

58:10-23.11b

LEGISLATIVE HISTORY CHECKLIST

RCSA: 58:10-23.11b

(Hazardous substances--  
petroleum and others--  
increase tax for spill fund

LAWS OF: 1986 CHAPTER 143

BILL NO: A2698

Sponsor(s): Bennett and others

Date Introduced: May 22, 1986

Committee: Assembly: Environmental Quality; Appropriations

Senate: -----

Amended during passage: Yes  
OCR-ACS enacted Amendments during passage denoted by asterisks. Substituted for S899 (3rd OCR and Senate committee statement--attached).

Date of Passage: Assembly: October 23, 1986

Senate: October 23, 1986

Date of Approval: November 12, 1986

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly: Yes 9-15-86 and 9-11-86

Senate: No

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: Yes

974.90 New Jersey. Legislature. Assembly. Environmental Quality Committee.  
P777 Public hearing, held 7-29 8-25-86, Mt. Holly and Kearny, N.J., 1986.  
1986 d

See newspaper clipping file in New Jersey Reference Department under "N.J. - Hazardous substances-cleanup-1986.

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[OFFICIAL COPY REPRINT]  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 2698**

**STATE OF NEW JERSEY**

ADOPTED SEPTEMBER 11, 1986

Sponsored by Assemblyman BENNETT, Assemblywoman DONOVAN,  
Assemblymen SINGER, SHINN, BAER and SMITH

AN ACT to amend and supplement the "Spill Compensation and  
Control Act," approved January 6, 1977 (P. L. 1976, c. 141).

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

1 1. Section 3 of P. L. 1976, c. 141 (C. 58:10-23.11b) is amended to  
2 read as follows:

3 3. Unless the context clearly indicates otherwise, the following  
4 terms shall have the following meanings:

5 a. "Administrator" means the chief executive of the New Jersey  
6 Spill Compensation Fund;

7 b. "Barrel" means 42 United States gallons or 159.09 liters or  
8 an appropriate equivalent measure set by the director for hazard-  
9 ous substances which are other than fluid or which are not com-  
10 monly measured by the barrel;

11 c. "Board" means a board of arbitration convened by the  
12 administrator to settle disputed disbursements from the fund;

13 d. "Cleanup and removal costs" means all costs associated with  
14 a discharge, incurred by the State or its political subdivisions or  
15 their agents or any person with written approval from the depart-  
16 ment in the: (1) removal or attempted removal of hazardous  
17 substances, or (2) taking of reasonable measures to prevent or  
18 mitigate damage to the public health, safety, or welfare, including,  
19 but not limited to, public and private property, shorelines, beaches,  
20 surface waters, water columns and bottom sediments, soils and  
21 other affected property, including wildlife and other natural  
22 resources, and shall include costs incurred by the department for

**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 committee amendments adopted September 15, 1986.**

23 the indemnification and legal defense of contractors pursuant to  
24 subsection a. of section 7 of this act, subject to the appropriation  
25 by law of monies from the General Fund to the fund to defray  
26 these costs;

27 e. "Commissioner" means the Commissioner of Environmental  
28 Protection;

29 f. "Department" means the Department of Environmental  
30 Protection;

31 g. "Director" means the Director of the Division of Taxation in  
32 the Department of the Treasury;

33 h. "Discharge" means any intentional or unintentional action  
34 or omission resulting in the releasing, spilling, leaking, pumping,  
35 pouring, emitting, emptying or dumping of hazardous substances  
36 into the waters or onto the lands of the State, or into waters out-  
37 side the jurisdiction of the State, when damage may result to the  
38 lands, waters or natural resources within the jurisdiction of the  
39 State;

40 i. "Fair market value" means the invoice price of the hazardous  
41 substances transferred, including transportation charges; but  
42 where no price is so fixed, "fair market value" shall mean the  
43 market price as of the close of the nearest day to the transfer, paid  
44 for similar hazardous substances, as shall be determined by the  
45 taxpayer pursuant to rules of the director;

46 j. "Fund" means the New Jersey Spill Compensation Fund;

47 k. "Hazardous substances" means *the "environmental hazard-*  
48 *ous substances" on the environmental hazardous substance list*  
49 *adopted by the department pursuant to section 4 of P. L. 1985,*  
50 *c. 315 (C. 34:5A-4);* such elements and compounds, including  
51 petroleum products, which are defined as such by the department,  
52 after public hearing, and which shall be consistent to the maximum  
53 extent possible with, and which shall include, the list of hazardous  
54 substances adopted by the federal Environmental Protection  
55 Agency pursuant to section 311 of the federal Water Pollution  
56 Control Act Amendments of 1972 *Pub. L. 92-500* as amended by  
57 the Clean Water Act of 1977 *Pub. L. 95-217* (33 U. S. C. § 1251  
58 et seq.) **[and]** ; the list of toxic pollutants designated by Congress  
59 or the EPA pursuant to section 307 of that act; *and the list of*  
60 *hazardous substances adopted by the federal Environmental Pro-*  
61 *tection Agency pursuant to section 101 of the "Comprehensive*  
62 *Environmental Response, Compensation and Liability Act of*  
63 *1980," Pub. L. 96-510 (42 U. S. C. § 9601 et seq.);* provided,  
64 however, that sewage and sewage sludge shall not be considered as  
65 hazardous substances for the purposes of this act;

66 l. "Major facility" includes, but is not limited to, any refinery,  
67 storage or transfer terminal, pipeline, deepwater port, drilling  
68 platform or any appurtenance related to any of the preceding that  
69 is used or is capable of being used to refine, produce, store, handle,  
70 transfer, process or transport hazardous substances. A vessel shall  
71 be considered a major facility only when hazardous substances are  
72 transferred between vessels.

73 A facility shall not be considered a major facility for the purpose  
74 of this act unless it has total combined above ground or buried  
75 storage capacity of:

76 (1) ~~50,000~~ 20,000 gallons or more for hazardous substances  
77 which are other than petroleum or petroleum products, or

78 (2) ~~400,000~~ 200,000 gallons or more for hazardous substances  
79 of all kinds.

80 For the purposes of this definition, "storage capacity" shall  
81 mean only that *total combined capacity* which is dedicated to, used  
82 for or intended to be used for storage of hazardous substances of  
83 *all kinds*. Where appropriate to the nature of the facility, storage  
84 capacity may be determined by the intended or actual use of open  
85 land or unenclosed space as well as by the capacities of tanks or  
86 other enclosed storage spaces.

87 m. "Natural resources" means all land, fish, shellfish, wildlife,  
88 biota, air, waters and other such resources owned, managed, held  
89 in trust or otherwise controlled by the State;

90 n. "Owner" or "operator" means with respect to a vessel,  
91 any person owning, operating or chartering by demise such vessel;  
92 with respect to any major facility, any person owning such facility,  
93 or operating it by lease, contract or other form of agreement; with  
94 respect to abandoned or derelict major facilities, the person who  
95 owned or operated such facility immediately prior to such abandon-  
96 ment, or the owner at the time of discharge;

97 o. "Person" means public or private corporations, companies,  
98 associations, societies, firms, partnerships, joint stock companies,  
99 individuals, the United States, the State of New Jersey and any  
100 of its political subdivisions or agents;

101 p. "Petroleum" or "petroleum products" means oil or petro-  
102 leum of any kind and in any form including, but not limited to,  
103 oil, petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse,  
104 oil mixed with other wastes, crude oils, and substances or additives  
105 to be utilized in the refining or blending of crude petroleum or  
106 petroleum stock in this State; however, any compound designated  
107 by specific chemical name to the list of hazardous substances

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108 adopted by the department pursuant to subsection 3 k. shall not  
109 be considered petroleum or a petroleum product for the purposes  
110 of this act, unless such compound is to be utilized in the refining  
111 or blending of crude petroleum or petroleum stock in this State;

112 q. "Taxpayer" means the owner or operator of a major facility  
113 subject to the tax provisions of this act;

114 r. "Tax period" means every calendar month on the basis of  
115 which the taxpayer is required to report under this act;

116 s. "Transfer" means unloading or offloading between major  
117 facilities and vessels, or vessels and major facilities, and from  
118 vessel to vessel or major facility to major facility, except for fuel-  
119 ing or refueling operations and except that with regard to the  
120 movement of hazardous substances other than petroleum, it shall  
121 also include any unloading of or offloading from a major facility;

122 t. "Vessel" means every description of watercraft or other  
123 contrivance that is practically capable of being used as a means  
124 of commercial transportation of hazardous substances upon the  
125 water, whether or not self-propelled;

126 u. "Waters" means the ocean and its estuaries to the seaward  
127 limit of the State's jurisdiction, all springs, streams and bodies of  
128 surface or groundwater, whether natural or artificial, within the  
129 boundaries of this State;

130 v. "Act of God" means an act exclusively occasioned by an  
131 unanticipated, grave natural disaster without the interference of  
132 any human agency.

1 2. Section 9 of P. L. 1976, c. 141 (C. 58:10-23.11h) is amended  
2 to read as follows:

3 9. a. There is hereby levied upon each owner or operator of one  
4 or more major facilities a tax to insure compensation for cleanup  
5 costs and damages associated with any discharge of hazardous  
6 substances to be paid by the transferee; provided, however, that  
7 in the case of a major facility which operates as a public storage  
8 terminal for hazardous substances owned by others, the owner of  
9 the hazardous substance transferred to such major facility or his  
10 authorized agent shall be considered to be the transferee or trans-  
11 feror, as the case may be, for the purposes of this section and shall  
12 be deemed to be a taxpayer for purposes of this act. Where such  
13 person has failed to file a return or pay the tax imposed by this act  
14 within 60 days after the due date thereof, the director shall forth-  
15 with take appropriate steps to collect same from the owner of the  
16 hazardous substance. In the event the director is not successful in  
17 collecting said tax, then on notice to the owner or operator of the

18 public storage terminal of said fact said owner or operator shall  
 19 not release any hazardous substance owned by the taxpayer. The  
 20 director may forthwith proceed to satisfy any tax liability of the  
 21 taxpayer by seizing, selling or otherwise disposing of said hazard-  
 22 ous substance to satisfy the taxpayer's tax liability and to take any  
 23 further steps permitted by law for its collection. For the purposes  
 24 of this act, public storage terminal shall mean a public or privately  
 25 owned major facility operated for public use which is used for the  
 26 storage or transfer of hazardous substances. The tax shall be  
 27 measured by the number of barrels or the fair market value, as the  
 28 case may be, of hazardous substances transferred to the major  
 29 facility; provided, however, that the same barrel, including any  
 30 products derived therefrom, subject to multiple transfers from or  
 31 between major facilities shall be taxed only once at the point of the  
 32 first transfer.

33 When a hazardous substance other than petroleum which has not  
 34 been previously taxed is transferred from a major in-State facility  
 35 to a facility which is not a major facility, the transferor shall be  
 36 liable for tax payment for said transfer.

37 b. The tax shall be ~~[\$0.01]~~ \$0.0125 per barrel transferred and  
 38 in the case of the transfer of hazardous substances other than  
 39 petroleum or petroleum products, the tax shall be the greater of  
 40 ~~[\$0.01]~~ \$0.0125 per barrel or ~~[0.4%]~~ 1.0% of the fair market value  
 41 of the product\*~~],~~ until the balance in the fund equals or exceeds  
 42 \$50,000,000.00\*~~];~~ provided, however, that with respect to transfers  
 43 of hazardous substances other than petroleum or petroleum pro-  
 44 ducts which are or contain any precious metals to be recycled,  
 45 refined, or rerefined in this State, or which are transferred into  
 46 this State subsequent to being recycled, refined or rerefined, the  
 47 tax shall be ~~[\$0.01]~~ \$0.0125 per barrel of the hazardous substance;  
 48 *and provided further, however, that the total aggregate tax due*  
 49 *for any individual taxpayer which has paid the tax in the \*~~[im-~~*  
 50 *mediately preceding]\* \*1986\* tax year shall not exceed 125% of*  
 51 *the tax due and payable by that taxpayer during \*~~[calendar year]~~\**  
 52 *\*the\* 1986 \*tax year;\* except that for a hazardous substance which*  
 53 *is directly converted to, and comprises more than 90% by weight*  
 54 *of, a non-hazardous final product, the taxpayer shall pay no*  
 55 *more than 100% of the tax due and payable in the \*~~[previous]~~\**  
 56 *\*1986\* tax year. For the purposes of this section, "precious*  
 57 *metals" means gold, silver, osmium, platinum, palladium, iridium,*  
 58 *rhodium, ruthenium and copper. ~~[In each fiscal year following~~*  
 59 *any year in which the balance of the fund equals or exceeds*  
 60 *\$50,000,000.00, no tax shall be levied unless: (1) the current balance*

61 in the fund is less than \$40,000,000.00; or (2) pending claims  
62 against the fund exceed 50% of the existing balance of the fund.  
63 The provisions of the foregoing notwithstanding, should claims  
64 paid from or pending against the fund not exceed \$5,000,000.00  
65 within three years after the tax is first levied, the tax shall be  
66 \$0.01 per barrel transferred or 0.4% of the fair market value of the  
67 product, as the case may be, until the balance in the fund equals or  
68 exceeds \$36,000,000.00, and thereafter shall not be levied unless:  
69 (1) the current balance in the fund is less than \$30,000,000.00; or  
70 (2) pending claims against the fund exceed 50% of the existing  
71 balance of the fund. In the event of either such occurrence and  
72 upon certification thereof by the State Treasurer, the director shall  
73 within 10 days of the date of such certification reley the excise tax  
74 which shall take effect on the first day of the month following such  
75 reley. With respect to the tax imposed upon the transfer of  
76 hazardous substances which are other than petroleum or petroleum  
77 products, if the revenues from such tax exceed \$7,000,000.00 during  
78 any calendar year, such excess shall be refunded or credited to the  
79 taxpayers who paid such tax during the calendar year. The refund  
80 or credit shall be based upon the amount of taxes paid by each  
81 taxpayer on transfers of hazardous substances which are other than  
82 petroleum or petroleum products for the calendar year in propor-  
83 tion to all taxes paid by all taxpayers on such transfers during said  
84 year; provided, however, that if at the end of the calendar year the  
85 increased tax rate as authorized by this subsection or subsection i.  
86 is in effect, no refund or credit shall be allowed for such calendar  
87 year; and provided further, that no refund or credit shall be  
88 allowed for a calendar year if by reason of such refund or credit a  
89 condition would occur which would authorize the imposition of the  
90 tax at the higher rate authorized in this subsection or subsection i.  
91 However, a partial refund or credit shall be allowed to the extent  
92 that such a condition would not occur.】 In the event of a major  
93 discharge or series of discharges of petroleum \*【and】\* \*or\* petro-  
94 leum products resulting in reasonable claims against the fund  
95 exceeding the existing balance of the fund, the tax shall be levied  
96 【as follows:

97 (1) On petroleum or petroleum products,】 at the rate of \$0.04  
98 per barrel \*of petroleum or petroleum products\* transferred, until  
99 the revenue produced by such increased rate equals 150% of the  
100 total dollar amount of all pending reasonable claims resulting from  
101 the discharge of petroleum or petroleum products; provided, how-  
102 ever, that such rate may be set at less than \$0.04 per barrel

103 transferred if the administrator determines that the revenue  
104 produced by such lower rate will be sufficient to pay outstanding  
105 reasonable claims against the fund within one year of such levy;  
106 and

107 **[(2) On hazardous substances other than petroleum or petroleum**  
108 **products, at the rate of the greater of \$0.04 per barrel transferred**  
109 **or 0.8% of the fair market value of such hazardous substance,**  
110 **until the revenue produced by such increased rate equals 150%**  
111 **of the total dollar amount of all pending reasonable claims result-**  
112 **ing from the discharge of hazardous substances other than petro-**  
113 **leum or petroleum products; provided, however, that with respect**  
114 **to transfers of hazardous substances other than petroleum or**  
115 **petroleum products which are or contain any precious metals to**  
116 **be recycled, refined, or rerefined in this State, or which are trans-**  
117 **ferred into this State subsequent to being recycled, refined, or**  
118 **rerefined, the tax shall be \$0.04 per barrel of the hazardous sub-**  
119 **stances; and provided further, however, that any such increased**  
120 **tax rate on hazardous substances other than petroleum or petro-**  
121 **leum products may be set at less than \$0.04 per barrel transferred,**  
122 **or 0.8% of the fair market value of the hazardous substance, as**  
123 **the case may be, if the administrator determines that the revenue**  
124 **produced by such lower rate shall be sufficient to pay outstanding**  
125 **reasonable claims against the fund within one year of such levy]**  
126 *provided further, however, that under no circumstances shall this*  
127 *rate be levied for the period of one year immediately following*  
128 *enactment of this 1986 amendatory and supplementary act.*

129 Interest received on moneys in the fund shall be credited to the  
130 fund. **[Should the fund exceed \$36,000,000.00 or \$50,000,000.00, as**  
131 **herein provided, as a result of such interest, the commissioner**  
132 **shall report to the Legislature and the Governor concerning the**  
133 **options for the use of such interest.]**

134 c. (1) Every taxpayer and owner or operator of a public storage  
135 terminal for hazardous substances shall on or before the 20th day  
136 of the month following the close of each tax period render a return  
137 under oath to the director on such forms as may be prescribed by  
138 the director indicating the number of barrels of hazardous sub-  
139 stances transferred and where appropriate, the fair market value  
140 of the hazardous substances transferred to or from the major  
141 facility, and at said time the taxpayer shall pay the full amount of  
142 the tax due.

143 (2) Every taxpayer or owner or operator of a major facility or  
144 vessel which transfers a hazardous substance, as defined in this  
145 act, and who is subject to the tax under subsection a. shall within

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146 20 days after the first such transfer in any fiscal year register with  
147 the director on such form as shall be prescribed by him.

148 d. If a return required by this act is not filed, or if a return when  
149 filed is incorrect or insufficient in the opinion of the director, the  
150 amount of tax due shall be determined by the director from such  
151 information as may be available. Notice of such determination  
152 shall be given to the taxpayer liable for the payment of the tax.  
153 Such determination shall finally and irrevocably fix the tax unless  
154 the person against whom it is assessed, within 30 days after receiv-  
155 ing notice of such determination, shall apply to the director for a  
156 hearing, or unless the director on his own motion shall redetermine  
157 the same. After such hearing the director shall give notice of his  
158 determination to the person to whom the tax is assessed.

159 e. Any taxpayer who shall fail to file his return when due or to  
160 pay any tax when the same becomes due, as herein provided, shall  
161 be subject to such penalties and interest as provided in the "State  
162 Tax Uniform Procedure Law," subtitle 9 of Title 54 of the Revised  
163 Statutes. If the Division of Taxation determines that the failure  
164 to comply with any provision of this section was excusable under  
165 the circumstances, it may remit such part or all of the penalty as  
166 shall be appropriate under such circumstances.

167 f. (1) Any person failing to file a return, failing to pay the tax,  
168 or filing or causing to be filed, or making or causing to be made,  
169 or giving or causing to be given any return, certificate, affidavit,  
170 representation, information, testimony or statement required or  
171 authorized by this act, or rules or regulations adopted hereunder  
172 which is willfully false, or failing to keep any records required  
173 by this act or rules and regulations adopted hereunder, shall, in  
174 addition to any other penalties herein or elsewhere prescribed, be  
175 guilty of a crime of the fourth degree.

176 (2) The certificate of the director to the effect that a tax has not  
177 been paid, that a return has not been filed, that information has  
178 not been supplied or that inaccurate information has been supplied  
179 pursuant to the provisions of this act or rules or regulations  
180 adopted hereunder shall be presumptive evidence thereof.

181 g. In addition to the other powers granted to the director in this  
182 section, he is hereby authorized and empowered:

183 (1) To delegate to any officer or employee of his division such of  
184 his powers and duties as he may deem necessary to carry out  
185 efficiently the provisions of this section, and the person or persons  
186 to whom such power has been delegated shall possess and may  
187 exercise all of said powers and perform all of the duties delegated  
188 by the director;

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189 (2) To prescribe and distribute all necessary forms for the im-  
190 plementation of this section.

191 h. The tax imposed by this act shall be governed in all respects  
192 by the provisions of the "State Tax Uniform Procedure Law,"  
193 subtitle 9 of Title 54 of the Revised Statutes, except only to the  
194 extent that a specific provision of this act may be in conflict there-  
195 with.

196 i. [Notwithstanding any other provisions of this section, upon a  
197 request from the administrator, the Treasurer may order the  
198 director to levy the tax on all hazardous substances other than  
199 petroleum or petroleum products at a specified rate greater than  
200 \$0.01 per barrel or 0.4% of the fair market value of the product,  
201 as the case may be, but in no event to exceed \$0.04 per barrel with  
202 respect to transfers of hazardous substances other than petroleum  
203 or petroleum products which are or contain any precious metals  
204 to be recycled, refined or rerefined in this State, or which are trans-  
205 ferred into this State subsequent to being recycled, refined or  
206 rerefined, or the greater of \$0.04 per barrel or 0.6% of the fair  
207 market value of the product with respect to transfers of any  
208 hazardous substances other than petroleum or petroleum products,  
209 if and as long as the administrator determines the following:

210 (1) That pending reasonable claims against the fund for hazar-  
211 dous substances other than petroleum or petroleum products exceed  
212 70% of the existing balance of the fund, and

213 (2) That the sum of the claims paid by the fund on behalf of  
214 discharges or removals of hazardous substances other than petro-  
215 leum or petroleum products plus pending reasonable claims against  
216 the fund on behalf of discharges of hazardous substances other  
217 than petroleum is equal to or greater than 70% of all claims paid  
218 by the fund plus all pending reasonable claims against the fund.

219 The provisions of this subsection shall not preclude the impo-  
220 sition of the tax at the higher rate authorized under subsection b.  
221 of this section.] (*Deleted by amendment, P. L. , c.* )

1 3. (New section) a. The Department of Environmental Protection  
2 shall compile a list of facilities which, based on all information  
3 made available to *\*or collected by\** the department *\*[under the*  
4 *various environmental programs]\** *\*pursuant to any State or*  
5 *federal law\**, may have sufficient storage capacity to be classified as  
6 a major facility.

7 b. The department shall transmit this list to the Director of the  
8 Division of Taxation in the Department of Treasury on January 1  
9 of the year next following the enactment of this act and annually  
10 thereafter, provided that the department may update the list more  
11 frequently as it deems appropriate.

12 c. The director shall utilize the list compiled by the department  
 13 to notify the owner or operator of the facilities thereon that they  
 14 may be liable for the tax levied pursuant to section 9 of P. L. 1976,  
 15 c. 141 (C. 58:10-23.11h).

16 d. The owner or operator of a facility so notified by the director  
 17 shall pay the tax or provide an explanation as to why the facility  
 18 should not be classified as a major facility.

1 4. The department shall compile a list of facilities which, based  
 2 on all information made available to *\*or collected by\** the depart-  
 3 ment *\*[under the various environmental programs]\** *\*pursuant to*  
 4 *any State or federal law\**, would be classified as a major facility if  
 5 storage capacity therefor were set at 5,000 gallons of hazardous  
 6 substances which are not petroleum or petroleum products.

1 5. The department shall *\*annually\** submit a written report to  
 2 the Senate Energy and Environment Committee and to the As-  
 3 sembly Environmental Quality Committee\*, *or their successors\**,  
 4 which shall include the information required pursuant to section  
 5 26 of P. L. 1976, c. 141 (C. 58:10-23.11y) as well as the list trans-  
 6 mitted to the Director of the Division of Taxation in the Depart-  
 7 ment of Treasury pursuant to *\*[sections]\** *\*section\* 3* *\*of this*  
 8 *amendatory and supplementary act\** and *\*the list compiled by the*  
 9 *department pursuant to section\* 4* of this amendatory and  
 10 supplementary act.

1 6. This act shall take effect immediately but shall remain  
 2 inoperative until the enactment of P. L. 1986 c. ... (C. ... )  
 3 (now before the legislature as Senate Bill No. 2012 of 1986 *\*or*  
 4 *Assembly Bill No. 2701 of 1986\**) and P. L. 1986 c. ... (C. ... )  
 5 (now before the Legislature as Assembly Committee Substitute for  
 6 Assembly Bill Nos. 2699 and 2700 of 1986)\*; *provided, however,*  
 7 *that the tax provisions in section 2 of this 1986 amendatory and*  
 8 *supplementary act shall take effect on the first day of the third*  
 9 *month following enactment\*.*

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HAZARDOUS SUBSTANCES (Control)

Amends "Spill Compensation and Control Act".

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**ASSEMBLY, No. 2698**  
**STATE OF NEW JERSEY**

INTRODUCED MAY 22, 1986

By Assemblyman BENNETT

AN ACT to amend the "Spill Compensation and Control Act,"  
approved January 6, 1977 (P. L. 1976, c. 141).

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

1 1. Section 9 of P. L. 1976, c. 141 (C. 58:10-23.11h) is amended  
2 to read as follows:

3 9. a. There is hereby levied upon each owner or operator of one  
4 or more major facilities a tax to insure compensation for cleanup  
5 costs and damages associated with any discharge of hazardous  
6 substances to be paid by the transferee; provided, however, that  
7 in the case of a major facility which operates as a public storage  
8 terminal for hazardous substances owned by others, the owner of  
9 the hazardous substance transferred to such major facility or his  
10 authorized agent shall be considered to be the transferee or trans-  
11 feror, as the case may be, for the purposes of this section and shall  
12 be deemed to be a taxpayer for purposes of this act. Where such  
13 person has failed to file a return or pay the tax imposed by this  
14 act within 60 days after the due date thereof, the director shall  
15 forthwith take appropriate steps to collect same from the owner of  
16 the hazardous substance. In the event the director is not suc-  
17 cessful in collecting said tax then on notice to the owner or operator  
18 of the public storage terminal of said fact said owner or operator  
19 shall not release any hazardous substance owned by the taxpayer.  
20 The director may forthwith proceed to satisfy any tax liability of  
21 the taxayer by seizing, selling or otherwise disposing of said haz-  
22 ardous substance to satisfy the taxpayer's tax liability and to take  
23 any further steps permitted by law for its collection. For the pur-

**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.**

24 poses of this act public storage terminal shall mean a public or  
25 privately owned major facility operated for public use which is  
26 used for the storage or transfer of hazardous substances. The tax  
27 shall be measured by the number of barrels or the fair market  
28 value, as the case may be, of hazardous substances transferred to  
29 the major facility, provided, however, that the same barrel, in-  
30 cluding any products derived therefrom, subject to multiple trans-  
31 fers from or between major facilities shall be taxed only once at  
32 the point of the first transfer.

33 When a hazardous substance other than petroleum which has not  
34 been previously taxed is transferred from a major in-State facility  
35 to a facility which is not a major facility, the transferor shall be  
36 liable for tax payment for said transfer.

37 b. The tax shall be ~~[\$0.01]~~ \$0.02 per barrel transferred and in  
38 the case of the transfer of hazardous substances other than  
39 petroleum or petroleum products, the tax shall be the greater of  
40 ~~[\$0.01]~~ \$0.02 per barrel or ~~[0.4%]~~ 0.8% of the fair market value  
41 of the product, ~~[until the balance in the fund equals or exceeds~~  
42 ~~\$50,000,000.00]~~; provided, however, that with respect to transfers  
43 of hazardous substances other than petroleum or petroleum prod-  
44 ucts which are or contain any precious metals to be recycled, re-  
45 fined, or rerefined in this State, or which are transferred into this  
46 State subsequent to being recycled, refined or rerefined, the tax  
47 shall be ~~[\$0.01]~~ \$0.02 per barrel of the hazardous substance. For  
48 the purposes of this section, "precious metals" means gold, silver,  
49 osmium, platinum, palladium, iridium, rhodium, ruthenium and  
50 copper. ~~[In each fiscal year following any year in which the bal-~~  
51 ~~ance of the fund equals or exceeds \$50,000,000.00, no tax shall be~~  
52 ~~levied unless (1) the current balance in the fund is less than~~  
53 ~~\$40,000,000.00 or (2) pending claims against the fund exceed 50%~~  
54 ~~of the existing balance of the fund. The provisions of the fore-~~  
55 ~~going notwithstanding, should claims paid from or pending against~~  
56 ~~the fund not exceed \$5,000,000.00 within three years after the tax~~  
57 ~~is first levied, the tax shall be \$0.01 per barrel transferred or 0.4%~~  
58 ~~of the fair market value of the product, as the case may be, until~~  
59 ~~the balance in the fund equals or exceeds \$36,000,000.00, and there-~~  
60 ~~after shall not be levied unless: (1) the current balance in the~~  
61 ~~fund is less than \$30,000,000.00 or (2) pending claims against the~~  
62 ~~fund exceed 50% of the existing balance of the fund. In the event~~  
63 ~~of either such occurrence and upon certification thereof by the~~  
64 ~~State Treasurer, the director shall within 10 days of the date of~~  
65 ~~such certification levy the excise tax, which shall take effect on~~

66 the first day of the month following such relevely. With respect to  
67 the tax imposed upon the transfer of hazardous substances which  
68 are other than petroleum or petroleum products, if the revenues  
69 from such tax exceed \$7,000,000.00 during any calendar year, such  
70 excess shall be refunded or credited to the taxpayers who paid  
71 such tax during the calendar year. The refund or credit shall be  
72 based upon the amount of taxes paid by each taxpayer on trans-  
73 fers of hazardous substances which are other than petroleum or  
74 petroleum products for the calendar year in proportion to all  
75 taxes paid by all taxpayers on such transfers during said year;  
76 provided, however, that if at the end of the calendar year the  
77 increased tax rate as authorized by this subsection or subsection i.  
78 is in effect, no refund or credit shall be allowed for such calendar  
79 year; and further, provided that no refund or credit shall be  
80 allowed for a calendar year if by reason of such refund or credit a  
81 condition would occur which would authorize the imposition of the  
82 tax at the higher rate authorized in this subsection or subsection i.  
83 However, a partial refund or credit shall be allowed to the extent  
84 that such a condition would not occur.】 In the event of a major dis-  
85 charge or series of discharges resulting in reasonable claims  
86 against the fund exceeding the existing balance of the fund, the  
87 tax shall be levied as follows:

88 (1) On petroleum or petroleum products, at the rate of 【\$0.04】  
89 \$0.08 per barrel transferred, until the revenue produced by such  
90 increased rate equals 150% of the total dollar amount of all pend-  
91 ing reasonable claims resulting from the discharge of petroleum  
92 or petroleum products; provided, however, that such rate may be  
93 set at less than 【\$0.04】 \$0.08 per barrel transferred if the ad-  
94 ministrator determines that the revenue produced by such lower  
95 rate will be sufficient to pay outstanding reasonable claims against  
96 the fund within one year of such levy; and

97 (2) On hazardous substances other than petroleum or petroleum  
98 products, at the rate of the greater of 【\$0.04】 \$0.08 per barrel  
99 transferred or 【0.8%】 1.6% of the fair market value of such haz-  
100 ardous substance, until the revenue produced by such increased  
101 rate equals 150% of the total dollar amount of all pending reason-  
102 able claims resulting from the discharge of hazardous substances  
103 other than petroleum or petroleum products【; provided, however,  
104 that with respect to transfers of hazardous substances other than  
105 petroleum or petroleum products which are or contain any precious  
106 metals to be recycled, refined, or rerefined in this State, or which  
107 are transferred into this State subsequent to being recycled, re-

108 fined, or rerefined, the tax shall be \$0.04 per barrel of the hazardous  
109 substances ; and provided further, however, that any such increased  
110 tax rate on hazardous substances other than petroleum or petro-  
111 leum products may be set at less than \$0.04 per barrel transferred,  
112 or 0.8% of the fair market value of the hazardous substance, as  
113 the case may be, if the administrator determines that the revenue  
114 produced by such lower rate shall be sufficient to pay outstanding  
115 reasonable claims against the fund within one year of such levy.】

116 Interest received on moneys in the fund shall be credited to the  
117 fund. 【Should the fund exceed \$36,000,000.00 or \$50,000,000.00, as  
118 herein provided, as a result of such interest, the commissioner  
119 shall report to the Legislature and the Governor concerning the  
120 options for the use of such interest.】

121 c. (1) Every taxpayer and owner or operator of a public storage  
122 terminal for hazardous substances shall on or before the twentieth  
123 day of the month following the close of each tax period render a  
124 return under oath to the director on such forms as may be pre-  
125 scribed by the director indicating the number of barrels of hazar-  
126 dous substances transferred and where appropriate, the fair  
127 market value of the hazardous substances transferred to or from  
128 the major facility, and at said time the taxpayer shall pay the full  
129 amount of the tax due.

130 (2) Every taxpayer or owner or operator of a major facility or  
131 vessel which transfers a hazardous substance, as defined in this  
132 act, and who is subject to the tax under subsection a. shall within  
133 20 days after the first such transfer in any fiscal year register with  
134 the director on such form as shall be prescribed by him.

135 d. If a return required by this act is not filed, or if a return when  
136 filed is incorrect or insufficient in the opinion of the director, the  
137 amount of tax due shall be determined by the director from such  
138 information as may be available. Notice of such determination  
139 shall be given to the taxpayer liable for the payment of the tax.  
140 Such determination shall finally and irrevocably fix the tax unless  
141 the person against whom it is assessed, within 30 days after re-  
142 ceiving notice of such determination, shall apply to the director  
143 for a hearing, or unless the director on his own motion shall re-  
144 determine the same. After such hearing the director shall give  
145 notice of his determination to the person to whom the tax is  
146 assessed.

147 e. Any taxpayer who shall fail to file his return when due or to  
148 pay any tax when the same becomes due, as herein provided, shall  
149 be subject to such penalties and interest as provided in the "State

150 Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Re-  
151 vised Statutes. If the Division of Taxation determines that the  
152 failure to comply with any provision of this section was excusable  
153 under the circumstances, it may remit such part or all of the pen-  
154 alty as shall be appropriate under such circumstances.

155 f. (1) Any person failing to file a return, failing to pay the tax,  
156 or filing or causing to be filed, or making or causing to be made,  
157 or giving or causing to be given any return, certificate, affidavit,  
158 representation, information, testimony or statement required or  
159 authorized by this act, or rules or regulations adopted hereunder  
160 which is willfully false, or failing to keep any records required  
161 by this act or rules and regulations adopted hereunder, shall, in  
162 addition to any other penalties herein or elsewhere prescribed, be  
163 guilty of a crime of the fourth degree.

164 (2) The certificate of the director to the effect that a tax has not  
165 been paid, that a return has not been filed, that information has  
166 not been supplied or that inaccurate information has been supplied  
167 pursuant to the provisions of this act or rules or regulations  
168 adopted hereunder shall be presumptive evidence thereof.

169 g. In addition to the other powers granted to the director in  
170 this section, he is hereby authorized and empowered:

171 (1) To delegate to any officer or employee of his division such of  
172 his powers and duties as he may deem necessary to carry out  
173 efficiently the provisions of this section, and the person or persons  
174 to whom such power has been delegated shall possess and may  
175 exercise all of said powers and perform all of the duties delegated  
176 by the director;

177 (2) To prescribe and distribute all necessary forms for the im-  
178 plementation of this section.

179 h. The tax imposed by this act shall be governed in all respects  
180 by the provisions of the "State Tax Uniform Procedure Law,"  
181 Subtitle 9 of Title 54 of the Revised Statutes, except only to the  
182 extent that a specific provision of this act may be in conflict  
183 therewith.

184 [i. Notwithstanding any other provisions of this section, *upon a*  
185 *request from the administrator*, the Treasurer may order the  
186 director to levy the tax on all hazardous substances other than  
187 petroleum or petroleum products at a specified rate greater than  
188 \$0.01 per barrel or 0.4% of the fair market value of the product, as  
189 the case may be, but in no event to exceed \$0.04 per barrel with  
190 respect to transfers of hazardous substances other than petroleum  
191 or petroleum products which are or contain any precious metals



192 to be recycled, refined or rerefined in this State, or which are trans-  
 193 ferred into this State subsequent to being recycled, refined or re-  
 194 refined, or the greater of \$0.04 per barrel or 0.6% of the fair  
 195 market value of the product with respect to transfers of any other  
 196 hazardous substances other than petroleum or petroleum prod-  
 197 ucts, if and as long as the administrator determines the following:

198 (1) That pending, reasonable claims against the fund for hazar-  
 199 dous substances other than petroleum or petroleum products ex-  
 200 ceed 70% of the existing balance of the fund, and

201 (2) That the sum of the claims paid by the fund on behalf of  
 202 discharges or removals of hazardous substances other than petro-  
 203 leum or petroleum products plus pending, reasonable claims  
 204 against the fund on behalf of discharges of hazardous substances  
 205 other than petroleum is equal to or greater than 70% of all claims  
 206 paid by the fund plus all pending, reasonable claims against the  
 207 fund.

208 The provisions of this subsection shall not preclude the impo-  
 209 sition of the tax at the higher rate authorized under subsection b.  
 210 of this section.】

1 2. This act shall take effect 90 days following enactment, but  
 2 the Department of Environmental Protection and the Department  
 3 of the Treasury shall take all actions necessary prior to the effec-  
 4 tive date of this act to implement the provisions of this act on  
 5 the effective date thereof.

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#### STATEMENT

This bill doubles the rate of the tax on petroleum and non-  
 petroleum hazardous substances imposed by the "Spill Compens-  
 ation and Control Act," P. L. 1977, c. 141. This bill would increase  
 the tax on petroleum from \$0.01 per barrel to \$0.02 per barrel,  
 and would increase the tax on non-petroleum hazardous substances  
 from the greater of \$0.01 per barrel or 0.4% of fair market value  
 to the greater of \$0.02 per barrel or 0.8% of fair market value.

This bill would also double the rates of the "accelerator" pro-  
 visions of the act, which automatically increase the base rates  
 of the tax when claims against the Spill Fund exceed the balance  
 of the fund. This bill also removes the existing \$50,000,000.00  
 "cap" on the Spill Fund.

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#### HAZARDOUS WASTE (Cleanup)

Increases the rate of the Spill Fund tax.

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ASSEMBLY COMMITTEE ON ENVIRONMENTAL QUALITY

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

**ASSEMBLY, No. 2698**

**STATE OF NEW JERSEY**

DATED: SEPTEMBER 11, 1986

As substituted by the Assembly Environmental Quality Committee this bill would make certain amendments to the "Spill Compensation and Control Act," P. L. 1976, c. 141 (C. 58:10-23.11 et seq.) to increase the amount of money raised for the purpose of cleaning up hazardous discharge sites. The bill would raise the tax on both chemical hazardous substances and petroleum hazardous substances by 25%; add new substances to be taxed; and lower the threshold at which a major facility becomes liable for the tax from 50,000 gallons to 20,000 gallons of storage capacity of chemical hazardous substances and from 400,000 gallons to 200,000 gallons of storage capacity of petroleum hazardous substances.

The bill would also "cap" the tax liability of current taxpayers at 125% of their liability for the 1986 tax year except that, with respect to hazardous substances which are directly converted to, and comprise more than 90% by weight of, a non-hazardous final product, the taxpayer would pay no more than 100% of the 1986 tax year's liability.

The bill would also direct the Department of Environmental Protection to compile lists of facilities which, on the basis of all information made available to it under the various environmental programs, constitute "major facilities" under the new definition, and which would constitute a major facility if storage capacity were established at 5,000 gallons. The list of facilities under the new definition would be transmitted to the Director of the Division of Taxation who would, in turn, notify the owners or operators thereof that they may be subject to the tax. The owner or operator would pay the tax or demonstrate that the facility is not in fact a major facility. Both lists would be included in the annual report of the administrator of the Spill Compensation and Control Fund and submitted to the Senate Energy and Environment Committee and to the Assembly Environmental Quality Committee.

This bill is part of a package of bills which, when considered together, would provide stable funding source for the cleanup of hazardous discharges over the next five years. The package would raise approximately \$600 million: \$200 million from a general obligation bond act; \$300 million from the Corporation Business Tax; and, \$90 million from the spill compensation and control tax. This package is the result of negotiations among varied interests in an effort to strike a balance between increasing the share that the business community directly contributes to the massive effort required to cleanup hazardous waste sites throughout the State, and the desire to make the contribution both by the business and public sectors as equitable as possible.

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ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

**ASSEMBLY, No. 2698**

with Assembly committee amendments

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**STATE OF NEW JERSEY**

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DATED: SEPTEMBER 15, 1986

The Assembly Appropriations Committee favorably reports the Assembly Committee Substitute for Assembly Bill No. 2698 with amendments.

This bill would amend the "Spill Compensation and Control Act," P. L. 1976, c. 141 (C. 58:10-23.11 et seq.) by increasing the amount of money raised for the purpose of cleaning up hazardous discharge sites. The bill raises the tax on both chemical hazardous substances and petroleum hazardous substances by 25%; adds new substances to be taxed; and lowers the threshold at which a major facility becomes liable for the tax from 50,000 gallons to 20,000 gallons of storage capacity of chemical hazardous substances and from 400,000 gallons to 200,000 gallons of storage capacity of petroleum hazardous substances.

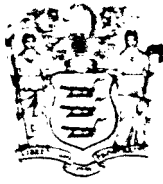
The bill would also "cap" the tax liability of current taxpayers at 125% of their liability for the 1986 tax year except that, with respect to hazardous substances which are directly converted to, and comprise more than 90% by weight of, a nonhazardous final product, the taxpayer would pay no more than 100% of the 1986 tax years liability.

The bill also directs, the Department of Environmental Protection to compile lists of facilities to be transmitted to the Director of the Division of Taxation to notify those owners or operators that they may be subject to the tax. The owner or operator would pay the tax or demonstrate that the facility is not in fact a major facility.

COMMITTEE AMENDMENTS:

The committee amended the bill to make various technical amendments. Also at the suggestion of the Division of Taxation, the effective date was amended concerning the tax provisions in the bill. The effective date for those provisions was changed to three months after enactment.

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DEC 7 1986

**OFFICE OF THE GOVERNOR**  
600 State Street  
Trenton, N. J.

# NEWS RELEASE

**CN-001**

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

**TRENTON, N.J. 08625**

**Release: WED., NOV. 12, 1986**

Governor Thomas H. Kean today signed the two legislative components of a hazardous waste clean-up proposal, allocating \$335 million to be used over the next five years as part of a broad clean-up effort of the State's toxic dump sites.

The funds will be added to \$200 million in bond issue resources approved by the voters on Election Day; \$500 million anticipated from the Federal Superfund program, and \$450 million in money recovered from responsible parties.

The total to be expended to clean up the 228 identified toxic dump sites in the State is \$1.5 billion.

The bills signed today, A-2698 and A-2699, were sponsored by Assemblyman John Bennett, R-Monmouth.

A-2698 increases by 25 percent the current tax on chemical and petroleum stocks under the State's Spill Compensation and Control Act. It is expected to produce \$22 million per year for the next five years --- a total of \$110 million.

A-2699 dedicates a portion of the State's Corporation Business Tax, starting in 1988, to the clean-up program. It is expected the State will receive a so-called "windfall" in corporate tax revenues as a result of the Federal tax reform act.

Under the legislation signed today, a total of \$255 million will be allocated from this "windfall" beginning in 1988.

-more-

The legislation also provides for a standby surtax on the corporation business tax should the anticipated "windfall" income fall below the sums currently anticipated. The surtax would be triggered to cover any potential shortfall in revenue.

Attached is a statement from Governor Kean concerning the Legislation.

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Today I am signing legislation to provide major new funding for cleanups of hazardous waste sites in New Jersey. The cleanup of these sites, as quickly and safely as possible, has been and continues to be one of the highest priorities of my administration. This bill and the \$200 million bond act provide a financing mechanism for the state's share of over \$1.5 billion in cleanup activity over the next five years. I sincerely hope this goal is achieved.

Our commitment to progress and excellence in meeting the challenge of hazardous waste cleanup is clear. New Jersey has more sites on the Superfund national priorities list than any other state - not because we have more problems; but because we have chosen to face up to those problems. And our willingness to face those problems is now beginning to pay off. New Jersey consistently leads the nation in capturing federal cleanup dollars because we have taken the time and spent the money to investigate sites and to design solutions. In addition, we are succeeding more and more frequently in convincing polluters to fund cleanups themselves. In both of these ways, we reduce the need for state spending.

We believe we can continue our progress in these two areas. Reauthorization of the federal Superfund means that federal funding, \$9 billion in total over the next 5 years, will continue. This renewed federal commitment and new, more flexible settlement procedures in Superfund should drive even more private party cleanups.

Long term State funding of cleanups is just as critical. Without funding certainty, program planning cannot continue effectively, and private polluters are less likely to clean up their sites.

I congratulate the Legislature for their strong commitment to funding the cleanup of hazardous waste. The bill before me today is the result of a bipartisan effort in which industry and environmental groups participated. Through a long process of compromise and negotiation a long-term funding plan was developed.

However, some problems remain. In providing state funds for cleanup, I had two major goals. The first was to provide certainty that state funding needs and commitments would be met. The second was to distribute the costs of cleanup equitably among those most responsible for the problem. The legislation before me does not meet either of these goals to my total satisfaction.

This bill provides for the expenditure of \$45 million annually from enhanced revenues which might result from federal tax reform. By providing that this major portion of each year's funding must come from general appropriations, the package leaves us with the uncertainty of the annual budget process, and drastically limits our flexibility to respond to the many competing demands for funding, such as education, housing and aid to cities.

Further, by presenting me with a program which relies heavily upon general revenues and bonds, and which includes only slightly enhanced Spill Fund revenues, the Legislature has applied the major share of the burden to the general taxpayers of this State and only a minor share to responsible industries. I believe these costs could be distributed more fairly.

In our negotiations the legislative package was modified to reflect our goals of certainty and fairness. The Legislature has agreed to pursue several steps to meet the goals of decreasing the general public's share of costs and reducing reliance upon annual appropriations.



Four agreements were reached to move the package in these directions.

1. We will be working with the Legislature and industry in developing proposals to revise the Spill Fund. The Chamber of Commerce has agreed to convene an industry task force to work with us. We intend to look for ways to broaden the base of this tax and increase revenues substantially, and welcome the input and cooperation from industry on this effort. Restructuring of this tax would increase certainty and reduce the reliance upon the general fund.
2. All fines and penalties paid for violations of hazardous waste laws will now be deposited into the cleanup fund instead of the general fund. This directly links violations with the need for cleanup. Also, a fee will be charged for privately funded cleanups to cover the costs incurred by the State.
3. Industry must continue to reduce the generation of hazardous waste. Senator Gormley has introduced legislation calling for development of standards and goals for waste minimization, and of a mechanism whereby failure to meet these goals would result in a corporate tax surcharge. We will work closely with him to refine that legislation.
4. A hazardous waste permit fee system will be established under which those who generate, treat, store or transport will be required to pay for their permits, commensurate with the amount of state regulatory oversight their activity requires. The enactment of such legislation would reduce the drain on the general fund by \$6 million annually.

By modifying the Legislature's original package these ways, we have moved in a positive direction and an important goal has been reached.