

SENATE BILL NO. 2662

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I herewith return Senate Bill No. 2662 without my approval.

New Jersey's most precious resources include our diverse population and our priceless but fragile natural environment. In 1976, the late Governor Brendan T. Byrne courageously signed pioneering legislation designed to protect both. The New Jersey Spill Compensation and Control Act (hereinafter referred to as the "Spill Act") was ahead of its time in creating what was then the nation's most comprehensive hazardous spill cleanup program. Years before Governor Byrne ensured his enduring environmental legacy by permanently preserving the Pinelands from unchecked development, his enactment of the Spill Act in 1976 established a strong, clear legal framework for addressing the urgent dangers posed by environmental degradation from discharges of harmful contaminants, including petroleum-based fuel products, into our environment. Since then, many other states as well as the federal government have passed similar legislation to safeguard their people, lands, and waters from the harmful effects of past and potential future toxic contamination.

Extensive legislative findings and declarations accompanied the landmark Spill Act, as amended and supplemented over time to strengthen its protective provisions, which are no less powerful today than they were upon enactment by Governor Byrne in 1976:

[T]hat New Jersey's lands and waters constitute a unique and delicately balanced resource; that the protection and preservation of these lands and waters promote the health, safety and welfare of the people of this State; that the tourist and recreation industry dependent on clean waters and

beaches is vital to the economy of this State; that the State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction; and that the storage and transfer of petroleum products and other hazardous substances between vessels, between facilities and vessels, and between facilities, whether onshore or offshore, is a hazardous undertaking and imposes risk of damage to persons and property within this State. N.J.S.A. 58:10-23.11a.

Consistent with these basic but powerful principles as well as the express statutory directive that the Spill Act be liberally construed to effectuate its protective purposes, N.J.S.A. 58:10-23.11x, our laws have safeguarded New Jersey for decades by strictly prohibiting discharges of hazardous substances and by broadly defining a discharge as "any **intentional or unintentional** action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous substances into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State" N.J.S.A. 58:10-23.11b (emphasis added).

Significantly, the Spill Act's purposely broad provisions established strict, no-fault liability for all responsible parties:

[A]ny person who has discharged a hazardous substance, **or is in any way responsible** for any hazardous substance, **shall be strictly liable, jointly and severally, without regard to fault**, for all cleanup and removal costs no matter by whom incurred. Such person shall also be **strictly liable, jointly and severally, without regard to fault**, for all cleanup and

removal costs incurred by the department or a local unit. .
. N.J.S.A. 58:10-23.11g(c) (emphasis added).

This no-nonsense approach - strict liability for those in any way responsible for hazardous discharges combined with no-fault, joint and several liability - is entirely consistent with, and indeed is integral to, the fundamental goals of the Spill Act, which were "to exercise the powers of this State to control the transfer and storage of hazardous substances and to provide liability for damage sustained within this State as a result of any discharge of said substances, by requiring the prompt containment and removal of such pollution and substances, and to provide a fund for swift and adequate compensation to resort businesses and other persons damaged by such discharges" N.J.S.A. 58:10-23.11a.

This bill would create what its proponents characterize as a new "defense" to Spill Act liability that applies only to individuals and businesses who deliver heating oil to unregulated tanks. More specifically, the bill would take effect immediately upon enactment and provides, in its entirety, as follows:

Notwithstanding the provisions of section 8 of P.L.1976, c.141 (C.58:10-23.11g), any other law, or common law, a person who delivers heating oil to an unregulated heating oil tank shall not be liable for cleanup and removal costs or for direct or indirect damages due to the discharge of heating oil from that heating oil tank unless the person knew or should have known that the delivery of heating oil would result in the discharge of a hazardous substance from that tank.

The text of the bill does not expressly refer to the Spill Act by name, but the statutory reference and the committee statements indicate that this sentence is intended to supersede the Spill Act, the common law, and any other existing statutory provisions governing discharges of heating oil into the environment. According to proponents of the bill, it responds to an unpublished 2015 decision of the Superior Court of New Jersey - Appellate Division that they believe misapplied the Spill Act in a manner that reportedly threatens to imperil the financial viability of some members of the fuel merchant industry. See Morristown Assocs. v. Grant Oil Co., 2015 N.J. Super. Unpub. LEXIS 2664 (App.Div. 2015).

New Jersey's long legacy of suffering serious environmental contamination stemming from underground storage tank discharges, as well as the apparent incongruity between the approach taken by this bill and the rest of the Spill Act's longstanding liability provisions, require some further examination. The current language of the Spill Act, as interpreted by New Jersey courts at all levels, applies equally to any person "in any way responsible for any hazardous substance." This bill, on the other hand, would introduce an entirely different rule applicable to only one category of potential dischargers - deliverers of heating oil - for whom a new standard, even less stringent than a negligence standard, would now apply within the existing strict liability, no fault statutory system that applies to everyone else, potentially resulting in severe consequences to homeowners and small business owners.

And while the bill would make a historically significant change to the Spill Act's environmental liability provisions, its merits were never considered by either the Senate or the Assembly's environmental committees. Under the circumstances, I am concerned

that the environmental and other important implications of this bill were not fully and completely explored. The Spill Act represents a carefully considered policy decision grounded in the critical importance of cleaning up contaminated sites, protecting human health, and preventing further environmental degradation resulting from the discharge of hazardous substances. Because this bill represents a serious departure from the manner in which the Spill Act has effectively assigned liability for over forty years, I cannot support it.

Accordingly, I herewith return Senate Bill No. 2662 without my approval.

[seal]

Respectfully,
/s/ Philip D. Murphy
Governor

Attest:

/s/ Matthew J. Platkin
Chief Counsel to the Governor