



House of Representatives

General Assembly

File No. 129

January Session, 2001

Substitute House Bill No. 6688

House of Representatives, April 4, 2001

The Committee on Environment reported through REP. STRATTON of the 17th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING REVISIONS TO CERTAIN SOLID WASTE STATUTES.

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

1 Section 1. Subsection (a) of section 3-7 of the general statutes is
2 repealed and the following is substituted in lieu thereof:

3 (a) Except as otherwise provided in this subsection, any
4 uncollectible claim for an amount of one thousand dollars or less may
5 be cancelled upon the books of any state department or agency upon
6 the authorization of the head of such department or agency. Any
7 uncollectible costs in an amount less than five thousand dollars
8 incurred by the Commissioner of Environmental Protection pursuant
9 to subdivision (1) of subsection (a) of section 22a-471 for the short-term
10 provision of potable drinking water or section 22a-451, for
11 investigating, containing, removing, monitoring or mitigating
12 pollution and contamination, emergency or hazardous waste may be
13 cancelled by the commissioner, in accordance with procedures

14 approved by the State Comptroller. When the Commissioner of
15 Environmental Protection, acting under authority granted by the
16 Governor, elects to file a claim for reimbursement of state costs for
17 investigating, containing, removing, monitoring or mitigating
18 pollution or contamination with the federal government pursuant to
19 the Oil Pollution Act of 1990, 33 USC 2701, the commissioner may
20 wave the state's right to pursue an independent cost recovery action
21 under section 22a-451 for any costs not reimbursed by the federal
22 government under the Oil Pollution Act of 1990.

23 Sec. 2. Section 22a-452a of the general statutes is repealed and the
24 following is substituted in lieu thereof:

25 (a) On and after June 3, 1985, any amount paid by the Commissioner
26 of Environmental Protection pursuant to subsection (b) of section 22a-
27 451 to contain and remove or mitigate the effects of a spill or to remove
28 any hazardous waste shall be a lien against the real estate on which the
29 spill occurred or from which it emanated or against real estate where
30 no spill occurred but from which hazardous waste was removed
31 provided such hazardous waste did not enter such real estate through
32 surface or subsurface migration. Any such lien shall be filed in
33 accordance with the provisions of this section, except that such lien
34 against real estate which has been transferred in accordance with the
35 provisions of sections 22a-134 to 22a-134d, inclusive, shall not have
36 priority over any previous transfer or encumbrance. The amount of the
37 lien shall include administrative costs, as set forth in subsection (a) of
38 section 22a-451, as of the date of the filing of the lien. Any costs
39 incurred subsequent to the filing of the lien may be the subject of
40 another lien.

41 (b) Notwithstanding the provisions of subsection (a) of this section,
42 amounts paid by the Commissioner of Environmental Protection
43 pursuant to subsection (b) of section 22a-451 shall not be a lien against
44 property operated as a public right-of-way that is owned by the state

45 or a political subdivision of the state, unless the state or the political
46 subdivision of the state would be liable for the costs of the spill
47 pursuant to subsection (a) of section 22a-451.

48 [(b)] (c) A lien pursuant to this section shall not be effective unless
49 (1) a certificate of lien is filed in the land records of each town in which
50 the real estate is located, describing the real estate, the amount of the
51 lien, the name of the owner as grantor, and (2) the commissioner mails
52 a copy of the certificate to the owner of record and to all other persons
53 of record holding an interest in such real estate over which the
54 commissioner's lien is entitled to priority. Upon presentation of a
55 certificate of lien, the town clerk shall endorse thereon [his] an
56 identification and the date and time of receipt and forthwith record it
57 in accordance with section 42a-9-409.

58 [(c)] (d) (1) Before filing a lien under this section, the commissioner
59 shall give the owner of the property on which the lien is to be filed and
60 mortgagees and lienholders of record a notice of [his] intent to file a
61 certificate of lien, as provided in this subsection.

62 (2) The notice required under this subsection shall be sent by
63 certified mail or served in the manner for serving civil process and
64 shall provide the following: (A) A statement of the purpose of the lien;
65 (B) a brief description of the property to be affected by the lien; (C) a
66 statement of the sum of the expenses incurred by the commissioner in
67 containing, removing or mitigating the effects of a spill or removing
68 hazardous waste; (D) a brief statement of the facts demonstrating
69 probable cause that the property is the subject of the expenses incurred
70 by the commissioner; and (E) the time period following service during
71 which any recipient of such notice whose legal rights may be affected
72 by the lien may request a hearing before the commissioner. A request
73 for a hearing under this subsection must be received by the
74 commissioner on or before thirty days following the service of the
75 notice of intent to file a certificate of lien. A hearing held pursuant to a

76 request filed under this subsection shall be limited to determining, in a
77 summary manner, probable cause for filing the certificate of lien.

78 ~~[(d)]~~ (e) In the absence of a timely request for a hearing, the
79 certificate of lien may be filed on the land records immediately. If a
80 hearing is held, the commissioner may issue a decision authorizing the
81 filing of a certificate of lien on the land records, denying the filing of a
82 certificate of lien or authorizing the filing and modifying the amount of
83 the certificate of lien.

84 ~~[(e)]~~ (f) Within thirty days after the filing of the certificate of lien
85 pursuant to this section, any property owner, mortgagee or other
86 lienholder of record who has been served with a copy of the certificate
87 of lien and whose legal rights may be affected by the lien may file with
88 the commissioner a request for a hearing limited to the issues of a
89 reduction in the amount of the lien or a discharge of the lien in its
90 entirety. If requested, the commissioner shall hold a hearing as soon
91 thereafter as practicable. There shall be no stay of a decision by the
92 commissioner authorizing the filing of a certificate of lien unless the
93 party seeking a stay has posted a surety acceptable to the
94 commissioner in an amount sufficient to cover the full amount of the
95 lien plus interest and costs.

96 ~~[(f)]~~ (g) Except as provided in subsection (a) of this section, such lien
97 shall take precedence over all transfers and encumbrances recorded on
98 or after June 3, 1985, in any manner affecting such interest in such real
99 estate or any part of it on which the spill occurred or from which the
100 spill emanated, or real estate which has been included, within the
101 preceding three years, in the property description of such real estate
102 and is contiguous to such real estate. This subsection shall not apply to
103 real estate which consists exclusively of residential real estate,
104 including but not limited to, residential units in any common interest
105 community, as defined in section 47-202.

106 ~~[(g)]~~ (h) In the case of all other real estate, including real estate

107 which consists exclusively of residential real estate, including but not
108 limited to, residential units in any common interest community, as
109 defined in section 47-202, the lien shall take precedence over any
110 transfer or encumbrance recorded after the commissioner files with the
111 town clerk notice of intent to file a lien on the land records in the town
112 in which the real estate is located.

113 [(h)] (i) When any amount with respect to which a lien has been
114 recorded under the provisions of this section has been paid or reduced,
115 the commissioner, upon request of any interested party, shall issue a
116 certificate discharging or partially discharging such lien, which
117 certificate shall be recorded in the same office in which the lien was
118 recorded. The town clerk shall note the recording of the certificate of
119 discharge upon the original notice of lien. Any action for the
120 foreclosure of such lien shall be brought by the Attorney General in the
121 name of the state in the superior court for the judicial district in which
122 the property subject to such lien is situated, or, if such property is
123 located in two or more judicial districts, in the superior court for any
124 one such judicial district, and the court may limit the time for
125 redemption or order the sale of such property or make such other or
126 further decree as it judges equitable.

127 (j) The Commissioner of Environmental Protection may elect not to
128 make a lien effective under subsection (c) of this section if the costs
129 incurred by the commissioner pursuant to subsection (b) of section
130 22a-451 do not exceed three thousand dollars. The commissioner may
131 elect not to make a lien effective, or may elect to release a lien once it is
132 effective, if the property is owned by a political subdivision of the state
133 and the political subdivision of the state spends an amount that is at
134 least equivalent to the costs incurred by the commissioner for purposes
135 of environmental remediation and redevelopment of the property.

136 Sec. 3. Section 22a-208y of the general statutes is repealed and the
137 following is substituted in lieu thereof:

138 The person holding the permit for a resources recovery facility, a
139 municipal solid waste landfill or a solid waste disposal area for the
140 disposal of bulky waste may submit to the Commissioner of
141 Environmental Protection a plan for the acceptance and disposal of
142 special waste or processed construction and demolition wood at such
143 facility. For purposes of this section, "special waste" shall have the
144 meaning provided in regulations adopted by said commissioner under
145 this chapter. Such plan shall identify special waste or processed
146 construction and demolition wood which can be subject to uniform
147 procedures for screening, testing, acceptance, recordkeeping, handling
148 and disposal and shall include the rate at which such waste shall be
149 processed. The commissioner shall review any plan submitted
150 according to this section and shall approve or deny such plan. If
151 accepted, compliance with such plan may constitute the special waste
152 authorization from said commissioner which would otherwise be
153 required for waste which meets the criteria of the plan.

154 Sec. 4. Section 22a-255h of the general statutes is repealed and the
155 following is substituted in lieu thereof:

156 (1) "Package" means any container used for the marketing,
157 protecting or handling of a product and includes a unit package, an
158 intermediate package and a shipping container. "Package" also means
159 any unsealed receptacle such as a carrying case, crate, cup, pail, rigid
160 foil or other tray, wrapper or wrapping film, bag or tub but shall not
161 include any glass, ceramic or metal receptacle which is intended to be
162 reusable or refillable.

163 (2) "Distributor" means any person, [who] firm, association,
164 partnership or corporation that takes title or delivery from the
165 manufacturer of a package, packaging component or product to use
166 for promotional purposes or to sell.

167 (3) "Packaging component" means any part of a package, including,
168 but not limited to, any interior or exterior blocking, bracing,

169 cushioning, weatherproofing, exterior strapping, coating, closure, ink,
170 label, dye, pigment, adhesive, stabilizer or other additive. Tin-plated
171 steel that meets specification A623 of the American Society of Testing
172 and Materials shall be considered as a single packaging component.
173 Electrolytic galvanized steel that meets specification A879 of the
174 American Society of Testing and Materials and hot-dipped coated
175 galvanized steel that meets specification A525 of the American Society
176 of Testing and Materials shall be treated in the same manner as tin-
177 plated steel.

178 (4) "Commissioner" means the Commissioner of Environmental
179 Protection.

180 (5) "Department" means the Department of Environmental
181 Protection.

182 (6) "Intermediate package" means a wrap, box, or bundle which
183 contains two or more unit packages of identical items.

184 (7) "Unit package" means the first tie, wrap, or container applied to
185 a single item, a quantity of the same item, a set, or an item with all its
186 component parts, which constitutes a complete and identifiable
187 package containing the unit of issue of a product for ultimate use.

188 (8) "Shipping container" means a container which is sufficiently
189 strong to be used in commerce for packing, storing and shipping
190 commodities.

191 (9) "Container" means a receptacle capable of closure.

192 (10) "Intentionally introduced" means deliberately utilized regulated
193 metal in the formulation of a package or packaging component where
194 the continued presence of such metal is desired in the final package or
195 packaging component to provide a specific characteristic, appearance
196 or quality. The use of a regulated metal as a processing agent or
197 intermediate to impart certain chemical or physical changes during

198 manufacturing where the incidental retention of a residue of said
199 metal in the final package or packaging component is neither desired
200 nor deliberate shall not be considered intentional introduction for the
201 purposes of this section where such package or component is in
202 compliance with subsection (c) of section 22a-255i. The use of recycled
203 materials as feedstock for the manufacture of new packaging materials
204 where some portion of the recycled materials may contain amounts of
205 the regulated metals shall not be considered intentional introduction
206 for the purposes of this section provided the new package or
207 packaging component is in compliance with subsection (c) of section
208 22a-255i.

209 (11) "Distribution" means the process for transferring a package or
210 packaging component for promotional purposes or resale. Persons
211 involved solely in delivering a package or packaging component on
212 behalf of third parties shall not be considered distributors.

213 (12) "Manufacturer" means any person, firm, association,
214 partnership or corporation producing a package or packaging
215 component, as defined in subdivision (3) of this section.

216 (13) "Manufacturing" means the physical or chemical modification
217 of a material to produce packaging or packaging components.

218 (14) "Supplier" means any person, firm, association, partnership or
219 corporation which sells, offers for sale or offers for promotional
220 purposes packages or packaging components which will be used by
221 any other person, firm, association, partnership or corporation to
222 package a product.

223 Sec. 5. Subsection (a) of section 22a-255i of the general statutes is
224 repealed and the following is substituted in lieu thereof:

225 (a) As soon as feasible, but not later than October 1, 1992, no
226 package or packaging component shall be offered for sale or

227 promotional purposes in this state, by its manufacturer or distributor,
228 if it is composed of any lead, cadmium, mercury or hexavalent
229 chromium which has been intentionally introduced during
230 manufacturing or distribution, as opposed to the incidental presence of
231 any of these substances.

232 Sec. 6. Section 22a-255j of the general statutes is repealed and the
233 following is substituted in lieu thereof:

234 All packages and packaging components shall be subject to sections
235 22a-255g to 22a-255m, inclusive, except the following:

236 (1) A package or packaging component which was manufactured
237 prior to October 1, 1990, and displays a code indicating the date it was
238 manufactured;

239 (2) A package or packaging component that would not exceed any
240 maximum concentration set forth in subsection (c) of section 22a-255i
241 but for the addition or use of recycled materials; provided the
242 provisions of sections 22a-255g to 22a-255m, inclusive, as amended by
243 this act, shall apply to such packages on and after January 1, [2000]
244 2010;

245 (3) A package or packaging component to which lead, cadmium,
246 mercury or hexavalent chromium have been added in the
247 manufacturing or distribution process in order to comply with health
248 or safety requirements of federal law, provided the manufacturer of
249 such a package or packaging component has demonstrated to the
250 commissioner that such package or packaging component is entitled to
251 an exemption under this subdivision and the commissioner grants
252 such exemption. The exemption shall be effective for up to two years
253 and may be extended if circumstances warrant an extension. An
254 extension may be granted for up to two years;

255 (4) Any alcoholic liquor bottled prior to October 1, 1992;

256 (5) A package or packaging component to which lead, cadmium,
257 mercury or hexavalent chromium have been added in the
258 manufacturing or distribution process for which there is no feasible
259 alternative to the use of lead, cadmium, mercury or hexavalent
260 chromium provided the manufacturer of such a package or packaging
261 component has demonstrated to the commissioner that such package
262 or packaging component is entitled to an exemption under this
263 subdivision and the commissioner grants such exemption. The
264 exemption shall be effective for two years and may be extended if
265 circumstances warrant an extension. An extension may be granted for
266 up to two years. For purposes of this subdivision, a use for which there
267 is no feasible alternative is one which is essential to the protection, safe
268 handling or function of the package's contents and for which [there is
269 no substitute] technical constraints preclude the substitution of the
270 other materials. For purposes of this subdivision, a use for which there
271 is no feasible alternative does not include marketing;

272 (6) A package or packaging component that exceeds contaminant
273 levels set forth in subsection (c) of section 22a-255i, provided (A) the
274 product being conveyed by such package or packaging component is
275 regulated under federal or state health or safety requirements; (B) the
276 transportation of such package or packaging component is regulated
277 under federal or state transportation requirements; (C) the disposal of
278 the package or packaging component is performed according to
279 federal or state radioactive or hazardous waste disposal requirements;
280 and (D) the manufacturer of such package or packaging component
281 has demonstrated to the commissioner that such package or packaging
282 component is entitled to an exemption under this subdivision and the
283 commissioner grants such exemption. Any exemption granted under
284 this subdivision shall expire on January 1, [2000] 2010;

285 (7) A package or packaging component which is reusable and has a
286 controlled distribution and reuse but which exceeds the contaminant
287 levels set forth in subsection (c) of section 22a-255i, provided the

288 manufacturer or distributor of such package or packaging component
289 petitions the commissioner for an exemption and the commissioner
290 grants such exemption. A manufacturer or distributor petitioning the
291 commissioner for such an exemption shall (A) satisfactorily
292 demonstrate that the environmental benefit of the reusable packaging
293 or packaging component is significantly greater as compared to the
294 same package or packaging component manufactured in compliance
295 with the contaminant levels set forth in subsection (c) of section 22a-
296 255i, and (B) submit a written plan including, at a minimum, the
297 following elements: (i) A means of identifying in a permanent and
298 visible manner those reusable packages or packaging components
299 containing regulated metals for which the exemption is sought; (ii) a
300 method of regulatory and financial accountability such that a specified
301 percentage of such reusable packaging or packaging components
302 manufactured and distributed to other persons are not discarded by
303 those persons after use, but are returned to the manufacturer or [his]
304 its designee; (iii) a system of inventory and record maintenance to
305 account for the reusable packaging or packaging components placed in
306 and removed from service; (iv) a means of transforming returned
307 packaging or packaging components that are no longer reusable into
308 recycled materials for manufacturing or into manufacturing wastes
309 which are subject to existing federal or state laws or regulations to
310 ensure that these wastes do not enter the commercial or municipal
311 waste stream; and (v) a system for annually reporting to the
312 commissioner any changes to the system or changes regarding the
313 manufacturer's designee. Any exemption granted under this
314 subdivision shall expire on January 1, [2000] 2010.

315 Sec. 7. Subsection (a) of section 22a-255m of the general statutes is
316 repealed and the following is substituted in lieu thereof:

317 (a) The department may, in consultation with the [Source Reduction
318 Council of the Council of Northeastern Governors] other member
319 states of the Toxics in Packaging Clearinghouse, review the

320 effectiveness of sections 22a-255g to 22a-255m, inclusive, as amended
321 by this act, and provide a report based on such review to the Governor
322 and the General Assembly. The report may describe substitutes which
323 manufacturers and distributors of packages and packaging
324 components have used in place of lead, mercury, cadmium and
325 hexavalent chromium, and may contain recommendations concerning
326 (1) other toxic substances contained in packaging that should be added
327 to those regulated under the provisions of sections 22a-255g to 22a-
328 255m, inclusive, as amended by this act, in order to further reduce the
329 toxicity of packaging waste, and (2) the advisability of retaining the
330 exemption provided in subdivision (2) of section 22a-255j, as amended
331 by this act.

332 Sec. 8. Subsection (a) of section 22a-454 of the general statutes is
333 repealed and the following is substituted in lieu thereof:

334 (a) No person shall engage in the business of collecting, storing or
335 treating waste oil or petroleum or chemical liquids or hazardous
336 wastes or of acting as a contractor to contain or remove or otherwise
337 mitigate the effects of discharge, spillage, uncontrolled loss, seepage or
338 filtration of such substance or material or waste nor shall any person,
339 municipality or regional authority dispose of waste oil or petroleum or
340 chemical liquids or waste solid, liquid or gaseous products or
341 hazardous wastes without a permit from the commissioner. Such
342 permit shall be in writing, shall contain such terms and conditions as
343 the commissioner deems necessary and shall be valid for a fixed term
344 not to exceed five years. No permit shall be granted, renewed or
345 transferred unless the commissioner is satisfied that the activities of
346 the permittee will not result in pollution, contamination, emergency or
347 a violation of any regulation adopted under sections 22a-30, 22a-39,
348 22a-116, 22a-347, 22a-377, 22a-430, 22a-449, 22a-451 and 22a-462. The
349 commissioner shall require payment of a fee of five hundred dollars
350 per year for each year covered by a permit to transport hazardous
351 waste and the payment of a fee of fourteen thousand dollars for a

352 permit to treat waste oil or petroleum or chemical liquids. The
353 commissioner may adopt regulations, in accordance with the
354 provisions of chapter 54, to prescribe the amount of the fees required
355 pursuant to this section. Upon the adoption of such regulations, the
356 fees required by this section shall be as prescribed in such regulations.
357 The commissioner may suspend or revoke a permit for violation of any
358 term or condition of the permit, for conviction of a violation of section
359 22a-131a or for assessment of a fine under section 22a-131. The
360 commissioner may conduct a program of study and research and
361 demonstration, relating to new and improved methods of waste oil
362 and petroleum or chemical liquids or waste solid, liquid or gaseous
363 products or hazardous wastes disposal. For the purposes of this
364 section, collecting, storing, or treating of waste oil, petroleum or
365 chemical liquids or hazardous waste shall mean such activities when
366 engaged in by a person whose principal business is the management of
367 such wastes. The commissioner may, by regulations adopted in
368 accordance with the provisions of chapter 54, exempt persons,
369 municipalities or regional authorities from the requirement to obtain a
370 permit under this section for activities associated with universal
371 wastes, as defined in 40 CFR 260.10.

372 Sec. 9. Section 22a-611 of the general statutes is repealed and the
373 following is substituted in lieu thereof:

374 The owner or operator of a facility required to complete a toxic
375 release form under Section 313 of the Emergency Planning and
376 Community Right-to-Know Act of 1986 shall submit such form
377 annually to the commission on or before July [1, 1990, and annually
378 thereafter] first or a date established by the United States
379 Environmental Protection Agency, whichever is later.

ENV **JOINT FAVORABLE SUBST.**

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: Minimal Savings

Affected Agencies: Department of Environmental Protection

Municipal Impact: Minimal Savings

Explanation

State and Municipal Impact:

Changes made in the bill concerning the cancellation of uncollectable costs and exemptions from certain liens are anticipated to result in a minimal reduction in paperwork and staff time for the Department of Environmental Protection (DEP), based on past history. Submittal and approval of plans to DEP by bulky waste facilities or municipal landfills instead of the need for individual authorizations by DEP for these entities to accept certain wastes, is anticipated to streamline the current process and result in efficiencies for the state and municipalities.

Allowing the DEP to adopt regulations which exempt persons, municipalities, or regional authorities from permit requirements associated with universal waste will streamline current procedures. These regulations are currently being developed and anticipated to go to public hearing within the next few months.

Sections of the bill concerning heavy metals in packaging, updating the name of the group DEP can consult with concerning packaging, as well as making a report submittal date consistent with the Federal

Environmental Protection Agency, have no fiscal impact.

OLR Bill Analysis

sHB 6688

AN ACT CONCERNING REVISIONS TO CERTAIN SOLID WASTE STATUTES.

SUMMARY:

This bill expands the powers of the Department of Environmental Protection (DEP) commissioner over the cleanup of hazardous material spills.

It allows a DEP permitted bulky waste facility or municipal landfill to submit a plan for accepting special waste or processed construction and demolition wood waste. Special waste includes such things as fly ash, sewage sludge, asbestos, and biomedical waste. Among other things, the plan must identify which waste can be screened, tested, and disposed of at the facility and the rate at which they can be processed. DEP must approve or deny the plan. If approved, the plan takes the place of the DEP authorization needed to accept such waste.

The bill changes some restrictions on heavy metals in packaging materials. Current law restricts the amount of heavy metals (lead, mercury, cadmium, and hexavalent chromium) that packaging materials can contain. The bill reinstates, until January 1, 2010, two exemptions from the law and restricts the scope of a third exemption. It also broadens a ban on the introduction of heavy metals by packaging manufacturers and distributors.

The bill authorizes the DEP commissioner to adopt regulations allowing individuals and entities engage in certain activities with regard to federal universal waste rules without obtaining a DEP hazardous waste permit.

Under federal law, owners and operators of facilities that use hazardous chemicals must complete forms describing their releases of toxic materials. Under state law, they must submit this form annually

to the DEP commissioner. The bill requires them to submit this form by a date specified by the U.S. Environmental Protection Agency, rather than by July 1, if the federally required date is later.

EFFECTIVE DATE: October 1, 2001

HAZARDOUS MATERIAL SPILLS

By law, a person or company that contaminates land or water through the release of petroleum, hazardous wastes, and other hazardous material is liable to the DEP for its costs in cleaning up or otherwise responding to the release. Under current law, the costs are a lien against the real property where (1) the spill occurred or emanated from or (2) hazardous waste was removed, provided it did not get there by surface or subsurface migration.

The bill exempts from the lien provision property owned by the state or its political subdivisions that is operated as a right-of-way, unless the state or political subdivision would be legally liable for the costs of the spill. Thus, if a highway accident involving a truck carrying hazardous material contaminated the right-of-way, the state or political subdivision would not be subject to a lien. It appears that this provision does not affect municipalities. This is because the liability provisions apply to a "person, firm, or corporation" and the term person explicitly excludes municipalities, which includes special districts as well as towns, cities, and boroughs although it includes the state and its other political subdivisions (CGS § 22a-423).

The bill allows the commissioner not to impose a lien if his costs are \$3,000 or less. He can choose not to impose a lien or can release one if a political subdivision owns the property and has spent as much on its remediation and redevelopment as the state has.

By law, the commissioner can cancel any uncollectible costs of less than \$5,000 that he incurs in responding to hazardous material releases. The bill extends this provision to costs he incurs in providing potable water to people affected by such releases. It allows the commissioner to waive the state's right to pursue an independent cost recovery under state law when he files a claim on the governor's behalf for federal reimbursement of the state's costs under the 1990 Oil

Pollution Act.

PACKAGING

By law, packaging (including packaging components) containing more than 100 parts per million of lead, mercury, cadmium, or hexavalent chromium, taken together, generally cannot be sold or offered for sale.

The bill reinstates, until January 1, 2010, two exemptions from this law that expired on January 1, 2000, and modifies a current exemption. The first exemption applies to packaging that exceeds the limit if (1) the product it contains is regulated under state or federal health or safety requirements, (2) the transportation and disposal of the packaging is state or federally regulated, and the disposal is performed according to those regulations and (3) the packaging manufacturer demonstrates to the DEP commissioner that it is entitled to the exemption.

The second exemption applies to reusable packaging whose distribution and reuse is controlled. To be eligible for this exemption, the manufacturer or distributor must demonstrate that the environmental benefits of using this packaging are significantly greater than using packaging that meets the standard. The manufacturer or distributor must also submit a detailed plan ensuring that the packaging is handled properly.

The law also provides a temporary exemption for packaging to which heavy metals have been added because there is no feasible alternative. The bill requires that technical constraints bar the substitution of any other material. Current law requires that there be no substitute. It specifies that the exemption does not apply to the introduction of heavy metals for marketing purposes. By law, the use of the heavy metals must be essential for the protection, safe handling, or function of the package's contents. The exemption lasts for two years and can be extended for another two years.

The bill bars manufacturers and distributors from offering packages for sale or promotional purposes if the heavy metals were intentionally introduced into them in the manufacturing or distribution process. This ban already applies to packaging components.

By law, violations of any of these provisions are subject to a civil penalty of up to \$10,000 per day. Knowing violations are subject to a penalty of up to \$50,000, imprisonment for up to one year, or both. The penalties do not apply to a manufacturer or distributor who relies in good faith on a written assurance from a vendor that a product complies with the standards or is exempt from them.

The bill updates the name of the body with whom DEP may consult in reviewing the effectiveness of the law.

UNIVERSAL WASTE RULE ACTIVITIES

Current law requires a person to obtain a DEP permit to engage in the business of (1) collecting, storing, or treating hazardous materials or (2) acting as a contractor to control or clean up hazardous material releases. Persons, municipalities, and regional authorities require a DEP permit to dispose of hazardous materials.

The bill authorizes the DEP commissioner to adopt regulations exempting persons, municipalities, or regional authorities from the permit requirements for activities associated with universal wastes. Universal wastes are batteries, pesticides, thermostats, and lamps, as defined by federal regulation.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 27 Nay 0