

# 58:10A-37.5

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2001                    **CHAPTER:** 22  
**NJSA:** 58:10A-37.5 (Underground storage tanks – delays cap on grants)  
**BILL NO:** S1173 (Substituted for A2376)

**SPONSOR(S):** McNamara and Vitale

**DATE INTRODUCED:** March 27, 2000

**COMMITTEE:**                    **ASSEMBLY:** Solid and Hazardous Waste; Appropriations  
**SENATE:** Environment; Budget

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**                    **ASSEMBLY:** December 11, 2000  
**SENATE:** October 23, 2000

**DATE OF APPROVAL:** February 2, 2001

### FOLLOWING ARE ATTACHED IF AVAILABLE:

**FINAL TEXT OF BILL** (1<sup>st</sup> reprint enacted)

**S1173**

**SPONSORS STATEMENT:** (Begins on page 4 of original bill)                    Yes

**COMMITTEE STATEMENT:**                    **ASSEMBLY:** Yes 11-13-00 (Sol.  
& Haz.)

12-7-00 (Approp.)

**SENATE:** Yes 5-4-00 (Envir.)

10-19-00 (Budget)

**FLOOR AMENDMENT STATEMENTS:** No

**LEGISLATIVE FISCAL ESTIMATE:** Yes 11-1-00

12-20-00

**A2376**

**SPONSORS STATEMENT:** (Begins on page 4 of original bill) Yes

Bill and Sponsors Statement identical to S1173

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes 11-13-00 (Sol.  
& Haz.) 12-7-00 (Approp.)

**SENATE:** No

**FLOOR AMENDMENT STATEMENTS:** No

**LEGISLATIVE FISCAL ESTIMATE:** Yes 10-18-00  
12-15-00

**FINAL VERSION** (Assembly Committee Substitute) Yes

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** Yes

**FOLLOWING WERE PRINTED:**

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** No

**SENATE, No. 1173**

**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

INTRODUCED MARCH 27, 2000

**Sponsored by:**

**Senator HENRY P. MCNAMARA**

**District 40 (Bergen and Passaic)**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

**SYNOPSIS**

Removes cap on grants from Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/5/2000)**

S1173 MCNAMARA, VITALE

2

1 AN ACT concerning financial assistance for underground storage  
2 tanks, and amending P.L.1997, c.235.

3

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

6

7 1. Section 5 of P.L.1997, c.235 (C.58:10A-37.5) is amended to  
8 read as follows:

9 5. a. The authority may award financial assistance from the fund  
10 to an eligible owner or operator in the form of a loan or a conditional  
11 hardship grant as provided in this section. An award of financial  
12 assistance, either as a loan or a grant, or a combination of both, may,  
13 upon application therefor, be for 100% of the eligible project costs.  
14 However, a loan that any applicant may receive from the fund for an  
15 upgrade, remediation, or closure, or any combination thereof, for any  
16 one facility, may not exceed \$1,000,000 and a grant that any applicant  
17 may receive from the fund for any one facility, may not exceed  
18 \$250,000. The total amount of financial assistance awarded as grants  
19 in any one year may not exceed one third of the total amount of  
20 financial assistance awarded in that year except that this limitation  
21 upon the award of grants shall not apply to financial assistance  
22 awarded between January 1, 1999 and **[March 31, 2000]** March 31,  
23 2001.

24 b. A public entity applying for financial assistance from the fund  
25 may only be awarded financial assistance in the form of an interest free  
26 loan.

27 c. An applicant, other than a public entity, may apply for and  
28 receive a conditional hardship grant as provided in paragraph (1) of  
29 this subsection, or a loan for an upgrade, closure, or remediation as  
30 provided in paragraph (2) of this subsection. Financial assistance  
31 awarded an applicant pursuant to this subsection may consist entirely  
32 of a conditional hardship grant, a loan for an upgrade, or loan for a  
33 closure, or a loan for a remediation, or any combination thereof,  
34 except that the total amount of the award of financial assistance shall  
35 be subject to the per facility dollar limitation enumerated in subsection  
36 a. of this section. Notwithstanding any other provision of this  
37 subsection to the contrary, no tax exempt, nonprofit organization,  
38 corporation, or association shall be awarded a conditional hardship  
39 grant pursuant to paragraph (1) of this subsection.

40 (1) A conditional hardship grant for eligible project costs of an  
41 upgrade, closure or remediation shall be awarded by the authority  
42 based upon a finding of eligibility and financial hardship and upon a  
43 finding that the applicant meets the criteria set forth in this act.

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 In order to be eligible for a conditional hardship grant, the applicant  
2 shall have owned or operated the subject petroleum underground  
3 storage tank as of December 1, 1996 and continually thereafter or shall  
4 have inherited the property from a person who owned the petroleum  
5 underground storage tank as of that date. No applicant shall be  
6 eligible for a conditional hardship grant if the applicant has a taxable  
7 income of more than \$100,000 or a net worth, exclusive of the  
8 applicant's primary residence, of over \$100,000.

9 A finding of financial hardship by the authority shall be based upon  
10 a determination that an applicant cannot reasonably be expected to  
11 repay all or a portion of the eligible project costs if the financial  
12 assistance were to be awarded as a loan. The amount of an award of  
13 a conditional hardship grant shall be the amount of that portion of the  
14 eligible project costs the authority determines the applicant cannot  
15 reasonably be expected to repay.

16 In making a finding of financial hardship for an application for the  
17 upgrade, closure, or remediation of a petroleum underground storage  
18 tank, where the petroleum underground storage tank is a part of the  
19 business property of the owner, the authority shall base its finding  
20 upon the cash flow of the applicant's business, whether or not any part  
21 of the applicant's business is related to the ownership or operation of  
22 that petroleum underground storage tank. In making a finding of  
23 financial hardship for an application for the upgrade or remediation of  
24 a petroleum underground storage tank, where the petroleum  
25 underground storage tank is not a part of the business property of the  
26 owner, the authority shall base its finding upon the applicant's taxable  
27 income in the year prior to the date of the application being submitted.

28 If the authority awards a conditional hardship grant in combination  
29 with a loan pursuant to this subsection, the authority shall release to  
30 the applicant the loan monies prior to the release of the conditional  
31 hardship grant monies.

32 Conditional hardship grants awarded to an applicant shall be subject  
33 to the lien provisions enumerated in section 16 of P.L.1997, c.235  
34 (C.58:10A-37.16).

35 (2) A loan to an eligible owner or operator for the eligible project  
36 costs of an upgrade, closure, or remediation shall be awarded by the  
37 authority only upon a finding that the applicant other than a public  
38 entity is able to repay the amount of the loan.

39 In making a finding of an applicant's ability to repay a loan for the  
40 upgrade, closure, and remediation of a regulated tank, or for the  
41 remediation of a discharge from a petroleum underground storage  
42 tank, the authority shall base its finding, as applicable, upon the cash  
43 flow of the applicant's business, the applicant's taxable income and the  
44 applicant's personal and business assets, except that the authority may  
45 not consider the applicant's primary residence as collateral, except that  
46 the authority may consider the applicant's primary residence as

1 collateral with the permission of the applicant or where the subject  
2 petroleum underground storage tank or regulated tank is located at the  
3 primary residence.

4 d. The authority shall, where applicable, require an applicant  
5 applying for financial assistance from the fund to submit to the  
6 authority the financial statements of the applicant's business for three  
7 years prior to the date of the application, the most recent interim  
8 financial statement for the year of the application, the applicant's  
9 federal income tax returns, or other relevant documentation.

10 e. Nothing in this section is intended to alter the priority or criteria  
11 for awarding financial assistance established pursuant to section 4 of  
12 P.L.1997, c.235 (C.58:10A-37.4).

13 f. An eligible owner or operator may only be awarded that amount  
14 of financial assistance issued as a loan for which the applicant  
15 demonstrates he could not qualify for and obtain as a commercial loan.  
16 The provisions of this subsection shall not apply to an owner or  
17 operator or petroleum underground storage tank used to store heating  
18 oil for onsite consumption in a residential building.

19 (cf: P.L.1999, c.89, s.1)

20

21 2. This act shall take effect immediately.

22

23

24

#### STATEMENT

25

26 This bill would remove the limit on the total amount of grant money  
27 that may be made available from the Petroleum Underground Storage  
28 Tank Remediation, Upgrade and Closure Fund for one additional year.  
29 The total annual amount of financial assistance that may be awarded  
30 as grants is one third of the total annual amount of financial assistance  
31 awarded. However, as of January, 2000, the applications for grants  
32 exceed the total amount of applications for loans. Therefore, this bill  
33 would remove the cap to assure that the available funds may be  
34 awarded.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

**SENATE, No. 1173**

**STATE OF NEW JERSEY**

DATED: MAY 4, 2000

The Senate Environment Committee reports favorably Senate Bill No. 1173.

This bill would remove the limit on the total amount of grant money that may be made available from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund for one additional year. The total annual amount of financial assistance that may be awarded as grants is one third of the total annual amount of financial assistance awarded. However, as of January, 2000, the applications for grants exceed the total amount of applications for loans. Therefore, this bill would remove the cap to assure that the available funds may be awarded.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **SENATE, No. 1173**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: OCTOBER 19, 2000

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 1173.

This bill, as amended, would delay until March 31, 2004 the implementation of a limit on the proportion of financial assistance from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund that can be awarded in the form of grants.

The law that established the underground storage tank fund provides that the amount of financial assistance from the Fund that may be awarded as grants cannot exceed one third of the total annual amount of financial assistance awarded, but delays implementation of this limit until March 31, 2000. As of January 2000, however, the applications for grants exceeded the total amount of applications for loans. Therefore, this bill would postpone implementation of the cap to assure that the available funds may be awarded.

In addition, the bill as amended revises a current prohibition against the award of reimbursement for prior expenditures to correct storage tank problems by permitting such reimbursements in the case of prior expenditures for tank remediation measures by individuals and small businesses meeting the qualifications for grants from the fund.

#### COMMITTEE AMENDMENTS:

Committee amendments to this bill (1) postpone the date to which implementation of the cap is to be delayed from March 31, 2001 under the bill as introduced to March 31, 2004, and (2) incorporate the provision authorizing reimbursement for prior expenditures on tank remediation.

#### FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the bill's enactment will have no fiscal impact on State moneys because the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund is primarily supported by an annual dedication of revenues generated from the Corporation Business Tax (CBT). This allocation is part of the annual 4 percent constitutional dedication of



total CBT collections for environmental purposes. With respect to the Fund itself, the OLS estimates that the removal of the cap on grants through March 31, 2004 will not significantly affect the availability of loan monies.

**LEGISLATIVE FISCAL ESTIMATE**  
**SENATE, No. 1173**  
**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

DATED: NOVEMBER 1, 2000

**SUMMARY**

**Synopsis:** Removes cap on grants from Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund.

**Type of Impact:** No impact on Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund.

**Agencies Affected:** N.J. Economic Development Authority.

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
<b>State Cost</b>	None	None	None

- ! The Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund awards grants and loans to owners of underground storage tanks to help them comply with State and federally-mandated upgrade and remediation projects. Grants are awarded to applicants who prove financial hardship.
- ! The Fund is supported by Corporation Business Tax revenues annually dedicated for this purpose pursuant to a constitutional amendment approved in 1996. Approximately \$20 million is dedicated annually to the Fund.
- ! The bill extends the period, under which an unlimited number of grants may be awarded, to March 31, 2001. Thereafter, in any one year, the Fund may only award grants totaling one-third of the total annual amount of financial assistance awarded.
- ! The Office of Legislative Services (OLS) estimates that the bill will have no fiscal impact on State funds nor on the availability of monies for both loans and grants awarded by the Fund.

**BILL DESCRIPTION**

Senate Bill No. 1173 of 2000 temporarily removes the limit on the total amount of grant money that may be made available from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund by extending the waiver period to March 31, 2001. The previous waiver period was January 1, 1999 to March 31, 2000. Notwithstanding this waiver, current law requires that the total annual amount of financial assistance that may be awarded as grants (as

opposed to loans) from the Fund be no more than one third of the total annual amount of financial assistance awarded. However, as of January, 2000, applications for grants had significantly exceeded applications for loans. The bill would therefore ensure that available funds could be awarded to all eligible applicants who apply for grants by March 31, 2001.

The Fund was created by P.L.1997, c.235, as amended, and is supported by constitutionally dedicated revenues from the Corporation Business Tax. This assistance program, as administered by the N.J. Economic Development Authority (with technical assistance from the Department of Environmental Protection), provides grants and loans to owners of underground storage tanks for State and federally-mandated upgrades and remediation projects. Successful applicants for grants must prove financial hardship in meeting compliance measures.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services (OLS) estimates that the bill's enactment will have no fiscal impact on State monies because the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund is primarily supported by an annual dedication of revenues generated from the Corporation Business Tax (CBT). This allocation is part of the annual 4 percent constitutional dedication of total CBT collections for environmental purposes. With respect to the Fund itself, the OLS estimates that the removal of the cap on grants through March 31, 2001 will not significantly affect the availability of loan monies. This estimate is based on statements made by the Economic Development Authority during committee hearings on the bill in which it indicated that the Fund has sufficient balances to accommodate all applicants for both grants and loans during the time period designated in the bill that waives the grant award restrictions.

Section: *Environment, Agriculture, Energy and Natural Resources*

Analyst: *Richard M. Handelman*  
*Senior Fiscal Analyst*

Approved: *Alan R. Kooney*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

[First Reprint]

**SENATE, No. 1173**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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INTRODUCED MARCH 27, 2000

**Sponsored by:**

**Senator HENRY P. MCNAMARA**

**District 40 (Bergen and Passaic)**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

**Co-Sponsored by:**

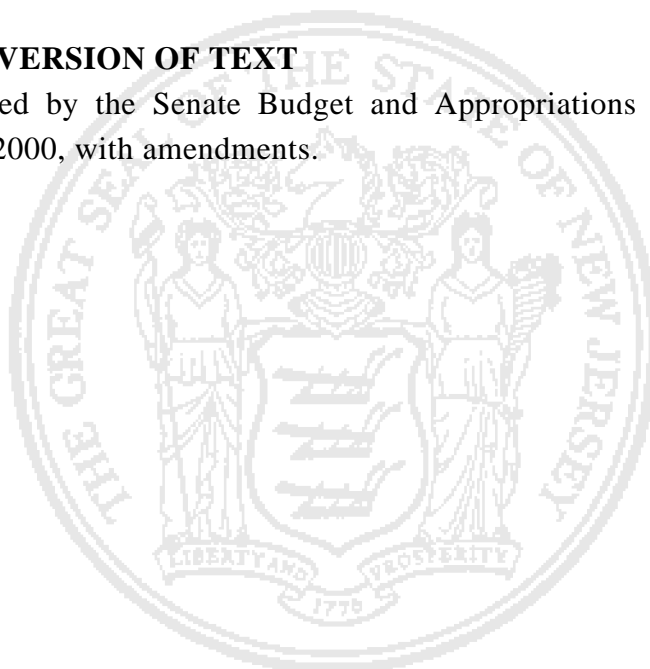
**Assemblymen Felice and Russo**

**SYNOPSIS**

Delays implementation of cap on grants from Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund; authorizes reimbursement grants for remediation costs.

**CURRENT VERSION OF TEXT**

As reported by the Senate Budget and Appropriations Committee on October 19, 2000, with amendments.



**(Sponsorship Updated As Of: 12/12/2000)**

1 AN ACT concerning financial assistance for underground storage  
2 tanks, and amending P.L.1997, c.235.

3

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

6

7 1. Section 5 of P.L.1997, c.235 (C.58:10A-37.5) is amended to  
8 read as follows:

9 5. a. The authority may award financial assistance from the fund  
10 to an eligible owner or operator in the form of a loan or a conditional  
11 hardship grant as provided in this section. An award of financial  
12 assistance, either as a loan or a grant, or a combination of both, may,  
13 upon application therefor, be for 100% of the eligible project costs.  
14 However, a loan that any applicant may receive from the fund for an  
15 upgrade, remediation, or closure, or any combination thereof, for any  
16 one facility, may not exceed \$1,000,000 and a grant that any applicant  
17 may receive from the fund for any one facility, may not exceed  
18 \$250,000. The total amount of financial assistance awarded as grants  
19 in any one year may not exceed one third of the total amount of  
20 financial assistance awarded in that year except that this limitation  
21 upon the award of grants shall not apply to financial assistance  
22 awarded between January 1, 1999 and **[March 31, 2000]**<sup>1</sup>**[March 31,**  
23 **2001] March 31, 2004<sup>1</sup>.**

24 b. A public entity applying for financial assistance from the fund  
25 may only be awarded financial assistance in the form of an interest free  
26 loan.

27 c. An applicant, other than a public entity, may apply for and  
28 receive a conditional hardship grant as provided in paragraph (1) of  
29 this subsection, or a loan for an upgrade, closure, or remediation as  
30 provided in paragraph (2) of this subsection. Financial assistance  
31 awarded an applicant pursuant to this subsection may consist entirely  
32 of a conditional hardship grant, a loan for an upgrade, or loan for a  
33 closure, or a loan for a remediation, or any combination thereof,  
34 except that the total amount of the award of financial assistance shall  
35 be subject to the per facility dollar limitation enumerated in subsection  
36 a. of this section. Notwithstanding any other provision of this  
37 subsection to the contrary, no tax exempt, nonprofit organization,  
38 corporation, or association shall be awarded a conditional hardship  
39 grant pursuant to paragraph (1) of this subsection.

40 (1) A conditional hardship grant for eligible project costs of an  
41 upgrade, closure or remediation shall be awarded by the authority

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> **Senate SBA committee amendments adopted October 19, 2000.**

1 based upon a finding of eligibility and financial hardship and upon a  
2 finding that the applicant meets the criteria set forth in this act.

3 In order to be eligible for a conditional hardship grant, the applicant  
4 shall have owned or operated the subject petroleum underground  
5 storage tank as of December 1, 1996 and continually thereafter or shall  
6 have inherited the property from a person who owned the petroleum  
7 underground storage tank as of that date. No applicant shall be  
8 eligible for a conditional hardship grant if the applicant has a taxable  
9 income of more than \$100,000 or a net worth, exclusive of the  
10 applicant's primary residence, of over \$100,000.

11 A finding of financial hardship by the authority shall be based upon  
12 a determination that an applicant cannot reasonably be expected to  
13 repay all or a portion of the eligible project costs if the financial  
14 assistance were to be awarded as a loan. The amount of an award of  
15 a conditional hardship grant shall be the amount of that portion of the  
16 eligible project costs the authority determines the applicant cannot  
17 reasonably be expected to repay.

18 In making a finding of financial hardship for an application for the  
19 upgrade, closure, or remediation of a petroleum underground storage  
20 tank, where the petroleum underground storage tank is a part of the  
21 business property of the owner, the authority shall base its finding  
22 upon the cash flow of the applicant's business, whether or not any part  
23 of the applicant's business is related to the ownership or operation of  
24 that petroleum underground storage tank. In making a finding of  
25 financial hardship for an application for the upgrade or remediation of  
26 a petroleum underground storage tank, where the petroleum  
27 underground storage tank is not a part of the business property of the  
28 owner, the authority shall base its finding upon the applicant's taxable  
29 income in the year prior to the date of the application being submitted.

30 If the authority awards a conditional hardship grant in combination  
31 with a loan pursuant to this subsection, the authority shall release to  
32 the applicant the loan monies prior to the release of the conditional  
33 hardship grant monies.

34 Conditional hardship grants awarded to an applicant shall be subject  
35 to the lien provisions enumerated in section 16 of P.L.1997, c.235  
36 (C.58:10A-37.16).

37 (2) A loan to an eligible owner or operator for the eligible project  
38 costs of an upgrade, closure, or remediation shall be awarded by the  
39 authority only upon a finding that the applicant other than a public  
40 entity is able to repay the amount of the loan.

41 In making a finding of an applicant's ability to repay a loan for the  
42 upgrade, closure, and remediation of a regulated tank, or for the  
43 remediation of a discharge from a petroleum underground storage  
44 tank, the authority shall base its finding, as applicable, upon the cash  
45 flow of the applicant's business, the applicant's taxable income and the  
46 applicant's personal and business assets, except that the authority may

1 not consider the applicant's primary residence as collateral, except that  
2 the authority may consider the applicant's primary residence as  
3 collateral with the permission of the applicant or where the subject  
4 petroleum underground storage tank or regulated tank is located at the  
5 primary residence.

6 d. The authority shall, where applicable, require an applicant  
7 applying for financial assistance from the fund to submit to the  
8 authority the financial statements of the applicant's business for three  
9 years prior to the date of the application, the most recent interim  
10 financial statement for the year of the application, the applicant's  
11 federal income tax returns, or other relevant documentation.

12 e. Nothing in this section is intended to alter the priority or criteria  
13 for awarding financial assistance established pursuant to section 4 of  
14 P.L.1997, c.235 (C.58:10A-37.4).

15 f. An eligible owner or operator may only be awarded that amount  
16 of financial assistance issued as a loan for which the applicant  
17 demonstrates he could not qualify for and obtain as a commercial loan.  
18 The provisions of this subsection shall not apply to an owner or  
19 operator or petroleum underground storage tank used to store heating  
20 oil for onsite consumption in a residential building.  
21 (cf: P.L.1999, c.89, s.1)

22

23 <sup>1</sup>2. Section 7 of P.L.1997, c.235 (C.58:10A-37.7) is amended to  
24 read as follows:

25 7. a. The authority shall award financial assistance to an owner or  
26 operator of a facility only if the facility is properly registered with the  
27 department pursuant to section 3 of P.L.1986, c.102 (C.58:10A-23),  
28 where applicable, and if all fees or penalties due and payable on the  
29 facility to the department pursuant to P.L.1986, c.102 have either been  
30 paid or the nature or the amount of the fee or penalty is being  
31 contested in accordance with law.

32 b. The authority may deny an application for financial assistance,  
33 and any award of financial assistance may be recoverable by the  
34 authority, upon a finding that:

35 (1) in the case of financial assistance awarded for a remediation,  
36 the discharge was proximately caused by the applicant's knowing  
37 conduct;

38 (2) in the case of financial assistance awarded for a remediation,  
39 the discharge was proximately caused or exacerbated by knowing  
40 conduct by the applicant with regard to any lawful requirement  
41 applicable to petroleum underground storage tanks intended to  
42 prevent, or to facilitate the early detection of, the discharge;

43 (3) the applicant failed to commence or complete a remediation,  
44 closure, or an upgrade for which an award of financial assistance was  
45 made within the time required by the department in accordance with  
46 the applicable rules and regulations, within the time prescribed in an

1 administrative order, an administrative consent agreement, a  
2 memorandum of agreement, or a court order; or

3 (4) the applicant provided false information or withheld  
4 information on a loan or grant application, or other relevant  
5 information required to be submitted to the authority, on any matter  
6 that would otherwise render the applicant ineligible for financial  
7 assistance from the fund, that would alter the priority of the applicant  
8 to receive financial assistance from the fund, that resulted in the  
9 applicant receiving a larger grant or loan award than the applicant  
10 would otherwise be eligible, or that resulted in payments from the fund  
11 in excess of the actual eligible project costs incurred by the applicant  
12 or the amount to which the applicant is legally eligible.

13 Nothing in this subsection shall be construed to require the  
14 authority to undertake an investigation or make any findings  
15 concerning the conduct described in this subsection.

16 c. An application for financial assistance from the fund for an  
17 upgrade or closure of a regulated tank shall include all regulated tanks  
18 at the facility for which the applicant is seeking financial assistance.  
19 Once financial assistance for an upgrade, closure or a remediation is  
20 awarded for a facility, no additional award of financial assistance may  
21 be made for that facility. However, if an applicant discovers while  
22 performing upgrade or closure activities that a remediation is  
23 necessary at the site of a facility, and if financial assistance was  
24 previously awarded for that site only for an upgrade or closure of a  
25 regulated tank, the applicant may amend his application and apply for  
26 financial assistance for the required remediation subject to the  
27 limitations enumerated in section 5 of this act. An application for  
28 financial assistance for an upgrade or closure of a regulated tank shall  
29 be conditioned upon the applicant agreeing to perform, at the time of  
30 the upgrade or closure, any remediation necessary as a result of a  
31 discharge from the regulated tank and commencement of the  
32 remediation within the time prescribed and in accordance with the  
33 rules and regulations of the department.

34 d. Except as provided below, no financial assistance for upgrade  
35 or closure shall be awarded for any regulated tank required to meet the  
36 upgrade or closure requirements pursuant to 42 U.S.C. s.6991 et seq.  
37 or P.L.1986, c.102 (C.58:10A-21 et seq.), or for the remediation of a  
38 discharge from any such regulated tank except as provided in  
39 subsection c. of this section, unless the application is filed with the  
40 authority prior to January 1, 1999 and the application is complete and  
41 the application fee is received by August 1, 1999. No financial  
42 assistance for upgrade or closure shall be awarded for any  
43 underground storage tank with a capacity of over 2,000 gallons used  
44 to store heating oil for onsite consumption in a nonresidential building  
45 required to be upgraded pursuant to P.L.1986, c.102 (C.58:10A-21 et  
46 seq.) but not pursuant to 42 U.S.C. s.6991 et seq. or for the  
47 remediation of a discharge from any such regulated tank except as



1 provided in subsection c. of this section, unless the application is filed  
2 with the authority prior to August 31, 1999 and the application is  
3 complete and the application fee is received by March 31, 2000.

4 e. The date of occurrence of a discharge shall not affect eligibility  
5 for financial assistance from the fund. Except for a preliminary  
6 assessment or a site investigation performed after the effective date of  
7 P.L.1997, c.235 (C.58:10A-37.1 et seq.), and except as provided in  
8 ~~[subsection]~~ subsections g. and h. of this section, no award of  
9 financial assistance shall be made from the fund for the otherwise  
10 eligible project costs of a remediation, closure, or an upgrade, or parts  
11 thereof, completed prior to an award of financial assistance from the  
12 fund.

13 f. No financial assistance may be awarded from the fund for the  
14 remediation of a discharge from a petroleum underground storage tank  
15 if financial assistance from the Hazardous Discharge Site Remediation  
16 Fund established pursuant to section 26 of P.L.1993, c.139  
17 (C.58:10B-4) has previously been made for a remediation at that site  
18 as a result of a discharge from that petroleum underground storage  
19 tank. No financial assistance may be awarded from the fund for the  
20 remediation of a discharge from a petroleum underground storage tank  
21 if the discharge began subsequent to the completion of an upgrade of  
22 that petroleum underground storage tank, which upgrade was intended  
23 to meet all applicable upgrade regulations of the department, no matter  
24 when the upgrade was performed.

25 g. Notwithstanding any provision of P.L.1997, c.235  
26 (C.58:10A-37.1 et seq.), where an eligible owner or operator has filed  
27 an application for financial assistance from the fund, and there are  
28 either insufficient monies in the fund or the authority has not yet acted  
29 upon the application or awarded the financial assistance, the eligible  
30 owner or operator may expend its own funds for the upgrade, closure,  
31 or remediation, and upon approval of the application, the authority  
32 shall award the financial assistance as a reimbursement of the monies  
33 expended for eligible project costs.

34 h. Notwithstanding any provision to the contrary of P.L.1997,  
35 c.235 (C.58:10A-37.1 et seq.), if an applicant has expended the  
36 applicant's own funds on a remediation prior to filing an application  
37 for financial assistance from the fund for the eligible project costs of  
38 the remediation, the authority, upon approval of the application, may  
39 make a grant from the fund pursuant to paragraph (1) of subsection c.  
40 of section 5 of P.L.1997, c.235 (C.58:10A-37.5) to reimburse the  
41 eligible owner or operator for the eligible project costs of the  
42 remediation.<sup>1</sup>

43 (cf: P.L.1999, c.89, s.3)

44  
45 <sup>1</sup>[2.] 3.<sup>1</sup> This act shall take effect immediately <sup>1</sup>and section 2 shall  
46 be retroactive to January 1, 2000<sup>1</sup>.

# ASSEMBLY, No. 2376

## STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED MAY 8, 2000

**Sponsored by:**

**Assemblyman NICHOLAS R. FELICE**

**District 40 (Bergen and Passaic)**

**Assemblyman DAVID C. RUSSO**

**District 40 (Bergen and Passaic)**

**SYNOPSIS**

Removes cap on grants from Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/9/2000)**

1 AN ACT concerning financial assistance for underground storage  
2 tanks, and amending P.L.1997, c.235.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. Section 5 of P.L.1997, c.235 (C.58:10A-37.5) is amended to  
8 read as follows:

9 5. a. The authority may award financial assistance from the fund  
10 to an eligible owner or operator in the form of a loan or a conditional  
11 hardship grant as provided in this section. An award of financial  
12 assistance, either as a loan or a grant, or a combination of both, may,  
13 upon application therefor, be for 100% of the eligible project costs.  
14 However, a loan that any applicant may receive from the fund for an  
15 upgrade, remediation, or closure, or any combination thereof, for any  
16 one facility, may not exceed \$1,000,000 and a grant that any applicant  
17 may receive from the fund for any one facility, may not exceed  
18 \$250,000. The total amount of financial assistance awarded as grants  
19 in any one year may not exceed one third of the total amount of  
20 financial assistance awarded in that year except that this limitation  
21 upon the award of grants shall not apply to financial assistance  
22 awarded between January 1, 1999 and ~~March 31, 2000~~ March 31,  
23 2001.

24 b. A public entity applying for financial assistance from the fund  
25 may only be awarded financial assistance in the form of an interest free  
26 loan.

27 c. An applicant, other than a public entity, may apply for and  
28 receive a conditional hardship grant as provided in paragraph (1) of  
29 this subsection, or a loan for an upgrade, closure, or remediation as  
30 provided in paragraph (2) of this subsection. Financial assistance  
31 awarded an applicant pursuant to this subsection may consist entirely  
32 of a conditional hardship grant, a loan for an upgrade, or loan for a  
33 closure, or a loan for a remediation, or any combination thereof,  
34 except that the total amount of the award of financial assistance shall  
35 be subject to the per facility dollar limitation enumerated in subsection  
36 a. of this section. Notwithstanding any other provision of this  
37 subsection to the contrary, no tax exempt, nonprofit organization,  
38 corporation, or association shall be awarded a conditional hardship  
39 grant pursuant to paragraph (1) of this subsection.

40 (1) A conditional hardship grant for eligible project costs of an  
41 upgrade, closure or remediation shall be awarded by the authority  
42 based upon a finding of eligibility and financial hardship and upon a  
43 finding that the applicant meets the criteria set forth in this act.

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 In order to be eligible for a conditional hardship grant, the applicant  
2 shall have owned or operated the subject petroleum underground  
3 storage tank as of December 1, 1996 and continually thereafter or shall  
4 have inherited the property from a person who owned the petroleum  
5 underground storage tank as of that date. No applicant shall be  
6 eligible for a conditional hardship grant if the applicant has a taxable  
7 income of more than \$100,000 or a net worth, exclusive of the  
8 applicant's primary residence, of over \$100,000.

9 A finding of financial hardship by the authority shall be based upon  
10 a determination that an applicant cannot reasonably be expected to  
11 repay all or a portion of the eligible project costs if the financial  
12 assistance were to be awarded as a loan. The amount of an award of  
13 a conditional hardship grant shall be the amount of that portion of the  
14 eligible project costs the authority determines the applicant cannot  
15 reasonably be expected to repay.

16 In making a finding of financial hardship for an application for the  
17 upgrade, closure, or remediation of a petroleum underground storage  
18 tank, where the petroleum underground storage tank is a part of the  
19 business property of the owner, the authority shall base its finding  
20 upon the cash flow of the applicant's business, whether or not any part  
21 of the applicant's business is related to the ownership or operation of  
22 that petroleum underground storage tank. In making a finding of  
23 financial hardship for an application for the upgrade or remediation of  
24 a petroleum underground storage tank, where the petroleum  
25 underground storage tank is not a part of the business property of the  
26 owner, the authority shall base its finding upon the applicant's taxable  
27 income in the year prior to the date of the application being submitted.

28 If the authority awards a conditional hardship grant in combination  
29 with a loan pursuant to this subsection, the authority shall release to  
30 the applicant the loan monies prior to the release of the conditional  
31 hardship grant monies.

32 Conditional hardship grants awarded to an applicant shall be subject  
33 to the lien provisions enumerated in section 16 of P.L.1997, c.235  
34 (C.58:10A-37.16).

35 (2) A loan to an eligible owner or operator for the eligible project  
36 costs of an upgrade, closure, or remediation shall be awarded by the  
37 authority only upon a finding that the applicant other than a public  
38 entity is able to repay the amount of the loan.

39 In making a finding of an applicant's ability to repay a loan for the  
40 upgrade, closure, and remediation of a regulated tank, or for the  
41 remediation of a discharge from a petroleum underground storage  
42 tank, the authority shall base its finding, as applicable, upon the cash  
43 flow of the applicant's business, the applicant's taxable income and the  
44 applicant's personal and business assets, except that the authority may  
45 not consider the applicant's primary residence as collateral, except that  
46 the authority may consider the applicant's primary residence as

1 collateral with the permission of the applicant or where the subject  
2 petroleum underground storage tank or regulated tank is located at the  
3 primary residence.

4 d. The authority shall, where applicable, require an applicant  
5 applying for financial assistance from the fund to submit to the  
6 authority the financial statements of the applicant's business for three  
7 years prior to the date of the application, the most recent interim  
8 financial statement for the year of the application, the applicant's  
9 federal income tax returns, or other relevant documentation.

10 e. Nothing in this section is intended to alter the priority or criteria  
11 for awarding financial assistance established pursuant to section 4 of  
12 P.L.1997, c.235 (C.58:10A-37.4).

13 f. An eligible owner or operator may only be awarded that amount  
14 of financial assistance issued as a loan for which the applicant  
15 demonstrates he could not qualify for and obtain as a commercial loan.  
16 The provisions of this subsection shall not apply to an owner or  
17 operator or petroleum underground storage tank used to store heating  
18 oil for onsite consumption in a residential building.

19 (cf: P.L.1999, c.89, s.1)

20

21 2. This act shall take effect immediately.

22

23

24

#### STATEMENT

25

26 This bill would remove the limit on the total amount of grant money  
27 that may be made available from the Petroleum Underground Storage  
28 Tank Remediation, Upgrade and Closure Fund for one additional year.  
29 The total annual amount of financial assistance that may be awarded  
30 as grants is one third of the total annual amount of financial assistance  
31 awarded. However, as of January, 2000, the applications for grants  
32 exceed the total amount of applications for loans. Therefore, this bill  
33 would remove the cap to assure that the available funds may be  
34 awarded.

**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY, No. 2376**  
**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

DATED: OCTOBER 18, 2000

**SUMMARY**

**Synopsis:** Removes cap on grants from Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund.

**Type of Impact:** No impact on Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund.

**Agencies Affected:** N.J. Economic Development Authority.

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<u><b>Year 1</b></u>	<u><b>Year 2</b></u>	<u><b>Year 3</b></u>
<b>State Cost</b>	None	None	None

- ! The Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund awards grants and loans to owners of underground storage tanks to help them comply with State and federally-mandated upgrade and remediation projects. Grants are awarded to applicants who prove financial hardship.
- ! The Fund is supported by Corporation Business Tax revenues annually dedicated for this purpose pursuant to a constitutional amendment approved in 1996. Approximately \$20 million is dedicated annually to the Fund.
- ! The bill extends the period, under which an unlimited number of grants may be awarded, to March 31, 2001. Thereafter, in any one year, the Fund may only award grants totaling one-third of the total annual amount of financial assistance awarded.
- ! The Office of Legislative Services (OLS) estimates that the bill will have no fiscal impact on State funds nor on the availability of monies for both loans and grants awarded by the Fund.

**BILL DESCRIPTION**

Assembly Bill No. 2376 of 2000 temporarily removes the limit on the total amount of grant money that may be made available from the Petroleum Underground Storage Tank Remediation,

Upgrade and Closure Fund by extending the waiver period to March 31, 2001. The previous waiver period was January 1, 1999 to March 31, 2000. Notwithstanding this waiver, current law requires that the total annual amount of financial assistance that may be awarded as grants (as opposed to loans) from the Fund be no more than one third of the total annual amount of financial assistance awarded. However, as of January, 2000, applications for grants had significantly exceeded applications for loans. The bill would therefore ensure that available funds could be awarded to all eligible applicants who apply for grants by March 31, 2001.

The Fund was created by P.L. 1997, c.235, as amended, and is supported by constitutionally dedicated revenues from the Corporation Business Tax. This assistance program, as administered by the N.J. Economic Development Authority (with technical assistance from the Department of Environmental Protection), provides grants and loans to owners of underground storage tanks for State and federally-mandated upgrades and remediation projects. Successful applicants for grants must prove financial hardship in meeting compliance measures.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services (OLS) estimates that the bill's enactment will have no fiscal impact on State monies because the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund is primarily supported by an annual dedication of revenues generated from the Corporation Business Tax (CBT). This allocation is part of the annual 4 percent constitutional dedication of total CBT collections for environmental purposes. With respect to the Fund itself, the OLS estimates that the removal of the cap on grants through March 31, 2001 will not significantly affect the availability of loan monies. This estimate is based on statements made by the Economic Development Authority during committee hearings on the bill in which it indicated that the Fund has sufficient balances to accommodate all applicants for both grants and loans during the time period designated in the bill that waives the grant award restrictions.

Section: *Environment, Agriculture, Energy and Natural Resources*

Analyst: *Richard M. Handelman*  
*Senior Fiscal Analyst*

Approved: *Alan R. Kooney*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 2376**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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ADOPTED NOVEMBER 13, 2000

**Sponsored by:**

**Assemblyman NICHOLAS R. FELICE**

**District 40 (Bergen and Passaic)**

**Assemblyman DAVID C. RUSSO**

**District 40 (Bergen and Passaic)**

**SYNOPSIS**

Delays implementation of cap on grants from Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund; authorizes reimbursement grants for remediation costs.

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Assembly Solid and Hazardous Waste Committee.





1 AN ACT concerning financial assistance for underground storage tanks,  
2 and amending P.L.1997, c.235.

3

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

6

7 1. Section 5 of P.L.1997, c.235 (C.58:10A-37.5) is amended to read  
8 as follows:

9 5. a. The authority may award financial assistance from the fund to  
10 an eligible owner or operator in the form of a loan or a conditional  
11 hardship grant as provided in this section. An award of financial  
12 assistance, either as a loan or a grant, or a combination of both, may, upon  
13 application therefor, be for 100% of the eligible project costs. However,  
14 a loan that any applicant may receive from the fund for an upgrade,  
15 remediation, or closure, or any combination thereof, for any one facility,  
16 may not exceed \$1,000,000 and a grant that any applicant may receive  
17 from the fund for any one facility, may not exceed \$250,000. The total  
18 amount of financial assistance awarded as grants in any one year may not  
19 exceed one third of the total amount of financial assistance awarded in  
20 that year except that this limitation upon the award of grants shall not  
21 apply to financial assistance awarded between January 1, 1999 and  
22 **[March 31, 2000] March 31, 2004**.

23 b. A public entity applying for financial assistance from the fund may  
24 only be awarded financial assistance in the form of an interest free loan.

25 c. An applicant, other than a public entity, may apply for and receive  
26 a conditional hardship grant as provided in paragraph (1) of this  
27 subsection, or a loan for an upgrade, closure, or remediation as provided  
28 in paragraph (2) of this subsection. Financial assistance awarded an  
29 applicant pursuant to this subsection may consist entirely of a conditional  
30 hardship grant, a loan for an upgrade, or loan for a closure, or a loan for  
31 a remediation, or any combination thereof, except that the total amount  
32 of the award of financial assistance shall be subject to the per facility  
33 dollar limitation enumerated in subsection a. of this section.  
34 Notwithstanding any other provision of this subsection to the contrary, no  
35 tax exempt, nonprofit organization, corporation, or association shall be  
36 awarded a conditional hardship grant pursuant to paragraph (1) of this  
37 subsection.

38 (1) A conditional hardship grant for eligible project costs of an  
39 upgrade, closure or remediation shall be awarded by the authority based  
40 upon a finding of eligibility and financial hardship and upon a finding that  
41 the applicant meets the criteria set forth in this act.

42 In order to be eligible for a conditional hardship grant, the applicant  
43 shall have owned or operated the subject petroleum underground storage

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 tank as of December 1, 1996 and continually thereafter or shall have  
2 inherited the property from a person who owned the petroleum  
3 underground storage tank as of that date. No applicant shall be eligible  
4 for a conditional hardship grant if the applicant has a taxable income of  
5 more than \$100,000 or a net worth, exclusive of the applicant's primary  
6 residence, of over \$100,000.

7 A finding of financial hardship by the authority shall be based upon a  
8 determination that an applicant cannot reasonably be expected to repay all  
9 or a portion of the eligible project costs if the financial assistance were to  
10 be awarded as a loan. The amount of an award of a conditional hardship  
11 grant shall be the amount of that portion of the eligible project costs the  
12 authority determines the applicant cannot reasonably be expected to  
13 repay.

14 In making a finding of financial hardship for an application for the  
15 upgrade, closure, or remediation of a petroleum underground storage  
16 tank, where the petroleum underground storage tank is a part of the  
17 business property of the owner, the authority shall base its finding upon  
18 the cash flow of the applicant's business, whether or not any part of the  
19 applicant's business is related to the ownership or operation of that  
20 petroleum underground storage tank. In making a finding of financial  
21 hardship for an application for the upgrade or remediation of a petroleum  
22 underground storage tank, where the petroleum underground storage tank  
23 is not a part of the business property of the owner, the authority shall base  
24 its finding upon the applicant's taxable income in the year prior to the date  
25 of the application being submitted.

26 If the authority awards a conditional hardship grant in combination  
27 with a loan pursuant to this subsection, the authority shall release to the  
28 applicant the loan monies prior to the release of the conditional hardship  
29 grant monies.

30 Conditional hardship grants awarded to an applicant shall be subject  
31 to the lien provisions enumerated in section 16 of P.L.1997, c.235  
32 (C.58:10A-37.16).

33 (2) A loan to an eligible owner or operator for the eligible project  
34 costs of an upgrade, closure, or remediation shall be awarded by the  
35 authority only upon a finding that the applicant other than a public entity  
36 is able to repay the amount of the loan.

37 In making a finding of an applicant's ability to repay a loan for the  
38 upgrade, closure, and remediation of a regulated tank, or for the  
39 remediation of a discharge from a petroleum underground storage tank,  
40 the authority shall base its finding, as applicable, upon the cash flow of the  
41 applicant's business, the applicant's taxable income and the applicant's  
42 personal and business assets, except that the authority may not consider  
43 the applicant's primary residence as collateral, except that the authority  
44 may consider the applicant's primary residence as collateral with the  
45 permission of the applicant or where the subject petroleum underground  
46 storage tank or regulated tank is located at the primary residence.

1 d. The authority shall, where applicable, require an applicant applying  
2 for financial assistance from the fund to submit to the authority the  
3 financial statements of the applicant's business for three years prior to the  
4 date of the application, the most recent interim financial statement for the  
5 year of the application, the applicant's federal income tax returns, or other  
6 relevant documentation.

7 e. Nothing in this section is intended to alter the priority or criteria for  
8 awarding financial assistance established pursuant to section 4 of  
9 P.L.1997, c.235 (C.58:10A-37.4).

10 f. An eligible owner or operator may only be awarded that amount of  
11 financial assistance issued as a loan for which the applicant demonstrates  
12 he could not qualify for and obtain as a commercial loan. The provisions  
13 of this subsection shall not apply to an owner or operator or petroleum  
14 underground storage tank used to store heating oil for onsite consumption  
15 in a residential building.

16 (cf: P.L.1999, c.89, s.1)

17  
18 2. Section 7 of P.L.1997, c.235 (C.58:10A-37.7) is amended to read  
19 as follows:

20 7. a. The authority shall award financial assistance to an owner or  
21 operator of a facility only if the facility is properly registered with the  
22 department pursuant to section 3 of P.L.1986, c.102 (C.58:10A-23),  
23 where applicable, and if all fees or penalties due and payable on the facility  
24 to the department pursuant to P.L.1986, c.102 have either been paid or  
25 the nature or the amount of the fee or penalty is being contested in  
26 accordance with law.

27 b. The authority may deny an application for financial assistance, and  
28 any award of financial assistance may be recoverable by the authority,  
29 upon a finding that:

30 (1) in the case of financial assistance awarded for a remediation, the  
31 discharge was proximately caused by the applicant's knowing conduct;

32 (2) in the case of financial assistance awarded for a remediation, the  
33 discharge was proximately caused or exacerbated by knowing conduct by  
34 the applicant with regard to any lawful requirement applicable to  
35 petroleum underground storage tanks intended to prevent, or to facilitate  
36 the early detection of, the discharge;

37 (3) the applicant failed to commence or complete a remediation,  
38 closure, or an upgrade for which an award of financial assistance was  
39 made within the time required by the department in accordance with the  
40 applicable rules and regulations, within the time prescribed in an  
41 administrative order, an administrative consent agreement, a memorandum  
42 of agreement, or a court order; or

43 (4) the applicant provided false information or withheld information  
44 on a loan or grant application, or other relevant information required to  
45 be submitted to the authority, on any matter that would otherwise render  
46 the applicant ineligible for financial assistance from the fund, that would

1 alter the priority of the applicant to receive financial assistance from the  
2 fund, that resulted in the applicant receiving a larger grant or loan award  
3 than the applicant would otherwise be eligible, or that resulted in  
4 payments from the fund in excess of the actual eligible project costs  
5 incurred by the applicant or the amount to which the applicant is legally  
6 eligible.

7 Nothing in this subsection shall be construed to require the authority  
8 to undertake an investigation or make any findings concerning the conduct  
9 described in this subsection.

10 c. An application for financial assistance from the fund for an upgrade  
11 or closure of a regulated tank shall include all regulated tanks at the  
12 facility for which the applicant is seeking financial assistance. Once  
13 financial assistance for an upgrade, closure or a remediation is awarded  
14 for a facility, no additional award of financial assistance may be made for  
15 that facility. However, if an applicant discovers while performing upgrade  
16 or closure activities that a remediation is necessary at the site of a facility,  
17 and if financial assistance was previously awarded for that site only for an  
18 upgrade or closure of a regulated tank, the applicant may amend his  
19 application and apply for financial assistance for the required remediation  
20 subject to the limitations enumerated in section 5 of this act. An  
21 application for financial assistance for an upgrade or closure of a regulated  
22 tank shall be conditioned upon the applicant agreeing to perform, at the  
23 time of the upgrade or closure, any remediation necessary as a result of a  
24 discharge from the regulated tank and commencement of the remediation  
25 within the time prescribed and in accordance with the rules and  
26 regulations of the department.

27 d. Except as provided below, no financial assistance for upgrade or  
28 closure shall be awarded for any regulated tank required to meet the  
29 upgrade or closure requirements pursuant to 42 U.S.C. s.6991 et seq. or  
30 P.L.1986, c.102 (C.58:10A-21 et seq.), or for the remediation of a  
31 discharge from any such regulated tank except as provided in subsection  
32 c. of this section, unless the application is filed with the authority prior to  
33 January 1, 1999 and the application is complete and the application fee is  
34 received by August 1, 1999. No financial assistance for upgrade or  
35 closure shall be awarded for any underground storage tank with a capacity  
36 of over 2,000 gallons used to store heating oil for onsite consumption in  
37 a nonresidential building required to be upgraded pursuant to P.L.1986,  
38 c.102 (C.58:10A-21 et seq.) but not pursuant to 42 U.S.C. s.6991 et seq.  
39 or for the remediation of a discharge from any such regulated tank except  
40 as provided in subsection c. of this section, unless the application is filed  
41 with the authority prior to August 31, 1999 and the application is  
42 complete and the application fee is received by March 31, 2000.

43 e. The date of occurrence of a discharge shall not affect eligibility for  
44 financial assistance from the fund. Except for a preliminary assessment or  
45 a site investigation performed after the effective date of P.L.1997, c.235  
46 (C.58:10A-37.1 et seq.), and except as provided in [subsection]

1 subsections g. and h. of this section, no award of financial assistance shall  
2 be made from the fund for the otherwise eligible project costs of a  
3 remediation, closure, or an upgrade, or parts thereof, completed prior to  
4 an award of financial assistance from the fund.

5 f. No financial assistance may be awarded from the fund for the  
6 remediation of a discharge from a petroleum underground storage tank if  
7 financial assistance from the Hazardous Discharge Site Remediation Fund  
8 established pursuant to section 26 of P.L.1993, c.139 (C.58:10B-4) has  
9 previously been made for a remediation at that site as a result of a  
10 discharge from that petroleum underground storage tank. No financial  
11 assistance may be awarded from the fund for the remediation of a  
12 discharge from a petroleum underground storage tank if the discharge  
13 began subsequent to the completion of an upgrade of that petroleum  
14 underground storage tank, which upgrade was intended to meet all  
15 applicable upgrade regulations of the department, no matter when the  
16 upgrade was performed.

17 g. Notwithstanding any provision of P.L.1997, c.235 (C.58:10A-37.1  
18 et seq.), where an eligible owner or operator has filed an application for  
19 financial assistance from the fund, and there are either insufficient monies  
20 in the fund or the authority has not yet acted upon the application or  
21 awarded the financial assistance, the eligible owner or operator may  
22 expend its own funds for the upgrade, closure, or remediation, and upon  
23 approval of the application, the authority shall award the financial  
24 assistance as a reimbursement of the monies expended for eligible project  
25 costs.

26 h. Notwithstanding any provision to the contrary of P.L.1997, c.235  
27 (C.58:10A-37.1 et seq.), if an applicant has expended the applicant's own  
28 funds on a remediation prior to filing an application for financial assistance  
29 from the fund for the eligible project costs of the remediation, the  
30 authority, upon approval of the application, may make a grant from the  
31 fund pursuant to paragraph (1) of subsection c. of section 5 of P.L.1997,  
32 c.235 (C.58:10A-37.5) to reimburse the eligible owner or operator for the  
33 eligible project costs of the remediation.

34 (cf: P.L.1999, c.89, s.3)

35

36 3. This act shall take effect immediately and section 2 shall be  
37 retroactive to January 1, 2000.

# ASSEMBLY SOLID AND HAZARDOUS WASTE COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2376**

# **STATE OF NEW JERSEY**

DATED: NOVEMBER 13, 2000

The Assembly Solid and Hazardous Waste Committee favorably reports an Assembly Committee Substitute for Assembly Bill No. 2376.

The Assembly Committee Substitute for Assembly Bill No. 2376 would delay until March 31, 2004 the implementation of a limit on the proportion of financial assistance from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund that can be awarded in the form of grants.

The law that established the underground storage tank fund provides that the amount of financial assistance from the Fund that may be awarded as grants cannot exceed one third of the total annual amount of financial assistance awarded, but delays implementation of this limit until March 31, 2000. As of January 2000, however, the applications for grants exceeded the total amount of applications for loans. Therefore, the substitute bill would postpone implementation of the cap to assure that the available funds may be awarded.

In addition, the substitute bill revises a current prohibition against the award of reimbursement for prior expenditures to correct storage tank problems by permitting such reimbursements in the case of prior expenditures for tank remediation measures by individuals and small businesses meeting the qualifications for grants from the fund.

The Assembly Committee Substitute for Assembly Bill No. 2376 is identical to Senate Bill No. 1173 (1R).

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 2376**

**STATE OF NEW JERSEY**

DATED: DECEMBER 7, 2000

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2376 (ACS).

Assembly Bill No. 2376 (ACS) delays until March 31, 2004 the implementation of a limit on the proportion of financial assistance from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund that can be awarded in the form of grants.

The law that established the underground storage tank fund provides that the amount of financial assistance from the Fund that may be awarded as grants cannot exceed one third of the total annual amount of financial assistance awarded, but delays implementation of this limit until March 31, 2000. As of January 2000, however, the applications for grants exceeded the total amount of applications for loans. Therefore, the bill postpones implementation of the cap to assure that the available funds may be awarded.

In addition, the bill revises a current prohibition against the award of reimbursement for prior expenditures to correct storage tank problems by permitting such reimbursements in the case of prior expenditures for tank remediation measures by individuals and small businesses meeting the qualifications for grants from the fund.

As reported, the bill is identical to Senate Bill No. 1173 (1R), as also reported by the committee.

FISCAL IMPACT:

The legislation delays the cap on grants from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund. There will be no fiscal impact on State funds nor on the availability of monies for both loans and grants awarded from the fund.

**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY COMMITTEE SUBSTITUTE FOR**  
**ASSEMBLY, No. 2376**  
**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

DATED: DECEMBER 15, 2000

**SUMMARY**

- Synopsis:** Delays implementation of cap on grants from Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund; authorizes reimbursement grants for remediation costs.
- Type of Impact:** Lowers future balance of the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund.
- Agencies Affected:** N.J. Economic Development Authority.

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<u><b>Year 1</b></u>	<u><b>Year 2</b></u>	<u><b>Year 3</b></u>
<b>State Cost</b>	None	None	None

- ! The Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund awards grants and loans to owners of underground storage tanks to help them comply with State and federally-mandated upgrade and remediation projects. Grants are awarded to applicants who prove financial hardship.
- ! The Closure Fund is supported by Corporation Business Tax revenues annually dedicated for this purpose pursuant to a constitutional amendment approved in 1996. Approximately \$20 million is dedicated annually to the Closure Fund.
- ! The committee substitute extends the period, under which an unlimited number of grants may be awarded, to March 31, 2004. At present, grant awards may not total more than one-third of the total annual amount of financial assistance awarded. The committee substitute also allows remediation costs incurred prior to a grant application to be eligible for grant reimbursement.
- ! The Office of Legislative Services (OLS) estimates that the committee substitute will have no fiscal impact on the General Fund, but will affect the Closure Fund's future balance by awarding more grants than loans during the period when the grant/loan allocation cap is suspended.



## **BILL DESCRIPTION**

Assembly Committee Substitute for Assembly Bill No. 2376 of 2000 temporarily removes the limit on the total amount of grant money that may be made available from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund by extending the waiver period to March 31, 2004. The previous waiver period was January 1, 1999 to March 31, 2000. Notwithstanding this waiver, current law requires that the total annual amount of financial assistance that may be awarded as grants (as opposed to loans) from the Fund be no more than one-third of the total annual amount of financial assistance awarded. However, as of January, 2000, applications for grants had significantly exceeded applications for loans. The committee substitute would therefore ensure that available funds could be awarded to all (or at least a greater number of) eligible applicants who apply for grants by March 31, 2004.

The committee substitute also amends a current prohibition against awarding grants that reimburse applicants for prior expenditures to correct storage tank problems. The committee substitute would permit such reimbursements for tank remediation measures paid by individuals and small businesses who otherwise qualify for grants from the Fund.

The Fund was created by P.L. 1997, c.235, as amended, and is supported by constitutionally dedicated revenues from the Corporation Business Tax. This assistance program, as administered by the N.J. Economic Development Authority (with technical assistance from the Department of Environmental Protection), provides grants and loans to owners of underground storage tanks for State and federally-mandated upgrades and remediation projects. Successful applicants for grants must prove financial hardship in meeting compliance measures.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services (OLS) estimates that the committee substitute's enactment will have no fiscal impact on the General Fund because the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund is primarily supported by an annual dedication of revenues generated from the Corporation Business Tax (CBT). This allocation is part of the annual 4 percent constitutional dedication of total CBT collections for environmental purposes.

With respect to the Closure Fund, the OLS estimates that the removal of the cap on grants awarded through March 31, 2004 will lower the available, long-term balance of the Fund but not significantly affect the availability of loan monies. This estimate is based on statements made by the Economic Development Authority during committee hearings on the bill in which it indicated that the Fund had sufficient balances to accommodate all applicants for both grants and loans during the designated time period in which grant award restrictions are waived. While this may be true, the OLS estimates that the decrease in loans awarded during this period will also cause a corresponding decrease in loan repayments, thus affecting future Fund balances. In addition, the lower demand for loans may be exacerbated by the committee substitute's provision to expand eligible reimbursement costs than can be covered by grants.

ACS for A2376

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Section: *Environment, Agriculture, Energy and Natural Resources*

Analyst: *Richard M. Handelman*  
*Senior Fiscal Analyst*

Approved: *Alan R. Kooney*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

P.L. 2001, CHAPTER 22, *approved February 2, 2001*  
Senate, No. 1173 (*First Reprint*)

1 **AN ACT** concerning financial assistance for underground storage  
2 tanks, and amending P.L.1997, c.235.

3

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

6

7 1. Section 5 of P.L.1997, c.235 (C.58:10A-37.5) is amended to  
8 read as follows:

9 5. a. The authority may award financial assistance from the fund  
10 to an eligible owner or operator in the form of a loan or a conditional  
11 hardship grant as provided in this section. An award of financial  
12 assistance, either as a loan or a grant, or a combination of both, may,  
13 upon application therefor, be for 100% of the eligible project costs.  
14 However, a loan that any applicant may receive from the fund for an  
15 upgrade, remediation, or closure, or any combination thereof, for any  
16 one facility, may not exceed \$1,000,000 and a grant that any applicant  
17 may receive from the fund for any one facility, may not exceed  
18 \$250,000. The total amount of financial assistance awarded as grants  
19 in any one year may not exceed one third of the total amount of  
20 financial assistance awarded in that year except that this limitation  
21 upon the award of grants shall not apply to financial assistance  
22 awarded between January 1, 1999 and ~~March 31, 2000~~<sup>1</sup> March 31,  
23 2001 March 31, 2004<sup>1</sup>.

24 b. A public entity applying for financial assistance from the fund  
25 may only be awarded financial assistance in the form of an interest free  
26 loan.

27 c. An applicant, other than a public entity, may apply for and  
28 receive a conditional hardship grant as provided in paragraph (1) of  
29 this subsection, or a loan for an upgrade, closure, or remediation as  
30 provided in paragraph (2) of this subsection. Financial assistance  
31 awarded an applicant pursuant to this subsection may consist entirely  
32 of a conditional hardship grant, a loan for an upgrade, or loan for a  
33 closure, or a loan for a remediation, or any combination thereof,  
34 except that the total amount of the award of financial assistance shall  
35 be subject to the per facility dollar limitation enumerated in subsection  
36 a. of this section. Notwithstanding any other provision of this  
37 subsection to the contrary, no tax exempt, nonprofit organization,  
38 corporation, or association shall be awarded a conditional hardship  
39 grant pursuant to paragraph (1) of this subsection.

40 (1) A conditional hardship grant for eligible project costs of an

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Senate SBA committee amendments adopted October 19, 2000.

1 upgrade, closure or remediation shall be awarded by the authority  
2 based upon a finding of eligibility and financial hardship and upon a  
3 finding that the applicant meets the criteria set forth in this act.

4 In order to be eligible for a conditional hardship grant, the applicant  
5 shall have owned or operated the subject petroleum underground  
6 storage tank as of December 1, 1996 and continually thereafter or shall  
7 have inherited the property from a person who owned the petroleum  
8 underground storage tank as of that date. No applicant shall be  
9 eligible for a conditional hardship grant if the applicant has a taxable  
10 income of more than \$100,000 or a net worth, exclusive of the  
11 applicant's primary residence, of over \$100,000.

12 A finding of financial hardship by the authority shall be based upon  
13 a determination that an applicant cannot reasonably be expected to  
14 repay all or a portion of the eligible project costs if the financial  
15 assistance were to be awarded as a loan. The amount of an award of  
16 a conditional hardship grant shall be the amount of that portion of the  
17 eligible project costs the authority determines the applicant cannot  
18 reasonably be expected to repay.

19 In making a finding of financial hardship for an application for the  
20 upgrade, closure, or remediation of a petroleum underground storage  
21 tank, where the petroleum underground storage tank is a part of the  
22 business property of the owner, the authority shall base its finding  
23 upon the cash flow of the applicant's business, whether or not any part  
24 of the applicant's business is related to the ownership or operation of  
25 that petroleum underground storage tank. In making a finding of  
26 financial hardship for an application for the upgrade or remediation of  
27 a petroleum underground storage tank, where the petroleum  
28 underground storage tank is not a part of the business property of the  
29 owner, the authority shall base its finding upon the applicant's taxable  
30 income in the year prior to the date of the application being submitted.

31 If the authority awards a conditional hardship grant in combination  
32 with a loan pursuant to this subsection, the authority shall release to  
33 the applicant the loan monies prior to the release of the conditional  
34 hardship grant monies.

35 Conditional hardship grants awarded to an applicant shall be subject  
36 to the lien provisions enumerated in section 16 of P.L.1997, c.235  
37 (C.58:10A-37.16).

38 (2) A loan to an eligible owner or operator for the eligible project  
39 costs of an upgrade, closure, or remediation shall be awarded by the  
40 authority only upon a finding that the applicant other than a public  
41 entity is able to repay the amount of the loan.

42 In making a finding of an applicant's ability to repay a loan for the  
43 upgrade, closure, and remediation of a regulated tank, or for the  
44 remediation of a discharge from a petroleum underground storage  
45 tank, the authority shall base its finding, as applicable, upon the cash  
46 flow of the applicant's business, the applicant's taxable income and the

1 applicant's personal and business assets, except that the authority may  
2 not consider the applicant's primary residence as collateral, except that  
3 the authority may consider the applicant's primary residence as  
4 collateral with the permission of the applicant or where the subject  
5 petroleum underground storage tank or regulated tank is located at the  
6 primary residence.

7 d. The authority shall, where applicable, require an applicant  
8 applying for financial assistance from the fund to submit to the  
9 authority the financial statements of the applicant's business for three  
10 years prior to the date of the application, the most recent interim  
11 financial statement for the year of the application, the applicant's  
12 federal income tax returns, or other relevant documentation.

13 e. Nothing in this section is intended to alter the priority or criteria  
14 for awarding financial assistance established pursuant to section 4 of  
15 P.L.1997, c.235 (C.58:10A-37.4).

16 f. An eligible owner or operator may only be awarded that amount  
17 of financial assistance issued as a loan for which the applicant  
18 demonstrates he could not qualify for and obtain as a commercial loan.  
19 The provisions of this subsection shall not apply to an owner or  
20 operator or petroleum underground storage tank used to store heating  
21 oil for onsite consumption in a residential building.

22 (cf: P.L.1999, c.89, s.1)

23

24 <sup>1</sup>2. Section 7 of P.L.1997, c.235 (C.58:10A-37.7) is amended to  
25 read as follows:

26 7. a. The authority shall award financial assistance to an owner or  
27 operator of a facility only if the facility is properly registered with the  
28 department pursuant to section 3 of P.L.1986, c.102 (C.58:10A-23),  
29 where applicable, and if all fees or penalties due and payable on the  
30 facility to the department pursuant to P.L.1986, c.102 have either been  
31 paid or the nature or the amount of the fee or penalty is being  
32 contested in accordance with law.

33 b. The authority may deny an application for financial assistance,  
34 and any award of financial assistance may be recoverable by the  
35 authority, upon a finding that:

36 (1) in the case of financial assistance awarded for a remediation,  
37 the discharge was proximately caused by the applicant's knowing  
38 conduct;

39 (2) in the case of financial assistance awarded for a remediation,  
40 the discharge was proximately caused or exacerbated by knowing  
41 conduct by the applicant with regard to any lawful requirement  
42 applicable to petroleum underground storage tanks intended to  
43 prevent, or to facilitate the early detection of, the discharge;

44 (3) the applicant failed to commence or complete a remediation,  
45 closure, or an upgrade for which an award of financial assistance was  
46 made within the time required by the department in accordance with

1 the applicable rules and regulations, within the time prescribed in an  
2 administrative order, an administrative consent agreement, a  
3 memorandum of agreement, or a court order; or

4 (4) the applicant provided false information or withheld  
5 information on a loan or grant application, or other relevant  
6 information required to be submitted to the authority, on any matter  
7 that would otherwise render the applicant ineligible for financial  
8 assistance from the fund, that would alter the priority of the applicant  
9 to receive financial assistance from the fund, that resulted in the  
10 applicant receiving a larger grant or loan award than the applicant  
11 would otherwise be eligible, or that resulted in payments from the fund  
12 in excess of the actual eligible project costs incurred by the applicant  
13 or the amount to which the applicant is legally eligible.

14 Nothing in this subsection shall be construed to require the  
15 authority to undertake an investigation or make any findings  
16 concerning the conduct described in this subsection.

17 c. An application for financial assistance from the fund for an  
18 upgrade or closure of a regulated tank shall include all regulated tanks  
19 at the facility for which the applicant is seeking financial assistance.  
20 Once financial assistance for an upgrade, closure or a remediation is  
21 awarded for a facility, no additional award of financial assistance may  
22 be made for that facility. However, if an applicant discovers while  
23 performing upgrade or closure activities that a remediation is  
24 necessary at the site of a facility, and if financial assistance was  
25 previously awarded for that site only for an upgrade or closure of a  
26 regulated tank, the applicant may amend his application and apply for  
27 financial assistance for the required remediation subject to the  
28 limitations enumerated in section 5 of this act. An application for  
29 financial assistance for an upgrade or closure of a regulated tank shall  
30 be conditioned upon the applicant agreeing to perform, at the time of  
31 the upgrade or closure, any remediation necessary as a result of a  
32 discharge from the regulated tank and commencement of the  
33 remediation within the time prescribed and in accordance with the  
34 rules and regulations of the department.

35 d. Except as provided below, no financial assistance for upgrade  
36 or closure shall be awarded for any regulated tank required to meet the  
37 upgrade or closure requirements pursuant to 42 U.S.C. s.6991 et seq.  
38 or P.L.1986, c.102 (C.58:10A-21 et seq.), or for the remediation of a  
39 discharge from any such regulated tank except as provided in  
40 subsection c. of this section, unless the application is filed with the  
41 authority prior to January 1, 1999 and the application is complete and  
42 the application fee is received by August 1, 1999. No financial  
43 assistance for upgrade or closure shall be awarded for any  
44 underground storage tank with a capacity of over 2,000 gallons used  
45 to store heating oil for onsite consumption in a nonresidential building  
46 required to be upgraded pursuant to P.L.1986, c.102 (C.58:10A-21 et  
47 seq.) but not pursuant to 42 U.S.C. s.6991 et seq. or for the

1 remediation of a discharge from any such regulated tank except as  
2 provided in subsection c. of this section, unless the application is filed  
3 with the authority prior to August 31, 1999 and the application is  
4 complete and the application fee is received by March 31, 2000.

5 e. The date of occurrence of a discharge shall not affect eligibility  
6 for financial assistance from the fund. Except for a preliminary  
7 assessment or a site investigation performed after the effective date of  
8 P.L.1997, c.235 (C.58:10A-37.1 et seq.), and except as provided in  
9 ~~[subsection]~~ subsections g. and h. of this section, no award of  
10 financial assistance shall be made from the fund for the otherwise  
11 eligible project costs of a remediation, closure, or an upgrade, or parts  
12 thereof, completed prior to an award of financial assistance from the  
13 fund.

14 f. No financial assistance may be awarded from the fund for the  
15 remediation of a discharge from a petroleum underground storage tank  
16 if financial assistance from the Hazardous Discharge Site Remediation  
17 Fund established pursuant to section 26 of P.L.1993, c.139  
18 (C.58:10B-4) has previously been made for a remediation at that site  
19 as a result of a discharge from that petroleum underground storage  
20 tank. No financial assistance may be awarded from the fund for the  
21 remediation of a discharge from a petroleum underground storage tank  
22 if the discharge began subsequent to the completion of an upgrade of  
23 that petroleum underground storage tank, which upgrade was intended  
24 to meet all applicable upgrade regulations of the department, no matter  
25 when the upgrade was performed.

26 g. Notwithstanding any provision of P.L.1997, c.235  
27 (C.58:10A-37.1 et seq.), where an eligible owner or operator has filed  
28 an application for financial assistance from the fund, and there are  
29 either insufficient monies in the fund or the authority has not yet acted  
30 upon the application or awarded the financial assistance, the eligible  
31 owner or operator may expend its own funds for the upgrade, closure,  
32 or remediation, and upon approval of the application, the authority  
33 shall award the financial assistance as a reimbursement of the monies  
34 expended for eligible project costs.

35 h. Notwithstanding any provision to the contrary of P.L.1997,  
36 c.235 (C.58:10A-37.1 et seq.), if an applicant has expended the  
37 applicant's own funds on a remediation prior to filing an application  
38 for financial assistance from the fund for the eligible project costs of  
39 the remediation, the authority, upon approval of the application, may  
40 make a grant from the fund pursuant to paragraph (1) of subsection c.  
41 of section 5 of P.L.1997, c.235 (C.58:10A-37.5) to reimburse the  
42 eligible owner or operator for the eligible project costs of the  
43 remediation.<sup>1</sup>

44 (cf: P.L.1999, c.89, s.3)

45  
46 <sup>1</sup>[2.] 3.<sup>1</sup> This act shall take effect immediately and section 2 shall  
47 be retroactive to January 1, 2000<sup>1</sup>.

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3 Delays implementation of cap on grants from Petroleum Underground

4 Storage Tank Remediation, Upgrade and Closure Fund; authorizes

5 reimbursement grants for remediation costs.



## CHAPTER 22

AN ACT concerning financial assistance for underground storage tanks, and amending P.L.1997, c.235.

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

1. Section 5 of P.L.1997, c.235 (C.58:10A-37.5) is amended to read as follows:

C.58:10A-37.5 Awarding of financial assistance.

5. a. The authority may award financial assistance from the fund to an eligible owner or operator in the form of a loan or a conditional hardship grant as provided in this section. An award of financial assistance, either as a loan or a grant, or a combination of both, may, upon application therefor, be for 100% of the eligible project costs. However, a loan that any applicant may receive from the fund for an upgrade, remediation, or closure, or any combination thereof, for any one facility, may not exceed \$1,000,000 and a grant that any applicant may receive from the fund for any one facility, may not exceed \$250,000. The total amount of financial assistance awarded as grants in any one year may not exceed one third of the total amount of financial assistance awarded in that year except that this limitation upon the award of grants shall not apply to financial assistance awarded between January 1, 1999 and March 31, 2004.

b. A public entity applying for financial assistance from the fund may only be awarded financial assistance in the form of an interest free loan.

c. An applicant, other than a public entity, may apply for and receive a conditional hardship grant as provided in paragraph (1) of this subsection, or a loan for an upgrade, closure, or remediation as provided in paragraph (2) of this subsection. Financial assistance awarded an applicant pursuant to this subsection may consist entirely of a conditional hardship grant, a loan for an upgrade, or loan for a closure, or a loan for a remediation, or any combination thereof, except that the total amount of the award of financial assistance shall be subject to the per facility dollar limitation enumerated in subsection a. of this section. Notwithstanding any other provision of this subsection to the contrary, no tax exempt, nonprofit organization, corporation, or association shall be awarded a conditional hardship grant pursuant to paragraph (1) of this subsection.

(1) A conditional hardship grant for eligible project costs of an upgrade, closure or remediation shall be awarded by the authority based upon a finding of eligibility and financial hardship and upon a finding that the applicant meets the criteria set forth in this act.

In order to be eligible for a conditional hardship grant, the applicant shall have owned or operated the subject petroleum underground storage tank as of December 1, 1996 and continually thereafter or shall have inherited the property from a person who owned the petroleum underground storage tank as of that date. No applicant shall be eligible for a conditional hardship grant if the applicant has a taxable income of more than \$100,000 or a net worth, exclusive of the applicant's primary residence, of over \$100,000.

A finding of financial hardship by the authority shall be based upon a determination that an applicant cannot reasonably be expected to repay all or a portion of the eligible project costs if the financial assistance were to be awarded as a loan. The amount of an award of a conditional hardship grant shall be the amount of that portion of the eligible project costs the authority determines the applicant cannot reasonably be expected to repay.

In making a finding of financial hardship for an application for the upgrade, closure, or remediation of a petroleum underground storage tank, where the petroleum underground storage tank is a part of the business property of the owner, the authority shall base its finding upon the cash flow of the applicant's business, whether or not any part of the applicant's business is related to the ownership or operation of that petroleum underground storage tank. In making a finding of financial hardship for an application for the upgrade or remediation of a petroleum underground storage tank, where the petroleum underground storage tank is not a part of the business property of the owner, the authority shall base its finding upon the applicant's taxable income in the year prior to the date of the application being submitted.

If the authority awards a conditional hardship grant in combination with a loan pursuant to this subsection, the authority shall release to the applicant the loan monies prior to the release of the conditional hardship grant monies.

Conditional hardship grants awarded to an applicant shall be subject to the lien provisions enumerated in section 16 of P.L.1997, c.235 (C.58:10A-37.16).

(2) A loan to an eligible owner or operator for the eligible project costs of an upgrade, closure, or remediation shall be awarded by the authority only upon a finding that the applicant other than a public entity is able to repay the amount of the loan.

In making a finding of an applicant's ability to repay a loan for the upgrade, closure, and remediation of a regulated tank, or for the remediation of a discharge from a petroleum underground storage tank, the authority shall base its finding, as applicable, upon the cash flow of the applicant's business, the applicant's taxable income and the applicant's personal and business assets, except that the authority may not consider the applicant's primary residence as collateral, except that the authority may consider the applicant's primary residence as collateral with the permission of the applicant or where the subject petroleum underground storage tank or regulated tank is located at the primary residence.

d. The authority shall, where applicable, require an applicant applying for financial assistance from the fund to submit to the authority the financial statements of the applicant's business for three years prior to the date of the application, the most recent interim financial statement for the year of the application, the applicant's federal income tax returns, or other relevant documentation.

e. Nothing in this section is intended to alter the priority or criteria for awarding financial assistance established pursuant to section 4 of P.L.1997, c.235 (C.58:10A-37.4).

f. An eligible owner or operator may only be awarded that amount of financial assistance issued as a loan for which the applicant demonstrates he could not qualify for and obtain as a commercial loan. The provisions of this subsection shall not apply to an owner or operator or petroleum underground storage tank used to store heating oil for onsite consumption in a residential building.

2. Section 7 of P.L.1997, c.235 (C.58:10A-37.7) is amended to read as follows:

C.58:10A-37.7 Conditions for awarding financial assistance.

7. a. The authority shall award financial assistance to an owner or operator of a facility only if the facility is properly registered with the department pursuant to section 3 of P.L.1986, c.102 (C.58:10A-23), where applicable, and if all fees or penalties due and payable on the facility to the department pursuant to P.L.1986, c.102 have either been paid or the nature or the amount of the fee or penalty is being contested in accordance with law.

b. The authority may deny an application for financial assistance, and any award of financial assistance may be recoverable by the authority, upon a finding that:

(1) in the case of financial assistance awarded for a remediation, the discharge was proximately caused by the applicant's knowing conduct;

(2) in the case of financial assistance awarded for a remediation, the discharge was proximately caused or exacerbated by knowing conduct by the applicant with regard to any lawful requirement applicable to petroleum underground storage tanks intended to prevent, or to facilitate the early detection of, the discharge;

(3) the applicant failed to commence or complete a remediation, closure, or an upgrade for which an award of financial assistance was made within the time required by the department in accordance with the applicable rules and regulations, within the time prescribed in an administrative order, an administrative consent agreement, a memorandum of agreement, or a court order; or

(4) the applicant provided false information or withheld information on a loan or grant application, or other relevant information required to be submitted to the authority, on any matter that would otherwise render the applicant ineligible for financial assistance from the fund, that would alter the priority of the applicant to receive financial assistance from the fund, that resulted in the applicant receiving a larger grant or loan award than the applicant would otherwise be eligible, or that resulted in payments from the fund in excess of the actual eligible project costs incurred by the applicant or the amount to which the applicant is legally eligible.

Nothing in this subsection shall be construed to require the authority to undertake an

investigation or make any findings concerning the conduct described in this subsection.

c. An application for financial assistance from the fund for an upgrade or closure of a regulated tank shall include all regulated tanks at the facility for which the applicant is seeking financial assistance. Once financial assistance for an upgrade, closure or a remediation is awarded for a facility, no additional award of financial assistance may be made for that facility. However, if an applicant discovers while performing upgrade or closure activities that a remediation is necessary at the site of a facility, and if financial assistance was previously awarded for that site only for an upgrade or closure of a regulated tank, the applicant may amend his application and apply for financial assistance for the required remediation subject to the limitations enumerated in section 5 of this act. An application for financial assistance for an upgrade or closure of a regulated tank shall be conditioned upon the applicant agreeing to perform, at the time of the upgrade or closure, any remediation necessary as a result of a discharge from the regulated tank and commencement of the remediation within the time prescribed and in accordance with the rules and regulations of the department.

d. Except as provided below, no financial assistance for upgrade or closure shall be awarded for any regulated tank required to meet the upgrade or closure requirements pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.), or for the remediation of a discharge from any such regulated tank except as provided in subsection c. of this section, unless the application is filed with the authority prior to January 1, 1999 and the application is complete and the application fee is received by August 1, 1999. No financial assistance for upgrade or closure shall be awarded for any underground storage tank with a capacity of over 2,000 gallons used to store heating oil for onsite consumption in a nonresidential building required to be upgraded pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.) but not pursuant to 42 U.S.C. s.6991 et seq. or for the remediation of a discharge from any such regulated tank except as provided in subsection c. of this section, unless the application is filed with the authority prior to August 31, 1999 and the application is complete and the application fee is received by March 31, 2000.

e. The date of occurrence of a discharge shall not affect eligibility for financial assistance from the fund. Except for a preliminary assessment or a site investigation performed after the effective date of P.L.1997, c.235 (C.58:10A-37.1 et seq.), and except as provided in subsections g. and h. of this section, no award of financial assistance shall be made from the fund for the otherwise eligible project costs of a remediation, closure, or an upgrade, or parts thereof, completed prior to an award of financial assistance from the fund.

f. No financial assistance may be awarded from the fund for the remediation of a discharge from a petroleum underground storage tank if financial assistance from the Hazardous Discharge Site Remediation Fund established pursuant to section 26 of P.L.1993, c.139 (C.58:10B-4) has previously been made for a remediation at that site as a result of a discharge from that petroleum underground storage tank. No financial assistance may be awarded from the fund for the remediation of a discharge from a petroleum underground storage tank if the discharge began subsequent to the completion of an upgrade of that petroleum underground storage tank, which upgrade was intended to meet all applicable upgrade regulations of the department, no matter when the upgrade was performed.

g. Notwithstanding any provision of P.L.1997, c.235 (C.58:10A-37.1 et seq.), where an eligible owner or operator has filed an application for financial assistance from the fund, and there are either insufficient monies in the fund or the authority has not yet acted upon the application or awarded the financial assistance, the eligible owner or operator may expend its own funds for the upgrade, closure, or remediation, and upon approval of the application, the authority shall award the financial assistance as a reimbursement of the monies expended for eligible project costs.

h. Notwithstanding any provision to the contrary of P.L.1997, c.235 (C.58:10A-37.1 et seq.), if an applicant has expended the applicant's own funds on a remediation prior to filing an application for financial assistance from the fund for the eligible project costs of the remediation, the authority, upon approval of the application, may make a grant from the fund pursuant to paragraph (1) of subsection c. of section 5 of P.L.1997, c.235 (C.58:10A-37.5) to reimburse the eligible owner or operator for the eligible project costs of the remediation.

3. This act shall take effect immediately and section 2 shall be retroactive to January 1, 2000

Approved February 2, 2001.

PO BOX 004  
TRENTON, NJ 08625

*Office of the Governor*  
**NEWS RELEASE**

CONTACT: Jayne O'Connor  
Steffanie Bell  
609-777-2600

RELEASE: February 2 , 2001

**Acting Gov. Donald T. DiFrancesco today signed the following legislation:**

**S-173**, sponsored by Senators McNamara (R-Bergen/Passaic) and Vitale (D-Middlesex) and Assemblymen Felice (R-Bergen/Passaic) and Russo (R-Bergen/Passaic) removes the cap on grants from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund. The legislation delays the implementation of a limit on the total amount of money that can be made available as grants until March 2004.

The Underground Storage Tank Finance Act, established in 1997, was created to finance loans and grants for the removal or upgrade of regulated underground storage tanks and for the costs of remediation necessary due to discharge of petroleum from regulated tanks.

Originally, no more than ten percent of the monies in the Fund could be annually distributed as grants. In 1999, it was increased to one-third for distribution of funds beginning in January 2000. Applications for grants continued to exceed applications for loans. As a result loan monies were not being used and projects were idle. This bill addresses the need to make sure projects are proceeding and underground tanks are being upgraded, closed or remediated in a timely manner.

**S-663**, sponsored by Senator Bucco (R-Morris) and Assemblyman Zecker (R-Essex/Passaic), establishes registration requirements for qualified journeymen electricians. Specifically the legislation codifies the regulatory definition of qualified journeyman electrician and authorizes the Board of Examiners of Electrical Contractors to issue certificates of registration for a period of three years to qualified journeymen electricians. As a condition of registration renewal, a 10-hour course of study related to the most recent edition of the National Electrical Code must be completed. These course programs and the instructors who teach them will be approved by the Board. Continuing education requirements can be waived on an individual basis. Any qualified journeymen electrician identification card that has been issued before the effective date of this bill will be valid for one year following the bill's effective date.