



House of Representatives

General Assembly

File No. 339

January Session, 2005

Substitute House Bill No. 6835

House of Representatives, April 13, 2005

The Committee on Environment reported through REP. ROY of the 119th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING IMPROVEMENTS TO THE UNDERGROUND STORAGE TANK PROGRAM.

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

1 Section 1. Section 22a-449 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) The Commissioner of Environmental Protection shall, to the
4 extent possible, immediately, whenever there is discharge, spillage,
5 uncontrolled loss, seepage or filtration of oil or petroleum or chemical
6 liquids or solid, liquid or gaseous products or hazardous wastes upon
7 any land or into any of the waters of the state or into any offshore or
8 coastal waters, which may result in pollution of the waters of the state,
9 damage to beaches, wetlands, stream banks or coastal areas, or
10 damage to sewers or utility conduits or other public or private
11 property or which may create an emergency, cause such discharge,
12 spillage, uncontrolled loss, seepage or filtration to be contained and
13 removed or otherwise mitigated by whatever method said

14 commissioner considers best and most expedient under the
15 circumstances. The commissioner shall also (1) determine the person,
16 firm or corporation responsible for causing such discharge, spillage,
17 uncontrolled loss, seepage or filtration and (2) send notice, in writing,
18 to the chief executive officer and the local director of health of the
19 municipality in which such discharge, spillage, uncontrolled loss,
20 seepage or filtration occurs of such occurrence. Such notification shall
21 be sent not later than twenty-four hours after the commissioner
22 becomes aware of the contamination.

23 (b) The commissioner may: (1) License terminals in the state for the
24 loading or unloading of oil or petroleum or chemical liquids or solid,
25 liquid or gaseous products or hazardous wastes and shall adopt, in
26 accordance with chapter 54, reasonable regulations in connection
27 therewith for the purposes of identifying terminals subject to licensure
28 and protecting the public health and safety and for preventing the
29 discharge, spillage, uncontrolled loss, seepage or filtration of oil or
30 petroleum or chemical liquids or solid, liquid or gaseous products or
31 hazardous wastes. Each license issued under this section shall be valid
32 for a period of not more than three years commencing July first, unless
33 sooner revoked by the commissioner, and there shall be charged for
34 each such license or renewal thereof fees established by regulation
35 sufficient to cover the reasonable cost to the state of inspecting and
36 licensing such terminals; (2) provide by regulations for the
37 establishment and maintenance in operating condition and position of
38 suitable equipment to contain as far as possible the discharge, spillage,
39 uncontrolled loss, seepage or filtration of any oil or petroleum or
40 chemical liquids or solid, liquid or gaseous products or hazardous
41 wastes; (3) inspect periodically all hoses, gaskets, tanks, pipelines and
42 other equipment used in connection with the transfer, transportation
43 or storage of oil or petroleum or chemical liquids or solid, liquid or
44 gaseous products or hazardous wastes to make certain that they are in
45 good operating condition, and order the renewal of any such
46 equipment found unfit for further use. No person shall commence
47 operation of any such terminal in this state on or after July 1, 1993,
48 without a license issued by the commissioner. Any person who

49 operates any such terminal without a license issued by the
50 commissioner shall be fined not more than five thousand dollars per
51 day during any period of unlicensed operation.

52 (c) The commissioner may establish such programs and adopt, in
53 accordance with chapter 54, and enforce such regulations as he deems
54 necessary to carry out the intent of sections 22a-133a to 22a-133j,
55 inclusive, sections 22a-448 to 22a-454, inclusive, and Subtitle C of the
56 Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.),
57 as amended from time to time, except that actions pursuant to the
58 state's hazardous waste program shall be brought under the provisions
59 of sections 22a-131 and 22a-131a.

60 (d) The Commissioner of Environmental Protection in consultation
61 with the Commissioner of Public Safety may establish by regulations
62 adopted in accordance with the provisions of chapter 54 standards and
63 criteria for the nonresidential underground storage of oil, petroleum
64 and chemical liquids which may include but not be limited to
65 standards and criteria for the design, installation, operation,
66 maintenance and monitoring of facilities for the underground storage
67 and handling of such liquids. Each nonresidential underground
68 storage facility which, pursuant to regulations adopted pursuant to
69 this section, submits notification of installation to the commissioner
70 after July 1, 1990, shall submit a notification fee of one hundred dollars
71 per tank. The Commissioner of Environmental Protection may
72 establish such programs and adopt, in accordance with chapter 54, and
73 enforce such regulations as he deems necessary to carry out the intent
74 of Subtitle I of the Resource Conservation and Recovery Act of 1976 (42
75 USC 6901, et seq.), as amended from time to time.

76 (e) The fee for the inspection of each nonresidential underground
77 storage facility which, pursuant to regulations adopted pursuant to
78 this section, submits notification to the commissioner shall be one
79 hundred dollars per tank, provided such fee may not be charged more
80 than once every five years.

81 (f) Any moneys collected for the issuance or renewal of a license,

82 pursuant to subsection (b) of this section or regulations adopted
83 pursuant to said subsection, shall be deposited in the General Fund.

84 (g) The Commissioner of Environmental Protection may adopt
85 regulations, in accordance with the provisions of chapter 54,
86 establishing (1) requirements for the inspection of nonresidential
87 underground storage tanks systems for compliance with this section
88 and any regulations adopted under this section, including, but not
89 limited to, the minimum frequency and requirements for inspections,
90 maintenance and disclosure of results, and (2) a program to authorize
91 persons to perform inspections, including education and training
92 requirements for such persons, and whether or not such persons may
93 be employed by the owner or operator of the subject underground
94 storage tank system.

95 (h) (1) If the commissioner determines that a nonresidential
96 underground storage tank system (A) is not designed, constructed,
97 installed and operated in accordance with section 22a-449o or
98 regulations adopted pursuant to this section, (B) fails to have or
99 operate proper release detection equipment in accordance with
100 regulations adopted pursuant to this section, or (C) fails to have or
101 operate proper overfill and spill protection measures or equipment in
102 accordance with regulations adopted pursuant to this section, then the
103 commissioner may require the owner or operator of the nonresidential
104 underground storage tank system to pump out the contents of its
105 system, place a notice on a system that is plainly visible, indicating that
106 the system is not in compliance with the requirements applicable to
107 underground storage tank systems and that such system cannot be
108 used and deliveries to such system cannot be accepted until a date
109 specified by the commissioner, or disable the use of such system by a
110 device that prohibits deliveries to such system. Any action pursuant to
111 this subsection shall not be based solely on requirements relating to
112 reporting or record keeping.

113 (2) No person shall make deliveries to any system bearing the notice
114 described in subdivision (1) of this subsection or on which the

115 commissioner has placed a disabling device. The owner or operator of
116 such system shall ensure that any such system is not used for
117 dispensing product or receiving deliveries until the commissioner
118 determines that said system is in compliance with the applicable
119 requirements. No person or municipality shall remove, alter, deface or
120 tamper with any notice or disabling device placed by the
121 commissioner pursuant to subdivision (1) of this subsection.

122 (3) Nothing in this subsection shall affect the authority of the
123 commissioner under any other statute or regulation.

124 (4) The commissioner may adopt regulations, in accordance with the
125 provisions of chapter 54, establishing requirements, other than those
126 specified in this subsection, relating to the prohibition of deliveries to
127 and the use of nonresidential underground storage tank systems that
128 are not in compliance with the requirements of this section and any
129 regulations adopted under this section.

130 Sec. 2. Section 22a-449e of the general statutes is repealed and the
131 following is substituted in lieu thereof (*Effective from passage*):

132 (a) The Commissioner of Environmental Protection, after
133 consultation with the members of the review board established by
134 section 22a-449d shall adopt regulations, in accordance with the
135 provisions of chapter 54, setting forth procedures for reimbursement
136 and payment from the account established under section 22a-449c.
137 Such regulations shall include such provisions as the commissioner
138 deems necessary to carry out the purposes of sections 22a-449a to 22a-
139 449h, inclusive, as amended by this act, including, but not limited to,
140 provisions for (1) notification of eligible parties of the existence of the
141 account; (2) records required for submission of claims and
142 reimbursement and payment; (3) periodic and partial reimbursement
143 and payment to enable responsible parties to meet interim costs,
144 expenses and obligations; and (4) reimbursement and payment for
145 costs, expenses and obligations incurred in connection with releases or
146 suspected releases, and incurred after July 5, 1989, for releases
147 discovered before or after said date provided reimbursement and

148 payment shall not be made for costs, expenses and obligations
149 incurred by a responsible party on or before said date.

150 (b) (1) The commissioner, in accordance with the procedures set
151 forth in subdivision (2) of this subsection, may prescribe a schedule for
152 the maximum amount to be paid from the account for labor,
153 equipment, materials, services or other costs, expenses or obligations
154 paid or incurred as a result of a release or suspected release. Such
155 schedule shall not be a regulation, as defined in section 4-166. The
156 amounts in any such schedule may be less than and shall be not more
157 than the usual, customary and reasonable amounts charged, as
158 determined by the commissioner. Notwithstanding the provisions of
159 sections 22a-449a to 22a-449j, inclusive, as amended by this act, or any
160 regulation adopted by the commissioner pursuant to this section, upon
161 adoption of any such schedule, the amount to be paid from the account
162 for any labor, equipment, materials, services or other costs, expenses or
163 obligations, shall not exceed the amount established in any such
164 schedule.

165 (2) The commissioner shall adopt, revise or revoke said schedule in
166 accordance with the provisions of this subsection. After consultation
167 with the board, the commissioner shall publish notice of intent to
168 adopt, revise or revoke the schedule, or any portion thereof, in a
169 newspaper having substantial circulation in the affected area. There
170 shall be a comment period of thirty days following publication of such
171 notice during which interested persons may submit written comments
172 to the commissioner. The commissioner shall publish notice of the
173 adoption, revision or revocation of the schedule, or part thereof, in a
174 newspaper having substantial circulation in the affected area. The
175 commissioner may review such schedule every two years or may do so
176 more or less frequently, as the commissioner deems necessary. The
177 commissioner, after consultation with the board, may revise or revoke
178 the schedule, in whole or in part, using the procedures specified in this
179 subsection. Any person may request that the commissioner adopt,
180 revise or revoke the schedule in accordance with this subsection.

181 (c) Upon adoption of a schedule by the commissioner pursuant to
182 subsection (b) of this section, the requirements concerning obtaining
183 three bids for services rendered contained in regulations adopted
184 pursuant to this section shall not apply, provided the schedule
185 includes the subject services.

186 Sec. 3. Section 22a-449f of the general statutes is amended by adding
187 subsection (f) as follows (*Effective from passage*):

188 (NEW) (f) With respect to any supplemental application or request
189 for payment or reimbursement from the account, which application or
190 request is based on an initial application or request for payment or
191 reimbursement for which the board has determined that the costs,
192 expenses or other obligations paid or incurred by such party are
193 eligible for payment or reimbursement from the account, that was
194 received by the board before June 1, 2004, the board, with the consent
195 of any applicant, may order payment or reimbursement by the
196 identification of a category by the commissioner of activities or costs,
197 expenses, or other obligations that are less than one hundred thousand
198 dollars and may establish a percentage to be paid from the account for
199 any such activity, cost, expense, or obligation. In establishing such
200 percentage, the commissioner shall consider the amounts previously
201 paid from the account and any other information the commissioner
202 deems relevant. Any such percentage shall be not more than, but may
203 be less than, ninety per cent of the average amount, as determined by
204 the commissioner, previously paid from the account for any activity,
205 cost, expense or obligation. After the commissioner has established a
206 percentage that may be paid, a responsible party may request, in
207 writing, payment or reimbursement for any activity, cost, expense or
208 other obligation at the percentage established by the commissioner.
209 The board shall expedite consideration of any such written request and
210 shall, not later than ninety days of receipt of any such request,
211 determine whether to order payment or reimbursement from the
212 account. The percentage established by the commissioner pursuant to
213 this subsection and paid from the account shall be considered full
214 payment for any such activity, expense or other obligation. The

215 activities, expenses or obligations identified by the commissioner
 216 pursuant to this subsection may constitute all or a portion of the
 217 amounts sought in a supplemental application or supplemental
 218 request for payment or reimbursement.

219 Sec. 4. Section 22a-449b of the general statutes is repealed and the
 220 following is substituted in lieu thereof (*Effective from passage*):

221 Not later than thirty days immediately following the tax due date
 222 for the tax imposed under section 12-587, a portion of such tax, in the
 223 amount of [three] five million dollars, shall be credited by the
 224 Comptroller to the underground storage tank petroleum clean-up
 225 account established under section 22a-449c.

| | | |
|---|---------------------|----------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>from passage</i> | 22a-449 |
| Sec. 2 | <i>from passage</i> | 22a-449e |
| Sec. 3 | <i>from passage</i> | 22a-449f |
| Sec. 4 | <i>from passage</i> | 22a-449b |

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:

| Agency Affected | Fund-Effect | FY 06 \$ | FY 07 \$ |
|--|------------------------------------|-----------|-----------|
| Department of Environmental Protection | EQ (UST account) - Revenue Gain | 8,000,000 | 8,000,000 |
| | GF - Revenue Loss | 8,000,000 | 8,000,000 |

Note: GF=General Fund

Municipal Impact:

| Municipalities | Effect | FY 06 \$ | FY 07 \$ |
|------------------------|--------|-----------|-----------|
| Various Municipalities | Cost | Potential | Potential |

Explanation

Passage of this bill will result in a decrease in revenue to the General Fund of \$8 million per year and an offsetting increase in revenue to the Underground Storage Tank Cleanup Account (UST). This change results in an earmarking of \$20 million per year instead of the current \$12 million of the petroleum products gross earnings tax to the UST account. The UST account has 921 outstanding claims pending as of 1/1/05 at a cost of approximately \$56 million. The dollar cost of claims still needs to be reviewed by staff and approved by the UST Board.

It is anticipated that the inspection and compliance requirements, the expedited decisions and development of a price schedule can be handled within the current \$2 million per year in the UST account that can be allocated to the Department of Environmental Protection (DEP) for administration of the program.

Municipalities with underground storage tanks costs could see increased costs in maintaining the UST's due to compliance with

inspection requirements that would be included in regulations to be adopted by DEP. The impact would vary for each municipality.

OLR Bill Analysis

sHB 6835

AN ACT CONCERNING IMPROVEMENTS TO THE UNDERGROUND STORAGE TANK PROGRAM

SUMMARY:

This bill increases, from \$3 million to \$5 million, the quarterly payment that the comptroller must credit to the underground storage tank petroleum clean-up account from the petroleum products gross earnings tax.

It authorizes the Department of Environmental Protection (DEP) commissioner to:

1. adopt regulations establishing requirements for the inspection of commercial underground storage tank systems (USTs);
2. block deliveries to and close USTs that do not comply with the law or inspection regulations; and
3. develop a price schedule of the maximum amount to be paid from the clean-up account for labor, equipment, material, services, or other costs paid or incurred because of a leak or suspected leak.

It authorizes the Clean-up Account Review Board to expedite a decision on whether to authorize supplemental payments.

EFFECTIVE DATE: Upon passage

INSPECTION OF COMMERCIAL USTS

The bill authorizes the commissioner to adopt regulations establishing requirements for inspection of commercial USTs for compliance with laws and regulations regarding UST design, construction, installation or operation, and with the regulations the commissioner adopts. The regulations must include the minimum frequency of, and requirements for, inspections, maintenance, and disclosure of results.

The commissioner also may adopt regulations establishing a program authorizing people to perform inspections. The regulations must include education and training requirements for inspectors and specify whether inspectors may be employed by the owner or operator of the UST being inspected.

NONCOMPLIANT USTS

The bill authorizes the commissioner to take certain actions if she finds that a UST (1) is not designed, built, installed, or operated according to the law or to regulations the bill requires or (2) does not have, or operate, proper (a) release detection equipment or (b) overfill and spill protection measures or equipment. In such instances, the commissioner may require a UST owner or operator to:

1. pump out the UST and place on it a plainly visible notice indicating it is not in compliance and cannot be used or accept deliveries until a date the commissioner specifies or
2. install a device that prohibits deliveries and renders the UST unusable.

The commissioner may not take any of the above actions solely for a violation of record keeping or reporting requirements.

The bill bars anyone from making any deliveries to any system bearing such a notice or on which the commissioner has placed a disabling device. The UST owner or operator must ensure the system does not dispense any product or receive deliveries until the commissioner finds it is in compliance. The bill prohibits any person or town from removing, altering, defacing, or tampering with a notice or disabling device. By law, the DEP commissioner may fine violators up to \$25,000 a day.

The bill authorizes the commissioner to adopt regulations setting additional requirements relating to the ban on deliveries and use of non-compliant USTs. The bill's provisions do not affect the commissioner's authority under any other law or regulation.

PRICE SCHEDULE

The bill authorizes the commissioner to prepare a price schedule of the maximum amount the UST clean-up account will reimburse applicants for labor, equipment, material, services, or other costs incurred as a result of a leak or a suspected leak. This schedule is not to be considered a regulation. The amounts in the price schedule can be no more than the usual, customary and reasonable amounts charged for these services or material, as determined by the commissioner. Once the schedule is adopted the board may not pay more than the amounts listed in it. The commissioner may apparently adopt the price schedule for both the residential and commercial UST programs.

Anyone may ask the commissioner to adopt, revise, or revoke the schedule. If she decides do so, she must, after consulting with the board, publish notice of intent in a newspaper of substantial circulation in the affected area and allow 30 days for submittal of written comments. She must then publish notice of the schedule's adoption, revision, or revocation in a newspaper of substantial circulation in the affected area. She may review the price schedule every two years or as she deems necessary. Once a schedule is adopted that includes a price for a particular service, the bill supersedes a regulatory requirement that applicants obtain three written bids for such a service and submit copies to the board.

EXPEDITED PAYMENT

The bill authorizes the review board to speed up consideration of a written request for supplemental payment for certain activities, costs, or expenses. The board may do so only when considering a supplemental application or request for payment based on an initial application it deemed eligible for payment and received before June 1, 2004.

Under the bill, the board may (1) authorize payment for a category of services the commissioner identifies for costs of less than \$100,000 and (2) set a percentage of up to 90% of the average amount previously paid for such costs. (However, the bill also requires the commissioner to establish this percentage.) Under the bill, the board may either pay the full amount requested or expedite a decision on whether to pay the lesser amount. The applicant must agree to the board's action in either case. These provisions apparently apply to both the commercial and residential UST programs.

In establishing a percentage, the commissioner must consider amounts previously paid from the account and other information she deems relevant. The percentage can be no more than 90% of the average amount previously paid for any activity, cost, or obligation. The commissioner apparently does not have to consider only the amounts previously paid for the same category of costs for which she is establishing a percentage.

Once the commissioner has determined the percentage, a responsible or affiliated party may request in writing payment for any activity at the percentage she has established. The board must expedite consideration of any such request and determine within 90 days of receiving the request if it will order payment from the account. The percentage the commissioner establishes will be considered full payment. The activities the commissioner identifies may be all or a portion of the amount sought in the supplemental application.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute
Yea 28 Nay 0