

Section C: Bill Analysis of Senate Bill 820

OLR AMENDED BILL ANALYSIS

SB 820 (File 690, as amended by House "A")*

AN ACT ESTABLISHING AN INNOCENT LANDOWNER DEFENSE IN POLLUTION CASES

SUMMARY: This bill limits innocent landowners with polluted property from liability to the state for assessments, fines, and other costs imposed for cleanup. Liability is limited to reimbursing the state for cleanup costs incurred to the extent of the landowner's interest in the property if the amount of the state's expenditure is a lien on the property handled in accordance with a procedure available under existing law. The limitation on liability applies to spills or discharges whether they occurred before or after passage of the bill, but does not affect actions that are final and no longer appealable after that date.

The landowner must establish his innocence by a preponderance of the evidence. In determining innocence, a court may take into account a person's specialized knowledge or experience; the amount paid for the property as it relates to the value if it were not polluted; commonly known or readily available information; the obviousness of the presence or likely presence of the pollution; and the ability to detect pollution by inspection.

The bill makes any person who sells an interest in contaminated real estate, regardless of whether the state has spent money to clean the site, liable up to the net sale proceeds for the cost of cleanup. Net proceeds are the amount received by a person after paying reasonable expenses and satisfying security interests.

Under current law, unchanged by the bill, secured lenders acquiring title by foreclosure or tender of a deed in lieu of foreclosure have liability limited to the value of the real estate if the spill occurred before acquisition of title.

Current law allows the Department of Environmental Protection (DEP) to issue an order to abate water pollution or correct a hazardous waste violation to a landowner whenever the department is also issuing an order to the person who caused the pollution. The bill exempts innocent landowners from liability for any assessment, fine, or other costs imposed by the state under this law, except through imposition of a lien on the property for reimbursement of state cleanup costs.

*House Amendment "A" eliminates a landowner's innocence if he had reason to know of the act or omission of a third party (the unamended bill excluded only those who actually knew of such act or omission) or if there was a reasonably foreseeable threat of pollution; eliminates fiduciaries as innocent landowner's; makes certain executors, trustees, and administrators of decedent's estates innocent landowners; limits an innocent landowner's liability to that obtained

by the imposition of a lien on the property; specifies that the limitation on landowner liability does not affect actions that are final and no longer appealable on passage of the bill; and makes the bill effective on passage.

EFFECTIVE DATE: Upon passage

FURTHER EXPLANATION

Innocent Landowner

Innocent landowners under the bill are of two types. First, those with an interest in property which is contaminated while owned by them. Second, those who acquire property after the contamination and who have not caused the pollution. The term does not apply to secured lenders.

In the first case, a landowner is innocent if the pollution is caused by: (1) an act of God; (2) an act of war; (3) an act or omission of a third party who is not an employee, agent, lessee, or in a direct or indirect contractual relationship with the landowner; or (4) an act or omission occurring in connection with a contract arising from a published rail transportation tariff. In the case of an act or omission of a third party the landowner is not innocent if he had knowledge, or had reason to know, and failed to take reasonable steps to prevent the pollution, or there was a reasonably foreseeable threat of pollution. But in the case of an act or omission of a third party occurring in connection with a rail transportation contact, the landowner is not innocent if he had knowledge and failed to take reasonable steps.

A person who acquires land after contamination is considered innocent if he (1) has no knowledge of the contamination and inquires into previous uses of the property consistent with good commercial or customary practice, (2) is a government entity, (3) acquires the property by inheritance or bequest, or (4) acquires the interest as executor or administrator of a decedent's estate or as trustee receiving the real estate interest from a decedent's estate if the decedent had held the interest in the real estate.

BACKGROUND

Related Case

In *Starr v. Commissioner* (CV91 039 81 62, February 10, 1992) the Superior Court ruled that an innocent landowner cannot be held primarily liable for cleanup of his land unless the DEP also orders the person responsible for causing the pollution.

Legislative History

The Senate referred the bill to the Appropriations Committee on May 18. That committee favorably reported the bill, with no changes, on May 20.

The Senate adopted Senate Amendment "A" on May 29. On June 7, the House rejected Senate "A" and adopted House "A." House "A" incorporates the changes of Senate "A" and also makes certain trustees, administrators, and executors of decedent's estates innocent landowners; makes a landowner liable for a third party act or omission if there was a reasonably foreseeable threat of pollution; and makes the bill effective upon passage.

COMMITTEE ACTION

Environment Committee

Joint Favorable Change of Reference
Yea 25 Nay 0

Judiciary Committee

Joint Favorable Substitute
Yea 27 Nay 0

Committee on Appropriations

Joint Favorable Report
Yea 42 Nay 0

Section D: Public Hearing on Senate Bill 820 - Keeney's Testimony

STATE OF CONNECTICUT

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Committee on the Environment
Public Hearing, February 10, 1993

Testimony of Commissioner Timothy R. E. Keeney
Department of Environmental Protection

Raised Bill 820 Act Concerning Landowner Liability for Hazardous Waste Contamination

This bill limits the liability of past and present owners of land from which a source or potential source of pollution emanates. Building upon the language of 107(b) of the federal Comprehensive Environment Response, Compensation and Liability Act ("CERCLA, "also known as "Superfund"), the bill attempts to find a balance between, on the one hand, protecting taxpayers from responsibility for cleaning up private land and, on the other, protecting owners who did not cause or contribute to pollution on their land.

To the extent that this bill tracks the language of CERCLA §107(b), the Department does not object to it, although the Committee should keep in mind that enactment of any landowner liability limitation constitutes a significant change from present law (see §22a-433), under which the landowner, not the taxpayer, is responsible for all pollution costs associated with the land. And any limitation on liability, even one as relatively narrow as the one provided here, could result in a significant impact on the public treasury.

The Department urges the Committee that any bill that limits liability should, like CERCLA §107, begin by comprehensively identifying the classes of persons who are liable. Subsection (a) of CERCLA §107 identifies all persons, not just landowners, who are liable for reimbursing the Government or any other person for the costs of remediation, and subsection (b) then creates defenses to such liability. Under §107(a) liability is imposed, without respect to fault, on the present owner and operator of the facility or vessel, on any past owner or operator of the facility at the time the hazardous substance was disposed there, and on any person who arranged for transportation, treatment or disposal of a hazardous substance at, or who transported a hazardous substance to, the facility from which the release has occurred or is threatened. (Sections 7002 and 7003 of the federal Resource Conservation and Recovery Act similarly impose remedial liability on present and past owners and operators and those who contributed to handling the material which caused the hazard.)

If Raised Bill 820 were revised to thus identify all liable persons, much-needed clarity would be added to Connecticut's pollution clean-up and cost recovery laws (see §§22a-432, 22a-433, 22a-133c, 22a-4S2). Furthermore, the defenses to liability in the bill would then apply not only to landowners but to operators and other contributors. For example, an operator at whose

facility an act of God caused a release and who took precautions against such an event should be entitled, no less than an owner, to the "act of God" defense provided by the bill.

Another concern relates to subsection (e) of the bill, which would make it applicable not only to legal proceedings instituted after the bill's effective date but also to proceedings pending on that date. I would point out that there are many pending cases in the Department which were initiated under existing law (§22a-433), which provides that a landowner is liable for remedial action simply by virtue of ownership. If the law were to change while these cases were pending, a great deal of administrative resources might be wasted.

Attached to this testimony are some technical suggestions for the bill.

Thank you for this opportunity to comment on Raised Bill 820 and the important subject of liability for pollution clean-ups. I and my legal staff would be happy to work with the Committee in further refining the substance and language of the bill.

Section E: Public Hearing on Senate Bill 820 - Hemond's Testimony

Testimony of David L. Hemond Chief Attorney, Connecticut Law Revision Commission

to the Judiciary Committee

in favor of House Bill 7062,

An Act Establishing an Innocent Landowner Defense in Pollution Cases

Senate Bill 820,

An Act Concerning Landowner Liability for Hazardous Waste Contamination

March 1, 1993

By letter dated May 29, 1992, Senator Anthony V. Avallone and Representative Richard D. Tulisano, acting as Co-Chairmen of the Judiciary Committee of the Connecticut General Assembly, requested the Law Revision Commission to review Connecticut statutes in the light of the Superior Court decision in *Susan S. Starr v. Commissioner, Department of Environmental Protection and the Scantic Neighborhood Association, Inc.* CV 91 039 81 62, (February 10, 1992). (The case is currently on appeal before the Connecticut Supreme Court.) In that case, the Superior Court ruled that an innocent landowner cannot be held primarily liable under sections 22a-432 and 22a-433 of the general statutes for cleanup of his land unless, the Department of Environmental Protection (DEP) also charges the party responsible for causing the pollution. In particular, the Judiciary Co-Chairmen asked that the Commission draft legislation that would provide reasonable protection for “innocent parties”.

Pursuant to that mandate, the Commission appointed Commission members William Breetz, Martin Burke, Nicholas Simeone, and Milton Widem to review the issues and draft an appropriate innocent landowner's defense. After a number of meetings, review of the applicable statutes, and circulation of a proposed draft to concerned parties, the committee recommended, and the Commission approved, enactment of the draft legislation now before you as House Bill 7062, creating an innocent landowner defense. Viewed in the light of the *Starr* case, the Commission finds that Connecticut statutes fail to adequately protect innocent it landowners from the risk of unlimited liability for cleanup costs of a spill or discharge of contaminating maternal. In a given case, the liability flowing from contamination may be substantially greater than the value of the contaminated property. The Commission recommends enactment of appropriate protection for innocent parties who hold such property.

Liability under the Commission bill compared to the Environment Committee bill, Senate Bill 820, AAC Landowner Liability for Hazardous Waste Contamination:

Senate Bill 820, AAC Landowner Liability for Hazardous Waste Contamination, has been raised by the Environment Committee and addresses the same topic as the House Bill, 7062 now before the Judiciary Committee. The Environment Committee bill is similar to last years

1992 Senate Bill 287, particularly as amended by LCO No. 4028, and would create an innocent landowner defense based on CERCLA but limit liability "only to the extent of the value of his interest in such property, appraised as if such property was unpolluted." The Commission rejected the standard of the Environment Committee bill (and last year's bill) because it allows assessment of personal liability against an innocent party in an amount that is not related to any actual value in the land held by the landowner. An innocent party under those bills could, for example, be assessed a million dollar liability, out-of-pocket, for cleanup and mitigation costs on land that in theory, if clean, might be worth a million dollars, but that, in fact, remains so contaminated that it is unmarketable. Those bills also fail to adequately coordinate the state's right to assess personal liability with the state's right to lien the property, a situation that can double the actual loss of the landowner. I have previously sent to the Judiciary Committee Chairmen and Ranking Members my detailed analysis of the problems created by the Environment Committee bill approach, an analysis that I initially prepared for Representative Jessie Stratton, Co-Chair of the Environment Committee. I would be happy to provide a copy of that analysis on request. The Commission proposal avoids those problems by limiting the state's remedy to obtaining value out of the contaminated land through the state's lien on that property.

Lender issues:

The Commission draft does not address rights of lenders. Those rights are currently governed by section 22a-452b. As noted above, lenders are entitled to a limitation on liability for environmental pollution when they foreclose on collateral. Because that limitation on liability emerges from the concept of limiting the liability of an innocent party, the Commission initially considered folding the rule for an innocent foreclosing lender into the new innocent landowner defense. However, comments made to the Commission on an earlier proposed draft persuasively indicated that lenders are, in fact, a distinct group that should be addressed separately. Current federal law and a recent Massachusetts statute, for example, comprehensively address what acts of control or management may be taken by a lender without triggering liability as an owner. Other provisions in those statutes allow lenders to realize on their collateral by selling foreclosed property without any cleanup. These proposals, which were brought to the Commission's attention by the lending community, deserve consideration in the context of the commercial role of lenders. However, adoption of a provision allowing lenders to realize on their collateral notwithstanding an existing spill would require a public policy decision beyond the scope of this Law Revision Commission study of the case and the rights of innocent landowners. Because an existing statute already provides limited lender protections and because lender rights were not directly implicated in the decision, the Commission proposal does not address those issues.

Imposition of liability issues

Commissioner Timothy Keeney of the Department of Environmental Protection recommended that the Commission draft, in accordance with CERCLA, "begin by specifically defining the persons on whom liability is imposed (past and present owners and operators, transporters, etc.)." Existing statutes, however, appear to provide clear authority for ordering abatement of pollution (section 22a-432 and section 22a-433), assessing liability for pollution (section 22a-451), and imposing a lien on the land for the cleanup costs (section 22a-452a). While the legislature may wish to give further consideration to the adequacy of these provisions,

nothing in the Commission's study indicates that existing authority of DEP requires revision. The focus of the case and the Judiciary Committee request was on ensuring that DEP authority not be exercised in a way that improperly burdened an innocent party. The Commission proposal, therefore, does not address or clarify DEP authority except as it applies, to persons defined in the proposal as innocent landowners.

Conclusion:

The Commission review indicated that Connecticut law fails to provide adequate protection for innocent landowners who may currently be held fully liable for cleanup of environmental spills on their property notwithstanding lack of knowledge of or participation in causing the spill. Because those costs may substantially exceed the value of the landowner's interest in the property, current law imposes inappropriate liabilities on certain innocent owners who happen to be in the wrong place at the wrong time. The proposed Commission draft addresses that failure by limiting the innocent landowner's liability to the state's right to place a lien on his interest in the real estate, an interest that the legislature has already made subject to a lien for cleanup costs. The proposal balances the legitimate state interest in applying the value of contaminated property toward its cleanup costs with the legitimate interest of innocent persons to protection against unlimited liability for contamination for which they were not responsible.

Section F: House Debate on Senate Bill 820 - June 5, 1993

THE CONNECTICUT GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
JUNE 5, 1993

The House was called to order at 11:00 a.m. o'clock
Speaker Ritter in the Chair.

CLERK:

Page 9, Calendar 697, substitute for Senate Bill
820, AN ACT ESTABLISHING AN INNOCENT
LANDOWNER DEFENSE IN POLLUTION
CASES, as amended by Senate Amendment
Schedule "A". Favorable report of the Committee on
Appropriations.

DEPUTY SPEAKER PUDLIN:

The question is on acceptance and passage in
concurrence with the Senate. Will you remark?

REP. TULISANO: (29th)

Yes, Mr. Speaker. Mr. Speaker, the bill before us
deals with setting up a system in which individuals
who otherwise had no control over certain pollution
and say take it as an executor, or an executrix or
trustee under some will and if their property has been
subject to a spill or a discharge, will no longer be
liable for cleaning it up.

First, it includes two kinds, as I indicated. Those
who take it and those who are sitting there innocently
while someone else contaminates their property. And
they would have nothing to do with it or it was an act
of God or something like that.

Mr. Speaker, the Clerk has amendment LCO8049.

DEPUTY SPEAKER PUDLIN:

Would the Clerk please call LCO8049, Senate "A"?

CLERK:

LCO8049, designated Senate "A" offered by
Senators Jepsen and Daily.

REP. TULISANO: (29th)

Mr. Speaker, this amendment makes some technical
changes in the bill as I indicated if they knew or
reason to know. It also includes that after the
liability in line 121, there would have to be an
imposition of a lien against contaminated real estate
under a certain section of the General Statutes by
DEP. In line 90, dealing with security interest is that
it applies to spills or discharges which occurred
before or after the effective date of the act unless a
non-effective cost of the enforcement.

I move for its adoption.

DEPUTY SPEAKER PUDLIN:

The question is on adoption. Will you remark?

Representative Farr.

REP. FARR: (19th)

Yes, just through you to Representative Tulisano.

I am really confused on the line 47 where they
deleted "shall not be personally liable for any
assessment" and inserted the new language "except
through the imposition of a lien against the real
property". I thought the intent was to say that the
person wouldn't be personally liable, that the lien
would only be to the extent of the value and if we
allow them to be liable for a lien, aren't we back to
where we started? Because the lien is for, I would
assume, for the entire clean-up cost.

DEPUTY SPEAKER PUDLIN:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, the purpose of this is to
make it clear that the individual, the property itself,
the realty itself, is subject to the lien in of itself.
But the individual person is not personally liable to
other interest to property they have which may
otherwise occurred.

They may have other property. Under the old rule,
all of that property could be subject to the spill, to
costs for recovery for this spill under this one single
property. That is limited in this innocent landowner
piece.

DEPUTY SPEAKER PUDLIN:

Representative Farr.

REP. FARR: (19th)

Yes. Through you, Mr. Speaker. I understand what
the purpose was. I am concerned about line 47. It
seems to say that if you put a super lien on there for a
value that exceeded the property, you would be liable
to an amount that exceeds the value of the property.
Am I misreading that? We deleted the words "shall
not be personally liable".

REP. TULISANO: (29th)

Mr. Speaker, I understand the question and I will
read it closer to see if it is misreading or not. It could
very well be. Mr. Speaker, I think there is another
section of the statute that would clarify it, but this is a
very important statute and I would ask, unless there is
I just want to check it out.

DEPUTY SPEAKER PUDLIN:

The gentleman has requested leave to PT the bill.

Hearing no objection, the bill is passed temporarily
some objection, that we PT it until I can look at that
closely and compare those two sections.

Section G: House Debate on Senate Bill 820 - June 7, 1993

THE CONNECTICUT GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
JUNE 7, 1993

The House was called to order at 10:00 o'clock
a.m., Speaker Ritter in the Chair.

CLERK:

Page 8, Calendar 697. Substitute for Senate Bill
820, AN ACT ESTABLISHING INNOCENT
LANDOWNER DEFENSE IN POLLUTION
CASES, as amended by Senate "A". Committee
on Appropriations.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

I move for acceptance of the Joint Committee's
favorable report and passage of the bill in
concurrence with the Senate

SPEAKER RITTER:

The motion is on acceptance and passage in
concurrence with the Senate. Please proceed.

REP. TULISANO: (29th)

Yes, Mr. Speaker. Mr. Speaker, the bill before us
deals with establishing defenses to pollution when
dealing with ...it limits the liability of people who
have not caused any pollution on their land.

Mr. Speaker, the Clerk has an amendment, LCO8049.

CLERK:

Amendment LCO8049, designated Senate "A".

REP. TULISANO: (29th)

Mr. Speaker, this contains some language changes in
the amendment. However, we have another
amendment coming which incorporates, so therefore,
I would move for rejection of Senate Amendment
Schedule "A".

SPEAKER RITTER:

The question is on rejection. Will you remark
further? If not, I will try your minds. All in favor
of rejection, signify by saying Aye.

REPRESENTATIVES:

Aye.

SPEAKER RITTER:

Opposed, nay. Senate "A" is rejected. Care to
comment further? Representative Tulisano.

REP. TULISANO: (29th)

Clerk has amendment LCO9307.

CLERK:

LCO9307, House Amendment Schedule "A".

SPEAKER RITTER:

Will be designated House "A".

CLERK:

Offered by Representative Tulisano.

SPEAKER RITTER:

Representative Tulisano, you have the floor.

REP. TULISANO: (29th)

Yes. Mr. Speaker, this amendment clarifies who the
innocent landowner would be and how they would
receive their interest in the property. It indicates that
they won't be liable except through imposition of a
lien against the real estate under 22a-452a of the
General Statutes.

I think that follows what Representative Farr was
talking about. It clarifies another amendment we had
before. It indicates when it becomes effective. It
makes the line effective upon passage. I move for its
adoption.

SPEAKER RITTER:

The question is on adoption. Will you remark
further? Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, as I indicated, the amendment does
make some clarifications in the file copy. It does
straighten out how a person receives their interest in
the property. In my summary, I think I hit the major
parts of it.

SPEAKER RITTER:

Will you remark further? Representative Belden.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. Mr. Speaker, I guess just
to get something on the record, in the amendment,
line 16 we are adding "there was reasonably
foreseeable threat of pollution". Through you, Mr.
Speaker, does that mean acid rain? Does that mean
underground flow of below the water table of how
currents would carry materials that are not or may not
currently be on the property, but could migrate there
over a period of time? Through you, Mr. Speaker.

REP. TULISANO: (29th)

Through you, Mr. Speaker. Under current law, Mr.
Speaker, well under the proposal in the file copy, it
limits it to you knew of the actual mission and failed
to take steps to protect against a spill. This
requires, a reasonable foreseeable threat. You knew,
that say there was a tank farm on the adjoining site
and there was leakage going on and you could have
cleaned it up or stopped it before it happened
although it wasn't actual pollution yet. Not acid rain.

REP. BELDEN: (113th)

Mr. Speaker.

SPEAKER RITTER:

Representative Belden.

REP. BELDEN: (113th)

Just to clarify that further, I believe the gentleman indicated if the property owner knew of a spill or something that could potentially contaminate that property, you could consider that under this definition of a reasonably foreseeable threat?

Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. That is correct.

SPEAKER RITTER:

Representative Belden, you have the floor.

REP. BELDEN: (113th)

Mr. Speaker, would just the fact that something may have occurred on another property fall under that category or would there have to be some reasonableness that the individual who owned the property should reasonably have knowledge of that threat, that pending threat? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. I think if you look on line 17, which you knew or had reason to know. So, I think the reasonable standard is in there.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. I just wanted to ask those questions because this is a very complex area and probably is going to keep the legal profession and the chemists busy for the next fifty years. I don't think whatever we put in the law is going to cover all of the various possibilities that can in fact, occur.

Thank you.

SPEAKER RITTER:

Will you remark further? Representative Ward.

REP. WARD: (86th)

Mr. Speaker. Thank you, Mr. Speaker. Mr. Speaker, through you to Representative Tulisano.

SPEAKER RITTER:

Please proceed.

REP. WARD: (86th)

In line 30 of the amendment, there is language, although it doesn't cite as new, I am assuming it is new language which would seem to, I believe it basically makes the law retroactive unless there is a final judgment out there, so it is retroactive even to pending cases. Through you, am I reading that correctly, Mr. Speaker?

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. I believe that is true.

REP. WARD: (86th)

Through you, Mr. Speaker. Was that the original

intent of the original bill that it be applied effectively. I guess that was my first question. Was that the intent of the original legislation?

REP. TULISANO: (29th)

Mr. Speaker, I believe so. If we look at the progenitor of this legislation, last year there was a Star decision that is still floating around and that was the one that began this whole thing and I don't think it has come to final conclusion yet. And it was in response to that, this legislation even started.

And I think that is where it came from.

SPEAKER RITTER:

Representative Ward.

REP. WARD: (86th)

Thank you, Mr. Speaker. I am sorry. I just hadn't seen this before. Are there cases pending now that we are aware of that this undoes or is this reversing some sort of a recent court decision? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. As I indicated, the one I do know is something called Star and it was a case that actually started this legislation this way during the last session of the General Assembly. We tried to do a bill like it. It was a little bit complex. That case has not come down, as I understand it, to a final conclusion. And would effect that, but it is the one that got us looking at this whole issue.

REP. WARD: (86th)

Thank you, Mr. Speaker. As I understand it then, this amendment isn't really in response to that case, rather the original bill was in response to that case and this is really to clarify or make clear what the original legislation had in mind.

Through you, Mr. Speaker.

REP. TULISANO: (29th)

Through you, Mr. Speaker. That is correct. In fact, I believe in one of the decisions that came down, innocence was raised by the courts and we started to look at that whole area. This is the clarification of that issue.

REP. WARD: (86th)

Thank you, Mr. Speaker. I appreciate the answers. I just wanted to make clear that this was to make what clear what the original intent of the legislation was a year or two years ago, whichever it was. And not to sort of change something that we had in mind previously.

SPEAKER RITTER:

Representative Belden.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. Having now had time while somebody else was talking to read the rest of the amendment, through you to Representative Tulisano

if I might, Mr. Speaker.

On line 32 of the amendment, it indicates that this section shall apply to any spill or discharge which occurred before or after the effective date of this act.

Mr. Speaker, to the gentleman, is there any statute of limitations or is this going to hold harmless anybody back to 1900 who maybe had a spill or on an abutting property or something?

I am trying to figure out, Mr. Speaker, through you, just how far back we are going to relieve people of any responsibility?

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, It only applies to those people who fit the definition of an innocent landowner. And it is a person who either inherited it, without any knowledge or a trustee who takes in something like that and they are not going to personally liable. Under current law, they would be personally liable. So, if someone made the spill, a number of years ago, as an example, and they did have, as individuals, they don't come under the definition of innocent, an innocent landowner, then it would not apply to them. If this bill occurred, what we are really protecting is the personal assets of an individual so they don't have to go out and clean-up something and have no involvement with it.

SPEAKER RITTER:

Representative Belden, you have the floor, Sir.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. I appreciate the gentleman's response, but let's just talk about the innocent landowner who bought the property in 1978. Would he be relieved of having any responsibility based upon all of the various federal and state legislation that have made more items hazardous, changed items around? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, If the individual bought it in 1978, and didn't know about it, and still doesn't know about it, he has no responsibility, individually, or personally of other personal assets.

The land is still liable for the cleanup charges.

The best I can think of in news today, for sort of an example, I think is Stratford. Where they have some polluted land supposedly. People are all innocent and as innocent landowners, all of their assets are not liable for the clean-up. And they didn't know anything about it when they bought it. So, they would be protected in some instances, I guess.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. I would question whether

or not this was even legal because I think, as I understand it, and as the lawyers that I deal with on this issue, the minute you touch the property, no matter what, under the federal law, you become a potential participant in any legal action that can be related to that particular piece of land. Whether you in fact were the perpetrator or not or whatever else. Through you, Mr. Speaker. I appreciate the gentleman responding to that, if he might.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, as I understand it in our committee hearing meeting, the exception is in fact allowed by federal law. The exception. The innocent landowner exception is allowed under the federal statute.

For example, if your spouse dies and your spouse inherits the land from your father, your parent dies, you inherit the land, you take it over, you cannot be held personally liable, under this act to clean it up. That does not mean, however, the land itself. The State would have its lien when it goes in to clean it up and the land itself's value will be made available to pay for that clean-up. It is just that the individual is immunized and I will use that word loosely, from all of their total assets having to be drained for actions they had nothing to do with.

SPEAKER RITTER:

Representative Belden.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. My understanding was or is that even in that case, there is a need for proof of whether one had or did not have something to do with pollution on the property. I mean, that becomes, in of itself, an investigation and a defense and this is why my understanding is and every legal case regarding pollution that I know of, they always go after everybody who occupied owned or had anything to do with the property, in the case of ownership. I am not talking about landfills now. I am talking about ownership of generally commercial or industrial property. Mr. Speaker, I still have some concern that when we do this, we are absolving a party by law in Connecticut that does two things. Number one, as Representative Tulisano indicated, if it is inherited, the person who inherited it is free and clear even though the previous owner may have in fact, been a party to pollution and I just don't quite understand why we want to, in this law, right now, for Connecticut only, change the ground rules. I think in this whole area, common law is revolving as the environmental issues develop and are pursued through the courts and I find we are taking quite a jump here in suddenly deciding we are going to absolve the current owner of various properties because they may not be liable.

I think they still have some need to be a part of the actions that occur on their property.
Thank you, Mr. Speaker. I give you an example and that is if they are not liable, then what happens when the property is to be mitigated and who does that and what if the people don't want to give access for the property, being mitigated or tested prior to transfers to somebody else?

SPEAKER RITTER:

Representative San Angelo.

REP. SAN ANGELO: (131st)

Thank you, Mr. Speaker. A question through you to the proponent of the amendment, please?

SPEAKER RITTER:

Please proceed, Sir.

REP. SAN ANGELO: (131st)

Representative Tulisano, what would stop a town from purchasing a large block of land if they thought it might be polluted, but there was no testing done on it? Would they town be liable if they purchased that piece of land?

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

They would be innocent landowners by definition in the proposed law, not the law as it exists today.

SPEAKER RITTER:

Okay. Now, Representative Wasserman, would you mind one more time, yielding to Representative San Angelo so he has the floor so he can continue his thought and then we will go back to you?

Representative San Angelo, do you accept the yield, Sir?

REP. SAN ANGELO: (131st)

Yeah. Again, through you then, so the current landowner, the landowner that sold the land would still be liable for it or not?

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. Yes and under the Star decision we are talking about, it says that they are continually liable, the person who caused the pollution.

SPEAKER RITTER:

Representative San Angelo.

REP. SAN ANGELO: (131st)

I want to see if I am correct here. Through you, Mr. Speaker, so what would happen is if a town purchased that piece of land, the State would clean it up and then the State would have to go back and sue the original landowner?

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. What would happen is the State would have a lien on the land, should it ever get sold to be recompensated, but also, you could go after, and I think the State probably would, go after also, the original polluters of the land. The problem obviously is, are they available, can you find them.

Yes, they have that right.

REP. SAN ANGELO: (131st)

Okay. Thank you, Mr. Speaker.

SPEAKER RITTER:

Thank you, Sir. Representative Wasserman, the patient Representative Wasserman. You have the floor, Madam.

REP. WASSERMAN: (106th)

Thank you, Mr. Speaker. Through you, Mr. Speaker to the proponent, Mr. Tulisano.

SPEAKER RITTER:

Representative Tulisano.

REP. WASSERMAN: (106th)

Representative Tulisano, in academic terms, what would we be doing to the concept of strict liability, as I understand it?

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. Strict liability as I used to understand it used to mean the person who caused the pollution is strictly liable for the clean up costs. What happened when we wrote our first law

in 19-- whenever we did it, we also said, strict liability as Representative Belden has alluded to, applied to who ever owns the land, not just the cause of it. I objected that time and was told that that was the federal law as Representative Belden thinks it is. However, from testimony elicited today, not today, in this session, the Commissioner of DEP testified that in fact ever since 1986, the innocent landowner exception always existed in law. We were somewhat led astray in the past. That in fact, the federal law has that exception. In fact, that exception had been noticed by the courts of Connecticut and have indicated, before you go after, you have to go after the causes of the pollution who have strict liability and they sort of recognized it, but the invitation was there for us to clarify this whole area. As I indicated when I spoke the dialogue with Representative Ward.

REP. WASSERMAN: (106th)

Thank you, Mr. Speaker. Through you, Mr. Speaker, if I may? One more question.

SPEAKER RITTER:

Please proceed, Madam.

REP. WASSERMAN: (106th)

I don't see any reference to it. Is there a mention somewhere of flooding as a source of ...it is a kind of pollution. I don't see it mentioned anywhere. Is the intent that it does cover flooding? For

instance, if a dam breaks, the damage to the downstream owners, that kind of flooding?

REP. TULISANO: (29th)

Through you, Mr. Speaker. I don't think flooding is involved in this whole area of pollution. Do you mean if they brought some contamination from a river? Through you, Mr. Speaker.

REP. WASSERMAN: (106th)

Thank you.

DEPUTY SPEAKER PUDLIN:

Representative Angelo Fusco.

REP. FUSCO: (81st)

Thank you, Mr. Speaker. A question to the proponent, through you.

DEPUTY SPEAKER PUDLIN:

Frame your question, Sir.

REP. FUSCO: (81st)

Through you, Mr. Speaker. Representative Tulisano, if I could give you a hypothetical case, I would appreciate your best answer. I know the answer might be hypothetical, but I think I have a similar situation in my district and I don't want to be specific about the case.

Through you, Mr. Speaker, Representative Tulisano, if a person owned land adjacent to a federal super fund site, and that land is contaminated to what extent is not known, but there is evidence that the land is contaminated and the person who owns it dies and leaves in their will that land to another person who is aware that there is some pollution, who is aware that there is some pollution on the site, but doesn't know what they are really getting into or what they have inherited. Would this give them certain protection? Through you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Tulisano. Do you care to respond, Sir?

REP. TULISANO: (29th)

I care to Mr. Speaker, but I am trying to think.

Generally speaking, that is the area who we are trying to protect. The hooker is of course, he might have know, there might have been some pollution and the amendment includes some language to the effect that he might have been involved in it and I am not so sure if he doesn't have some obligation, at least to being to clean that, but I don't think he is still personally liable.

REP. FUSCO: (81st)

Through you, Mr. Speaker. Then I would take that a little further, if I could and ask if the person knew that the land that they inherited had some contamination, really doesn't understand the extent or the environmental issue, but they inherited it and they weren't involved in the contamination, this would give them some protection?

REP. TULISANO: (29th)

Through you, Mr. Speaker. That is what it is designed to protect.

DEPUTY SPEAKER PUDLIN:

Representative Fusco.

REP. FUSCO: (81st)

If the inheritance took place, prior to the passage of this act, would they still be covered? Through you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. The amendment includes spills that occur prior or after this act and there has been no final litigation in it and you will recall our dialogue with Representative Ward, then there would be some protection.

REP. FUSCO: (81st)

Thank you.

DEPUTY SPEAKER PUDLIN:

Representative Farr.

REP. FARR: (19th)

Yes, just to clarify some questions. I think some comments that were made by Representative Belden, so the Chamber understands.

What we are talking about here is a situation - somebody inherits property. At the present time, you inherit property, you get a million dollar piece of property, you've got a windfall and then it turns around and DEP comes in and says, guess what. It is going to cost \$3 million to clean it up and you owe \$2 million. That is what the present law says. What this amendment and what this bill is attempting to say is that if you inherit a one million dollar piece of property, you didn't contaminate it, you didn't know it was dirty, you get it, DEP comes in and says, guess what, it's dirty, it is going to cost \$3 million. They can put a lien on it. They can take the property.

So you lose the property, but they don't come after you personally over and above it and that is what the amendment and the bill are all about. It is relieving personal liability for people, from pollution that they didn't cause. It doesn't mean they don't lose the property, but at least they don't have to have personal liability over and above the property.

And I think that is what we are trying to get at here and that is why we want to make it for properties that are already out there because there are innocent people who didn't realize someone else had contaminated it prior to that.

I would support the amendment and the bill.

DEPUTY SPEAKER PUDLIN:

Representative Miller.

REP. MILLER: (122nd)

Thank you, Mr. Speaker. A quick question to the proponent.

DEPUTY SPEAKER PUDLIN:

Please proceed.

REP. MILLER: (122nd)

If I had a parcel that was worth \$50,000 and the cost to mitigate the property was \$100,000 and I thought the best idea for me to get away from any liability would be to file bankruptcy, would those laws protect me?

DEPUTY SPEAKER PUDLIN:

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I am not sure. If there is already a mortgage on the property and they went bankrupt and the mortgagee had to take back the property, they are already protected in the law.

For trustee in bankruptcy who takes it, the trustee would be an innocent landowner. If he took his trustee, but the land itself, the value of the land, would go to clean-up, if it was only worth \$50,000. But remember, if it was \$50,000 dirty, it maybe worth more once you clean it up to the closer the cost. I don't know if I answered the full question or if there was another. At least those two I know about.

REP. MILLER: (122nd)

Thank you. Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Wollenberg of the 21st.

REP. WOLLENBERG: (21st)

Yes, Mr. Speaker. I rise in support of this amendment and just by way of a little history. We had the super lien bill here a few years ago and at the time, we discussed some of these very issues and included some of these very issues in the super lien that was where someone did own property. It was found to be dirty. The law that was passed in the dark in the corner in the middle of one night the year the before, was not recognized until October of the following year when banks had to deal with it. Banks refused to put on mortgages because they would be liable under the super lien bill and everything came to a halt. We did change that at that time. We limited liability on banks and we also limited liability on people who owned the land to the land itself, if they were not the polluter.

Now, if they were the polluter, it was a different case, but in that case, if someone bought the corner, it used to be a gas station and then found out it was polluted, all under the super lien, which was another type of recovery for the State, in these polluted areas, they would only recover that property, the value of that property. They couldn't recover the person's home and so on. There was no personal liability and we limited it at that time.

This just extends it. It is another circumstance and we are just extending it.

Thank you.

DEPUTY SPEAKER PUDLIN:

Thank you, Sir.

Representative Knierim.

REP. KNIERIM: (16th)

Thank you, Mr. Speaker. Through you, a question to the proponent of the amendment?

DEPUTY SPEAKER PUDLIN:

Frame your question, Sir.

REP. KNIERIM: (16th)

Thank you, Mr. Speaker. Through you to Representative Tulisano, I am interested in the language beginning on line 30 of the amendment and my question is whether the language is intended to affect in any way, contractual rights between parties? The reference here is to actions and presumably, that means a state initiated action for collection of costs, but if the parties in a transaction have made provision for the payment of remediation expenses, would they be, in any way, affected? Through you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Tulisano.

REP. TULISANO: (29th)

Just let me pull the file copy and put the amendment together for a second. Thank you.

DEPUTY SPEAKER PUDLIN:

Indulgence of the Chamber for a moment, please.

REP. TULISANO: (29th)

Through you, Mr. Speaker. As is clear when you read them together, this is all new language. It is Subsection D dealing with innocent landowner situations and the liability of the parties involved and how. I think you have to read this section within that which I think Representative Knierim identified as the obligations of the landowner and whether or not they have to pay costs and that kind of an action. I don't believe, when you are taking the context of the file copy and this, that it goes to a third party, contractual relations, people had a contract to do something like a clean-up company of some sort. It doesn't go there at all.

I think that is clear when you read it where it falls in the file copy.

DEPUTY SPEAKER PUDLIN:

Representative Knierim.

REP. KNIERIM: (16th)

Thank you, Mr. Speaker. Just to be a bit more specific in the question, I think that addresses my concern, but to be more specific, let's suppose that an individual sells a piece of property to someone, steps are taken, commercially reasonable steps are taken to investigate whether there are some environmental problems known are discovered, but the parties, nonetheless, in their deed or in their contracts that survive the deed, provide specifically that the buyer is going to pay for any costs for remediation. Is it the case, through you, Mr. Speaker?

DEPUTY SPEAKER PUDLIN:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. I think that would still be a valid contract. The relationship in here deals with between the State and the individual.

REP. KNIERIM: (16th)

Thank you, very much.

DEPUTY SPEAKER PUDLIN:

Will you remark further on House "A"? Will you remark? If not, let me try your minds. All those in favor of House "A", signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER PUDLIN:

Contrary minded, signify Nay.

The ayes have it. The amendment is adopted. Will you remark further on the bill? Will you remark?

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you, Mr. Speaker. The Clerk has an amendment, LCO7418. May he please call and may I request leave of the Chamber to summarize?

DEPUTY SPEAKER PUDLIN:

Will the Clerk please call LCO7418, House "B"?

CLERK:

LCO7418, House "B" offered by Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Yes. Mr. Speaker, this amendment would take the limited landowner defense to its logical conclusion.

It would change lines 71 through 74 of the existing bill and shall say that the interest of the state in a lien against contaminated property would be only to the extent that the interest is unencumbered by a mortgage or other lien on the property and that the innocent landowner would be liable only for his equity in the property and not for that covered by an incumbrance.

I move adoption.

DEPUTY SPEAKER PUDLIN:

Will you remark further, Sir.

REP. RADCLIFFE: (123rd)

Yes. Mr. Speaker, this particular amendment, as I indicated is the logical extension of what we are attempting to do here with the innocent landowner defense

The innocent landowner is by definition innocent, a stranger to the pollution, as it were. Not one who caused the condition although he or she now owns land and this could also be a corporation, owns land that is subject to pollution and therefore, subject to the legitimate public policy interest in cleaning that pollution.

But we want to encourage land to be transferred.

We want to encourage people to begin businesses on

commercial property to perhaps buy that property, to take a mortgage on that property, in order to finance and enhance capitol development and other activity. At present, if an individual files a mortgage on that property, the innocent landowner, for example takes a mortgage on a piece of property, the State might have a lien up to the total value of the property.

Now, as was discussed earlier in debate, the State cannot, under any circumstances, attempt to satisfy that lien out of the personal assets of the individual who owns the property or the corporation or the partnership or other entities. What can be done, however, is that the lien can be foreclosed and at the time of the foreclosure, the lending institution, although no longer having a security interest, could enforce its note or its underlying obligation against the innocent landowner.

So, in effect, we defeat the purpose of a portion of this act. We defeat the purpose of this act because the innocent landowner is forced to pay for the clean up, although not directly to the State, out of the proceeds of what amounts to an attempt to enforce a note on property other than the property which is subject to the pollution.

A mortgage is usually guaranteed in two ways. One, by an incumbrance on the property and secondly, by a promissory note, signed by the individual to be discharged.

Even if the bank can't enforce the mortgage against the property in question, there is nothing to prevent an existing law that I know of from the lending institution attempting to enforce that obligation in a suit for which a prejudgment remedy was presumably would be appropriate against the other landowner. So therefore, what this says is you are truly innocent as a landowner, if you had nothing to do with the pollution, if you didn't know or have reason to know of any incumbrance on that particular property, then we are going to hold you truly harmless, not only for anything other than the equity in this property, which you bought is a legitimate risk, but also from a subsequent action by a third party. Thank you.

DEPUTY SPEAKER PUDLIN:

Representative Farr.

REP. FARR: (19th)

Through you, Mr. Speaker to Representative Radcliffe. Representative Radcliffe, my only, my major concern with this amendment is, does this cause any inconsistency with federal law? Is this going to make our act not consistent with federal law, therefore, not giving the protection the underlying bill would do? Through you, Mr. Speaker to Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. I am not sure whether or not there would be an inconsistency with federal law. I know that there has been an inconsistency with regard to the innocent landowner defense and that of course, is the reason for the underlying bill, that particular inconsistency.

Through you, Mr. Speaker.

REP. FARR: (19th)

Through you, Mr. Speaker to Representative Radcliffe.

Under this language, if the innocent landowner had a \$1 million piece of property and then subsequently, to buying it, put a \$900,000 mortgage on the property, does this language say that he is only liable to the equity after - above the \$900,000?

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. That is correct provided that he was a truly innocent landowner at the time. If there were an incumbrance which were placed on the property, subsequent to the purchase and the landowner had known or had reason to know at that time, under existing state and federal law, that the property was contaminated, then he would not truly be an innocent landowner to the extent that he had relinquished the interest in land to the lending institution to the extent of the security interest.

Through you, Mr. Speaker.

REP. FARR: (19th)

Through you, Mr. Speaker to Representative Radcliffe. I am a little bit confused then. The \$900,000 lien by the lending institution, does the lending institution now lose their \$900,000 lien as well or are they protected under other law because they are a lender? Are they able to claim the \$900,000?

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. I believe they would be protected under other law and in the event that the landowner was not a truly innocent landowner, would also preserve remedies under the negotiable instrument, the note, and if their lien on the property would then become secondary to the so-called super lien.

Through you, Mr. Speaker.

REP. FARR: (19th)

Thank you, Mr. Speaker. Thank you, Representative Radcliffe. I think I am very concerned about this amendment. The underlying bill is long overdue. I think the amendment, as I understand it, would allow an innocent landowner to acquire the property, let's say for one million dollars, then put a million dollar mortgage on it, in affect, getting his money out of the property and then wouldn't be liable.

I think the amendment goes further than we had intended. I am concerned it may make some problems with the underlying bill.

Thank you.

DEPUTY SPEAKER PUDLIN:

Thank you. Will you remark further on House "B"? Representative Radcliffe.

REP. RADCLIFFE: (123rd)

For the second time, Mr. Speaker. Mr. Speaker, I think what we have here are two public policies which are to a certain extent, in conflict with one another. One, it is the public policy to insure that pollution which may be decades old in this State, which may have occurred at a time when the means of that pollution really was, affect rather of the use of that land was really unknown to the landowner, has had its affects and ramifications for clean-up, far beyond what could have been anticipated by the original owners. And that ought to be abated and the property put in condition where it can be used in a suitable fashion. That is one public policy.

The other public policy, however, is to encourage individuals to take over a piece of property, take over a business, which could be subject to something like this which they would have no way of knowing. Would have no way of knowing by an examination of the land records, would have absolutely no way of knowing when they purchased the property and most properties, at least most properties commercial properties, when they are purchased, involve the financing of that property to a third party. You are going to have a third party who is involved, that third party, the lending institution, is already protected under state law as we have said.

But what of the individual who is taking the risk?

Yes, under the underlying file copy, which is long overdue, which deals with the Star case and we can discuss that after the amendment has been dispensed with, the innocent landowner is only to be liable up to the value of the property. Not to the total cost of the clean-up.

But that property is usually encumbered. And even though the incumbrance may come second to the super lien, even though the bank would then be in a secondary position because of this lien, because of this lien which could in fact, be foreclosed, there is nothing that I know of in existing law and I stand to be corrected on this, but there is nothing that I know of in existing law which would say that that bank, that institution, could not take that security instrument and assuming that the obligor had other property, attempt to enforce that security interest in a law suit, attempt to enforce that security interest by means of an attachment on a prejudgment remedy, or otherwise and that is the reason for the existing bill. And the amendment, Mr. Speaker, I think it is consistent with the file copy and would urge adoption.

Thank you.

DEPUTY SPEAKER PUDLIN:

Thank you, Sir. Will you comment on "B"?
Representative Stratton.

REP. STRATTON: (17th)

Through you, Mr. Speaker a question to the
proponent of the amendment.

DEPUTY SPEAKER PUDLIN:

Ready, Representative Radcliffe.

REP. STRATTON: (17th)

Just very simply in that this amendment would
clearly involve someone assuming the liability for the
rest of the value of that property in terms of the
expense of cleaning it up if the owner's interest was
not sufficient to do that. I am wondering whether the
proponent has a fiscal note on this.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. I do have a fiscal note
and anticipating the next question, would be pleased
to share with the Chamber.

The fiscal note does indicate it limits the
landowner exposure and limits therefore, what the
State can recoup for the clean-up costs and therefore,
it would involve potential significant cost to the State
for cleanup contamination. It could also result in
savings to municipalities because municipalities and
municipal property is subject to the super lien.
There could be significant cost to the State, but
those were undetermined, according to the fiscal note
that I have.

Through you, Mr. Speaker.

REP. STRATTON: (17th)

Just in answer to that question while I think all
of us would love to be in a position to say that the
State of Connecticut would assume that kind of
liability for any contaminated properties in the State,
given the fact that we have no clear indications of
how significant that could be and I guess most of us
assume it could be very, very significant, I think that
it is clearly irresponsible for this Chamber to say that
we are going to absolve an innocent landowner of
that liability clean-up of property and let them recoup
the value of the that property when it is later sold
after the taxpayers of Connecticut have footed the bill
for that and would therefore, strongly oppose the
amendment.

DEPUTY SPEAKER PUDLIN:

Will you remark further on "B"? If not, let me try
your minds. All those in favor of House "B",
signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER PUDLIN:

Those opposed, nay.

REPRESENTATIVES:

No.

DEPUTY SPEAKER PUDLIN:

The nays clearly have it. The amendment is passed.

Will you remark further on the bill, as amended?

Representative O'Neill.

REP. O'NEILL: (69th)

Yes, Mr. Speaker. If I may, a couple of questions
to Representative Tulisano.

When we are talking about the situation involving
contamination of land, let's say we are talking about a
gasoline station and there has been a release of
gasoline on to that land and it travels away from that
land on to somebody else's land, perhaps
contaminating a well or something like that. The
people start to become aware of some problems with
their water. Would this, what is the level of
innocence in terms of knowledge that we are talking
about knew or should have known that the land is
contaminated if their tests start to show that their
water starts to be something that indicates there is a
problem with it? Through you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. They have some
obligation even with the proposal before us to take
steps to alleviate any further contamination. They
probably could also go against the ...they have a civil
right of action against the person who is
contaminating their land to try to get them to clean it
up as presumably, the State would go against that
person if they notified them and that person has the
obligation of at least reimbursing them for their
clean-up.

DEPUTY SPEAKER PUDLIN:

Representative O'Neill.

REP. O'NEILL: (69th)

Thank you. What would be the level of a situation
where let's say there's a known contamination on a
piece of land with say a gas station across the street
from you and your next door neighbor says their well
is contaminated, they have a test from the State
showing contamination on one side and your
neighbor on the other side says he's got
contamination, but your well is tested and doesn't
show any of that benzine contamination, or whatever
the other substance was that might be in the water to
show that you've got a contaminated piece of land
now.

Are you able to say that you are innocent insofar
as you don't really know that your land is
contaminated, even though everyone around you
seems to be in that status? Through you, Mr. Speaker.

REP. TULISANO: (29th)

Through you, Mr. Speaker, I think the amendment
says you have to take reasonable steps to check it out
and reasonably know you're not, so that would be I
think unreasonable and I don't think they can come

under innocence by trying to ignore facts that would lead them to a conclusion.

DEPUTY SPEAKER PUDLIN:

Representative O'Neill.

REP. O'NEILL: (69th)

Just one very last question here, then. So a person who knows that their neighbors are contaminated is under an obligation, then, to make some sort of an inquiry to do some testing to see if perhaps they are contaminated as well, in order to maintain their innocence hereunder. Through you, Mr. Speaker.

REP. TULISANO: (29th)

Through you, Mr. Speaker, that's correct.

REP. O'NEILL: (69th)

Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Will you remark further? Will you remark further on the bill as amended? If not, staff and guests to the well of the House. Members please be seated. The machine will be opened.

CLERK:

The House of Representatives is voting by roll. Members to the Chamber, please. Members to the Chamber, please. The House of Representatives is voting by roll call.

The House is voting by roll. Members to the Chamber please. Members to the Chamber please.

The House is voting by roll.

DEPUTY SPEAKER PUDLIN:

If all the members have voted and if your votes are properly recorded, the machine will be locked. The Clerk will take the tally.

CLERK:

Senate Bill 820 as amended by House "A".

Total number voting 141

Necessary for passage 71

Those voting yea 141

Those voting nay 0

Those absent and not voting 10

DEPUTY SPEAKER PUDLIN:

The bill as amended passes. The Clerk please return to the Call of the Calendar.

Section H: Senate Debate on Senate Bill 820 - June 8, 1993

1993 GENERAL ASSEMBLY
SENATE

TUESDAY
June 8, 1993

THE CLERK:
Calendar Page 12, Calendar No. 406, File No. 690,
Substitute for Senate Bill 820, AN ACT
ESTABLISHING AN
INNOCENT LANDOWNER DEFENSE IN
POLLUTION CASES. (As amended by Senate
Amendment Schedule "A" and House Amendment
Schedule "A").
Favorable Report of the Committee on
Appropriations.
The House rejected Senate Amendment Schedule "A"
on June 7th.

THE CHAIR:
The Chair would recognize Senator Jepsen.

SENATOR JEPSEN:
Thank you, Madam President. I move adoption of the
Joint Committee's Favorable Report and passage of
the bill in concurrence with the House.

THE CHAIR:
Thank you very much. Would you wish to remark
further?

SENATOR JEPSEN:
I would, thank you, Madam President. This is a
bill that we passed I believe unanimously or close to
unanimously a couple of weeks ago, sent it down to
the House, so there has been some discussion
between us and the House on certain technical
aspects of the bill and applicable dates, in particular,
with regard to fiduciaries and in the end we've
resolved to go with the House's version of the
technical questions and I would urge support for the
bill as amended by the House.

THE CHAIR:
Thank you very much. Would anybody else wish to
remark? Senator Kissel.

SENATOR KISSEL:
Madam President, I would move re-adoption of
Senate Amendment "A" regarding this bill.

THE CHAIR:
Thank you very much. You have a motion before you
by Senator Kissel to readopt Senate Amendment "A."
Senator Kissel, would you like to speak on your
motion?

SENATOR KISSEL:

Yes, Madam President. One of the things involved in
Senate Amendment "A" is a simple standard
regarding what would make up an innocent
landowner. What we're doing here, if you read the
legislative notes regarding this bill, is exposing the
State of Connecticut to potentially millions and
millions of dollars worth of liability.

Senate Amendment "A" makes sure that individuals
involved had knowledge or had the need to know
regarding a standard on whether they were innocent
or not innocent. By disallowing this amendment, it's
my understanding that that standard has been reduced
so that an individual could merely state, let's say in
the process of civil case, that they did not know and
the questioning would end with the bare assertion of
lack of knowledge. It's my firm belief that if we are
going to expose the State of Connecticut to
potentially millions and millions and millions of
dollars of liability to take care of these toxic waste
spills, contamination, environmental problems, that if
in a court of law can be indicated that an individual
had a reason to know if the line of inquiry could be
expanded so that if the person made the bare
assertion that they did not know that this land was
contaminated, that upon further questioning an
attorney could bring out that the individual had a
reason to know.

My reasoning for this is that by discouraging real
knowledge we almost encourage individuals to be
ignorant of the risks associated with certain parcels of
land and we don't want to do that. So by making the
standard somewhat more expansive, especially when
we're dealing with a situation which could expose the
State of Connecticut to millions and millions of
dollars of liability, we should have a higher standard,
not just bare knowledge or lack of knowledge, but
whether the person had a reason to know, whether
their spouse perhaps was engaged in a business that
involved chemicals or toxic wastes, whether the
individual may have been involved in a small,
privately held corporation and therefore had a reason
to know what was going on on the parcel of land, all
sorts of different possibilities.

It seems like a very fine point, but what I want to
do is allow the attorney that's involved in this case to
have a little freer reign before the State of
Connecticut says this individual may indeed assert
that they are innocent and therefore the state will
absolve them of some of their liability because, and

as we'll get into later on with the rest of this bill, it's my understanding that the state is giving up through this legislation an ability to go to that landowner for more than the value of the land and that landowner may indeed be a millionaire, may be a very wealthy corporation and I believe this applies to both individuals, corporate and personal.

So I think that's a big change and I don't think it's too much to ask that we readopt Senate "A".

Thank you, Madam President.

THE CHAIR:

Thank you very much. The Chair --.

SENATOR KISSEL:

And I would ask for a roll call on this, Madam President.

THE CHAIR:

Thank you very much. Senator Jepsen, on the motion to readopt, sir.

SENATOR JEPSEN:

I would oppose the motion to readopt. I would refer Senator Kissel to the House Amendment Schedule "A" that was adopted. It adopts exactly the same language, exactly the same standard in line 17 of having a reason to know that it was in Senate Amendment Schedule "A" that he would like us to adopt. To adopt Senate "A" would not only be redundant, it would send it back to the House and certain death, so apparently Senator Kissel has made a technical mistake in misreading the House Amendment. The House Amendment does exactly what he wants the Senate Amendment to do.

THE CHAIR:

Thank you very much. Would anybody else wish to remark on the motion to readopt Senate "A"? Are there any further remarks on the motion to readopt Senate "A" on Senate Calendar 406? Senator Kissel for the second time.

SENATOR KISSEL:

Thank you, Madam President. I would be happy if Senator Jepsen would be willing to just have this go P-T. If he can assure me with the amendment that the House passed before me and we can resolve this issue, I'd be happy, because my intent is not to tank this bill.

THE CHAIR:

Thank you very much. Senator Jepsen.

SENATOR JEPSEN:

What if I suggested the Chamber stand at ease momentarily. I think that we could resolve this very quickly.

THE CHAIR:

Thank you very much. The Chair will stand at ease..

THE CHAIR:

The Chair will recognize Senator Kissel. Have you and Senator Jepsen had your conversation?

SENATOR KISSEL:

Yes, Madam President, I have reviewed the House Amendment to this bill, House Amendment Schedule "A", and my concerns regarding Senate Schedule "A", which was rejected by the House, my concerns have been ameliorated, so with the President's permission, I would withdraw my motion to readopt Senate "A".

THE CHAIR:

Senator Kissel, you've got the Chair's permission to withdraw Senate "A", I mean your motion regarding the re-adoption of Senate "A". Senator Kissel has withdrawn his motion, so we now have in front of us Senate Calendar 406, Substitute for Senate Bill 820, with House Amendment "A" only and no more other motion regarding that. Senator Jepsen, do you wish to speak for the third time, if there's no objection? Go ahead, sir.

SENATOR JEPSEN:

Thank you, Madam President. Not to belabor it, this is a bill that passed, I believe on Consent recently. It is a good bill which protects innocent purchasers or owners of land limiting their liability on a cleanup to the value of the land that they own and it's a fair bill. It's taken a lot of work by a number of interested parties and I urge its adoption.

THE CHAIR:

Thank you very much. Would anybody else wish to remark? Senator Kissel, do you wish to remark?

SENATOR KISSEL:

Yes, Madam President, just through you, questions to the proponent and I understand this matter went forward on a previous Consent Calendar, but in being concerned about my amendments, I also have some further concerns about the bill that I think since it's before us, perhaps we could easily clear up. In the file there's a note that states very clearly that Section 2 of the bill makes an innocent landowner liable to the extent of his interest in the property under certain circumstances, but the language in Section 3 appears to conflict by leaving the innocent landowner free of any liability whatsoever. My concern to create a proper legislative history for this bill is which takes precedence, Section 2 or Section 3, through you, Madam President?

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

It is my understanding that the state retains its Super Lien on the land. There's no intention in Section 3 to remove all liability from the landowner and that the intention of the legislation is to, however, to limit the landowner's liability -- the landowner's value in the land.

SENATOR KISSEL:

Through you, again, to the proponent.

THE CHAIR:

Yes, Senator Kissel.

SENATOR KISSEL:

Thank you. Is there any portion of this bill which is retroactive or is does this just take effect from the date of adoption? in other words, would this apply to any past cases that may be before the courts at this time, through you, Madam President?

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

Thank you, Madam President. Please excuse the delay, with the assistance of able counsel. This Section D of House Amendment Schedule "A" makes clear that this would apply to any action in court that has not reached a -- where action is not final and is not subject to an appeal.

So it's the opinion of -- aha, through you, Madam President, so this law now applies to the Starr vs. Commissioner Case, which is pending before the State Supreme Court? Is that my understanding, through you, Madam President?

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

I'm not familiar with the specifics of that case, but if what you say is true and action is not final, it would appear to apply.

SENATOR KISSEL:

And through you, Madam President, that part of the House Amendment is new to this bill, through you, Madam President?

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

I believe it clarifies what we intended to do throughout the tortuous road of bringing this legislation before us now.

SENATOR KISSEL:

So, again, through you, Madam President, it is retroactive. It applies to any case that's pending in the court system at this time as long as it hasn't reached a final determination, and as an addendum to that, through you, Madam President, I'm to assume that an appeal before the State Supreme Court is not considered a final determination, through you, Madam President.

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

That is my understanding, but that's not what I'm here to judge. Retroactivity is a relative question. If it's not retroactive relative to actions that it has not reached a final action, it is retroactive relative to actions that have already commenced.

SENATOR KISSEL:

And through you, Madam President, as a Point of Clarification regarding this bill, it says that the state's liability would be limited, or the individual's liability, the innocent landowner's liability would be limited to the extent of the value of the land that is being cleaned up and my question, through you, Madam President, is if the state does not file a lien against that land, but clearly had a right so to do, could the state file a lien against other land the landowner may have to the value of the land that may have been sold or encumbered in some other way before the state asserted its right against that original land, through you, Madam President?

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

It's my understanding that the Super Lien is on the contaminated land alone.

SENATOR KISSEL:

Through you, Madam President, regarding the case that may be before the State Supreme Court at this time, then it would be advantageous for the state to file a lien against that land to the full extent of the value of the land if it appears that cleanup costs might exceed the value of that land, through you, Madam President.

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

It's not my position to judge what would be to the state's advantage in that situation.

SENATOR KISSEL:

So, again, through you, Madam President, if the state fails to file a lien against the land, then any rights by the "innocent land --" any liability of the innocent landowner is cut off? Through you, Madam President, the state's only recourse is to that contaminated land and that alone, through you, Madam President.

THE CHAIR:

That is correct.

SENATOR KISSEL:

And, through you, Madam President, for individuals that inherit property, is it correct to interpret that this bill, without an inquiry as to whether they knew or reasonably knew of the existence of contamination, that if they acquire the land through inheritance, they are immediately placed in the class of innocent landowner despite any knowledge or reasonableness of their lack of knowledge that may exist, through you, Madam President?

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

If they're already liable for acts they may have committed, they would have remained liable. You

cannot cleanse them of that, but apart from that exception, that would be correct.

SENATOR KISSEL:

Can I, as a Point of Inquiry, through you, Madam President, why? Why are we absolving people who acquire the land through inheritance? Why are we not asking whether they knew or had a reasonable belief of lack of knowledge? Why are they being targeted as a class to be immediately made innocent landowners, through you, Madam President?

SENATOR JEPSEN:

Number one, it conforms with the federal law, and number two, if you think it through, that would be quite a treat to inherit a piece of polluted land from Uncle Bill and find that the -- let's say it was worth a million bucks and there was a \$2 million liability for cleanup and what you would in fact inherit, as what Senator Kissel has suggested, is that you would inherit not only the million dollars of land, but the \$2 million in cleanup costs. I'm not sure that that's correct. That's a nice present from Uncle Bill.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

This is by way of a statement, no further questions to the proponent. I realize that this went through this body once before very quickly on a Consent Calendar and I appreciate the fact that it's found its way back up here. I also want everyone to realize that the House Amendment very clearly makes this legislation apply to a pending legal case as noted in the file note, which case, the Starr vs.

Commissioners, CV910398162, which is a matter pending in, having to do with land in my hometown of Enfield. I don't have a fundamental problem with absolving innocent landowners and as a principle to guide us, I think protecting various assets of a truly innocent landowner from this type of exposure to liability is good public policy. Nonetheless, what we should all realize when we pass this legislation is that the state heretofore will be in a position, which it was my understanding that the Commissioner of the Department of Environmental Protection had objected to because in the file noted, it clearly indicates that the potential passage of the legislation would limit the liability of innocent landowners and the potential costs to the state would be in the tens of thousands to multi-millions of dollars for each potential site for remediation.

So by this small piece of legislation, which clearly doesn't have a lot of attention, the state could be opening itself up for multiple millions of dollars of liability. As long as everybody is aware of that, I don't have a problem and I think the case that pulls at our heartstrings is the individual that gains land by inheritance, but I think we should pay close

attention to this legislation as it is utilized in the court system, particularly by individuals that may be involved in corporations, either closely held corporations or larger corporations because when we get to the issue of cleaning up toxic waste spills, clearly, with the push for environmental reforms, our State of Connecticut could be looking at a major burden on its state budget, but given all the assurances that have been given to me by the proponent, Senator Jepsen,

I will support this bill. Thank you, Madam President.

THE CHAIR:

Thank you, Senator Kissel. Would anybody else wish to remark? Are there any further remarks on Senate Calendar 406? Are there any further remarks?

Senator Jepsen, if there is no objection, would you like to place this item on the Consent Calendar?

SENATOR JEPSEN:

I so move.

THE CHAIR:

Thank you very much. Is there any objection to placing Senate Calendar 406, Substitute for Senate Bill 820, on the Consent Calendar? Yes, there is an objection. Senator Kissel.

SENATOR KISSEL:

Yes, Madam President, I'd like to have this go on roll.

THE CHAIR:

Okay. Thank you very much. Mr. Clerk, would you please make the necessary announcement for a roll call vote. Wait a minute. A roll call on Calendar 406.

THE CLERK:

An immediate roll call has been requested in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

Thank you very much, Mr. Clerk. The issue before the Chamber is Senate Calendar 406, Substitute for Senate Bill No. 820 with House Amendment "A" only. The machine is on. You may record your vote. Have all Senators voted and are your votes properly recorded? The machine is closed.

The result of the vote:

32 Yea

4 Nay

0 Absent

The Bill Passes.

Section I: Public Act No. 93-375

Substitute Senate Bill No. 820

AN ACT ESTABLISHING AN INNOCENT LANDOWNER DEFENSE IN POLLUTION CASES.

Section 1. (NEW) As used in this section, section 2 of this act and section 22a-433 of the general statutes, as amended by section 3 of this act:

(1) "Innocent landowner" means: (A) A person holding an interest in real estate, other than a security interest, that, while owned by that person, is subject to a spill or discharge if the spill or discharge is caused solely by any one of or any combination of the following: (i) An act of God; (ii) an act of war; (iii) an act or omission of a third party other than an employee, agent or lessee of the landowner or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the landowner, unless there was a reasonably foreseeable threat of pollution or the landowner knew or had reason to know of the act or omission and failed to take reasonable steps to prevent the spill or discharge, or (iv) an act or omission occurring in connection with a contractual arrangement arising from a published tariff and acceptance for carriage by a common carrier by rail, unless the landowner knew of the act or omission and failed to take reasonable steps to prevent the spill or discharge; or (B) A person who acquires an interest in real estate, other than a security interest, after the date of a spill or discharge if the person is not otherwise liable for the spill or discharge as the result of actions taken before the acquisition and, at the time of acquisition, the person (i) does not know and has no reason to know of the spill or discharge, and inquires, consistent with good commercial or customary practices, into the previous uses of the property; (ii) is a government entity; (iii) acquires the interest in real estate by inheritance or bequest; or (iv) acquires the interest in real estate as an executor or administrator of a decedent's estate or as a trustee that receives the interest in real estate from a decedent's estate, provided such decedent was the person holding the interest in real estate.

(2) "Discharge" means a discharge causing pollution, as those terms are defined in section 22a-423 of the general statutes.

(3) "Spill" means a spill as defined in section 22a-452c of the general statutes.

Sec. 2. (NEW) (a) An innocent landowner holding or acquiring an interest in real estate that has been subjected to a spill or discharge shall not be liable, except through imposition of a lien against that real estate under section 22a-452a of the general statutes, for any assessment, fine or other costs imposed by the state for the containment, removal or mitigation of such spill or discharge. A person claiming immunity under this subsection must establish that he is an innocent landowner by a preponderance of the evidence. In determining whether a person is an innocent landowner, a court may take into account any specialized knowledge or experience of the person, the relationship of the consideration paid for the interest in the real estate to the value

of such interest if the real estate were not polluted, commonly known or reasonably ascertainable information about the real estate, the obviousness of the presence or likely presence of the spill or discharge, and the ability to detect such spill or discharge by appropriate inspection. (b) Notwithstanding the provisions of subsection (a) of this section: (1) Any amount paid by the commissioner of environmental protection pursuant to subsection (b) of section 22a-451 of the general statutes to contain, remove or mitigate the effects of the spill or discharge shall be a lien against the real estate to the extent of the interest of the innocent landowner therein as provided by section 22a-452a of the general statutes, and (2) any person, including an innocent landowner, who sells an interest in real estate that has been subjected to a spill or discharge shall be liable, to the extent of the net proceeds of such sale, for the costs of containing, removing or mitigating the effects of such spill or discharge. For the purposes of this subsection, "net proceeds" means proceeds received by the person after payment of the reasonable expenses of the sale and satisfaction of all debts secured by any security interests. (c) The liability of a person holding a security interest in real estate who acquires title to the real estate by virtue of a foreclosure or tender of a deed in lieu of foreclosure shall be limited as provided in section 22a-452b of the general statutes. (d) This section shall apply to any spill or discharge which occurred before or after the effective date of this act, except that it shall not affect any enforcement or cost recovery action if such action has become final, and is no longer subject to appeal, prior to the effective date of this act.

Sec. 3. Section 22a-433 of the general statutes is repealed and the following is substituted in lieu thereof: Whenever the commissioner issues an order to abate pollution to any person pursuant to the provisions of section 22a-430 or 22a-431, an order to correct potential sources of pollution pursuant to the provisions of section 22a-432 or an order to correct a violation of hazardous waste regulations pursuant to section 22a-449 and the commissioner finds that such person is not the owner of the land from which such source of pollution or potential source of pollution emanates, he may issue a like order to the owner of such land or shall send a certified copy of such order, by certified mail, return receipt requested, to the owner at his last-known post-office address, with a notice that such order will be filed on the land records in the town wherein the land is located. When the commissioner issues such an order to an owner, the owner and the person causing such pollution shall be jointly and severally responsible. Any owner to whom such an order is issued or who receives a certified copy of an order pursuant to this section shall be entitled to all notices of, and rights to participate in, any proceedings before or orders of the commissioner and to such hearing and rights of appeal as are provided for in sections 22a-436 and 22a-437. AN INNOCENT LANDOWNER, AS DEFINED IN SECTION 1 OF THIS ACT, SHALL NOT BE HELD LIABLE EXCEPT THROUGH IMPOSITION OF A LIEN AGAINST THE CONTAMINATED REAL ESTATE UNDER SECTION 22a-452a, FOR ANY ASSESSMENT, FINE OR OTHER COSTS IMPOSED BY THE STATE UNDER THIS SECTION IN ANY ENFORCEMENT OR COST RECOVERY ACTION IF SUCH ACTION HAS BECOME FINAL, AND IS NO LONGER SUBJECT TO APPEAL, PRIOR TO THE EFFECTIVE DATE OF THIS ACT.

Sec. 4. This act shall take effect from its passage.

Approved June 30, 1993

Section J: Office of Legislative Research Report on Public Act 93-375

SUMMARY

PA 93-375 places limits on the liability a so-called "innocent landowner" would have to clean-up polluted land. This protection would apply if the pollution were caused by acts of God or by third parties when the owner inherited the property or otherwise had no way of knowing about the pollution. Federal law also has provisions that limit the liability of landowners. There are differences in wording between federal law and Connecticut's act, but it is difficult to clearly discern the differences in the legal effect of the two laws. In general, Connecticut's law may provide less protection for any particular individual, but it is probably easier to qualify as an innocent landowner under Connecticut's law than under federal law.

The Department of Environmental Protection believes PA 93-375 may effectively terminate Connecticut's Super Lien provision and that in some cases it might protect at-fault landowners. The commissioner is also concerned that the state will not be able to pay for cleanups of all polluted properties where the landowner has no, or very limited, liability.

PA 93-375

This act limits innocent landowners with polluted property from liability to the state for assessments, fines, and other costs imposed for cleanup. Liability is limited to reimbursing the state for cleanup costs incurred to the extent of the landowner's interest in the property, if the amount of the state's expenditure is a lien on the property handled in accordance with a procedure available by law. The limitation on liability applies to spills or discharges, whether they occurred before or after passage of the act, but does not affect actions that are final and no longer appealable after that date.

The landowner must establish his innocence by a preponderance of the evidence. In determining innocence, a court may take into account his specialized knowledge or experience; the amount paid for the property as it relates to what the value would be if it were not polluted; commonly known or readily available information; the obviousness of the presence or likely presence of the pollution; and the ability to detect pollution by inspection.

The act makes any person who sells an interest in contaminated real estate, regardless of whether the state has spent money to clean the site, liable up to the net sale proceeds for the cost of cleanup. Net proceeds are the amount received by a person after paying reasonable expenses and satisfying security interests (such as a mortgage).

Under the law, unchanged by the bill, secured lenders acquiring title by foreclosure or tender of a deed in lieu of foreclosure have liability limited to the value of the real estate if the spill occurred before acquisition of title.

The law allows the Department of Environmental Protection (DEP) to issue an order to abate water pollution or correct a hazardous waste violation to a landowner whenever the department is also issuing an order to the person who caused the pollution. The act exempts innocent landowners from liability for any assessment, fine, or other costs imposed by the state under this law, except through imposition of a lien on the property for reimbursement of state cleanup costs.

Innocent landowners under the act are of two types. First, those with an interest in property which is contaminated while owned by them. Second, those who acquire property after the contamination and who have not caused the pollution. The term does not apply to secured lenders.

In the first case, a landowner is innocent if the pollution is caused by: (1) an act of God; (2) an act of war; (3) an act or omission of a third party who is not an employee, agent, lessee, or in a direct or indirect contractual relationship with the landowner; or (4) an act or omission occurring in connection with a contract arising from a published rail transportation tariff. In the case of an act or omission of a third party, the landowner is not innocent if he had knowledge, or had reason to know, and failed to take reasonable steps to prevent the pollution or there was a reasonably foreseeable threat of pollution. But in the case of an act or omission of a third party occurring in connection with a rail transportation contract, the landowner is not innocent if he had knowledge and failed to take reasonable steps.

A person who acquires land after contamination is considered innocent if he (1) has no knowledge of the contamination and inquires into previous uses of the property consistent with good commercial or customary practice, (2) is a government entity, (3) acquires the property by inheritance or bequest, or (4) acquires the interest as executor or administrator of a decedent's estate or as trustee receiving the real estate interest from a decedent's estate if the decedent had held the interest in the real estate.