



Senate

General Assembly

File No. 99

February Session, 2006

Substitute Senate Bill No. 415

Senate, March 23, 2006

The Committee on Environment reported through SEN. FINCH of the 22nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING ENVIRONMENTAL REMEDIATION ALLOCATION.

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

1 Section 1. Section 22a-452 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2006*):

3 (a) Any person [, firm, corporation] or municipality which contains
4 or removes or otherwise mitigates the effects of oil or petroleum or
5 chemical liquids or solid, liquid or gaseous products or hazardous
6 wastes or hazardous substances resulting from any discharge, spillage,
7 uncontrolled loss, seepage or filtration of such substance or material or
8 waste shall be entitled to reimbursement or recovery from any person
9 [, firm or corporation] for the reasonable costs expended or to be
10 expended for such containment, removal, or mitigation, including the
11 reasonable costs of investigation and monitoring, if such oil or
12 petroleum or chemical liquids or solid, liquid or gaseous products or
13 hazardous wastes or hazardous substances pollution or contamination
14 or other emergency [resulted from the negligence or other actions of

15 such person, firm or corporation] (1) was directly or indirectly caused
16 by such person, or (2) such person, regardless of fault, is one of the
17 following: (A) The owner or operator of a facility, (B) any person who,
18 at the time of disposal of any hazardous substance, owned or operated
19 any facility at which such hazardous substances were disposed of, (C)
20 any person who, by contract, agreement or otherwise, arranged for
21 disposal or treatment, or arranged with a transporter for transport for
22 disposal or treatment, of hazardous substances owned or possessed by
23 such person, by any other party or entity at any facility owned or
24 operated by another party or entity and containing such hazardous
25 substances, and (D) any person who accepts or accepted any
26 hazardous substances for transport to disposal or treatment facilities or
27 sites selected by such person, from which there is any discharge,
28 spillage, uncontrolled loss, seepage or filtration of hazardous
29 substances. When such pollution or contamination or emergency
30 results from the joint [negligence or other] actions or omissions of two
31 or more persons, [firms or corporations,] each shall be liable to the
32 others for a pro rata share of the costs of containing, and removing or
33 otherwise mitigating the effects of the same and for all damage caused
34 thereby. For purposes of this section, "hazardous substances" has the
35 same meaning as provided in section 22a-134 and "owner and
36 operator" and "facility" have the same meanings as provided in 42 USC
37 9601.

38 (b) No person [, firm or corporation which] who renders assistance
39 or advice in mitigating or attempting to mitigate the effects of an actual
40 or threatened discharge of oil or petroleum or chemical liquids or
41 solid, liquid or gaseous products or hazardous [materials] wastes or
42 hazardous substances, other than a discharge of oil as defined in
43 section 22a-457b, to the surface waters of the state, or [which] who
44 assists in preventing, cleaning-up or disposing of any such discharge
45 shall be held liable, notwithstanding any other provision of law, for
46 civil damages as a result of any act or omission by him in rendering
47 such assistance or advice, except acts or omissions amounting to gross
48 negligence or wilful or wanton misconduct, unless he is compensated
49 for such assistance or advice for more than actual expenses. For the

50 purpose of this subsection, "discharge" means spillage, uncontrolled
51 loss, seepage or filtration. [and "hazardous materials" means any
52 material or substance designated as such by any state or federal law or
53 regulation.]

54 (c) The immunity provided in this section shall not apply to (1) any
55 person, firm or corporation responsible for such discharge, or under a
56 duty to mitigate the effects of such discharge, (2) any agency or
57 instrumentality of such person, firm or corporation, or (3) negligence
58 in the operation of a motor vehicle.

59 (d) An action for reimbursement or recovery of the reasonable costs
60 expended for containment, removal or mitigation, including the
61 reasonable costs of investigation and monitoring, shall be commenced
62 not later than six years after initiation of the physical on-site
63 construction of the remedial action taken to contain, remove or
64 mitigate the effects of oil or petroleum or chemical liquids or solid,
65 liquid or gaseous products or hazardous wastes or hazardous
66 substances, or three years after the completion of the containment,
67 removal or mitigation activities, whichever is later.

68 (e) In any action brought pursuant to this section, the Superior
69 Court may issue an order granting the reimbursement or recovery of
70 reasonable costs to be incurred in the future.

71 (f) A person shall not be liable under this section where the person
72 can establish by a preponderance of the evidence that the discharge,
73 spillage, uncontrolled loss, seepage or filtration of a hazardous
74 substance and the resulting damages were caused solely by (1) an act
75 of God, (2) an act of war, (3) an act or omission of a third party other
76 than (A) an employee or agent of the person, or (B) a third party whose
77 act or omission occurs in connection with a contractual relationship,
78 existing directly or indirectly, with the person, except that a person
79 shall not be liable where the sole contractual arrangement with such
80 third party arises from a published tariff and acceptance for carriage
81 by a common carrier by rail, if the person establishes by a
82 preponderance of the evidence that such person (i) exercised due care

83 with respect to the hazardous substance taking into consideration the
 84 characteristics of such hazardous substance, in light of all relevant facts
 85 and circumstances, and (ii) took precautions against foreseeable acts or
 86 omissions of any such third party and the consequences that could
 87 foreseeably result from such acts or omissions, or (4) any combination
 88 of the foregoing.

89 (g) This section shall apply to any action brought before, on or after
 90 July 1, 2006, for the reimbursement or recovery of the reasonable costs
 91 for containment, removal or mitigation, including the reasonable costs
 92 of investigation and monitoring, except that it shall not apply to any
 93 action that has become final, and is no longer subject to appeal, prior to
 94 July 1, 2006.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2006	22a-452

Statement of Legislative Commissioners:

A redundant phrase was removed from subsection (a) and portions of subsection (f) were rephrased for purposes of clarity.

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: None

Municipal Impact:

Municipalities	Effect	FY 07 \$	FY 08 \$
Various Municipalities	See Below	See Below	See Below

Explanation

To the extent that this legislation would expand the ability of a municipality to recover costs for remediation from a responsible party, a cost savings/revenue gain could be incurred.

The Out Years

The fiscal impact identified above would continue into the future.

OLR Bill Analysis
sSB 415

AN ACT CONCERNING ENVIRONMENTAL REMEDIATION ALLOCATION.

SUMMARY:

Under current law, a person or municipality that contains, removes or mitigates the effects of an oil, chemical, or hazardous waste spill is entitled to reimbursement for the reasonable costs of containment, removal, or mitigation by the person whose negligence or other actions caused the spill. This bill makes it easier to recover these costs and expands the kinds of costs that may be recovered. Specifically, it (1) eliminates the need to prove negligence; (2) allows for recovery of money yet to be spent, including the reasonable costs of investigation and monitoring; and (3) allows reimbursement or recovery for pollution by a hazardous substance. It specifies who is liable for the cost of remediation, sets deadlines for bringing reimbursement and recovery actions, exempts certain people from liability, and makes other changes.

The bill applies to any action brought before, on, or after July 1, 2006, except actions that become final and are not subject to appeal before July 1, 2006.

EFFECTIVE DATE: July 1, 2006

People Liable for Remediation Costs

Under the bill, a person or town that mitigates a hazardous waste or hazardous substance spill can recover or obtain reimbursement from a person who directly or indirectly caused the spill. It also allows recovery and reimbursement against a person who, regardless of fault, (1) owns or operates a facility; (2) when such substances were disposed of, owned or operated the facility where they were disposed of; (3) by

contract or otherwise, arranged to dispose of or treat a hazardous substance he owned at a facility owned or operated by another person that contained such hazardous substance; (4) by contract or otherwise, arranged with a transporter to ship the hazardous substance to such a facility; or (5) accepts or accepted a hazardous substance for shipment to disposal or treatment facilities or other sites from which there is a spill.

Under current law, when such pollution results from the joint negligence or other action of two more people, each is liable to the others for his share of the costs of containing, removing, or otherwise mitigating the effects of the pollution and for damage it caused. The bill eliminates the negligence requirement and instead imposes these pro rata costs on those people whose actions or omissions caused the pollution.

The bill requires any actions for reimbursement or recovery to be brought no later than six years after physical on-site remediation began, or three years after remediation is finished, whichever is later. It authorizes the Superior Court to issue an order granting reimbursement or recovery of reasonable costs yet to be incurred.

Exemptions from Liability

Current law exempts most people who help mitigate the effects of an actual or threatened discharge of hazardous materials from liability for civil damages. The bill instead exempts people who mitigate the effects of an actual or threatened discharge of a hazardous waste or hazardous substance.

It also exempts from liability anyone who can show, by a preponderance of the evidence, that the discharge of a hazardous substance (but not a hazardous waste) and resulting damages were caused solely by one or more of the following: (1) an act of God or war or (2) the act or omission of a third party. In the latter case, the person must establish by a preponderance of the evidence that he (1) exercised due care over the hazardous substance considering its characteristics

and all relevant facts and circumstances and (2) took precautions against the third party's foreseeable acts or omissions and the consequences that could foreseeably result from them. But the third party exemption does not apply if that party is the person's employee or agent or someone whose act or omission occurs in connection with a contractual relationship with the person (other than a contract to ship by rail).

BACKGROUND

Hazardous Substances

A hazardous substance is (1) a substance defined as such under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC 9601) or (2) a petroleum product or by-product for which state remediation standards have been adopted, or for which those standards have a process for calculating the substance's numeric criteria.

Hazardous Waste

Hazardous waste is any waste material that may pose a present or potential hazard to human health or the environment when improperly disposed of, treated, stored, transported, or otherwise managed. It can include hazardous waste identified in accordance with Section 3001 of the federal Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.).

Facility

A facility is any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise come to be located. The term does not include any consumer product in consumer use or any vessel (42 USC 9601).

Owner or Operator

Owner or operator does not include a unit of state or local

government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign. This exclusion does not apply to any state or local government that has caused or contributed to the release or threatened release of a hazardous substance from the facility (42 USC 9601).

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 25 Nay 0 (03/08/2006)