



General Assembly
February Session, 2006

Raised Bill No. 415
LCO No. 2164



Referred to Committee on
ENVIRONMENT
Introduced by:
(ENV)

**AN ACT CONCERNING ENVIRONMENTAL REMEDIATION
ALLOCATION.**

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

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 Section 22a-452 of the general statutes is repealed and the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

3 (a) Any person [, firm, corporation] or municipality which contains
4 or removes or otherwise mitigates the effects of oil or petroleum or
5 chemical liquids or solid, liquid or gaseous products or hazardous
6 wastes or hazardous substances resulting from any discharge, spillage,
7 uncontrolled loss, seepage or filtration of such substance or material or
8 waste shall be entitled to reimbursement or recovery from any person
9 [, firm or corporation] for the reasonable costs or to be expended for
10 such containment, removal, or mitigation, including the reasonable
11 costs of investigation and monitoring, if such oil or petroleum or
12 chemical liquids or solid, liquid or gaseous products or hazardous
13 wastes or hazardous substances pollution or contamination or other
14 emergency [resulted from the negligence or other actions of such
15 person, firm or corporation] (1) was directly or indirectly caused by
16 such person, or (2) such person, regardless of fault, is one of the

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

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

0067

415

Raised Bill No.

51 for such assistance or advice for more than actual expenses. For the
52 purpose of this subsection, "discharge" means spillage, uncontrolled
53 loss, seepage or filtration. [and "hazardous materials" means any
54 material or substance designated as such by any state or federal law or
55 regulation.]

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

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

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

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

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

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

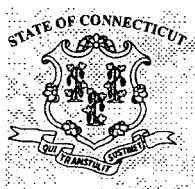
This act shall take effect as follows and shall amend the following sections:

Section 1	July 1, 2006	22a-452
-----------	--------------	---------

Statement of Purpose:

To clarify and expand the circumstances that a person who is conducting remediation of a spill of hazardous substances can seek reimbursement for the costs of the remediation from other responsible parties.

[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.]



Senate

General Assembly

File No. 99

February Session, 2006

Substitute Senate Bill No. 415

Senate, March 23, 2006

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

AN ACT CONCERNING ENVIRONMENTAL REMEDIATION ALLOCATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

Statement of Legislative Commissioners:

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

ENV *Joint Favorable Subst.*

[06]

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

OFA Fiscal Note

State Impact: None

Municipal Impact:

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

Explanation

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

The Out Years

The fiscal impact identified above would continue into the future.

**OLR Bill Analysis
sSB 415**

**AN ACT CONCERNING ENVIRONMENTAL REMEDIATION
ALLOCATION.**

SUMMARY:

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

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

EFFECTIVE DATE: July 1, 2006

People Liable for Remediation Costs

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

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

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

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

Exemptions from Liability

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

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

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

BACKGROUND

Hazardous Substances

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

Hazardous Waste

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

Facility

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

Owner or Operator

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

[106]

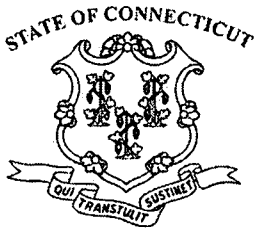
government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign. This exclusion does not apply to any state or local government that has caused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

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 25 Nay 0 (03/08/2006)



General Assembly

[SENATE] Amendment

February Session, 2006

LCO No. 5710



Offered by:

SEN. RORABACK, 30th Dist.

SEN. HERLIHY, 8th Dist.

To: Subst. Senate Bill No. 415

File No. 99

Cal. No. 112

"AN ACT CONCERNING ENVIRONMENTAL REMEDIATION ALLOCATION."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Subsection (a) of section 4-30a of the general statutes is
4 repealed and the following is substituted in lieu thereof (*Effective July*
5 *1, 2007*):

6 (a) After the accounts for the General Fund have been closed for
7 each fiscal year and the Comptroller has determined the amount of
8 unappropriated surplus in said fund, after any amounts required by
9 provision of law to be transferred for other purposes have been
10 deducted, the amount of such surplus shall be transferred by the State
11 Treasurer as follows: (1) Three per cent to the Department of
12 Agriculture for the purchase or preservation of farmland, (2) seven per
13 cent to the Department of Environmental Protection for the purchase
14 or preservation of open space, and (3) ninety per cent to a special fund

15 to be known as the Budget Reserve Fund. When the amount in said
 16 fund equals ten per cent of the net General Fund appropriations for the
 17 fiscal year in progress, no further transfers shall be made by the
 18 Treasurer to said fund and the amount of such surplus in excess of that
 19 transferred to said fund shall be deemed to be appropriated to the
 20 State Employees Retirement Fund, in addition to the contributions
 21 required pursuant to section 5-156a, but not exceeding five per cent of
 22 the unfunded past service liability of the system as set forth in the most
 23 recent actuarial valuation certified by the Retirement Commission.
 24 Such surplus in excess of the amounts transferred to the Departments
 25 of Agriculture and Environmental Protection, the Budget Reserve
 26 Fund and the state employees retirement system shall be deemed to be
 27 appropriated for: (1) Redeeming prior to maturity any outstanding
 28 indebtedness of the state selected by the Treasurer in the best interests
 29 of the state; (2) purchasing outstanding indebtedness of the state in the
 30 open market at such prices and on such terms and conditions as the
 31 Treasurer shall determine to be in the best interests of the state for the
 32 purpose of extinguishing or defeasing such debt; (3) providing for the
 33 defeasance of any outstanding indebtedness of the state selected by the
 34 Treasurer in the best interests of the state by irrevocably placing with
 35 an escrow agent in trust an amount to be used solely for, and sufficient
 36 to satisfy, scheduled payments of both interest and principal on such
 37 indebtedness; or (4) any combination of these methods. Pending the
 38 use or application of such amount for the payment of interest and
 39 principal, such amount may be invested in (A) direct obligations of the
 40 United States government, including state and local government
 41 treasury securities that the United States Treasury issues specifically to
 42 provide state and local governments with required cash flows at yields
 43 that do not exceed Internal Revenue Service arbitrage limits, (B)
 44 obligations guaranteed by the United States government, and (C)
 45 securities backed by United States government obligations as collateral
 46 and for which interest and principal payments on the collateral
 47 generally flow immediately through to the security holder."

SENATE AMENDMENT

Calendar: 112

LCO: 5710

Bill: 415

ADOPTED voice REJECTED voice

ADOPTED roll REJECTED roll