject to the Transfer Act because of a temporary use or one-time shipment of waste

An office building in Hartford was deemed an establishment due to the disposal of limited amounts of printing ink, because a business on the second floor had printed its own brochures. The only contaminants found after testing were the pesticides used on the trees. However, the property was transferred several times, requiring filings each time.

A small, light industrial building in Naugatuck was deemed an establishment after the printer switched to water-based inks and disposed of old inks. The seller spent around \$75,000 on environmental investigations, and no contamination was found. The first buyer walked away, as the environmental investigations took longer than they were willing to wait. A second deal is pending, for a purchase price \$50,000 lower due to the property's Transfer Act status.

A warehouse for a moving company in Stamford had a one-time disposal of waste paint from 1999 and is now subject to the Transfer Act. The seller will need to investigate the property and prove no spills happened.

A corporate training center and former seminary (with no history of manufacturing use) was deemed an establishment due to the disposal of old paint.

Properties that become “establishments” due to the Transfer Act would otherwise not be considered in need of remediation under existing environmental regulations

A 50,000 square foot building in Wallingford was under contract to an end user who was going to invest \$3 million and employ over 20 people. However, a former tenant had made a one-time



manifested shipment of over 100 kilograms of waste, after cleaning out a closet when moving. The only significant finding from the environmental investigation was that 40 to 90 years ago, legally-approved pesticides were used on what was then an orchard. The pending sale fell through as lawyers from both sides and two environmental firms spent over a year to investigate and determine whether the site was subject to the Transfer Act; the buyer walked away due to the lengthy delay. The present owner needs to spend \$200,000 to put a membrane over the area where the pesticides were used, and the building is 90% vacant.

In the 1980's, a buyer purchased land that the U.S. Army Corps had filled with harbor dredging materials and foundry sands, with CT Department of Environmental Protection oversight and approval. The new owner developed the property as a commercial/industrial subdivision. In the intervening years, different tenants shipped hazardous waste off site, typically when they vacated the property, causing multiple parcels to become establishments. There have been no releases from the tenants' operations (warehouses, research labs, etc.) but the urban fill exceeds DEEP's current standards. The landlord cannot now sell these industrial lots without entering the Transfer Act program and remediating the fill that the state had authorized to be placed there. There are now half a dozen properties that are so stigmatized. Their neighbors, sitting on exactly the same fill, are not deemed establishments.

Well-formulated amendments to the Transfer Act have the potential to significantly reduce the number of uncontaminated or already-remediated properties that are subject to unnecessary regulation and to create consistency across various state regulations, while preserving important environmental protections.

TRANSFER ACT FILINGS BY TOWN

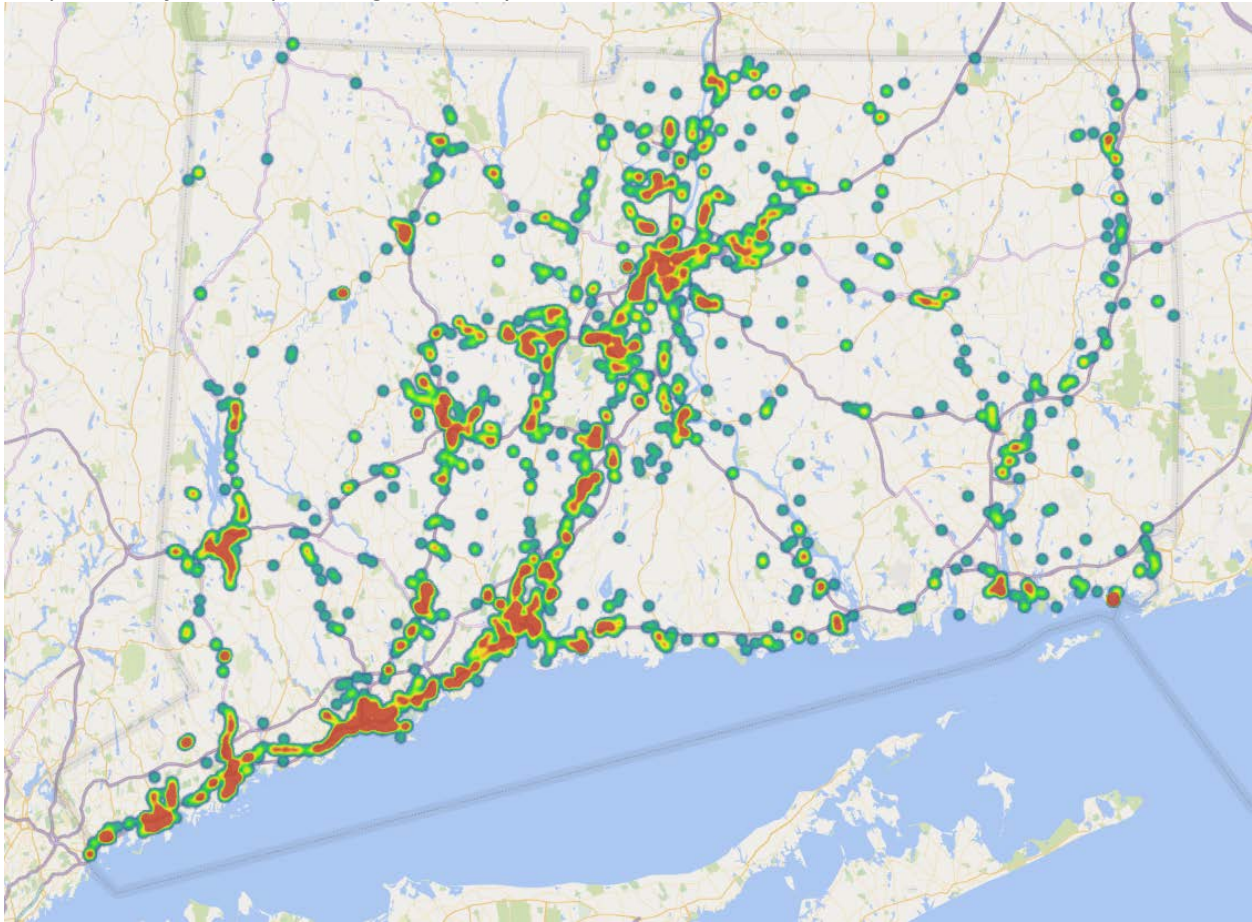
Stakeholders generally assert that the Transfer Act, as it is currently written, suppresses commerce because transactions take longer to close or do not happen at all. In addition, there can be an environmental impact because the current statute may discourage some contaminated properties from being remediated. Even "potentially contaminated" properties, which may not need any remediation, are stigmatized as it is easier to build on a greenfield site than to incur the time delays and added expense imposed by the Transfer Act.

These potential impacts of the Transfer Act are widespread: there have been over 7,200 filings since the Transfer Act began in 1985, spread across 158 of Connecticut's 169 municipalities.¹ One hundred thirty-five municipalities have had at least 5 filings. The largest number of filings have been from Connecticut's larger cities: Stamford has had close to 400, while Waterbury, Bridgeport,

¹ A full list of contaminated or potentially contaminated sites in the state, including those who have completed filings under the transfer act, can be found on the State of Connecticut Department of Energy and Environmental Protection website:

https://www.ct.gov/deep/cwp/view.asp?a=2715&q=325018&depNav_GID=1626

Map 2: Transfer Act Open Filings, February 2019



Source: Connecticut Department of Energy and Environmental Protection; Ryer Associates analysis

TRANSFER ACT IMPACTS

The decision to leave properties as is and vacant, rather than selling them under the Transfer Act for new uses, has an impact on the economy of the State of Connecticut. This impact is due to:

1. Foregone ongoing operations employment as the potential purchasing company chooses to place their facility in another state rather than deal with the delays caused by the Transfer Act, and
2. Foregone construction employment, as the purchasing company would likely have made repairs, rehabilitation, or demolition and building of new facilities on the property.

These jobs may not be foregone forever, but rather delayed significantly due to the Transfer Act process. The impacts are felt most heavily in larger municipalities, which have a high number of Establishments due to former historical uses. The same jobs can more easily go to less populated areas that still have greenfield sites available, or out of state.

In addition to the jobs lost directly by companies locating outside Connecticut and not conducting construction activities on the Transfer Act properties, jobs are also lost indirectly, as other Connecticut companies do not need to increase production due to purchases by the businesses that chose not to locate in Transfer Act establishments. The state's economy is also affected through induced effects of the foregone employment – had those jobs existed, the workers would have spent a significant portion of their earnings on household purchases at other businesses in the state.

Furthermore, had those construction and ongoing operations jobs existed, the workers and businesses would have paid taxes to the state and local governments. These lost tax revenues would have been beneficial to the state and local governments dealing with regular budget deficits.

Table 1 shows the annual impacts of the Transfer Act on the State of Connecticut from three case study properties, assuming the sale. These case studies were presented by real estate professionals or developers as lost opportunities resulting from the burdens of the Transfer Act.

Property 1, which would have employed 25 people and cost \$3 million in improvements to the property, resulted in the biggest total impacts on the state: 25 foregone jobs due to the lost construction alone via direct, indirect, and induced impacts, and a total of 51 jobs lost due to the direct, indirect, and induced impacts of the regular operations on the site. The foregone construction would have increased tax revenues by over \$128,000, while the foregone operations would have resulted in lost tax revenues of over \$288,000 to the state and local government each year. The impacts from foregone construction on the other two properties were much smaller, as these properties were expected to need less improvement upon purchase. The annual impacts on employment and taxes from Properties 2 and 3 would also have been smaller than for Property 1, due to smaller expected employment at those facilities.

Table 2: Annual Impacts of Transfer Act on Sample Properties

	Property 1	Property 2	Property 3
Industry	Grocery wholesaler	Manufacturer of plumbing fixtures	Manufacturer of aircraft parts
Anticipated effects of property sale			
Estimated cost of improvements	\$3,000,000	\$200,000	\$200,000
Operational jobs created	25	15	20
One-time impacts of foregone construction			
Total jobs not created	25	2	2
Local and state tax revenues not collected	\$128,234	\$8,548	\$8,548
Annual impacts of foregone operations			
Total jobs not created	51	42	58
Local and state tax revenues not collected	\$281,165	\$287,280	\$354,073

Sources: Data provided by Connecticut Association of Realtors; Emsi; CERC calculations.

While some of these impacts might seem small when considering individual properties, the impact overall on employment and tax revenues in the state could be much bigger. *Table 2* shows the estimated impacts for Form III filings received between 2014 to 2018 and listed in the DEEP property transfer database.² There were over 470 filings in the database for the five years that were likely still active or pending.

Assuming these filings are not completed in 2019 and that these filings were for properties with the same projected employment and improvement costs as Property 2, the most conservative of the three sample properties in *Table 1*, the state would experience a loss of over 7,000 jobs that otherwise would have been available in the state in the absence of the Transfer Act delays or decisions to purchase a facility in another state (*Table 2*). These jobs would have generated over 20,000 estimated jobs via direct, indirect, and induced effects, as other companies in Connecticut increased production to meet the needs of these initial businesses and as the employees spent their earnings on household consumption in the state. The businesses represented by these filings would have generated an estimated \$178 million in tax revenues for the state and local governments in 2019. Likewise, over 380 construction workers would have been employed at some point in the five years to make improvements to the properties represented by the filings in the DEEP database, with almost 400 additional jobs generated due to this construction work. The one-time tax impact of the construction spending would have been almost \$5 million for state and local governments.

² Filings included in this total were for those parties that have filed Form III, which indicates the property's environmental conditions are unknown or there was hazardous waste or pollution released but the property has not yet been remediated. Filings were also classified in the database with status codes indicating the filing was still active or pending (codes A, D, DL, L, LD, P). Duplicate filings by address were removed from the database.

Table 3: Estimated Impacts of Transfer Act on Filings from 2014 to 2018 in DEEP Database

	Transfer Act Filings
Anticipated effects of property sales	
<i>Estimated cost of improvements</i>	\$94,600,000
<i>Operational jobs created</i>	7,095
Impacts of foregone construction	
<i>Total jobs not created</i>	777
<i>Local and state tax revenues not collected</i>	\$4,984,879
Impacts of foregone operations	
<i>Total jobs not created</i>	20,088
<i>Local and state tax revenues not collected</i>	\$177,989,649

Sources: Data provided by Connecticut Association of Realtors; Emsi; CERC calculations.

These calculations are related to the lost economic activity for deals that fell through; without counting funds spent to investigate properties with no contamination, or without including losses due to time delays or filing fees.

CONCLUSION

It is important for the health and safety of Connecticut's citizens and for the attractiveness of the state as a place to do business that polluted properties be remediated. However, it is also important for the state to remove impediments to economic development when possible. Therefore, the Property Transfer Act and its regulations present hurdles for developers and need to be examined for possible amendment to ease undue restrictions.

The Transfer Act, adopted in 1985 in response to hazardous waste conditions, has been amended over the subsequent years in attempts to ease compliance burdens while still maintaining adequate protections. The Transfer Act was also amended to recognize the creation of the brownfield remediation and revitalization program and its coverage of many possible Transfer Act sites. Additional analysis is needed to compare the numbers and conditions of properties subject to the provisions of the two legislated programs.

Today, only Connecticut and New Jersey have this restrictive type of Transfer Act legislation. Properties that fall outside the legislative intent may be subject to its requirements. Transactions are being delayed or abandoned, which can lead to significant lost opportunities for economic growth. Delays in needed environmental cleanup can also result.

The potential impacts of the Transfer Act are widespread: there were over 470 filings with DEEP in the past five years (2014-2018) that are likely still active or pending. A total of over 7,200 filings have been made under the Transfer Act since its adoption and these have represented properties in 158 of Connecticut's 169 municipalities.

Transfer Act amendments, to greatly reduce the turnaround time for verifications and approvals and to permit transfers to go forward once a notice of Transfer Act waiver filing has been made, are being proposed and should be considered.



APPENDIX A: BACKGROUND AND LEGISLATIVE HISTORY

Attracting businesses to locate in Connecticut cities and towns is critical to the economic growth strategy that will help solve the state's fiscal problems, according to the newly-elected Governor. Economic growth needs to be a goal for entities beyond the traditional Department of Community and Economic Development, including the private businesses that are here, as well as state agencies that can help or hinder growth, such as the Departments of Labor, Transportation, Revenue Services, and Energy and Environmental Protection, according to the Governor's public pronouncements. To be most effective, this initiative must include a review of the benefits and costs associated with statutes and regulations that are involved when a business makes location decisions, including the Property Transfer Law.

In 1985 the Connecticut General Assembly enacted sections of the C.G.S. Hazardous Waste Chapter that are known as the "Property Transfer Law" (Sections 22a-134 through 22a-134e) (Transfer Act), after finding that improper management of hazardous wastes had caused contamination to the state's water, soil and air, endangering the health and safety of citizens. The overarching purpose of the Transfer Act was to address hazardous waste facilities in a manner that would protect health and safety while complying with the federal Resource Conservation and Recovery Act of 1976 (42 USC 6901 *et seq.*)

The Transfer Act requires that transferors (as defined) of certain real properties and business operations on or from which hazardous waste was generated or handled in the past must, upon transfer (generally, any change in ownership) of the property, disclose environmental conditions to the transferee and to regulators and comply with any applicable requirements to investigate and remediate conditions. The Act provides that when a transferor does not comply with its provisions that transferor is deemed strictly liable to the transferee for all costs of remediation and is subject to a judgment for damages caused by the failure to comply with the Act.

Establishments covered by the Transfer Act are those properties where hazardous waste is or was generated, or where such waste was handled, or where a dry cleaning, furniture stripping or vehicle body repair business was operated. Transfers of properties and businesses under the Act require investigation of environmental conditions and the filing of forms with the Department of Energy and Environmental Protection (DEEP). The particular forms to be filed are determined by the conditions and whether the transfer involves real property, a business operation or both.

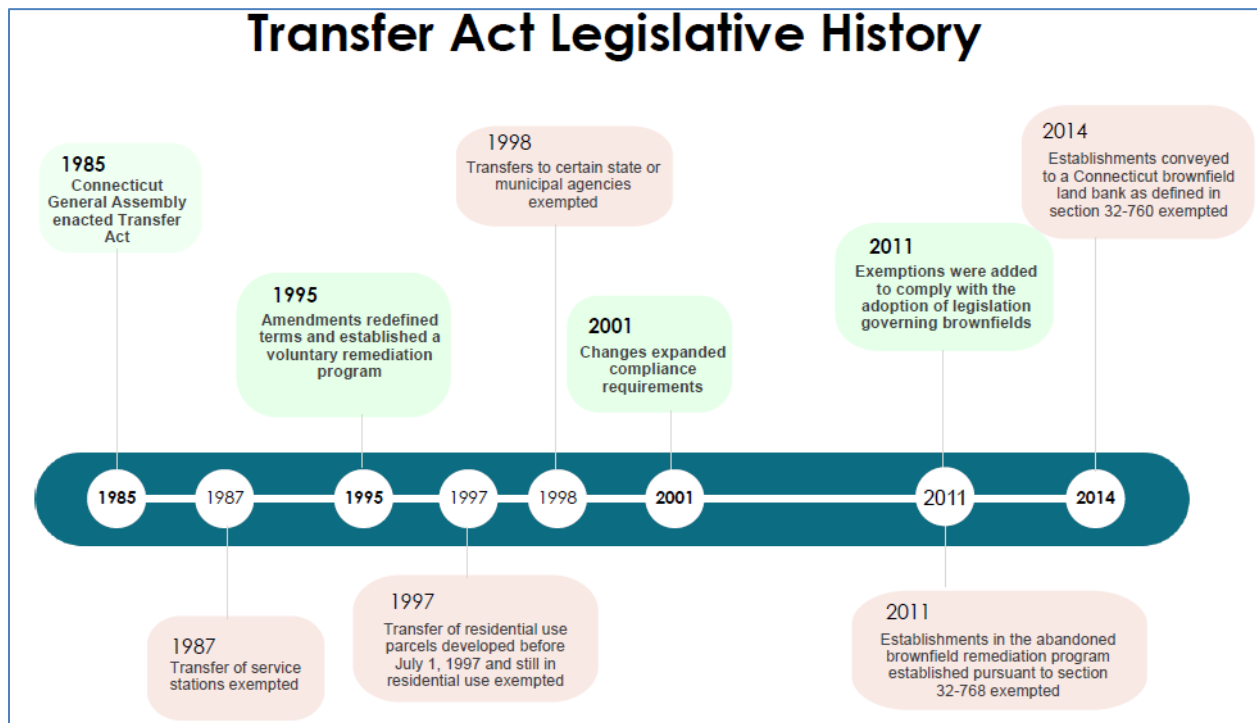
The Transfer Act Program, administered by the Remediation Division of the Bureau of Water Protection and Land Reuse of DEEP, further advises that "When transferring an establishment where there has been a release of a hazardous waste or a hazardous substance, the parties negotiate who will sign the Property Transfer Form as the Certifying Party to investigate the parcel



and remediate pollution caused by any release of a hazardous waste or hazardous substance from the establishment.”

Since its enactment, the Transfer Act has been amended many times. Significant amendments in 1995 redefined terms and established a voluntary remediation program. Changes in 2001 expanded compliance requirements. In 2011, exemptions were added to comply with the adoption of legislation governing brownfields. Some notable exemptions to the Act’s applicability include:

- 1987-transfer of service stations exempted
- 1997-transfer of residential use parcels developed before July 1, 1997 and still in residential use exempted
- 1998-transfers to certain state or municipal agencies exempted
- 2011-establishments in the abandoned brownfield remediation program established pursuant to section 32-768 exempted
- 2014-establishments conveyed to a Connecticut brownfield land bank as defined in section 32-760 exempted



The history of amendments to sections 22a-134 [Definitions] and 22a-134a [Transfer of establishments] follows.

The history of amendments to sections 22a-134 [Definitions] and 22a-134a [Transfer of establishments]:

Section 22a-134 History: P.A. 87-475 redefined “establishment” to apply to those operating on or after May 1, 1967, and to include dry cleaning, furniture stripping, painting and auto body operations and added definitions of “service stations” and “transfer of a service station”; P.A. 95-183 added Subdiv. (1) (A) to (M), inclusive, re exclusions from the definition of “transfer of establishment”; amended Subdiv. (3) to redefine “establishment” to mean any real property or business operation from which on and after November 1, 1980, there was generated, except as the result of remediation activities, more than 100 kilograms of hazardous waste in any one month and to make other grammatical adjustments for consistency; amended Subdiv. (4) to redefine “hazardous waste” to include waste identified in accordance with the federal Resource Conservation and Recovery Act or by the commissioner in regulations and polychlorinated biphenyls in concentrations greater than 50 parts per million and to exclude lead paint abatement wastes; deleted former Subdiv. (5) defining “negative declaration” and renumbered the remaining Subdivs. accordingly; amended the renumbered Subdiv. (5) to specify that “service station” means a retail operation which does not otherwise meet the definition of “establishment”; amended the renumbered Subdiv. (6) to add Subparas. (A) to (M), inclusive, re exclusions from the definition of “transfer of a service station”; and added new Subdivs. (7) to (20), inclusive, providing definitions for “certifying party”, “party associated with the transfer of an establishment”, “remediation standards”, “parcel”, “Form I”, “Form II”, “Form III”, “Form IV”, “person”, “remediate”, “licensed environmental professional”, “environmental condition assessment form”, “pollution”, and “verification”; P.A. 96-113 redefined “transfer of establishment” to add provision re providing environmental condition assessment form to commissioner for conveyance of certain portions of parcels and to exclude conveyances of service stations, redefined “establishment” to make technical clarifications, deleted a definition of “transfer of a service station”, redefined “party” to explicitly include former operators of establishments and the state, redefined “Form II” to add provision re determination that no remediation is necessary, redefined “Form IV” to add provision re accompanying documentation and added the definition of “vehicle”, renumbering Subdivs. as necessary, effective May 24, 1996; P.A. 97-218 redefined “transfer of establishment” in Subdiv. (1) to exclude conveyances of parcels developed solely for residential use prior to July 1, 1997, where such use has not changed; amended Subdiv. (3)(B) to provide that in that category of “establishment”, the waste is generated at a different location; redefined “certifying party” in Subdiv. (6) to specify that investigation of parcel be in accordance with prevailing standards and guidelines and that remediation be in accordance with the remediation standards; redefined “form I” in Subdiv. (10) to clarify that declaration is based on an investigation of the property in accordance with the prevailing standards and guidelines; redefined “form II” in Subdiv. (11) to provide that remediation of the parcel is in accordance with the remediation standards; redefined “form III” in Subdiv. (12) to provide that the investigation is in accordance with prevailing standards and guidelines; and redefined “form IV” in Subdiv. (13) to provide that the certification be accompanied by a determination by the commissioner or a licensed environmental professional under Secs. 22a-134a or 22a-133x and that the investigation is in accordance with prevailing standards and guidelines; P.A. 98-253 added Subdiv. (l)(P) excluding from the definition of “transfer of establishment” conveyances to certain state or municipal agencies; Dec. Sp. Sess. P.A. 98-1 added Subdiv. (1)(Q) re conveyance to a limited liability company established to assemble



properties to effectuate the purposes of the Patriots Stadium Enabling Act, effective January 12, 1999; P.A. 99-225 deleted said Subdiv. (1)(Q) and added new Subparas. (Q), (R) and (S) regarding exemptions for certain transactions involving certain partnership properties, amended Subdiv. (3) to clarify a provision excepting remediation activities from the definition of “establishment”, and amended Subdivs. (6), (10), (11), (12), and (13) to require adoption of regulations on or before January 1, 2002, providing standards for investigation of contaminated parcels; P.A. 99-241 deleted Subdiv. (1)(Q) re conveyance of parcel to limited liability company established to assemble properties to effectuate purposes of the Patriots Stadium Enabling Act, and added a limited liability company established to assemble properties for development of the convention center facilities, sportsplex and related parking facilities site, effective July 1, 1999 (Revisor's note: In codifying the provisions of P.A. 99-225 and 99-241, as they affect Subdiv. (1), the Revisors retained the words “or (Q) any conveyance of a parcel”, which were deleted by P.A. 99-225, so as to add the amendment to Subpara. (Q) contained in P.A. 99-241, and relettered new Subparas. (Q), (R) and (S), contained in P.A. 99-225, to (R), (S) and (T), respectively); P.A. 00-140 amended Subdiv. (1)(Q) to make a technical change, substitute “acquisition” for “assembly”, delete references to former convention center facilities, sportsplex and related parking facilities and add reference to the overall project as defined in Sec. 32-651, effective May 2, 2000; P.A. 01-204 redefined “transfer of establishment”, “establishment”, “certifying party”, “party associated with the transfer of an establishment”, “Form I”, “Form II”, “Form III”, “Form IV”, “environmental condition assessment form”, “verification” and “vehicle”, defined “business operation”, “corporate reorganization not substantially affecting the ownership of an establishment”, “Form IV verification”, “hazardous substance” and “sediment”, and made technical changes; June Sp. Sess. 01-9 revised effective date of P.A. 01-204 but without affecting this section; P.A. 03-218 amended Subdiv. (1)(B) by adding “or foreclosure of a municipal tax lien” and made a technical change (1)(E), amended Subdiv. (10)(B) by adding “based on an investigation of the parcel in accordance with the prevailing standards and guidelines”, and amended Subdiv. (11) by making technical changes and, in Subpara. (C), by adding “verification”, effective July 1, 2003; P.A. 03-19 made technical changes in Subdivs. (1), (11), (21) and (24), effective May 12, 2003; P.A. 06-76 amended Subdiv. (1) to make technical changes, to add Subpara. (V) re universal waste, and to add Subpara. (W) re residential common interest community, amended Subdiv. (10) to require verification from licensed environmental professional to be in writing, amended Subdivs. (10) and (11)(A) to require additional verification that no discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste or substances has occurred at any portion of the establishment, and added Subdivs. (26) and (27) defining “universal waste” and “universal waste transfer facility”, respectively; P.A. 06-184 amended Subdiv. (1)(B) by redefining “transfer of establishment” to include tax warrant sales pursuant to Sec. 12-157, effective June 9, 2006; P.A. 07-81 amended Subdiv. (19) to redefine “verification” to require that written opinion be on a form prescribed by commissioner; P.A. 08-124 made technical changes in Subdiv. (1)(L) and (V), effective June 2, 2008; P.A. 09-235 redefined “transfer of establishment” in Subdiv. (1), effective July 9, 2009, and added Subdiv. (28) defining “interim verification”, effective October 1, 2009; pursuant to P.A. 11-80, “Commissioner of Environmental Protection” was changed editorially by the Revisors to “Commissioner of Energy and Environmental Protection”, effective July 1, 2011; P.A. 11-141 amended Subdiv. (1) by adding Subparas. (X), (Y) and (Z) re establishment in abandoned brownfield cleanup program, transfer of title from bankruptcy court or municipality to a nonprofit organization and establishment in brownfield remediation and revitalization program, effective



July 8, 2011; P.A. 11-241 amended Subdiv. (1) by deleting former Subpara. (R) re conversion of general or limited partnership to limited liability company and redesignating existing Subparas. (S) to (W) as Subparas. (R) to (V), effective January 1, 2014; P.A. 12-32 amended Subdiv. (1) by adding new Subpara. (R) re conversion of general or limited partnership to limited liability company, redesignating existing Subparas. (R) to (V) as Subparas. (S) to (W) and adding Subpara. (X) re acquisition of establishment in abandoned brownfield cleanup program, Subpara. (Y) re transfer of title from bankruptcy court or municipality to a nonprofit organization and Subpara. (Z) re establishment in brownfield remediation and revitalization program, effective January 1, 2014; P.A. 12-183 amended Subdiv. (1) by adding Subpara. (AA) re conveyance to effectuate project certified and approved pursuant to Sec. 32-9v, effective June 15, 2012; P.A. 12-196 amended Subdiv. (1) by adding provisions, codified by the Revisors as Subpara. (BB), re conveyance of certain airport properties, effective June 15, 2012; pursuant to June 12 Sp. Sess. P.A. 12-1, “Connecticut Development Authority” was changed editorially by the Revisors to “Connecticut Innovations, Incorporated” in Subdiv. (1)(P), effective July 1, 2012; P.A. 13-308 amended Subdiv. (1) by replacing reference to Sec. 32-9kk with reference to Sec. 32-760, making a technical change and adding reference to remedial action and redevelopment municipal grant program in Subpara. (B) and by making a technical change in Subpara. (X), effective July 1, 2013; P.A. 14-88 amended Subdiv. (1)(B) to redefine “transfer of establishment” by adding references to exercise of eminent domain by a municipality and amended Subdiv. (3) to redefine “establishment” by adding provision re removal or abatement of building materials and making technical changes, effective June 3, 2014; P.A. 17-214 amended Subdiv. (1) to redefine “transfer of establishment” by adding reference to Connecticut brownfield land bank in Subpara. (B) and by adding Subpara. (CC) re conveyance of establishment to Connecticut brownfield land bank, added Subdiv. (29) defining “Connecticut brownfield land bank”, and made a technical change, effective July 1, 2017.

Section 22a-134a History: P.A. 87-475 added Subsec. (d) regarding liens against real estate on which a service station was transferred and in operation on or after May 1, 1967, and added Subsec. (e) authorizing the commissioner to adopt regulations; P.A. 87-589 made technical changes in Subsec. (d); P.A. 95-183 amended Subsec. (a) to add a reference to Sec. 22a-134e, deleted former Subsecs. (b) and (c) and relettered the remaining Subsecs. accordingly, amended the relettered Subsec. (b) to change “cleaned up” to “remediated”, added new Subsec. (d) re submittal of Form I or II, new Subsec. (e) re submittal of Form II or IV, new Subsec. (f) re review of Form III or IV, new Subsec. (g) re verification of forms by environmental professional, new Subsecs. (h) and (i) re a schedule for remediation, new Subsec. (j) re notice of remediation, new Subsec. (k) re orders to file or remediate, new Subsec. (l) re construction of the Transfer Act with regard to innocent landowners and new Subsec. (m) re transfers covered by previous filings (Revisor's note: P.A. 88-230, 90-98, 93-142 and 95-220 authorized substitution of “judicial district of Hartford” for “judicial district of Hartford-New Britain” in public and special acts of the 1995 session of the General Assembly, effective September 1, 1998); P.A. 96-113 amended Subsec. (d) to provide that a transferor shall submit a copy of any Form III or IV to the transferee and amended Subsec. (k) to expand range of orders authorized under that subsection, effective May 24, 1996; P.A. 99-225 amended Subsec. (f) to require verification of investigations and to require adoption of regulations on or before January 1, 2002, providing standards for investigation of contaminated parcels and amended Subsec. (m) to provide that eligibility for the exemption under that subsection on the basis of a filing of a Form I or II is limited to filings of such forms after October 1, 1995, to require verification of investigations by



licensed environmental professionals and to require adoption of regulations before January 1, 2002, providing standards for investigation of contaminated parcels; P.A. 01-204 deleted former Subsec. (b) re liens pursuant to Sec. 22a-452 and redesignated existing Subsecs. (c) to (m) as Subsecs. (b) to (l), amended Subsec. (c) to clarify that a Form I or II submission must be complete, require the commissioner to notify the transferor no later than 90 days after the submission of a Form I or Form II if the commissioner deems the Form I or Form II incomplete, require the transferor, rather than the certifying party, to submit a complete Form III or Form IV if the transferor is unable to submit a Form I or Form II, require such Form III or Form IV to be prepared and signed by a party associated with the transfer, and require the transferor to prepare and sign the proper form if no other party associated with the transfer does so, amended Subsec. (d) to require the certifying party to a Form I, Form III or Form IV, if requested in writing by the commissioner, to submit copies of technical plans, reports and other supporting documentation of the investigation of the parcel or remediation of the establishment and make a technical change for purposes of gender neutrality, amended Subdiv. (e) to change the commissioner's notification deadline from within 15 days of receipt to no later than 30 days after receipt, make a technical change for purposes of gender neutrality, eliminate the requirement for adoption of regulations on or before January 1, 2002, and delete provision re parcels subject to an order, consent order, or stipulated judgment, amended Subsec. (f) to include a hazardous substance at the establishment in Subdiv. (1) and to substitute "establishment" for "parcel" in Subdivs. (3) to (5), amended Subsec. (g) to make the subsection applicable to a certifying party to a Form III or Form IV, require the certifying party to submit a schedule for investigating and remediating the establishment, rather than the parcel, require the commissioner to notify the certifying party if the commissioner determines that the commissioner's review and written approval is necessary, delete provisions re submission of copies of technical plans and reports, provide that the certifying party shall investigate the parcel and remediate the establishment, require the certifying party to submit a verification that the establishment has been remediated, require that the certifying party submit, as applicable, a Form IV verification and make technical changes, amended Subsec. (h) to apply to certifying parties to a Form III or Form IV, provide that commissioner's notification state approval of the investigation of the parcel and remediation of the establishment is required, provide that schedule is to apply to the investigation of the parcel and remediation of the establishment, provide that the certifying party is to submit a schedule for the submission for scopes of work and submit the scopes of work, and make technical changes, amended Subsec. (i) to apply to certifying parties to a Form III or Form IV and, in Subdivs. (2) and (3), to substitute "establishment" for "parcel", amended Subsec. (j) to allow the commissioner to issue an order to any person who fails to file a form or files an incomplete or incorrect form, allow the commissioner to issue an order to the transferor or transferee, or both, requiring a filing, substitute "establishment" for "parcel" and make conforming changes, amended Subsec. (l) to make technical changes and delete requirement for adoption of regulations on or before January 1, 2002, and added Subsec. (m) re failure of commissioner to comply with notice provisions of section does not limit commissioner's ability to enforce provisions of the Transfer Act; June Sp. Sess. P.A. 01-9 revised effective date of P.A. 01-204 but without affecting this section; P.A. 03-19 made a technical change in Subsec. (l), effective May 12, 2003; P.A. 03-82 amended Subsec. (a) by adding provision re person appointed by court to sell, convey or partition real property or as a trustee in bankruptcy shall not be deemed a party associated with the transfer of an establishment and shall not be required to comply with Secs. 22a-

134 to 22a-134e; P.A. 03-218 added “Form II” to the introductory language in Subsec. (d), amended Subsec. (d)(2) by replacing “Form II” with “Form III”, replaced “establishment” with “parcel” in Subsec. (i)(3)(B), and replaced “22a-134f” with “22a-134e” in Subsec. (m), effective July 1, 2003; P.A. 06-76 amended Subsec. (g) to designate existing language as Subdiv. (1), make a technical change, add provision re schedule specified by commissioner, replace provision re submission of independent verification with language re submission of a final verification and reliance on verification for a portion of the establishment and add Subdiv. (2) re remediation of a portion of an establishment, and amended Subsec. (h) to designate existing language as Subdiv. (1), make technical changes and add Subdiv. (2) re remediation of a portion of an establishment; P.A. 07-81 amended Subsec. (e) to provide that certifying party shall use a licensed environmental professional for verification unless notified that commissioner’s review is required, to require that investigation be performed in accordance with prevailing standards and guidelines and to make technical changes, amended Subsec. (g)(1) to add reference to Subsec. (h) as an exception, to change deadline for submission of schedule from 30 to 75 days after receipt of the notice, to add provisions re deadlines of 2 years and 3 years, respectively, for notification of completion of the investigation or initiation of the remediation, to specify that commissioner’s review may be required at any time and to make technical changes, and amended Subsec. (k) to replace reference to Sec. 22a-134(a) with reference to Sec. 22a-134a; P.A. 07-233 amended Subsec. (e) to require certifying party to use a licensed environmental professional to verify investigation and remediation, to add exception for review required by the commissioner, to require commissioner to respond not later than 45 days after receipt of an environmental condition assessment form from anyone who submitted a Form III before October 1, 1995, re whether a licensed environmental professional can be used, and to add to the licensed environmental professional’s charge in such cases verification that investigation was done according to prevailing standards and guidelines, amended Subsec. (g) to add exception as provided in Subsec. (h), to give certifying party 75, rather than 30, days to submit investigation and remediation schedule, to provide that the 75 days starts upon notice that form is complete, to require certifying party to provide commissioner with documentation that investigation and a remedial action plan are done, and to allow commissioner to prescribe the form for all verifications, and added Subsec. (e)(3) re audits, effective July 1, 2007; P.A. 08-124 made technical changes in Subsecs. (g) and (h), effective June 2, 2008; P.A. 09-235 redesignated existing Subsec. (g)(1) as Subsec. (g)(1)(A) to Subsec. (g)(1)(C), amended Subsec. (g)(1)(A) to delete references to Form IV and require schedule to provide that remediation support a verification or interim verification within specified time frame, amended Subsec. (g)(1)(B) to make provisions applicable to certifying party that submitted a Form III or Form IV before October 1, 2009, and require certifying party to achieve remediation standards to support final verification, amended Subsec. (g)(1)(C) to require certifying party that submits a Form III or Form IV after October 1, 2009, to meet remediation standards to support final or interim verification not later than 8 years after notice that the Form III or Form IV is complete, and to allow for filing extension, and added Subsec. (g)(1)(D) and Subsec. (g)(1)(E) re groundwater; pursuant to P.A. 11-80, “Department of Environmental Protection” was changed editorially by the Revisors to “Department of Energy and Environmental Protection”, effective July 1, 2011; P.A. 11-141 added Subsec. (n) re execution of Form III or Form IV not requiring certifying party to investigate or remediate, effective July 8, 2011; P.A. 14-88 amended Subsec. (g)(2) by designating existing provisions as Subpara. (A) and amending same to add “Notwithstanding the date the Form III or Form IV was submitted” and



add references to interim verification, and by adding Subpara. (B) re certifying party who submits interim verification on or before December 31, 2014, and amended Subsec. (g)(3) by adding reference to interim verification in Subpara. (A) and making a technical change in Subpara. (C)(v), effective June 3, 2014.

APPENDIX B: APPLICATIONS UNDER TRANSFER ACT PROGRAM, BY MUNICIPALITY

TOWN	Number of Applications
Andover	4
Ansonia	46
Avon	37
Barkhamsted	12
Beacon Falls	10
Berlin	91
Bethany	9
Bethel	50
Bethlehem	1
Bloomfield	93
Bolton	5
Bozrah	5
Branford	110
Bridgeport	259
Bristol	125
Brookfield	43
Brooklyn	4
Burlington	5
Canterbury	4
Canton	29
Cheshire	54
Chester	19
Clinton	14
Colchester	15
Columbia	5
Cornwall	2
Coventry	8

Cromwell	32
Danbury	194
Danielson	4
Darien	23
Deep River	14
Derby	31
Durham	10
East Granby	35
East Haddam	5
East Hampton	10
East Hartford	135
East Haven	22
East Lyme	17
East Windsor	42
Eastford	4
Ellington	11
Enfield	91
Essex	32
Fairfield	100
Farmington	82
Franklin	13
Glastonbury	64
Goshen	1
Granby	5
Greenwich	62
Griswold	15
Groton	47
Guilford	43
Haddam	6
Hamden	76
Hampton	1
Hartford	240
Harwinton	2
Hebron	5
Kent	8
Killingly	47
Lebanon	5
Ledyard	12
Lisbon	5
Litchfield	22

Madison	12
Manchester	152
Mansfield	8
Marlborough	2
Meriden	107
Middlebury	21
Middlefield	7
Middletown	107
Milford	141
Monroe	22
Montville	27
Morris	1
Naugatuck	54
New Britain	133
New Canaan	25
New Fairfield	15
New Hartford	15
New Haven	234
New London	47
New Milford	61
Newington	85
Newtown	34
Norfolk	4
North Branford	22
North Canaan	13
North Haven	125
North Stonington	3
Norwalk	202
Norwich	71
Old Lyme	3
Old Saybrook	28
Orange	52
Oxford	10
Plainfield	29
Plainville	68
Plantville	1
Plymouth	41
Pomfret	2

Portland	30
Preston	5
Prospect	6
Putnam	41
Redding	19
Ridgefield	26
Rocky Hill	37
Salisbury	6
Saybrook	1
Seymour	35
Sharon	6
Shelton	101
Simsbury	37
Somers	15
South Windsor	86
Southbury	15
Southington	73
Sprague	9
Stafford	27
Stamford	397
Sterling	4
Stonington	85
Stratford	120
Suffield	18
test Town	1
Thomaston	28
Thompson	11
Tolland	10
Torrington	96
Trumbull	34
Union	5
Unionville	1
Vernon	70
Wallingford	162
Washington	3
Waterbury	265
Waterford	19
Watertown	94
West Hartford	91
West Haven	96

Westbrook	17
Westport	44
Wethersfield	26
Willington	8
Wilton	45
Winchester	51
Windham	42
Windsor	105
Windsor Locks	59
Wolcott	22
Woodbridge	17
Woodbury	6
Woodstock	4
TOTAL	7,247