



House of Representatives

General Assembly

File No. 439

January Session, 2001

Substitute House Bill No. 6915

House of Representatives, April 24, 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 THE RESIDENTIAL UNDERGROUND STORAGE TANK AMNESTY PROGRAM.

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

1 Section 1. (NEW) (a) As used in this section, "registered contractor"
2 means a person registered with the Commissioner of Environmental
3 Protection pursuant to section 22a-449k of the general statutes,
4 "qualifying income" means the owner's adjusted gross income, as
5 defined in section 12-701 of the general statutes, for the calendar year
6 immediately preceding the year for which reimbursement is sought
7 under this section and "costs eligible for payment" means costs that are
8 reasonable for payment, as determined by the guidelines established
9 pursuant to section 22a-449d of the general statutes, as amended by
10 this act.

11 (b) On or after the effective date of this act, if, in the course of
12 removing or replacing a residential underground heating oil storage
13 tank system, a registered contractor finds that there has been a spill, as

14 defined in section 22a-452c of the general statutes, attributable to such
15 a system, in either (1) an area classified as "GA" by the Water Quality
16 Standards adopted pursuant to section 22a-426 of the general statutes,
17 if such contractor estimates that the remediation of such spill is likely
18 to cost more than ten thousand dollars, or (2) in an area classified as
19 "GB" or "GC" under such standards, then such contractor shall
20 immediately notify the Department of Environmental Protection
21 regarding such spill. The commissioner may assess the spill and
22 confirm that the remediation proposed by the contractor is appropriate
23 and necessary, or may authorize an environmental professional
24 licensed under section 22a-133v of the general statutes to assess the
25 spill and make such confirmation. Any such remediation shall be
26 subject to approval by the commissioner. The commissioner may
27 authorize an environmental professional licensed under section 22a-
28 133v of the general statutes to make a recommendation regarding such
29 approval. The costs of an inspection pursuant to this section shall be
30 eligible for payment under the residential underground heating oil
31 storage tank system clean-up subaccount established under subsection
32 (b) of section 22a-449c of the general statutes, as amended by this act.

33 (c) On or after the effective date of this act, to be eligible for
34 payment pursuant to this section, an owner shall submit the following
35 information to the Commissioner of Environmental Protection, in such
36 form as the commissioner may require, prior to entering into a contract
37 with a registered contractor for remediation of a spill attributable to a
38 residential underground heating oil storage tank system: (1) The name
39 and Social Security number of the property owner; (2) a verification
40 that such tank serves the owner's primary residence; (3) a verification
41 of the owner's qualifying income; and (4) the name of the registered
42 contractor who will perform the remediation. The commissioner shall,
43 not later than thirty days following receipt of such information, send a
44 written notice to the owner that specifies whether the owner is eligible
45 for payment under this section, whether funds are available for such
46 owner under this section and the amount of remediation costs for

47 which the owner is responsible prior to receiving reimbursement
48 under this section.

49 (d) On or after the effective date of this act, an owner shall not be
50 responsible to the registered contractor or any subcontractor of the
51 registered contractor for any costs eligible for payment in accordance
52 with the following: (1) If an owner's qualifying income is less than or
53 equal to fifty thousand dollars, the owner shall not be responsible for
54 costs eligible for payment in excess of five hundred dollars; (2) if an
55 owner's qualifying income is less than or equal to one hundred
56 thousand dollars, the owner shall not be responsible for costs eligible
57 for payment in excess of two thousand dollars; (3) if an owner's
58 qualifying income is less than or equal to one hundred fifty thousand
59 dollars, the owner shall not be responsible for costs eligible for
60 payment in excess of four thousand dollars; (4) if an owner's qualifying
61 income is less than or equal to two hundred thousand dollars, the
62 owner shall not be responsible for costs eligible for payment in excess
63 of five thousand dollars; (5) if an owner's qualifying income is less than
64 or equal to two hundred fifty thousand dollars, the owner shall not be
65 responsible for costs eligible for payment in excess of seven thousand
66 five hundred dollars; (6) if an owner's qualifying income is greater
67 than or equal to five hundred thousand dollars, the owner shall not be
68 responsible for costs eligible for payment in excess of twenty thousand
69 dollars. The registered contractor or any subcontractor of the
70 registered contractor shall not bill the owner for any costs eligible for
71 payment from said subaccount in excess of the amounts for which the
72 owner is responsible, as determined by this subsection, unless the
73 contractor or subcontractor enters into a separate written contract with
74 the owner, on a form prescribed by the commissioner, authorizing the
75 contractor or subcontractor to bill the owner for such costs, and such
76 separate contract gives the owner the right to cancel such contract up
77 to three days after entering into it. No registered contractor or any
78 subcontractor of a registered contractor shall accept payment for any
79 costs eligible for payment from said subaccount until it has provided

80 the owner with the information necessary to apply for a disbursement
81 pursuant to subsection (e) of this section.

82 (e) (1) On or after the effective date of this act, an owner shall submit
83 to the Underground Storage Tank Petroleum Clean-Up Account
84 Review Board established under section 22a-449d of the general
85 statutes, as amended by this act, an application that is postmarked no
86 later than January 1, 2002, for a disbursement from the residential
87 underground heating oil storage tank system clean-up subaccount,
88 documentation of all costs eligible for payment for work performed
89 pursuant to a contract with the owner for the remediation of a
90 residential underground heating oil storage tank system for the
91 purpose of providing payment for the costs of such remediation,
92 provided such owner has complied with the provisions of subdivisions
93 (1) and (2) of subsection (a) of section 22a-449j of the general statutes
94 and provided such remediation was completed on or before October 1,
95 2001. Such reimbursements shall be made in accordance with
96 subsection (d) of this section. Such owner shall provide to the review
97 board a statement confirming that the registered contractor has been
98 engaged by such owner to remove or to replace such residential
99 underground heating oil storage tank system and perform the
100 remediation and shall execute an instrument which provides for
101 payment to said account of any amounts realized by the owner, after
102 any costs of litigation or attorney's fees have been paid, from a
103 judgment or settlement regarding any claim for the costs of such
104 remediation made against an insurance policy or any person.

105 (2) In any service contract entered into between a registered
106 contractor and an owner for the remediation of a residential
107 underground heating oil storage tank system, the registered contractor
108 shall clearly identify all costs, including markup costs, that are not or
109 may not be eligible for payment from said subaccount.

110 (3) The owner shall submit documentation, satisfactory to the

111 review board, of any costs associated with such remediation. The
112 review board may deny reimbursement of remediation costs that the
113 review board determines are unreasonable based on the guidelines
114 established pursuant to subsection (c) of section 22a-449d of the
115 general statutes, as amended by this act, on and after the date the
116 review board establishes such guidelines, and may deny remediation
117 costs if the site was not inspected and approved by the commissioner
118 in accordance with the provisions of subsection (b) of this section. The
119 review board shall deny any such costs in accordance with subsection
120 (c) of section 1 of this act and any such costs in excess of fifty thousand
121 dollars unless the commissioner determines such additional costs are
122 warranted to protect public health and the environment. If an owner
123 fails to submit to the review board documentation of costs associated
124 with such remediation that may be eligible for payment from the
125 residential underground heating oil storage tank system clean-up
126 subaccount or if the owner submits documentation of such costs but
127 the board denies payment of such costs, the registered contractor shall
128 be liable for such costs and shall have no cause of action against the
129 owner of the underground petroleum storage tank except as provided
130 in subsection (d) of this section.

131 (4) A copy of the review board's decision shall be sent to the
132 Commissioner of Environmental Protection and to the owner by
133 certified mail, return receipt requested. The commissioner or any
134 contractor aggrieved by a decision of the review board may, not more
135 than twenty days after the date the decision was issued, request a
136 hearing before the review board in accordance with chapter 54 of the
137 general statutes. After such hearing, the board shall consider the
138 information submitted to it and affirm or modify its decision on the
139 reimbursement. A copy of the affirmed or modified decision shall be
140 sent to the commissioner and any contractor by certified mail, return
141 receipt requested.

142 Sec. 2. Section 22a-449c of the general statutes is repealed and the

143 following is substituted in lieu thereof:

144 (a) (1) There is established an account to be known as the
145 "underground storage tank petroleum clean-up account". The
146 underground storage tank petroleum clean-up account shall be an
147 account of the Environmental Quality Fund. Notwithstanding any
148 provision of the general statutes to the contrary, any moneys collected
149 shall be deposited in the Environmental Quality Fund and credited to
150 the underground storage tank petroleum clean-up account. Any
151 balance remaining in said account at the end of any fiscal year shall be
152 carried forward in said account for the fiscal year next succeeding.

153 (2) The account shall be used by the Commissioner of
154 Environmental Protection to provide money for reimbursement or
155 payment to responsible parties or parties supplying goods or services,
156 or both, to responsible parties for costs, expenses and other obligations
157 paid or incurred, as the case may be, as a result of releases, and
158 suspected releases, costs of investigation of releases and suspected
159 releases, and third party claims for bodily injury, property damage and
160 damage to natural resources. Notwithstanding the provisions of this
161 section, the responsible party for a release shall bear all costs of the
162 release that are less than ten thousand dollars or more than one million
163 dollars, except that for any such release which was reported to the
164 department prior to December 31, 1987, and for which more than five
165 hundred thousand dollars has been expended by the responsible party
166 to remediate such release prior to June 19, 1991, the responsible party
167 for the release shall bear all costs of such release which are less than
168 ten thousand dollars or more than three million dollars. There shall be
169 allocated to the department annually, for administrative costs, [one
170 million one hundred fifty thousand] two million dollars.

171 (b) There is established a subaccount within the underground
172 storage tank petroleum clean-up account to be known as the
173 "residential underground heating oil storage tank system clean-up

174 subaccount" to be used solely for the provision of reimbursements
175 under section 22a-449l, as amended by this act, and section 1 of this
176 act, for the remediation of contamination attributed to residential
177 underground heating oil storage tank systems. The subaccount shall
178 hold the proceeds of the bond funds allocated pursuant to section 51 of
179 public act 00-167*.

180 Sec. 3. Section 22a-449d of the general statutes is repealed and the
181 following is substituted in lieu thereof:

182 (a) There is established an Underground Storage Tank Petroleum
183 Clean-Up Account Review Board to review applications for
184 reimbursements and payments from the account established under
185 section 22a-449c. Upon application for reimbursement or payment
186 pursuant to section 22a-449f, the board shall determine if a release
187 occurred and damage resulted from such release and the amount of
188 any such damage. The board shall have the authority to order payment
189 from the residential underground heating oil storage tank system
190 clean-up subaccount to registered contractors for reasonable costs
191 associated with the remediation of a residential underground heating
192 oil storage tank system based on the guidelines established pursuant to
193 subsection (c) of this section; [22a-449d;] hold hearings, administer
194 oaths, subpoena witnesses and documents through its chairperson
195 when authorized by the board; designate an agent to perform such
196 duties of the board as it deems necessary except the duty to render a
197 final decision to order reimbursement or payment from the account;
198 and provide by notice, printed on any form, that any false statement
199 made thereof or pursuant thereto is punishable pursuant to section
200 53a-157b.

201 (b) The board shall consist of the Commissioners of Environmental
202 Protection and Revenue Services, the Secretary of the Office of Policy
203 and Management and the State Fire Marshal, or their designees; one
204 member representing the Connecticut Petroleum Council, appointed

205 by the speaker of the House of Representatives; one member
206 representing the Service Station Dealers Association, appointed by the
207 majority leader of the Senate; one member of the public, appointed by
208 the majority leader of the House of Representatives; one member
209 representing the Independent Connecticut Petroleum Association,
210 appointed by the president pro tempore of the Senate; one member
211 representing the Connecticut Gasoline Retailers Association, appointed
212 by the minority leader of the House of Representatives; one member
213 representing a municipality with a population greater than one
214 hundred thousand, appointed by the Governor; one member
215 representing a municipality with a population of less than one
216 hundred thousand, appointed by the minority leader of the Senate; one
217 member representing a small manufacturing company which employs
218 fewer than seventy-five persons, appointed by the speaker of the
219 House of Representatives; one member experienced in the delivery,
220 installation, and removal of residential underground petroleum
221 storage tanks and remediation of contamination from such tanks,
222 appointed by the president pro tempore of the Senate; and one
223 member who is an environmental professional licensed under section
224 22a-133v and is experienced in investigating and remediating
225 contamination attributable to underground petroleum storage tanks,
226 appointed by the Governor. The board shall annually elect one of its
227 members to serve as chairperson.

228 (c) Not later than July 1, 2000, the board shall establish guidelines
229 for determining what costs are reasonable for payment under section
230 22a-449l, as amended by this act, and section 1 of this act and shall
231 establish requirements for financial assurance, training and
232 performance standards for registered contractors, as defined in said
233 section 22a-449l, as amended by this act, and section 1 of this act. The
234 board shall not reimburse an applicant for costs associated with the
235 removal of contaminated soil that are in excess of one hundred fifty-
236 seven dollars per ton of contaminated soil.

237 (d) To the extent that funds are available in the residential
238 underground heating oil storage tank system clean-up subaccount, the
239 board may order payment from such subaccount to registered
240 contractors for reasonable costs associated with the remediation of a
241 residential underground heating oil storage tank system of an owner
242 in accordance with section 22a-449l, as amended by this act, and
243 section 1 of this act. No such payment shall be authorized unless the
244 board deems the costs reasonably based on the guidelines established
245 pursuant to subsection (c) of this section.

246 Sec. 4. Section 22a-449l of the general statutes is repealed and the
247 following is substituted in lieu thereof:

248 (a) As used in this section, "registered contractor" means a person
249 registered with the Commissioner of Environmental Protection
250 pursuant to section 22a-449k.

251 (b) If, in the course of removing or replacing a residential
252 underground heating oil storage tank system, a registered contractor
253 finds that there has been a spill, as defined in section 22a-452c,
254 attributable to such system and such contractor estimates that the
255 remediation of such spill is likely to cost more than five thousand
256 dollars, such contractor shall immediately notify the Department of
257 Environmental Protection regarding such spill. If, after the contractor's
258 initial estimate, the contractor subsequently determines that such cost
259 will exceed five thousand dollars, the contractor shall upon that
260 determination notify the Department of Environmental Protection. The
261 commissioner may assess the spill and confirm that the remediation
262 proposed by the contractor is appropriate and necessary, or may
263 authorize an environmental professional licensed under section 22a-
264 133v to assess the spill and make such confirmation. Any such
265 remediation shall be subject to approval by the commissioner, except
266 that the commissioner may authorize an environmental professional
267 licensed under section 22a-133v to make a recommendation regarding

268 such approval. If a registered contractor estimates that the remediation
269 of such spill is likely to cost more than ten thousand dollars, the
270 commissioner or any agent of the commissioner or an environmental
271 professional licensed under said section 22a-133v contracted by the
272 commissioner shall inspect the site and confirm that such remediation
273 is reasonable. The costs of such an inspection shall be eligible for
274 payment under the residential underground heating oil storage tank
275 system clean-up subaccount established under subsection (b) of section
276 22a-449c, as amended by this act.

277 (c) (1) A registered contractor shall submit to the Underground
278 Storage Tank Petroleum Clean-Up Account Review Board established
279 under section 22a-449d, as amended by this act, for a disbursement
280 from the residential underground heating oil storage tank system
281 clean-up subaccount, all reasonable costs for work performed pursuant
282 to a contract with the owner for the remediation of a residential
283 underground heating oil storage tank system for the purpose of
284 providing payment for the costs of such remediation. An owner of a
285 residential underground heating oil storage tank system shall not be
286 responsible to the registered contractor or any subcontractor of the
287 registered contractor for any costs that are eligible for payment from
288 the residential underground heating oil storage tank system clean-up
289 subaccount over five hundred dollars. The registered contractor or any
290 subcontractor shall not bill the owner for any costs eligible for
291 payment from said subaccount over five hundred dollars unless the
292 contractor or subcontractor enters into a separate written contract with
293 the owner, on a form prescribed by the commissioner, authorizing the
294 contractor or subcontractor to bill the owner more than five hundred
295 dollars and such separate contract gives the owner the right to cancel
296 such contract up to three days after entering into it. Such owner shall
297 provide to the review board a statement confirming the registered
298 contractor has been engaged by such owner to remove or to replace
299 such residential underground heating oil storage tank system and
300 perform the remediation and shall execute an instrument which

301 provides for payment to said account of any amounts realized by the
302 owner, after any costs of litigation or attorney's fees have been paid,
303 from a judgment or settlement regarding any claim for the costs of
304 such remediation made against an insurance policy or any party. In
305 any service contract entered into between a registered contractor and
306 an owner for the remediation of a residential underground heating oil
307 storage tank system, the registered contractor shall clearly identify all
308 costs, including markup costs, that are not or may not be eligible for
309 payment from said subaccount.

310 (2) The registered contractor shall submit documentation,
311 satisfactory to the review board, of any costs associated with such
312 remediation. The review board may deny remediation costs of the
313 registered contractor that the review board determines are
314 unreasonable based on the guidelines established pursuant to
315 subsection (c) of section 22a-449d, as amended by this act, on and after
316 the date the review board establishes such guidelines, and may deny
317 remediation costs (A) in excess of five thousand dollars if the
318 Department of Environmental Protection was not notified in
319 accordance with the provisions of subsection (b) of this section, and (B)
320 in excess of ten thousand dollars if the site was not inspected in
321 accordance with the provisions of subsection (b) of this section. The
322 review board shall deny any such costs in excess of fifty thousand
323 dollars unless the commissioner determines such additional costs are
324 warranted to protect public health and the environment. If a registered
325 contractor fails to submit to the review board documentation of costs
326 associated with such remediation that may be eligible for payment
327 from the residential underground heating oil storage tank system
328 clean-up subaccount or if the registered contractor submits
329 documentation of such costs but the board denies payment of such
330 costs, the registered contractor shall be liable for such costs and shall
331 have no cause of action against the owner of the underground
332 petroleum storage tank.

333 (3) A copy of the review board's decision shall be sent to the
334 Commissioner of Environmental Protection and to the registered
335 contractor by certified mail, return receipt requested. The
336 commissioner or any contractor aggrieved by a decision of the review
337 board may, not more than twenty days after the date the decision was
338 issued, request a hearing before the review board in accordance with
339 chapter 54. After such hearing, the board shall consider the
340 information submitted to it and affirm or modify its decision on the
341 reimbursement. A copy of the affirmed or modified decision shall be
342 sent to the commissioner and any contractor by certified mail, return
343 receipt requested.

344 (d) Neither the Underground Storage Tank Petroleum Clean-Up
345 Account Review Board nor the Commissioner of Environmental
346 Protection shall accept applications pursuant to this section on or after
347 the effective date of this act.

348 Sec. 5. Subsection (a) of section 22a-449m of the general statutes is
349 repealed and the following is substituted in lieu thereof:

350 (a) Any remediation of contaminated soil or groundwater the cost of
351 which is to be paid out of the subaccount established under subsection
352 (b) of section 22a-449c, as amended by this act, shall be performed by
353 or under the direct onsite supervision of a registered contractor, as
354 defined in section 22a-449l, as amended by this act, and section 1 of
355 this act and shall be performed in accordance with regulations adopted
356 by the commissioner pursuant to section 22a-133k that establish direct
357 exposure criteria for soil, pollutant mobility criteria for soil and
358 groundwater protection criteria for GA and GAA areas. If the
359 replacement of any such residential underground heating oil storage
360 tank system performed pursuant to the provisions of this section
361 involves installation of an underground petroleum storage tank, such
362 tank shall conform to any standards which apply to new underground
363 petroleum storage tanks.

364 Sec. 6. Section 22a-449l of the general statutes is repealed.

365 Sec. 7. This act shall take effect from its passage, except that section
366 6 shall take effect one year from its passage.

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: See Explanation Below

Affected Agencies: Department of Environmental Protection

Municipal Impact: None

Explanation

State Impact:

The bill makes changes to the residential underground storage tank amnesty program affecting eligibility and reimbursement. The bill prohibits the acceptance of applications under the current program starting on the bill's effective date, which is upon passage. The new program increases the deductible a homeowner must pay if his adjusted gross income (AGI) is more than \$50,000. The current deductible is \$500 for all applicants. The deductible in the bill ranges from \$500 to \$20,000 (AGI above \$500,000 or more). Applications must be submitted no later than 1/1/02, and payments are contingent on availability of funds for the program. SHB 6668, the state budget, as favorably reported by the Appropriations Committee, provides that surplus funds from FY 01 in the amount of \$17 million be provided for the sub-account of the Underground Storage Tank Petroleum Clean-Up Account which funds the program. As of April 2001, there are approximately 520 claims pending for which no funding is currently available under the current program. These claims are for \$4.2 million.

Claims have been submitted at a rate of \$200,000 per week. It is anticipated that the \$17 million will pay claims through the end of the program. Funding had been provided through GO bond allocations. Funds allocated for the program since inception have been \$9.04 million.

Under current law, it is estimated that \$14 million in revenue from the gross earnings tax on petroleum companies will be transferred from the General Fund to the Underground Storage Tank Clean-Up Account (UST) in FY 02. It is anticipated that this bill will increase revenue into the UST account due to the increase in the DEP's administrative cap from \$1.15 million to \$2.0 million per year. The additional expenditures will accelerate the account reaching the minimum floor of \$5 million. This triggers the release of revenues into the account until the funds reaches the \$15 million dollar ceiling. The additional \$850,000 is needed since administrative expenses for the commercial UST program are currently at the cap. The funds are also needed for the administrative duties of the residential program.

OLR BILL ANALYSIS

sHB 6915

AN ACT CONCERNING THE RESIDENTIAL UNDERGROUND STORAGE TANK AMNESTY PROGRAM.**SUMMARY:**

This bill substantially amends the program that pays for cleaning up contamination from residential underground heating oil storage tanks. Most of the changes affect only applications submitted after the bill's effective date (which is upon passage). But, the bill bars the board that administers the program from making payments on pending applications that (1) exceed \$157 per ton of contaminated soil removed or (2) are not reasonably based on guidelines the law required it to adopt. The bill, starting on its effective date, prohibits the board and the Department of Environmental Protection (DEP) from accepting applications under the current program. It repeals the current program one year later.

For applications submitted after its effective date, the bill changes the circumstances under which contractors must notify DEP about a spill from a tank before the cleanup begins. It eliminates a requirement that DEP inspect the spill under certain circumstances and changes the circumstances under which DEP may conduct such inspections.

The bill appears to transfer, from the contractor to the homeowner, the responsibility for initially incurring the costs of the cleanup but has conflicting provisions on this point (see COMMENT). It transfers, from the contractor to the homeowner, the responsibility for applying for reimbursement but does not appear to actually make homeowners eligible for payment. The bill increases the deductible the homeowner must pay if his adjusted gross income (AGI) for federal tax purposes is more than \$50,000.

Under the bill, to be eligible for reimbursement, the cleanup must be completed by October 1, 2001 and an application submitted to the

board, postmarked by January 1, 2002. The bill makes payments contingent on the availability of funds and makes several other changes in eligibility standards.

The Underground Storage Tank Petroleum Clean-up Account includes a sub-account that funds this program. DEP also uses the account for a separate program addressing oil spills. The bill increases DEP's annual allocation from the account for administrative expenses for the latter program from \$1,150,000 to \$2 million.

EFFECTIVE DATE: Upon passage except for the repeal of the current program, which is effective one year later.

CONTRACTOR NOTIFICATION AND DEP REVIEW

Under current law, contractors must notify DEP when they estimate or determine, when removing or replacing a tank, that the cleanup will exceed \$5,000. DEP may assess the spill to determine whether the remediation the contractor proposes is necessary and appropriate. If the contractor's estimate is more than \$10,000, DEP must do this.

Under the bill, contractors must notify DEP when (1) they estimate that the cost will exceed \$10,000 in an area classified as GA (high quality) under state water quality standards or (2) in any case involving a spill in a GB or GC (lower quality) area. DEP can assess the spill to determine whether the remediation the contractor proposes is necessary and appropriate.

By law, DEP can authorize a licensed environmental professional (LEP) to make this determination. Any such remediation is subject to DEP approval, but DEP can allow an LEP to make an approval recommendation. The costs of the inspection are eligible for reimbursement from the clean-up subaccount.

APPLICATION PROCEDURES

The bill makes the homeowner, rather than the contractor, responsible for applying for payment from the board. It generally requires the homeowner to submit the same information to the board that contractors currently have to submit.

To be eligible for payment under the bill, the homeowner must also submit an application to the department before signing a contract with the contractor. The form must include (1) the owner’s name and Social Security number, (2) a verification that the tank serves his primary home, (3) a verification of his AGI, and (4) the name of the contractor who will complete the remediation.

The commissioner must inform the owner, within 30 days of receiving the application, (1) whether he is eligible, (2) whether funds are available for him, and (3) the amount the owner must pay.

DEDUCTIBLE

Under current law, the homeowner is responsible for the first \$500 of the cleanup costs. The bill increases the deductible for owners whose AGI, for the calendar year preceding the year for which reimbursement is sought, exceeds \$50,000. (The bill does not specify how AGI is calculated for multiple income households, for example, married couples filing jointly or separately.) The deductible increases with income, as shown in Table 1.

Table 1: Deductible Under the Bill

AGI	Deductible
Up to \$100,000	\$2,000
Up to \$150,000	\$4,000
Up to \$200,000	\$5,000
Up to \$250,000	\$7,500
\$500,000 or more	\$20,000

ELIGIBILITY STANDARDS

The bill generally subjects applications filed by homeowners to the same review that currently apply to applications filed by contractors. But it requires the homeowner, as a condition of eligibility for this program, to comply with existing law’s requirements under a separate program. That program requires a homeowner to (1) provide for the removal or replacement of his underground tank system by January 1, 2002 and (2) notify DEP of the completion of these steps, in order to

gain immunity from liability to the state for oil spills.

Under current law, the board can deny a contractor reimbursement if he does not notify DEP and get its approval before beginning certain cleanup projects. Under the bill, the board can deny a homeowner reimbursement if the contractor does not meet these requirements. This means that the board can penalize a homeowner for his contractor's noncompliance with the law.

Under current law, if the contractor fails to provide the board with the required documentation or is denied reimbursement, he is liable for the remediation costs and cannot sue the homeowner. Under the bill, if the homeowner fails to provide the documentation or is denied reimbursement the contractor is liable for the damages and can sue the homeowner only for the costs above the homeowner's deductible.

The bill allows DEP or the contractor, but not the homeowner, to appeal the board's decision. It requires the board to send a copy of the affirmed or modified decision to DEP and the contractor, but not the homeowner.

COMMENT

Conflicting Provisions on Who Pays

The bill has contradictory provisions as to who initially pays the cleanup costs and who is eligible for reimbursement. The bill requires homeowners to submit certain information to DEP and the board, respectively, in order to receive payment from the program subaccount. It refers to these payments as reimbursement, implying that the homeowner incurred the cost of the cleanup. It also prohibits a contractor or his subcontractor from accepting payment from the homeowner unless it gives the homeowner the information needed to apply for reimbursement. But the bill also provides that the homeowner is not responsible to the contractor or his subcontractor for costs above the deductible. It bars the contractor for billing the homeowner for the excess costs unless the parties have entered into a contract to this effect that gives the homeowner to right to rescind it within three days.

The bill also does not appear to make homeowners eligible for payment. By law, the board is authorized to order payments from the subaccount to contractors for the reasonable costs of cleanups. The bill does not amend this provision to extend this authority to provide for payments to homeowners. And it reiterates this provision for applications received after its effective date.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 28 Nay 0