

13:1D-59 (repealed)

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2005 **CHAPTER:** 141
NJSA: 13:1D-59 (repealed) (Repeals air toxics surcharge)
BILL NO: A3667/A3836 (Substituted for S2124/S2385)
SPONSORS: Sires and others
DATE INTRODUCED: January 10, 2005
COMMITTEE: **ASSEMBLY:** Appropriations
SENATE: Budget and Appropriations
AMENDED DURING PASSAGE: No
DATE OF PASSAGE: **ASSEMBLY:** March 14, 2005
SENATE: June 27, 2005
DATE OF APPROVAL: July 7, 2005
FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Assembly Committee Substitute for A3667/3836 enacted)

A3667/A3836

[SPONSOR'S STATEMENT \(A3667\)](#): (Begins on page 3 of original bill) [Yes](#)

[SPONSOR'S STATEMENT \(A3836\)](#): (Begins on page 2 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** [Yes](#)

SENATE: [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes [4-8-2005 \(A3667\)](#)
[4-8-2005 \(A3836\)](#)
[6-8-05 \(A3667/3836\)](#)

S2124/S2385

[SPONSOR'S STATEMENT \(S2124\)](#): (Begins on page 3 of original bill) [Yes](#)

[SPONSOR'S STATEMENT \(S2385\)](#): (Begins on page 6 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes [6-3-2005 \(S2124\)](#)
[6-3-2005 \(S2385\)](#)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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No

NEWSPAPER ARTICLES:

No

IS 7/26/07

P.L. 2005, CHAPTER 141, *approved July 7, 2005*
Assembly Committee Substitute for
Assembly, Nos. 3667 and 3836

1 **AN ACT** concerning the air toxics surcharge, repealing P.L.2004, c.51.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. P.L.2004, c.51 (C.13:1D-59 et seq.) is repealed.

7

8 2. This act shall take effect immediately and shall apply
9 retroactively to calendar year 2004 and calendar years thereafter.

10

11

12

13

14 Repeals air toxics surcharge.

ASSEMBLY, No. 3667

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JANUARY 10, 2005

Sponsored by:

Assemblyman ALBIO SIRES

District 33 (Hudson)

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

SYNOPSIS

Prevents imposition of air toxics surcharge on emissions that have been eliminated by July 1, 2004.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/15/2005)

A3667 SIRES, CHIVUKULA

2

1 AN ACT concerning the air toxics surcharge, and amending P.L.2004,
2 c.51.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 2 of P.L.2004, c.51 (C.13:1D-60) is amended to read as
8 follows:

9 2. a. (1) There is imposed upon the owner or operator of each
10 facility an air toxics surcharge in the amount provided in subsection b.
11 of this section. The surcharge shall be based on the annual emissions
12 of each Category 2 toxic substance, Category 3 toxic substance and
13 Category 4 toxic substance as reported in the release and pollution
14 prevention report for that facility.

15 (2) The air toxics surcharge due in a calendar year shall be based
16 upon the data reported in the release and pollution prevention report
17 for emissions that occurred two calendar years prior to the year for
18 which the return is filed. Upon a written demonstration by the owner
19 or operator of a facility to the department, that the emission of a toxic
20 substance has been eliminated by July 1, 2004 as a result of a change
21 in operation, a change in process, or a pollution prevention activity at
22 the facility, the air toxics surcharge shall not be due for any such
23 emission that occurred prior to June 29, 2004.

24 (3) Failure to submit a release and pollution prevention report shall
25 not relieve the owner or operator of a facility of the obligation to pay
26 the required air toxics surcharge.

27 b. The air toxics surcharge for each facility shall be assessed as
28 follows:

29 (1) \$10.00 shall be assessed for each pound of Category 4 toxic
30 substances released as stack or fugitive emissions as reported on the
31 release and pollution prevention report;

32 (2) \$1.00 shall be assessed for each pound of Category 3 toxic
33 substances released as stack or fugitive emissions as reported on the
34 release and pollution prevention report; and

35 (3) \$0.10 shall be assessed for each pound of Category 2 toxic
36 substances released as stack or fugitive emissions as reported on the
37 release and pollution prevention report.

38 c. The air toxics surcharge imposed on the owner or operator of
39 a facility shall not exceed \$500,000 in any calendar year.

40 d. The owner or operator of each facility subject to the air toxics
41 surcharge imposed pursuant to this section shall file with the director
42 a certificate of registration on a form prescribed by the director.

43 e. The owner or operator of each facility subject to the air toxics

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

Matter underlined thus is new matter.

1 surcharge imposed pursuant to this section shall, on or before March
2 15 of each year, prepare and file a return under oath for the preceding
3 calendar year with the director on such forms as may be prescribed by
4 the director. The return shall include any information that the director
5 shall prescribe, shall indicate the dollar value of the air toxics
6 surcharge due pursuant to that return for the facility and at the said
7 time the owner or operator of each facility shall pay the full amount of
8 the air toxics surcharge due.

9 f. If a return required by this section is not filed, or if a return
10 when filed is incorrect or insufficient as determined by the director, the
11 amount of surcharge due shall be determined by the director based on
12 collections of the air toxics surcharge from the owner or operator of
13 the facility liable for the payment of the air toxics surcharge during the
14 previous five years. Notice of the determination shall be given to the
15 owner or operator of the facility liable for the payment of the air toxics
16 surcharge. The determination shall finally and irrevocably fix the air
17 toxics surcharge unless the owner or operator of the facility against
18 whom it is assessed, within 90 days after the giving of the notice of the
19 determination, shall file a protest in writing as provided in
20 R.S.54:49-18 and request a hearing, or unless the director on the
21 director's own motion shall redetermine the same. After the hearing the
22 director shall give notice of the determination to the owner or operator
23 of the facility to whom the air toxics surcharge is assessed.

24 g. The air toxics surcharge imposed pursuant to this section shall
25 be governed by the provisions of the State Uniform Tax Procedure
26 Law, R.S.54:48-1 et seq.

27 h. In addition to the other powers granted by this section, the
28 director may adopt any rules and regulations necessary for the
29 implementation of this section.

30 i. Notwithstanding the provisions of subparagraph (C) of
31 paragraph (2) of subsection (k) of section 4 of P.L.1945, c.162
32 (C.54:10A-4), if any, to the contrary, any deduction of the air toxics
33 surcharge imposed pursuant to subsection a. of this section allowed in
34 computing a taxpayer's taxable income which the taxpayer is required
35 to report to the United States Treasury Department for the purpose of
36 computing its federal taxable income shall be allowed in determining
37 the taxpayer's "entire net income" pursuant to subsection (k) of section
38 4 of P.L.1945, c.162 (C.54:10A-4).

39 (cf: P.L.2004, c.51, s.2)

40

41 2. This act shall take effect immediately.

42

43

STATEMENT

44

45 This bill would provide that the air toxics surcharge that was
46 imposed pursuant to P.L.2004, c.51, which was enacted on June 29,

A3667 SIRES, CHIVUKULA

4

1 2004 would not be imposed on emissions that have been eliminated by
2 July 1, 2004. The calculation of the surcharge is based upon a report
3 of emissions filed two years prior to the year for which the surcharge
4 is due. Therefore, a facility that had eliminated an emission at a
5 facility by the time the surcharge was imposed would still have to pay
6 the surcharge even though the emission was no longer occurring. This
7 bill would provide that if it can be demonstrated to the Department of
8 Environmental Protection that the emission of an air toxic had stopped
9 by July 1, 2004, a surcharge would not be due on the emission of that
10 air toxic.

ASSEMBLY, No. 3836

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED FEBRUARY 24, 2005

Sponsored by:

Assemblyman JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Assemblyman ROBERT J. SMITH

District 4 (Camden and Gloucester)

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

Co-Sponsored by:

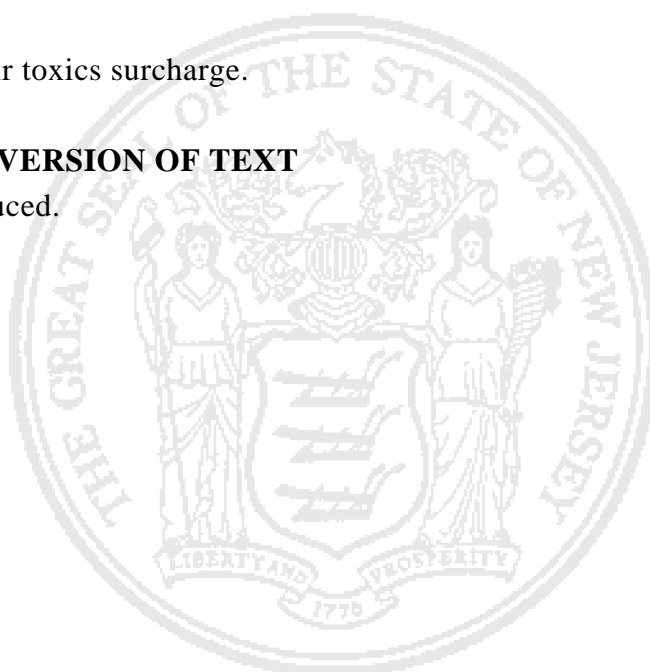
Assemblyman Conaway

SYNOPSIS

Repeals air toxics surcharge.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/11/2005)

A3836 VAN DREW, GREENWALD

2

1 **AN ACT** concerning the air toxics surcharge, and repealing P.L.2004,
2 c.51.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. P.L.2004, c.51 (C.13:1D-59 et seq.) is repealed.

8

9 2. This act shall take effect immediately.

10

11

12

STATEMENT

13

14 This bill would repeal P.L.2004, c.51, the law that imposed a
15 surcharge upon the annual emissions of air toxics.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 3667 and 3836

STATE OF NEW JERSEY

DATED: MARCH 10, 2005

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 3667 and 3836.

This Assembly Committee Substitute for Assembly Bill Nos. 3667 and 3836 repeals P.L.2004, c.51, the law that imposed a surcharge upon the annual emissions of air toxics.

P.L.2004, c.51 imposed an air toxics surcharge upon the owner or operator of each facility for which the owner or operator submits a release and pollution prevention report. The surcharge is assessed annually on each pound of categorized toxic substance emitted two years earlier.

The substitute repeals the surcharge retroactively, effective for calendar year 2004 liabilities and thereafter.

FISCAL IMPACT:

The Executive budget proposal for State Fiscal Year 2004-2005 projected annual revenue from a \$10-per-pound surcharge on air toxic emissions at \$6 million. No fiscal information is available on the projected revenues from P.L.2004, c.51, which was enacted with other, lesser, rates.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 3667 and 3836**

STATE OF NEW JERSEY

DATED: MAY 19, 2005

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 3667/3836 (ACS).

This Assembly Committee Substitute for Assembly Bill Nos. 3667 and 3836 repeals P.L.2004, c.51, the law that imposed a surcharge upon the annual emissions of air toxics.

P.L.2004, c.51 imposed an air toxics surcharge upon the owner or operator of each facility for which the owner or operator submits a release and pollution prevention report. The surcharge is assessed annually on each pound of categorized toxic substance emitted two years earlier.

The substitute repeals the surcharge retroactively, effective for calendar year 2004 liabilities and thereafter.

As reported, this bill is identical to Senate Bill Nos. 2124 and 2385 (SCS), as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services estimates that the repeal of P.L. 2004, c.51 will result in the annual loss, beginning in FY 2005, of approximately \$6 million in surcharge revenues to the General Fund. This amount is identified as Anticipated Revenues in the FY 2005 Appropriations Bill and Appropriations Handbook. Pursuant to the bill's retroactive effective date, all surcharge assessments collected during FY 2005 will be returned to the surcharge payers.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 3667
STATE OF NEW JERSEY
211th LEGISLATURE

DATED: APRIL 8, 2005

SUMMARY

Synopsis: Prevents imposition of air toxics surcharge on emissions that have been eliminated by July 1, 2004.

Type of Impact: Revenue loss to the General Fund.

Agencies Affected: Department of Environmental Protection

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue (Loss)	Indeterminate - see comments below.		

- ! The bill exempts facilities that have eliminated air toxics emissions by July 1, 2004 from paying the air toxics surcharge imposed by P.L.2004, c.51.
- ! The surcharge is based upon a report of emissions filed two years prior to the year for which the surcharge is due.
- ! Air toxic surcharges can range from \$0.10 to \$10.00 per pound of emission, up to a maximum of \$500,000 in a calendar year.
- ! The Office of Legislative Services estimates that an undetermined amount of potential surcharge revenues would not be collected from exempt facilities.

BILL DESCRIPTION

Assembly Bill No. 3667 of 2005 provides that the air toxics surcharge imposed by P.L.2004, c.51, enacted on June 29, 2004, would not be imposed on emissions that have been eliminated by July 1, 2004. Since the calculation of the surcharge is based upon a report of emissions filed two years prior to the year for which the surcharge is due, a facility that had eliminated its toxic emissions by the time the surcharge was imposed would still have to pay the surcharge even though the emission was no longer occurring. The bill provides that if a facility can demonstrate to the Department of Environmental Protection that it has eliminated air toxic emissions by July 1, 2004, the surcharge would not be imposed on the subject emissions.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services estimates that the bill's enactment would result in a loss in revenues from the air toxics surcharge that would be otherwise collected from facilities exempted under the bill. The amount of this loss cannot, however, be ascertained by the Office of Legislative Service because the number of facilities that may benefit from the bill's exemption is unknown at this time.

Section: *Environment, Agriculture, Energy and Natural Resources*

Analyst: *Richard M. Handelman*
Senior Fiscal Analyst

Approved: *David J. Rosen*
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 3836
STATE OF NEW JERSEY
211th LEGISLATURE

DATED: APRIL 8, 2005

SUMMARY

Synopsis: Repeals air toxics surcharge.
Type of Impact: Revenue loss in the General Fund.
Agencies Affected: Department of Environmental Protection

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue (Loss)		\$6,000,000 annually	

- ! The bill repeals P.L.2004, c.51 (C.13:1D-59 et seq), the law that imposed a surcharge upon the annual emissions of air toxics. The law was enacted and took effect on June 29, 2004.
- ! The surcharge is based upon a report of emissions filed two years prior to the year for which the surcharge is due.
- ! Air toxic surcharges can range from \$0.10 to \$10.00 per pound of emission, up to a maximum of \$500,000 in a calendar year.
- ! The Office of Legislative Services (OLS) estimates that approximately \$6 million per year in surcharge fees would not be collected as a result of the bill's enactment.

BILL DESCRIPTION

Assembly Bill No. 3836 of 2005 would repeal P.L.2004, c.51, the law that imposed a surcharge upon the annual emissions of air toxics. This law was enacted and effective on June 29, 2004. The surcharge is based on the annual emissions of each Category 2 toxic substance, Category 3 toxic substance and Category 4 toxic substance as reported in the release and pollution prevention report for that facility. The air toxics surcharge for each facility is assessed as follows: (1) \$10.00 for each pound of Category 4 toxic substances released as stack or fugitive emissions; (2) \$1.00 for each pound of Category 3 toxic substances released as stack or fugitive emissions; and (3) \$0.10 for each pound of Category 2 toxic substances released as stack or fugitive emissions.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the repeal of P.L.2004, c.51 would result in the loss of approximately \$6 million in revenues that would be collected annually from facilities subject to the air toxics surcharge. The estimate is based on the anticipated level of fee collections during FY 2005, as certified in the "Miscellaneous Taxes, Fees, Revenues" section of the FY 2005 Appropriations Act. This annual sum was also cited in the FY 2005 "Budget in Brief" and by the bill's sponsors during its committee deliberations.

Section: *Environment, Agriculture, Energy and Natural Resources*

Analyst: *Richard M. Handelman*
Senior Fiscal Analyst

Approved: *David J. Rosen*
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 3667 and 3836
STATE OF NEW JERSEY
211th LEGISLATURE

DATED: JUNE 8, 2005

SUMMARY

Synopsis: Repeals air toxics surcharge.
Type of Impact: Revenue loss to the General Fund.
Agencies Affected: Department of Environmental Protection

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue (Loss)		\$6,000,000 annually	

- ! The bill repeals P.L. 2004, c.51, which imposes a surcharge on the owners or operators of facilities that emit certain air toxic substances.
- ! The surcharge, which became effective in 2004, is based upon a report of emissions filed two years prior to the year for which the surcharge is due.
- ! Air toxic surcharges can range from \$0.10 to \$10.00 per pound of emission, up to a maximum of \$500,000 in a calendar year.
- ! The Office of Legislative Services estimates that the repeal of this law will result in the annual loss of approximately \$6 million to the General Fund.

BILL DESCRIPTION

Assembly Committee Substitute for Assembly Bill Nos. 3667 and 3836 of 2005 repeals P.L.2004, c.51, the law that imposed an air toxics surcharge upon the owners or operators of facilities that release such emissions. The surcharge is assessed annually on each pound of categorized toxic substance emitted two years earlier. The committee substitute repeals the surcharge retroactively, effective for calendar year 2004 liabilities and any calendar years thereafter.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services estimates that the repeal of P.L. 2004, c.51 will result in the annual loss, beginning in FY 2005, of approximately \$6 million in surcharge revenues to the General Fund. This amount is identified as Anticipated Revenues in the FY 2005 Appropriations Bill and Appropriations Handbook. Pursuant to the bill's retroactive effective date, all surcharge assessments collected during FY 2005 will be returned to the surcharge payers.

Section: *Environment, Agriculture, Energy and Natural Resources*

Analyst: *Richard M. Handelman*
Senior Fiscal Analyst

Approved: *David J. Rosen*
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

SENATE, No. 2124

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED DECEMBER 13, 2004

Sponsored by:
Senator JOSEPH V. DORIA, JR.
District 31 (Hudson)

SYNOPSIS

Prevents imposition of air toxics surcharge on emissions that have been eliminated by July 1, 2004.

CURRENT VERSION OF TEXT

As introduced.



S2124 DORIA

2

1 AN ACT concerning the air toxics surcharge, and amending P.L.2004,
2 c.51.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 2 of P.L.2004, c.51 (C.13:1D-60) is amended to read as
8 follows:

9 2. a. (1) There is imposed upon the owner or operator of each
10 facility an air toxics surcharge in the amount provided in subsection b.
11 of this section. The surcharge shall be based on the annual emissions
12 of each Category 2 toxic substance, Category 3 toxic substance and
13 Category 4 toxic substance as reported in the release and pollution
14 prevention report for that facility.

15 (2) The air toxics surcharge due in a calendar year shall be based
16 upon the data reported in the release and pollution prevention report
17 for emissions that occurred two calendar years prior to the year for
18 which the return is filed. Upon a written demonstration by the owner
19 or operator of a facility to the department, that the emission of a toxic
20 substance has been eliminated by July 1, 2004 as a result of a change
21 in operation, a change in process, or a pollution prevention activity at
22 the facility, the air toxics surcharge shall not be due for any such
23 emission that occurred prior to June 29, 2004.

24 (3) Failure to submit a release and pollution prevention report shall
25 not relieve the owner or operator of a facility of the obligation to pay
26 the required air toxics surcharge.

27 b. The air toxics surcharge for each facility shall be assessed as
28 follows:

29 (1) \$10.00 shall be assessed for each pound of Category 4 toxic
30 substances released as stack or fugitive emissions as reported on the
31 release and pollution prevention report;

32 (2) \$1.00 shall be assessed for each pound of Category 3 toxic
33 substances released as stack or fugitive emissions as reported on the
34 release and pollution prevention report; and

35 (3) \$0.10 shall be assessed for each pound of Category 2 toxic
36 substances released as stack or fugitive emissions as reported on the
37 release and pollution prevention report.

38 c. The air toxics surcharge imposed on the owner or operator of
39 a facility shall not exceed \$500,000 in any calendar year.

40 d. The owner or operator of each facility subject to the air toxics
41 surcharge imposed pursuant to this section shall file with the director
42 a certificate of registration on a form prescribed by the director.

43 e. The owner or operator of each facility subject to the air toxics

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 underlined thus is new matter.

1 surcharge imposed pursuant to this section shall, on or before March
2 15 of each year, prepare and file a return under oath for the preceding
3 calendar year with the director on such forms as may be prescribed by
4 the director. The return shall include any information that the director
5 shall prescribe, shall indicate the dollar value of the air toxics
6 surcharge due pursuant to that return for the facility and at the said
7 time the owner or operator of each facility shall pay the full amount of
8 the air toxics surcharge due.

9 f. If a return required by this section is not filed, or if a return
10 when filed is incorrect or insufficient as determined by the director, the
11 amount of surcharge due shall be determined by the director based on
12 collections of the air toxics surcharge from the owner or operator of
13 the facility liable for the payment of the air toxics surcharge during the
14 previous five years. Notice of the determination shall be given to the
15 owner or operator of the facility liable for the payment of the air toxics
16 surcharge. The determination shall finally and irrevocably fix the air
17 toxics surcharge unless the owner or operator of the facility against
18 whom it is assessed, within 90 days after the giving of the notice of the
19 determination, shall file a protest in writing as provided in
20 R.S.54:49-18 and request a hearing, or unless the director on the
21 director's own motion shall redetermine the same. After the hearing the
22 director shall give notice of the determination to the owner or operator
23 of the facility to whom the air toxics surcharge is assessed.

24 g. The air toxics surcharge imposed pursuant to this section shall
25 be governed by the provisions of the State Uniform Tax Procedure
26 Law, R.S.54:48-1 et seq.

27 h. In addition to the other powers granted by this section, the
28 director may adopt any rules and regulations necessary for the
29 implementation of this section.

30 i. Notwithstanding the provisions of subparagraph (C) of
31 paragraph (2) of subsection (k) of section 4 of P.L.1945, c.162
32 (C.54:10A-4), if any, to the contrary, any deduction of the air toxics
33 surcharge imposed pursuant to subsection a. of this section allowed in
34 computing a taxpayer's taxable income which the taxpayer is required
35 to report to the United States Treasury Department for the purpose of
36 computing its federal taxable income shall be allowed in determining
37 the taxpayer's "entire net income" pursuant to subsection (k) of section
38 4 of P.L.1945, c.162 (C.54:10A-4).

39 (cf: P.L.2004, c.51, s.2)

40

41 2. This act shall take effect immediately.

42

43

STATEMENT

44

45 This bill would provide that the air toxics surcharge that was
46 imposed pursuant to P.L.2004, c.51, which was enacted on June 29,

S2124 DORIA

1 2004 would not be imposed on emissions that have been eliminated by
2 July 1, 2004. The calculation of the surcharge is based upon a report
3 of emissions filed two years prior to the year for which the surcharge
4 is due. Therefore, a facility that had eliminated an emission at a
5 facility by the time the surcharge was imposed would still have to pay
6 the surcharge even though the emission was no longer occurring. This
7 bill would provide that if it can be demonstrated to the Department of
8 Environmental Protection that the emission of an air toxic had stopped
9 by July 1, 2004, a surcharge would not be due on the emission of that
10 air toxic.

SENATE, No. 2385

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED MARCH 1, 2005

Sponsored by:
Senator JOHN H. ADLER
District 6 (Camden)

SYNOPSIS

Exempts manufacturers of marine equipment from air toxics surcharge.

CURRENT VERSION OF TEXT

As introduced.



S2385 ADLER

2

1 **AN ACT** concerning the air toxics surcharge, and amending P.L.2004,
2 c.51.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.2004, c.51 (C.13:1D-59) is amended to read as
8 follows:

9 1. As used in this act:

10 "CAS" means the Chemical Abstract Service registry number;

11 "Department" means the Department of Environmental Protection;

12 "Division" means the Division of Taxation in the Department of the
13 Treasury;

14 "Director" means the Director of the Division of Taxation in the
15 Department of the Treasury;

16 "Category 4 toxic substance" means the following substances as
17 identified by the following name or chemical abstract service registry
18 number: orenethylbenzene (CAS No. 100-41-4), chloroform (CAS No.
19 67-66-3), 1,4-dioxane (CAS No. 123-91-1), dichloromethane (CAS
20 No. 75-09-2), styrene (CAS No. 100-42-5), p-cresol (CAS No.
21 106-44-5), trichloroethylene (CAS No. 79-01-6), 1,2-dichoroethane
22 (CAS No. 107-06-2), vinyl acetate (CAS No. 108-05-4), vinylidene
23 chloride (CAS No. 75-35-4), benzene (CAS No. 71-43-2), arsenic
24 compounds (CAS No. N020), nickel (CAS No. 7440-02-0), nickel
25 compounds (CAS No. N495), vinyl chloride (CAS No. 75-01-4),
26 epichlorohydrin (CAS No. 106-89-8), formaldehyde (CAS No.
27 50-00-0), tetrachloroethylene (perchloroethylene) (CAS No.
28 127-18-4), hydrazine (CAS No. 302-01-2), propylene oxide (CAS No.
29 75-56-9), toluene diisocyanate (mixed isomers) (CAS No.
30 26471-62-5), aniline (and salts) (CAS No. 62-53-3), beryllium (CAS
31 No. 7440-41-7), cadmium compounds (CAS No. N078), chromium
32 (CAS No. 7440-47-3), chromium compounds (CAS No. N090),
33 ethylene oxide (CAS No. 75-21-8), nitrobenzene (CAS No. 98-95-3),
34 naphthalene (CAS No. 91-20-3), chlordane (CAS No. 57-74-9),
35 acetaldehyde (CAS No. 75-07-0), 1,2-butylene oxide (CAS No.
36 106-88-7), cobalt (CAS No. 7440-48-4), cobalt compounds (CAS No.
37 N096), di(2-ethylhexyl) phthalate (DEHP) (CAS No. 117-81-7), lead
38 (CAS No. 7439-92-1), lead compounds (CAS No. N420), mercury
39 (CAS No. 7439-97-6), mercury compounds (CAS No. N458), benzyl
40 chloride (CAS No. 100-44-7), pentachlorobenzen (CAS No.
41 608-93-5), creosote (CAS No. 8001-58-9), pendimethalin (CAS No.
42 40487-42-1), asbestos (friable) (CAS No. 1332-21-4), dioxin and
43 dioxin-like compounds (CAS No. N150), polycyclic aromatic

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

Matter underlined thus is new matter.

1 compounds (CAS No. N590), polychlorinated biphenyls (PCB) (CAS
2 No. 1336-36-3), acrylamide (CAS No. 79-06-01), benzoic trichloride
3 (CAS No. 98-07-7), dimethyl sulfate (CAS No. 77-78-1),
4 1,3-butadiene (CAS No. 106-99-0), benzal chloride (CAS No.
5 98-87-3), diethyl sulfate (CAS No. 64-67-5), dimethylcarbamyl
6 chloride (CAS No. 79-44-7), hexachloroethane (CAS No. 67-72-1),
7 heptachlor (CAS No. 76-44-8), hexachlorobenzene (CAS No.
8 118-74-1), acrylonitrile (CAS No. 107-13-1), antimony compounds
9 (CAS No. N010), catechol (CAS No. 120-80-9), diglycidyl resorcinol
10 ether (CAS No. 101-90-6), ethyl acrylate (CAS No. 140-88-5),
11 nitrofen (CAS No. 1836-75-5), propyleneimine (CAS No. 75-55-8),
12 sodium o-phenylphenoxide (CAS No. 132-27-4), urethane (CAS No.
13 51-79-6), benzo(g,h,i)perylene (CAS No. 191-24-2), allyl chloride
14 (CAS No. 107-05-1), and decabromodiphenyl oxide (CAS No.
15 1163-19-5), 1,1,1,2-tetrachloroethane (CAS No. 630-20-6),
16 1,1,2,2-tetrachloroethane (CAS No. 79-34-5), 1,1,2-trichloroethane
17 (CAS No. 79-00-5), 1,1-dimethyl hydrazine (CAS No. 57-14-7),
18 1,2-dibromo-3-chloropropane (CAS No. 96-12-8), 1,2-dibromoethane
19 (CAS No. 106-93-4), 1,2-diphenylhydrazine (CAS No. 122-66-7),
20 1,3-dichloropropylene (CAS No. 542-75-6), 1,4-dichlorobenzene
21 (CAS No. 106-46-7), 2,4,6-trichlorophenol (CAS No. 88-06-2),
22 2,4-diaminoanisole (CAS No. 615-05-4), 2,4-diaminotoluene (CAS
23 No. 95-80-7), 2,4-dinitrotoluene (CAS No. 121-14-2),
24 2,6-dinitrotoluene (CAS No. 606-20-2), 2,6-xylylidine (CAS No.
25 87-62-7), 2-nitropropane (CAS No. 79-46-9), 3,3'-dichlorobenzidine
26 (CAS No. 91-94-1), 3,3-dimethoxybenzidine (CAS No. 119-90-4),
27 3,3-dimethylbenzidine (CAS No. 119-93-7), 4,4-diaminodiphenyl ether
28 (CAS No. 101-80-4), 4,4-methylenebis(2-chloroaniline), (CAS No.
29 101-14-4), 4,4-methylenebis(n,n-dimethyl), benzenamin (CAS No.
30 101-61-1), 4,4-methylenedianiline (CAS No. 101-77-9),
31 4,4-thiodianiline (CAS No. 139-65-1), 4-aminoazobenzene (CAS No.
32 60-09-3), 4-aminobiphenyl (CAS No. 92-67-1),
33 4-dimethylaminoazobenzene (CAS No. 60-11-7), acephate (CAS No.
34 30560-19-1), acetamide (CAS No. 60-35-5), aldrin (CAS No.
35 309-00-2), alpha-hexachlorocyclohexane (CAS No. 319-84-6), arsenic
36 (CAS No. 7440-38-2), benzidine (CAS No. 92-87-5), benzoyl chloride
37 (CAS No. 98-88-4), beryllium compounds (CAS No. n050),
38 beta-naphthylamine (CAS No. 91-59-8), beta-propiolactone (CAS No.
39 57-57-8), bis(2-chloroethyl), ether (CAS No. 111-44-4),
40 bis(chloromethyl), ether (CAS No. 542-88-1), bromoform (CAS No.
41 75-25-2), c.i. acid red 114 (CAS No. 6459-94-5), c.i. food red 5 (CAS
42 No. 3761-53-3), c.i. solvent yellow 3 (CAS No. 97-56-3), c.i. solvent
43 yellow 34 (CAS No. 492-80-8), cadmium (CAS No. 7440-43-9),
44 carbon tetrachloride (CAS No. 56-23-5), chlorendic acid (CAS No.
45 115-28-6), chloromethyl methyl ether (CAS No. 107-30-2),
46 chloroprene (CAS No. 126-99-8), chlorothalonil (CAS No.

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1 1897-45-6), dichlorobromomethane (CAS No. 75-27-4), dichlorvos
2 (CAS No. 62-73-7), dihydrosafrole (CAS No. 94-58-6), dimethipin
3 (CAS No. 55290-64-7), ethyleneimine (CAS No. 151-56-4),
4 ethylidene dichloride (CAS No. 75-34-3), folpet (CAS No. 133-07-3),
5 fomesafen (CAS No. 72178-02-0), hexachloro-1,3-butadiene (CAS
6 No. 87-68-3), hexamethylphosphoramide (CAS No. 680-31-9),
7 hydrazine sulfate (CAS No. 10034-93-2), isodrin (CAS No.
8 465-73-6), lindane (CAS No. 58-89-9), linuron (CAS No. 330-55-2),
9 m-cresol (CAS No. 108-39-4), methoxychlor (CAS No. 72-43-5),
10 mustard gas (CAS No. 505-60-2), nitrilotriacetic acid (CAS No.
11 139-13-9), nitrogen mustard (mechlorethamine) (CAS No. 51-75-2),
12 n-nitrosodiethylamine (CAS No. 55-18-5), n-nitrosodimethylamine
13 (CAS No. 62-75-9), n-nitrosodi-n-butylamine (CAS No. 924-16-3),
14 n-nitrosodi-n-propylamine (CAS No. 621-64-7),
15 n-nitrosodiphenylamine (CAS No. 86-30-6),
16 n-nitrosomethylvinylamine (CAS No. 4549-40-0), n-nitrosomorpholine
17 (CAS No. 59-89-2), n-nitroso-n-ethylurea (CAS No. 759-73-9),
18 n-nitroso-n-methylurea (CAS No. 684-93-5), n-nitrosornicotine
19 (CAS No. 16543-55-8), n-nitrosopiperidine (CAS No. 100-75-4),
20 o-anisidine (CAS No. 90-04-0), o-cresol (CAS No. 95-48-7),
21 octachlorostyrene (CAS No. 29082-74-4), oryzalin (CAS No.
22 19044-88-3), o-toluidine (CAS No. 95-53-4), paraquat dichloride
23 (paraquat) (CAS No. 1910-42-5), parathion (CAS No. 56-38-2),
24 p-chloroaniline (CAS No. 106-47-8), p-chloro-o-toluidine (CAS No.
25 95-69-2), p-cresidine (CAS No. 120-71-8), pentachlorophenol (pcp),
26 (CAS No. 87-86-5), phenytoin (CAS No. 57-41-0),
27 p-nitrosodiphenylamine (CAS No. 156-10-5), polybrominated
28 biphenyls (pbbs), (CAS No. n575), potassium bromate (CAS No.
29 7758-01-2), propane sultone (CAS No. 1120-71-4), quinoline (CAS
30 No. 91-22-5), safrole (CAS No. 94-59-7), styrene oxide (CAS No.
31 96-09-3), thioacetamide (CAS No. 62-55-5), toxaphene (camphechlor)
32 (CAS No. 8001-35-2), trifluralin (CAS No. 1582-09-8),
33 tris(2,3-dibromopropyl) phosphate (CAS No. 126-72-7), trypan blue
34 (CAS No. 72-57-1), and vinyl chloride (CAS No. 593-60-2);

35 "Category 3 toxic substance" means the following substances as
36 identified by the following name or chemical abstract service registry
37 number: methyl ethyl ketone (CAS No. 78-93-3), carbon disulfide
38 (CAS No. 75-15-0), chloroethane (CAS No. 75-00-3), glycol ethers
39 (except surfactants) (CAS No. N230), copper compounds (with
40 exceptions) (CAS No. N100), ammonia (CAS No. 7664-41-7),
41 chlorine (CAS No. 7782-50-5), copper (CAS No. 7440-50-8), sulfuric
42 acid (CAS No. 7664-93-9), triethylamine (CAS No. 121-44-8),
43 bromomethane (CAS No. 74-83-9), hydrochloric acid (CAS No.
44 7647-01-0), xylene (mixed isomers) (CAS No. 1330-20-7), acetonitrile
45 (CAS No. 75-05-8), barium compounds (except barium sulfate) (CAS
46 No. N040), chlorine dioxide (CAS No. 10049-04-4), manganese(CAS

1 No. 7439-96-5), manganese compounds (CAS No. N450), phosphorus
2 (CAS No. 7723-14-0), zinc compounds (CAS No. N982),
3 dicyclopentadiene (CAS No. 77-73-6), maleic anhydride (CAS No.
4 108-31-6), phthalic anhydride (CAS No. 85-44-9), titanium
5 tetrachloride (CAS No. 7550-45-0), toluene-2,4-diisocyanate (CAS
6 No. 584-84-9), zinc (fume or dust) (CAS No. 7440-66-6),
7 chloromethane (CAS No. 74-87-3), selenium (CAS No. 7782-49-2),
8 1,2-dichloropropane (CAS No. 78-87-5), diethanolamine (CAS No.
9 111-42-2), n,n-dimethylformamide (CAS No. 68-12-2),
10 2-chloroacetophenone (CAS No. 532-27-4), anthracene (CAS No.
11 120-12-7), barium (CAS No. 7440-39-3), boron trifluoride (CAS No.
12 7637-07-2), chloropicrin (CAS No. 76-06-2),
13 hexachlorocyclopentadiene (CAS No. 77-47-4), hydrogen cyanide
14 (hydrocyanic acid) (CAS No. 74-90-8), methacrylonitrile (CAS No.
15 126-98-7), methyl isocyanate (CAS No. 624-83-9), phosphine (CAS
16 No. 7803-51-2), selenium compounds (CAS No. N725), and
17 toluene-2,6-diisocyanate (CAS No. 91-08-7);

18 "Category 2 toxic substance" means the following substances as
19 identified by the following name or chemical abstract service registry
20 number: 1,1,1-trichloroethane (CAS No. 71-55-6), phenol (CAS No.
21 108-95-2), toluene (CAS No. 108-88-3), methanol (CAS No.
22 67-56-1), methyl methacrylate (CAS No. 80-62-6),
23 1,2-dichlorobenzene (CAS No. 95-50-1), chlorobenzene (CAS No.
24 108-90-7), cumene (CAS No. 98-82-8), methyl isobutyl ketone (CAS
25 No. 108-10-1), 1-chloro-1,1-difluoroethane (HCFC-142b) (CAS No.
26 75-68-3), cresol (mixed isomers) (CAS No. 1319-77-3),
27 dichlorodifluoromethane (CFC-12) (CAS No. 75-71-8), ethylene
28 glycol (CAS No. 107-21-1), freon 113 (CAS No. 76-13-1), n-hexane
29 (CAS No. 110-54-3), trichlorofluoromethane (CFC-11) (CAS No.
30 75-69-4), chlorodifluoromethane (hcfc-22) (CAS No. 75-45-6), methyl
31 tert-butyl ether (CAS No. 1634-04-4), propylene (propene) (CAS No.
32 115-07-1), hydrogen fluoride (CAS No. 7664-39-3), phosgene (CAS
33 No. 75-44-5), acrylic acid (CAS No. 79-10-7), isopropyl alcohol
34 (mfg-strong acid process) (CAS No. 67-63-0), and acrolein (CAS No.
35 107-02-8);

36 "Facility" means the building, equipment and contiguous area at a
37 single location used for the conduct of business and for which the
38 owner or operator is required to submit a release and pollution
39 prevention report pursuant to the reporting requirements of 42 U.S.C.
40 s.11023, or other criteria adopted by the Department of Environmental
41 Protection and in effect on the date of enactment of this act, except
42 that facility shall not include any facility where marine equipment as
43 defined in section 3 of P.L.1984, c.152 (C.12:7A-3) is manufactured;

44 "Owner or operator" means any person who owns a facility, or any
45 person in control of, or exercising responsibility for, the daily
46 operation of the facility;

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1 "Person" means an individual, partnership, corporation, association,
2 organization, government or governmental subdivision or agency,
3 business trust, estate, trust, or any other legal or commercial entity;

4 "Release and pollution prevention report" means the combined
5 report submitted to the department annually pursuant to the "Worker
6 and Community Right to Know Act," P.L.1983, c.315 (C.34:5A-1 et
7 al.) and the "Pollution Prevention Act," P.L.1991, c.235 (C.13:1D-35
8 et seq.), and any rules and regulations adopted pursuant thereto that
9 are in effect on the date of enactment of this act, and that provides
10 environmental emissions release and throughput data on an annual
11 basis; and

12 "Toxic substance" means any hazardous substance as defined
13 pursuant to section 3 of P.L.1991, c.235 (C.13:1D-37).
14 (cf: P.L.2004, c.51, s.1)

15

16 2. This act shall take effect immediately.

17

18

19

STATEMENT

20

21 This bill exempts the owner or operator of a facility that
22 manufactures marine equipment from air toxics surcharge imposed
23 pursuant to P.L.2004, c.51. Marine equipment means vessels or hulls
24 greater than 12 feet in length.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 2124 and 2385**

STATE OF NEW JERSEY

DATED: MAY 19, 2005

The Senate Budget and Appropriations Committee reports favorably a Senate Committee Substitute for Senate Bill Nos. 2124 and 2385.

This Senate Committee Substitute for Senate Bill Nos. 2124 and S2385 repeals P.L.2004, c.51, the law that imposed a surcharge upon the annual emissions of air toxics.

P.L.2004, c.51 imposed an air toxics surcharge upon the owner or operator of each facility for which the owner or operator submits a release and pollution prevention report. The surcharge is assessed annually on each pound of categorized toxic substance emitted two years earlier.

The substitute repeals the surcharge retroactively, effective for calendar year 2004 liabilities and thereafter.

As reported, this bill is identical to Assembly Bill Nos. 3667 and 3836 (ACS), as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services estimates that the repeal of P.L. 2004, c.51 will result in the annual loss, beginning in FY 2005, of approximately \$6 million in surcharge revenues to the General Fund. This amount is identified as Anticipated Revenues in the FY 2005 Appropriations Bill and Appropriations Handbook. Pursuant to the bill's retroactive effective date, all surcharge assessments collected during FY 2005 will be returned to the surcharge payers.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 2124
STATE OF NEW JERSEY
211th LEGISLATURE

DATED: JUNE 3, 2005

SUMMARY

Synopsis: Prevents imposition of air toxics surcharge on emissions that have been eliminated by July 1, 2004.

Type of Impact: Revenue loss to the General Fund.

Agencies Affected: Department of Environmental Protection

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue (Loss)	Indeterminate - see comments below		

- ! The bill exempts facilities that have eliminated air toxics emissions by July 1, 2004 from paying the air toxics surcharge imposed by P.L.2004, c.51.
- ! The surcharge is based upon a report of emissions filed two years prior to the year for which the surcharge is due.
- ! Air toxic surcharges can range from \$0.10 to \$10.00 per pound of emission, up to a maximum of \$500,000 in a calendar year.
- ! The Office of Legislative Services estimates that an undetermined amount of potential surcharge revenues would not be collected from exempt facilities.

BILL DESCRIPTION

Senate Bill No. 2124 of 2004 provides that the air toxics surcharge imposed by P.L.2004, c.51, enacted on June 29, 2004, would not be imposed on emissions that have been eliminated by July 1, 2004. Since the calculation of the surcharge is based upon a report of emissions filed two years prior to the year for which the surcharge is due, a facility that had eliminated its toxic emissions by the time the surcharge was imposed would still have to pay the surcharge even though the emission was no longer occurring. The bill provides that if a facility can demonstrate to the Department of Environmental Protection that it has eliminated air toxic emissions by July 1, 2004, the surcharge would not be imposed on the subject emissions.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services estimates that the bill's enactment would result in a loss in revenues from the air toxics surcharge that would be otherwise collected from facilities exempted under the bill. The amount of this loss cannot, however, be ascertained by the Office of Legislative Service because the number of facilities that may benefit from the bill's exemption is unknown at this time.

Section: *Environment, Agriculture, Energy and Natural Resources*

Analyst: *Richard M. Handelman*
Senior Fiscal Analyst

Approved: *David J. Rosen*
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 2385
STATE OF NEW JERSEY
211th LEGISLATURE

DATED: JUNE 3, 2005

SUMMARY

Synopsis: Exempts manufacturers of marine equipment from air toxics surcharge.
Type of Impact: Revenue loss to the General Fund.
Agencies Affected: Department of Environmental Protection

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue (Loss)	Indeterminate - See comments below		

- ! The bill exempts the owner or operator of a facility that manufactures marine equipment from being assessed the air toxics surcharge pursuant to P.L. 2004, c.51.
- ! The air toxics surcharge was initiated in FY 2005 and is projected to generate approximately \$6 million in revenues annually.
- ! Air toxic surcharges can range from \$0.10 to \$10.00 per pound of emission, up to a maximum of \$500,000 in a calendar year.
- ! The Office of Legislative Services estimates that the exemption proposed by the bill will result in an undetermined loss of surcharge revenue collected by the General Fund.

BILL DESCRIPTION

Senate Bill No. 2385 of 2005 exempts the owner or operator of a facility that manufactures marine equipment from the air toxics surcharge imposed pursuant to P.L.2004, c.51. The bill defines marine equipment as vessels or hulls greater than 12 feet in length.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.



OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services estimates that the exemption proposed by the bill will result in less revenues collected by the State from air toxics surcharge assessments. Currently, revenues generated from this funding source are estimated at \$6 million annually. The Office of Legislative Services cannot calculate the extent of revenue loss due to insufficient data concerning the number or types of marine facilities that may take advantage of the proposed exemption.

Section: *Environment, Agriculture, Energy and Natural Resources*

Analyst: *Richard M. Handelman*
Senior Fiscal Analyst

Approved: *David J. Rosen*
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.