SENATE, No. 2322

STATE OF NEW JERSEY

215th LEGISLATURE

INTRODUCED NOVEMBER 19, 2012

Sponsored by:
Senator NICHOLAS P. SCUTARI
District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Prohibits contribution action against local unit for cleanup and removal costs or any other damages associated with discharge of hazardous substance.

CURRENT VERSION OF TEXT

As introduced.
AN ACT concerning liability for the discharge of hazardous substances, and amending and supplementing P.L.1976, c.141.

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

1. (New section) Notwithstanding any provision of P.L.1976, c.141 (C.58:10-23.11 et seq.), or any other law, including the common law, or any rule or regulation, to the contrary, no person may bring an action for contribution against a local unit for cleanup and removal costs or any other damages associated with a discharge of a hazardous substance.

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

7. a. (1) Whenever any hazardous substance is discharged, the department may, in its discretion, act to clean up and remove or arrange for the cleanup and removal of the discharge or may direct the discharger to clean up and remove, or arrange for the cleanup and removal of, the discharge. If the discharge occurs at any hazardous waste facility or solid waste facility, the department may order the hazardous waste facility or solid waste facility closed for the duration of the cleanup and removal operations. The department may monitor the discharger's compliance with any such directive. Any discharger who fails to comply with such a directive shall be liable to the department in an amount equal to three times the cost of such cleanup and removal, and shall be subject to the revocation or suspension of any license issued or permit held authorizing that person to operate a hazardous waste facility or solid waste facility.

(2) (a) Whenever one or more dischargers or persons cleans up and removes a discharge of a hazardous substance, those dischargers and persons shall have a right of contribution against all other dischargers and persons in any way responsible for a discharged hazardous substance or other persons who are liable for the cost of the cleanup and removal of that discharge of a hazardous substance; provided, however, no discharger or person shall have a right of contribution against a local unit, notwithstanding any provision of P.L.1976, c.141 (C.58:10-23.11 et seq.), or any other law, including the common law, or any rule or regulation, to the contrary. In an action for contribution, the contribution plaintiffs need prove only that a discharge occurred for which the contribution defendant or defendants are liable pursuant to the provisions of subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), and the contribution defendant shall have only the defenses to liability available to parties pursuant to subsection d.

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.
of section 8 of P.L.1976, c.141 (C.58:10-23.11g). In resolving
contribution claims, a court may allocate the costs of cleanup and
removal among liable parties using such equitable factors as the
court determines are appropriate. Nothing in this subsection shall
affect the right of any party to seek contribution pursuant to any
other statute or under common law against a party other than a local
unit.

(b) A person who has discharged a hazardous substance or is in
any way responsible for the discharge of a hazardous substance who
has resolved his liability to the State for cleanup and removal costs,
including the payment of compensation for damage to, or the loss
of, natural resources, or for the restoration of natural resources, and
(i) has received a final remediation document, or (ii) has entered
into an administrative or judicially approved settlement with the
State, shall not be liable for claims for contribution regarding
matters addressed in the settlement or the final remediation
document, as the case may be. The settlement shall not release any
other person from liability for cleanup and removal costs who is not
a party to the settlement, but shall reduce the potential liability of
any other discharger or person in any way responsible for a
discharged hazardous substance at the site that is the subject of the
final remediation document or the settlement by the amount of the
final remediation document or the settlement.

(3) In an action for contribution taken pursuant to this
subsection, a contribution plaintiff may file a claim with the court
for treble damages. A contribution plaintiff may be granted an
award of treble damages by the court from one or more contribution
defendants only upon a finding by the court that: (a) the
contribution defendant is a person who was named on or subject to
a directive issued by the department, who failed or refused to
comply with such a directive, and who is subject to contribution
pursuant to this subsection; (b) the contribution plaintiff gave 30
days' notice to the contribution defendant of the plaintiff's intention
to seek treble damages pursuant to this subsection and gave the
contribution defendant an opportunity to participate in the cleanup;
(c) the contribution defendant failed or refused to enter into a
settlement agreement with the contribution plaintiff; and (d) the
contribution plaintiff (i) on or after the date of enactment of
P.L.2009, c.60 (C.58:10C-1 et al.), commenced remediation of the
site and provided written notice to the department that the
contribution plaintiff is remediating or has remediated the property
pursuant to the provisions of section 30 of P.L.2009, c.60
(C.58:10B-1.3), or (ii) entered into an agreement with the
department to remediate the site. Notwithstanding the foregoing
requirements, any authorization to seek treble damages made by the
department prior to the effective date of P.L.1997, c.278 (C.58:10B-
1.1 et al.) shall remain in effect, provided that the department or the
contribution plaintiff gave notice to the contribution defendant of
the plaintiff’s request to the department for authorization to seek
treble damages.

A contribution defendant from whom treble damages is sought in
a contribution action shall not be assessed treble damages by any
court where the contribution defendant, for good cause shown,
failed or refused to enter the settlement agreement with the
contribution plaintiff or where principles of fundamental fairness
will be violated. One third of an award of treble damages in a
contribution action pursuant to this paragraph shall be paid to the
department, which sum shall be deposited in the New Jersey Spill
Compensation Fund. The other two thirds of the treble damages
award shall be shared by the contribution plaintiffs in the proportion
of the responsibility for the cost of the cleanup and removal that the
contribution plaintiffs have agreed to with the department or in an
amount as has been agreed to by those parties.

Cleanup and removal of hazardous substances and actions to
minimize damage from discharges shall, to the greatest extent
possible, be in accordance with the National Contingency Plan for
cleanup and removal of oil and hazardous substances established
pursuant to section 311(c)(2) of the Federal Water Pollution Control

Whenever the department acts to clean up and remove a
discharge or contracts to secure prospective cleanup and removal
services, it is authorized to draw upon the money available in the
fund. Such money shall be used to pay promptly for all cleanup and
removal costs incurred by the department in cleaning up, in
removing or in minimizing damage caused by such discharge.
Nothing in this section is intended to preclude removal and cleanup
operations by any person threatened by such discharges, provided
such persons coordinate and obtain approval for such actions with
ongoing State or federal operations. No action taken by any person
to contain or clean up and remove a discharge shall be construed as
an admission of liability for said discharge. No person who renders
assistance in containing or cleaning up and removing a discharge
shall be liable for any civil damages to third parties resulting solely
from acts or omissions of such person in rendering such assistance,
except for acts or omissions of gross negligence or willful
misconduct. In the course of cleanup or removal operations, no
person shall discharge any detergent into the waters of this State
without prior authorization of the commissioner.

b. Notwithstanding any other provisions of P.L.1976, c.141
(C.58:10-23.11 et seq.), the department, subject to the approval of
the administrator with regard to the availability of funds therefor, or
a local unit as a part of an emergency response action and with the
approval of the department, may clean up and remove or arrange for
the cleanup and removal of any hazardous substance which:

(1) Has not been discharged from a grounded or disabled vessel,
necessary to prevent an imminent discharge of such hazardous substance; or

(2) Has not been discharged, if the department determines that such substance is not satisfactorily stored or contained and said substance possesses any one or more of the following characteristics:
   (a) Explosiveness;
   (b) High flammability;
   (c) Radioactivity;
   (d) Chemical properties which in combination with any discharged hazardous substance at the same storage facility would create a substantial risk of imminent damage to public health or safety or an imminent and severe damage to the environment;
   (e) Is stored in a container from which its discharge is imminent as a result of contact with a hazardous substance which has already been discharged and such additional discharge would create a substantial risk of imminent damage to public health or safety or imminent and severe damage to the environment; or
   (f) High toxicity and is stored or being transported in a container or motor vehicle, truck, rail car or other mechanized conveyance from which its discharge is imminent as a result of the significant deterioration or the precarious location of the container, motor vehicle, truck, rail car or other mechanized conveyance, and such discharge would create a substantial risk of imminent damage to public health or safety or imminent and severe damage to the environment; or

(3) Has been discharged prior to the effective date of P.L.1976, c.141.

c. If and to the extent that he determines that funds are available, the administrator shall approve and make payments for any cleanup and removal costs incurred by the department for the cleanup and removal of a hazardous substance other than petroleum as authorized by subsection b. of this section; provided that in determining the availability of funds, the administrator shall not include as available funds revenues realized or to be realized from the tax on the transfer of petroleum, to the extent that such revenues result from a tax levied at a rate in excess of $0.01 per barrel, pursuant to subsection b. of section 9 of P.L.1976, c.141 (C.58:10-23.11h), unless the administrator determines that the sum of claims paid by the fund on behalf of petroleum discharges or cleanup and removals plus pending reasonable claims against the fund on behalf of petroleum discharges or cleanup and removals is greater than 30% of the sum of all claims paid by the fund plus all pending reasonable claims against the fund.

d. The administrator may only approve and make payments for any cleanup and removal costs incurred by the department for the cleanup and removal of a hazardous substance discharged prior to the effective date of P.L.1976, c.141, pursuant to subsection b. of
this section, if, and to the extent that, he determines that adequate
funds from another source are not or will not be available; and
provided further, with regard to the cleanup and removal costs
incurred for discharges which occurred prior to the effective date of
P.L.1976, c.141, the administrator may not during any one-year
period pay more than $18,000,000 in total or more than $3,000,000
for any discharge or related set or series of discharges.

e. Notwithstanding any other provisions of P.L.1976, c.141, the
administrator, after considering, among any other relevant factors,
the department's priorities for spending funds pursuant to P.L.1976,
c.141, and within the limits of available funds, shall make payments
for the restoration or replacement of, or connection to an alternative
water supply for, any private residential well destroyed,
contaminated, or impaired as a result of a discharge prior to the
effective date of P.L.1976, c.141; provided, however, total
payments for said purpose shall not exceed $500,000 for the period
between the effective date of this subsection e. and January 1, 1983,
and in any calendar year thereafter.

f. Any expenditures of cleanup and removal costs and related
costs made by the State pursuant to this act shall constitute, in each
instance, a debt of the discharger to the fund. The debt shall
constitute a lien on all property owned by the discharger when a
notice of lien, incorporating a description of the property of the
discharger subject to the cleanup and removal and an identification
of the amount of cleanup, removal and related costs expended by
the State, is duly filed with the clerk of the Superior Court. The
clerk shall promptly enter upon the civil judgment or order docket
the name and address of the discharger and the amount of the lien as
set forth in the notice of lien. Upon entry by the clerk, the lien, to
the amount committed by the State for cleanup and removal, shall
attach to the revenues and all real and personal property of the
discharger, whether or not the discharger is insolvent.

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.
g. In the event a vessel discharges a hazardous substance into the waters of the State, the cleanup and removal and related costs resulting from that discharge that constitute a maritime lien on the discharging vessel pursuant to 33 U.S.C. s.1321 or any other law, may be recovered by the Department of Environmental Protection in an action in rem brought in the district court of the United States. An impoundment of a vessel resulting from this action shall continue until:

(1) the claim against the owner or operator of the vessel for the cleanup and removal and related costs of the discharge is satisfied;

(2) the owner or operator of the vessel, or a representative of the owner or operator, provides evidence of financial responsibility as provided in section 2 of P.L.1991, c.58 (C.58:10-23.11g2) and satisfactorily guarantees that these costs will be paid; or

(3) the impoundment is otherwise vacated by a court order. The remedy provided in this subsection is in addition to any other remedy or enforcement power that the department may have under any other law.

Any action brought by the State pursuant to this subsection and any impoundment of a vessel resulting therefrom shall not subject the State to be in any way liable for a subsequent or continued discharge of a hazardous substance from that vessel.

(cf: P.L.2009, c.60, s.37)

3. This act shall take effect immediately and shall apply to any action pending or filed on or after the date of enactment.

STATEMENT

This bill would prohibit any person from bringing an action for contribution against a local unit, as defined pursuant to section 3 of the “Spill Compensation and Control Act,” P.L.1976, c.141 (C.58:10-23.11b), for cleanup and removal costs or any other damages associated with a discharge of a hazardous substance. The prohibition would bar any such contribution action against a local unit, notwithstanding any provision of the “Spill Compensation and Control Act,” or any other law, including the common law, or any rule or regulation, to the contrary.