



House of Representatives

General Assembly

File No. 550

February Session, 2000

Substitute House Bill No. 5763

House of Representatives, April 12, 2000

The Committee on Appropriations reported through REP. DYSON of the 94th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

An Act Concerning The Underground Storage Tank Amnesty Program.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-449a of the general statutes is repealed and
2 the following is substituted in lieu thereof:

3 As used in this section and sections 22a-449c to [22a-449g] 22a-449i,
4 inclusive, and sections 4 to 6, inclusive, of this act:

5 (1) "Petroleum" means crude oil, crude oil fractions and refined
6 petroleum fractions, including gasoline, kerosene, heating oils and
7 diesel fuels;

8 (2) "Release" means any spilling, leaking, pumping, pouring,
9 emitting, emptying, discharging, injecting, escaping, leaching,
10 dumping or disposing of petroleum from any underground storage
11 tank or underground storage tank system;

12 (3) "Responsible party" means any person or entity, including the
13 state and any political subdivision of the state, which owns or operates
14 an underground storage tank or underground storage tank system
15 from which a release emanates;

16 (4) "Underground storage tank" means a tank or combination of
17 tanks, including underground pipes connected thereto, used to contain
18 an accumulation of petroleum, whose volume is ten per cent or more
19 beneath the surface of the ground, including the volume of
20 underground pipes connected thereto; [and]

21 (5) "Underground storage tank system" means an underground
22 storage tank and any associated ancillary equipment and containment
23 system; and

24 (6) "Residential underground heating oil storage tank system"
25 means an underground storage tank system used in connection with
26 residential real property comprised of four residential units or fewer.

27 Sec. 2. Section 22a-449c of the general statutes is repealed and the
28 following is substituted in lieu thereof:

29 (a) (1) There is established an account to be known as the
30 "underground storage tank petroleum clean-up account". The
31 underground storage tank petroleum clean-up account shall be an
32 account of the Environmental Quality Fund. Notwithstanding any
33 provision of the general statutes to the contrary, any moneys collected
34 shall be deposited in the Environmental Quality Fund and credited to
35 the underground storage tank petroleum clean-up account. Any
36 balance remaining in said account at the end of any fiscal year shall be
37 carried forward in said account for the fiscal year next succeeding.

38 [(b)] (2) The account shall be used by the Commissioner of
39 Environmental Protection to provide money for reimbursement or
40 payment to responsible parties or parties supplying goods or services,

41 or both, to responsible parties for costs, expenses and other obligations
42 paid or incurred, as the case may be, as a result of releases, and
43 suspected releases, costs of investigation of releases and suspected
44 releases, and third party claims for bodily injury, property damage and
45 damage to natural resources. Notwithstanding the provisions of this
46 section, the responsible party for a release shall bear all costs of the
47 release that are less than ten thousand dollars or more than one million
48 dollars, except that for any such release which was reported to the
49 department prior to December 31, 1987, and for which more than five
50 hundred thousand dollars has been expended by the responsible party
51 to remediate such release prior to June 19, 1991, the responsible party
52 for the release shall bear all costs of such release which are less than
53 ten thousand dollars or more than three million dollars. There shall be
54 allocated to the department annually, for administrative costs, one
55 million one hundred fifty thousand dollars.

56 (3) The purpose of said account is to protect public health and the
57 environment by providing for remediation of soil or water that has
58 been polluted by the release of petroleum from underground storage
59 tanks.

60 (b) There is established a subaccount within the underground
61 storage tank petroleum clean-up account to be known as the
62 "residential underground heating oil storage tank system clean-up
63 subaccount" to be used solely for the provision of reimbursements
64 under section 3 of public act 99-269, as amended by this act, for the
65 remediation of contamination attributed to residential underground
66 heating oil storage tank systems.

67 Sec. 3. Section 22a-449d of the general statutes, as amended by
68 section 4 of public act 99-269, is repealed and the following is
69 substituted in lieu thereof:

70 (a) There is established an Underground Storage Tank Petroleum
71 Clean-Up Account Review Board to review applications for

72 reimbursements and payments from the account established under
73 section 22a-449c, as amended by this act. Upon application for
74 reimbursement or payment pursuant to section 22a-449f the board
75 shall determine if a release occurred and damage resulted from such
76 release and the amount of any such damage. The board shall have the
77 authority to order payment from the residential underground heating
78 oil storage tank system clean-up subaccount to registered contractors
79 for reasonable costs associated with the remediation of a residential
80 underground heating oil storage tank system; hold hearings,
81 administer oaths, subpoena witnesses and documents through its
82 chairperson when authorized by the board; designate an agent to
83 perform such duties of the board as it deems necessary except the duty
84 to render a final decision to order reimbursement or payment from the
85 account; and provide by notice, printed on any form, that any false
86 statement made thereof or pursuant thereto is punishable pursuant to
87 section 53a-157b.

88 (b) The board shall consist of the Commissioners of Environmental
89 Protection and Revenue Services, the Secretary of the Office of Policy
90 and Management and the State Fire Marshal, or their designees; one
91 member representing the Connecticut Petroleum Council, appointed
92 by the speaker of the House of Representatives; one member
93 representing the Service Station Dealers Association, appointed by the
94 majority leader of the Senate; one member of the public, appointed by
95 the majority leader of the House of Representatives; one member
96 representing the Independent Connecticut Petroleum Association,
97 appointed by the president pro tempore of the Senate; one member
98 representing the Connecticut Gasoline Retailers Association, appointed
99 by the minority leader of the House of Representatives; one member
100 representing a municipality with a population greater than one
101 hundred thousand, appointed by the Governor; one member
102 representing a municipality with a population of less than one
103 hundred thousand, appointed by the minority leader of the Senate; one
104 member representing a small manufacturing company which employs

105 fewer than seventy-five persons, appointed by the speaker of the
106 House of Representatives; [and] one member experienced in the
107 delivery, installation, and removal of residential underground
108 petroleum storage tanks and remediation of contamination from such
109 tanks, appointed by the president pro tempore of the Senate; and one
110 member who is an environmental professional licensed under section
111 22a-133v and is experienced in investigating and remediating
112 contamination attributable to underground petroleum storage tanks,
113 appointed by the Governor. The board shall annually elect one of its
114 members to serve as chairperson.

115 (c) Not later than July 1, 2000, the board shall establish guidelines
116 for determining what costs are reasonable for payment under section 3
117 of public act 99-269, as amended by this act, and shall establish
118 requirements for financial assurance, training and performance
119 standards for registered contractors, as defined in said section 3 of
120 public act 99-269.

121 Sec. 4. Section 1 of public act 99-269 is repealed and the following is
122 substituted in lieu thereof:

123 (a) No person shall be liable to the state in any civil action for any
124 cost relating to any spill, as defined in section 22a-452c of the general
125 statutes, attributable to [an underground storage tank system, as
126 defined in section 22a-449a of the general statutes, used in connection
127 with residential real property comprised of four residential units or
128 fewer] a residential underground heating oil storage tank system if (1)
129 such person has provided for the removal or replacement of [an
130 underground petroleum storage tank associated with] such system
131 after July 1, 1999, and before January 1, 2002, and (2) such person has
132 provided notice and documentation of such removal or replacement to
133 the Commissioner of Environmental Protection in such form and
134 containing such information as the commissioner may require. After a
135 person has been released from potential liability pursuant to this

136 subsection, such release as it applies to such removal or replacement
137 shall carry forward to future owners of property where such removal
138 or replacement occurred. The provisions of this subsection shall not
139 apply to any person who fails to discontinue the use of or to remove a
140 residential underground heating oil storage tank system within the
141 period specified by an order of the Commissioner of Environmental
142 Protection. Removals and replacements shall be conducted in
143 accordance with subsection (a) of section 7 of this act.

144 (b) On or before January 1, 2000, and annually thereafter until
145 January 1, 2003, the commissioner shall report to the joint standing
146 committee of the General Assembly having cognizance of matters
147 relating to the environment regarding the program established under
148 this section, the extent to which it is used and the extent of the state's
149 liability for environmental remediation as a result of the program.

150 Sec. 5. Section 2 of public act 99-269 is repealed and the following is
151 substituted in lieu thereof:

152 [Any person in the business of removing or replacing underground
153 storage tanks pursuant to section 22a-449l shall register with the
154 Commissioner of Environmental Protection and shall provide to said
155 commissioner] No person shall remove or replace or subcontract for
156 the removal or replacement of a residential underground heating oil
157 storage tank system if such removal or replacement will involve
158 remediation of contaminated soil or groundwater, the costs of which
159 are to be paid out of the residential underground heating oil storage
160 tank system clean-up subaccount established pursuant to subsection
161 (b) of section 22a-449c, as amended by this act, unless the person is a
162 registered contractor. To become a registered contractor, a person shall
163 provide to the Commissioner of Environmental Protection, on forms
164 prescribed by said commissioner, (1) evidence of financial assurance in
165 the form of insurance, a surety bond or liquid company assets in an
166 amount not less than two hundred fifty thousand dollars, and (2) a

167 written statement certifying that such person has had any training
168 required by law for such business and that such person has (A)
169 performed no fewer than three residential underground petroleum
170 storage tank system removals, or (B) has contracted for at least three
171 removals of residential underground petroleum storage tank systems.
172 Such person shall pay a registration fee of five hundred dollars to the
173 commissioner. Each contractor holding a valid registration on July first
174 shall, not later than August first of that year, pay a renewal fee to the
175 commissioner of two hundred fifty dollars in order to maintain such
176 registration. Any money collected for registration pursuant to this
177 section shall be deposited in the Environmental Quality Fund. The
178 commissioner may revoke a registration for cause and on and after the
179 date the department adopts such regulations, may reject any
180 application for registration that does not meet such requirements.

181 Sec. 6. Section 3 of public act 99-269 is repealed and the following is
182 substituted in lieu thereof:

183 (a) As used in this section, ["contractor"] "registered contractor"
184 means a person registered with the Commissioner of Environmental
185 Protection pursuant to section 2 of [this act] public act 99-269, as
186 amended by this act. [No person who is not a contractor may remove
187 or replace any underground petroleum storage tank used in
188 connection with residential real property comprised of four residential
189 units or fewer if such removal or replacement will involve remediation
190 of contaminated soil or groundwater the costs of which are to be paid
191 out of the not less than two million dollars set aside from the proceeds
192 of bonds authorized under subdivision (1) of subsection (b) of sections
193 13 and 32 of public act 99-242* for the purpose of providing funding
194 for remediation of soil contaminated by a release from a home heating
195 oil tank. If any such replacement involves installation of an
196 underground petroleum storage tank, such tank shall conform to any
197 standards which apply to new underground petroleum storage tanks.]

198 (b) If, in the course of removing or replacing [an underground
199 petroleum storage tank associated with an underground storage tank
200 system, as defined in section 22a-449a of the general statutes, used in
201 connection with residential real property comprised of four residential
202 units or fewer,] a residential underground heating oil storage tank
203 system, a registered contractor finds that there has been a spill, as
204 defined in section 22a-452c of the general statutes, attributable to such
205 system and such contractor estimates that the remediation of such spill
206 is likely to cost more than five thousand dollars, such contractor shall
207 immediately notify the [spill response unit of the] Department of
208 Environmental Protection regarding such spill. If, after the contractor's
209 initial estimate, the contractor subsequently determines that such cost
210 will exceed five thousand dollars, the contractor shall upon that
211 determination notify the Department of Environmental Protection. The
212 department may assess the spill and confirm that the remediation
213 proposed by the contractor is appropriate and necessary, or may
214 authorize an environmental professional licensed under section 22a-
215 133v of the general statutes, to assess the spill and make such
216 confirmation. Any such remediation shall be subject to approval by the
217 department, except that the department may authorize an
218 environmental professional licensed under section 22a-133v of the
219 general statutes to make a recommendation regarding such approval.
220 If a registered contractor estimates that the remediation of such spill is
221 likely to cost more than ten thousand dollars, the commissioner or any
222 agent of the commissioner or an environmental professional licensed
223 under said section 22a-133v contracted by the department shall inspect
224 the site and confirm that such remediation is reasonable.

225 (c) (1) A registered contractor [, or a person licensed under section
226 22a-454 of the general statutes, who is engaged to perform remediation
227 of a spill associated with an underground storage tank system, as
228 defined in section 22a-449a of the general statutes, used in connection
229 with residential real property comprised of four residential units or
230 fewer may apply] shall submit to the Underground Storage Tank

231 Petroleum Clean-up Account Review Board established under section
232 22a-449d, as amended by this act, for a disbursement from the [not less
233 than two million dollars set aside from the proceeds of bonds
234 authorized under subdivision (1) of subsection (b) of sections 13 and 32
235 of public act 99-242* for the costs of such remediation provided the
236 owner of such tank system shall pay the first five hundred dollars of
237 such costs and the board may approve payment of the balance of such
238 costs up to fifty thousand dollars] residential underground heating oil
239 storage tank system clean-up subaccount established under subsection
240 (b) of section 22a-449c of the general statutes, as amended by this act,
241 all costs for work performed pursuant to a contract with the owner for
242 the remediation of a residential underground heating oil storage tank
243 system for the purpose of providing payment for the costs of such
244 remediation. An owner of a residential underground heating oil
245 storage tank system shall not be responsible to the registered
246 contractor or any subcontractor of the registered contractor for any
247 costs that are eligible for payment from the residential underground
248 heating oil storage tank system clean-up subaccount over five hundred
249 dollars. The registered contractor or any subcontractor shall not bill the
250 owner for any costs eligible for payment from said subaccount over
251 five hundred dollars unless the contractor or subcontractor enters into
252 a separate written contract with the owner authorizing the contractor
253 or subcontractor to bill the owner more than five hundred dollars and
254 such separate contract gives the owner the right to cancel such contract
255 up to three days after entering into it. Such owner shall provide to the
256 review board a statement confirming [whether the applicant] the
257 registered contractor has been engaged by such owner to remove or to
258 replace such residential underground heating oil storage tank system
259 and perform the remediation and shall execute an instrument which
260 provides for payment to said account of any amounts realized by the
261 owner, after any costs of litigation or attorney's fees have been paid,
262 from a judgment or settlement regarding any claim for the costs of
263 such remediation made against an insurance policy or any party. [The

264 contractor shall submit documentation, satisfactory to the board, of
265 any costs associated with such remediation.] In any service contract
266 entered into between a registered contractor and an owner for the
267 remediation of a residential underground heating oil storage tank
268 system, the registered contractor shall clearly identify all costs,
269 including markup costs, that are not or may not be eligible for
270 payment from said subaccount.

271 (2) The registered contractor shall submit documentation,
272 satisfactory to the review board, of any costs associated with such
273 remediation. The review board may deny remediation costs of the
274 registered contractor that the review board determines are
275 unreasonable based on the guidelines established pursuant to
276 subsection (c) of section 22a-449d, as amended by this act, and may
277 deny remediation costs (A) in excess of five thousand dollars if the
278 Department of Environmental Protection was not notified in
279 accordance with the provisions of subsection (b) of this section, and (B)
280 in excess of ten thousand dollars if the site was not inspected in
281 accordance with the provisions of subsection (b) of this section. If a
282 registered contractor fails to submit to the review board
283 documentation of costs associated with such remediation that may be
284 eligible for payment from the residential underground heating oil
285 storage tank system clean-up subaccount or if the registered contractor
286 submits documentation of such costs but the board denies payment of
287 such costs, the registered contractor shall be liable for such costs and
288 shall have no cause of action against the owner of the underground
289 petroleum storage tank.

290 (3) A copy of the review board's decision shall be sent to the
291 Commissioner of Environmental Protection and to the registered
292 contractor by certified mail, return receipt requested. The
293 commissioner or any contractor aggrieved by a decision of the review
294 board may, not more than twenty days after the date the decision was
295 issued, request a hearing before the review board in accordance with

296 chapter 54. After such hearing, the board shall consider the
 297 information submitted to it and affirm or modify its decision on the
 298 reimbursement. A copy of the affirmed or modified decision shall be
 299 sent to the commissioner and any contractor by certified mail, return
 300 receipt requested.

301 Sec. 7. (NEW) (a) Any remediation performed pursuant to sections 4
 302 to 6, inclusive, of this act shall be performed by or under the direct
 303 onsite supervision of a registered contractor, as defined in section 6 of
 304 this act and shall be performed in accordance with regulations adopted
 305 by the commissioner pursuant to section 22a-133k of the general
 306 statutes that establish direct exposure criteria for soil, pollutant
 307 mobility criteria for soil and groundwater protection criteria for GA
 308 and GAA areas. If the replacement of any residential underground
 309 heating oil storage tank system performed pursuant to the provisions
 310 of this section involves installation of an underground petroleum
 311 storage tank, such tank shall conform to any standards which apply to
 312 new underground petroleum storage tanks.

313 (b) The commissioner shall adopt regulations in accordance with the
 314 provisions of chapter 54 of the general statutes setting forth the
 315 standards and criteria for residential underground heating oil storage
 316 tank systems which may include, but not be limited to, (1) standards
 317 for criteria for the design, installation, operation, maintenance and
 318 monitoring of such facilities, (2) the life expectancy after which such
 319 systems must be removed and replaced, and (3) standards and
 320 procedures for the granting of a waiver for the installation of a new
 321 residential underground heating oil storage tank system or the
 322 replacement of an existing system.

323 Sec. 8. This act shall take effect from its passage.

ENV Committee Vote: Yea 23 Nay 0 JFS C/R APP

APP Committee Vote: Yea 50 Nay 0 JFS

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Cost, Various

Affected Agencies: Department of Environmental Protection

Municipal Impact: None

Explanation

State Impact:

The bill establishes a sub-account of the underground storage tank petroleum clean-up account for the remediation of contamination attributed to residential underground heating oil storage tank systems. However, the bill provides no funding to capitalize the account. The residential program established under PA 99-269 is currently funded through a \$2 million bond authorization during the current fiscal year and an additional \$2 million is anticipated to be available in FY 01. Over \$3 million in claims have been paid or are currently pending.

The bill specifies a renewal fee of \$250 for registration of contractors. The original legislation established a \$500 fee to register and it was unclear if the fee was to be paid on an annual or one time basis. This renewal fee is estimated to provide approximately \$42,000 a year to the Environmental Quality Fund, based on the number of contractors who have registered. These funds do not cover the costs of registration. They will minimally offset some of the costs of the program.

Requiring contractors to notify DEP, and DEP to inspect when remediation estimates exceed \$10,000 will require an additional full-time field inspector and associated other expenses at a cost of approximately \$60,000. Over 120 sites out of the total applicants thus far have been for costs exceeding \$10,000.

Eliminating the \$50,000 reimbursement cap would increase costs of the program and increase the need for future funds to pay reimbursement costs.

Requiring the DEP to adopt residential underground storage tank regulations will cost \$25,000-\$50,000 or divert staff away from program responsibilities.

Requiring the board to establish guidelines on reasonable costs, and standards for contractors will minimally increase administrative costs. However, it is unclear if the guidelines can be adopted by July 1, 2000.

Allowing for the denial of costs by the review board could minimally reduce the need for additional future funds.

Extending the amnesty to run with the land rather than the party who originally files with DEP, is not anticipated to increase costs to the state.

Adding an additional member to the underground storage tank petroleum clean-up account review board has no fiscal impact.

The bill makes additional changes concerning contractors and contractor requirements with customers and billing procedures, which have no state or municipal fiscal impact, however delineating specific costs within contracts would minimally increase administrative efficiency.

OLR Bill Analysis

sHB 5763

AN ACT CONCERNING THE UNDERGROUND STORAGE TANK AMNESTY PROGRAM.

SUMMARY:

This bill makes several changes to the residential underground storage tank (UST) remediation amnesty program established in 1999. The program also establishes, contractor registration and procedures for reimbursement of remediation costs and provides amnesty from civil liability to the state for costs related to a residential UST discharge to anyone who has their tank removed by a registered contractor between July 1, 1999 and January 1, 2002.

The bill:

1. establishes a UST petroleum clean-up subaccount to fund the program but does not capitalize it;
2. eliminates the \$50,000 reimbursement cap;
3. extends the amnesty for those who remove residential USTs by allowing it to pass on to future owners, but limits amnesty eligibility by excluding those who violate Department of Environmental Protection (DEP) orders to remove or discontinue use of a tank;
4. requires contractors to clearly inform their customers in the contract of costs that may not be covered by the program;
5. requires them to submit all eligible costs to the board for reimbursement and prohibits them from billing customers for such costs beyond the first \$500 if they fail to do so, unless they have a separate contract with the customer;
6. requires contractors to notify DEP, and DEP to inspect, when

remediation estimates exceed \$10,000;

7. requires the UST review board to develop guidelines for reimbursement decisions and for contractor training and qualifications (in addition to the existing statutory qualifications);
8. authorizes the governor to appoint an additional member to the existing 13 member review board;
9. establishes an appeal process for board decisions; and
10. requires DEP to adopt residential UST regulations and requires contractors to comply with them and meet existing remediation standards.

The bill also makes changes to the contractor registration procedures and requirements. It:

1. allows contractors to register if they have subcontracted at least three UST removals, rather than requiring them to have performed such removals;
2. establishes a \$250 contractor registration renewal fee; and
3. specifies that DEP may revoke registrations and reject applications if they fail to meet certain regulatory standards. (The bill does not authorize DEP to adopt such standards; it authorizes the review board to develop “guidelines” regarding contractor qualifications.)

EFFECTIVE DATE: Upon passage

RESIDENTIAL UST CLEAN-UP FUNDING

UST Petroleum Clean-Up Account (Commercial Clean-Up)

The bill specifies that the purpose of the UST petroleum clean-up account is to protect public health and the environment by providing for remediation of soil or water that has been polluted by petroleum from USTs. This account provides funds for cleaning-up commercial UST. It is funded through the petroleum gross earnings tax.

UST Petroleum Clean-Up Subaccount (Residential Clean-Up)

The bill establishes a subaccount within the existing UST petroleum clean-up account exclusively for paying claims for remediation of residential USTs. (The bill does not capitalize the subaccount or require funds be deposited in it.) Under current law the program is funded by up to \$2 million in general obligation bonds.

The bill authorizes the UST petroleum clean up account review board to pay such claims from the subaccount rather than from the bond funds. (It does not eliminate the bond authorization for FY 2000-01, but it eliminates the board's explicit authority to use the bonds.) It makes corresponding changes.

UST PETROLEUM CLEAN-UP ACCOUNT REVIEW BOARD

The bill expands, from 13 to 14, the members of the review board. The new member, appointed by the governor, must be a licensed environmental professional and have experience investigating and remediating UST contamination. The board reviews residential tank reimbursement applications from registered contractors and determines awards.

The bill requires the board, by July 1, 2000, to establish (1) guidelines for determining reasonable remediation costs for residential USTs and (2) financial assurance, training, and performance standards for registered contractors. (By law registered contractors must have at least \$250,000 in financial assurances.)

AMNESTY

Existing law provides amnesty from civil liability to the state for costs related to a spill from a residential UST to anyone who has their tank removed or replaced between July 1, 1999 and January 1, 2002 using a registered contractor. The bill specifies that the amnesty does not apply to those who fail to discontinue the use of or fail to remove a residential UST in accordance with a DEP order.

The bill extends the amnesty to cover future owners (*i.e.* makes it run

with the land). And it requires that removals and replacements be done under the direct, on site supervision of a supervisor and in accordance with DEP regulations.

REGISTERED CONTRACTORS

Eligibility

The bill expands the contractor eligibility requirements to allow those who have contracted for, rather than only those who performed, three or more UST removals. It specifies that the removals must be for residential tanks.

Registration Renewal

The bill requires contractors with a valid registration on July 1 of each year to pay DEP a \$250 renewal fee by August 1 of that year. DEP must deposit the renewal fees in the Environmental Quality (EQ) Fund. By law, contractors pay a \$500 initial registration fee, which is also deposited in the EQ fund.

Registration Revocation and Rejection

The bill authorizes DEP to revoke a contractor's registration for cause. (It is unclear whether the contractor must have an opportunity to be heard or to appeal.) The bill also authorizes DEP to reject any registration application that does not satisfy its regulations, but only after such regulations are adopted. (The bill does not authorize DEP to adopt such regulations; it authorizes the review board to adopt "guidelines" but it is unclear whether they could be applied to deny an application.)

UST REMEDIATION

Standards and DEP Regulations

The bill requires that residential UST remediation under the program must be performed in accordance with the existing remediation standards regulations governing groundwater protection for current and future water supply areas and direct exposure and pollutant

mobility criteria for soil.

By law, tanks installed to replace tanks removed under the program must meet all new UST standards. The bill requires the DEP to adopt regulations setting residential UST standards. The regulations may include (1) design, installation, and operation maintenance and monitoring criteria, (2) tank life expectancy, after which it must be removed, and (3) new tank installation and existing tank replacement waiver standards. (Since existing law does not prohibit residential UST installation, the waivers would apparently apply to any regulations DEP establishes.)

Notice of Certain Remediation and DEP Confirmation

By law, registered contractors must notify DEP if their initial or any subsequent cost estimates for a UST remediation exceeds \$5,000. The bill requires the contractors to provide that notice immediately or upon making the determination.

By law, the DEP may assess projects over \$5,000 to confirm whether the proposed remediation is appropriate and necessary or it may authorize a Licensed Environmental Professional (LEP) to do so. Under the bill, DEP, its designee, or a contracted LEP must inspect and confirm such proposed remediation if the estimated costs exceed \$10,000.

UST Remediation Contracts and Reimbursement

Under current law, a registered contractor or a person authorized to handle hazardous wastes may apply to the board for reimbursement of residential UST remediation expenses after the first \$500 and up to \$50,000. The bill eliminates the \$50,000 cap and limits the program to allow only registered contractors to apply to the board. (Under current law, it was unclear under what circumstances licensed, hazardous waste handlers could apply because they were not authorized to remediate residential USTs.)

The bill requires, rather than allows, such contractors to apply for reimbursement and specifies that the contractor must submit all cost

for work performed under the remediation contract. It requires the contract to clearly identify all costs that may not be eligible payment from the program including mark-up costs.

The bill specifies that the owner is not liable to the contractor for costs eligible for reimbursement after the first \$500 and prohibits the contractor (or any subcontractor) from billing the tank owner for such costs, unless the owner enters a separate contract for such services. The owner must have the right to cancel such a contract after the first three days. (This section refers to owners' liability and rights; by law, other parties may enter into such agreements.)

The bill expands contractors' potential liability by making them liable for costs that "may be eligible" under the program if the contractor fails to submit such costs to the board. By law, the contractor is liable for costs rejected by the board and may not sue the tank owner to recover them.

By law, the board may deny remediation costs that exceed \$5,000 if the contractor did not notify DEP of the costs in accordance with the law. The bill adds a similar provision for sites with costs over \$10,000 that are not inspected in accordance with the bill's requirements. It also specifies that the board may reject costs it determines are unreasonable but requires that the determination be based on the guidelines the board must establish under the bill.

Appeals Review Board

The bill requires the review board, after reviewing an application and determining an award, to send a copy of its decision to the registered contractor by certified mail return receipt requested and to DEP. Within 20 days of the decisions issuance, DEP or an aggrieved contractor may request a hearing before the review board. The board may consider any information it receives at the hearing and may modify or affirm its initial decision. It must send notice of its decision in the same manner.

BACKGROUND

Residential UST Program

PA 99-269 established an amnesty program for residential UST owners who remove or replace their tanks between July 1, 1999 and January 1, 2002. It allows them to recover related remediation expenses from bond funds administered by the UST review board if they employed a DEP-registered contractor.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute Change of Reference

Yea 23 Nay 0

Appropriations Committee

Joint Favorable Substitute

Yea 50 Nay 0