



General Assembly

February Session, 2010

Raised Bill No. 5119

LCO No. 520

00520_____ENV

Referred to Committee on Environment

Introduced by:
(ENV)

AN ACT CONCERNING MINOR REVISIONS TO THE UNDERGROUND STORAGE TANK PETROLEUM CLEAN-UP ACCOUNT AND GROUNDWATER POLLUTION ABATEMENT STATUTES.

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

1 Section 1. Subsection (a) of section 22a-449c of the 2010 supplement
2 to the general statutes is repealed and the following is substituted in
3 lieu thereof (*Effective from passage*):

4 (a) (1) There is established an underground storage tank petroleum
5 clean-up program.

6 (2) The program shall provide money for reimbursement or
7 payment pursuant to section 22a-449f, within available appropriations,
8 to responsible parties or parties supplying goods or services, for costs,
9 expenses and other obligations paid or incurred, as the case may be, as
10 a result of releases, and suspected releases, costs of investigation and
11 remediation of releases and suspected releases, and for claims by a
12 person other than a responsible party for bodily injury, property
13 damage and damage to natural resources that have been finally
14 adjudicated or settled with the prior written consent of the board. The

15 commissioner may also make payment to an assignee who is in the
16 business of receiving assignments of amounts approved by the board,
17 but not yet paid from the account, provided the party making any such
18 assignment, using a form approved by the commissioner, directs the
19 commissioner to pay such assignee, that no cost of any assignment
20 shall be borne by the state and that the state and its agencies shall not
21 bear any liability with respect to any such assignment. The program
22 shall not provide money for reimbursement or payment to responsible
23 parties for costs, expenses and other obligations paid or incurred, as
24 the case may be, as a result of the Department of Environmental
25 Protection responding to releases or suspected releases from an
26 underground storage tank system. Such prohibition includes costs
27 paid or to be paid by a responsible party to the commissioner.

28 (3) Notwithstanding the provisions of this section regarding
29 reimbursements of parties pursuant to section 22a-449f and regulations
30 adopted pursuant to section 22a-449e, and regardless of when an
31 application for payment or reimbursement from the program may
32 have been submitted to the board, payment or reimbursement shall be
33 made in accordance with the following: (A) After June 1, 2004, no
34 payment or reimbursement shall be made for any costs, expenses and
35 other obligations paid or incurred for remediation, including any
36 monitoring to determine the effectiveness of the remediation, of a
37 release to levels more stringent than or beyond those specified in the
38 remediation standards established pursuant to section 22a-133k, except
39 to the extent the applicant demonstrates that it has been directed
40 otherwise, in writing, by the commissioner; (B) after June 1, 2005, no
41 payment or reimbursement shall be made to any person for
42 diminution in property value or interest, provided that reimbursement
43 for interest accrued on attorneys' fees may be permitted if an
44 application seeking interest accrued on attorneys' fees was submitted
45 to the commissioner on or before March 31, 2003, and such application
46 has been tabled by the board for three or more years; and (C) after June
47 1, 2005, no payment or reimbursement shall be made for attorneys' fees
48 or other costs of legal representation paid or incurred as a result of a

49 release or suspected release (i) in excess of five thousand dollars to any
50 responsible party, (ii) in excess of ten thousand dollars to any person
51 other than a responsible party, and (iii) by a responsible party
52 regarding the defense of claims brought by another person, except that
53 applications for reimbursement filed on or before June 30, 2005, shall
54 not be subject to the limitations for reimbursement imposed by clauses
55 (i) and (ii) of this subparagraph. In addition, notwithstanding the
56 provisions of this section regarding reimbursements of parties
57 pursuant to section 22a-449f, the responsible party shall bear all costs
58 of the release that are less than ten thousand dollars and all persons
59 shall bear all costs of the release that are more than one million dollars,
60 except that for any such release which was reported to the department
61 prior to December 31, 1987, and for which more than five hundred
62 thousand dollars has been expended by the responsible party to
63 remediate such release prior to June 19, 1991, the responsible party for
64 the release shall bear all costs of such release which are less than ten
65 thousand dollars or more than five million dollars, provided the
66 portion of any reimbursement or payment in excess of three million
67 dollars may, at the discretion of the commissioner, be made in annual
68 payments for up to a five-year period.

69 Sec. 2. Subsection (a) of section 22a-471 of the 2010 supplement to
70 the general statutes is repealed and the following is substituted in lieu
71 thereof (*Effective from passage*):

72 (a) (1) If the commissioner determines that pollution of the
73 groundwaters has occurred or can reasonably be expected to occur and
74 the Commissioner of Public Health determines that the extent of
75 pollution creates or can reasonably be expected to create an
76 unacceptable risk of injury to the health or safety of persons using such
77 groundwaters as a public or private source of water for drinking or
78 other personal or domestic uses, the Commissioner of Environmental
79 Protection shall, within available appropriations, arrange for the short-
80 term provision of potable drinking water to those residential buildings
81 and elementary and secondary schools affected by such pollution until

82 either he issues an order pursuant to this section requiring the
83 provision of such short-term supply and the recipient complies with
84 such order or a long-term supply of potable drinking water has been
85 provided, whichever is earlier. In determining if pollution creates an
86 unacceptable risk of injury, the Commissioner of Public Health shall
87 balance all relevant and substantive facts and inferences and shall not
88 be limited to a consideration of available statistical analysis but shall
89 consider all of the evidence presented and any factor related to human
90 health risks. The commissioner may issue an order to the person or
91 municipality responsible for such pollution requiring that potable
92 drinking water be provided to all persons affected by such pollution. If
93 the commissioner finds that more than one person or municipality is
94 responsible for such pollution, he shall attempt to apportion
95 responsibility if he determines that apportionment is appropriate. If he
96 does not apportion responsibility, all persons and municipalities
97 responsible for the pollution of the groundwaters shall be jointly and
98 severally responsible for the providing of potable drinking water to
99 persons affected by such pollution. If the commissioner determines
100 that the state or an agency or department of the state is responsible in
101 whole or in part for the pollution of the groundwaters, such agency or
102 department shall prepare or arrange for the preparation of an
103 engineering report and shall provide or arrange for the provision of a
104 long-term potable drinking water supply. If the commissioner is
105 unable to determine the person or municipality responsible or if he
106 determines that the responsible persons have no assets other than land,
107 buildings, business machinery or livestock and are unable to secure a
108 loan at a reasonable rate of interest to provide potable drinking water,
109 he may prepare or arrange for the preparation of an engineering report
110 and provide or arrange for the provision of a long-term potable
111 drinking water supply or he may issue an order to the municipality
112 wherein groundwaters unusable for potable drinking water are located
113 requiring that short-term provision of potable drinking water be made
114 to those existing residential buildings and elementary and secondary
115 schools affected by such pollution and that long-term provision of

116 potable drinking water be made to all persons affected by such
117 pollution. For purposes of this section, "residential building" means
118 any house, apartment, trailer, mobile manufactured home or other
119 structure occupied by individuals as a dwelling, except a non-owner-
120 occupied hotel or motel or a correctional institution.

121 (2) Any order issued pursuant to this section may require the
122 provision of potable drinking water in such quantities as the
123 commissioner determines are necessary for drinking and other
124 personal and domestic uses and may require the maintenance and
125 monitoring of potable water supply facilities for any period which the
126 commissioner determines is necessary. In making such determinations,
127 the commissioner shall consider the short-term and long-term needs
128 for potable drinking water and the health and safety of those persons
129 whose water supply is unusable. Any order may require the
130 submission of an engineering report which shall be subject to the
131 approval of the commissioner and the Commissioner of Public Health
132 and include, but not be limited to, a description in detail of the
133 problem, area and population affected by pollution of the
134 groundwaters; the expected duration of and extent of the pollution;
135 alternate solutions including relative cost of construction or
136 installation, operation and maintenance; design criteria on all alternate
137 solutions; and any other information which the commissioner deems
138 necessary. Upon review of such report, the commissioner and the
139 Commissioner of Public Health shall consider the nature of the
140 pollution, the expected duration and extent of the pollution, the health
141 and safety of the persons affected, the initial and ongoing cost-
142 effectiveness and reliability of each alternative and any other factors
143 which they deem relevant, and shall approve a system or method to
144 provide potable drinking water pursuant to the order. Each order shall
145 include a time schedule for the accomplishment of the steps leading to
146 the provision of potable drinking water. Notwithstanding the fact that
147 a responsible party has been or may be identified or a request for a
148 hearing on or a pending appeal from an order issued pursuant to this
149 section, when pollution of the groundwaters has occurred or may

150 reasonably be expected to occur, the commissioner may prepare or
151 arrange for the preparation of an engineering report as described in
152 this subdivision and may provide or arrange for the provision of a
153 long-term potable drinking water supply. In any case where the state
154 or an agency or department of the state is responsible in whole or in
155 part for the pollution of the groundwaters, such agency or department
156 shall prepare or arrange for the preparation of an engineering report
157 and shall provide or arrange for the provision of a long-term potable
158 drinking water supply, and if the state is not the sole responsible party,
159 the commissioner shall seek reimbursement under subdivision (4) of
160 subsection (b) of this section for the costs of such report and for the
161 provision of potable water. The cost of the report and of the provision
162 of a long-term potable drinking water supply, as funds allow, shall be
163 paid from the proceeds of any bonds authorized for the provision of
164 potable drinking water.

165 (3) The provisions of this section shall not affect the rights of any
166 municipality to institute suit to recover all damages, expenses and
167 costs incurred by the municipality from any responsible party,
168 including, but not limited to, the costs specified in subparagraph (B)(i)
169 and (ii) of subdivision (4) of subsection (b) of this section and, in the
170 case of any municipality which is not responsible for the pollution of
171 the groundwaters, the additional amounts specified in subparagraph
172 (B)(iii) and (iv) of subdivision (4) of subsection (b) of this section.

173 (4) No provision of this section shall limit the liability of any person
174 who or municipality which renders the groundwaters unusable for
175 potable drinking water from a suit for damages by a person who or
176 municipality which relied on said groundwaters for potable drinking
177 water prior to the determination by the commissioner that the
178 groundwaters are polluted.

179 (5) The commissioner may issue any order pursuant to this section if
180 the pollution of the groundwaters occurred before or after July 1, 1982.

181 (6) The commissioner may at any time require further action by any

182 person to whom or municipality to which an order is issued pursuant
183 to this section if he determines that such action is necessary to protect
184 the health and safety of those persons whose water supply was
185 rendered unusable.

186 (7) After periodic evaluation of water quality at a groundwater
187 source that was fitted with a filtration system pursuant to the
188 provisions of this section, the commissioner may determine that
189 continued operation, testing and maintenance of such filtration system
190 by the state is no longer warranted. If the commissioner makes such a
191 determination and finds that it is not cost effective to remove and
192 reuse such filtration system at another site, the commissioner may
193 dispose of such filtration system or offer such filtration system to the
194 subject property owner at no cost. In the event that the subject
195 property owner accepts such filtration system at no cost, such subject
196 property owner shall be responsible for any subsequent maintenance
197 of such filtration system and no liability shall accrue to the state or the
198 state's filtration system contractor for such filtration system.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	22a-449c(a)
Sec. 2	<i>from passage</i>	22a-471(a)

Statement of Purpose:

To make minor revisions to the state's underground storage tank petroleum clean-up account and groundwater pollution abatement statutes that may result in cost savings to the state.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]