

5418--B

2011-2012 Regular Sessions

I N S E N A T E

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Introduced by Sens. GRISANTI, MAZIARZ, RITCHIE -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the navigation law, in relation to responsible parties for petroleum contaminated sites and incentives to parties who are willing to remediate petroleum contaminated sites

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (a) of subdivision 2 of section 176 of the navi-
2 gation law, as amended by chapter 584 of the laws of 1992, is amended to
3 read as follows:
4 (a) Upon the occurrence of a discharge of petroleum, the department
5 shall respond promptly and proceed to cleanup and remove the discharge
6 in accordance with environmental priorities or may, at its discretion,
7 direct the discharger to promptly cleanup and remove the discharge. IF
8 A PERSON THE DEPARTMENT DEEMS A DISCHARGER, AND THUS DIRECTS TO CLEANUP
9 AND REMOVE THE DISCHARGE PURSUANT TO THIS SECTION PRESENTS THE DEPART-
10 MENT WITH EVIDENCE THAT A THIRD PARTY IS SOLELY RESPONSIBLE FOR THE
11 DISCHARGE AND REQUESTS THE DEPARTMENT TO DETERMINE WHETHER THE EVIDENCE
12 ESTABLISHES THE THIRD PARTY IS IN FACT SOLELY RESPONSIBLE, THE DEPART-
13 MENT SHALL, WITHIN THIRTY DAYS OF RECEIPT OF SUCH REQUEST, DETERMINE IN
14 WRITING EITHER THAT THE THIRD PARTY: (I) SHALL BE DEEMED A DISCHARGER BY
15 THE DEPARTMENT, AND SHALL BE DIRECTED TO UNDERTAKE THE CLEANUP AND
16 REMOVAL OF THE DISCHARGE; OR (II) WILL NOT BE DEEMED A DISCHARGER BY THE
17 DEPARTMENT BECAUSE THE INFORMATION PRESENTED DOES NOT ESTABLISH THE
18 RESPONSIBILITY OF THE THIRD PARTY BY A PREPONDERANCE OF THE EVIDENCE. IF
19 THE DEPARTMENT DETERMINES THAT THE PERSON THE DEPARTMENT INITIALLY DEEMS

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 A DISCHARGER AND THE THIRD PARTY ARE BOTH DISCHARGERS, THE DEPARTMENT
2 SHALL, WITHIN THIRTY DAYS OF SUCH REQUEST, ADVISE EACH OF THE PARTIES
3 THAT THEY ARE DEEMED DISCHARGERS SUBJECT TO APPORTIONMENT OF LIABILITY
4 FOR THE DISCHARGE PURSUANT TO SUBDIVISIONS ONE AND TWO OF SECTION ONE
5 HUNDRED EIGHTY OF THIS ARTICLE. The department shall be responsible for
6 cleanup and removal or as the case may be, for retaining agents and
7 contractors who shall operate under the direction of that department for
8 such purposes. Implementation of cleanup and removal procedures after
9 each discharge shall be conducted in accordance with environmental
10 priorities and procedures established by the department.

11 S 2. Subdivision 8 of section 176 of the navigation law, as added by
12 chapter 712 of the laws of 1989, is amended and a new subdivision 9 is
13 added to read as follows:

14 8. Notwithstanding any other provision of law to the contrary, includ-
15 ing but not limited to SUBDIVISION (C) OF section 15-108 of the general
16 obligations law, every person providing cleanup, removal of discharge of
17 petroleum or relocation of persons pursuant to this section shall be
18 entitled to contribution from any other responsible party.

19 9. THE FOLLOWING SHALL NOT BE DEEMED A FINAL AGENCY ACTION SUBJECT TO
20 REVIEW PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND
21 RULES, AND SHALL NOT HAVE A BINDING EFFECT ON ANY PARTY IN PENDING OR
22 FUTURE PROCEEDINGS REGARDING THE DISCHARGE: (A) A DETERMINATION OR
23 ACTION OF THE DEPARTMENT PURSUANT TO SUBDIVISION ONE, TWO, OR THREE OF
24 THIS SECTION, INCLUDING BUT NOT LIMITED TO, A DETERMINATION OF THE
25 REASONABLENESS OF ANY COSTS INCURRED; (B) A DETERMINATION OR ACTION OF
26 THE ADMINISTRATOR PURSUANT TO SECTION ONE HUNDRED EIGHTY, ONE HUNDRED
27 EIGHTY-ONE-A, OR ONE HUNDRED EIGHTY-THREE OF THIS ARTICLE, INCLUDING THE
28 FILING OF AN ENVIRONMENTAL LIEN.

29 S 3. Subdivisions 1 and 2 of section 180 of the navigation law, subdi-
30 vision 1 as added by chapter 845 of the laws of 1977 and subdivision 2
31 as amended by chapter 672 of the laws of 1991, are amended to read as
32 follows:

33 1. To represent the state in meetings with the alleged discharger OR
34 DISCHARGERS and claimants concerning liability for the discharge and
35 amount of the claims, AND, IF THERE IS MORE THAN ONE DISCHARGER IN A
36 MEETING, TO APPORTION LIABILITY FOR THE DISCHARGE;

37 2. To determine if hearings are needed to settle particular claims
38 filed by injured persons AND TO APPORTION LIABILITY BETWEEN AND AMONG
39 DISCHARGERS;

40 S 4. Subdivision 1 of section 181 of the navigation law, as amended by
41 chapter 712 of the laws of 1989, is amended and a new subdivision 7 is
42 added to read as follows:

43 1. (A) Any person who has discharged petroleum shall be strictly
44 liable, without regard to fault, for all cleanup and removal costs and
45 all direct and indirect damages, no matter by whom sustained, as defined
46 in this section, UNLESS THE LIABILITY LIMITATION AS DESCRIBED UNDER
47 PARAGRAPH (B) OF THIS SUBDIVISION APPLIES. In addition to cleanup and
48 removal costs and damages, any such person who is notified of such
49 release and who did not undertake relocation of persons residing in the
50 area of the discharge in accordance with paragraph (c) of subdivision
51 seven of section one hundred seventy-six of this article, shall be
52 liable to the fund for an amount equal to two times the actual and
53 necessary expense incurred by the fund for such relocation pursuant to
54 section one hundred seventy-seven-a of this article.

55 (B) (I) ANY PERSON WHO AGREES TO REMEDIATE THE DISCHARGE TO THE SATIS-
56 FACTION OF THE DEPARTMENT, AND IN CONFORMANCE WITH THIS ARTICLE, SHALL

1 BE ENTITLED TO RECEIVE LIABILITY LIMITATION. SUCH AGREEMENT SHALL BE
2 CALLED THE LIABILITY LIMITATION AGREEMENT AND SHALL BE WRITTEN AND
3 EXECUTED BY BOTH THE DEPARTMENT AND SUCH PERSON. AFTER EXECUTION OF THE
4 LIABILITY LIMITATION AGREEMENT, SUCH PERSON SHALL NOT BE LIABLE TO THE
5 STATE UPON ANY STATUTORY OR COMMON LAW CAUSE OF ACTION, ARISING OUT OF
6 THE PRESENCE OF ANY CONTAMINATION IN, ON, OR EMANATING FROM THE SITE
7 THAT WAS THE SUBJECT OF THE LIABILITY LIMITATION, EXCEPT THAT SUCH
8 PERSON SHALL NOT RECEIVE A RELEASE FOR NATURAL RESOURCE DAMAGES THAT MAY
9 BE AVAILABLE UNDER LAW. THE LIABILITY LIMITATION SHALL APPLY TO ALL
10 SUCCESSORS IN OWNERSHIP OF THE PROPERTY AND TO ALL PERSONS WHO LEASE THE
11 PROPERTY OR WHO ENGAGE IN OPERATIONS ON THE PROPERTY, PROVIDED THAT SUCH
12 PERSONS ACT WITH DUE CARE AND IN GOOD FAITH TO ADHERE TO THE REQUIRE-
13 MENTS OF THE LIABILITY LIMITATION AGREEMENT.

14 (II) A LIABILITY LIMITATION AGREEMENT AND THE PROTECTIONS IT AFFORDS
15 SHALL NOT APPLY TO ANY DISCHARGE THAT OCCURS SUBSEQUENT TO THE EXECUTION
16 OF THE LIABILITY LIMITATION AGREEMENT, NOR SHALL A LIABILITY LIMITATION
17 AGREEMENT AND THE PROTECTIONS IT AFFORDS RELIEVE ANY PERSON OF THE OBLI-
18 GATIONS TO COMPLY IN THE FUTURE WITH LAWS AND REGULATIONS. THE STATE
19 NONETHELESS SHALL RESERVE ALL OF ITS RIGHTS CONCERNING, AND SUCH LIABIL-
20 ITY LIMITATION SHALL NOT EXTEND TO, ANY FURTHER INVESTIGATION AND/OR
21 REMEDIATION THE DEPARTMENT DEEMS NECESSARY DUE TO FRAUD, NONCOMPLIANCE
22 WITH THE TERMS THAT FORMED THE LIABILITY LIMITATION AGREEMENT, OR A
23 WRITTEN FINDING BY THE DEPARTMENT THAT A CHANGE IN AN ENVIRONMENTAL
24 STANDARD, FACTOR, OR CRITERION UPON WHICH THE LIABILITY LIMITATION
25 AGREEMENT WAS BASED WOULD RENDER REMEDIATION ACTIVITIES NO LONGER
26 PROTECTIVE OF PUBLIC HEALTH OR THE ENVIRONMENT. NOTHING IN THIS SECTION
27 SHALL AFFECT THE LIABILITY OF THE PERSON RESPONSIBLE FOR SUCH PERSON'S
28 OWN ACTS OR OMISSIONS CAUSING WRONGFUL DEATH OR PERSONAL INJURY. NOTHING
29 IN THIS SECTION SHALL AFFECT THE LIABILITY OF ANY PERSON WITH RESPECT TO
30 ANY CIVIL ACTION BROUGHT BY A PARTY OTHER THAN THE STATE. THE PROVISIONS
31 OF THIS SECTION SHALL NOT AFFECT AN ACTION OR A CLAIM, INCLUDING A STAT-
32 UTORY OR COMMON LAW CLAIM FOR CONTRIBUTION OR INDEMNIFICATION, THAT SUCH
33 PERSON HAS OR MAY HAVE AGAINST A THIRD PARTY.

34 7. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A PUBLIC
35 CORPORATION SHALL NOT BE LIABLE FOR THE DISCHARGE OF PETROLEUM AT A SITE
36 IF SUCH PUBLIC CORPORATION ACQUIRED SUCH SITE INVOLUNTARILY, AND SUCH
37 PUBLIC CORPORATION RETAINED SUCH SITE WITHOUT PARTICIPATING IN THE
38 DEVELOPMENT OF SUCH SITE. THIS EXEMPTION SHALL NOT APPLY TO ANY PUBLIC
39 CORPORATION THAT HAS (A) CAUSED OR CONTRIBUTED TO THE DISCHARGE OF
40 PETROLEUM FROM OR AT THE SITE, (B) PURCHASED, SOLD, REFINED, TRANS-
41 PORTED, OR DISCHARGED PETROLEUM FROM OR AT SUCH SITE, OR (C) CAUSED THE
42 PURCHASE, SALE, REFINEMENT, TRANSPORTATION, OR DISCHARGE OF PETROLEUM
43 FROM OR AT SUCH SITE. THE TERMS "PARTICIPATION IN DEVELOPMENT," "PUBLIC
44 CORPORATION" AND "INVOLUNTARY ACQUISITION OF OWNERSHIP OR CONTROL" SHALL
45 HAVE THE SAME MEANING AS THOSE TERMS ARE DEFINED IN PARAGRAPHS (C), (D)
46 AND (E) OF SUBDIVISION TWO OF SECTION 27-1323 OF THE ENVIRONMENTAL
47 CONSERVATION LAW. HOWEVER, "PARTICIPATION IN DEVELOPMENT" SHALL NOT
48 INCLUDE IMPROVEMENTS WHICH ARE PART OF A CLEANUP AND REMOVAL OF A
49 DISCHARGE OF PETROLEUM PURSUANT TO THIS ARTICLE.

50 S 5. Section 183 of the navigation law, as added by chapter 845 of the
51 laws of 1977, is amended to read as follows:

52 S 183. Settlements. The administrator shall attempt to promote and
53 arrange a settlement between the claimant and the person OR PERSONS
54 responsible for the discharge. If the source of the discharge can be
55 determined and liability is conceded, the claimant and the alleged
56 discharger OR DISCHARGERS may agree to a settlement which shall be final

1 and binding upon the parties and which will waive all recourse against
2 the fund. TO THE EXTENT AN ALLEGED DISCHARGER PRESENTS EVIDENCE TO THE
3 ADMINISTRATOR THAT ANOTHER PARTY IS WHOLLY OR PARTIALLY RESPONSIBLE FOR
4 THE CLAIM, AND REQUESTS THE ADMINISTRATOR TO CONSIDER WHETHER SUCH
5 INFORMATION PRESENTED ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE
6 THAT THE THIRD PARTY IS IN FACT WHOLLY OR PARTIALLY RESPONSIBLE, THE
7 ADMINISTRATOR WITHIN THIRTY DAYS OF RECEIPT OF SUCH REQUEST SHALL EITHER
8 DETERMINE: (1) IN WRITING, IF THE THIRD PARTY SHALL BE DEEMED AN ADDI-
9 TIONAL DISCHARGER TO ANY PENDING OR ANTICIPATED CLAIM OR (2) IF AN
10 ADMINISTRATIVE HEARING AS TO LIABILITY IS NECESSARY.
11 S 6. This act shall take effect immediately.