



Senate

General Assembly

File No. 181

January Session, 2007

Substitute Senate Bill No. 1154

Senate, March 29, 2007

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 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, 2007*):

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 Section 22a-152 of the general statutes is repealed and the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, 2007*):

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 Section 22a-153 of the general statutes is repealed and the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, 2007*):

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 the public for the management of terrorist events or other
75 emergencies involving radioactive materials. Any such guidelines may

76 be based upon the recommendations of the federal government and
77 the National Council on Radiation Protection and Measurements.

78 Sec. 4. Subsection (a) of section 22a-154 of the general statutes is
79 repealed and the following is substituted in lieu thereof (*Effective*
80 *October 1, 2007*):

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

90 Sec. 5. Section 22a-155 of the general statutes is repealed and the
91 following is substituted in lieu thereof (*Effective October 1, 2007*):

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

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

106 (a) The commissioner may issue, modify or revoke orders to (1)

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

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

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

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

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

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

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

161 Sec. 6. Section 22a-156 of the general statutes is repealed and the
162 following is substituted in lieu thereof (*Effective October 1, 2007*):

163 Whenever, in the judgment of the [Commissioner of Environmental
164 Protection] commissioner, any person has engaged in or is about to
165 engage in (1) any acts or practices which constitute, or will constitute, a
166 violation of any provision of sections [22a-151 to 22a-158, inclusive, or
167 any other applicable statute] 22a-148 to 22a-150, inclusive, sections 22a-
168 153 to 22a-155, inclusive, as amended by this act, section 22a-157, as
169 amended by this act, or 22a-158, or any [rule,] regulation adopted or
170 registration or license or order issued [thereunder, at the request of the
171 Commissioner of Environmental Protection] pursuant to said sections,
172 or (2) any act or omission in which a person has established, created or

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

186 Sec. 7. (NEW) (*Effective October 1, 2007*) (a) Any person who violates
187 any provision of sections 22a-148 to 22a-150, inclusive, sections 22a-153
188 to 22a-155, inclusive, section 22a-157 or 22a-158 of the general statutes,
189 as amended by this act, or any regulation adopted or registration,
190 license or order issued pursuant to said sections, or any owner of land
191 who permits such violations to occur on such owner's land, shall be
192 assessed a civil penalty of not more than ten thousand dollars per day
193 for each offense. Each violation shall be a separate and distinct offense
194 and, in the case of a continuing violation, each day a violation
195 continues shall be deemed a separate and distinct offense. If two or
196 more persons are responsible for such violation, such persons shall be
197 jointly and severally liable under this section. The Attorney General,
198 upon request of the Commissioner of Environmental Protection, shall
199 institute a civil action in the superior court for the judicial district of
200 Hartford to recover such penalty. Any such action brought by the
201 Attorney General pursuant to this section shall have precedence in the
202 order of trial as provided for in section 52-191 of the general statutes.

203 (b) Any person who, with criminal negligence, violates any
204 provision of sections 22a-148 to 22a-150, inclusive, sections 22a-153 to
205 22a-155, inclusive, section 22a-157 or 22a-158 of the general statutes, as
206 amended by this act, or any regulation adopted or registration, license

207 or order issued pursuant to said sections shall be fined not more than
208 twenty-five thousand dollars per day for each violation or be
209 imprisoned not more than one year, or both. A subsequent conviction
210 for any such violation shall carry a fine of not more than fifty thousand
211 dollars per day for each day of violation or imprisonment for not more
212 than two years, or both. Each violation shall be a separate and distinct
213 offense, and, in the case of a continuing violation, each day a violation
214 continues shall be deemed to be a separate and distinct offense.

215 (c) Any person who knowingly violates any provision of sections
216 22a-148 to 22a-150, inclusive, sections 22a-153 to 22a-155, inclusive,
217 section 22a-157 or 22a-158 of the general statutes, as amended by this
218 act, or any regulation adopted or registration, license or order issued
219 pursuant to said sections shall be fined not more than fifty thousand
220 dollars per day for each day of violation or be imprisoned not more
221 than three years, or both. A subsequent conviction for any such
222 violation shall carry a fine of not more than one hundred thousand
223 dollars per day for each day of violation or imprisonment for not more
224 than ten years, or both. Each violation shall be a separate and distinct
225 offense, and, in the case of a continuing violation, each day a violation
226 continues shall be deemed to be a separate and distinct offense.

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

241 continues shall be deemed to be a separate and distinct offense.

242 (e) For the purposes of this section, "person" includes, but is not
243 limited to, any responsible corporate officer or municipal official.

244 Sec. 8. Section 22a-157 of the general statutes is repealed and the
245 following is substituted in lieu thereof (*Effective October 1, 2007*):

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

259 Sec. 9. (NEW) (*Effective October 1, 2007*) (a) If a person causes or is
260 responsible for any exposure hazard or potential exposure hazard
261 from radioactive materials, radioactive waste, or a source of ionizing
262 radiation, or causes or is responsible for pollution, contamination or
263 potential pollution or potential contamination of any land, water, air or
264 other natural resource of the state through a discharge, spillage,
265 uncontrolled loss, release, leakage, seepage, or filtration of radioactive
266 material or radioactive waste, and does not act immediately to prevent,
267 abate, contain, mitigate or remove such hazard, potential hazard,
268 pollution, contamination, or potential pollution or potential
269 contamination, to the satisfaction of the Commissioner of
270 Environmental Protection, or if such person is unknown, and such
271 hazard, potential hazard, pollution, contamination, or potential
272 pollution or potential contamination, is not being prevented, abated,
273 contained, mitigated or removed by the federal government, a state

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

282 (b) Any person who causes or is responsible for any exposure
283 hazard or potential exposure hazard from radioactive materials,
284 radioactive waste, or a source of ionizing radiation or who causes or is
285 responsible for pollution, contamination, or potential pollution or
286 potential contamination of any land, water, air or other natural
287 resource of the state through a discharge, spillage, uncontrolled loss,
288 release, leakage, seepage, or filtration of radioactive material or
289 radioactive waste shall be liable for all costs and expenses incurred by
290 the commissioner pursuant to subsection (a) of this section, including
291 all costs and expenses to restore the air, water, land and other natural
292 resources of the state, and shall be liable for all attorneys fees, court
293 costs and any other legal expenses incurred by the state for the
294 recovery of such costs. Nothing in this subsection shall preclude the
295 commissioner from seeking additional compensation or such other
296 relief that a court may award, including punitive damages. When such
297 hazard, potential hazard, pollution, contamination or potential
298 pollution or potential contamination results from the action or inaction
299 of more than one person, each person shall be held jointly and
300 severally liable for such costs. Upon request of the commissioner, the
301 Attorney General shall bring a civil action to recover all such costs and
302 expenses from the person who caused or is responsible for any hazard,
303 potential hazard, pollution, contamination or potential pollution or
304 potential 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 potential
310 contamination of any land, water, air or other natural resources of the
311 state through a discharge, spillage, uncontrolled loss, release, leakage,
312 seepage, or filtration of radioactive material or radioactive waste that is
313 not 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 potential contamination. When such hazard, potential
319 hazard, pollution, contamination or potential pollution or potential
320 contamination results from the action or inaction of more than one
321 person, each person shall be held jointly and severally liable for such
322 costs.

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

335 Sec. 10. Subsection (a) of section 22a-6a of the general statutes is
336 repealed and the following is substituted in lieu thereof (*Effective*
337 *October 1, 2007*):

338 (a) Any person who knowingly or negligently violates any
339 provision of section 14-100b or 14-164c, subdivision (3) of subsection
340 (b) of section 15-121, section 15-171, 15-172, 15-175, 22a-5, 22a-6 or 22a-

341 7, chapter 440, chapter 441, section 22a-69 or 22a-74, subsection (b) of
342 section 22a-134p, section 22a-148 to 22a-150, inclusive, 22a-153, 22a-
343 154, as amended by this act, 22a-157, as amended by this act, 22a-158,
344 22a-162, 22a-171, 22a-174, 22a-175, 22a-177, 22a-178, 22a-181, 22a-183,
345 22a-184, 22a-190, 22a-208, 22a-208a, 22a-209, 22a-213, 22a-220, 22a-225,
346 22a-231, 22a-336, 22a-342, 22a-345, 22a-346, 22a-347, 22a-349a, 22a-358,
347 22a-359, 22a-361, 22a-362, 22a-365 to 22a-379, inclusive, 22a-401 to 22a-
348 411, inclusive, 22a-416, 22a-417, 22a-424 to 22a-433, inclusive, 22a-447,
349 22a-449, 22a-450, 22a-451, 22a-454, 22a-458, 22a-461, 22a-462 or 22a-471,
350 or any regulation, order or permit adopted or issued thereunder by the
351 Commissioner of Environmental Protection shall be liable to the state
352 for the reasonable costs and expenses of the state in detecting,
353 investigating, controlling and abating such violation. Such person shall
354 also be liable to the state for the reasonable costs and expenses of the
355 state in restoring the air, waters, lands and other natural resources of
356 the state, including plant, wild animal and aquatic life to their former
357 condition insofar as practicable and reasonable, or, if restoration is not
358 practicable or reasonable, for any damage, temporary or permanent,
359 caused by such violation to the air, waters, lands or other natural
360 resources of the state, including plant, wild animal and aquatic life and
361 to the public trust therein. Institution of a suit to recover for such
362 damage, costs and expenses shall not preclude the application of any
363 other remedies.

364 Sec. 11. (NEW) (*Effective October 1, 2007*) Notwithstanding the
365 provisions of section 22a-6a, sections 22a-151 to 22a-157, inclusive, of
366 the general statutes, as amended by this act, and sections 7 to 10
367 inclusive, of this act, the standards adopted by the federal
368 Occupational Safety and Health Administration, including, but not
369 limited to: (1) Standards listed in 29 CFR 1910.1096 as adopted
370 pursuant to chapter 571 of the general statutes, (2) 29 USC 651 et seq.,
371 or (3) more protective worker exposure limits, as determined by the
372 Commissioner of Environmental Protection, in consultation with the
373 Labor Commissioner, as appropriate, shall apply to persons who
374 produce, transport, store, possess, manage, treat, remediate or dispose
375 of radioactive material, radioactive waste or a source of ionizing

376 radiation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	22a-151
Sec. 2	<i>October 1, 2007</i>	22a-152
Sec. 3	<i>October 1, 2007</i>	22a-153
Sec. 4	<i>October 1, 2007</i>	22a-154(a)
Sec. 5	<i>October 1, 2007</i>	22a-155
Sec. 6	<i>October 1, 2007</i>	22a-156
Sec. 7	<i>October 1, 2007</i>	New section
Sec. 8	<i>October 1, 2007</i>	22a-157
Sec. 9	<i>October 1, 2007</i>	New section
Sec. 10	<i>October 1, 2007</i>	22a-6a(a)
Sec. 11	<i>October 1, 2007</i>	New section

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 chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
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)	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

sSB 1154

***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 material 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 regulations to establish fees needed to administer the programs and implement and enforce the regulations, and creates an account within DEP’s Environmental Quality Fund to receive the fees. 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.

The bill requires people to register ionizing radiation sources according to law and 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 and makes them 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 on rules, regulations, and licensing of ionizing radiation sources.

It authorizes the commissioner, in addition to the governor, to hire consultants, experts, or technicians to investigate and report on implementation of laws on 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.

It applies federal Occupational Safety and Health Administration standards for worker radiation exposure or, as appropriate, more protective worker exposure limits, as determined by DEP and the labor commissioner, to people who produce, transport, store, possess,

manage, treat, remediate or dispose of radioactive material, radioactive waste, or ionizing radiation sources.

EFFECTIVE DATE: October 1, 2007

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;
3. planning for and responding to actual or potential terrorist or other emergency events that involve, or may include, radioactive material; and
4. carrying out the laws governing ionizing radiation and licensing of ionizing radiation sources.

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. It allows her 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.

The commissioner 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 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.

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.

The commissioner may, after issuing an order or after a hearing, modify the order by agreement or extend the period given for compliance 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. This document constitutes notice to the owner's heirs and descendants. 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) for 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

Under current law, when the commissioner believes anyone has violated or is about to violate a law, rule, regulation, or order pertaining to radioactive material or radiation sources, she may 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 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.

Expansion of Attorney General's Authority

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 commissioner's showing 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 material, 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.

Anyone who knowingly or negligently violates the bill's 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 or potential 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 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 MATERIAL

The bill imposes specific penalties on people who violate laws and regulations concerning radioactive sources and material, including responsible corporate officers and municipal officials. Each violation is considered a separate and distinct offense, and each day of a continuing violation is a separate and distinct offense.

Penalties for Violation of Laws Governing Radiation Sources and Radioactive Material

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 also applies 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.

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-four states have entered into agreement state status and have assumed regulatory authority over certain radioactive material. Three more states have filed statement of intent with the NRC to become agreement states.

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 Substitute

Yea 30 Nay 0 (03/12/2007)