

58:10-23.11f et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 58:10-23.11f et al

(Spill compensation fund--transfer from Treasury to DEP)

LAWS OF: 1985

CHAPTER: 115

Bill No: A332

Sponsor(s): Shusted and others

Date Introduced: Pre-filed

Committee: Assembly: Agriculture and Environment

Senate: Energy and Environment

Amended during passage: Yes Substituted for S630 (not attached since identical to A332). Amendments during passage denoted by asterisks.

Date of Passage: Assembly: September 20, 1984

Senate: January 31, 1985

Date of Approval: April 9, 1985

Following statements are attached if available:

Sponsor statement: Yes Also attached: Senate amendments, adopted 1-24-84 (with statement)

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: ~~Yes~~ No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: Yes

Hearings: No

(OVER)

Reports referred to sponsors' statement:

974.90 New Jersey. Division of Criminal Justice. Program Integrity Section.
I62 State of New Jersey hazardous substance removal
1982 operations: review and analysis of fiscal policies and managerial
operations: preliminary report.

Administration of hazardous waste cleanups report--not received by State Library as of
11-1-85.

[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 332

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblymen SHUSTED, ROCCO, Assemblywoman OGDEN,
Assemblymen FELICE, PALAIA, HAYTAIAN, MARKERT,
KOSCO, KAVANAUGH, ROONEY, SCHUBER, GILL,
HENDRICKSON, MUZIANI, MILLER, ZIMMER, FRANKS,
ALBOHN and Assemblywoman COOPER

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 7 of P. L. 1976, c. 141 (C. 58:10-23.11f) is amended to
2 read as follows:

3 7. a. Whenever any hazardous substance is discharged, the de-
4 partment may, in its discretion**, ** act to remove or arrange for the
5 removal of such discharge or may direct the discharger to remove,
6 or arrange for the removal of, such discharge. If the discharge
7 occurs at any hazardous or solid waste disposal facility, the depart-
8 ment may order the facility closed for the duration of the removal
9 operations. The department may monitor the discharger's com-
10 pliance with any such directive. Any discharger who fails to
11 comply with such a directive shall be liable to the department in
12 an amount equal to three times the cost of such removal, and
13 shall be subject to the revocation or suspension of any license or
14 permit he holds authorizing him to operate a hazardous or solid
15 waste disposal facility.

16 Removal of hazardous substances and actions to minimize
17 damage from discharges shall, to the greatest extent possible, be in
18 accordance with the National Contingency Plan for removal of oil

**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 13, 1984.

**—Senate amendments adopted January 28, 1985.

19 and hazardous substances established pursuant to section 311 (c)
 20 (2) of the ****[Federal]**** ***federal*** Water Pollution Control Act
 21 Amendments of 1972 (P. L. 92-500, 33 U. S. C. ****§**** 1251 et seq.).

22 Whenever the department acts to remove a discharge or contracts
 23 to secure prospective removal services, it is authorized to draw
 24 upon the money available in the fund. Such moneys shall be used
 25 to pay promptly for all cleanup costs incurred by the department
 26 in removing or in minimizing damage caused by such discharge.

27 Nothing in this section is intended to preclude removal and
 28 cleanup operations by any person threatened by such discharges,
 29 provided such persons coordinate and obtain approval for such
 30 actions with ongoing State or federal operations. No action taken
 31 by any person to contain or remove a discharge shall be construed
 32 as an admission of liability for said discharge. No person who
 33 renders assistance in ****[continuing]**** ***containing*** or removing
 34 a discharge shall be liable for any civil damages to third parties
 35 resulting solely from acts or omissions of such person in rendering
 36 such assistance^{**},^{**} except for acts or omissions of gross negligence
 37 or willful misconduct. In the course of cleanup operations, no
 38 person shall discharge any detergent into the waters of this State
 39 without prior authorization of the commissioner.

40 b. Notwithstanding any other provisions of P. L. 1976, c. 141
 41 (C. 58:10-23.11 et seq.), the department, **[after notifying the ad-**
 42 **ministrators and]** subject to the approval of the administrator with
 43 regard to the availability of funds therefor, may remove or ar-
 44 range for the removal of any hazardous substance which:

45 (1) Has not been discharged from a grounded or disabled ves-
 46 sel^{**},^{**} if the department determines that such removal is neces-
 47 sary to prevent an imminent discharge of such hazardous sub-
 47A stance; ^{*}or^{*}

48 (2) Has not been discharged^{**},^{**} if the department determines
 49 that such substance is not satisfactorily stored or contained and
 50 said substance possesses any one or more of the following char-
 51 acteristics:

52 (a) Explosiveness;

53 (b) High flammability;

54 (c) Radioactivity;

55 (d) Chemical properties which in combination with any dis-
 56 charged hazardous substance at the same storage facility would
 57 create a substantial risk of imminent damage to public health
 58 or safety or an imminent and severe damage to the environment;

59 (e) Is stored in a container from which its discharge is im-
 60 minent as a result of contact with a hazardous substance which

61 has already been discharged and such additional discharge would
62 create a substantial risk of imminent damage to public health or
63 safety or imminent and severe damage to the environment; or

64 (f) High toxicity and is stored or being transported in a container
65 or motor vehicle, truck, railcar or other mechanized conveyance
66 from which its discharge is imminent as a result of the significant
67 deterioration or the precarious location of the container, motor
68 vehicle, truck, railcar or other mechanized conveyance, and such
69 discharge would create a substantial risk of imminent damage to
70 public health or safety or imminent and severe damage to the
71 environment; or

72 (3) Has been discharged prior to the effective date of P. L. 1976,
73 c. 141***[**, if such discharge poses a substantial risk of imminent
74 damage to the public health or safety or imminent and severe
75 damage to the environment**]***.

76 c. If and to the extent that he determines that funds are available,
77 the administrator shall approve and make payments for any cleanup
78 and removal costs incurred by the department for the removal of
79 a hazardous substance other than petroleum as authorized by sub-
80 section b. of this section; provided that in determining the avail-
81 ability of funds, the administrator shall not include as available
82 funds revenues realized or to be realized from the tax on the trans-
83 fer of petroleum**, ** to the extent that such revenues result from a
84 tax levied at a rate in excess of \$0.01 per barrel, pursuant to sub-
85 section 9b. of P. L. 1976, c. 141 (C. 58:10-23.11h), unless the
86 administrator determines that the sum of claims paid by the fund
87 on behalf of petroleum discharges or removals plus pending reason-
88 able claims against the fund on behalf of petroleum discharges or
89 removals is greater than 30% of the sum of all claims paid by the
90 fund plus all pending****[.]**** reasonable claims against the fund.

91 d. The administrator may only approve and make payments for
92 any cleanup and removal costs incurred by the department for the
93 removal of a hazardous substance discharged prior to the effective
94 date of P. L. 1976, c. 141, pursuant to subsection b. of this section,
95 if, and to the extent that, he determines that adequate funds from
96 another source are not or will not be available; and further pro-
97 vided, with regard to the cleanup and removal costs incurred for
98 discharges which occurred prior to the effective date of P. L. 1976,
99 c. 141, the administrator may not during any one year period pay
100 more than ***[\$3,000,000.00]*** *\$18,000,000.00* in total or more than
101 ***[\$1,500,000.00]*** *\$3,000,000.00* for any discharge or related set
101A or series of discharges.

102 e. Notwithstanding any other provisions of P. L. 1976, c. 141,

103 the administrator, [upon the approval of the department] after
104 considering, among any other relevant factors, [its] *the depart-*
105 *ment's* priorities for spending funds pursuant to P. L. 1976, c. 141,
106 and within the limits of available funds, shall make payments for
107 the restoration or replacement of, or connection to an alternative
108 water supply for, any private residential well destroyed, con-
109 taminated, or impaired as a result of a discharge prior to the effec-
110 tive date of P. L. 1976, c. 141, provided however total payments for
111 said purpose shall not exceed \$500,000.00 for the period between the
112 effective date of this subsection ***e.*** and January 1, 1983, and in
113 any calendar year thereafter.

114 f. Any expenditures made by the administrator pursuant to this
115 act shall constitute ***[a first priority claim and lien paramount to*
116 *all other claims and liens upon]*** ***in each instance, a debt of the*
117 *discharger to the fund. The debt shall constitute a lien on all*
118 *property owned by the discharger when a notice of lien, incorpo-*
119 *rating a description of the property of the discharger subject to*
120 *the cleanup and removal and an identification of the amount of*
121 *cleanup, removal and related costs expended from the fund is duly*
122 *filed with the clerk of the Superior Court. The clerk shall promptly*
123 *enter upon the civil judgment or order docket the name and address*
124 *of the discharger and the amount of the lien as set forth in the*
125 *notice of lien. Upon entry by the clerk, the lien, to the amount*
126 *committed by the administrator for cleanup and removal, shall*
127 *attach to*** the revenues and all real and personal property of the
128 discharger, whether or not the discharger is insolvent. ***[All liens*
129 *under P. L. 1976, c. 141 (C. 58:10-23.11 et seq.) shall be filed with*
130 *the clerk or register of deeds and mortgages of the county wherein*
131 *the affected property is located, and with the clerk of the Superior*
132 *Court, and shall immediately attach to, and become binding upon,*
133 *all the property, whether real or personal, of the party against*
134 *whom the lien is filed. If it is believed that the party chargeable*
135 *under the lien has an interest or estate, whether vested or con-*
136 *tingent, in property within the State, but the exact location of the*
137 *property is not known, then the liens shall be filed with the clerk*
138 *of the Superior Court and shall become binding upon all the prop-*
139 *erty of the party chargeable under the lien wherever situated*
140 *within the State.]*** ***The notice of lien filed pursuant to this sub-*
141 *section which affects the property of a discharger subject to the*
142 *cleanup and removal of a discharge shall create a lien with priority*
143 *over all other claims or liens which are or have been filed against*
144 *the property, except if the property comprises six dwelling units*
145 *or less and is used exclusively for residential purposes, this notice*

146 of lien shall not affect any valid lien, right or interest in the prop-
 147 erty filed in accordance with established procedure prior to the
 148 filing of this notice of lien. The notice of lien filed pursuant to this
 149 subsection which affects any property of a discharger other than
 150 the property subject to the cleanup and removal, shall have priority
 151 from the day of the filing of the notice of the lien over all other
 152 claims and liens filed against the property, but shall not affect any
 153 valid lien, right, or interest in the property filed in accordance
 154 with established procedure prior to the filing of a notice of lien
 155 pursuant to this subsection.**

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 fa-
 29 cility, provided, however, that the same barrel, including any prod-
 30 ucts derived therefrom, subject to multiple transfers from or be-
 31 tween 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 per barrel transferred and in the case
38 of the transfer of hazardous substances other than petroleum or
39 petroleum products, the tax shall be the greater of \$0.01 per barrel
40 or 0.4% of the fair market value of the product, until the balance
41 in the fund equals or exceeds \$50,000,000.00; provided, however,
42 that with respect to transfers of hazardous substances other than
43 petroleum or petroleum products which are or contain any precious
44 metals to be recycled, refined, or rerefined in this State, or which
45 are transferred into this State subsequent to being recycled, re-
46 fined or rerefined, the tax shall be \$0.01 per barrel of the hazardous
47 substance. For the purposes of this section, "precious metals"
48 means gold, silver, osmium, platinum, palladium, iridium,
49 rhodium, ruthenium and copper. In each fiscal year following any
50 year in which the balance of the fund equals or exceeds
51 \$50,000,000.00, no tax shall be levied unless (1) the current balance
52 in the fund is less than \$40,000,000.00 or (2) pending claims against
53 the fund exceed 50% of the existing balance of the fund. The
54 provisions of the foregoing notwithstanding, should claims paid
55 from or pending against the fund not exceed \$5,000,000.00 within
56 three years after the tax is first levied, the tax shall be \$0.01 per
57 barrel transferred or 0.4% of the fair market value of the product,
58 as the case may be, until the balance in the fund equals or exceeds
59 \$36,000,000.00, and thereafter shall not be levied unless: (1) the
60 current balance in the fund is less than \$30,000,000.00 or (2) pend-
61 ing claims against the fund exceed 50% of the existing balance of
62 the fund. In the event of either such occurrence and upon certifica-
63 tion thereof by the State Treasurer, the director shall within 10
64 days of the date of such certification relevy the excise tax, which
65 shall take effect on the first day of the month following such relevy.
66 With respect to the tax imposed upon the transfer of hazardous
67 substances which are other than petroleum or petroleum products,
68 if the revenues from such tax exceed \$7,000,000.00 during any
69 calendar year, such excess shall be refunded or credited to the tax-
70 payers who paid such tax during the calendar year. The refund
71 or credit shall be based upon the amount of taxes paid by each
72 taxpayer on transfers of hazardous substances which are other than
73 petroleum or petroleum products for the calendar year in propor-
74 tion to all taxes paid by all taxpayers on such transfers during said
75 year; provided, however, that if at the end of the calendar year the
76 increased tax rate as authorized by this subsection or subsection i.

77 is in effect, no refund or credit shall be allowed for such calendar
78 year; and further, provided that no refund or credit shall be
79 allowed for a calendar year if by reason of such refund or credit a
80 condition would occur which would authorize the imposition of the
81 tax at the higher rate authorized in this subsection or subsection i.
82 However, a partial refund or credit shall be allowed to the extent
83 that such a condition would not occur. In the event of a major dis-
84 charge or series of discharges resulting in reasonable claims against
85 the fund exceeding the existing balance of the fund, the tax shall be
86 levied as follows:

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

96 (2) On hazardous substances other than petroleum or petroleum
97 products, at the rate of the greater of \$0.04 per barrel transferred
98 or 0.8% of the fair market value of such hazardous substance,
99 until the revenue produced by such increased rate equals 150%
100 of the total dollar amount of all pending reasonable claims result-
101 ing from the discharge of hazardous substances other than petro-
102 leum or petroleum products; provided, however, that with respect
103 to transfers of hazardous substances other than petroleum or
104 petroleum products which are or contain any precious metals to
105 be recycled, refined, or rerefined in this State, or which are trans-
106 ferred into this State subsequent to being recycled, refined, or
107 rerefined, the tax shall be \$0.04 per barrel of the hazardous sub-
108 stances; and provided further, however, that any such increased
109 tax rate on hazardous substances other than petroleum or petro-
110 leum products may be set at less than \$0.04 per barrel transferred,
111 or 0.8% of the fair market value of the hazardous substance, as
112 the case may be, if the administrator determines that the revenue
113 produced by such lower rate shall be sufficient to pay outstanding
114 reasonable claims against the fund within one year of such levy.

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

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

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

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

145 e. Any taxpayer who shall fail to file his return when due or to
146 pay any tax when the same becomes due, as herein provided, shall
147 be subject to such penalties and interest as provided in the "State
148 Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Revised
149 Statutes. If the Division of Taxation determines that the failure
150 to comply with any provision of this section was excusable under
151 the circumstances, it may remit such part or all of the penalty as
152 shall be appropriate under such circumstances.

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

162 (2) The certificate of the director to the effect that a tax has not

163 been paid, that a return has not been filed, that information has
164 not been supplied or that inaccurate information has been supplied
165 pursuant to the provisions of this act or rules or regulations
166 adopted hereunder shall be presumptive evidence thereof.

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

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

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

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

182 i. Notwithstanding any other provisions of this section, *upon a*
183 *request from the administrator*, the Treasurer may order the
184 director to levy the tax on all hazardous substances other than
185 petroleum or petroleum products at a specified rate greater than
186 \$0.01 per barrel or 0.4% of the fair market value of the product, as
187 the case may be, but in no event to exceed \$0.04 per barrel with
188 respect to transfers of hazardous substances other than petroleum
189 or petroleum products which are or contain any precious metals
190 to be recycled, refined or rerefined in this State, or which are trans-
191 ferred into this State subsequent to being recycled, refined or
192 rerefined, or the greater of \$0.04 per barrel or 0.6% of the fair
193 market value of the product with respect to transfers of any other
194 hazardous substances other than petroleum or petroleum products,
195 if and as long as the administrator determines the following:

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

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

205 The provisions of this subsection shall not preclude the impo-

206 sition of the tax at the higher rate authorized under subsection b.
207 of this section.

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

3 10. The New Jersey Spill Compensation Fund is hereby estab-
4 lished as a nonlapsing, revolving fund in the **【Department of the**
5 **Treasury】** *department* to carry out the purposes of this act. The
6 fund shall be credited with all taxes and penalties related to this act.
7 Interest received on moneys in the fund shall be credited to the
8 fund.

1 4. Section 11 of P. L. 1976, c. 141 (C. 58:10-23.11j) is amended to
2 read as follows:

3 11. **【a.】** The **【State Treasurer】** *commissioner* shall appoint and
4 supervise an administrator of the fund. The administrator shall be
5 the chief executive of the fund and shall have the following powers
6 and duties:

7 **【(1)】** *a.* To represent the State in meetings with the alleged dis-
8 charger and claimants concerning liability for the discharge and
9 the amount of the claims;

10 **【(2)】** *b.* To determine if boards of arbitration are needed to
11 settle particular claims;

12 **【(3)】** *c.* To administer boards of arbitration;

13 **【(4)】** *d.* To certify the amount of claims and names of claimants
14 to the **【State Treasurer】** *commissioner*.

1 5. Section 15 of P. L. 1976, c. 141 ****【(C. 58:10-3.11n)】****
2 ****【(C. 58:10-23.11n)】**** is amended to read as follows:

3 15. *a.* Boards of arbitration shall be convened by the adminis-
4 trator when persons alleged to have caused the discharge, the
5 administrator or other persons contest the validity or amount of
6 damage claims or cleanup and removal costs presented to the fund
7 for payment. If the source of discharge is not known, any person
8 may contest such claims presented for payment to the fund.

9 *b.* In the discretion of the administrator, a board of arbitration
10 may consist of three persons or a single neutral person. In the
11 case of three-person boards, one person shall be chosen by the per-
12 son alleged to have caused the discharge, one person shall be chosen
13 by the claimant, and one person shall be chosen by the first two
14 to serve as chairman. If the two arbitrators cannot agree upon,
15 select, and name the neutral arbitrator after their appointment,
16 the administrator shall request the American Arbitration Associa-
17 tion to utilize its procedures to select the neutral arbitrator. If
18 the source of the discharge is unknown or liability is not conceded,
19 the administrator shall request the American Arbitration Associa-

20 tion to utilize its procedures to select the neutral arbitrator and
21 an arbitrator normally selected by the absent or unknown person.
22 Representation by any party on the board shall not be considered
23 as any admission of liability for such discharges. In the case of a
24 one-person board, such neutral arbitrator may, in the discretion
25 of the administrator, be selected by the administrator, by agree-
26 ment of the affected parties or by utilization of the procedures of
27 the American Arbitration Association; provided, however, that
28 the administrator or any regular employee of [the administrator
29 or] the department shall not act as an arbitrator.

30 (1) Arbitrators shall be designated by their principals within
31 30 calendar days after the administrator notifies the principals of
32 claims against the fund arising from a discharge.

33 (2) Should either party fail to name an arbitrator within the
34 designated time, then the administrator shall request the American
35 Arbitration Association to utilize its procedures to select that
36 arbitrator. The two arbitrators thus chosen shall select the neutral
37 arbitrator required by this section.

38 c. One board of arbitration may be convened to hear and deter-
39 mine all claims arising from or related to a common discharge.

40 d. The boards shall have the power to order testimony under
41 oath and may subpoena attendance and testimony of witnesses and
42 the production of such documentary materials pertinent to the
43 issues presented to the board for determination. Each person ap-
44 pearing before the board shall have the right to counsel.

45 e. All costs and expenses approved by the administrator at-
46 tributable to the employment of any arbitrator shall be payable
47 from the fund.

48 f. All decisions of the boards of arbitration shall be in writing
48A with notification to all appropriate parties, and shall be rendered
48B within 60 calendar days of the final appointment of the board
49 unless the parties otherwise agree in writing to an extension.

50 g. Determinations made by the board shall be final. Any action
51 for judicial review shall be filed in the Appellate Division of the
52 Superior Court within 30 days of the filing of the decision with
53 the administrator.

54 h. No sooner than 30 days after the determination of the arbi-
55 trators, nor more than 60 days thereafter, the arbitrators shall
56 certify all claims settled or arbitrated to the administrator who,
57 in turn, shall certify the amount of the award and the name of
58 the claimant to the [treasurer] commissioner who shall *direct the*
59 *administrator to pay the award from the fund.* In any case in which
60 the person responsible for the discharge seeks judicial review,

61 reasonable attorneys' fees and costs shall be awarded to the claim-
62 ant if the decision of the board is affirmed.

1 6. Section 17 of P. L. 1976, c. 141 (C. 58:10-23.11p) is amended
2 to read as follows:

3 17. The Department of the Public Advocate may act to assert
4 such claims as are alleged against the fund by persons who in the
5 opinion of the Public Advocate, may be better represented as a
6 class in recovery of damage or cleanup costs provided by this act.
7 All moneys recovered for this class from the fund shall be dis-
8 tributed by the **[Department of the Treasury]** *department* after
9 certification by the administrator. Failure by the Department of
10 Public Advocate to act on behalf of such class shall in no way
11 prejudice the claims to be asserted by such class or individuals
12 under the provisions of this act.

1 7. Section 26 of P. L. 1976, c. 141 (C. 58:10-23.11y) is amended
2 to read as follows:

3 26. The commissioner **[and administrator]** shall make an annual
4 report to the Legislature and Governor which shall describe the
5 quality and quantity of spills of hazardous substances, the costs
6 and damages paid by and recovered for the fund, and the economic
7 **[an]** *and* environmental impact on the State as a result of the
8 administration of this act.

1 8. (New section) a. Except as otherwise provided by this amend-
2 atory and supplementary act, all the functions, powers and duties of
3 the administrator in the Department of the Treasury are continued
4 in the administrator in the Department of Environmental Protec-
5 tion.

6 b. All files, books, papers, records, equipment and other prop-
7 erty of the administrator in the Department of the Treasury are
8 transferred to the administrator in the Department of Environ-
9 mental Protection.

10 c. The rules, regulations and orders of the administrator in the
11 Department of the Treasury shall continue with full force as the
12 rules, regulations and orders of the administrator in the Depart-
13 ment of Environmental Protection until amended or repealed.

1 9. (New section) After consultation between the commissioner
2 and the State Treasurer, all relevant appropriations, grants and
3 other moneys available to the administrator in the Department of
4 the Treasury shall be transferred to the administrator in the
5 Department of Environmental Protection and shall remain avail-
6 able for the objects and purposes for which appropriated, subject
7 to any terms, restrictions, limitations or other requirements im-
8 posed by federal or State law.

1 10. (New section) After consultation between the commissioner
 2 and State Treasurer, the employees of the administrator, including
 3 the administrator, in the Department of the Treasury may be trans-
 4 ferred to the Department of Environmental Protection. Nothing in
 5 this amendatory and supplementary act shall be construed to
 6 deprive these employees of any rights or protections provided them
 7 by the civil service, pension or retirement laws of this State.

1 11. (New section) Whenever in any law, rule, regulation, order,
 2 contract, document, judicial or administrative proceeding, or other-
 3 wise, reference is made to the administrator in the Department of
 4 the Treasury, the same shall be considered to mean and refer to the
 5 administrator in the Department of Environmental Protection.

1 12. (New section) This amendatory and supplementary act shall
 2 not affect actions or proceedings, civil or criminal, brought by or
 3 against the administrator in the Department of the Treasury and
 4 pending on the effective date of this amendatory and supplementary
 5 act, but these actions or proceedings may be further prosecuted or
 6 defended in the same manner and to the same effect by the
 7 administrator in the Department of Environmental Protection.

1 13. (New section) ***W**ithin 45 days of the effective date of this
 2 amendatory and supplementary act, the**]*** *The** administrator in
 3 the Department of the Treasury shall prepare and present to the
 4 State Treasurer and the commissioner a statement of the current
 5 financial condition of the fund, including a summary of all outstand-
 6 ing claims against the fund *on the effective date of this amenda-*
 7 *tory and supplementary act*.*

1 14. (New section) The transfer directed by this amendatory and
 2 supplementary act, except as otherwise provided herein, shall be
 3 made in accordance with the "State Agency Transfer Act," P. L.
 4 1971, c. 375 (C. 52:14D-1 et seq.).

1 **15. (New section) In order to effectuate the purposes of this act,*
 2 *the Department of Environmental Protection may call to its*
 3 *assistance and avail itself of the services of any State department,*
 4 *board, commission or agency as may be required.**

1 **[15.]*** **16.* This act shall take effect 45 days following enact-*
 2 *ment except that section 13 shall take effect** immediately.

STATEMENT

The purpose of this bill is to transfer responsibility for the administration of the New Jersey Spill Compensation Fund from the Department of the Treasury to the Department of Environmental Protection. Transfer of this responsibility was a recommendation of the *Review and Analysis of Fiscal Policies and Managerial Operations* prepared by the Program Integrity Section of the Division of Criminal Justice, Department of Law and Public Safety and the *Administration of Hazardous Waste Cleanups: Final Report* prepared by the State Treasurer and the Commissioner of the Department of Environmental Protection. The position of the administrator of the fund will be transferred to the Department of Environmental Protection.

A 332 (1985)

ASSEMBLY AGRICULTURE AND ENVIRONMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 332

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 13, 1984

As amended by the Assembly Agriculture and Environment Committee, this bill would transfer responsibility for the administration of the New Jersey Spill Compensation Fund from the Department of the Treasury to the Department of Environmental Protection. The bill requires the administrator of the fund to prepare a report within 45 days of enactment on the financial condition of the fund. At the end of that 45-day period the transfer would occur. Transfer of this responsibility was a recommendation of the *Review and Analysis of Fiscal Policies and Managerial Operations* prepared by the Program Integrity Section of the Division of Criminal Justice, Department of Law and Public Safety and the *Administration of Hazardous Waste Cleanups: Final Report* prepared by the State Treasurer and the Commissioner of the Department of Environmental Protection. The position of the administrator of the fund will be transferred to the Department of Environmental Protection.

The committee amended the bill to provide that the report on the financial condition of the fund be submitted to the State Treasurer and the Commissioner of the Department of Environmental Protection before the transfer of responsibilities, and to allow the department to avail itself of the services of other State agencies for information on assistance in administering the fund.

The committee reported the bill favorably.

SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 332

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: DECEMBER 6, 1984

Assembly Bill No. 332 would transfer the responsibility for the administration of the New Jersey Spill Compensation Fund from the Department of the Treasury to the Department of Environmental Protection. The Spill Fund was created by the "Spill Compensation and Control Act", P. L. 1976, c. 141 (C. 58:10-23.11 et seq.), and is the major State funding source for the cleanup of hazardous discharges.

The transfer of the administration of the Spill Fund from Treasury to Department of Environmental Protection has been recommended by two reports: the *Review and Analysis of Fiscal Policies and Managerial Operations*, prepared by the Program Integrity Section of the Division of Criminal Justice, Department of Law and Public Safety, and the *Administration of Hazardous Waste Cleanups: Final Report*, jointly prepared by the State Treasurer and Department of Environmental Protection.

This bill provides that the position of administrator of the Spill Fund be transferred to the Department of Environmental Protection, and also provides for the transfer of all other personnel associated with the Spill Fund.

Assembly Bill No. 332 also provides that the Administrator of the Spill Fund prepare a report on the financial condition of the fund and submit it to the Department of Environmental Protection on the date of the transfer, and authorizes the Department of Environmental Protection to call upon the services of other State agencies in its administration of the Spill Fund.

Assembly Bill No. 332 is identical to Senate Bill No. 630 as amended by the Committee.

1-24-85

Senate Amendments
Sponsored by Senator Bassano
to

Assembly Bill No. 332 *OCR*
Sponsored by Assemblyman Shusted

Amend:

Page	Sec.	Line	
4	1	118-129	<p>On line 118, after "solvent," omit remainder of line, omit lines 119-129 entirely, insert</p> <p>└ "The notice of lien filed pursuant to this subsection which affects the property of a discharger subject to the cleanup and removal of a discharge shall create a lien with priority over all other claims or liens which are or have been filed against the property, except if the property comprises six dwelling units or less and is used exclusively for residential purposes, this notice of lien shall not affect any valid lien, right or interest in the property filed in accordance with established procedure prior to the filing of this notice of lien. The notice of lien filed pursuant to this subsection which affects any property of a discharger other than the property subject to the cleanup and removal, shall have priority from the day of the filing of the notice of the lien over all other claims and liens filed against the property, but shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien pursuant to this subsection."</p>

~~Note to Printer~~

~~Please correct typographical error as follows~~

9	5	1	<p>Omit "(C.58:10-3.11n)" ^Q insert "(C.58:10-23.11n)"</p> <p>Statement</p>
---	---	---	---

These amendments make purely technical amendments to the bill.