



General Assembly

January Session, 2001

Bill No. 6684

LCO No. 3757

Referred to Committee on Environment

Introduced by:

REP. WARD, 86th Dist.

SEN. DELUCA, 32nd Dist.

***AN ACT CONCERNING PAYMENTS FOR THE REMOVAL OF
RESIDENTIAL UNDERGROUND STORAGE TANKS.***

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

1 Section 1. (NEW) (a) As used in this section, "qualifying income"
2 means the total of the owner's taxable and nontaxable income for the
3 year immediately preceding the year for which reimbursement is
4 sought under this section and "costs eligible for payment" means costs
5 that are reasonable for payment, as determined by the guidelines
6 established pursuant to section 22a-449d of the general statutes, as
7 amended by this act.

8 (b) On or after the effective date of this act, any owner of a
9 residential underground storage tank who is eligible pursuant to
10 subsection (c) of this section may apply to the Underground Storage
11 Tank Petroleum Clean-Up Account Review Board established under
12 section 22a-449d of the general statutes, as amended by this act, for
13 reimbursement of remediation costs eligible for payment incurred in
14 the course of removing or replacing a residential underground storage

15 tank system, provided such person has complied with the provisions
16 of section 22a-449j of the general statutes. Such reimbursements shall
17 be made in accordance with the provisions of this section.

18 (c) An owner with a qualifying income of two hundred thousand
19 dollars or less may qualify for payment under this section provided
20 the owner submits notice to the Commissioner of Environmental
21 Protection that provides evidence (1) of the owner's income eligibility
22 in such form and containing such information as the commissioner
23 may require; (2) that the owner contracted with a contractor registered
24 pursuant to section 22a-449k of the general statutes, as amended by
25 this act; and (3) that the owner notified the contractor of such owner's
26 eligibility for reimbursement prior to entering into the contract for
27 removal or replacement of the residential underground heating oil
28 storage tank system.

29 (d) (1) An owner shall be liable for the first one thousand dollars of
30 remediation costs eligible for payment. An eligible owner shall be
31 entitled, to the extent funds are available in the residential
32 underground heating oil storage tank system clean-up subaccount, to
33 reimbursement of a percentage of the next twenty-five thousand
34 dollars of its costs eligible for payment as follows: (A) An eligible
35 owner whose qualifying income is less than fifty thousand dollars shall
36 be entitled to one hundred per cent reimbursement of the next twenty-
37 five thousand dollars of its costs eligible for payment, and (B) if an
38 eligible owner's qualifying income exceeds fifty thousand dollars, the
39 percentage of reimbursement shall be reduced by ten per cent for each
40 fifteen thousand dollars or fraction thereof by which the owner's
41 household income exceeds said amount. In no event shall the amount
42 of reimbursement for any remediation exceed twenty-five thousand
43 dollars.

44 (2) In notifying an owner of the owner's eligibility under this
45 section, the commissioner shall inform the owner that such eligibility is
46 not to be construed as a guarantee of payment or reimbursement from

47 the residential underground heating oil storage tank system clean-up
48 subaccount and that any such payment or reimbursement is subject to
49 the availability of funds for such purpose.

50 (e) If, in the course of removing or replacing a residential
51 underground heating oil storage tank system, a registered contractor
52 finds that there has been a spill, as defined in section 22a-452c of the
53 general statutes, attributable to such system, such contractor shall
54 immediately notify the Department of Environmental Protection
55 regarding such spill. The department may assess the spill and confirm
56 that the remediation proposed by the contractor is appropriate and
57 necessary, or may authorize an environmental professional licensed
58 under section 22a-133v of the general statutes to assess the spill and
59 make such confirmation. Any such remediation shall be subject to
60 approval by the department, except that the department may authorize
61 an environmental professional licensed under section 22a-133v of the
62 general statutes to make a recommendation regarding such approval.
63 If a registered contractor estimates that the remediation of such spill is
64 likely to cost more than ten thousand dollars, the commissioner or any
65 agent of the commissioner or an environmental professional licensed
66 under said section 22a-133v of the general statutes contracted by the
67 department shall inspect the site and confirm that such remediation is
68 reasonable. The costs of such an inspection shall be eligible for
69 payment under the residential underground heating oil storage tank
70 system clean-up subaccount established under subsection (b) of section
71 22a-449c of the general statutes, as amended by this act.

72 (f) (1) If an owner is eligible for reimbursement under subsection (c)
73 of this section, its registered contractor shall submit an application to
74 the Underground Storage Tank Petroleum Clean-Up Account Review
75 Board established under section 22a-449d of the general statutes, as
76 amended by this act, for a disbursement from the residential
77 underground heating oil storage tank system clean-up subaccount,
78 containing the percentage of costs eligible for reimbursement, as
79 determined by subsection (d) of this section, for work performed

80 pursuant to a contract with the eligible owner for the remediation of a
81 residential underground heating oil storage tank system for the
82 purpose of providing payment for the costs of such remediation. An
83 eligible owner of a residential underground heating oil storage tank
84 system shall not be responsible to the registered contractor or any
85 subcontractor of the registered contractor for any costs for which the
86 owner is qualified for reimbursement pursuant to subsection (d) of this
87 section from the residential underground heating oil storage tank
88 system clean-up subaccount. Such eligible owner shall provide to the
89 review board a statement confirming the registered contractor has
90 been engaged by such owner to remove or to replace such residential
91 underground heating oil storage tank system and perform the
92 remediation and shall execute an instrument which provides for
93 payment to said account of a proportional share of the amounts
94 realized by the eligible owner, after any costs of litigation or attorney's
95 fees have been paid, from a judgment or settlement regarding any
96 claim for the costs of such remediation made against an insurance
97 policy or any party. In any service contract entered into between a
98 registered contractor and an eligible owner for the remediation of a
99 residential underground heating oil storage tank system, the registered
100 contractor shall clearly identify all costs, including markup costs, that
101 are not or may not be eligible for payment from said subaccount as
102 determined by the guidelines established pursuant to subsection (c) of
103 section 22a-449d of the general statutes, as amended by this act.

104 (2) The registered contractor shall also submit documentation,
105 satisfactory to the review board, of any costs associated with such
106 remediation as set forth in subdivision (1) of subsection (f) of this
107 section. The review board shall deny remediation costs of the
108 registered contractor that the review board determines are
109 unreasonable based on the guidelines established pursuant to
110 subsection (c) of section 22a-449d of the general statutes, as amended
111 by this act, and may deny remediation costs if the Department of
112 Environmental Protection was not notified or if the site was not
113 inspected in accordance with the provisions of this section. If a

114 registered contractor fails to submit to the review board
115 documentation of costs associated with such remediation that may be
116 eligible for payment from the residential underground heating oil
117 storage tank system clean-up subaccount or if the registered contractor
118 submits documentation of such costs but the board denies payment of
119 such costs, the registered contractor shall be liable for such costs and
120 shall have no cause of action against the owner of the underground
121 petroleum storage tank.

122 (3) A copy of the review board's decision shall be sent to the
123 Commissioner of Environmental Protection and to the registered
124 contractor by certified mail, return receipt requested. The
125 commissioner or any contractor aggrieved by a decision of the review
126 board may, not more than twenty days after the date the decision was
127 issued, request a hearing before the review board in accordance with
128 chapter 54 of the general statutes. After such hearing, the board shall
129 consider the information submitted to it and affirm or modify its
130 decision on the reimbursement. A copy of the affirmed or modified
131 decision shall be sent to the commissioner and the contractor that
132 requested the hearing by certified mail, return receipt requested.

133 (g) Nothing in this section shall be construed to guarantee
134 reimbursement or payment from the residential underground heating
135 oil storage tank system clean-up subaccount. Payments and
136 reimbursements from the account shall be made only to the extent that
137 funds are available in such account.

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

140 (a) (1) There is established an account to be known as the
141 "underground storage tank petroleum clean-up account". The
142 underground storage tank petroleum clean-up account shall be an
143 account of the Environmental Quality Fund. Notwithstanding any
144 provision of the general statutes to the contrary, any moneys collected
145 shall be deposited in the Environmental Quality Fund and credited to

146 the underground storage tank petroleum clean-up account. Any
147 balance remaining in said account at the end of any fiscal year shall be
148 carried forward in said account for the fiscal year next succeeding.

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

167 (b) There is established a subaccount within the underground
168 storage tank petroleum clean-up account to be known as the
169 "residential underground heating oil storage tank system clean-up
170 subaccount" to be used solely for the provision of reimbursements
171 under section 22a-449l or section 1 of this act for the remediation of
172 contamination attributed to residential underground heating oil
173 storage tank systems. The subaccount may contain any moneys
174 required by law to be deposited in the account and shall hold the
175 proceeds of the bond funds allocated pursuant to section 51 of public
176 act 00-167* any other funds.

177 Sec. 3. Section 22a-449d of the general statutes is repealed and the

178 following is substituted in lieu thereof:

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

198 (b) The board shall consist of the Commissioners of Environmental
199 Protection and Revenue Services, the Secretary of the Office of Policy
200 and Management and the State Fire Marshal, or their designees; one
201 member representing the Connecticut Petroleum Council, appointed
202 by the speaker of the House of Representatives; one member
203 representing the Service Station Dealers Association, appointed by the
204 majority leader of the Senate; one member of the public, appointed by
205 the majority leader of the House of Representatives; one member
206 representing the Independent Connecticut Petroleum Association,
207 appointed by the president pro tempore of the Senate; one member
208 representing the Connecticut Gasoline Retailers Association, appointed
209 by the minority leader of the House of Representatives; one member
210 representing a municipality with a population greater than one

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

225 (c) Not later than July 1, 2000, the board shall establish guidelines
226 for determining what costs are reasonable for payment under section
227 22a-449l and shall establish requirements for financial assurance,
228 training and performance standards for registered contractors, as
229 defined in said section 22a-449l.

230 (d) To the extent that funds are available in the residential
231 underground heating oil storage tank system clean-up subaccount, the
232 board may order payment from such subaccount to registered
233 contractors for reasonable costs associated with the remediation of a
234 residential underground heating oil storage tank system of an owner
235 eligible under subsection (c) of section 1 of this act. No such payments
236 shall be authorized unless the board deems the costs reasonable based
237 on the guidelines established pursuant to subsection (c) of this section.

238 Sec. 4. Section 22a-449k of the general statutes is repealed and the
239 following is substituted in lieu thereof:

240 No person shall remove or replace or subcontract for the removal or
241 replacement of a residential underground heating oil storage tank
242 system if the person finds such removal or replacement will involve

243 remediation of contaminated soil or groundwater, [the costs of which
244 are to be paid out of the residential underground heating oil storage
245 tank system clean-up subaccount established pursuant to subsection
246 (b) of section 22a-449c,] unless the person is a registered contractor. To
247 become a registered contractor, a person shall provide to the
248 Commissioner of Environmental Protection, on forms prescribed by
249 said commissioner, (1) evidence of financial assurance in the form of
250 insurance, a surety bond or liquid company assets in an amount not
251 less than two hundred fifty thousand dollars, and (2) a written
252 statement certifying that such person has had any training required by
253 law for such business and that such person has (A) performed no
254 fewer than three residential underground petroleum storage tank
255 system removals, or (B) has contracted for at least three removals of
256 residential underground petroleum storage tank systems. Such person
257 shall pay a registration fee of five hundred dollars to the
258 commissioner. Each contractor holding a valid registration on July first
259 shall, not later than August first of that year, pay a renewal fee to the
260 commissioner of two hundred fifty dollars in order to maintain such
261 registration. Any money collected for registration pursuant to this
262 section shall be deposited in the Environmental Quality Fund. The
263 commissioner may revoke a registration for cause and, on and after the
264 date the review board establishes requirements for financial assurance,
265 training and performance standards under subsection (c) of section
266 22a-449d, may reject any application for registration that does not meet
267 such requirements.

268 Sec. 5. Section 22a-449l of the general statutes is repealed and the
269 following is substituted in lieu thereof:

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

273 (b) Neither the Underground Storage Tank Petroleum Clean-up
274 Account Review Board nor the Commissioner of Environmental

275 Protection shall accept applications pursuant to this section on or after
276 the effective date of this act.

277 [(b)] (c) If, in the course of removing or replacing a residential
278 underground heating oil storage tank system, a registered contractor
279 finds that there has been a spill, as defined in section 22a-452c,
280 attributable to such system and such contractor estimates that the
281 remediation of such spill is likely to cost more than five thousand
282 dollars, such contractor shall immediately notify the Department of
283 Environmental Protection regarding such spill. If, after the contractor's
284 initial estimate, the contractor subsequently determines that such cost
285 will exceed five thousand dollars, the contractor shall upon that
286 determination notify the Department of Environmental Protection. The
287 department may assess the spill and confirm that the remediation
288 proposed by the contractor is appropriate and necessary, or may
289 authorize an environmental professional licensed under section 22a-
290 133v to assess the spill and make such confirmation. Any such
291 remediation shall be subject to approval by the department, except that
292 the department may authorize an environmental professional licensed
293 under section 22a-133v to make a recommendation regarding such
294 approval. If a registered contractor estimates that the remediation of
295 such spill is likely to cost more than ten thousand dollars, the
296 commissioner or any agent of the commissioner or an environmental
297 professional licensed under said section 22a-133v contracted by the
298 department shall inspect the site and confirm that such remediation is
299 reasonable. The costs of such an inspection shall be eligible for
300 payment under the residential underground heating oil storage tank
301 system clean-up subaccount established under subsection (b) of section
302 22a-449c.

303 [(c)] (d) (1) A registered contractor shall submit to the Underground
304 Storage Tank Petroleum Clean-Up Account Review Board established
305 under section 22a-449d for a disbursement from the residential
306 underground heating oil storage tank system clean-up subaccount, all
307 reasonable costs for work performed pursuant to a contract with the

308 owner for the remediation of a residential underground heating oil
309 storage tank system for the purpose of providing payment for the costs
310 of such remediation. An owner of a residential underground heating
311 oil storage tank system shall not be responsible to the registered
312 contractor or any subcontractor of the registered contractor for any
313 costs that are eligible for payment from the residential underground
314 heating oil storage tank system clean-up subaccount over five hundred
315 dollars. The registered contractor or any subcontractor shall not bill the
316 owner for any costs eligible for payment from said subaccount over
317 five hundred dollars unless the contractor or subcontractor enters into
318 a separate written contract with the owner, on a form prescribed by the
319 commissioner, authorizing the contractor or subcontractor to bill the
320 owner more than five hundred dollars and such separate contract
321 gives the owner the right to cancel such contract up to three days after
322 entering into it. Such owner shall provide to the review board a
323 statement confirming the registered contractor has been engaged by
324 such owner to remove or to replace such residential underground
325 heating oil storage tank system and perform the remediation and shall
326 execute an instrument which provides for payment to said account of
327 any amounts realized by the owner, after any costs of litigation or
328 attorney's fees have been paid, from a judgment or settlement
329 regarding any claim for the costs of such remediation made against an
330 insurance policy or any party. In any service contract entered into
331 between a registered contractor and an owner for the remediation of a
332 residential underground heating oil storage tank system, the registered
333 contractor shall clearly identify all costs, including markup costs, that
334 are not or may not be eligible for payment from said subaccount.

335 (2) The registered contractor shall submit documentation,
336 satisfactory to the review board, of any costs associated with such
337 remediation. The review board may deny remediation costs of the
338 registered contractor that the review board determines are
339 unreasonable based on the guidelines established pursuant to
340 subsection (c) of section 22a-449d on and after the date the review
341 board establishes such guidelines, and may deny remediation costs (A)

342 in excess of five thousand dollars if the Department of Environmental
343 Protection was not notified in accordance with the provisions of
344 subsection (b) of this section, and (B) in excess of ten thousand dollars
345 if the site was not inspected in accordance with the provisions of
346 subsection (b) of this section. The review board shall deny any such
347 costs in excess of fifty thousand dollars unless the commissioner
348 determines such additional costs are warranted to protect public health
349 and the environment. If a registered contractor fails to submit to the
350 review board documentation of costs associated with such remediation
351 that may be eligible for payment from the residential underground
352 heating oil storage tank system clean-up subaccount or if the registered
353 contractor submits documentation of such costs but the board denies
354 payment of such costs, the registered contractor shall be liable for such
355 costs and shall have no cause of action against the owner of the
356 underground petroleum storage tank.

357 (3) A copy of the review board's decision shall be sent to the
358 Commissioner of Environmental Protection and to the registered
359 contractor by certified mail, return receipt requested. The
360 commissioner or any contractor aggrieved by a decision of the review
361 board may, not more than twenty days after the date the decision was
362 issued, request a hearing before the review board in accordance with
363 chapter 54. After such hearing, the board shall consider the
364 information submitted to it and affirm or modify its decision on the
365 reimbursement. A copy of the affirmed or modified decision shall be
366 sent to the commissioner and any contractor by certified mail, return
367 receipt requested.

368 (e) Nothing in this section shall be construed to guarantee
369 reimbursement or payment from the residential underground heating
370 oil storage tank system clean-up subaccount. Payments and
371 reimbursements from the account shall be made only to the extent that
372 funds are available in such account.

373 Sec. 6. This act shall take effect from its passage.

Statement of Purpose:

To implement the Governor's budget recommendations.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]