

# Boston Business Journal

Volume Seventeen Number Fifty Two

February 6-12, 1998

©1998 Boston Business Journal, Inc.

## *Attorney advocates new reforms to brownfield legislation*

By Jeff Porter

**The Commonwealth's political leaders risk making the same mistake as their federal counterparts by failing to take the steps necessary to encourage the clean up and redevelopment of brownfields, the contaminated and underutilized industrial and commercial properties present in virtually every Massachusetts community.**



**Our Democratic and Republican leaders agree on many changes to Chapter 21E, the law governing brownfields. Nevertheless, it has been over a year since Rep. Peter Larkin of Pittsfield filed the first comprehensive brownfield bill and almost six months since the State House of Representatives' Committee on Natural Resources and Agriculture reported favorably on it. House Bill 5013 synthesizes Rep. Larkin's bill with a brownfield bill filed by Attorney General Scott Harshbarger and Rep. Charlotte Golar Richie and another one filed by then Gov. William Weld.**

**To date, no brownfield bill has hit the House or Senate floor, although it appears that may change soon.**

**In the meantime, a hot real estate market continues to create pressure to develop pristine undeveloped "greenfields" while vacant contaminated properties, otherwise prime candidates for redevelopment, remain unused.**

**Urban neighborhoods languish while suburban and rural areas with insufficient infrastructure are overwhelmed by development.**

**The solution to our brownfield problem is as easy as it is largely uncontroversial. First, liability reform must be enacted, freeing for redevelopment those otherwise attractive sites held hostage by the current liability scheme.**

**Next, sufficient governmental incentives must be provided to**

**encourage the redevelopment of those brownfield sites in urban and economically depressed area disadvantaged by more than just the liability threatened by state law. House Bill 5013 goes a long way toward accomplishing both of these goals.**

### **Liability protection**

**On the liability reform front, House Bill 5013 provides that redevelopers who clean up previously contaminated sites in accordance with current state standards are exempted from liability under both Chapter 21E and common law.**

**Owners of properties affected by offsite contamination are also provided liability protection.**

**Lenders are given greater comfort that they will not be caught by the state's liability net if they make loans to finance the redevelopment of contaminated properties.**

**By way of governmental incentives, House Bill 5013 provides for tax credits and grants for clean up expenses incurred in the redevelopment of sites in statutory defined economically distressed areas as well, as state guaranteed loans for qualifying projects.**

**House Bill 5013 is supported by Acting Gov. Cellucci and Attorney General Harshbarger. For two years running House Speaker Finneran has made passage of a brownfield bill one of his legislative priorities.**

**So why the hold up? One very significant contributing factor could be the failure of Massachusetts businesses to push for the expedited enactment of the brownfield bill. House Bill 5013 certainly doesn't give the real estate and business communities everything they were looking for in such a bill.**

**Most disappointing to these constituencies is the fact that bill does not provide the same sweeping liability exemption for those who have caused contamination who clean it up as it does for "innocent" redevelopers.**

**However, before letting House Bill 5013 wither on the vine because it doesn't deliver everything Massachusetts businesses might be looking for, we should look at the tortured fate of similar proposed reforms to the federal program governing contaminated sites, also known as Superfund.**

**Despite a broad consensus on Capital Hill on key brownfield**

issues, efforts to legislate these reforms have been stalled for years as Republicans and Democrats continue to argue about that on which they disagree rather than implementing those significant reforms on which they do agree. Massachusetts' political and business leaders should not compound this mistake by failing to reform our own clean up statute just because complete consensus on all issues is not currently possible.

### Comprehensive reforms

The fact is the reforms presented by House Bill 5013 are more comprehensive than anyone could have thought possible only 18 months ago. We could pass on the opportunity presented by these proposed reforms and make do with the statute as is until further compromises are possible.

In doing so, many meaningful development opportunities would be lost. More importantly, contaminated sites that would otherwise be cleaned up will continue to present significant risks to our health and environment and the open spaces that are among our most valued natural resources will continue to be developed needlessly.

Chapter 21E has been amended several times since its enactment in 1983. It will be amended again. Sellers and potential purchasers of brownfield sites, the communities in which those sites are located, and the environment would be better served if our political leaders enacted those reforms on which there is consensus now while continuing to debate those issues on which there is a divergence of opinion.

---

**Jeff Porter** is a partner in the Boston and Washington, D.C., law firm Mintz, Levin, Cohn, Ferris, Glovsky and Popeo PC.

Copyright Boston Business Journal. February 6, 1998. Reprinted with permission. All Rights reserved.