

1                                    AMENDMENT TO SENATE BILL 222

2            AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 222, AS AMENDED,  
3 by replacing the title with the following:

4            "AN ACT in relation to environmental protection."; and  
5 immediately below the enacting clause, by inserting the  
6 following:

7            "ARTICLE I. Recommendations of the Illinois  
8 Environmental Regulatory Review Commission."; and  
9 after the end of Section 10, by inserting the following:

10                                    "ARTICLE II. Non-IERRC provisions.

11            Section 25. The State Finance Act is amended by adding  
12 Section 5.595 as follows:

13            (30 ILCS 105/5.595 new)  
14            Sec. 5.595. The Oil Spill Response Fund.

15            Section 30. The Environmental Protection Act is amended  
16 by adding Title VI-C as follows:

17            (415 ILCS 5/Tit. VI-C heading new)

1                    TITLE VI-C: OIL SPILL RESPONSE

2                    (415 ILCS 5/25c-1 new)

3                    Sec. 25c-1. Oil Spill Response Fund.

4                    (a) There is hereby created within the State Treasury an  
5 interest-bearing special fund to be known as the Oil Spill  
6 Response Fund. There shall be deposited into the Fund all  
7 monies recovered as reimbursement for response costs incurred  
8 by the Agency from parties responsible for releases or  
9 threats of release of petroleum, monies provided to the State  
10 from the federal Oil Spill Liability Trust Fund, and such  
11 other monies as may be received for this purpose through  
12 contributions, gifts, or supplemental environmental projects,  
13 pursuant to court orders or decrees, or from any other  
14 source.

15                    (b) Pursuant to appropriation, all monies in the Oil  
16 Spill Response Fund may be used by the Agency for all of the  
17 following purposes:

18                    (1) Responding to releases or threats of release of  
19 petroleum that may constitute a substantial danger to the  
20 environment or human health or welfare.

21                    (2) Contractual expenses and purchases of equipment  
22 or supplies necessary to enable prompt response to  
23 releases or threats of release of petroleum and to  
24 provide effective mitigation of such releases or threats  
25 of release.

26                    (3) Costs of investigation and assessment of the  
27 source, nature, and extent of a release or threatened  
28 release of petroleum and any resulting injuries or  
29 damages.

30                    (4) Costs associated with planning and training for  
31 response to releases and threats of release of petroleum.

32                    (5) Costs associated with preparing and submitting  
33 claims of the Agency to the federal Oil Spill Liability

1 Trust Fund.

2 (c) For the purposes of implementing this Section,  
3 "petroleum" means crude oil, refined petroleum,  
4 intermediates, fractions or constituents of petroleum, brine  
5 or salt water from oil production, oil sheens, hydrocarbon  
6 vapors, and any other form of oil or petroleum.

7 (d) In addition to any other authority provided by State  
8 or federal law, the Agency shall be entitled to recovery of  
9 costs incurred by it in response to releases and threats of  
10 release of petroleum from any persons who are responsible for  
11 causing, allowing, or threatening such releases.

12 Section 35. The Response Action Contractor  
13 Indemnification Act is amended by changing Sections 4 and 5  
14 as follows:

15 (415 ILCS 100/4) (from Ch. 111 1/2, par. 7204)

16 Sec. 4. (a) In the event that any civil proceeding  
17 arising out of a State response action contract is commenced  
18 against any response action contractor, the Attorney General  
19 shall, upon timely and appropriate notice to him by such  
20 contractor, appear on behalf of such contractor and defend  
21 the action. Any such notice shall be in writing, shall be  
22 mailed within 15 days after the date of receipt by the  
23 contractor of service of process, and shall authorize the  
24 Attorney General to represent and defend the contractor in  
25 the proceeding. The giving of this notice to the Attorney  
26 General shall constitute an agreement by the contractor to  
27 cooperate with the Attorney General in his defense of the  
28 action and a consent that the Attorney General shall conduct  
29 the defense as he deems advisable and in the best interests  
30 of the contractor and the State, including settlement in the  
31 Attorney General's discretion. In any such proceeding, the  
32 State shall pay the court costs and litigation expenses of

1 defending such action, to the extent approved by the Attorney  
2 General as reasonable, as they are incurred.

3 In the event that the Attorney General determines either  
4 (1) that so appearing and defending a contractor involves an  
5 actual or potential conflict of interest, or (2) that the act  
6 or omission which gave rise to the claim was not within the  
7 scope of the State response action contract, or was  
8 intentional, willful or wanton misconduct, the Attorney  
9 General shall decline in writing to appear or defend or shall  
10 promptly take appropriate action to withdraw as attorney for  
11 such contractor. Upon receipt of such declination or  
12 withdrawal by the Attorney General on the basis of an actual  
13 or potential conflict of interest, the contractor may employ  
14 his own attorney to appear and defend, in which event the  
15 State shall pay the contractor's court costs, litigation  
16 expenses and attorneys' fees to the extent approved by the  
17 Attorney General as reasonable, as they are incurred.

18 (b) In any civil proceeding arising out of a State  
19 response action contract in which notice was given to the  
20 Attorney General under subsection (a), if the court or jury  
21 finds that the act or omission of the response action  
22 contractor was within the scope of the State response action  
23 contract and was not intentional, willful or wanton  
24 misconduct, the court shall so state in its judgement, and  
25 the State shall indemnify the contractor for any damages  
26 awarded and court costs and attorneys' fees assessed as part  
27 of the final and unreversed judgment. In such event, if the  
28 Attorney General declined to appear or withdrew on the  
29 grounds that the act or omission was not within the scope of  
30 the State response action contract, or was intentional,  
31 willful or wanton misconduct, the State shall also pay the  
32 contractor's court costs, litigation expenses and attorneys  
33 fees to the extent approved by the Attorney General as  
34 reasonable.

1 (c) Unless the Attorney General determines that the  
2 conduct or inaction which gave rise to the claim or cause of  
3 action was not within the scope of the State response action  
4 contract, or was intentional, willful or wanton misconduct,  
5 any case in which notice was given pursuant to subsection (a)  
6 may be settled, in the Attorney General's discretion, and the  
7 State shall indemnify the contractor for any damages, court  
8 costs and attorneys' fees agreed to as part of the  
9 settlement. If the contractor is represented by private  
10 counsel, any settlement which obligates the State to  
11 indemnify the contractor must be approved by the Attorney  
12 General and the court having jurisdiction.

13 (d) Court costs and litigation expenses and other costs  
14 of providing a defense, including attorneys' fees, paid or  
15 obligated under this Section, and the costs of  
16 indemnification, including the payment of any final judgment  
17 or final settlement under this Section, shall be paid by  
18 warrant from the Response Contractors Indemnification Fund  
19 pursuant to vouchers certified by the Attorney General.

20 (e) Nothing contained or implied in this Section shall  
21 operate, or be construed or applied, to deprive the State, or  
22 any response action contractor, of any defense otherwise  
23 available.

24 (f) Any judgment subject to State indemnification under  
25 this Section shall not be enforceable against the response  
26 action contractor, but shall be paid by the State in the  
27 following manner. Upon receipt of a certified copy of the  
28 judgment, the Attorney General shall review it to determine  
29 if the judgment is (1) final, unreversed and no longer  
30 subject to appeal, and (2) subject to indemnification under  
31 this Section. If he determines that it is, he shall submit a  
32 voucher for the amount of the judgment and any interest  
33 thereon to the State Comptroller, and the amount shall be  
34 paid by warrant to the judgment creditor solely out of funds

1 available in the Response Contractors Indemnification Fund.  
 2 ~~If--the--balance--in--such--Fund--is--insufficient--to--pay--any~~  
 3 ~~properly--certified--voucher--for--a--warrant--drawn--thereon,~~ the  
 4 ~~Comptroller--shall--transfer--the--necessary--amount--to--the--Fund~~  
 5 ~~from--the--General--Revenue--Fund.~~ In no event will the amount  
 6 paid for a single occurrence surpass \$100,000 ~~\$2,000,000~~,  
 7 provided that this limitation shall not render any portion of  
 8 the judgment enforceable against the response action  
 9 contractor.

10 (Source: P.A. 84-1445.)

11 (415 ILCS 100/5) (from Ch. 111 1/2, par. 7205)

12 Sec. 5. Response Contractors Indemnification Fund.

13 (a) There is hereby created the Response Contractors  
 14 Indemnification Fund. The State Treasurer, ex officio, shall  
 15 be custodian of the Fund, and the Comptroller shall direct  
 16 payments from the Fund upon vouchers properly certified by  
 17 the Attorney General in accordance with Section 4. The  
 18 Treasurer shall credit interest on the Fund to the Fund.

19 (b) Every State response action contract shall provide  
 20 that 5% of each payment to be made by the State under the  
 21 contract shall be paid by the State directly into the  
 22 Response Contractors Indemnification Fund rather than to the  
 23 contractor, except that when there is at least \$100,000 ~~more~~  
 24 ~~than--\$2,000,000~~ in the Fund at the beginning of a State  
 25 fiscal year, State response action contracts during that  
 26 fiscal year need not provide that 5% of each payment made  
 27 under the contract be paid into the Fund. When only a  
 28 portion of a contract relates to a remedial or response  
 29 action, or to the identification, handling, storage,  
 30 treatment or disposal of a pollutant, the contract shall  
 31 provide that only that portion is subject to this subsection.

32 (c) Within 30 days after the effective date of this  
 33 amendatory Act of 1997, the Comptroller shall order

1 transferred and the Treasurer shall transfer \$1,200,000 from  
2 the Response Contractors Indemnification Fund to the  
3 Brownfields Redevelopment Fund. The Comptroller shall order  
4 transferred and the Treasurer shall transfer \$1,200,000 from  
5 the Response Contractors Indemnification Fund to the  
6 Brownfields Redevelopment Fund on the first day of fiscal  
7 years 1999, 2000, 2001, 2002, and 2003~~7~~-~~20047~~-~~and~~-2005.

8 (d) Within 30 days after the effective date of this  
9 amendatory Act of the 91st General Assembly, the Comptroller  
10 shall order transferred and the Treasurer shall transfer  
11 \$2,000,000 from the Response Contractors Indemnification Fund  
12 to the Asbestos Abatement Fund.

13 (e) Within 30 days after the effective date of this  
14 amendatory Act of the 93rd General Assembly, the Comptroller  
15 shall order transferred and the Treasurer shall transfer all  
16 monies in the Response Action Contractor Indemnification Fund  
17 in excess of \$100,000 from the Response Action Contractor  
18 Indemnification Fund to the Brownfields Redevelopment Fund.

19 (Source: P.A. 91-704, eff. 7-1-00; 92-486, eff. 1-1-02.)".