



Senate

General Assembly

File No. 96

February Session, 2002

Substitute Senate Bill No. 373

Senate, March 21, 2002

The Committee on Environment reported through SEN. WILLIAMS of the 29th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

**AN ACT CONCERNING AGREEMENT STATE STATUS WITH THE
NUCLEAR REGULATORY COMMISSION.**

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 Section 22a-152 of the general statutes is repealed and the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 (*Effective October 1, 2002*):

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 agreement state status 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 amended. The fees
16 collected pursuant to such regulations shall cover all costs to the state
17 associated with the administration of such radiation hazard control
18 program.

19 (c) There is established within the Environmental Quality Fund
20 established pursuant to section 22a-27g an account to be known as the
21 "ionizing radiation management account". Notwithstanding the
22 provisions of section 22a-27g, any moneys collected in accordance with
23 subsection (b) of this section and sections 22a-148 to 22a-154, inclusive,
24 shall be deposited in the Environmental Quality Fund and credited to
25 the ionizing radiation management account. Any balance remaining in
26 the account at the end of any fiscal year shall be carried forward in the
27 account for the fiscal year next succeeding. The account shall be used
28 by the Commissioner of Environmental Protection solely for the
29 purpose of paying the direct and indirect costs of administering an
30 ionizing radiation program set forth in the Atomic Energy Act of 1954,
31 as amended, and sections 22a-148 to 22a-158, inclusive, as amended by
32 this act.

33 Sec. 2. Section 22a-157 of the general statutes is repealed and the
34 following is substituted in lieu thereof (*Effective October 1, 2002*):

35 (a) No person shall use, manufacture, produce, transport, transfer,
36 receive, acquire, own or possess any source of ionizing radiation,
37 unless exempt, licensed or registered in accordance with the provisions
38 of sections [22a-151] 22a-148 to 22a-158, inclusive, as amended by this
39 act.

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

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

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

65 Sec. 3. Subsection (a) of section 22a-6 of the general statutes is
66 repealed and the following is substituted in lieu thereof (*Effective*
67 *October 1, 2002*):

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

79 orders and institute legal proceedings including, but not limited to,
80 suits for injunctions, for the enforcement of any statute, regulation,
81 order or permit administered, adopted or issued by him; (4) in
82 accordance with regulations adopted by him, require, issue, renew,
83 revoke, modify or deny permits, under such conditions as he may
84 prescribe, governing all sources of pollution in Connecticut within his
85 jurisdiction; (5) in accordance with constitutional limitations, enter at
86 all reasonable times, without liability, upon any public or private
87 property, except a private residence, for the purpose of inspection and
88 investigation to ascertain possible violations of any statute, regulation,
89 order or permit administered, adopted or issued by him and the
90 owner, managing agent or occupant of any such property shall permit
91 such entry, and no action for trespass shall lie against the
92 commissioner for such entry, or he may apply to any court having
93 criminal jurisdiction for a warrant to inspect such premises to
94 determine compliance with any statute, regulation, order or permit
95 administered, adopted or enforced by him, provided any information
96 relating to secret processes or methods of manufacture or production
97 ascertained by the commissioner during, or as a result of, any
98 inspection, investigation, hearing or otherwise shall be kept
99 confidential and shall not be disclosed except that, notwithstanding the
100 provisions of subdivision (5) of subsection (b) of section 1-210, such
101 information may be disclosed by the commissioner to the United States
102 Environmental Protection Agency pursuant to the federal Freedom of
103 Information Act of 1976, (5 USC 552) and regulations adopted
104 thereunder or, if such information is submitted after June 4, 1986, to
105 any person pursuant to the federal Clean Water Act (33 USC 1251 et
106 seq.); (6) undertake any studies, inquiries, surveys or analyses he may
107 deem relevant, through the personnel of the department or in
108 cooperation with any public or private agency, to accomplish the
109 functions, powers and duties of the commissioner; (7) require the
110 posting of sufficient performance bond or other security to assure
111 compliance with any permit or order; (8) provide by notice printed on
112 any form that any false statement made thereon or pursuant thereto is
113 punishable as a criminal offense under section 53a-157b; (9) construct

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

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

165 Sec. 4. Subsection (a) of section 22a-6a of the general statutes is
166 repealed and the following is substituted in lieu thereof (*Effective*
167 *October 1, 2002*):

168 (a) Any person who knowingly or negligently violates any
169 provision of section 14-100b or 14-164c, as amended, subdivision (3) of
170 subsection (b) of section 15-121, section 15-171, 15-172, 15-175, 22a-5,
171 22a-6 or 22a-7, chapter 440, chapter 441, section 22a-69 or 22a-74,
172 subsection (b) of section 22a-134p, section 22a-148, 22a-149, 22a-150,
173 22a-154, 22a-162, 22a-171, 22a-174, as amended, 22a-175, 22a-177, 22a-
174 178, 22a-181, 22a-183, 22a-184, 22a-190, 22a-208, 22a-208a, 22a-209, 22a-
175 213, 22a-220, 22a-225, 22a-231, 22a-336, 22a-342, 22a-345, 22a-346, 22a-
176 347, 22a-349a, 22a-358, 22a-359, 22a-361, 22a-362, 22a-365 to 22a-379,
177 inclusive, 22a-401 to 22a-411, inclusive, 22a-416, 22a-417, 22a-424 to
178 22a-433, inclusive, 22a-447, 22a-449, 22a-450, 22a-451, as amended, 22a-
179 454, 22a-458, 22a-461, 22a-462 or 22a-471, or any regulation, order or
180 permit adopted or issued thereunder by the Commissioner of
181 Environmental Protection shall be liable to the state for the reasonable
182 costs and expenses of the state in detecting, investigating, controlling

183 and abating such violation. Such person shall also be liable to the state
184 for the reasonable costs and expenses of the state in restoring the air,
185 waters, lands and other natural resources of the state, including plant,
186 wild animal and aquatic life to their former condition insofar as
187 practicable and reasonable, or, if restoration is not practicable or
188 reasonable, for any damage, temporary or permanent, caused by such
189 violation to the air, waters, lands or other natural resources of the state,
190 including plant, wild animal and aquatic life and to the public trust
191 therein. Institution of a suit to recover for such damage, costs and
192 expenses shall not preclude the application of any other remedies.

193 Sec. 5. Subsection (a) of section 22a-6b of the general statutes is
194 repealed and the following is substituted in lieu thereof (*Effective*
195 *October 1, 2002*):

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

208 (1) For failure to file any registration, other than a registration for a
209 general permit, for failure to file any plan, report or record, or any
210 application for a permit, for failure to obtain any certification, for
211 failure to display any registration, permit or order, or file any other
212 information required pursuant to any provision of section 14-100b or
213 14-164c, as amended, subdivision (3) of subsection (b) of section 15-
214 121, section 15-171, 15-172, 15-175, 22a-5, 22a-6, 22a-7, 22a-32, 22a-39 or
215 22a-42a, 22a-45a, chapter 441, sections 22a-134 to 22a-134d, inclusive,

216 as amended, subsection (b) of section 22a-134p, section 22a-148, 22a-
217 149, 22a-150, 22a-154, 22a-157, as amended by this act, 22a-158, 22a-171,
218 22a-174, as amended, 22a-175, 22a-177, 22a-178, 22a-181, 22a-183, 22a-
219 184, 22a-208, 22a-208a, 22a-209, 22a-213, 22a-220, 22a-231, 22a-336, 22a-
220 342, 22a-345, 22a-346, 22a-347, 22a-349a, 22a-354p, 22a-358, 22a-359,
221 22a-361, 22a-362, 22a-368, 22a-401 to 22a-405, inclusive, 22a-411, 22a-
222 416, 22a-417, 22a-424 to 22a-433, inclusive, 22a-447, 22a-449, 22a-450,
223 22a-451, 22a-454, 22a-458, 22a-461, 22a-462 or 22a-471, or any
224 regulation, order, registration, license or permit adopted or issued
225 thereunder by the commissioner, and for other violations of similar
226 character as set forth in such schedule or schedules, no more than one
227 thousand dollars for said violation and in addition no more than one
228 hundred dollars for each day during which such violation continues;

229 (2) For deposit, placement, removal, disposal, discharge or emission
230 of any material or substance or electromagnetic radiation or the
231 causing of, engaging in or maintaining of any condition or activity in
232 violation of any provision of section 14-100b or 14-164c, as amended,
233 subdivision (3) of subsection (b) of section 15-121, section 15-171, 15-
234 172, 15-175, 22a-5, 22a-6, 22a-7, 22a-32, 22a-39 or 22a-42a, 22a-45a,
235 chapter 441, sections 22a-134 to 22a-134d, inclusive, as amended,
236 section 22a-69 or 22a-74, subsection (b) of section 22a-134p, section 22a-
237 148, 22a-149, 22a-150, 22a-154, 22a-157, as amended by this act, 22a-158,
238 22a-162, 22a-171, 22a-174, as amended, 22a-175, 22a-177, 22a-178, 22a-
239 181, 22a-183, 22a-184, 22a-190, 22a-208, 22a-208a, 22a-209, 22a-213, 22a-
240 220, 22a-336, 22a-342, 22a-345, 22a-346, 22a-347, 22a-349a, 22a-354p,
241 22a-358, 22a-359, 22a-361, 22a-362, 22a-368, 22a-401 to 22a-405,
242 inclusive, 22a-411, 22a-416, 22a-417, 22a-424 to 22a-433, inclusive, 22a-
243 447, 22a-449, 22a-450, 22a-451, as amended, 22a-454, 22a-458, 22a-461,
244 22a-462 or 22a-471, or any regulation, order, registration, license or
245 permit adopted thereunder by the commissioner, and for other
246 violations of similar character as set forth in such schedule or
247 schedules, no more than twenty-five thousand dollars for said
248 violation for each day during which such violation continues;

249 (3) For violation of the terms of any final order of the commissioner,

250 except final orders under subsection (d) of this section and emergency
 251 orders and cease and desist orders as set forth in subdivision (4) of this
 252 subsection, for violation of the terms of any permit issued by the
 253 commissioner, and for other violations of similar character as set forth
 254 in such schedule or schedules, no more than twenty-five thousand
 255 dollars for said violation for each day during which such violation
 256 continues;

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

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

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

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

273 (8) For violation of any provision of sections 22a-608 to 22a-611,
 274 inclusive, no more than the amount established by Section 325 of the
 275 Emergency Planning and Community Right-To-Know Act of 1986 (42
 276 USC 11001 et seq.) for a violation of Section 302, 304 or 311 to 313,
 277 inclusive, of said act.

This act shall take effect as follows:	
Section 1	<i>October 1, 2002</i>
Sec. 2	<i>October 1, 2002</i>

Sec. 3	<i>October 1, 2002</i>
Sec. 4	<i>October 1, 2002</i>
Sec. 5	<i>October 1, 2002</i>

Statement of Legislative Commissioners:

In section 1, "covering" was changed to "paying the" and in section 2(c), the reference to state or federal law was added for clarity.

ENV *Joint Favorable Subst.-LCO*

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:

Fund-Type	Agency Affected
EQ - Cost and Offsetting Revenue Gains	Department of Environmental Protection
GF - Potential Minimal Cost and Potential Minimal Revenue	Office of Attorney General

Note: GF=General Fund

Municipal Impact: None

Explanation

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 account in the Environmental Quality Fund for the Department of Environmental Protection (DEP) to develop and administer the program. It is anticipated that the program will be implemented over a 3-5 year period. The revenue will be derived from fees for over 750 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

sSB 373

AN ACT CONCERNING AGREEMENT STATE STATUS WITH THE NUCLEAR REGULATORY COMMISSION**SUMMARY:**

This bill authorizes the Department of Environmental Protection (DEP) to replace the federal Nuclear Regulatory Commission (NRC) as the regulatory agency overseeing licensing and safety of certain radioactive material. (The NRC will continue to regulate nuclear power plants.) By federal and state law, the governor may request such an agreement with the NRC. If the NRC approves, Connecticut would assume "agreement state" status.

The bill requires the DEP commissioner to adopt regulations establishing a program to control radiation hazards and set fees to pay for the program's administration. It authorizes him to establish fees for the (1) registration of radioactive material and isotopes used by hospitals and (2) licensing of ionizing radiation sources, and devices and equipment that use those sources. The fees are to be placed in a special account the bill creates within the Environmental Quality Fund.

The bill makes unlicensed people who recklessly or negligently cause radioactive discharges liable to DEP for the costs and expenses DEP incurs in cleaning up the discharges. It authorizes DEP to seek punitive damages and to ask the attorney general to take civil action to recover its costs and expenses. It entitles people who contain, remove, or clean up radioactive contamination or mitigate its effect to reimbursement from those responsible under federal or state law for the pollution. 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.

The bill makes any person who knowingly or negligently violates laws concerning the regulation or registration of ionizing radiation sources and devices, radioactive isotopes and materials, and x-ray devices liable to the state for the costs and expenses of detecting, investigating,

controlling, and abating the violations, and for the costs and expenses of restoring the environment.

The bill authorizes the commissioner to impose civil penalties for violations of laws concerning the unauthorized use, transportation, or possession of radioactive materials; the licensing of sources of ionizing radiation; registration of x-ray machines; and the maintenance of certain records.

EFFECTIVE DATE: October 1, 2002

IONIZING RADIATION MANAGEMENT ACCOUNT

DEP must deposit fees it collects from the licensing and registration of radiation sources in an Ionizing Radiation Management Account. It can only use this account to pay for the direct and indirect costs of program administration. It must carry forward funds remaining in the account at the end of a fiscal year to the next fiscal year.

CIVIL PENALTIES

The bill authorizes the commissioner to impose civil penalties of up to \$1,000 per violation and \$100 a day for each day the violation continues, 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 material and laws that require (1) registration of x-ray machines and radioactive material used by hospitals, (2) licensure of other sources of ionizing radiation, and (3) maintenance of certain records.

The bill also authorizes the commissioner to impose civil penalties of up to \$25,000 a day for the discharge of electromagnetic radiation, or causing, engaging, or maintaining any condition or activity in violation of the laws barring the unauthorized possession, use, or transportation of radioactive material and laws that require (1) registration of x-ray machines and radioactive material used by hospitals, (2) licensure of other sources of ionizing radiation, and (3) maintenance of certain records.

It appears that the following are subject to both penalties: violations concerning registration of x-ray machines and radioactive material

used by hospitals, licensure of other sources of ionizing radiation, and maintenance of certain records.

Finally, under current law, the commissioner may impose these fines for violations of a number of environmental laws. This bill authorizes him to also impose them for violating registrations or licensing requirements pertaining to those environmental laws.

BACKGROUND

Agreement State Status

The 1954 federal Atomic Energy Act permits the Nuclear Regulatory Commission to transfer to the states regulatory authority over certain radioactive material. The governor must sign a letter of intent, and the state must show that its regulatory program is compatible with NRC's, adequate to protect public health and safety, and self-supporting. DEP intends to meet the last requirement through the fees it sets. Thirty-two states have agreement state status, and three more are in the process of seeking such status.

Licensees

DEP estimates there are between 200 and 250 NRC licensees in Connecticut. They include universities, research facilities, industries, doctors' offices, hospitals, and pharmaceutical companies.

COMMITTEE ACTION

Environment Committee

Joint Favorable Report

Yea 24 Nay 0