

13:1K-1 to 13:1K-5

LEGISLATIVE HISTORY CHECKLIST

(Confiscation of vessels, aircraft, etc. used in illegal discharge of hazardous substances)

NUSA 13:1K-1 to 13:1K-5

LAWS 1981

CHAPTER 387

Bill No. S1650

Sponsor(s) Dodd and Coufield

Date Introduced Dec. 11, 1980

Committee: Assembly Energy and Natural Resources

Senate Energy and Environment

Amended during passage according to Governor's recommendations

Yes

XX Amendments denoted by asterisks

Date of Passage: Assembly March 3, 1981

Senate Jan. 29, 1981

Date of approval Jan. 6, 1982

Following statements are attached if available:

Sponsor statement	Yes	XX (Below)
Committee Statement: Assembly	Yes	XX
Senate	XXX	No
Fiscal Note	XXX	No
Veto Message	Yes	XX
Message on signing	Yes XXX	No

Following were printed:

Reports	XXX	No
Hearings	XXX	No

Sponsors' statement:

This bill provides for the confiscation and forfeiture of any aircraft, vessel, vehicle, equipment other container used in the illegal discharge of hazardous substances.

See newspaper clipping (attached)

6/22/81

MICROFILM 7

1-6-82

[OFFICIAL COPY REPRINT]

SENATE, No. 1650

STATE OF NEW JERSEY

INTRODUCED DECEMBER 11, 1980

By Senators DODD and CAUFIELD

Referred to Committee on Energy and Environment

AN ACT concerning the forfeiture of conveyances used in the willful discharge of ***[hazardous substances and supplementing the "Spill Compensation and Control Act"** (P. L. 1976, c. 141; C. 58:10-23.11 et seq.)]* **harmful or destructive substances and supplementing Title 13 of the Revised Statutes**.

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

1 1. All conveyances which are used or intended for use in the
2 willful discharge of ***[hazardous]*** **harmful or destructive** sub-
3 stances shall be subject to forfeiture to the State, except that:

4 a. No conveyance used by any person as a common carrier in the
5 transaction of business as a common carrier shall be forfeited
6 under this act unless it appears that the owner or person in charge
7 of such conveyance was a consenting party or privy to a violation
8 of this act. The term conveyance shall mean aircraft, vessels,
9 vehicles, other equipment or containers.

10 b. No conveyance shall be forfeited by reason of any act or
11 omission, established by the owner thereof, to have been com-
12 mitted or omitted without his knowledge by any person other than
13 such owner while such conveyance was unlawfully in the possession
14 of a person other than the owner in violation of the criminal law
15 of the United States or of any state:

16 c. The forfeiture of any conveyance encumbered by a bona-fide
17 security interest shall remain subject to the interest of the
18 secured party if he had no knowledge of the act or omission.

1 2. ***[The department may]*** **When in the presence of a law*
1A *enforcement officer, a department official shall** seize and secure any
2 such conveyance upon process issued pursuant to a summary
3 hearing and upon a determination that such conveyance was used
4 in violation of this act by any court having jurisdiction over the
5 property, or having final jurisdiction over a related criminal pro-
6 ceeding under this act except that seizure without such process
6A may be made when:

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

7 a. It is not inconsistent with the Constitution of this State and
8 the United States:

9 b. The property subject to seizure has been the subject of a
10 prior judgment in favor of the State in a criminal injunctive relief
11 or forfeiture proceeding under this act;

12 c. The department or any person charged with enforcement of
13 this act has probable cause to believe that the property has been
14 used or intended to be used in violation of this act. In the event
15 of seizure pursuant to this subsection proceedings shall be promptly
16 instituted.

1 3. Property confiscated or detained pursuant to this act shall
2 be deemed to be in the custody of the State and subject only to the
3 judgments and orders of the court. Whenever property is seized
4 under this provision the State may;

5 a. Detain such conveyance by affixing thereto a statement or
6 other appropriate marking, giving notice that it is being confiscated.

7 b. Require that the department, take custody of the property
8 and remove it to an appropriate location for disposition in accord-
9 ance with law.

1 4. Whenever any property is forfeited under this act, its dis-
2 position shall be determined at the discretion of the commissioner
3 including official use by the department, or referral to the Director
4 of the Division of Purchase and Property for disposal in the
5 following manner.

6 a. Any public entity or political subdivision may make applica-
7 tion to the Director of the Division of Budget and Accounting in
8 the State Department of Treasury, to take title to such property
9 by demonstrating the need to do so and the use to which it will
10 be put.

11 b. The Director, Division of Budget and Accounting shall review
12 applications submitted pursuant to this section, make determina-
13 tions regarding final disposition, and notify the applicant and the
14 Director of Purchase and Property accordingly.

15 c. In the event that no disposition is made under a. or b. above,
16 the director of Purchase and Property shall dispose of the property
17 in the manner authorized by law for disposal of surplus property.

1 5. a. The burden of proof required for "in rem" forfeiture
2 proceedings under this act is by a preponderance of the evidence.

3 b. It shall not be necessary for the State to negate any exemption
4 or exception set forth in any proceeding under this act, and the
5 burden of proof for any such exemption or exception shall be
6 upon the person claiming its benefit.

1 6. This act shall take effect immediately.

STATEMENT

This bill provides for the confiscation and forfeiture of any aircraft, vessel, vehicle, equipment or other container used in the illegal discharge of hazardous substances.

**ASSEMBLY ENERGY AND NATURAL RESOURCES
COMMITTEE**

STATEMENT TO
SENATE, No. 1650

STATE OF NEW JERSEY

DATED: FEBRUARY 19, 1981

This bill provides for the confiscation and forfeiture of any aircraft, vessel, vehicle, equipment or other container used in the illegal discharge of hazardous substances.

SENATE AMENDMENTS TO
SENATE, No. 1650

STATE OF NEW JERSEY

ADOPTED NOVEMBER 23, 1981

Amend page 1, title, lines 2-4, delete "hazardous substances and supplementing the" on line 2; omit line 3; and on line 4 omit "58:10-23.11 et seq.) and insert "harmful or destructive substances and supplementing Title 13 of the Revised Statutes".

Amend page 1, section 1, line 2, delete "hazardous" and insert "harmful or destructive".

Amend page 1, section 2, line 1, delete "The department may" and insert "When in the presence of a law enforcement officer, a department official shall".

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

May 4, 1981

SENATE BILL NO. 1650

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 (b) of the Constitution, I am returning Senate Bill No. 1650, with my objections, for reconsideration.

This bill would allow the Department of Environmental Protection to confiscate any conveyance -- i.e., aircraft, vessel, vehicle, equipment or other container -- used in the illegal discharge of hazardous substances.

I am convinced that the Department of Environmental Protection should have the power to seize conveyances used in the illegal discharge of harmful substances. However, this bill contains language which might limit existing forfeiture provisions, N.J.S.A. 2C:64-1, and may limit the law enforcement agencies that may seize conveyances used in the illegal discharge of harmful substances.

For instance, the bill limits seizures to conveyances used in the illegal discharge of "hazardous substances"; the Criminal Code broadly applies to any conveyances containing any "harmful or destructive substance", which includes hazardous and toxic pollutants. See N.J.S.A. 2C:17-2; N.J.S.A. 2C:64-1. Moreover, the bill, which only extends seizure power to the Department of Environmental Protection, may be read to exclude other enforcement agencies from such seizures.

Accordingly, I am returning Senate Bill 1650 for reconsideration and recommend that it be amended as follows:

On Page 1, line 2, section 1: Delete "hazardous substances" and insert "harmful or destructive substances"

On Page 1, line 1, section 2: Add "When in the presence of a law enforcement officer, a department official shall seize and secure any such conveyance..."

Respectfully,

/s/ Brendan Byrne

GOVERNOR

Attest:

/s/ Harold L. Hodes

CHIEF OF STAFF, Secretary

JANUARY 6, 1982

- 3 -

S-1650, sponsored by Senator Frank Dodd (D-Essex) which allows the Department of Environmental Protection to confiscate any conveyance -- i.e. aircraft, vessel, vehicle, equipment or other container -- used in the illegal discharge of a hazardous substance.

Governor Byrne conditionally vetoed the bill on May 4, 1981, saying that while he was convinced that DEP should have this power "the bill contains language which might limit existing forfeiture provisions and may limit the law enforcement agencies that may seize conveyances used in the illegal discharge of harmful substances."

He suggested some changes in the bill's language to reflect these concerns and the Legislature concurred with his recommendations.

S-3347, sponsored by Senator Barry Parker (R-Burlington) which authorizes the Board of Public Utilities, in its discretion, to allow any public or private water company ordered by the BPU and the Department of Environmental Protection to acquire and take over a small water company pursuant to law, to charge and collect a differential rate from the customers of the former service area of the small water company.

The bill is intended to facilitate takeovers allowed under S-1614, which was not delivered to the Governor until December 8 and signed December 22, 1981. The bills are inextricably linked.

Since the Governor had to take action on S-3347 by November 12, he conditionally vetoed it on that day to change its effective date from "immediately" to "upon the enactment of (S-1614)".

#