

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2A:58B-2 (Hazardous substances-- removal-- limit liability of contractors)

CHAPTER 77

Laws Of: 1987

Bill No: A2357

Sponsor(s): Rafferty and others

Date Introduced: March 13, 1986

Committee: Assembly: Insurance

Senate: Energy and Environment

Amended during passage: Yes Amendments during passage denoted by asterisks

Date of Passage: Assembly: December 15, 1986

Senate: March 11, 1987

Date of Approval: March 11, 1987

Following statements are attached if available:

Sponsor statement: Yes Attached: Assembly amendments, adopted 9-8-86 (with statement)

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: Yes

Hearings: No

974.90 New Jersey. Legislature. Assembly. Corrections, Health and Human Services
159 Committee.

~~19895b~~ Public hearing on crisis in liability insurance. . .
1985b held 12-16-85. Trenton, 1985.

(OVER)

974.90 Public hearing before Environmental Impairment Liability Insurance Study
159 Commission on "extent of liability insurance crisis," held 10-15-85 and
1985a 10-24-85 Trenton, 1985.

974.90 Public hearing before Environmental Impairment Liability Insurance Study
159 Commission on the extent of the insurance crisis, held 10-2-85.
1985 Trenton.

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3-11-87
[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 2357

(CORRECTED COPY)

STATE OF NEW JERSEY

INTRODUCED MARCH 13, 1986

By Assemblymen KELLY, DiGAETANO, WEIDEL, ZECKER, RAFFERTY, KLINE, MILLER, Assemblywoman COOPER, Assemblymen DEVERIN, GENOVA and LOVEYS

AN ACT concerning the liability of certain persons engaged in the construction of public works, buildings or improvements for the State and supplementing Title 2A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Unless the context clearly indicates otherwise, the following
2 terms shall have the following meanings:

4 a. "Contract modification" means alterations, deviations, addi-
5 tions to, or omissions from the provisions of a contract, or re-
6 quiring the performance of extra work by a contractor, consultant
7 or others, which, while not included in the original contract, is
8 deemed proper for the completion of the whole work contemplated
9 by the State.

10 b. "Construction" or "constructing" means, in addition to the
11 usual meanings thereof, acts of construction, reconstruction, re-
12 placement, extension, improvement and betterment.

13 c. "Discharge" means the intentional releasing, spilling, leak-
14 ing, pumping, pouring, emitting, emptying or dumping of haz-
15 ardous substances into the waters or onto the lands of the State
16 or into waters outside the jurisdiction of the State in accordance
17 with procedures established pursuant to State or federal laws,
18 rules or regulations or a plan approved by the New Jersey De-

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly amendments adopted September 8, 1986.

19 partment of Environmental Protection or the United States En-
20 vironmental Protection Agency.

21 d. "Hazardous substances" means such elements and com-
22 pounds, including petroleum products, which are defined as such
23 by the Department of Environmental Protection, after public hear-
24 ing, and which shall be consistent to the maximum extent pos-
25 sible with, and which shall include, the list of hazardous substances
26 adopted by the federal Environmental Protection Agency pur-
27 suant to Section 311 of the Federal Water Pollution Control Act
28 Amendments of 1972 (P. L. 92-500, 33 U. S. C. § 1251 et seq.)
29 and the list of toxic pollutants designated by Congress or the
30 Environmental Protection Agency pursuant to Section 307 of that
31 act; provided, however that sewage and sewage sludge shall not
32 be considered as hazardous substances for purposes of this act.

33 e. "Person" means public or private corporations, companies,
34 associations, societies, firms, partnerships, joint stock companies,
35 individuals, the United States, the State of New Jersey and any
36 of its political subdivisions or agents.

37 f. "Petroleum" or "petroleum products" means oil or petro-
38 leum of any kind and in any form including, but not limited to,
39 oil, petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse,
40 oil mixed with other wastes, crude oils, and substances or addi-
41 tives to be utilized in the refining or blending of crude petroleum
42 or petroleum stock in this State; however, any compound desig-
43 nated by specific chemical name to the list of hazardous substances
44 adopted by the Department of Environmental Protection pursuant
45 to the "Spill Compensation and Control Act," P. L. 1976, c. 141
46 (C. 58:10-23.11 et seq.) shall not be considered petroleum or a
47 petroleum product for the purposes of this act, unless such com-
48 pound is to be utilized in the refining or blending of crude petro-
49 leum or petroleum stock in this State.

50 g. "Services" means work performed by a design or other ex-
51 pert consultant and the services of non-experts who perform work
52 or technical functions on a project for public works, buildings or
53 improvements, including work preliminary to the construction
54 under a contract and work which results in or from a contract
55 modification.

56 h. "State" means the State and any office, department, division,
57 bureau, board, commission, or agency of the State, but shall not,
58 with the exception of New Jersey Transit Corporation, include
59 any such entity which is statutorily authorized to sue and be sued.

60 i. "Waters" means the ocean and its estuaries to the seaward

61 limit of the State's jurisdiction, all springs, streams and bodies
 62 of surface or groundwater, whether natural or artificial, within
 63 the boundaries of this State.

1 2. The provisions of any other law, rule or regulation to the
 2 contrary notwithstanding, the liability of any person construct-
 3 ing public works, buildings or improvements or offering
 4 services in connection with the construction of public works,
 5 buildings or improvements for the State, which work includes
 6 in whole or in part the removal or cleanup of hazardous sub-
 7 stances, the discharge of hazardous substances, or the contain-
 8 ment of hazardous substances at or near the construction sites,
 9 for any injury to a person or property caused by or related to
 10 such construction or services, shall be limited to acts or omissions
 11 of the person during the course of performing such construction
 12 or services which can be shown, based on a preponderance of the
 13 evidence, to have been negligent. For purposes of this act, the
 14 demonstration that the acts or omissions of a person performing
 15 such construction or services were in accordance with ***[an ap-**
 16 **proved plan or were]** **a plan which has been reviewed and ap-*
 17 *proved by the New Jersey Department of Environmental Protec-*
 18 *tion or the United States Environmental Protection Agency and**
 19 pursuant to State or federal laws, rules or regulations, and in
 20 accordance with generally accepted practices and state-of-the-art
 21 scientific knowledge and utilization of the best technology reason-
 22 ably available at the time of the removal, cleanup, containment or
 23 discharge of such hazardous substances shall create a rebuttable
 24 presumption that the acts or omissions were not negligent. This
 25 limitation on liability shall ***[apply]** **be limited** to that element
 26 of the work which involves the development of a plan for the
 27 handling of hazardous substances and the handling of hazardous
 28 substances. This limitation on liability shall also apply to con-
 29 struction and services undertaken in the development of such a
 30 plan for approval.

1 3. This act shall take effect immediately.

TORT LIABILITY AND MALPRACTICE

Limits the liability of persons performing public works con-
 tracts which include services for the removal, cleanup, contain-
 ment or discharge of hazardous waste.

1 2. (New section) The provisions of any other law, rule or regu-
 2 lation to the contrary notwithstanding, the liability of any person
 3 constructing public works, buildings or improvements or offering
 4 services in connection with the construction of public works,
 5 buildings or improvements for the State, which work includes
 6 in whole or in part the removal or cleanup of hazardous sub-
 7 stances, the discharge of hazardous substances, or the contain-
 8 ment of hazardous substances at or near the construction sites,
 9 for any injury to a person or property caused by or related to
 10 such construction or services, shall be limited to acts or omissions
 11 of the person during the course of performing such construction
 12 or services which can be shown, based on a preponderance of the
 13 evidence, to have been negligent. For purposes of this act, the
 14 demonstration that the acts or omissions of a person performing
 15 such construction or services were in accordance with an ap-
 16 proved plan or were pursuant to State or federal laws, rules or
 17 regulations, and in accordance with generally accepted practices
 18 and state-of-the-art scientific knowledge and utilization of the
 19 best technology reasonably available at the time of the removal,
 20 cleanup, containment or discharge of such hazardous substances
 21 shall create a rebuttable presumption that the acts or omissions
 22 were not negligent. This limitation on liability shall apply to that
 23 element of the work which involves the development of a plan
 24 for the handling of hazardous substances and the handling of
 25 hazardous substances. This limitation on liability shall also apply
 26 to construction and services undertaken in the development of
 27 such a plan for approval.

1 3. This act shall take effect immediately.

STATEMENT

Under current law, persons associated with the handling of hazardous substances, including contractors, engineers and others, are strictly liable, jointly and severally, without regard to fault, for all damages which result therefrom. This virtually unlimited liability has made it impossible for those undertaking the construction of public works, buildings or improvements, or those providing services in connection with such public works, buildings or improvements, to obtain liability insurance, which, in turn, has hampered the State's progress in the construction of roadways, buildings and other improvements. By limiting the liability of persons handling hazardous substances to instances where those persons' own acts or omission are determined to have been

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negligent, this bill makes it possible for contractors, engineers and others to obtain liability insurance and, thus, to continue to perform such construction services for the State.

This bill would limit the liability of contractors and persons performing services on public works, buildings and improvements which have, as an element of the work, the removal, cleanup, containment or discharge of hazardous substances. This limitation on liability would apply whether or not the handling of such hazardous substances was anticipated at the time the contract was executed with the contractor or person providing services. Thus, this limitation on liability would also apply where the handling of hazardous substances became an element of the work through subsequent contract modification.

Further, this limitation on liability applies to construction and services only to the extent that such construction and services involved the removal, cleanup, containment or discharge of hazardous substances. This bill does not alter the existing state of the law as it relates to other elements of the construction or performance of services.

To qualify under the provisions of this bill, it is necessary that the construction or services be performed pursuant to State or federal laws, rules or regulations, or pursuant to a plan approved by the New Jersey Department of Environmental Protection or the federal Environmental Protection Agency, or be part of the work undertaken to develop such a plan. The bill contains a broad definition of the term "person" so as to encompass work undertaken or plans developed by public as well as private bodies. Thus, the limitation on liability provided by this bill extends to activities by public bodies either in furthering their own projects or in providing assistance to other public agencies in pursuing projects.

TORT LIABILITY AND MALPRACTICE

Limits the liability of persons performing public works contracts which include services for the removal, cleanup, containment or discharge of hazardous waste.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT ON

Assembly, Bill No. 2357

DATED: May 8, 1986

This bill limits the liability of persons who construct public works, buildings or improvements, or who offer services in connection with the construction of public works, buildings or improvements for the State if the work includes in whole or in part the removal or cleanup of hazardous substances, the discharge of hazardous substances, or the containment of hazardous substances at or near the construction sites. Liability of these persons would be limited to acts or omissions of the person which can be shown, based on a preponderance of the evidence, that they are negligent.

The bill limits the limitation on liability to that element of the work which involves the development of a plan for the handling of hazardous substances and the handling of the substances themselves. The bill creates a rebuttable presumption that the acts or omissions of the contractors were not negligent if they were in accordance with an approved plan or were pursuant to State or federal laws, rules, or regulations, and in accordance with generally accepted practices and state-of-the-art scientific knowledge and utilization of the best technology reasonably available at the time of the removal.

Under current law, persons who are associated with the handling of hazardous substances are strictly liable for all damages which result from the handling of the substances; thus, they can be adjudged liable without regard to fault. The doctrine of strict liability has evolved through case law, and does not have a statutory basis. This virtually unlimited liability has made it difficult for contractors who deal with hazardous substances to obtain insurance coverage because of the magnitude of the risk which the doctrine of strict liability implies. This bill, by imposing a standard of negligence, would limit the liability of these contractors to those cases in which the contractor is responsible through some negligent action. Presumably, this would make insurance more available and more affordable.

(Proposed by Assemblyman Kelly)
to

Assembly Bill No. 2257
(Sponsored by Assemblyman Kelly)

ADOPTED
SEP 8 1986

Amend:

Page	Sec.	Line	
3	2	15,16	After "with" omit "an approved plan or were" insert "a plan which has been reviewed and approved by the New Jersey Department of Environmental Protection or the United States Environmental Protection Agency and"
3	2	22	Omit "apply" insert "be limited"

Statement

These amendments would clarify the fact that
the acts or omissions of a contractor under the act
were in accordance with a plan approved by
either the DEP or EPA.

SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2357

STATE OF NEW JERSEY

DATED: FEBRUARY 19, 1987

The Senate Energy and Environment Committee favorably reports Assembly Bill No. 2357.

Assembly Bill No. 2357 would limit the liability of persons under contract with the State to provide work or services which involve the cleanup, removal, or containment of a hazardous substance. The liability of these persons for any personal or property damage caused in connection with the cleanup, removal, or discharge of hazardous substances would be limited to actions which can be shown, based on a preponderance of the evidence, to be negligent. The limitation on liability provided in this bill would apply only to work or services pertaining to the development of a plan for the handling of hazardous substances approved by either the Department of Environmental Protection or the federal Environmental Protection Agency, or the actual handling of hazardous substances.

This bill further provides that if any acts or omissions concerning the handling of hazardous substances can be shown to have been in conformance with an approved plan, and in accordance with state-of-the-art scientific knowledge, a rebuttable presumption would be established that the acts were not negligent.

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OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

Contact: JOHN SAMERJAN
609-292-8956 OP. 292-6000 EXT. 207

TRENTON, N.J. 08625

Release: THURS., MAR. 12, 1987

Governor Thomas H. Kean today signed the following legislation:

A-2357, sponsored by Assemblyman John Kelly, R-Essex, provides that persons performing services on public works, buildings and improvements which have as an element of the work the removal, cleanup or containment of hazardous substances, shall be liable only where their negligent acts or omissions caused the damage cited by a claimant.

Several transportation projects in the State have been delayed because the presence of hazardous materials in the construction process has made it difficult for contractors and consultants to obtain liability insurance.

The legislation is effective immediately.

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