



Senate

General Assembly

File No. 733

January Session, 2001

Senate Bill No. 1010

Senate, May 10, 2001

The Committee on Finance, Revenue and Bonding reported through SEN. LOONEY of the 11th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING THE DELEGATION OF CERTAIN NUCLEAR REGULATORY COMMISSION PROGRAMS.

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

1 Section 1. Section 22a-152 of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 (a) The Governor, on behalf of this state, is authorized to enter into
4 agreements with the government of the United States providing for
5 discontinuance of certain of the programs of the government of the
6 United States with respect to sources of ionizing radiation and the
7 assumption thereof by this state, as provided for in the Atomic Energy
8 Act of 1954, as amended.

9 (b) The Commissioner of Environmental Protection shall adopt
10 regulations, in accordance with the provisions of chapter 54, to
11 establish a fee-based program for the control of radiation hazards
12 sufficient to protect the public health, safety and welfare and secure

13 status as an agreement state from the United States Nuclear Regulatory
14 Commission. For purposes of this section, "agreement state" shall have
15 the same meaning as in 42 USC Section 2021b, as from time to time
16 amended. The fees collected pursuant to such regulations shall cover
17 all costs to the state associated with the administration of such
18 radiation hazard control program.

19 (c) There is established a fund to be known as the "Agreement State
20 Management Fund" which shall be held by the Treasurer. Within the
21 Agreement State Management Fund, there is established and created a
22 nonlapsing account to be known as the "agreement state management
23 fund account". The Agreement State Management Fund shall contain
24 fees collected pursuant to the provisions of subsection (b) of this
25 section and shall be deposited and credited to the agreement state
26 management fund account. The agreement state management fund
27 account shall be used to pay any costs to state agencies of
28 implementing, administering and maintaining agreement state status
29 with the United States Nuclear Regulatory Commission. All moneys
30 deposited within the agreement state management account are
31 deemed to be appropriated for this purpose.

32 Sec. 2. Section 22a-157 of the general statutes is repealed and the
33 following is substituted in lieu thereof:

34 (a) No person shall use, manufacture, produce, transport, transfer,
35 receive, acquire, own or possess any source of ionizing radiation,
36 unless exempt, licensed or registered in accordance with the provisions
37 of sections 22a-151 to 22a-158, inclusive.

38 (b) Any person who through negligent or reckless conduct causes
39 pollution or contamination or potential pollution or contamination of
40 any land, water or air resources of the state through a discharge,
41 spillage, uncontrolled loss, leakage or leaching of radioactive material
42 or radioactive waste without a license, shall be liable for all costs and
43 expenses incurred by the Commissioner of Environmental Protection

44 in containing, removing, cleaning, mitigating or preventing such
45 pollution or contamination or potential pollution or contamination.
46 Nothing in this subsection shall preclude the commissioner from
47 seeking additional compensation that a court may award, including
48 punitive damages. Upon the request of the commissioner, the Attorney
49 General shall bring a civil action to recover all such costs and expenses.

50 (c) Any person who contains or removes or otherwise cleans
51 radioactive material or radioactive waste pollution or contamination,
52 or mitigates the effects of radioactive material or radioactive wastes
53 resulting from a discharge, spillage, uncontrolled loss, leakage or
54 leaching of radioactive material or radioactive waste without a license
55 shall be entitled to reimbursement from any person responsible for
56 such pollution or contamination for the reasonable costs expended for
57 such containment, removal, cleaning or mitigation, if such pollution or
58 contamination resulted from the negligent or reckless conduct of such
59 responsible person. When such pollution or contamination results
60 from the negligence of more than one party or person, each shall be
61 held jointly and severally liable for such costs.

62 Sec. 3. Subsection (a) of section 22a-6 of the general statutes is
63 repealed and the following is substituted in lieu thereof:

64 (a) The commissioner may: (1) Adopt, amend or repeal, in
65 accordance with the provisions of chapter 54, such environmental
66 standards, criteria and regulations, and such procedural regulations as
67 are necessary and proper to carry out his functions, powers and duties;
68 (2) enter into contracts with any person, firm, corporation or
69 association to do all things necessary or convenient to carry out the
70 functions, powers and duties of the department; (3) initiate and receive
71 complaints as to any actual or suspected violation of any statute,
72 regulation, permit or order administered, adopted or issued by him.
73 The commissioner shall have the power to hold hearings, administer
74 oaths, take testimony and subpoena witnesses and evidence, enter

75 orders and institute legal proceedings including, but not limited to,
76 suits for injunctions, for the enforcement of any statute, regulation,
77 order or permit administered, adopted or issued by him; (4) in
78 accordance with regulations adopted by him, require, issue, renew,
79 revoke, modify or deny permits, under such conditions as he may
80 prescribe, governing all sources of pollution in Connecticut within his
81 jurisdiction; (5) in accordance with constitutional limitations, enter at
82 all reasonable times, without liability, upon any public or private
83 property, except a private residence, for the purpose of inspection and
84 investigation to ascertain possible violations of any statute, regulation,
85 order or permit administered, adopted or issued by him and the
86 owner, managing agent or occupant of any such property shall permit
87 such entry, and no action for trespass shall lie against the
88 commissioner for such entry, or he may apply to any court having
89 criminal jurisdiction for a warrant to inspect such premises to
90 determine compliance with any statute, regulation, order or permit
91 administered, adopted or enforced by him, provided any information
92 relating to secret processes or methods of manufacture or production
93 ascertained by the commissioner during, or as a result of, any
94 inspection, investigation, hearing or otherwise shall be kept
95 confidential and shall not be disclosed except that, notwithstanding the
96 provisions of subdivision (5) of subsection (b) of section 1-210, such
97 information may be disclosed by the commissioner to the United States
98 Environmental Protection Agency pursuant to the federal Freedom of
99 Information Act of 1976, (5 USC 552) and regulations adopted
100 thereunder or, if such information is submitted after June 4, 1986, to
101 any person pursuant to the federal Clean Water Act (33 USC 1251 et
102 seq.); (6) undertake any studies, inquiries, surveys or analyses he may
103 deem relevant, through the personnel of the department or in
104 cooperation with any public or private agency, to accomplish the
105 functions, powers and duties of the commissioner; (7) require the
106 posting of sufficient performance bond or other security to assure
107 compliance with any permit or order; (8) provide by notice printed on

108 any form that any false statement made thereon or pursuant thereto is
109 punishable as a criminal offense under section 53a-157b; (9) construct
110 or repair or contract for the construction or repair of any dam or flood
111 and erosion control system under his control and management, make
112 or contract for the making of any alteration, repair or addition to any
113 other real asset under his control and management, including rented
114 or leased premises, involving an expenditure of five hundred thousand
115 dollars or less, and, with prior approval of the Commissioner of Public
116 Works, make or contract for the making of any alteration, repair or
117 addition to such other real asset under his control and management
118 involving an expenditure of more than five hundred thousand dollars
119 but not more than one million dollars; (10) by regulations adopted in
120 accordance with the provisions of chapter 54 require the payment of a
121 fee sufficient to cover the reasonable cost of the search, duplication and
122 review of records requested under the Freedom of Information Act, as
123 defined in section 1-200, and the reasonable cost of reviewing and
124 acting upon an application for and monitoring compliance with the
125 terms and conditions of any state or federal permit, license,
126 registration, order, certificate or approval required pursuant to
127 subsection (i) of section 22a-39, subsections (c) and (d) of section 22a-
128 96, subsections (h), (i) and (k) of section 22a-424, and sections 22a-6d,
129 22a-32, 22a-134a, 22a-134e, 22a-135, 22a-148, 22a-149, 22a-150, 22a-154,
130 22a-174, 22a-174a, 22a-208, 22a-208a, 22a-209, 22a-342, 22a-345, 22a-361,
131 22a-363c, 22a-368, 22a-372, 22a-379, 22a-403, 22a-409, 22a-416, 22a-428
132 to 22a-432, inclusive, 22a-449 and 22a-454 to 22a-454c, inclusive, and
133 Section 401 of the federal Clean Water Act, (33 USC 1341). Such costs
134 may include, but are not limited to the costs of (A) public notice, (B)
135 reviews, inspections and testing incidental to the issuance of and
136 monitoring of compliance with such permits, licenses, orders,
137 certificates and approvals, and (C) surveying and staking boundary
138 lines. The applicant shall pay the fee established in accordance with the
139 provisions of this section prior to the final decision of the
140 commissioner on the application. The commissioner may postpone

141 review of an application until receipt of the payment. Payment of a fee
142 for monitoring compliance with the terms or conditions of a permit
143 shall be at such time as the commissioner deems necessary and is
144 required for an approval to remain valid; and (11) by regulations
145 adopted in accordance with the provisions of chapter 54, require the
146 payment of a fee sufficient to cover the reasonable cost of responding
147 to requests for information concerning the status of real estate with
148 regard to compliance with environmental statutes, regulations, permits
149 or orders. Such fee shall be paid by the person requesting such
150 information at the time of the request. Funds not exceeding two
151 hundred thousand dollars received by the commissioner pursuant to
152 subsection (g) of section 22a-174, during the fiscal year ending June 30,
153 1985, shall be deposited in the General Fund and credited to the
154 appropriations of the Department of Environmental Protection in
155 accordance with the provisions of section 4-86, and such funds shall
156 not lapse until June 30, 1986. In any action brought against any
157 employee of the department acting within his scope of delegated
158 authority in performing any of the above-listed duties, the employee
159 shall be represented by the Attorney General.

160 Sec. 4. Subsection (a) of section 22a-6a of the general statutes is
161 repealed and the following is substituted in lieu thereof:

162 (a) Any person who knowingly or negligently violates any
163 provision of section 14-100b or 14-164c, subdivision (3) of subsection
164 (b) of section 15-121, section 15-171, 15-172, 15-175, 22a-5, 22a-6 or 22a-
165 7, chapter 440, chapter 441, section 22a-69 or 22a-74, subsection (b) of
166 section 22a-134p, section 22a-148, 22a-149, 22a-150, 22a-154, 22a-162,
167 22a-171, 22a-174, 22a-175, 22a-177, 22a-178, 22a-181, 22a-183, 22a-184,
168 22a-190, 22a-208, 22a-208a, 22a-209, 22a-213, 22a-220, 22a-225, 22a-231,
169 22a-336, 22a-342, 22a-345, 22a-346, 22a-347, 22a-349a, 22a-358, 22a-359,
170 22a-361, 22a-362, 22a-365 to 22a-379, inclusive, 22a-401 to 22a-411,
171 inclusive, 22a-416, 22a-417, 22a-424 to 22a-433, inclusive, 22a-447, 22a-
172 449, 22a-450, 22a-451, 22a-454, 22a-458, 22a-461, 22a-462 or 22a-471, or

173 any regulation, order or permit adopted or issued thereunder by the
174 Commissioner of Environmental Protection shall be liable to the state
175 for the reasonable costs and expenses of the state in detecting,
176 investigating, controlling and abating such violation. Such person shall
177 also be liable to the state for the reasonable costs and expenses of the
178 state in restoring the air, waters, lands and other natural resources of
179 the state, including plant, wild animal and aquatic life to their former
180 condition insofar as practicable and reasonable, or, if restoration is not
181 practicable or reasonable, for any damage, temporary or permanent,
182 caused by such violation to the air, waters, lands or other natural
183 resources of the state, including plant, wild animal and aquatic life and
184 to the public trust therein. Institution of a suit to recover for such
185 damage, costs and expenses shall not preclude the application of any
186 other remedies.

187 Sec. 5. Subsection (a) of section 22a-6b of the general statutes is
188 repealed and the following is substituted in lieu thereof:

189 (a) The Commissioner of Environmental Protection shall adopt
190 regulations, in accordance with the provisions of chapter 54, to
191 establish a schedule setting forth the amounts, or the ranges of
192 amounts, or a method for calculating the amount of the civil penalties
193 which may become due under this section. Such schedule or method
194 may be amended from time to time in the same manner as for
195 adoption provided any such regulations which become effective after
196 July 1, 1993, shall only apply to violations which occur after said date.
197 The civil penalties established for each violation shall be of such
198 amount as to insure immediate and continued compliance with
199 applicable laws, regulations, orders and permits. Such civil penalties
200 shall not exceed the following amounts:

201 (1) For failure to file any registration, other than a registration for a
202 general permit, for failure to file any plan, report or record, or any
203 application for a permit, for failure to obtain any certification, for

204 failure to display any registration, permit or order, or file any other
205 information required pursuant to any provision of section 14-100b or
206 14-164c, subdivision (3) of subsection (b) of section 15-121, section 15-
207 171, 15-172, 15-175, 22a-5, 22a-6, 22a-7, 22a-32, 22a-39 or 22a-42a, 22a-
208 45a, chapter 441, sections 22a-134 to 22a-134d, inclusive, subsection (b)
209 of section 22a-134p, section 22a-148, 22a-149, 22a-150, 22a-154, 22a-157,
210 22a-158, 22a-171, 22a-174, 22a-175, 22a-177, 22a-178, 22a-181, 22a-183,
211 22a-184, 22a-208, 22a-208a, 22a-209, 22a-213, 22a-220, 22a-231, 22a-336,
212 22a-342, 22a-345, 22a-346, 22a-347, 22a-349a, 22a-354p, 22a-358, 22a-
213 359, 22a-361, 22a-362, 22a-368, 22a-401 to 22a-405, inclusive, 22a-411,
214 22a-416, 22a-417, 22a-424 to 22a-433, inclusive, 22a-447, 22a-449, 22a-
215 450, 22a-451, 22a-454, 22a-458, 22a-461, 22a-462 or 22a-471, or any
216 regulation, order, registration or permit adopted or issued thereunder
217 by the commissioner, and for other violations of similar character as
218 set forth in such schedule or schedules, no more than one thousand
219 dollars for said violation and in addition no more than one hundred
220 dollars for each day during which such violation continues;

221 (2) For deposit, placement, removal, disposal, discharge or emission
222 of any material or substance or electromagnetic radiation or the
223 causing of, engaging in or maintaining of any condition or activity in
224 violation of any provision of section 14-100b or 14-164c, subdivision (3)
225 of subsection (b) of section 15-121, section 15-171, 15-172, 15-175, 22a-5,
226 22a-6, 22a-7, 22a-32, 22a-39 or 22a-42a, 22a-45a, chapter 441, sections
227 22a-134 to 22a-134d, inclusive, section 22a-69 or 22a-74, subsection (b)
228 of section 22a-134p, section 22a-162, 22a-171, 22a-174, 22a-175, 22a-177,
229 22a-178, 22a-181, 22a-183, 22a-184, 22a-190, 22a-208, 22a-208a, 22a-209,
230 22a-213, 22a-220, 22a-336, 22a-342, 22a-345, 22a-346, 22a-347, 22a-349a,
231 22a-354p, 22a-358, 22a-359, 22a-361, 22a-362, 22a-368, 22a-401 to 22a-
232 405, inclusive, 22a-411, 22a-416, 22a-417, 22a-424 to 22a-433, inclusive,
233 22a-447, 22a-449, 22a-450, 22a-451, 22a-454, 22a-458, 22a-461, 22a-462 or
234 22a-471, or any regulation, order or permit adopted thereunder by the
235 commissioner, and for other violations of similar character as set forth
236 in such schedule or schedules, no more than twenty-five thousand

237 dollars for said violation for each day during which such violation
238 continues;

239 (3) For violation of the terms of any final order of the commissioner,
240 except final orders under subsection (d) of this section and emergency
241 orders and cease and desist orders as set forth in subdivision (4) of this
242 subsection, for violation of the terms of any permit issued by the
243 commissioner, and for other violations of similar character as set forth
244 in such schedule or schedules, no more than twenty-five thousand
245 dollars for said violation for each day during which such violation
246 continues;

247 (4) For violation of any emergency order or cease and desist order of
248 the commissioner, and for other violations of similar character as set
249 forth in such schedule or schedules, no more than twenty-five
250 thousand dollars for said violation for each day during which such
251 violation continues;

252 (5) For failure to make an immediate report required pursuant to
253 subdivision (3) of subsection (a) of section 22a-135, or a report required
254 by the department pursuant to subsection (b) of section 22a-135, no
255 more than twenty-five thousand dollars per violation per day;

256 (6) For violation of any provision of the state's hazardous waste
257 program, no more than twenty-five thousand dollars per violation per
258 day;

259 (7) For wilful violation of any condition imposed pursuant to
260 section 26-313 which leads to the destruction of, or harm to, any rare,
261 threatened or endangered species, no more than ten thousand dollars
262 per violation per day;

263 (8) For violation of any provision of sections 22a-608 to 22a-611,
264 inclusive, no more than the amount established by Section 325 of the
265 Emergency Planning and Community Right-To-Know Act of 1986 (42

266 USC 11001 et seq.) for a violation of Section 302, 304 or 311 to 313,
267 inclusive, of said act.

ENV *Joint Favorable C/R*

FIN

FIN *Joint Favorable*

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 and Offsetting Revenue Gains, Potential Minimal Revenue

Affected Agencies: Department of Environmental Protection, Office of the Attorney General

Municipal Impact: None

Explanation**State Impact:**

The development and implementation of a fee-based program for the control of radiation hazards to secure "agreement state status" with the United States Nuclear Regulatory Commission will be fully paid for by the regulated community through fees. These fees will be deposited into a separate General Fund account for use by the Department of Environmental Protection (DEP). It is anticipated that the program will be implemented over a 3-5 year period. The revenue will be derived from fees for over 660 licenses and registrants in the state. Three million in revenue will be needed to cover the start-up period of the program and \$1.2 million a year (in current dollars) will be needed to fully operate the program. The DEP will need 12-14 employees, consisting of radiation control physicists and clericals. The DEP and the regulated community will determine the specific fees to support the program.

Any increase in revenue due to the civil penalties established in the bill is anticipated to be minimal. The potential workload increase to the Office of the Attorney General is anticipated to be minimal and could be absorbed within normal budgetary resources.

OLR BILL ANALYSIS

SB 1010

AN ACT CONCERNING THE DELEGATION OF CERTAIN NUCLEAR REGULATORY COMMISSION PROGRAMS.**SUMMARY:**

Under federal law, the Nuclear Regulatory Commission (NRC) can delegate its authority over radiation sources, other than nuclear power plants, to a state that meets specified criteria. A state that assumes this authority has "agreement state status." State law authorizes the governor to enter such an agreement.

This bill requires the Department of Environmental Protection (DEP) commissioner to adopt regulations to enable the state to obtain agreement state status. The regulations must establish a fee-based program for the control of radiation hazards to protect public health, safety, and welfare. The fees must cover the administrative costs. The bill establishes a special fund in connection with this program.

It also allows DEP to impose fees in connection with the registration of hospitals' use of radioactive materials and DEP's licensure of sources of ionizing radiation.

The bill makes anyone who negligently or recklessly causes environmental harm by discharging radioactive materials or waste liable to the DEP commissioner for costs and damages. It entitles the entity that cleans up the discharge to reimbursement from such parties.

The bill establishes a civil penalty of up to \$1,000, plus \$100 for each day a violation continues, for violations of related laws.

EFFECTIVE DATE: October 1, 2001

SPECIAL FUND

The bill establishes a special fund to hold the fees collected under the DEP regulations. The fees must be deposited in an account in the fund, which must be used to pay any state agency costs in implementing, administering, and maintaining agreement state status. The money is considered appropriated for this purpose.

RADIOACTIVE DISCHARGES

The bill makes knowing or negligent violators of the following provisions liable to the state for its costs in detecting, investigating, controlling, and abating the violation and restoring the environment:

1. DEP regulation of sources of ionizing radiation and radioactive materials,
2. the requirements that hospitals that use radioactive materials register with DEP and that x-ray machines be registered, and
3. the requirements that other sources of ionizing radiation be licensed.

The bill makes anyone who negligently or recklessly causes potential or actual pollution or contamination of the state's natural resources from radiation liable for DEP's costs and expenses. The liability arises from the unauthorized discharge of radioactive materials or waste or the spillage, uncontrolled loss, leakage, or leaching of such materials or waste. An offender is liable for all DEP costs and expenses in containing, removing, cleaning, mitigating, or preventing the pollution or contamination. The bill does not preclude DEP from seeking additional compensation from the courts, including punitive damages. At DEP's request, the attorney general must bring a suit to recover the costs and expenses.

The bill entitles anyone who contains, removes, or cleans up such materials or waste or mitigates their effects to reimbursement from the offender. If more than one person or party was culpable, the bill holds them jointly and severally liable. This means the person who cleans up the contamination can seek recovery of his full costs from any offender, regardless of the degree of his contribution to the spill.

PENALTIES

The bill authorizes DEP to impose a civil penalty of up to \$1,000 and up to \$100 per day for failure to file registrations or other information DEP requires in connection with its regulation of radiation sources. Among other things, the penalty applies to violations of the laws barring the unauthorized possession, use, or transportation of radioactive materials and laws that require: (1) registration of hospitals and x-ray machines, (2) licensure of other sources of ionizing radiation, and (3) maintenance of certain records. It also applies the civil penalty to failure to file information required under a DEP registration under a wide range of environmental laws.

COMMITTEE ACTION

Environment Committee

Joint Favorable Change of Reference
Yea 27 Nay 0

Finance, Revenue and Bonding Committee

Joint Favorable Report
Yea 42 Nay 0