

58:10-23.11h

LEGISLATIVE HISTORY CHECKLIST

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(Hazardous substance tax)

NJSA: 58:10-23.11h

LAWS OF: 1997 CHAPTER: 134

BILL NO: A1668

SPONSOR(S): Kavanaugh & Corodemus

DATE INTRODUCED: March 4, 1996

COMMITTEE: ASSEMBLY: Appropriations

SENATE: Environment; Budget

AMENDED DURING PASSAGE: Yes Amendments during passage denoted
First reprint enacted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: June 19, 1997

SENATE: June 5, 1996

DATE OF APPROVAL: June 27, 1997

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes 12-16-96 & 3-10-97

FISCAL NOTE: Yes

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:
REPORTS: No

HEARINGS: No

KBP:pp

[First Reprint]
ASSEMBLY, No. 1668

STATE OF NEW JERSEY

INTRODUCED MARCH 4, 1996

By Assemblymen KAVANAUGH, CORODEMUS,
Assemblywomen Heck and Wright

1 AN ACT concerning taxes on hazardous substances, amending
2 P.L.1976, c.141.

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

6
7 1. Section 9 of P.L.1976, c.141 (C.58:10-23.11h) is amended to
8 read as follows:

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SEN committee amendments adopted December 16, 1996.

1 for the storage or transfer of hazardous substances. The tax shall be
2 measured by the number of barrels or the fair market value, as the case
3 may be, of hazardous substances transferred to the major facility;
4 provided, however, that the same barrel, including any products
5 derived therefrom, subject to multiple transfers from or between major
6 facilities shall be taxed only once at the point of the first transfer.

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

11 b. (1) The tax shall be \$0.0150 per barrel transferred and in the
12 case of the transfer of hazardous substances other than petroleum or
13 petroleum products, the tax shall be the greater of \$0.0150 per barrel
14 or 1.0% of the fair market value of the product plus \$0.0025 per
15 barrel; provided, however, that with respect to transfers of hazardous
16 substances other than petroleum or petroleum products which are or
17 contain any precious metals to be recycled, refined, or rerefined in this
18 State, **[or]** which are transferred into this State subsequent to being
19 recycled, refined or rerefined, or which are or contain elemental
20 phosphorus, the tax shall be \$0.0150 per barrel of the hazardous
21 substance; and provided further, however, that the total aggregate tax
22 due for any individual taxpayer which has paid the tax in the 1986 tax
23 year shall not exceed 125% of the tax due and payable by that taxpayer
24 during the 1986 tax year plus an additional \$0.0025 per barrel; except
25 that for a hazardous substance which is directly converted to, and
26 comprises more than 90% by weight of, a non-hazardous final product,
27 the taxpayer shall pay no more than 100% of the tax due and payable
28 in the 1986 tax year plus an additional \$0.0025 per barrel. ¹**[For]** In
29 computing 125% of the tax due and payable by the taxpayer during the
30 1986 tax year, for¹ taxes due after January 1, ¹[1995, in computing
31 125% of taxes due and payable by the taxpayer during the 1986 tax
32 year] 1996 from an owner or operator of one or more major facilities
33 who has continuously since 1986 filed a combined tax return for more
34 than one major facility but who prior to January 1, 1996 has closed
35 one or more of those major facilities¹, a taxpayer shall include 1986
36 taxes arising ¹[out of the operations of] from¹ major facilities which
37 (1) caused the taxpayer to incur a tax liability in 1986, and (2)
38 continue to cause the ¹[corporate]¹ taxpayer to incur a tax liability
39 during the current tax year. For transfers which are or contain
40 elemental phosphorus, in computing the 125% of the taxes due and
41 payable by the taxpayer during the 1986 tax year, a taxpayer shall
42 calculate the tax at \$0.015 per barrel. For the purposes of this section,
43 "precious metals" means gold, silver, osmium, platinum, palladium,
44 iridium, rhodium, ruthenium and copper. In the event of a major
45 discharge or series of discharges of petroleum or petroleum products
46 resulting in reasonable claims against the fund exceeding the existing

1 balance of the fund, the tax shall be levied at the rate of \$0.04 per
2 barrel of petroleum or petroleum products transferred, until the
3 revenue produced by such increased rate equals 150% of the total
4 dollar amount of all pending reasonable claims resulting from the
5 discharge of petroleum or petroleum products; provided, however,
6 that such rate may be set at less than \$0.04 per barrel transferred if the
7 administrator determines that the revenue produced by such lower rate
8 will be sufficient to pay outstanding reasonable claims against the fund
9 within one year of such levy. For the purposes of determining the
10 existing balance of the fund, the administrator shall not include any
11 amount in the fund collected from the \$0.0025 per barrel increase in
12 the tax imposed pursuant to P.L.1990, c.78 and dedicated for
13 hazardous substance discharge prevention in accordance with
14 paragraph (2) of this subsection.

15 Interest received on moneys in the fund shall be credited to the
16 fund.

17 (2) An amount of \$0.0025 per barrel collected from the proceeds
18 of the tax imposed pursuant to this subsection shall be deposited into
19 the New Jersey Spill Compensation Fund and dedicated for the
20 purposes of P.L.1990, c.78 and for other authorized purposes
21 designed to prevent the discharge of a hazardous substance.

22 c. (1) Every taxpayer and owner or operator of a public storage
23 terminal for hazardous substances shall on or before the 20th day of
24 the month following the close of each tax period render a return under
25 oath to the director on such forms as may be prescribed by the director
26 indicating the number of barrels of hazardous substances transferred
27 and where appropriate, the fair market value of the hazardous
28 substances transferred to or from the major facility, and at said time
29 the taxpayer shall pay the full amount of the tax due.

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

35 d. If a return required by this act is not filed, or if a return when
36 filed is incorrect or insufficient in the opinion of the director, the
37 amount of tax due shall be determined by the director from such
38 information as may be available. Notice of such determination shall be
39 given to the taxpayer liable for the payment of the tax. Such
40 determination shall finally and irrevocably fix the tax unless the person
41 against whom it is assessed, within 30 days after receiving notice of
42 such determination, shall apply to the director for a hearing, or unless
43 the director on his own motion shall redetermine the same. After such
44 hearing the director shall give notice of his determination to the person
45 to whom the tax is assessed.

46 e. Any taxpayer who shall fail to file his return when due or to pay

1 any tax when the same becomes due, as herein provided, shall be
2 subject to such penalties and interest as provided in the "State Tax
3 Uniform Procedure Law," R.S.54:48-1 et seq. If the Division of
4 Taxation determines that the failure to comply with any provision of
5 this section was excusable under the circumstances, it may remit such
6 part or all of the penalty as shall be appropriate under such
7 circumstances.

8 f. (1) (Deleted by amendment, P.L.1987, c.76.)

9 (2) (Deleted by amendment, P.L.1987, c.76.)

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

12 (1) To delegate to any officer or employee of his division such of
13 his powers and duties as he may deem necessary to carry out
14 efficiently the provisions of this section, and the person or persons to
15 whom such power has been delegated shall possess and may exercise
16 all of said powers and perform all of the duties delegated by the
17 director;

18 (2) To prescribe and distribute all necessary forms for the
19 implementation of this section.

20 h. The tax imposed by this act shall be governed in all respects by
21 the provisions of the "State Tax Uniform Procedure Law,"
22 R.S.54:48-1 et seq., except only to the extent that a specific provision
23 of this act may be in conflict therewith.

24 i. (Deleted by amendment, P.L.1986, c.143.)

25 (cf: P.L.1990, c.78, s.17)

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27 2. This act shall take effect immediately.

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32 Alters cap on tax due for transfers of hazardous substances.

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

3 (1) To delegate to any officer or employee of his division such of
4 his powers and duties as he may deem necessary to carry out
5 efficiently the provisions of this section, and the person or persons to
6 whom such power has been delegated shall possess and may exercise
7 all of said powers and perform all of the duties delegated by the
8 director;

9 (2) To prescribe and distribute all necessary forms for the
10 implementation of this section.

11 h. The tax imposed by this act shall be governed in all respects by
12 the provisions of the "State Tax Uniform Procedure Law,"
13 R.S.54:48-1 et seq., except only to the extent that a specific provision
14 of this act may be in conflict therewith.

15 i. (Deleted by amendment, P.L.1986, c.143.)

16 (cf: P.L.1990, c.78, s.17)

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18 2. This act shall take effect immediately.

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STATEMENT

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23 This bill would amend the "Spill Compensation and Control Act" to
24 change the way the tax imposed upon the owner or operator of a
25 major facility is calculated. Currently, for most taxpayers, the
26 aggregate tax due for any taxpayer who has paid the tax in the 1986
27 calender year is capped at 125% of the tax due for the 1986 calender
28 year plus \$0.0025 per barrel of hazardous substance transferred. This
29 bill would change that calculation. For taxes due after January 1,
30 1995, in computing 125% of taxes due and payable by the taxpayer
31 during the 1986 tax year, a taxpayer shall include 1986 taxes arising
32 out of the operations of major facilities which (1) caused the taxpayer
33 to incur a tax liability in 1986, and (2) continue to cause the corporate
34 taxpayer to incur a tax liability during the current tax year. In addition,
35 the bill would change the tax for any transfer of a hazardous substance
36 that is or contains elemental phosphorus to \$0.015 per barrel. In
37 computing 125% of taxes due and payable by the taxpayer during the
38 1986 tax year, the 1986 taxes for any transfer that is or contains
39 elemental phosphorus shall be recalculated at a rate of \$0.015 per
40 barrel.

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Alters cap on tax due for transfers of hazardous substances.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1668

STATE OF NEW JERSEY

DATED: MARCH 25, 1996

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1668.

Assembly Bill No. 1668 amends the "Spill Compensation and Control Act," to change the way the tax imposed upon the owner or operator of a major facility is calculated.

The act currently imposes a tax on facilities that produce, refine, store, handle transfer or transport hazardous substances, to ensure compensation for cleanup costs and damages due to the discharge of petroleum products and other hazardous substances. The tax is capped for a taxpayer that paid the tax in 1986 at 125% of the tax due for the 1986 calendar year plus \$0.0025 per barrel of hazardous substance transferred.

This bill would change that calculation. For taxes due after January 1, 1995, in computing 125% of taxes due and payable by the taxpayer during the 1986 tax year, a taxpayer would include in the 1986 base only taxes arising out of the operations of major facilities that caused the taxpayer to incur a tax liability in 1986 and continue to cause the taxpayer to incur a liability during the current year.

Also, the bill changes the tax rate for any transfer of a hazardous substance that is, or contains, elemental phosphorus from the greater of \$0.015 per barrel or 1% of fair market value plus \$0.0025 per barrel to a flat \$0.015 per barrel. In computing taxes due and payable by the taxpayer during the 1986 tax year for purposes of determining the 125% of 1986 liability cap amount, the 1986 taxes for any transfer that is, or contains, elemental phosphorus will be recalculated at a rate of \$0.015 per barrel.

FISCAL IMPACT:

The change in the calculation of the 1986 base amount will reduce the 1986 base amount, which will reduce the current cap amount. No current inventory of facilities taken out of service since 1986 is available for determining the reduction in revenue.

No information is currently available as to the quantity or fair market value of hazardous substance that is, or contains, elemental phosphorus; no estimate of the revenue impact of the rate change as to phosphorus hazardous waste can be made at this time.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1668

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 16, 1996

The Senate Environment Committee favorably reports Assembly Bill No. 1668 with committee amendments.

Assembly Bill No. 1668 amends the "Spill Compensation and Control Act," to change the way the tax imposed upon certain owners or operators of major facilities is calculated.

The act currently imposes a tax on facilities that produce, refine, store, handle transfer or transport hazardous substances, to ensure compensation for cleanup costs and damages due to the discharge of petroleum products and other hazardous substances. The tax is capped for a taxpayer that paid the tax in 1986 at 125% of the tax due for the 1986 calendar year plus \$0.0025 per barrel of hazardous substance transferred.

This bill would change that calculation for certain taxpayers. As amended by the committee, for taxes due after January 1, 1996, in computing 125% of taxes due and payable by the taxpayer during the 1986 tax year, a taxpayer would include in the 1986 base only taxes arising out of the operations of major facilities that caused the taxpayer to incur a tax liability in 1986 and continue to cause the taxpayer to incur a liability during the current year.

Also, the bill changes the tax rate for any transfer of a hazardous substance that is, or contains, elemental phosphorus from the greater of \$0.015 per barrel or 1% of fair market value plus \$0.0025 per barrel to a flat \$0.015 per barrel. In computing taxes due and payable by the taxpayer during the 1986 tax year for purposes of determining the 125% of 1986 liability cap amount, the 1986 taxes for any transfer that is, or contains, elemental phosphorus will be recalculated at a rate of \$0.015 per barrel.

The change in the calculation of the 1986 base amount will reduce the 1986 base amount, which will reduce the current cap amount. No current inventory of facilities taken out of service since 1986 is available for determining the reduction in revenue.

The limitation on the tax assessed for substances that are, or that contain, elemental phosphorus is necessary due to the relatively few producers of this material and the competitive nature of the industry.

The cap recalculation is being made in order to fix an inequity in the manner in which the law has been implemented. It was represented to the committee that certain taxpayers who had more than one major facility in 1986 and who filed separate tax forms for each facility were able to obtain lower overall caps when one of their facilities closed because the cap was calculated on a per facility basis. The committee was told that this is not the case for taxpayers who filed combined tax returns for multiple facilities and who have closed a facility. These taxpayers must now pay the tax based on a cap that includes the closed facility.

The committee does not have sufficient information to determine the fiscal impacts of the recalculation of the 1986 cap. In order to limit those impacts, and to eliminate an incentive to close a facility in order to get a tax benefit, the committee limited the cap provisions to those taxpayers that filed joint tax returns for multiple major facilities since 1986 and who have closed one or more of those facilities prior to January 1, 1996. The committee amendments also change the retroactive provisions of the bill from January 1, 1995 to January 1, 1996 and make a technical change.

As amended by committee, this bill is identical to Senate Bill No. 1525 with committee amendments.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1668

STATE OF NEW JERSEY

DATED: MARCH 10, 1997

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 1668 (1R) of 1996.

Assembly Bill No. 1668 (1R) amends the "Spill Compensation and Control Act," to change the way the tax imposed upon certain owners or operators of major facilities is calculated.

The act currently imposes a tax on facilities that produce, refine, store, handle transfer or transport hazardous substances, to ensure compensation for cleanup costs and damages due to the discharge of petroleum products and other hazardous substances. The tax is capped for a taxpayer that paid the tax in 1986 at 125% of the tax due for the 1986 calendar year plus \$0.0025 per barrel of hazardous substance transferred.

This bill would change that calculation for certain taxpayers for taxes due after January 1, 1996. In computing 125% of taxes due and payable by the taxpayer during the 1986 tax year, a taxpayer will include in the 1986 base only taxes arising out of the operations of major facilities that caused the taxpayer to incur a tax liability in 1986 and continue to cause the taxpayer to incur a liability during the current year.

Also, the bill changes the tax rate for any transfer of a hazardous substance that is, or contains, elemental phosphorus from the greater of \$0.015 per barrel or 1% of fair market value plus \$0.0025 per barrel to a flat \$0.015 per barrel. In computing taxes for the 1986 tax year for purposes of determining the 125% of 1986 liability cap amount, the 1986 taxes for any transfer that is, or contains, elemental phosphorus will be recalculated at a rate of \$0.015 per barrel.

As reported, this bill is identical to Senate Bill No. 1525 (1R) of 1996 (Inverso).

FISCAL IMPACT

In a legislative fiscal estimate prepared by the Office of Legislative Services (OLS), the OLS states that it cannot calculate the fiscal impact of this bill on corporate taxpayers or on the level of tax revenues collected by the New Jersey Spill Compensation Fund due to the unavailability of tax, facility and hazardous substance records

dating back to 1986. It can be assumed, however, that the bill would result in lower tax revenues collected by the "spill fund" which, in turn, will further limit its ability to support various programmatic and claims activities.

The "spill fund" balance at the end of Fiscal Year 1996 was \$25.5 million. In Fiscal Year 1996, the fund collected \$15.4 million in taxes, plus an additional \$18.3 million in license and other fees. Fund expenditures totaled \$37.5 million in FY 1996. The Spill Fund's balance at the end of FY 1997 is estimated at \$26.6 million.

LEGISLATIVE FISCAL ESTIMATE TO
ASSEMBLY, No. 1668
STATE OF NEW JERSEY

DATED: April 11, 1996

Assembly Bill No.1668 of 1996 would amend the "Spill Compensation and Control Act" (P.L.1976, c.141) to change the way the tax imposed upon the owner or operator of a major facility is calculated. Currently, for most taxpayers, the aggregate tax due for any taxpayer who has paid the tax in the 1986 calendar year is capped at 125% of the tax due for the 1986 calendar year, plus \$0.0025 per barrel of hazardous substance transferred. This bill would change that calculation. For taxes due after January 1, 1995, in computing 125% of taxes due and payable by the taxpayer during the 1986 tax year, a taxpayer would include 1986 taxes arising out of the operations of major facilities which (1) caused the taxpayer to incur a tax liability in 1986, and (2) continue to cause the corporate taxpayer to incur a tax liability during the current tax year. In addition, the bill would change the tax for any transfer of a hazardous substance that is or contains elemental phosphorus to \$0.015 per barrel. In computing 125% of taxes due and payable by the taxpayer during the 1986 tax year, the 1986 taxes for any transfer that is or contains elemental phosphorus would then be recalculated at a rate of \$0.015 per barrel.

The Office of Legislative Services cannot calculate the fiscal impacts of this bill on corporate taxpayers or on the level of tax revenues collected by the Spill Fund due to the unavailability of tax, facility and hazardous substance records dating back to 1986. It can be assumed, however, that the bill would result in lower tax revenues collected by the Spill Fund which, in turn, would further limit its ability to support various programmatic and claims activities. The Spill Fund collects between \$16.5 million and \$17.0 million annually in taxes, plus an additional \$28.0 million is generated annually in revenues from licenses and other fees. Its expenditures totaled \$76.8 million in FY 1995 and are estimated at \$49.7 million in FY 1996. The Spill Fund's balance at the end of FY 1996 is estimated at \$26.8 million.

The 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.