



# Senate

General Assembly

**File No. 53**

February Session, 2006

Senate Bill No. 417

*Senate, March 21, 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 bill ought to pass.

## **AN ACT CONCERNING THE CONTROL AND SECURITY OF RADIOACTIVE MATERIAL.**

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

1 Section 1. Section 22a-151 of the general statutes is amended by  
2 adding subdivisions (9) and (10) as follows (*Effective October 1, 2006*):

3 (NEW) (9) "Radioactive materials" means any solid, liquid or gas  
4 that emits ionizing radiation spontaneously.

5 (NEW) (10) "Commissioner" means the Commissioner of  
6 Environmental Protection or a designee or agent of the Commissioner  
7 of Environmental Protection.

8 Sec. 2. Section 22a-152 of the general statutes is repealed and the  
9 following is substituted in lieu thereof (*Effective October 1, 2006*):

10 The Governor, or the commissioner, on behalf of this state, is  
11 authorized to enter into agreements with the government of the United  
12 States providing for discontinuance of certain of the programs of the

13 government of the United States with respect to sources of ionizing  
14 radiation and the assumption thereof by this state, as provided for in  
15 the Atomic Energy Act of 1954, as amended.

16 Sec. 3. Section 22a-153 of the general statutes is repealed and the  
17 following is substituted in lieu thereof (*Effective October 1, 2006*):

18 (a) The [Commissioner of Environmental Protection] commissioner  
19 shall supervise and regulate in the interest of the public health and  
20 safety the use of ionizing radiation within the state.

21 (b) [Said] The commissioner may employ, subject to the provisions  
22 of chapter 67, and prescribe the powers and duties of such persons as  
23 may be necessary to carry out the provisions of sections 22a-151 to 22a-  
24 158, inclusive, as amended by this act.

25 (c) [Said] The commissioner shall [make such regulations as may be  
26 necessary to carry out the provisions of said sections] adopt  
27 regulations, in accordance with the provisions of chapter 54, regarding  
28 sources of ionizing radiation and radioactive materials, including, but  
29 not limited to:

30 (1) Regulations necessary to secure agreement state status from the  
31 Nuclear Regulatory Commission pursuant to Section 274 of the Atomic  
32 Energy Act of 1954, 42 USC 2021, as amended;

33 (2) Regulations relating to the (2) construction, operation, control,  
34 tracking, security or decommissioning of sources of ionizing radiation,  
35 including, but not limited to, any modification or alteration of such  
36 sources;

37 (3) Regulations relating to the production, transportation, use,  
38 storage, possession, management, treatment, disposal or remediation  
39 of radioactive materials;

40 (4) Regulations relating to planning for and responding to terrorist  
41 or other emergency events, or the potential for such events, that  
42 involve or may include radioactive materials;

43 (5) Regulations as may be necessary to carry out the provisions of  
44 sections 22a-151 to 22a-158, inclusive, as amended by this act; and

45 (6) Regulations establishing fees for the licensure of sources of  
46 ionizing radiation, which fees, in conjunction with the fees collected  
47 pursuant to section 22a-148 shall be sufficient for the administration,  
48 implementation and enforcement of an ionizing radiation program.

49 (d) The Governor or the commissioner is authorized to employ such  
50 consultants, experts and technicians as [he shall deem] necessary for  
51 the purpose of conducting investigations and reporting [to him] on  
52 matters connected with the implementation of the provisions of [said  
53 sections] sections 22a-148 to 22a-158, inclusive, as amended by this act.

54 (e) There is established within the Environmental Quality Fund  
55 established under section 22a-27g an account to be known as the  
56 "ionizing radiation management account". Notwithstanding the  
57 provisions of section 22a-27g, any moneys collected in accordance with  
58 section 22a-148, or 22a-150, or any regulations adopted in accordance  
59 with subsection (c) of this section, shall be deposited in the  
60 Environmental Quality Fund and credited to the ionizing radiation  
61 management account. Any balance remaining in the account at the end  
62 of any fiscal year shall be carried forward in the account for the fiscal  
63 year next succeeding. Said account may also receive moneys from  
64 other sources. The account shall be available to the commissioner to  
65 implement, administer and enforce (1) the ionizing radiation program,  
66 or (2) the provisions of sections 22a-148 to 22a-158, inclusive, as  
67 amended by this act, and section 9 of this act, or any regulations or  
68 guidelines adopted pursuant to said sections. Nothing in this  
69 subsection shall prevent the commissioner from obtaining or using  
70 funds from sources other than the ionizing radiation management  
71 account for the purposes of implementing, administering, and  
72 enforcing an ionization radiation program.

73 (f) The commissioner may establish radiation exposure guidelines  
74 for emergency responders and the public for the management of  
75 terrorist events or other emergencies involving radioactive materials.

76 Any such guidelines may be based upon the recommendations of the  
77 federal government and the National Council on Radiation Protection  
78 and Measurements.

79 Sec. 4. Subsection (a) of section 22a-154 of the general statutes is  
80 repealed and the following is substituted in lieu thereof (*Effective*  
81 *October 1, 2006*):

82 (a) The [Commissioner of Environmental Protection may provide by  
83 regulation for] commissioner may adopt regulations, in accordance  
84 with the provisions of chapter 54, for the general or specific licensing  
85 of [by-product, source, special nuclear materials and other] sources of  
86 ionizing radiation. [, or devices or equipment utilizing such materials,  
87 and for amendment, suspension, or revocation of licenses issued  
88 pursuant thereto.] The commissioner may issue, deny, renew, modify,  
89 suspend or revoke such licenses and may include such terms and  
90 conditions in such licenses that the commissioner deems necessary.

91 Sec. 5. Section 22a-155 of the general statutes is repealed and the  
92 following is substituted in lieu thereof (*Effective October 1, 2006*):

93 [(a) In any proceeding under sections 22a-151 to 22a-158, inclusive,  
94 or any other applicable statute (1) for the issuance or modification of  
95 rules and regulations relating to control of sources of ionizing  
96 radiation; or (2) for granting, suspending, revoking or amending any  
97 license; or (3) for determining compliance with or granting exceptions  
98 from rules and regulations of the Commissioner of Environmental  
99 Protection, the commissioner or his representative designated in  
100 writing shall hold a hearing upon the request of any person whose  
101 interest may be affected by the proceeding, and shall admit any such  
102 person as a party to such proceeding. Thirty days published notice  
103 shall be given of any such hearing.

104 (b) Any final order entered in any proceeding under subsection (a)  
105 above shall be subject to judicial review by the Superior Court in the  
106 manner prescribed in section 25-36.]

107     (a) The commissioner may issue, modify or revoke orders to (1)  
108 abate pollution or a potential source of pollution from ionizing  
109 radiation or radioactive materials, or (2) correct violations of sections  
110 22a-148 to 22a-150, inclusive, section 22a-153, as amended by this act,  
111 22a-154, as amended by this act, 22a-157, as amended by this act, or  
112 22a-158, or any regulation adopted or registration or license issued  
113 pursuant to said sections. Such orders may include steps necessary to  
114 abate pollution or a potential source of pollution, or correct any  
115 violation or any other measures the commissioner deems necessary.  
116 Such orders may be issued to any person who violates any provision of  
117 said sections, or any regulation adopted or registration or license  
118 issued pursuant to said sections or to the owner of any land on which  
119 the violation occurs, regardless of whether the owner of the land  
120 participated in the violation. If two or more persons are issued an  
121 order pursuant to this section for the same violation, such persons  
122 shall be jointly and severally liable for complying with such order.

123     (b) Each order issued under this section shall be served by certified  
124 mail, return receipt requested, or by service by a state marshal or  
125 indifferent person. If a state marshal or indifferent person serves the  
126 order, a true copy of the order shall be served, and the original, with a  
127 return of such service endorsed thereon, shall be filed with the  
128 commissioner. The order shall be deemed to be issued upon service or  
129 upon deposit in the mail. Any order issued pursuant to this section  
130 shall state the basis on which it is issued and shall specify a reasonable  
131 time for compliance.

132     (c) Unless a person aggrieved by an order files a written request for  
133 a hearing before the commissioner not later than thirty days after the  
134 date of issuance, such order shall become final. If so requested, the  
135 commissioner shall hold a hearing as soon thereafter as practicable. A  
136 request for a hearing shall be a condition precedent to any appeal. The  
137 commissioner may, after the hearing or at any time after the issuance  
138 of the order, modify such order by agreement or extend the time  
139 schedule contained in the order if the commissioner deems such  
140 modification or extension advisable or necessary and any such

141 modification or extension shall be deemed to be a revision of an  
142 existing order and shall not constitute a new order. There shall be no  
143 hearing subsequent to, or any appeal from, any such modification or  
144 extension.

145 (d) After the hearing, the commissioner shall consider all  
146 supporting and rebutting evidence and may affirm, modify or revoke  
147 such order and shall notify the recipient of the order of such action by  
148 certified mail, return receipt requested.

149 (e) When the commissioner issues a final order pursuant to this  
150 section, the commissioner shall cause a certified copy or notice thereof  
151 to be recorded on the land records in the municipality in which the  
152 land is located, and such certified copy or notice shall constitute a  
153 notice to the owner's heirs, successors and assigns. When the order has  
154 been fully complied with or revoked, the commissioner shall issue a  
155 certificate acknowledging such compliance or revocation, which  
156 certificate the commissioner shall cause to be recorded on the land  
157 records in the municipality in which the order was previously  
158 recorded.

159 (f) A final order of the commissioner shall be subject to appeal as set  
160 forth in sections 4-183 and 4-184, except that any such appeal shall be  
161 taken to the superior court for the judicial district of New Britain.

162 Sec. 6. Section 22a-156 of the general statutes is repealed and the  
163 following is substituted in lieu thereof (*Effective October 1, 2006*):

164 Whenever, in the judgment of the [Commissioner of Environmental  
165 Protection] commissioner, any person has engaged in or is about to  
166 engage in (1) any acts or practices which constitute, or will constitute, a  
167 violation of any provision of sections [22a-151 to 22a-158, inclusive, or  
168 any other applicable statute] 22a-148 to 22a-150, inclusive, sections 22a-  
169 153 to 22a-155, inclusive, as amended by this act, section 22a-157, as  
170 amended by this act, or 22a-158, or any [rule,] regulation adopted or  
171 registration or license or order issued [thereunder, at the request of the  
172 Commissioner of Environmental Protection] pursuant to said sections,

173 or (2) any act or omission in which a person has established, created or  
174 maintained or will establish, create or maintain an exposure hazard or  
175 source of pollution from ionizing radiation or radioactive material,  
176 upon the request of the commissioner, the Attorney General [may  
177 make application to the appropriate court] shall bring an action in the  
178 superior court for the judicial district of Hartford for an order  
179 enjoining such acts, [or] practices or omissions, or for an order to  
180 control or abate a hazard or source of pollution, or for an order  
181 directing compliance and, upon a showing by the commissioner that  
182 such person has engaged or is about to engage in any such acts or  
183 practices or omissions, a permanent or temporary injunction,  
184 restraining order or other order may be granted. Any such action  
185 brought by the Attorney General pursuant to this section shall have  
186 precedence in the order of trial as provided for in section 52-191.

187       Sec. 7. (NEW) (*Effective October 1, 2006*) (a) Any person who violates  
188 any provision of sections 22a-148 to 22a-150, inclusive, sections 22a-153  
189 to 22a-155, inclusive, section 22a-157 or 22a-158 of the general statutes,  
190 as amended by this act, or any regulation adopted or registration,  
191 license or order issued pursuant to said sections, or any owner of land  
192 who permits such violations to occur on such owner's land, shall be  
193 assessed a civil penalty of not more than ten thousand dollars per day  
194 for each offense. Each violation shall be a separate and distinct offense  
195 and, in the case of a continuing violation, each day's continuance  
196 thereof shall be deemed a separate and distinct offense. If two or more  
197 persons are responsible for such violation, such persons shall be jointly  
198 and severally liable under this section. The Attorney General, upon  
199 request of the Commissioner of Environmental Protection, shall  
200 institute a civil action in the superior court for the judicial district of  
201 Hartford to recover such penalty. Any such action brought by the  
202 Attorney General pursuant to this section shall have precedence in the  
203 order of trial as provided for in section 52-191 of the general statutes.  
204 For the purposes of this section, "person" includes, but is not limited to,  
205 any responsible corporate officer or municipal official.

206       (b) Any person who, with criminal negligence, violates any

207 provision of sections 22a-148 to 22a-150, inclusive, sections 22a-153 to  
208 22a-155, inclusive, section 22a-157 or 22a-158 of the general statutes, as  
209 amended by this act, or any regulation adopted or registration, license  
210 or order issued pursuant to said sections shall be fined not more than  
211 twenty-five thousand dollars per day for each violation or be  
212 imprisoned not more than one year, or both. A subsequent conviction  
213 for any such violation shall carry a fine of not more than fifty thousand  
214 dollars per day for each day of violation or imprisonment for not more  
215 than two years, or both. Each violation shall be a separate and distinct  
216 offense, and, in the case of a continuing violation, each day a violation  
217 continues shall be deemed to be a separate and distinct offense.

218 (c) Any person who knowingly violates any provision of sections  
219 22a-148 to 22a-150, inclusive, sections 22a-153 to 22a-155, inclusive,  
220 section 22a-157 or 22a-158 of the general statutes, as amended by this  
221 act, or any regulation adopted or registration, license or order issued  
222 pursuant to said sections shall be fined not more than fifty thousand  
223 dollars per day for each day of violation or be imprisoned not more  
224 than three years, or both. A subsequent conviction for any such  
225 violation shall carry a fine of not more than one hundred thousand  
226 dollars per day for each day of violation or imprisonment for not more  
227 than ten years, or both. Each violation shall be a separate and distinct  
228 offense, and, in the case of a continuing violation, each day a violation  
229 continues shall be deemed to be a separate and distinct offense.

230 (d) Any person who knowingly makes a false statement,  
231 representation or certification in an application, record, report, plan or  
232 other document filed or required to be maintained under sections 22a-  
233 148 to 22a-150, inclusive, sections 22a-153 to 22a-155, inclusive, section  
234 22a-157 or 22a-158 of the general statutes, as amended by this act, or  
235 any regulation adopted or registration, license or order issued  
236 pursuant to said sections, or who falsifies, tampers with, or knowingly  
237 renders inaccurate any monitoring device or method required to be  
238 maintained under said sections, or any regulation adopted or  
239 registration, license or order issued pursuant to said sections, shall,  
240 upon conviction, be fined not more than twenty-five thousand dollars

241 per day for each violation or imprisoned not more than two years for  
242 each violation, or both. Each violation shall be a separate and distinct  
243 offense, and, in the case of a continuing violation, each day a violation  
244 continues shall be deemed to be a separate and distinct offense.

245 Sec. 8. Section 22a-157 of the general statutes is repealed and the  
246 following is substituted in lieu thereof (*Effective October 1, 2006*):

247 No person shall construct, operate, use, manufacture, produce,  
248 transport, transfer, receive, acquire, decommission, own or possess any  
249 source of ionizing radiation, [unless exempt, licensed or registered in  
250 accordance with the provisions of sections 22a-151 to 22a-158,  
251 inclusive] unless such activity is in compliance with all requirements of  
252 this chapter, including any regulations adopted, or registration or  
253 license issued under this chapter. No person shall produce, transport,  
254 store, possess, manage, treat, remediate, or dispose of any radioactive  
255 materials, unless such activity is in compliance with all requirements  
256 of this chapter including any regulations adopted, or registration or  
257 license issued under this chapter. No person shall fail to register a  
258 source of ionizing radiation required to be registered under this  
259 chapter, including any regulations adopted, or registration or license  
260 issued under this chapter.

261 Sec. 9. (NEW) (*Effective October 1, 2006*) (a) If a person causes or is  
262 responsible for any exposure hazard or potential exposure hazard  
263 from radioactive materials, radioactive waste, or a source of ionizing  
264 radiation, or causes or is responsible for pollution, contamination or  
265 potential pollution or contamination of any land, water, air or other  
266 natural resource of the state through a discharge, spillage,  
267 uncontrolled loss, release, leakage, seepage, or filtration of radioactive  
268 material or radioactive waste, and does not act immediately to prevent,  
269 abate, contain, mitigate or remove such hazard, potential hazard,  
270 pollution, contamination, or potential pollution or contamination, to  
271 the satisfaction of the Commissioner of Environmental Protection, or if  
272 such person is unknown, and such hazard, potential hazard, pollution,  
273 contamination, or potential pollution or contamination, is not being

274 prevented, abated, contained, mitigated or removed by the federal  
275 government, a state agency, a municipality or a regional or interstate  
276 authority, the commissioner may take steps he or she deems necessary  
277 to protect human health and the environment including, but not  
278 limited to, investigating, monitoring, abating, containing, mitigating,  
279 or removing such hazard, potential hazard, pollution, contamination,  
280 or potential pollution or contamination. The commissioner may enter  
281 into a contract with any person for the purpose of carrying out the  
282 provisions of this subsection.

283 (b) Any person who causes or is responsible for any exposure  
284 hazard or potential exposure hazard from radioactive materials,  
285 radioactive waste, or a source of ionizing radiation or who causes or is  
286 responsible for pollution, contamination, or potential pollution or  
287 contamination of any land, water, air or other natural resource of the  
288 state through a discharge, spillage, uncontrolled loss, release, leakage,  
289 seepage, or filtration of radioactive material or radioactive waste shall  
290 be liable for all costs and expenses incurred by the commissioner  
291 pursuant to subsection (a) of this section, including all costs and  
292 expenses to restore the air, water, land and other natural resources of  
293 the state, and shall be liable for all attorneys fees, court costs and any  
294 other legal expenses incurred by the state regarding the recovery of  
295 such costs. Nothing in this subsection shall preclude the commissioner  
296 from seeking additional compensation or such other relief that a court  
297 may award, including punitive damages. When such hazard, potential  
298 hazard, pollution, contamination or potential pollution or  
299 contamination results from the action or inaction of more than one  
300 person, each person shall be held jointly and severally liable for such  
301 costs. Upon request of the commissioner, the Attorney General shall  
302 bring a civil action to recover all such costs and expenses from the  
303 person who caused or is responsible for any hazard, potential hazard,  
304 pollution, contamination or potential pollution or contamination.

305 (c) Any person who prevents, abates, contains, removes or mitigates  
306 any (1) exposure hazard or potential exposure hazard from radioactive  
307 materials, radioactive waste, or a source of ionizing radiation that is

308 not authorized by regulation, registration or license, or (2) any  
309 pollution or contamination or potential pollution or contamination of  
310 any land, water, air or other natural resources of the state through a  
311 discharge, spillage, uncontrolled loss, release, leakage, seepage, or  
312 filtration of radioactive material or radioactive waste that is not  
313 authorized by regulation, registration or license, shall be entitled to  
314 reimbursement of the reasonable costs incurred or expended for such  
315 abatement, containment, removal, or mitigation from any person  
316 whose negligent, reckless, or intentional action or inaction caused such  
317 hazard, potential hazard, pollution, contamination or potential  
318 pollution or contamination. When such hazard, potential hazard,  
319 pollution, contamination or potential pollution or contamination  
320 results from the action or inaction of more than one person, each  
321 person shall be held jointly and severally liable for such costs.

322 (d) Whenever the commissioner incurs contractual obligations in  
323 carrying out the duties of subsection (a) of this section and the person  
324 who causes or is responsible for the hazard, potential hazard,  
325 pollution, contamination or potential pollution or contamination does  
326 not assume such contractual obligations, the commissioner shall  
327 request the Attorney General to bring a civil action pursuant to  
328 subsection (a) of this section to recover the costs and expenses of such  
329 contractual obligations and other costs and expenses provided for in  
330 subsection (b) of this section. If any such person is unknown, the  
331 commissioner shall request the federal government to assume such  
332 contractual obligations to the extent provided for by federal law.

333 Sec. 10. Subsection (a) of section 22a-6a of the general statutes is  
334 repealed and the following is substituted in lieu thereof (*Effective*  
335 *October 1, 2006*):

336 (a) Any person who knowingly or negligently violates any  
337 provision of section 14-100b or 14-164c, subdivision (3) of subsection  
338 (b) of section 15-121, section 15-171, 15-172, 15-175, 22a-5, 22a-6 or 22a-  
339 7, chapter 440, chapter 441, section 22a-69 or 22a-74, subsection (b) of  
340 section 22a-134p, section 22a-148 to 22a-150, inclusive, 22a-153, 22a-

341 154, as amended by this act, 22a-157, as amended by this act, 22a-158,  
342 22a-162, 22a-171, 22a-174, 22a-175, 22a-177, 22a-178, as amended, 22a-  
343 181, 22a-183, 22a-184, 22a-190, 22a-208, 22a-208a, 22a-209, 22a-213, 22a-  
344 220, 22a-225, 22a-231, 22a-336, 22a-342, 22a-345, 22a-346, 22a-347, 22a-  
345 349a, as amended, 22a-358, 22a-359, 22a-361, 22a-362, 22a-365 to 22a-  
346 379, inclusive, 22a-401 to 22a-411, inclusive, 22a-416, 22a-417, 22a-424  
347 to 22a-433, inclusive, 22a-447, 22a-449, as amended, 22a-450, 22a-451,  
348 22a-454, 22a-458, 22a-461, 22a-462 or 22a-471, as amended, or any  
349 regulation, order or permit adopted or issued thereunder by the  
350 Commissioner of Environmental Protection shall be liable to the state  
351 for the reasonable costs and expenses of the state in detecting,  
352 investigating, controlling and abating such violation. Such person shall  
353 also be liable to the state for the reasonable costs and expenses of the  
354 state in restoring the air, waters, lands and other natural resources of  
355 the state, including plant, wild animal and aquatic life to their former  
356 condition insofar as practicable and reasonable, or, if restoration is not  
357 practicable or reasonable, for any damage, temporary or permanent,  
358 caused by such violation to the air, waters, lands or other natural  
359 resources of the state, including plant, wild animal and aquatic life and  
360 to the public trust therein. Institution of a suit to recover for such  
361 damage, costs and expenses shall not preclude the application of any  
362 other remedies.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2006	22a-151
Sec. 2	October 1, 2006	22a-152
Sec. 3	October 1, 2006	22a-153
Sec. 4	October 1, 2006	22a-154(a)
Sec. 5	October 1, 2006	22a-155
Sec. 6	October 1, 2006	22a-156
Sec. 7	October 1, 2006	New section
Sec. 8	October 1, 2006	22a-157
Sec. 9	October 1, 2006	New section
Sec. 10	October 1, 2006	22a-6a(a)

**ENV**      *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 07 \$</b>	<b>FY 08 \$</b>
Department of Environmental Protection	EQ Cost - Offsetting Revenue Gain	See Below	See Below
Attorney General	GF - Revenue Gain	Potential	Potential
Judicial Dept.	GF - Revenue Gain	Potential	Potential
Judicial Department (Probation) Correction Department	GF - Cost	Potential	Potential

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The development and implementation of a fee-based program for the control of sources of ionizing radiation and radioactive materials to secure “agreement state status” with the United States Nuclear Regulatory Commission will be fully paid for by the regulated community through fees. The fees will be deposited into a separate account of the Environmental Quality Fund of the Department of Environmental Protection (DEP) called the “ionizing radiation management account” and will be used 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 approximately 250-300 licenses and 250-300 registrants in the state. Three million in revenue will be needed to cover the start-up period of the program and approximately \$1.3 million will be needed to fully operate the program. The DEP and the regulated community will determine the specific fees necessary to support the program.

The Office of the Attorney General (OAG) could accommodate

potential enforcement measures under the bill within budgeted resources since it is anticipated that any expenses incurred during litigation would be passed on to the Department of Environmental Protection. Annual General Fund revenues from civil enforcement by the OAG are indeterminate, but could be significant in any given year due to the magnitude of fines authorized under the bill.

The bill also specifies criminal penalties that may be imposed for certain prohibited actions. To the extent that these changes increase the likelihood that offenders would be prosecuted or receive harsher penalties, a potential revenue gain from criminal fines and potential cost for incarceration and/or probation supervision in the community exist.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis  
SB 417*****AN ACT CONCERNING THE CONTROL AND SECURITY OF  
RADIOACTIVE MATERIAL.*****SUMMARY:**

This bill requires the Department of Environmental Protection (DEP) commissioner to adopt regulations allowing the state to enter into "agreement state" status with the federal Nuclear Regulatory Commission (NRC). This allows DEP to replace the NRC as the regulatory agency overseeing the licensing and safety of certain radioactive materials in Connecticut, pursuant to federal law. The NRC continues to regulate nuclear power plants in the state.

Under current law, the governor may enter into agreements with the federal government to take over certain of these programs. The bill also gives this authority to the DEP commissioner, authorizes her to adopt the necessary regulations, and establishes fees needed to administer the programs and implement and enforce the regulations. Currently, licensees pay license fees to the NRC.

The bill authorizes the commissioner to adopt regulations regarding (1) ionizing radiation sources that emit atomic and nuclear particles, gamma rays, or x-rays, and (2) radioactive material.

Under current law, anyone using, producing, manufacturing, transporting, transferring, receiving, owning, acquiring, or possessing any ionizing radiation source must be licensed, registered, or exempt. The bill, instead, requires these people, as well as anyone who constructs, operates, or decommissions an ionizing radiation source, to comply with the laws and regulations governing radiation and radioactive material, as well as with any registrations and licenses

issued under those laws. (By law, unchanged by the bill, the commissioner may exempt someone from the licensing requirements if she finds that the exemption does not constitute a significant risk to occupational and public health and safety.)

The bill requires people to register ionizing radiation sources when this is required by law or regulation. It bars people from producing, transporting, storing, possessing, managing, treating, remediating, or disposing of any radioactive material unless they comply with applicable laws, regulations, registrations, and licenses.

It imposes penalties on people who violate laws and regulations concerning radioactive sources and material; makes such people liable for clean-up costs, legal expenses, court costs, and the costs of restoring the air, water, land, and other state natural resources. It entitles people who prevent, contain, or remove radioactive hazards or contamination caused by radiation leaks to reimbursement from the parties responsible for the leaks if the contamination was caused intentionally, negligently, or recklessly.

The bill authorizes the commissioner to order the abatement of pollution caused by ionizing radiation or radioactive material and to correct violations of the laws governing radiation and radioactive material. It permits people aggrieved by those orders to request a hearing before her. It repeals a requirement that the commissioner hold a hearing at the request of people affected by certain proceedings concerning rules, regulations, and licensing of ionizing radiation sources.

It authorizes the DEP commissioner, in addition to the governor, to hire consultants, experts, or technicians to investigate and report on implementation of laws concerning radiation and radioactive material, including (1) ionizing sources operated by persons, firms, corporations, towns, cities, and boroughs; (2) radioactive material and radioactive isotopes that hospitals use to treat or diagnose diseases or

for research; and (3) x-ray machines used by health care professions.

EFFECTIVE DATE: October 1, 2006

### **ADOPTION OF REGULATIONS**

The commissioner must adopt regulations (1) needed to secure “agreement state” status and (2) establishing license fees for ionizing radiation sources that, together with other fees authorized by law, are sufficient to administer, implement, and enforce an ionizing radiation program. She must adopt regulations to carry out the laws pertaining to ionizing radiation sources. These regulations do not affect existing laws requiring registration: (1) ionizing sources operated by persons, firms, corporations, towns, cities, and boroughs; (2) radioactive material and radioactive isotopes that hospitals use to treat or diagnose diseases or for research; and (3) x-ray machines used by health care professionals.

The commissioner must also adopt regulations relating to:

1. construction, operation, control, tracking, security, or decommissioning of ionizing radiation sources, including any modification or alteration of such sources;
2. the production, transportation, use, storage, possession, management, treatment, disposal, or remediation of radioactive material; and
3. planning for and responding to actual or potential terrorist or other emergency events that involve, or may include, radioactive materials.

### **LICENSING REGULATIONS**

Under current law, the commissioner has broad authority to adopt regulations for the control of radiation and radioactive material. The bill specifically authorizes her to adopt regulations for the general or

specific licensing of ionizing radiation sources. Under current law, the commissioner may provide, by regulation, for the licensing of ionizing radiation sources, and for the amendment, suspension, and revocation of those licenses. The bill instead authorizes her to adopt regulations for the licensing of ionizing radiation sources; issue, deny, renew, modify, suspend, or revoke licenses she issues under those regulations; and set licensing terms and conditions she believes necessary.

### **LICENSING FEES AND THE IONIZING RADIATION MANAGEMENT ACCOUNT**

The bill authorizes the commissioner to set licensing fees for ionizing radiation sources and to use the fees, together with other fees the law allows, to pay for administering, implementing, and enforcing the ionizing radiation program, and laws, regulations, or guidelines concerning radiation and radioactive material, including (1) ionizing sources operated by persons, firms, corporations, towns, cities, and boroughs; (2) radioactive material and radioactive isotopes that hospitals use to treat or diagnose diseases or for research; and (3) x-ray machines used by health care professionals. She must deposit the fees in an Ionizing Radiation Management Account the bill creates within DEP's Environmental Quality Fund, rather than in that fund's environmental quality account. The Ionizing Radiation Management account may receive money from other sources besides licensing fees, and the commissioner may also use these funds to implement, administer, and enforce the program. Any money remaining in the account at the end of a fiscal year must be carried forward to the next fiscal year.

### **TERRORIST EVENTS**

The bill authorizes the commissioner to set radiation exposure guidelines for emergency responders and the public related to terrorist events or other emergencies involving radioactive material. She may base the guidelines on recommendations of the federal government and the National Council on Radiation Protection and Measurements.

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**ORDERS TO ABATE AND CORRECT VIOLATIONS**

The bill authorizes the commissioner to issue, modify, or revoke orders to (1) abate pollution or a potential source of pollution from ionizing radiation or radioactive material, and (2) correct violations of laws, regulations, registrations, or licenses concerning ionizing radiation, radiation sources, and radioactive material. Her orders may include steps needed to abate or correct such violations. She may issue such orders to people who (1) violate the law, regulations, licenses, or registrations, or (2) own the land on which the violation occurs, regardless of whether they took part in the violation. Two or more people receiving such an order for the same violation will be held jointly and severally liable.

***Order and Hearing Procedure***

The bill requires that orders the commissioner issues be delivered by certified mail, return receipt requested, or by a state marshal or indifferent person. If a state marshal or indifferent person serves the order, he must serve a true copy. The original, with a return of service endorsed on it, must be filed with the commissioner. The order is deemed issued upon service or deposit in the mail. Any order must state why it was issued and specify a reasonable time for compliance.

An order is considered final unless a person aggrieved by the order asks for a hearing before the commissioner within 30 days of the date it was issued. Such a request must be in writing. The commissioner must hold a hearing as soon after such a request as practicable. An aggrieved party cannot appeal an order unless he first requests such a hearing.

After a hearing, or after she issues an order, the commissioner may modify the order by agreement or extend its time schedule if she believes it advisable or necessary. Such a modification is a revision of an existing order and not a new order. There can be no hearing or appeal from such a modification or extension.

Following the hearing, the commissioner must consider all the evidence and may affirm, modify, or revoke her order. She must notify the recipient of the order of her decision by certified mail, return receipt requested.

After the commissioner issues a final order, she must file a certified copy or notice of the order on the land records in the town where the land is located. When the order has been fully complied with or revoked, the commissioner must file a certificate acknowledging the compliance or revocation on those land records. A final order is subject to appeal, which must be brought in New Britain Superior Court.

### **HEARING REQUIREMENT REPEALED**

The bill repeals a requirement that the commissioner hold a hearing, subject to judicial review, at the request of any person whose interests may be affected in proceedings, (1) for the issuance or modification of rules and regulations pertaining to control of ionizing radiation sources; (2) granting, suspending, revoking, or amending a license; and (3) for determining compliance with, or granting exceptions from, DEP rules and regulations.

### **REMEDIES AVAILABLE TO THE COMMISSIONER**

Current law authorizes the commissioner, when she believes anyone has violated or is about to violate a law, rule, regulation, or order pertaining to radioactive material or radiation sources, to ask the attorney general to seek an order (1) enjoining the violation or (2) directing the violator to comply with the law, regulation, or order. The bill eliminates her ability to do so for the violation or prospective violation of a rule, but authorizes her to make such a determination and request when she believes someone has or is about to (1) violate the terms of a registration or license or (2) engage in any act or omission establishing, creating, or maintaining, or that will establish, create, or maintain, an exposure hazard or source of pollution from ionizing radiation or radioactive material.

The bill expands the attorney general's authority in such cases to (1) persons, firms, corporations, towns, cities, and boroughs operating any ionizing radiation source or producing, transporting, or disposing of radioactive material; (2) hospitals using naturally occurring radioactive material or radioactive isotopes; and (3) health professionals using x-ray machines.

It requires, rather than authorizes, the attorney general to ask a court to enjoin the practice or omission, or for an order to control or abate the pollution. He must file all such actions, including those the law already authorizes, in Hartford Superior Court. All such actions by the attorney general take precedence over any other civil action for purposes of the order of trial, according to law.

The law authorizes the issuance of a permanent or temporary injunction, restraining order, or other order upon a showing by the commissioner that a person has engaged or is about to engage in such acts or practices. The bill also authorizes such injunctions or orders upon the showing by the commissioner that someone is engaged in or about to engage in an act of omission creating an exposure hazard or pollution source.

It authorizes the commissioner to investigate, monitor, abate, contain, remove, or mitigate the effects of the exposure hazard, potential hazard, pollution, or potential pollution caused by the discharge of radioactive material or radioactive waste if (1) the person responsible for the discharge or exposure hazard does not act immediately to contain and mitigate the effects of the leak to the commissioner's satisfaction or (2) the responsible party is unknown, and the discharge is not being contained, removed, or mitigated by the federal government, a state agency, a municipality, or a regional or interstate authority. The bill authorizes the commissioner to enter into a contract with a third party to carry out the remediation.

### ***Liability of Responsible Parties***

The bill makes the party responsible for actual or potential pollution or exposure hazard from radioactive materials, waste, or ionizing radiation sources liable for all costs and expenses the commissioner incurs in investigating, containing, removing, abating, monitoring, or mitigating the pollution, including (1) the costs of restoring the air, water, land, and other natural resources and (2) attorney's fees, legal expenses, and court costs the state incurs. The bill authorizes the commissioner to seek additional compensation from the responsible party, including punitive damages. If more than one person causes the pollution or contamination, each person is held jointly and severally liable. The attorney general must bring a civil action to recover all such costs and expenses from the person responsible if the commissioner asks him to do so.

Under the bill, anyone who knowingly or negligently violates its provisions is liable to the state for the reasonable costs of detecting, investigating, controlling, and abating the violation, and for the state's reasonable costs and expenses in restoring the air, water, lands, and other natural resources to their former condition as far as is practical and reasonable. If restoration is not practicable and reasonable, the person is liable for any temporary or permanent damage the violation causes to the air, waters, lands, or other natural resources. As by law, the filing of a lawsuit does not bar the application of other remedies.

### ***Reimbursement for Remediation Costs***

The bill entitles people who prevent, abate, contain, remove, or mitigate exposure hazards or potential exposure hazards from radioactive material, radioactive waste or an ionizing source, or any pollution caused by an unauthorized discharge of radioactive material, to reimbursement of reasonable costs from the responsible party if that party caused the pollution through intentional, negligent, or reckless conduct or inaction. Where pollution results from the negligence of more than one person, each person must be held jointly and severally liable.

The bill requires the commissioner to ask the attorney general to bring a civil action to recover the costs and expenses of the commissioner's contractual obligation to remediate discharges if the responsible person does not assume those responsibilities. If the responsible person, firm, or corporation is unknown, the commissioner must ask the federal government to assume the obligation to the extent provided for by federal law.

## **PENALTIES FOR VIOLATION OF LAWS GOVERNING RADIATION AND RADIOACTIVE MATERIALS**

### ***Penalties for Violation***

The bill subjects violators of the laws governing ionizing radiation sources, radiation, or radioactive material, or any regulation, license, registration, or order issued under those laws, to a fine of up to \$10,000 a day for each offense. This fine applies to responsible corporate officers, municipal officials, and to any landowner who allows such a violation to occur on his property. If two or more people are responsible, each person is jointly and severally liable. The bill requires the attorney general to begin a civil action in Hartford Superior Court to recover the penalty if the commissioner asks him to do so. It requires any such action to take precedence over other actions in the order of trial.

### ***Penalties for Criminally Negligent Violation***

The bill subjects anyone who, with criminal negligence, violates these laws, regulations, orders, licenses, or registrations to a fine of up to \$25,000 a day, up to one year in prison, or both. A subsequent conviction is punishable by up to \$50,000 a day for each day of the violation, up to two years in prison, or both.

### ***Penalties for Knowing Violation***

The bill subjects anyone who knowingly violates these laws, regulations, registrations, orders, or licenses to a fine of up to \$50,000 a day for each day of the violation, up to three years in prison, or both. A

subsequent conviction is punishable by a fine of up to \$ 100,000 a day for each day of violation, up to 10 years in prison, or both.

### ***Penalties for Intentional False Statements***

By law, anyone who intentionally makes a false written statement under oath or on a form that states false statements are punishable is guilty of a class A misdemeanor, and subject to a \$2,000 fine, up to one year in prison, or both. The bill subjects anyone who knowingly makes a false statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained under laws governing radiation and radioactive material, or any regulation, registration, license, or order, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method the law requires be maintained, to a fine of up to \$25,000, up to two years in prison, or both, for each violation.

Each of the above violations is considered a separate and distinct offense, and each day of a continuing violation is also a separate and distinct offense.

## **BACKGROUND**

### ***Agreement States***

The 1954 federal Atomic Energy Act permits the NRC to transfer to a state regulatory authority over certain radioactive material if the governor signs a letter of intent and the state can show that its regulatory program is compatible with NRC's regulations and adequate to protect public health and safety (42 USC § 2021).

Thirty-three states have entered into agreement state status and have assumed regulatory authority over certain radioactive material.

### ***NRC Licensees in Connecticut***

The state will assume responsibility for an estimated 300 NRC licensees in Connecticut under the bill. They include universities, research facilities, industries, doctors' offices, hospitals, and

pharmaceutical companies.

**COMMITTEE ACTION**

Environment Committee

Joint Favorable

Yea 25 Nay 0 (03/08/2006)