

1000 FRIENDS of Connecticut

2009 Smart Growth Legislative Wrap Up

For robust cities and downtowns, to sustainably grow our state and local economies, and to protect critical natural resources, we must make comprehensive changes to the state's development policies and investment priorities.

Those changes must include: 1. reducing our reliance on the property tax; 2. improving regional cooperation; 3. modernizing local zoning codes; and 4. investing strategically and in the long-term best interests of the people and the state.

The final gavel of the 2009 legislative session fell at midnight, June third. It punctuated successful, bipartisan efforts for smart, sustainable growth. Bills passed that will:

- define smart growth and make it integral to the state's planning;
- encourage regionalism;
- finance green developments near transit;
- expedite the cleanup and reuse of polluted sites;
- prop-up struggling dairy farmers;
- protect a dedicated revenue source, the Community Investment Account, for affordable housing, open space, farmland and historic preservation; and
- make streets friendlier to cyclists, walkers and transit users.

Below, please find a summary of the bills that passed in 2009.

An Act Concerning Smart Growth and Plans of Conservation and Development Passed Senate 36 to 0 and House 143 to 2

This legislation defines smart growth and establishes smart growth principles. It authorizes the Continuing Legislative Committee on State Planning to study the State Plan of Conservation and Development, how the plan is adopted, and the process for integrating smart growth into the plan. The legislation gives the Office of Policy and Management extra time to update the next version of the state's plan and requires that the plan integrate the Connecticut Climate Change Action Plan.

"Smart Growth" is defined as: economic, social and environmental development that (A) promotes through financial and other incentives, economic competitiveness in the state while preserving natural resources, and (B)

utilizes a collaborative approach to planning, decision making, and evaluation between and among all levels of government and the communities and the constituents they serve; and

"Principles of smart growth" means standards and objectives that support and encourage smart growth when used to guide actions and decisions, including, but not limited to, standards and criteria for (A) integrated planning or investment that coordinates tax, transportation, housing, environmental and economic development policies at the state, regional and local level, (B) the reduction of reliance on the property tax by municipalities by creating efficiencies and coordination of services on the regional level while reducing interlocal competition for grand list growth, (C) the redevelopment of existing infrastructure and resources, including but not limited to brownfields and historic places, (D)

transportation choices that provide alternatives to automobiles including rail, public transit, bikeways and walking, while reducing energy consumption, (E) the development or preservation of housing affordable to households of varying income in locations proximate to transportation or employment centers or locations compatible with smart growth, (F) concentrated, mixed-use, mixed income development proximate to transit nodes and civic, employment or cultural centers, and (G) the conservation and protection of natural resources by (i) preserving open space, water resources, farmland, environmentally sensitive areas and historic properties, and (ii) further energy efficiency.

An Act Modernizing Connecticut Fertilizer Law

Passed 35 to 0 in the Senate, 133 to 16 in the House in the January to June 2009 Session of the Connecticut General Assembly

Only the last section of the legislation pertains to smart growth.

The final sections increase the document recording fee collected by town clerks to \$40 beginning July 1, 2011. Town clerks may retain one dollar for the purposes of their offices, four dollars are payable to the municipality for local capital improvement projects, and the town clerks will remit \$36 to the State Treasurer.

The “Land Protection, Affordable Housing and Historic Preservation Account” in the state’s General Fund will be renamed the “Community Investment Account”. The \$36 balance of the recording fee will be deposited into that fund and disbursed as follows: 20 percent

to the Connecticut Commission on Culture and Tourism for historic preservation and historic preservation technical assistance; 20 percent to the Department of Environmental Protection’s Municipal Open Space Grant Program; 20 percent to the Connecticut Housing Finance Authority for affordable housing programs; and 40 percent to the Department of Agriculture for agricultural viability grants, the farm transition program, to encourage schools and restaurants to buy CT grown products, farmland preservation and a new agricultural sustainability account.

The agricultural sustainability account will aggregate funds for grants to subsidize dairy farmers for each month the federal price for milk falls below the monthly cost of production.

The legislation also expands the eligibility of farm viability matching grants to include agricultural nonprofits and makes the development of new marketing programs an eligible activity for grant funds.

Much of Connecticut’s open land belongs to dairy farmers who are experiencing a large gap between the price to produce milk and the amount they receive for the milk. Sustaining these farms protects our local food supply and maintains valuable open land. At the same time, this legislation is likely to protect the Community Investment Act from state budget gap-closing raids

An Act Concerning Brownfields Development

Passed Senate 36 to 0 and House 151 to 0

The legislation makes the use of old mills on brownfield properties exempt from a floodplain requirement that applies to other state agency actions. (The language is identical to An Act Concerning Floodplain Management and Mill Properties)

It exempts properties taken in eminent domain from the transfer act so long as the party acquiring the property didn't create or contribute to contaminating the site. The party participates in the voluntary remediation program, and complies with the voluntary program's schedules and approvals. It extends the transfer act exemption to municipal economic development agencies and nonprofit economic development corporations.

The legislation reduces the legal obligations of people who acquire title for remediated brownfield properties from municipalities/ municipal economic development agencies/and nonprofit economic development corporations so long as they were not responsible for the pollution and are not directly or indirectly related to the person who is responsible for the contamination.

When properties are sold, the municipality/economic development agency/nonprofit economic development corporation retains 20 percent of the proceeds from the sale. They must deploy the proceeds for economic development capital improvements. Eighty percent of the proceeds must be transferred to the Office of Brownfield Remediation and Development to fuel future remediations.

The legislation conveys "innocent party status" to municipalities/municipal economic development agencies/nonprofit economic

development corporations/nonstock LLCs formed by municipalities that receive funding from the Office of Brownfield Remediation and Development. This frees them of liability for pollution they did not cause. If the municipal entities listed above exacerbated contamination on the site, their liability is limited to the pollution directly attributable to their negligence or recklessness.

Municipalities get permission to enter and investigate sites if the property owner can't be located, the site has a tax lien, the site is the target of eminent domain, or the municipality's legislative body determines the property is underutilized. The municipality must give 45 day's notice to the owner before entering the property. The municipality isn't liable for any contamination it finds on the sites so long as it doesn't cause or contribute to the pollution and it reports environmental hazards as required. If the municipality's agent exacerbates the pollution, the city or town will only be liable for the contamination contributed by its agent's recklessness and negligence.

Property owners may object to municipal meddling within 30 days of receiving notice from the city or town. They can only object if they are in the process of completing a comprehensive environmental assessment and have paid delinquent taxes.

The legislation establishes an abandoned brownfield cleanup program. Eligible properties must be contaminated properties that have been significantly underused since October 1, 1999. Eligible applicants must be willing to acquire title, remediate and redevelop the sites. The sites must have a regional or municipal economic development benefit. The

applicant must not have created anything that could reasonably be expected to pollute the water of the state. The applicant isn't under an order to clean up pollution on the property. The person responsible for the pollution is indeterminable or not able to clean up the property; and the Department of Economic and Community Development Commissioner may establish additional criteria at his/her discretion. The awardee must follow the guidelines for investigation and remediation established in the voluntary remediation program and must prevent any further pollution migration. People who have title to abandoned brownfield properties under the program are released from liability for investigating or remediating pollution that may have emanated from the property before they take title.

The legislation says that unless the Commissioner of the Department of Environmental Protection says otherwise in writing, investigation and remediation will follow a prescribed schedule where investigation will begin within two years, remediation will be initiated within three years, and there is verification of completion not later than eight years.

Licensed environmental professionals may submit plans to DEP on behalf of site owners or municipalities.

The legislation gives preference for green remediation technologies where possible.

Connecticut has thousands of underutilized brownfield sites. Many of the sites are in ideal smart growth redevelopment areas. Developers and municipalities have long complained that the state's legal and bureaucratic constraints coupled with a lack of funding keep the sites dirty and dilapidated.

Though this legislation provides no new capital, it does make significant attempts to shake loose some of the other constraints.

An Act Establishing a Tax Credit for Green Buildings

Passed Senate 36 to 0 and House 143 to 4

This bill creates a transferable tax credit to finance green building that is applicable on or after January 1, 2012.

The size of the credit would be determined based on: the costs for construction or rehabilitation; commissioning; architectural and engineering fees (including energy modeling); site costs like temporary electric wiring; scaffolding; demolition; fencing and security; carpeting; partitions; walls and wall coverings; ceilings; lighting; plumbing; electrical; mechanical; heating; cooling and ventilation.

The credit would not apply to the costs to purchase or remediate land, or to provide phone or computer systems.

Eligible projects would be rated LEED gold or equivalent as determined by the Commissioner of the Connecticut Department of Environmental Protection. The credit would apply only to those buildings in the project that meet the gold or platinum standard.

The credit would not exceed \$25 million in the aggregate and taxpayers may not claim the credit for more than 25 percent of allowable costs in any income year. The credit could be applied as follows: LEED platinum = 10.5 percent; LEED gold = eight percent; Core & shell platinum = seven percent; core & shell gold = five percent. Plus an additional .5 percent for projects that are mixed-use; located in a brownfield or enterprise zone, do not require sewer

extensions of more than 1/8 mile, are located within 1/4 mile walking distance of bus transit or 1/2 mile walking distance of rail, light rail, streetcar or ferry.

The Office of Policy and Management will be required to report to the General Assembly and the Governor on the status of the tax credit program on or before July 1 2013. That report is to include: number of applications for the credit, amount granted, geographical distribution of credits, and any other information the Secretary of OPM would like to include.

This tax credit will provide a much-needed source of subsidy for smart, sustainable developments.

An Act Concerning Regionalism

Passed Senate 36 to 0 and House 134 to 13

The legislation makes no changes to what towns or cities are enabled to do. It reiterates that mayors/first selectmen of two or more cities and towns in the same economic development district may agree to promote regional economic development and share the tax revenue from that economic development.

It stipulates that if municipal officials choose to enter into such an agreement, the agreement must include an agreement not to compete for new economic development, and identify the areas for:

- new economic development,
- open space and natural resource preservation,
- transit oriented development,
- capital improvements,
- regional energy consumption,
- arts and cultural asset sharing.

In addition, the agreement must include terms for three municipal cooperative programs and three education cooperative

programs. (For example: collective bargaining, purchasing, health care pooling, curriculum development, special education services, etc.)

Every municipality that is party to the agreement must participate in one general governmental cooperative program and one educational cooperative program. A copy of the agreement is to be provided to the Office of Policy and Management.

Under this legislation, Regional Councils of Elected Officials are required to promote regional economic development agreements and to identify the opportunities for and obstacles to agreements between towns within the region.

Earlier drafts of the bill would have made participating cities and towns eligible for federal economic development grants and would have provided cities and towns that prepared such agreements with a share of the sales tax and the hotel tax generated in their regions.

The bill as passed provides no incentives to regionalize.

An Act Concerning Floodplain Management and Mill Properties

Passed Senate 35 to 0 and House 142 to 0

The legislation makes the use of old mills on brownfield properties exempt from a floodplain requirement that applies to other state agency actions.

No longer will state agencies wishing to use brownfield mill properties be required to seek the Commissioner of the Department of Environmental Protection's approval for proposed activity in a floodplain. After October 1, 2009, for mills on brownfields, agencies must only show to the

Commissioner's satisfaction that the activity (1) is subject to state environmental remediation regulations, (2) is limited to the area of the property where mill uses have historically occurred, and (3) complies with the National Flood Insurance Program. An agency proposing a critical activity also must show that the proposed critical activity is above the 500-year flood mark.

include the estimated timeframe for project completion.

This legislation says in the State of Connecticut complete streets is our priority.

People seeking to bring back mills located in floodplains have frequently been thwarted by the state's floodplain policy. This legislation is intended to ease revitalization of mill properties that are on brownfields in the floodplain.

An Act Improving Bicycle and Pedestrian Access

Passed Senate 31 to 4 and House 123 to 20

This legislation does three things. It requires that a reasonable amount (after October 1, 2010 not less than one percent) of funds dedicated to construction or rehabilitation of highways and streets be used to provide sidewalks, bike lanes, curb cuts, etc. for pedestrians and cyclists.

It creates an eleven-member bicycle and pedestrian advisory board whose charge will be to examine the need for bicycle and pedestrian transportation, promote programs and facilities for cyclists and walkers, and advise state agencies on bike- & pedestrian-friendly policies and programs.

Finally, the legislation requires the Commissioner of the Department of Transportation submit a report on October first of this year and next to the General Assembly. The report will list Special Transportation Fund supported projects that contact bicycle and pedestrian access. The list will spell out the project title, scope, funding source, description and cost of bicycle and pedestrian components, and