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P.L. 2006, CHAPTER 58, *approved August 2, 2006*  
Senate Committee Substitute for Senate, No. 482

1 AN ACT concerning underground storage tanks, and amending and  
2 supplementing P.L.1997, c.235 and P.L.1991, c.123.

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

6  
7 1. Section 2 of P.L.1997, c.235 (C.58:10A-37.2) is amended to  
8 read as follows:

9 2. As used in this act:

10 "Applicant" means a person who files an application for financial  
11 assistance from the Petroleum Underground Storage Tank  
12 Remediation, Upgrade, and Closure Fund for payment of eligible  
13 project costs of a remediation due to a discharge of petroleum from  
14 a petroleum underground storage tank, for payment of eligible  
15 project costs of a replacement or closure of a petroleum  
16 underground storage tank that is not regulated pursuant to P.L.1986,  
17 c.102 (C.58:10A-21 et seq.) or 42 U.S.C. s.6991 et seq., and for  
18 payment of eligible project costs of an upgrade or closure of a  
19 regulated tank;

20 "Authority" means the New Jersey Economic Development  
21 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et  
22 seq.);

23 "Closure" means the proper closure or removal of a petroleum  
24 underground storage tank necessary to meet all regulatory  
25 requirements of federal, State, or local law;

26 "Commissioner" means the Commissioner of Environmental  
27 Protection;

28 "Department" means the Department of Environmental  
29 Protection;

30 "Discharge" means the intentional or unintentional release by  
31 any means of petroleum from a petroleum underground storage tank  
32 into the environment;

33 "Eligible owner or operator" means (1) any owner or operator,  
34 other than the owner or operator of a petroleum underground  
35 storage tank storing heating oil for onsite consumption in a  
36 residential building, who owns or operates less than 10 petroleum  
37 underground storage tanks in New Jersey, who has a net worth of  
38 less than **[\$2,000,000]** \$3,000,000 and who demonstrates to the  
39 satisfaction of the authority, the inability to qualify for and obtain a  
40 commercial loan for all or part of the eligible project costs**],** or in  
41 the case of such an owner or operator of a facility located within an  
42 area designated as a Planning Area 1 (Metropolitan), Planning Area  
43 2 (Suburban), or a designated center as designated pursuant to the

**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 "State Planning Act," sections 1 through 12 of P.L.1985,  
2 c.398(C.52:18A-196 et seq.), who has a net worth of less than  
3 \$3,000,000 and who demonstrates to the satisfaction of the  
4 authority, the inability to qualify for and obtain a commercial loan  
5 for all or part of the eligible project costs], (2) the owner or  
6 operator of a petroleum underground storage tank storing heating  
7 oil for onsite consumption in a residential building, (3) a public  
8 entity who owns or operates a petroleum underground storage tank  
9 in New Jersey, or (4) an independent institution of higher education  
10 that owns or operates a petroleum underground storage tank;

11 "Eligible project costs" means the reasonable costs for  
12 equipment, work or services required to effectuate a remediation,  
13 an upgrade, or a closure which equipment, work or services are  
14 eligible for payment from the Petroleum Underground Storage Tank  
15 Remediation, Upgrade, and Closure Fund. In the case of an  
16 upgrade or closure of a regulated tank, eligible project costs shall be  
17 limited to the cost of the minimal effective system necessary to  
18 meet all the regulatory requirements of federal and State law except  
19 that an eligible owner or operator who has met the upgrade  
20 requirements pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986,  
21 c.102 (C.58:10A-21 et seq.) may be awarded a loan which shall not  
22 be limited to the cost of a minimal effective system, in order to  
23 finance the costs of the improvement or replacement of tanks to  
24 meet State and federal standards as provided in subsection g. of  
25 section 5 of P.L.1997, c.235 (C.58:10A-37.5). The limitation of  
26 eligible project costs to the minimal effective system shall not be  
27 construed to deem ineligible those project costs expended to replace  
28 a regulated tank rather than to improve the regulated tank. An  
29 owner or operator may perform an upgrade or a closure beyond the  
30 minimal effective system in which case the eligible project costs  
31 that may be awarded from the fund as financial assistance in the  
32 form of a grant shall be that amount that would represent the cost of  
33 a minimal effective system. In the case of a remediation ,  
34 replacement, or closure of a petroleum underground storage tank  
35 **【used to store heating oil for onsite consumption in a residential**  
36 **building】** that is unregulated pursuant to P.L.1986, c.102  
37 (C.58:10A-21 et seq.) or 42 U.S.C. s.6991 et seq., eligible project  
38 costs shall include the cost to replace a **【leaking】** tank with an  
39 above-ground or underground storage tank. In the case of a  
40 remediation, eligible project costs shall not include the cost to  
41 remediate a site to meet residential soil remediation standards if the  
42 local zoning ordinances adopted pursuant to the "Municipal Land  
43 Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) does not allow for  
44 residential use. Eligible project costs shall include the cost of a  
45 preliminary assessment and site investigation, even if performed  
46 prior to the award of financial assistance from the fund if the  
47 preliminary assessment and site investigation were performed after

1 the effective date of P.L.1997, c.235;

2 "Facility" means one or more operational or nonoperational  
3 petroleum underground storage tanks under single ownership at a  
4 common site;

5 "Financial assistance" means a grant or loan or a combination of  
6 both that may be awarded by the authority from the fund to an  
7 eligible owner or operator as provided in section 5 of P.L.1997,  
8 c.235 (C.58:10A-37.5);

9 "Independent institution of higher education" means those  
10 institutions of higher education incorporated and located in this  
11 State, which, by virtue of law or character or license, are nonprofit  
12 educational institutions empowered to grant academic degrees and  
13 which provide a level of education which is equivalent to the  
14 education provided by the State's public institutions of higher  
15 education as attested by the receipt of and continuation of regional  
16 accreditation by the Middle States Association of Colleges and  
17 Schools, and which are eligible to receive State aid under the  
18 provisions of the Constitution of the United States and the  
19 Constitution of the State of New Jersey. "Independent institution  
20 of higher education" does not include any educational institution  
21 dedicated primarily to the preparation or training of ministers,  
22 priests, rabbis, or other professional persons in the field of religion;

23 "Operator" means any person in control of, or having  
24 responsibility for, the daily operation of a facility;

25 "Owner" means any person who owns a facility;

26 "Person" means any individual, partnership, corporation, society,  
27 association, consortium, joint venture, commercial entity, or public  
28 entity, but does not include the State or any of its departments,  
29 agencies or authorities;

30 "Petroleum" means all hydrocarbons which are liquid at one  
31 atmosphere pressure (760 millimeters or 29.92 inches Hg) and  
32 temperatures between -20 F and 120 F (-29 C and 49 C), and all  
33 hydrocarbons which are discharged in a liquid state at or nearly at  
34 atmospheric pressure at temperatures in excess of 120 F (49 C)  
35 including, but not limited to, gasoline, kerosene, fuel oil, oil sludge,  
36 oil refuse, oil mixed with other wastes, crude oil, and purified  
37 hydrocarbons that have been refined, re-refined, or otherwise  
38 processed for the purpose of being burned as a fuel to produce heat  
39 or usable energy or which is suitable for use as a motor fuel or  
40 lubricant in the operation or maintenance of an engine;

41 "Petroleum Underground Storage Tank Remediation, Upgrade  
42 and Closure Fund" or "fund" means the fund established pursuant to  
43 section 3 of P.L.1997, c.235 (C.58:10A-37.3);

44 "Petroleum underground storage tank" means a tank of any size,  
45 including appurtenant pipes, lines, fixtures, and other related  
46 equipment, that normally and primarily stores petroleum, the  
47 volume of which, including the volume of the appurtenant pipes,  
48 lines, fixtures and other related equipment, is 10% or more

1 belowthe ground. "Petroleum underground storage tank" does not  
2 include:

3 (1) Septic tanks installed or regulated pursuant to regulations  
4 adopted by the department pursuant to "The Realty Improvement  
5 Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23  
6 et seq.) or the "Water Pollution Control Act," P.L.1977, c.74  
7 (C.58:10A-1 et seq.);

8 (2) Pipelines, including gathering lines, regulated under 49  
9 U.S.C. s.60101 et seq., or intrastate pipelines regulated under State  
10 law;

11 (3) Surface impoundments, pits, ponds, or lagoons, operated in  
12 or regulated pursuant to regulations adopted by the department  
13 pursuant to the "Water Pollution Control Act," P.L.1977, c.74  
14 (C.58:10A-1 et seq.);

15 (4) Storm water or wastewater collection systems operated or  
16 regulated pursuant to regulations adopted by the department  
17 pursuant to the "Water Pollution Control Act";

18 (5) Liquid traps or associated gathering lines directly related to  
19 oil or gas production and gathering operations;

20 (6) Tanks situated in an underground area, including, but not  
21 limited to, basements, cellars, mines, drift shafts, or tunnels, if the  
22 storage tank is situated upon or above the surface of the floor, or  
23 storage tanks located below the surface of the ground which are  
24 equipped with secondary containment and are uncovered so as to  
25 allow visual inspection of the exterior of the tank; and

26 (7) Any pipes, lines, fixtures, or other equipment connected to  
27 any tank exempted from the provisions of this definition pursuant to  
28 paragraphs (1) through (6) above;

29 "Public entity" means any county, municipality, or public school  
30 district, but shall not include any authority created by those entities;

31 "Regulated tank" means a petroleum underground storage tank  
32 that is required to be upgraded pursuant to P.L.1986, c.102  
33 (C.58:10A-21 et seq.) or 42 U.S.C. s.6991 et seq.;

34 "Remediation" means all necessary actions to investigate and  
35 clean up any known, suspected, or threatened discharge of  
36 petroleum, including, as necessary, the preliminary assessment, site  
37 investigation, remedial investigation, and remedial action, as those  
38 terms are defined in section 23 of P.L.1993, c.139 (C.58:10B-1);

39 "Upgrade" means the replacement of a regulated tank, the  
40 installation of secondary containment, monitoring systems, release  
41 detection systems, corrosion protection, spill prevention, or overflow  
42 prevention therefor, or any other necessary improvement to the  
43 regulated tank in order to meet the standards for regulated tanks  
44 adopted pursuant to section 5 of P.L.1986, c.102 (C.58:10A-25) and  
45 42 U.S.C. s.6991 et seq.

46 (cf: P.L.2003, c.148, s.1)

47

48 2. Section 4 of P.L.1997, c.235 (C.58:10A-37.4) is amended to

1 read as follows:

2 4. a. Monies in the fund shall be allocated and used to provide  
3 financial assistance only to (1) eligible owners or operators of  
4 regulated tanks in this State in order to finance the eligible project  
5 costs of the upgrade or closure of those regulated tanks as may be  
6 required pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102  
7 (C.58:10A-21 et seq.); **and** (2) eligible owners and operators of  
8 petroleum underground storage tanks in this State in order to  
9 finance the eligible project costs of remediations that are necessary  
10 due to the discharge of petroleum from one or more of those  
11 petroleum underground storage tanks ; (3) eligible owners or  
12 operators of petroleum underground storage tanks in this State that  
13 are not regulated pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.)  
14 or 42 U.S.C. s.6991 et seq. in order to finance the eligible project  
15 costs of the replacement or closure of those tanks; and (4) eligible  
16 owners or operators of regulated tanks in this State who have met  
17 the upgrade requirements pursuant to 42 U.S.C. s.6991 et seq. or  
18 P.L.1986, c.102 (C.58:10A-21 et seq.) in order to finance an  
19 improvement or replacement of a regulated tank. Priority for the  
20 issuance of financial assistance from the fund, and the terms and  
21 conditions of that financial assistance, shall be based upon the  
22 criteria set forth in this section.

23 b. Upon a determination that an application for financial  
24 assistance meets all established criteria for the award of financial  
25 assistance from the fund, the authority shall approve the  
26 application. Prior to December 22, 1998, the authority may approve  
27 only those applications given priority pursuant to paragraphs (1)  
28 and (2) of this subsection or pursuant to subsections c. and f. of this  
29 section, but the authority may receive, file, and deem complete any  
30 application for financial assistance it receives prior to that date.

31 Upon the authority's approval of an application for financial  
32 assistance, the authority shall award financial assistance to an  
33 applicant upon the availability of sufficient monies in the fund.  
34 When monies in the fund are not sufficient at any point in time to  
35 fully fund all applications for financial assistance that have been  
36 approved by the authority, the authority shall award financial  
37 assistance to approved applicants, notwithstanding the date of  
38 approval of the application, in the following order of priority:

39 (1) Upgrades of regulated tanks required to be upgraded pursuant  
40 to 42 U.S.C. s.6991 et seq., and including any necessary  
41 remediation at the site of the regulated tank, shall be given first  
42 priority;

43 (2) Closure of any regulated tank required to be upgraded  
44 pursuant to 42 U.S.C. s.6991 et seq., and including any necessary  
45 remediation at the site of the regulated tank, shall be given second  
46 priority;

47 (3) Upgrades of regulated tanks required to be upgraded pursuant  
48 to P.L.1986, c.102 (C.58:10A-21 et seq.), but not pursuant to 42

- 1 U.S.C. s.6991 et seq., and including any necessary remediation at  
2 the site of the regulated tank, shall be given third priority;
- 3 (4) Any necessary remediations at the sites of petroleum  
4 underground storage tanks other than those given priority pursuant  
5 to paragraph (1), (2), or (3) of this subsection shall be given fourth  
6 priority;
- 7 (5) Closure of any regulated tank required to be upgraded  
8 pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.), but not pursuant  
9 to 42 U.S.C. s.6991 et seq., shall be given last priority.
- 10 c. Notwithstanding the priority for the award of financial  
11 assistance set forth in subsection b. of this section, whenever there  
12 has been a discharge, and the discharge poses a threat to a drinking  
13 water source, to human health, or to a sensitive or significant  
14 ecological area, an approved application for the award of financial  
15 assistance for the remediation and upgrade or closure, if necessary,  
16 shall be given priority over all other applications for financial  
17 assistance.
- 18 d. The priority ranking of applicants within any priority  
19 category enumerated in paragraphs (1), (2), (3), (4), and (5) of  
20 subsection b. and in subsection c. of this section shall be based upon  
21 the date an application for financial assistance is filed with the  
22 authority as determined pursuant to section 6 of P.L.1997, c.235  
23 (C.58:10A-37.6).
- 24 e. Whenever a facility consists of petroleum underground  
25 storage tanks from more than one priority category as enumerated in  
26 paragraphs (1) through (5) of subsection b. of this section, and  
27 subsection c. of this section, all the petroleum underground storage  
28 tanks at that facility shall be accorded the priority that would be  
29 accorded the highest priority petroleum underground storage tank at  
30 that facility.
- 31 f. Notwithstanding the priority rankings established in this  
32 section, one-tenth of the amount annually appropriated to the  
33 Petroleum Underground Storage Tank Remediation, Upgrade and  
34 Closure Fund shall be used to provide financial assistance to owners  
35 or operators of petroleum underground storage tanks used to store  
36 heating oil for onsite consumption in a residential building, in order  
37 to finance the eligible project costs of remediations that are  
38 necessary due to the discharge of heating oil from those petroleum  
39 underground storage tanks. The authority shall provide financial  
40 assistance pursuant to this subsection notwithstanding the owner or  
41 operator's ability to obtain commercial loans for all or part of the  
42 financing. The priority ranking of applicants for these funds shall  
43 be based upon the date an application for financial assistance is  
44 filed with the authority as determined pursuant to section 6 of  
45 P.L.1997, c.235 (C.58:10A-37.6). If the authority does not receive  
46 qualified applications for financial assistance from owners and  
47 operators of petroleum underground storage tanks used to store  
48 heating oil for onsite consumption that meet the criteria set forth in



1 this act and in any rules or regulations issued pursuant thereto,  
2 sufficient to enable the award of financial assistance an amount  
3 equal to one-tenth of the amount annually appropriated to the fund  
4 in any one year as required pursuant to this subsection, the authority  
5 may award that financial assistance in the order of priority as  
6 provided in this section. In addition to the monies dedicated  
7 pursuant to this subsection, the authority may award financial  
8 assistance to an owner or operator of a petroleum underground  
9 storage tank used to store heating oil for onsite consumption when  
10 the criteria enumerated in subsection c. of this section are met.

11 (cf: P.L.2003, c.148, s.2)

12

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

15 5. a. (1) The authority may award financial assistance from the  
16 fund to an eligible owner or operator in the form of a loan or a  
17 conditional hardship grant as provided in this section. An award of  
18 financial assistance, either as a loan or a grant, or a combination of  
19 both, may, upon application therefor, be for 100% of the eligible  
20 project costs, except as provided in paragraph (1) of subsection c.  
21 and in subsection h. of this section. However, a loan that any  
22 applicant may receive from the fund for an upgrade, remediation, or  
23 closure, or any combination thereof, for any one facility, may not  
24 exceed \$2,000,000, except as provided below, and a grant that any  
25 applicant may receive from the fund for any one facility, may not  
26 exceed \$500,000. A loan that an applicant may receive from the  
27 fund for a remediation of a discharge that poses a threat to a  
28 drinking water source may not exceed \$3,000,000.

29 (2) Notwithstanding the provisions of paragraph (1) of this  
30 subsection to the contrary, an eligible owner or operator of a facility  
31 located within an area designated as a Planning Area 1  
32 (Metropolitan), Planning Area 2 (Suburban), **[or]** a designated  
33 center as designated pursuant to the "State Planning Act," sections 1  
34 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.), or the  
35 Highlands Region designated pursuant to section 7 of P.L.2004,  
36 c.120 (C.13:20-7), may receive a loan in an amount not to exceed  
37 \$3,000,000 and a grant in an amount not to exceed **[\$750,000]**  
38 \$1,000,000 for each facility so located.

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

42 c. An applicant, other than a public entity, may apply for and  
43 receive a conditional hardship grant for the upgrade, closure or  
44 remediation as provided in paragraph (1) of this subsection, or a  
45 loan for an upgrade, closure or remediation as provided in  
46 paragraph (2) of this subsection, provided that an applicant for a  
47 conditional hardship grant or a loan for an upgrade may be eligible

1 for financial assistance only for any underground storage tank with  
2 a capacity of over 2,000 gallons used to store heating oil for onsite  
3 consumption in a nonresidential building that has received an  
4 extension of the deadline for compliance with the standards  
5 pursuant to subsection b. of section 9 of P.L.1986, c.102  
6 (C.58:10A-29). Financial assistance awarded an applicant pursuant  
7 to this subsection may consist entirely of a conditional hardship  
8 grant, a loan for an upgrade, a loan for a closure, or a loan for a  
9 remediation, or any combination thereof, except that the total  
10 amount of the award of financial assistance shall be subject to the  
11 per facility dollar limitation enumerated in subsection a. of this  
12 section. Notwithstanding any other provision of this subsection to  
13 the contrary, no tax exempt, nonprofit organization, corporation, or  
14 association shall be awarded a conditional hardship grant pursuant  
15 to paragraph (1) of this subsection, provided that an independent  
16 institution of higher education, a nonprofit organization,  
17 corporation, or association with not more than 100 paid individuals  
18 that is qualified for exemption from federal taxation pursuant to  
19 section 501 (c)(3) of the federal Internal Revenue Code, 26  
20 U.S.C.s.501(c)(3), or a duly incorporated volunteer fire, ambulance,  
21 first aid, emergency, or rescue company or squad, may be awarded  
22 a conditional hardship grant pursuant to paragraph (1) of this  
23 subsection..

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

28 In order to be eligible for a conditional hardship grant for closure  
29 or upgrade, in the case of a regulated tank, the applicant shall have  
30 owned or operated the subject regulated tank as of December 1,  
31 2002 and continually thereafter or shall have inherited the property  
32 from a person who owned the regulated tank as of that date. In  
33 order to be eligible for a conditional hardship grant for remediation,  
34 in the case of a regulated tank, the applicant shall have owned or  
35 operated the subject regulated tank at the time of tank closure. No  
36 applicant shall be eligible for a conditional hardship grant if the  
37 applicant has a taxable income of more than ~~【\$200,000】~~ \$250,000  
38 or a net worth, exclusive of the applicant's primary residence and  
39 pension, of over ~~【\$200,000】~~ \$500,000. Any applicant with a  
40 taxable income of more than \$200,000 who qualifies for a grant  
41 shall be required to pay no more than \$1,000 of the eligible project  
42 costs .

43 Notwithstanding the eligibility requirements for net worth and  
44 income, an independent institution of higher education, a nonprofit  
45 organization, corporation, or association with not more than 100  
46 paid individuals that is qualified for exemption from federal  
47 taxation pursuant to section 501(c)(3) of the federal Internal

1 Revenue Code, 26 U.S.C.s.501(c)(3), or a duly incorporated  
2 volunteer fire, ambulance, first aid, emergency, or rescue company  
3 or squad shall be eligible for a conditional hardship grant for  
4 eligible project costs of a closure or remediation of a petroleum  
5 underground storage tank.

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

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

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

30 Conditional hardship grants awarded to an applicant shall be  
31 subject to the lien provisions enumerated in section 16 of P.L.1997,  
32 c.235 (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  
36 entity is able to repay the amount of the loan.

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

48 d. The authority shall, where applicable, require an applicant

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

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

10 f. An eligible owner or operator may only be awarded that  
11 amount of financial assistance issued as a loan for which the  
12 applicant demonstrates he could not qualify for and obtain as a  
13 commercial loan. The provisions of this subsection shall not apply  
14 to an owner or operator or petroleum underground storage tank used  
15 to store heating oil for onsite consumption in a residential building,  
16 to an independent institution of higher education, or to a duly  
17 incorporated volunteer fire, ambulance, first aid, emergency, or  
18 rescue company or squad.

19 g. An eligible owner or operator of a regulated tank in this State  
20 who has met the upgrade requirements pursuant to 42 U.S.C. s.6991  
21 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.) may be awarded a  
22 loan in order to finance an improvement or replacement of a  
23 regulated tank to meet State and federal standards.

24 h. (1) In the case of a closure of a petroleum underground  
25 storage tank used to store heating oil for onsite consumption in a  
26 residential building in this State where no remediation is required,  
27 an eligible owner or operator may receive a grant in an amount up  
28 to \$1,200.

29 (2) In the case of a replacement and closure of a petroleum  
30 underground storage tank used to store heating oil for onsite  
31 consumption in a residential building in this State where no  
32 remediation is required, an eligible owner or operator may receive a  
33 grant in an amount up to \$3,000.

34 No person shall be eligible for grant monies from the fund to  
35 replace a petroleum underground storage tank that stores heating oil  
36 for onsite consumption in a residential building if the tank that  
37 stores heating oil for that residential building was previously  
38 replaced using a grant from the fund.

39 i. In the case of a closure and replacement of a petroleum  
40 underground storage tank used to store heating oil for onsite  
41 consumption in a residential building in this State, to the maximum  
42 extent feasible, the owner or operator shall replace the petroleum  
43 underground storage tank with an aboveground tank.

44 (cf: P.L.2003, c.148, s.3)

45

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

48 7. a. The authority shall award financial assistance to an owner

1 or operator of a facility only if the facility is properly registered  
2 with the department pursuant to section 3 of P.L.1986, c.102  
3 (C.58:10A-23), where applicable, and if all fees or penalties due  
4 and payable on the facility to the department pursuant to P.L.1986,  
5 c.102 have either been paid or the nature or the amount of the fee or  
6 penalty is being contested in accordance with law.

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

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

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

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

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

35 Nothing in this subsection shall be construed to require the  
36 authority to undertake an investigation or make any findings  
37 concerning the conduct described in this subsection.

38 c. An application for financial assistance from the fund for an  
39 upgrade or closure of a regulated tank shall include all regulated  
40 tanks at the facility for which the applicant is seeking financial  
41 assistance. **【Once】** Except as provided in subsection g. of section 5  
42 of P.L.1997, c.235 (C.58:10A-37.5), once financial assistance for an  
43 upgrade or closure is awarded for a facility, no additional award of  
44 financial assistance for upgrade or closure costs may be made for  
45 that facility. However, if an applicant discovers while performing  
46 upgrade or closure activities that a remediation is necessary at the  
47 site of a facility, and if financial assistance was previously awarded  
48 for that site only for an upgrade or closure of a regulated tank, the

1 applicant may amend his application and apply for financial  
2 assistance for the required remediation subject to the limitations  
3 enumerated in section 5 of P.L.1997, c.235 (C.58:10A-37.5). An  
4 application for financial assistance for an upgrade or closure of a  
5 regulated tank shall be conditioned upon the applicant agreeing to  
6 perform, at the time of the upgrade or closure, any remediation  
7 necessary as a result of a discharge from the regulated tank and  
8 commencement of the remediation within the time prescribed and in  
9 accordance with the rules and regulations of the department.

10 d. Except as provided **【below】** in this subsection, and in  
11 subsection g. of section 5 of P.L.1997, c.235 (C.58:10A-37.5), no  
12 financial assistance for upgrade shall be awarded for any regulated  
13 tank required to meet the upgrade or closure requirements pursuant  
14 to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et  
15 seq.), unless the application is filed with the authority prior to  
16 January 1, 1999 and the application is complete and the application  
17 fee is received by August 1, 1999. **【No】** Except as provided in  
18 subsection g. of section 5 of P.L.1997, c.235 (C.58:10A-37.5), no  
19 financial assistance for upgrade shall be awarded for any  
20 underground storage tank with a capacity of over 2,000 gallons used  
21 to store heating oil for onsite consumption in a nonresidential  
22 building required to be upgraded pursuant to P.L.1986, c.102  
23 (C.58:10A-21 et seq.) but not pursuant to 42 U.S.C.s.6991 et seq.,  
24 unless the applicant has received an extension of the deadline for  
25 compliance with the standards pursuant to subsection b. of section 9  
26 of P.L.1986, c.102 (C.58:10A-29), the application is filed with the  
27 authority prior to June 30, 2005 and the application is complete and  
28 the application fee is received by December 31, 2005.

29 No financial assistance for closure shall be awarded for any  
30 regulated tank required to meet the upgrade or closure requirements  
31 pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-  
32 21 et seq.), or for the remediation of a discharge from any such  
33 regulated tank except as provided in subsection c. of this section,  
34 unless the application is filed with the authority prior to June 30,  
35 2005 and the application is complete and the application fee is  
36 received by December 31, 2005.

37 In the case of a regulated tank that is not operational, financial  
38 assistance for the closure or the remediation of any discharge  
39 therefrom may be awarded if the application is filed with the  
40 authority no more than 18 months after the date of discovery of the  
41 existence of the regulated tank, or 18 months from the effective date  
42 of P.L.2003, c.148, whichever is later.

43 e. The date of occurrence of a discharge shall not affect  
44 eligibility for financial assistance from the fund. Except for a  
45 preliminary assessment or a site investigation performed after the  
46 effective date of P.L.1997, c.235 (C.58:10A-37.1 et seq.), and  
47 except as provided in subsections g. through j. of this section, no

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

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

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

35 i. Notwithstanding any provision of P.L.1997, c.235 (C.58:10A-  
36 37.1 et seq.) to the contrary, if an applicant that is an independent  
37 institution of higher education has expended the applicant's own  
38 funds on a remediation prior to filing an application for financial  
39 assistance from the fund for the eligible project costs of the  
40 remediation, the authority, upon approval of the application, may  
41 make a grant from the fund pursuant to paragraph (1) of subsection  
42 c. of section 5 of P.L.1997, c.235 (C.58:10A-37.5) to reimburse the  
43 applicant for expenditures for the eligible project costs of the  
44 remediation made on or after December 1, 1996 in an amount not  
45 to exceed \$500,000 for each independent institution of higher  
46 education.

47 j. Notwithstanding any provision of P.L.1997, c.235 (C.58:10A-  
48 37.1 et seq.) to the contrary, if an applicant has expended the

1 applicant's own funds for a remediation of a petroleum underground  
2 storage tank used to store heating oil at the applicant's primary  
3 residence prior to filing an application for financial assistance from  
4 the fund for the eligible project costs of the remediation, the  
5 authority, upon approval of the application, may make a grant from  
6 the fund pursuant to paragraph (1) of subsection c. of section 5 of  
7 P.L.1997, c.235 (C.58:10A-37.5) to reimburse the applicant for the  
8 eligible project costs of the remediation.

9 (cf: P.L.2003, c.148, s.5)

10  
11 5. Section 16 of P.L.1997, c.235 (C.58:10A-37.16) is amended  
12 to read as follows:

13 16. a. In addition to any other financial assistance requirements  
14 imposed by the authority pursuant to P.L.1997, c.235 (C.58:10A-  
15 37.1 et seq.), any award of financial assistance from the fund except  
16 for any grant awarded pursuant to paragraph (1) of subsection c. of  
17 section 5 of P.L.1997, c.235 (C.58:10A-37.5) for a replacement or  
18 closure of a petroleum underground storage tank used to store  
19 heating oil at the applicant's residence or for a remediation  
20 necessitated by a discharge from a petroleum underground storage  
21 tank used to store heating oil at the applicant's **【primary】** residence,  
22 shall constitute, in each instance, a debt of the applicant to the fund.  
23 The debt shall constitute a lien on the real property at which the  
24 subject facility is located. The lien shall be in the amount of the  
25 financial assistance awarded the applicant. The lien shall attach  
26 when a notice of lien, incorporating the name of the property owner,  
27 a description of the real property on which the subject facility is  
28 located and an identification of the amount of the financial  
29 assistance awarded, is duly filed with the county recording officer in  
30 the county in which the property is located.

31 Where financial assistance from the fund is awarded as a  
32 combination of a loan and a grant, separate liens for the loan and  
33 the grant shall be filed. No lien shall be placed on any real property  
34 of an applicant based on a conditional hardship grant awarded  
35 pursuant to paragraph (1) of subsection c. of section 5 of P.L.1997,  
36 c.235 (C.58:10A-37.5), for a replacement or closure of a petroleum  
37 underground storage tank used to store heating oil at the applicant's  
38 residence or for a remediation necessitated by a discharge from a  
39 petroleum underground storage tank used to store heating oil at the  
40 applicant's **【primary】** residence.

41 b. A lien that is filed on real property pursuant to a loan shall be  
42 removed upon repayment of the loan.

43 c. Except as provided below, the lien that is filed on real  
44 property pursuant to a conditional hardship grant shall be removed  
45 upon repayment of the amount of the grant that is unsatisfied or  
46 upon the end of a **【15-year】** five-year period in which the site for  
47 which the financial assistance was awarded continued to be



1 operated in substantially the same manner as it was operated at the  
2 time of the award of financial assistance. The period of operation  
3 need not run consecutively. Beginning with the **【11th】** second year  
4 of operating in substantially the same manner, **【20%】** 25% of the  
5 conditional hardship grant shall be deemed satisfied with an  
6 additional **【20%】** 25% to be satisfied each year until the entire  
7 amount of the conditional hardship grant is satisfied at the end of  
8 the **【15-year】** five-year period. The owner or operator of the  
9 facility claiming to have satisfied a conditional hardship grant due  
10 to the **【15-year】** five-year period of operation, shall submit a  
11 certification of this fact to the authority. Upon repayment of the  
12 unsatisfied grant award or upon submittal of this certification,  
13 unless the authority has made a finding that the certification is not  
14 correct, the authority shall remove the lien from the property.

15 Where real property for which a conditional hardship grant was  
16 awarded is not being operated in substantially the same manner, the  
17 **【15-year】** five-year period to satisfy the lien shall be tolled. If at  
18 any time prior to the satisfaction of the lien the property is  
19 developed or operated for a purpose that is not substantially the  
20 same as its operation at the time of the award of the conditional  
21 hardship grant, the grant recipient shall so certify to the authority  
22 upon the change in operation. Upon receipt of this certification, the  
23 authority shall determine, based upon the new operation of the  
24 property if the financial assistance shall continue as a conditional  
25 hardship grant or if it shall be converted into a loan. In making this  
26 determination, the authority shall base its decision on the financial  
27 hardship factors used in determining the original eligibility for the  
28 conditional hardship grant.

29 A lien that is filed on real property pursuant to a grant shall be  
30 removed by the authority upon condemnation of the property or  
31 upon the exercise of the power of eminent domain, and the  
32 conditional hardship grant shall be deemed satisfied.

33 The authority may take whatever enforcement actions it deems  
34 necessary to verify the operation of any property for which a  
35 conditional hardship grant was made. The terms and conditions of  
36 any loan converted from a grant pursuant to this subsection shall be  
37 the same as those authorized pursuant to this act.

38 d. The provisions of this section do not apply to any real  
39 property of an applicant who is a public entity.

40 (cf: P.L.2005, c.315, s.2)

41

42 6. Section 3 of P.L.1991, c.123 (C.58:10A-24.3) is amended to  
43 read as follows:

44 3. a. The department shall establish and conduct examinations  
45 for certifying that a person is qualified to perform services on  
46 underground storage tanks at underground storage tank sites for  
47 purposes of complying with the provisions of P.L.1986, c.102

1 (C.58:10A-21 et seq.) and for tank testing, tank installation, tank  
2 removal, tank closure, or subsurface evaluations for corrective  
3 action, closure or corrosivity on unregulated heating oil tanks.  
4 Application to the department for examination for certification shall  
5 be made in a manner and on such forms as may be prescribed by the  
6 department. The department may prescribe training or continuing  
7 education, experience or other requirements as a condition for  
8 taking a certification examination, or for recertification. The filing  
9 of an application shall be accompanied by a nonrecoverable  
10 application fee of \$35.00 to cover the costs of processing the  
11 application and conducting examinations. No person shall be  
12 certified by the department unless he or she satisfactorily completes  
13 the examination and satisfies any other requirements of this act, or  
14 of the department adopted pursuant thereto.

15 b. Notwithstanding the provisions of subsection a. of this  
16 section, any person who files, within 300 days of the effective date  
17 of this act, an application for certification under this subsection, and  
18 demonstrates to the department that he or she has adequately  
19 performed services on underground storage tanks at underground  
20 storage tank sites for at least five consecutive years immediately  
21 preceding the filing of the application, shall be certified without  
22 examination upon payment of an application and certification fee.  
23 Within one year of certification, a person certified pursuant to this  
24 subsection shall submit to the department evidence of attendance at  
25 a department approved training course on the department's rules and  
26 regulations concerning underground storage tanks. One year from  
27 the effective date of this act, no person applying for certification  
28 pursuant to this subsection shall perform services requiring  
29 certification until certified by the department.

30 c. A person certified pursuant to subsection b. of this section  
31 shall comply with the examination and other requirements adopted  
32 by the department pursuant to subsection a. of this section as a  
33 precondition for filing for a renewal of a certification issued  
34 pursuant to subsection b. of this section.

35 d. The department may establish a general certification for tank  
36 services and on-site supervisory responsibilities, and such other  
37 classes of certification for particular tank services or for on-site  
38 supervisory responsibilities as it deems appropriate, and may  
39 establish separate training, examination and working experience  
40 requirements therefor. The department shall establish a separate  
41 certification for tank testing, tank installation, tank removal, tank  
42 closure, and subsurface evaluations for corrective action, closure or  
43 corrosivity on unregulated heating oil tanks with separate training  
44 and examination requirements therefor. The certification program  
45 for persons who perform services on underground storage tanks or  
46 on unregulated heating oil tanks shall include standards for pricing,  
47 customer service, compliance with applicable rules and regulations,

1 adequate submissions to the department, and any other standards  
2 relevant to the performance, qualifications, and business practices  
3 of persons or business firms seeking certification. Any person  
4 certified to perform services on underground storage tanks at  
5 underground storage tank sites for purposes of complying with the  
6 provisions of P.L.1986, c.102 (C.58:10A-21 et seq.) shall not be  
7 required to obtain a separate certification to perform work on  
8 unregulated heating oil tanks.

9 (cf: P.L.1999, c.322, s.4)

10

11 7. Section 5 of P.L.1991, c.123 (C.58:10A-24.5) is amended to  
12 read as follows:

13 5. a. The department may deny, suspend, revoke, or refuse to  
14 renew a certification for good cause, including:

15 (1) a violation, or abetting another to commit a violation, of any  
16 provision of this act, or of P.L.1986, c.102 (C.58:10A-21 et seq.), or  
17 rule or regulation adopted, or order issued under either act;

18 (2) making a false statement on an application for certification or  
19 other information required by the department pursuant to this act, or  
20 P.L.1986, c.102;

21 (3) misrepresentation or the use of fraud in obtaining  
22 certification **【or】**, in performing tank testing, tank installation, tank  
23 removal, tank closure, or subsurface evaluations for corrective  
24 action, closure or corrosivity on an unregulated heating oil tank, or  
25 in performing underground storage tank services;

26 (4) failure to meet the standards or requirements of the  
27 certification program, including standards relevant to the  
28 performance, qualifications, and business practices of persons or  
29 business firms who perform tank services.

30 b. Before suspending, revoking, or refusing to renew a  
31 certification, the department shall afford the applicant or certificate  
32 holder an opportunity to be heard in accordance with the provisions  
33 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
34 1 et seq.).

35 c. Suspension, revocation, or refusal to renew a certification  
36 shall not bar the department from pursuing against the applicant or  
37 certificate holder any other lawful remedy available to the  
38 department.

39 d. Any business firm or person whose certification is revoked  
40 shall be ineligible to apply for certification for three years from the  
41 date of the revocation.

42 e. If the department has reason to believe that a condition exists  
43 that poses an imminent threat to the public health, safety or welfare,  
44 it may order the certificate holder to cease operations pending the  
45 outcome of the hearing.

46 (cf: P.L.1999, c.322, s.6)

1       8. (New section) a. Notwithstanding the provisions of the  
2 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
3 seq.) to the contrary, the Department of Environmental Protection  
4 shall adopt, after notice, interim rules and regulations establishing a  
5 program for the certification of persons qualified to perform tank  
6 testing, tank installation, tank removal, tank closure, or subsurface  
7 evaluations for corrective action, closure or corrosivity on  
8 unregulated heating oil tanks as provided in P.L.1999, c.322 within  
9 60 days after the effective date of this act. The rules and regulations  
10 shall be effective as regulations immediately upon filing with the  
11 Office of Administrative Law and shall be effective for a period not  
12 to exceed 18 months, and may, thereafter, be amended, adopted or  
13 readopted by the department in accordance with the provisions of  
14 the "Administrative Procedure Act."

15       b. Upon the adoption of interim rules and regulations pursuant  
16 to this section, a grant or loan from the fund to close or replace an  
17 unregulated heating oil tank may only be made to reimburse the  
18 applicant for work performed by a person certified pursuant to  
19 section 3 of P.L.1991, c.123 (C.58:10A-24.3).

20

21       9. (New section) Any person who performs tank installation,  
22 tank removal, tank closure, or subsurface evaluations for corrective  
23 action, closure or corrosivity on an unregulated heating oil tank  
24 shall provide to the governing body of the municipality in which the  
25 tank is located, copies of any submissions required by the  
26 Department of Environmental Protection concerning the tank  
27 installation, tank removal, tank closure, and subsurface evaluations  
28 for corrective action, closure or corrosivity on an unregulated  
29 heating oil tank within 10 days after their submission to the  
30 department.

31

32       10. This act shall take effect immediately.

33

34

35

36

37       Makes various changes to the laws governing underground  
38 storage tanks.

# SENATE, No. 482

## STATE OF NEW JERSEY 212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Salem, Cumberland and Gloucester)**

**Senator HENRY P. MCNAMARA**

**District 40 (Bergen, Essex and Passaic)**

**Co-Sponsored by:**

**Senators Asselta, Bucco, T.Kean, Littell, Martin, Kenny, Bark, Kyrillos  
and Lance**

**SYNOPSIS**

Makes various changes to law governing uses of monies in the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



**(Sponsorship Updated As Of: 2/28/2006)**

S482 SWEENEY, MCNAMARA

2

1 AN ACT concerning underground storage tanks, and amending  
2 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 2 of P.L.1997, c.235 (C.58:10A-37.2) is amended to  
8 read as follows:

9 2. As used in this act:

10 "Applicant" means a person who files an application for financial  
11 assistance from the Petroleum Underground Storage Tank  
12 Remediation, Upgrade, and Closure Fund for payment of eligible  
13 project costs of a remediation due to a discharge of petroleum from  
14 a petroleum underground storage tank , for the payment of eligible  
15 project costs of a closure or replacement of a petroleum  
16 underground storage tank that is not regulated pursuant to P.L.1986,  
17 c.102 (C.58:10A-21 et seq.) or 42 U.S.C. s.6991 et seq., and for  
18 payment of eligible project costs of an upgrade or closure of a  
19 regulated tank;

20 "Authority" means the New Jersey Economic Development  
21 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et  
22 seq.);

23 "Closure" means the proper closure or removal of a petroleum  
24 underground storage tank necessary to meet all regulatory  
25 requirements of federal, State, or local law;

26 "Commissioner" means the Commissioner of Environmental  
27 Protection;

28 "Department" means the Department of Environmental  
29 Protection;

30 "Discharge" means the intentional or unintentional release by  
31 any means of petroleum from a petroleum underground storage tank  
32 into the environment;

33 "Eligible owner or operator" means (1) any owner or operator,  
34 other than the owner or operator of a petroleum underground  
35 storage tank storing heating oil for onsite consumption in a  
36 residential building, who owns or operates less than 10 petroleum  
37 underground storage tanks in New Jersey, who has a net worth of  
38 less than **[\$2,000,000]** \$3,000,000 and who demonstrates to the  
39 satisfaction of the authority, the inability to qualify for and obtain a  
40 commercial loan for all or part of the eligible project costs**],** or in  
41 the case of such an owner or operator of a facility located within an  
42 area designated as a Planning Area 1 (Metropolitan), Planning Area  
43 2 (Suburban), or a designated center as designated pursuant to the  
44 "State Planning Act," sections 1 through 12 of P.L.1985, c.398  
45 (C.52:18A-196 et seq.), who has a net worth of less than \$3,000,000

**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 and who demonstrates to the satisfaction of the authority, the  
2 inability to qualify for and obtain a commercial loan for all or part  
3 of the eligible project costs],(2) the owner or operator of a  
4 petroleum underground storage tank storing heating oil for onsite  
5 consumption in a residential building, (3) a public entity who owns  
6 or operates a petroleum underground storage tank in New Jersey, or  
7 (4) an independent institution of higher education that owns or  
8 operates a petroleum underground storage tank;

9 "Eligible project costs" means the reasonable costs for  
10 equipment, work or services required to effectuate a remediation,  
11 an upgrade, or a closure which equipment, work or services are  
12 eligible for payment from the Petroleum Underground Storage Tank  
13 Remediation, Upgrade, and Closure Fund. In the case of an  
14 upgrade or closure of a regulated tank, eligible project costs shall be  
15 limited to the cost of the minimal effective system necessary to  
16 meet all the regulatory requirements of federal and State law except  
17 as provided in subsection g. of section 5 of P.L.1997, c.235  
18 (C.58:10A-37.5). The limitation of eligible project costs to the  
19 minimal effective system shall not be construed to deem ineligible  
20 those project costs expended to replace a regulated tank rather than  
21 to improve the regulated tank. An owner or operator may perform  
22 an upgrade or a closure beyond the minimal effective system in  
23 which case the eligible project costs that may be awarded from the  
24 fund as financial assistance in the form of a grant shall be that  
25 amount that would represent the cost of a minimal effective system.  
26 In the case of a remediation, replacement, or closure of a petroleum  
27 underground storage tank **【used to store heating oil for onsite**  
28 **consumption in a residential building】** that is unregulated pursuant  
29 to P.L.1986, c.102 (C.58:10A-21 et seq.) or 42 U.S.C. s.6991 et  
30 seq., eligible project costs shall include the cost to replace a  
31 **【leaking】** tank with an above-ground or underground storage tank.  
32 In the case of a remediation, eligible project costs shall not include  
33 the cost to remediate a site to meet residential soil remediation  
34 standards if the local zoning ordinances adopted pursuant to the  
35 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)  
36 does not allow for residential use. Eligible project costs shall  
37 include the cost of a preliminary assessment and site investigation,  
38 even if performed prior to the award of financial assistance from the  
39 fund if the preliminary assessment and site investigation were  
40 performed after the effective date of P.L.1997, c.235;

41 "Facility" means one or more operational or nonoperational  
42 petroleum underground storage tanks under single ownership at a  
43 common site;

44 "Financial assistance" means a grant or loan or a combination of  
45 both that may be awarded by the authority from the fund to an  
46 eligible owner or operator as provided in section 5 of P.L.1997,  
47 c.235 (C.58:10A-37.5);

1 "Independent institution of higher education" means those  
2 institutions of higher education incorporated and located in this  
3 State, which, by virtue of law or character or license, are nonprofit  
4 educational institutions empowered to grant academic degrees and  
5 which provide a level of education which is equivalent to the  
6 education provided by the State's public institutions of higher  
7 education as attested by the receipt of and continuation of regional  
8 accreditation by the Middle States Association of Colleges and  
9 Schools, and which are eligible to receive State aid under the  
10 provisions of the Constitution of the United States and the  
11 Constitution of the State of New Jersey. "Independent institution  
12 of higher education" does not include any educational institution  
13 dedicated primarily to the preparation or training of ministers,  
14 priests, rabbis, or other professional persons in the field of religion;

15 "Operator" means any person in control of, or having  
16 responsibility for, the daily operation of a facility;

17 "Owner" means any person who owns a facility;

18 "Person" means any individual, partnership, corporation, society,  
19 association, consortium, joint venture, commercial entity, or public  
20 entity, but does not include the State or any of its departments,  
21 agencies or authorities;

22 "Petroleum" means all hydrocarbons which are liquid at one  
23 atmosphere pressure (760 millimeters or 29.92 inches Hg) and  
24 temperatures between -20 F and 120 F (-29 C and 49 C), and all  
25 hydrocarbons which are discharged in a liquid state at or nearly at  
26 atmospheric pressure at temperatures in excess of 120 F (49 C)  
27 including, but not limited to, gasoline, kerosene, fuel oil, oil sludge,  
28 oil refuse, oil mixed with other wastes, crude oil, and purified  
29 hydrocarbons that have been refined, re-refined, or otherwise  
30 processed for the purpose of being burned as a fuel to produce heat  
31 or usable energy or which is suitable for use as a motor fuel or  
32 lubricant in the operation or maintenance of an engine;

33 "Petroleum Underground Storage Tank Remediation, Upgrade  
34 and Closure Fund" or "fund" means the fund established pursuant to  
35 section 3 of P.L.1997, c.235 (C.58:10A-37.3);

36 "Petroleum underground storage tank" means a tank of any size,  
37 including appurtenant pipes, lines, fixtures, and other related  
38 equipment, that normally and primarily stores petroleum, the  
39 volume of which, including the volume of the appurtenant pipes,  
40 lines, fixtures and other related equipment, is 10% or more below  
41 the ground. "Petroleum underground storage tank" does not  
42 include:

43 (1) Septic tanks installed or regulated pursuant to regulations  
44 adopted by the department pursuant to "The Realty Improvement  
45 Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23  
46 et seq.) or the "Water Pollution Control Act," P.L.1977, c.74  
47 (C.58:10A-1 et seq.);

48 (2) Pipelines, including gathering lines, regulated under 49



1 U.S.C. s.60101 et seq., or intrastate pipelines regulated under State  
2 law;

3 (3) Surface impoundments, pits, ponds, or lagoons, operated in  
4 or regulated pursuant to regulations adopted by the department  
5 pursuant to the "Water Pollution Control Act," P.L.1977, c.74  
6 (C.58:10A-1 et seq.);

7 (4) Storm water or wastewater collection systems operated or  
8 regulated pursuant to regulations adopted by the department  
9 pursuant to the "Water Pollution Control Act";

10 (5) Liquid traps or associated gathering lines directly related to  
11 oil or gas production and gathering operations;

12 (6) Tanks situated in an underground area, including, but not  
13 limited to, basements, cellars, mines, drift shafts, or tunnels, if the  
14 storage tank is situated upon or above the surface of the floor, or  
15 storage tanks located below the surface of the ground which are  
16 equipped with secondary containment and are uncovered so as to  
17 allow visual inspection of the exterior of the tank; and

18 (7) Any pipes, lines, fixtures, or other equipment connected to  
19 any tank exempted from the provisions of this definition pursuant to  
20 paragraphs (1) through (6) above;

21 "Public entity" means any county, municipality, or public school  
22 district, but shall not include any authority created by those entities;

23 "Regulated tank" means a petroleum underground storage tank  
24 that is required to be upgraded pursuant to P.L.1986, c.102  
25 (C.58:10A-21 et seq.) or 42 U.S.C. s.6991 et seq.;

26 "Remediation" means all necessary actions to investigate and  
27 clean up any known, suspected, or threatened discharge of  
28 petroleum, including, as necessary, the preliminary assessment, site  
29 investigation, remedial investigation, and remedial action, as those  
30 terms are defined in section 23 of P.L.1993, c.139 (C.58:10B-1);

31 "Upgrade" means the replacement of a regulated tank, the  
32 installation of secondary containment, monitoring systems, release  
33 detection systems, corrosion protection, spill prevention, or overfill  
34 prevention therefor, or any other necessary improvement to the  
35 regulated tank in order to meet the standards for regulated tanks  
36 adopted pursuant to section 5 of P.L.1986, c.102 (C.58:10A-25) and  
37 42 U.S.C. s.6991 et seq.

38 (cf: P.L.2003, c.148, s.1)

39

40 2. Section 4 of P.L.1997, c.235 (C.58:10A-37.4) is amended to  
41 read as follows:

42 4. a. Monies in the fund shall be allocated and used to provide  
43 financial assistance only to (1) eligible owners or operators of  
44 regulated tanks in this State in order to finance the eligible project  
45 costs of the upgrade or closure of those regulated tanks as may be  
46 required pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102  
47 (C.58:10A-21 et seq.); **and** (2) eligible owners and operators of  
48 petroleum underground storage tanks in this State in order to

1 finance the eligible project costs of remediations that are necessary  
2 due to the discharge of petroleum from one or more of those  
3 petroleum underground storage tanks; (3) eligible owners or  
4 operators of petroleum underground storage tanks in this State that  
5 are not regulated pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.)  
6 or 42 U.S.C. s.6991 et seq. in order to finance the eligible project  
7 costs of the closure or replacement of those tanks; and (4) eligible  
8 owners or operators of regulated tanks in this State who have met  
9 the upgrade requirements pursuant to 42 U.S.C. s.6991 et seq. or  
10 P.L.1986, c.102 (C.58:10A-21 et seq.) in order to finance an  
11 upgrade beyond the minimal effective system. Priority for the  
12 issuance of financial assistance from the fund, and the terms and  
13 conditions of that financial assistance, shall be based upon the  
14 criteria set forth in this section.

15 b. Upon a determination that an application for financial  
16 assistance meets all established criteria for the award of financial  
17 assistance from the fund, the authority shall approve the  
18 application. Prior to December 22, 1998, the authority may approve  
19 only those applications given priority pursuant to paragraphs (1)  
20 and (2) of this subsection or pursuant to subsections c. and f. of this  
21 section, but the authority may receive, file, and deem complete any  
22 application for financial assistance it receives prior to that date.

23 Upon the authority's approval of an application for financial  
24 assistance, the authority shall award financial assistance to an  
25 applicant upon the availability of sufficient monies in the fund.  
26 When monies in the fund are not sufficient at any point in time to  
27 fully fund all applications for financial assistance that have been  
28 approved by the authority, the authority shall award financial  
29 assistance to approved applicants, notwithstanding the date of  
30 approval of the application, in the following order of priority:

31 (1) Upgrades of regulated tanks required to be upgraded pursuant  
32 to 42 U.S.C. s.6991 et seq., and including any necessary  
33 remediation at the site of the regulated tank, shall be given first  
34 priority;

35 (2) Closure of any regulated tank required to be upgraded  
36 pursuant to 42 U.S.C. s.6991 et seq., and including any necessary  
37 remediation at the site of the regulated tank, shall be given second  
38 priority;

39 (3) Upgrades of regulated tanks required to be upgraded pursuant  
40 to P.L.1986, c.102 (C.58:10A-21 et seq.), but not pursuant to 42  
41 U.S.C. s.6991 et seq., and including any necessary remediation at  
42 the site of the regulated tank, shall be given third priority;

43 (4) Any necessary remediations at the sites of petroleum  
44 underground storage tanks other than those given priority pursuant  
45 to paragraph (1), (2), or (3) of this subsection shall be given fourth  
46 priority;

1 (5) Closure of any regulated tank required to be upgraded  
2 pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.), but not pursuant  
3 to 42 U.S.C. s.6991 et seq., shall be given last priority.

4 c. Notwithstanding the priority for the award of financial  
5 assistance set forth in subsection b. of this section, whenever there  
6 has been a discharge, and the discharge poses a threat to a drinking  
7 water source, to human health, or to a sensitive or significant  
8 ecological area, an approved application for the award of financial  
9 assistance for the remediation and upgrade or closure, if necessary,  
10 shall be given priority over all other applications for financial  
11 assistance.

12 d. The priority ranking of applicants within any priority  
13 category enumerated in paragraphs (1), (2), (3), (4), and (5) of  
14 subsection b. and in subsection c. of this section shall be based upon  
15 the date an application for financial assistance is filed with the  
16 authority as determined pursuant to section 6 of P.L.1997, c.235  
17 (C.58:10A-37.6).

18 e. Whenever a facility consists of petroleum underground  
19 storage tanks from more than one priority category as enumerated in  
20 paragraphs (1) through (5) of subsection b. of this section, and  
21 subsection c. of this section, all the petroleum underground storage  
22 tanks at that facility shall be accorded the priority that would be  
23 accorded the highest priority petroleum underground storage tank at  
24 that facility.

25 f. Notwithstanding the priority rankings established in this  
26 section, one-tenth of the amount annually appropriated to the  
27 Petroleum Underground Storage Tank Remediation, Upgrade and  
28 Closure Fund shall be used to provide financial assistance to owners  
29 or operators of petroleum underground storage tanks used to store  
30 heating oil for onsite consumption in a residential building, in order  
31 to finance the eligible project costs of remediations that are  
32 necessary due to the discharge of heating oil from those petroleum  
33 underground storage tanks. The authority shall provide financial  
34 assistance pursuant to this subsection notwithstanding the owner or  
35 operator's ability to obtain commercial loans for all or part of the  
36 financing. The priority ranking of applicants for these funds shall  
37 be based upon the date an application for financial assistance is  
38 filed with the authority as determined pursuant to section 6 of  
39 P.L.1997, c.235 (C.58:10A-37.6). If the authority does not receive  
40 qualified applications for financial assistance from owners and  
41 operators of petroleum underground storage tanks used to store  
42 heating oil for onsite consumption that meet the criteria set forth in  
43 this act and in any rules or regulations issued pursuant thereto,  
44 sufficient to enable the award of financial assistance an amount  
45 equal to one-tenth of the amount annually appropriated to the fund  
46 in any one year as required pursuant to this subsection, the authority  
47 may award that financial assistance in the order of priority as  
48 provided in this section. In addition to the monies dedicated

1 pursuant to this subsection, the authority may award financial  
2 assistance to an owner or operator of a petroleum underground  
3 storage tank used to store heating oil for onsite consumption when  
4 the criteria enumerated in subsection c. of this section are met.  
5 (cf: P.L.2003, c.148, s.2)

6

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

9 5. a. (1) The authority may award financial assistance from the  
10 fund to an eligible owner or operator in the form of a loan or a  
11 conditional hardship grant as provided in this section. An award of  
12 financial assistance, either as a loan or a grant, or a combination of  
13 both, may, upon application therefor, be for 100% of the eligible  
14 project costs, except as provided in paragraph (1) of subsection c. of  
15 this section. However, a loan that any applicant may receive from  
16 the fund for an upgrade, remediation, or closure, or any  
17 combination thereof, for any one facility, may not exceed  
18 \$2,000,000, except as provided below, and a grant that any  
19 applicant may receive from the fund for any one facility, may not  
20 exceed \$500,000. A loan that an applicant may receive from the  
21 fund for a remediation of a discharge that poses a threat to a  
22 drinking water source may not exceed \$3,000,000.

23 (2) Notwithstanding the provisions of paragraph (1) of this  
24 subsection to the contrary, an eligible owner or operator of a facility  
25 located within an area designated as a Planning Area 1  
26 (Metropolitan), Planning Area 2 (Suburban), **【or】** a designated  
27 center as designated pursuant to the "State Planning Act," sections 1  
28 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.), or in the  
29 Highlands Region designated pursuant to section 7 of P.L.2004,  
30 c.120 (C.13:20-7), may receive a loan in an amount not to exceed  
31 \$3,000,000 and a grant in an amount not to exceed **【\$750,000】**  
32 **【\$1,000,000】** for each facility so located.

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

36 c. An applicant, other than a public entity, may apply for and  
37 receive a conditional hardship grant for the upgrade, closure or  
38 remediation as provided in paragraph (1) of this subsection, or a  
39 loan for an upgrade, closure or remediation as provided in  
40 paragraph (2) of this subsection, provided that an applicant for a  
41 conditional hardship grant or a loan for an upgrade may be eligible  
42 for financial assistance only for any underground storage tank with  
43 a capacity of over 2,000 gallons used to store heating oil for onsite  
44 consumption in a nonresidential building that has received an  
45 extension of the deadline for compliance with the standards  
46 pursuant to subsection b. of section 9 of P.L.1986, c.102  
47 (C.58:10A-29). Financial assistance awarded an applicant pursuant

1 to this subsection may consist entirely of a conditional hardship  
2 grant, a loan for an upgrade, a loan for a closure, or a loan for a  
3 remediation, or any combination thereof, except that the total  
4 amount of the award of financial assistance shall be subject to the  
5 per facility dollar limitation enumerated in subsection a. of this  
6 section. Notwithstanding any other provision of this subsection to  
7 the contrary, no tax exempt, nonprofit organization, corporation, or  
8 association shall be awarded a conditional hardship grant pursuant  
9 to paragraph (1) of this subsection, provided that an independent  
10 institution of higher education, a nonprofit organization,  
11 corporation, or association with not more than 100 paid individuals  
12 that is qualified for exemption from federal taxation pursuant to  
13 section 501 (c)(3) of the federal Internal Revenue Code, 26  
14 U.S.C.s.501(c)(3), or a duly incorporated volunteer fire, ambulance,  
15 first aid, emergency, or rescue company or squad, may be awarded  
16 a conditional hardship grant pursuant to paragraph (1) of this  
17 subsection..

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

22 In order to be eligible for a conditional hardship grant for closure  
23 or upgrade, in the case of a regulated tank, the applicant shall have  
24 owned or operated the subject regulated tank as of December 1,  
25 2002 and continually thereafter or shall have inherited the property  
26 from a person who owned the regulated tank as of that date. In  
27 order to be eligible for a conditional hardship grant for remediation,  
28 in the case of a regulated tank, the applicant shall have owned or  
29 operated the subject regulated tank at the time of tank closure. No  
30 applicant shall be eligible for a conditional hardship grant if the  
31 applicant has a taxable income of more than ~~【\$200,000】~~ \$250,000  
32 or a net worth, exclusive of the applicant's primary residence and  
33 pension, of over ~~【\$200,000】~~ \$500,000. Any applicant with a  
34 taxable income of more than \$200,000 who qualifies for a grant  
35 shall be required to pay no more than \$1,000 of the eligible project  
36 costs.

37 Notwithstanding the eligibility requirements for net worth and  
38 income, an independent institution of higher education, a nonprofit  
39 organization, corporation, or association with not more than 100  
40 paid individuals that is qualified for exemption from federal  
41 taxation pursuant to section 501(c)(3) of the federal Internal  
42 Revenue Code, 26 U.S.C.s.501(c)(3), or a duly incorporated  
43 volunteer fire, ambulance, first aid, emergency, or rescue company  
44 or squad shall be eligible for a conditional hardship grant for  
45 eligible project costs of a closure or remediation of a petroleum  
46 underground storage tank.

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

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

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

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

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

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

43 d. The authority shall, where applicable, require an applicant  
44 applying for financial assistance from the fund to submit to the  
45 authority the financial statements of the applicant's business for  
46 three years prior to the date of the application, the most recent  
47 interim financial statement for the year of the application, the

1 applicant's federal income tax returns, or other relevant  
2 documentation.

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

6 f. An eligible owner or operator may only be awarded that  
7 amount of financial assistance issued as a loan for which the  
8 applicant demonstrates he could not qualify for and obtain as a  
9 commercial loan. The provisions of this subsection shall not apply  
10 to an owner or operator or petroleum underground storage tank used  
11 to store heating oil for onsite consumption in a residential building,  
12 to an independent institution of higher education, or to a duly  
13 incorporated volunteer fire, ambulance, first aid, emergency, or  
14 rescue company or squad.

15 g. An eligible owner or operator of a regulated tank in this State  
16 who has met the upgrade requirements pursuant to 42 U.S.C. s.6991  
17 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.) may be awarded a  
18 loan in order to finance an upgrade beyond the minimal effective  
19 system.

20 (cf: P.L.2003, c.148, s.3)

21

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

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

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

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

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

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

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

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

15 c. An application for financial assistance from the fund for an  
16 upgrade or closure of a regulated tank shall include all regulated  
17 tanks at the facility for which the applicant is seeking financial  
18 assistance. **【Once】** Except as provided in subsection g. of section 5  
19 of P.L.1997, c.235 (C.58:10A-37.5), once financial assistance for an  
20 upgrade or closure is awarded for a facility, no additional award of  
21 financial assistance for upgrade or closure costs may be made for  
22 that facility. However, if an applicant discovers while performing  
23 upgrade or closure activities that a remediation is necessary at the  
24 site of a facility, and if financial assistance was previously awarded  
25 for that site only for an upgrade or closure of a regulated tank, the  
26 applicant may amend his application and apply for financial  
27 assistance for the required remediation subject to the limitations  
28 enumerated in section 5 of P.L.1997, c.235 (C.58:10A-37.5). An  
29 application for financial assistance for an upgrade or closure of a  
30 regulated tank shall be conditioned upon the applicant agreeing to  
31 perform, at the time of the upgrade or closure, any remediation  
32 necessary as a result of a discharge from the regulated tank and  
33 commencement of the remediation within the time prescribed and in  
34 accordance with the rules and regulations of the department.

35 d. Except as provided **【below】** in this subsection, and in  
36 subsection g. of section 5 of P.L.1997, c.235 (C.58:10A-37.5), no  
37 financial assistance for upgrade shall be awarded for any regulated  
38 tank required to meet the upgrade or closure requirements pursuant  
39 to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et  
40 seq.), unless the application is filed with the authority prior to  
41 January 1, 1999 and the application is complete and the application  
42 fee is received by August 1, 1999. 【No】 Except as provided in  
43 subsection g. of section 5 of P.L.1997, c.235 (C.58:10A-37.5), no  
44 financial assistance for upgrade shall be awarded for any  
45 underground storage tank with a capacity of over 2,000 gallons used  
46 to store heating oil for onsite consumption in a nonresidential  
47 building required to be upgraded pursuant to P.L.1986, c.102



1 (C.58:10A-21 et seq.) but not pursuant to 42 U.S.C.s.6991 et seq.,  
2 unless the applicant has received an extension of the deadline for  
3 compliance with the standards pursuant to subsection b. of section 9  
4 of P.L.1986, c.102 (C.58:10A-29), the application is filed with the  
5 authority prior to June 30, 2005 and the application is complete and  
6 the application fee is received by December 31, 2005.

7 No financial assistance for closure shall be awarded for any  
8 regulated tank required to meet the upgrade or closure requirements  
9 pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-  
10 21 et seq.), or for the remediation of a discharge from any such  
11 regulated tank except as provided in subsection c. of this section,  
12 unless the application is filed with the authority prior to June 30,  
13 2005 and the application is complete and the application fee is  
14 received by December 31, 2005.

15 In the case of a regulated tank that is not operational, financial  
16 assistance for the closure or the remediation of any discharge  
17 therefrom may be awarded if the application is filed with the  
18 authority no more than 18 months after the date of discovery of the  
19 existence of the regulated tank, or 18 months from the effective date  
20 of P.L.2003, c.148, whichever is later.

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

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

42 g. Notwithstanding any provision of P.L.1997, c.235 (C.58:10A-  
43 37.1 et seq.), where an eligible owner or operator has filed an  
44 application for financial assistance from the fund, and there are  
45 either insufficient monies in the fund or the authority has not yet  
46 acted upon the application or awarded the financial assistance, the  
47 eligible owner or operator may expend its own funds for the  
48 upgrade, closure, or remediation, and upon approval of the

1 application, the authority shall award the financial assistance as a  
2 reimbursement of the monies expended for eligible project costs.

3 h. Notwithstanding any provision of P.L.1997, c.235 (C.58:10A-  
4 37.1 et seq.) to the contrary, if an applicant has expended the  
5 applicant's own funds on a remediation after filing an application  
6 for financial assistance from the fund for the eligible project costs  
7 of the remediation, the authority, upon approval of the application,  
8 may make a grant from the fund pursuant to paragraph (1) of  
9 subsection c. of section 5 of P.L.1997, c.235 (C.58:10A-37.5) to  
10 reimburse the eligible owner or operator for the eligible project  
11 costs of the remediation.

12 i. Notwithstanding any provision of P.L.1997, c.235 (C.58:10A-  
13 37.1 et seq.) to the contrary, if an applicant that is an independent  
14 institution of higher education has expended the applicant's own  
15 funds on a remediation prior to filing an application for financial  
16 assistance from the fund for the eligible project costs of the  
17 remediation, the authority, upon approval of the application, may  
18 make a grant from the fund pursuant to paragraph (1) of subsection  
19 c. of section 5 of P.L.1997, c.235 (C.58:10A-37.5) to reimburse the  
20 applicant for expenditures for the eligible project costs of the  
21 remediation made on or after December 1, 1996 in an amount not to  
22 exceed \$500,000 for each independent institution of higher  
23 education.

24 j. Notwithstanding any provision of P.L.1997, c.235 (C.58:10A-  
25 37.1 et seq.) to the contrary, if an applicant has expended the  
26 applicant's own funds for a remediation of a petroleum underground  
27 storage tank used to store heating oil at the applicant's primary  
28 residence prior to filing an application for financial assistance from  
29 the fund for the eligible project costs of the remediation, the  
30 authority, upon approval of the application, may make a grant from  
31 the fund pursuant to paragraph (1) of subsection c. of section 5 of  
32 P.L.1997, c.235 (C.58:10A-37.5) to reimburse the applicant for the  
33 eligible project costs of the remediation.

34 (cf: P.L.2003, c.148, s.5)

35

36 5. Section 16 of P.L.1997, c.235 (C.58:10A-37.16) is amended  
37 to read as follows:

38 16. a. In addition to any other financial assistance requirements  
39 imposed by the authority pursuant to P.L.1997, c.235 (C.58:10A-  
40 37.1 et seq.), any award of financial assistance from the fund except  
41 for any grant awarded pursuant to paragraph (1) of subsection c. of  
42 section 5 of P.L.1997, c.235 (C.58:10A-37.5) for a closure or  
43 replacement of a petroleum underground storage tank used to store  
44 heating oil at the applicant's primary residence or for a remediation  
45 necessitated by a discharge from a petroleum underground storage  
46 tank used to store heating oil at the applicant's primary residence,  
47 shall constitute, in each instance, a debt of the applicant to the fund.  
48 The debt shall constitute a lien on the real property at which the

1 subject facility is located. The lien shall be in the amount of the  
2 financial assistance awarded the applicant. The lien shall attach  
3 when a notice of lien, incorporating the name of the property owner,  
4 a description of the real property on which the subject facility is  
5 located and an identification of the amount of the financial  
6 assurance awarded, is duly filed with the county recording officer in  
7 the county in which the property is located.

8 Where financial assistance from the fund is awarded as a  
9 combination of a loan and a grant, separate liens for the loan and  
10 the grant shall be filed. No lien shall be placed on any real property  
11 of an applicant based on a conditional hardship grant awarded  
12 pursuant to paragraph (1) of subsection c. of section 5 of P.L.1997,  
13 c.235 (C.58:10A-37.5), for a closure or replacement of a petroleum  
14 underground storage tank used to store heating oil at the applicant's  
15 primary residence or for a remediation necessitated by a discharge  
16 from a petroleum underground storage tank used to store heating oil  
17 at the applicant's primary residence.

18 b. A lien that is filed on real property pursuant to a loan shall  
19 be removed upon repayment of the loan.

20 c. The lien that is filed on real property pursuant to a  
21 conditional hardship grant shall be removed upon repayment of the  
22 amount of the grant that is unsatisfied or upon the end of a **【15-**  
23 **year】** five year period in which the site for which the financial  
24 assistance was awarded continued to be operated in substantially the  
25 same manner as it was operated at the time of the award of financial  
26 assistance. The period of operation need not run consecutively.  
27 Beginning with the **【11th】** second year of operating in substantially  
28 the same manner, **【20%】** 25% of the conditional hardship grant  
29 shall be deemed satisfied with an additional **【20%】** 25% to be  
30 satisfied each year until the entire amount of the conditional  
31 hardship grant is satisfied at the end of the **【15-year】** five year  
32 period. The owner or operator of the facility claiming to have  
33 satisfied a conditional hardship grant due to the **【15-year】** five year  
34 period of operation, shall submit a certification of this fact to the  
35 authority. Upon repayment of the unsatisfied grant award or upon  
36 submittal of this certification, unless the authority has made a  
37 finding that the certification is not correct, the authority shall  
38 remove the lien from the property.

39 Where real property for which a conditional hardship grant was  
40 awarded is not being operated in substantially the same manner, the  
41 **【15-year】** five year period to satisfy the lien shall be tolled. If at  
42 any time prior to the satisfaction of the lien the property is  
43 developed or operated for a purpose that is not substantially the  
44 same as its operation at the time of the award of the conditional  
45 hardship grant, the grant recipient shall so certify to the authority  
46 upon the change in operation. Upon receipt of this certification, the  
47 authority shall determine, based upon the new operation of the

1 property if the financial assistance shall continue as a conditional  
2 hardship grant or if it shall be converted into a loan. In making this  
3 determination, the authority shall base its decision on the financial  
4 hardship factors used in determining the original eligibility for the  
5 conditional hardship grant.

6 The authority may take whatever enforcement actions it deems  
7 necessary to verify the operation of any property for which a  
8 conditional hardship grant was made. The terms and conditions of  
9 any loan converted from a grant pursuant to this subsection shall be  
10 the same as those authorized pursuant to this act.

11 d. The provisions of this section do not apply to any real  
12 property of an applicant who is a public entity.  
13 (cf: P.L.1999, c.89, s.5)

14

15 6. This act shall take effect immediately.

16

17

18

#### STATEMENT

19

20 This bill would make various changes to the law governing the  
21 uses of money in the Petroleum Underground Storage Tank  
22 Remediation, Upgrade, and Closure Fund. The bill would authorize  
23 loans and grants from the fund for the closure and replacement of  
24 petroleum underground storage tanks that are not regulated pursuant  
25 to P.L.1986, c.102 (C.58:10A-21 et seq.) or 42 U.S.C. s.6991 et seq.  
26 Existing law allows the use of the moneys in the fund for those  
27 tanks only to finance the remediation in the case of a leak. This bill  
28 would make the owners of those tanks eligible for loans or grants  
29 for closure and replacement with an above- ground or underground  
30 tank even if there is not a leak. The bill would also make loans  
31 available to regulated tank owners who have met the upgrade  
32 requirements but who want to upgrade their systems beyond the  
33 minimally effective system.

34 The bill would increase the overall net worth cap for eligibility  
35 for financing from \$2 million to \$3 million. Further, the bill would  
36 increase the eligibility criteria for grants. Under the bill, in order to  
37 qualify for a grant, an owner or operator's income must be under  
38 \$250,000 per year and his net worth, exclusive of primary residence  
39 and pension must be under \$500,000. However, for grant applicant  
40 with an income over \$200,000 per year, the applicant must pay no  
41 more than \$1,000 of the eligible project costs.

42 Existing law allows for higher grant and loan caps for facilities  
43 located in areas designated Planning Areas 1 and 2, and in  
44 designated centers. This bill would increase the grant cap for  
45 facilities in those areas from \$750,000 to \$1,000,000 and would  
46 allow the higher loan and grant cap for financial assistance for  
47 facilities located in the Highlands Region.

**S482 SWEENEY, MCNAMARA**

17

- 1 Finally, the bill would reduce the time over which a property
- 2 must be operated in substantially the same manner in order to
- 3 satisfy a conditional hardship grant from 15 years to five years.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 482**

# **STATE OF NEW JERSEY**

DATED: JUNE 23, 2006

The Assembly Appropriations Committee reports favorably Senate Bill No. 482 (SCS).

Senate Bill No. 482 (SCS) makes various changes to the law governing the uses of money in the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund. The bill authorizes loans and grants from the fund for the replacement and closure of petroleum underground storage tanks that are not regulated pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.) or 42 U.S.C. s.6991 et seq. Existing law allows the use of the moneys in the fund for those tanks only to finance the remediation in the case of a leak. This bill makes the owners of those tanks eligible for loans or grants for replacement and closure with an aboveground or underground tank even if there is not a leak. Grants for the closure of an underground storage tank used to store heating oil for onsite consumption in a residential building in the State where no remediation is required would be limited to up to \$1,200. Grants for the replacement and closure of an underground storage tank used to store heating oil for onsite consumption in a residential building in the State where no remediation is required would be limited to up to \$3,000. In addition, the bill requires that to the maximum extent feasible, an underground storage tank shall be replaced with an aboveground tank. Further, if a petroleum underground storage tank that stores heating oil for onsite consumption in a residential building has already been replaced once using a grant from the fund, no other grants would be made available to replace that tank again.

The bill also makes loans available to regulated tank owners who have met the upgrade requirements under federal and State law in order to improve or replace their systems to meet State or federal standards.

The bill increases the overall net worth cap for eligibility for financing from \$2 million to \$3 million. Further, the bill increases the eligibility criteria for grants. Under the committee substitute, in order to qualify for a grant, an owner or operator's income must be under \$250,000 per year and his net worth, exclusive of primary residence and pension, must be under \$500,000. However, for a grant applicant

with an income over \$200,000 per year, the applicant must pay no more than \$1,000 of the eligible project costs.

Existing law allows for higher grant and loan caps for facilities located in areas designated under the "State Planning Act" as Planning Areas 1 and 2 and as designated centers. This committee substitute would increase the grant cap for facilities in those areas from \$750,000 to \$1,000,000 and would allow the higher loan and grant cap for financial assistance for facilities located in the Highlands Region.

The bill reduces the time over which a property must be operated in substantially the same manner in order to satisfy a conditional hardship grant from 15 years to five years.

The bill requires that for the certification program for persons who perform services on regulated tanks and on unregulated tanks, the Department of Environmental Protection shall include standards for pricing, customer service, compliance with applicable rules and regulations, adequate submissions to the department, and any other standards relevant to the performance, qualifications, and business practices of persons or business firms seeking certification. In addition, the bill allows the department to deny, revoke, suspend or refuse to renew a certification for failure to meet the standards or requirements of the certification program.

The bill authorizes the department to adopt interim rules and regulations establishing a program for the certification of persons qualified to perform tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on unregulated heating oil tanks as provided in P.L.1999, c.322 within 60 days after the effective date of the bill. The rules and regulations would be effective as regulations immediately upon filing with the Office of Administrative Law for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the department in accordance with the provisions of the "Administrative Procedure Act." The bill provides that upon the adoption of interim rules and regulations, a grant or loan from the fund to close or replace an unregulated heating oil tank may only be made to reimburse the applicant for work performed by a person certified pursuant to section 3 of P.L.1991, c.123 (C.58:10A-24.3).

Finally, the bill requires persons who perform tank services on an unregulated heating oil tank to provide copies of any submissions made to the department to the governing body of the municipality in which the tank is located within 10 days after their submission to the department.

FISCAL IMPACT:

The bill will have no fiscal impact on the General Fund or other State funds because the program, including administrative costs, is entirely supported by constitutionally dedicated CBT funds.

# SENATE ENVIRONMENT COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 482**

# **STATE OF NEW JERSEY**

DATED: MAY 15, 2006

The Senate Environment Committee reports favorably a Senate Committee Substitute for Senate Bill No. 482.

This committee substitute would make various changes to the law governing the uses of money in the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund. The committee substitute would authorize loans and grants from the fund for the replacement and closure of petroleum underground storage tanks that are not regulated pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.) or 42 U.S.C. s.6991 et seq. Existing law allows the use of the moneys in the fund for those tanks only to finance the remediation in the case of a leak. This committee substitute would make the owners of those tanks eligible for loans or grants for replacement and closure with an aboveground or underground tank even if there is not a leak. Grants for the closure of an underground storage tank used to store heating oil for onsite consumption in a residential building in the State where no remediation is required would be limited to up to \$1,200. Grants for the replacement and closure of an underground storage tank used to store heating oil for onsite consumption in a residential building in the State where no remediation is required would be limited to up to \$3,000. In addition, the committee substitute would require that to the maximum extent feasible, an underground storage tank shall be replaced with an aboveground tank. Further, if a petroleum underground storage tank that stores heating oil for onsite consumption in a residential building has already been replaced once using a grant from the fund, no other grants would be made available to replace that tank again.

The committee substitute would also make loans available to regulated tank owners who have met the upgrade requirements under federal and State law in order to improve or replace their systems to meet State or federal standards.

The committee substitute would increase the overall net worth cap for eligibility for financing from \$2 million to \$3 million. Further, the committee substitute would increase the eligibility criteria for grants. Under the committee substitute, in order to qualify for a grant, an owner or operator's income must be under \$250,000 per year and his



net worth, exclusive of primary residence and pension, must be under \$500,000. However, for a grant applicant with an income over \$200,000 per year, the applicant must pay no more than \$1,000 of the eligible project costs.

Existing law allows for higher grant and loan caps for facilities located in areas designated under the "State Planning Act" as Planning Areas 1 and 2 and as designated centers. This committee substitute would increase the grant cap for facilities in those areas from \$750,000 to \$1,000,000 and would allow the higher loan and grant cap for financial assistance for facilities located in the Highlands Region.

The committee substitute would reduce the time over which a property must be operated in substantially the same manner in order to satisfy a conditional hardship grant from 15 years to five years.

The committee substitute would require that for the certification program for persons who perform services on regulated tanks and on unregulated tanks, the Department of Environmental Protection shall include standards for pricing, customer service, compliance with applicable rules and regulations, adequate submissions to the department, and any other standards relevant to the performance, qualifications, and business practices of persons or business firms seeking certification. In addition, the committee substitute would allow the department to deny, revoke, suspend or refuse to renew a certification for failure to meet the standards or requirements of the certification program.

The committee substitutes authorizes the department to adopt interim rules and regulations establishing a program for the certification of persons qualified to perform tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on unregulated heating oil tanks as provided in P.L.1999, c.322 within 60 days after the effective date of the bill. The rules and regulations would be effective as regulations immediately upon filing with the Office of Administrative Law for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the department in accordance with the provisions of the "Administrative Procedure Act." The committee substitute provides that upon the adoption of interim rules and regulations, a grant or loan from the fund to close or replace an unregulated heating oil tank may only be made to reimburse the applicant for work performed by a person certified pursuant to section 3 of P.L.1991, c.123 (C.58:10A-24.3).

Finally, the committee substitute requires persons who perform tank services on an unregulated heating oil tank to provide copies of any submissions made to the department to the governing body of the municipality in which the tank is located within 10 days after their submission to the department.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 482**

# **STATE OF NEW JERSEY**

DATED: JUNE 12, 2006

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 482 (SCS).

The committee substitute would make various changes to the law governing the uses of money in the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund. The committee substitute would authorize loans and grants from the fund for the replacement and closure of petroleum underground storage tanks that are not regulated pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.) or 42 U.S.C. s.6991 et seq. Existing law allows the use of the moneys in the fund for those tanks only to finance the remediation in the case of a leak. This committee substitute would make the owners of those tanks eligible for loans or grants for replacement and closure with an aboveground or underground tank even if there is not a leak. Grants for the closure of an underground storage tank used to store heating oil for onsite consumption in a residential building in the State where no remediation is required would be limited to up to \$1,200. Grants for the replacement and closure of an underground storage tank used to store heating oil for onsite consumption in a residential building in the State where no remediation is required would be limited to up to \$3,000. In addition, the committee substitute would require that to the maximum extent feasible, an underground storage tank shall be replaced with an aboveground tank. Further, if a petroleum underground storage tank that stores heating oil for onsite consumption in a residential building has already been replaced once using a grant from the fund, no other grants would be made available to replace that tank again.

The committee substitute would also make loans available to regulated tank owners who have met the upgrade requirements under federal and State law in order to improve or replace their systems to meet State or federal standards.

The committee substitute would increase the overall net worth cap for eligibility for financing from \$2 million to \$3 million. Further, the committee substitute would increase the eligibility criteria for grants. Under the committee substitute, in order to qualify for a grant, an owner or operator's income must be under \$250,000 per year and his

net worth, exclusive of primary residence and pension, must be under \$500,000. However, for a grant applicant with an income over \$200,000 per year, the applicant must pay no more than \$1,000 of the eligible project costs.

Existing law allows for higher grant and loan caps for facilities located in areas designated under the "State Planning Act" as Planning Areas 1 and 2 and as designated centers. This committee substitute would increase the grant cap for facilities in those areas from \$750,000 to \$1,000,000 and would allow the higher loan and grant cap for financial assistance for facilities located in the Highlands Region.

The committee substitute would reduce the time over which a property must be operated in substantially the same manner in order to satisfy a conditional hardship grant from 15 years to five years.

The committee substitute would require that for the certification program for persons who perform services on regulated tanks and on unregulated tanks, the Department of Environmental Protection shall include standards for pricing, customer service, compliance with applicable rules and regulations, adequate submissions to the department, and any other standards relevant to the performance, qualifications, and business practices of persons or business firms seeking certification. In addition, the committee substitute would allow the department to deny, revoke, suspend or refuse to renew a certification for failure to meet the standards or requirements of the certification program.

The committee substitutes authorizes the department to adopt interim rules and regulations establishing a program for the certification of persons qualified to perform tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on unregulated heating oil tanks as provided in P.L.1999, c.322 within 60 days after the effective date of the bill. The rules and regulations would be effective as regulations immediately upon filing with the Office of Administrative Law for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the department in accordance with the provisions of the "Administrative Procedure Act." The committee substitute provides that upon the adoption of interim rules and regulations, a grant or loan from the fund to close or replace an unregulated heating oil tank may only be made to reimburse the applicant for work performed by a person certified pursuant to section 3 of P.L.1991, c.123 (C.58:10A-24.3).

Finally, the committee substitute requires persons who perform tank services on an unregulated heating oil tank to provide copies of any submissions made to the department to the governing body of the municipality in which the tank is located within 10 days after their submission to the department.

FISCAL IMPACT:

The committee substitute will have no fiscal impact on the General Fund or other State funds because the program, including administrative costs, is entirely supported by constitutionally dedicated CBT funds.

**LEGISLATIVE FISCAL ESTIMATE**  
**SENATE COMMITTEE SUBSTITUTE FOR**  
**SENATE, No. 482**  
**STATE OF NEW JERSEY**  
**212th LEGISLATURE**

DATED: JUNE 21, 2006

**SUMMARY**

- Synopsis:** Makes various changes to the laws governing underground storage tanks.
- Type of Impact:** No impact on the constitutional dedication of Corporation Business Tax revenues to the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund.
- Agencies Affected:** Department of Environmental Protection and the New Jersey 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>	\$0	\$0	\$0

- The committee substitute makes various changes to the underground storage tank grant and loan program in order to provide more money to more recipients. This is accomplished by expanding or changing the uses and criteria under which these funds are awarded.
- The underground storage grant and loan program is supported by the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund, which is financed annually by the constitutional dedication of Corporation Business Tax (CBT) revenues.
- The program is jointly administered by the Department of Environmental Protection and the New Jersey Economic Development Authority.
- The Office of Legislative Services (OLS) estimates that the committee substitute will facilitate the spending of available CBT funds for this program. It will have no fiscal impact on the General Fund or State Treasury.

**BILL DESCRIPTION**

Senate Committee Substitute for Senate Bill No. 482 of 2006 makes various changes to the law governing the uses of money in the Petroleum Underground Storage Tank Remediation,

Upgrade, and Closure Fund. This fund, supported annually by the constitutional dedication of CBT revenues and co-managed by the Department of Environmental Protection and the New Jersey Economic Development Authority, was created in 1997 to provide loans and grants to homeowners and businesses to upgrade, remove or remediate underground storage tanks in order to help meet federal and State deadlines for completing these activities.

The committee substitute expands the use of loans and grants under this program for project categories not previously allowed. For example, existing law allows the financing of tank remediation only in cases of a leak. The committee substitute would make the owners of those tanks eligible for loans or grants for replacement and closure with an aboveground or underground tank even if there is not a leak. The committee substitute also increases the grant or loan award ceilings for existing project categories, amends various applicant criteria and eligibility qualifications, allows for higher grant and loan caps for facilities located in areas designated under the "State Planning Act" and in the Highlands Region, and reduces the time over which a property must be operated in substantially the same manner in order to satisfy a conditional hardship grant.

Last, the committee substitute makes technical amendments concerning the certification program for persons who perform services on regulated and unregulated tanks. It also authorizes the department to adopt interim rules and regulations for this program, which was established in 1999 but never formally implemented.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

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

The OLS estimates that the committee substitute will have no fiscal impact on the General Fund or other State funds because the program, including administrative costs, is entirely supported by constitutionally dedicated CBT funds. The OLS further notes that in facilitating or expanding the ways in which these funds may be awarded, the committee substitute will enable current and future balances of CBT funds dedicated for this purpose to be spent more efficiently at higher expenditure levels.

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

*Analyst: Richard M. Handelman  
Senior Fiscal Analyst*

*Approved: David J. Rosen  
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, No. 1896**

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**STATE OF NEW JERSEY**

**212th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

**Sponsored by:**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex)**

**Assemblyman LOUIS M. MANZO**

**District 31 (Hudson)**

**Assemblyman DOUGLAS H. FISHER**

**District 3 (Salem, Cumberland and Gloucester)**

**Co-Sponsored by:**

**Assemblyman Gordon**

**SYNOPSIS**

Makes residential underground storage tanks eligible for grants and loans for closure and replacement.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



**(Sponsorship Updated As Of: 2/7/2006)**

1 AN ACT concerning underground storage tanks, and amending  
2 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 2 of P.L.1997, c.235 (C.58:10A-37.2) is amended to  
8 read as follows:

9 2. As used in this act:

10 "Applicant" means a person who files an application for financial  
11 assistance from the Petroleum Underground Storage Tank  
12 Remediation, Upgrade, and Closure Fund for payment of eligible  
13 project costs of a remediation due to a discharge of petroleum from  
14 a petroleum underground storage tank , for the closure of a  
15 petroleum underground storage tank used to store heating oil for  
16 onsite consumption in a residential building, and for payment of  
17 eligible project costs of an upgrade or closure of a regulated tank;

18 "Authority" means the New Jersey Economic Development  
19 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et  
20 seq.);

21 "Closure" means the proper closure or removal of a petroleum  
22 underground storage tank necessary to meet all regulatory  
23 requirements of federal, State, or local law;

24 "Commissioner" means the Commissioner of Environmental  
25 Protection;

26 "Department" means the Department of Environmental  
27 Protection;

28 "Discharge" means the intentional or unintentional release by  
29 any means of petroleum from a petroleum underground storage tank  
30 into the environment;

31 "Eligible owner or operator" means (1) any owner or operator,  
32 other than the owner or operator of a petroleum underground  
33 storage tank storing heating oil for onsite consumption in a  
34 residential building, who owns or operates less than 10 petroleum  
35 underground storage tanks in New Jersey, who has a net worth of  
36 less than \$2,000,000 and who demonstrates to the satisfaction of the  
37 authority, the inability to qualify for and obtain a commercial loan  
38 for all or part of the eligible project costs, or in the case of such an  
39 owner or operator of a facility located within an area designated as  
40 a Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a  
41 designated center as designated pursuant to the "State Planning  
42 Act," sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et  
43 seq.), who has a net worth of less than \$3,000,000 and who  
44 demonstrates to the satisfaction of the authority, the inability to  
45 qualify for and obtain a commercial loan for all or part of the

**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 eligible project costs,(2) the owner or operator of a petroleum  
2 underground storage tank storing heating oil for onsite consumption  
3 in a residential building, (3) a public entity who owns or operates a  
4 petroleum underground storage tank in New Jersey, or (4) an  
5 independent institution of higher education that owns or operates a  
6 petroleum underground storage tank;

7 "Eligible project costs" means the reasonable costs for  
8 equipment, work or services required to effectuate a remediation,  
9 an upgrade, or a closure which equipment, work or services are  
10 eligible for payment from the Petroleum Underground Storage Tank  
11 Remediation, Upgrade, and Closure Fund. In the case of an  
12 upgrade or closure of a regulated tank, eligible project costs shall be  
13 limited to the cost of the minimal effective system necessary to  
14 meet all the regulatory requirements of federal and State law. The  
15 limitation of eligible project costs to the minimal effective system  
16 shall not be construed to deem ineligible those project costs  
17 expended to replace a regulated tank rather than to improve the  
18 regulated tank. An owner or operator may perform an upgrade or a  
19 closure beyond the minimal effective system in which case the  
20 eligible project costs that may be awarded from the fund as  
21 financial assistance shall be that amount that would represent the  
22 cost of a minimal effective system. In the case of a remediation or  
23 closure of a petroleum underground storage tank used to store  
24 heating oil for onsite consumption in a residential building, eligible  
25 project costs shall include the cost to replace a [leaking] tank with  
26 an above-ground or underground storage tank. In the case of a  
27 remediation, eligible project costs shall not include the cost to  
28 remediate a site to meet residential soil remediation standards if the  
29 local zoning ordinances adopted pursuant to the "Municipal Land  
30 Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) does not allow for  
31 residential use. Eligible project costs shall include the cost of a  
32 preliminary assessment and site investigation, even if performed  
33 prior to the award of financial assistance from the fund if the  
34 preliminary assessment and site investigation were performed after  
35 the effective date of P.L.1997, c.235;

36 "Facility" means one or more operational or nonoperational  
37 petroleum underground storage tanks under single ownership at a  
38 common site;

39 "Financial assistance" means a grant or loan or a combination of  
40 both that may be awarded by the authority from the fund to an  
41 eligible owner or operator as provided in section 5 of P.L.1997,  
42 c.235 (C.58:10A-37.5);

43 "Independent institution of higher education" means those  
44 institutions of higher education incorporated and located in this  
45 State, which, by virtue of law or character or license, are nonprofit  
46 educational institutions empowered to grant academic degrees and  
47 which provide a level of education which is equivalent to the

1 education provided by the State's public institutions of higher  
2 education as attested by the receipt of and continuation of regional  
3 accreditation by the Middle States Association of Colleges and  
4 Schools, and which are eligible to receive State aid under the  
5 provisions of the Constitution of the United States and the  
6 Constitution of the State of New Jersey. "Independent institution  
7 of higher education" does not include any educational institution  
8 dedicated primarily to the preparation or training of ministers,  
9 priests, rabbis, or other professional persons in the field of religion;

10 "Operator" means any person in control of, or having  
11 responsibility for, the daily operation of a facility;

12 "Owner" means any person who owns a facility;

13 "Person" means any individual, partnership, corporation, society,  
14 association, consortium, joint venture, commercial entity, or public  
15 entity, but does not include the State or any of its departments,  
16 agencies or authorities;

17 "Petroleum" means all hydrocarbons which are liquid at one  
18 atmosphere pressure (760 millimeters or 29.92 inches Hg) and  
19 temperatures between -20 F and 120 F (-29 C and 49 C), and all  
20 hydrocarbons which are discharged in a liquid state at or nearly at  
21 atmospheric pressure at temperatures in excess of 120 F (49 C)  
22 including, but not limited to, gasoline, kerosene, fuel oil, oil sludge,  
23 oil refuse, oil mixed with other wastes, crude oil, and purified  
24 hydrocarbons that have been refined, re-refined, or otherwise  
25 processed for the purpose of being burned as a fuel to produce heat  
26 or usable energy or which is suitable for use as a motor fuel or  
27 lubricant in the operation or maintenance of an engine;

28 "Petroleum Underground Storage Tank Remediation, Upgrade  
29 and Closure Fund" or "fund" means the fund established pursuant to  
30 section 3 of P.L.1997, c.235 (C.58:10A-37.3);

31 "Petroleum underground storage tank" means a tank of any size,  
32 including appurtenant pipes, lines, fixtures, and other related  
33 equipment, that normally and primarily stores petroleum, the  
34 volume of which, including the volume of the appurtenant pipes,  
35 lines, fixtures and other related equipment, is 10% or more below  
36 the ground. "Petroleum underground storage tank" does not  
37 include:

38 (1) Septic tanks installed or regulated pursuant to regulations  
39 adopted by the department pursuant to "The Realty Improvement  
40 Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23  
41 et seq.) or the "Water Pollution Control Act," P.L.1977, c.74  
42 (C.58:10A-1 et seq.);

43 (2) Pipelines, including gathering lines, regulated under 49  
44 U.S.C. s.60101 et seq., or intrastate pipelines regulated under State  
45 law;

46 (3) Surface impoundments, pits, ponds, or lagoons, operated in  
47 or regulated pursuant to regulations adopted by the department  
48 pursuant to the "Water Pollution Control Act," P.L.1977, c.74

1 (C.58:10A-1 et seq.);

2 (4) Storm water or wastewater collection systems operated or  
3 regulated pursuant to regulations adopted by the department  
4 pursuant to the "Water Pollution Control Act";

5 (5) Liquid traps or associated gathering lines directly related to  
6 oil or gas production and gathering operations;

7 (6) Tanks situated in an underground area, including, but not  
8 limited to, basements, cellars, mines, drift shafts, or tunnels, if the  
9 storage tank is situated upon or above the surface of the floor, or  
10 storage tanks located below the surface of the ground which are  
11 equipped with secondary containment and are uncovered so as to  
12 allow visual inspection of the exterior of the tank; and

13 (7) Any pipes, lines, fixtures, or other equipment connected to  
14 any tank exempted from the provisions of this definition pursuant to  
15 paragraphs (1) through (6) above;

16 "Public entity" means any county, municipality, or public school  
17 district, but shall not include any authority created by those entities;

18 "Regulated tank" means a petroleum underground storage tank  
19 that is required to be upgraded pursuant to P.L.1986, c.102  
20 (C.58:10A-21 et seq.) or 42 U.S.C. s.6991 et seq.;

21 "Remediation" means all necessary actions to investigate and  
22 clean up any known, suspected, or threatened discharge of  
23 petroleum, including, as necessary, the preliminary assessment, site  
24 investigation, remedial investigation, and remedial action, as those  
25 terms are defined in section 23 of P.L.1993, c.139 (C.58:10B-1);

26 "Upgrade" means the replacement of a regulated tank, the  
27 installation of secondary containment, monitoring systems, release  
28 detection systems, corrosion protection, spill prevention, or overfill  
29 prevention therefor, or any other necessary improvement to the  
30 regulated tank in order to meet the standards for regulated tanks  
31 adopted pursuant to section 5 of P.L.1986, c.102 (C.58:10A-25) and  
32 42 U.S.C. s.6991 et seq.

33 (cf: P.L.1997,c.235, s.2)

34

35 2. Section 4 of P.L.1997, c.278 (C.58:10A-37.4) is amended to  
36 read as follows:

37 4. a. Monies in the fund shall be allocated and used to provide  
38 financial assistance only to (1) eligible owners or operators of  
39 regulated tanks in this State in order to finance the eligible project  
40 costs of the upgrade or closure of those regulated tanks as may be  
41 required pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102  
42 (C.58:10A-21 et seq.); [and] (2) eligible owners and operators of  
43 petroleum underground storage tanks in this State in order to  
44 finance the eligible project costs of remediations that are necessary  
45 due to the discharge of petroleum from one or more of those  
46 petroleum underground storage tanks : and (3) eligible owners or  
47 operators of petroleum underground storage tanks used to store

1 heating oil for onsite consumption in a residential building in this  
2 State in order to finance the eligible project costs of the closure of  
3 those tanks. Priority for the issuance of financial assistance from  
4 the fund, and the terms and conditions of that financial assistance,  
5 shall be based upon the criteria set forth in this section.

6 b. Upon a determination that an application for financial  
7 assistance meets all established criteria for the award of financial  
8 assistance from the fund, the authority shall approve the  
9 application. Prior to December 22, 1998, the authority may approve  
10 only those applications given priority pursuant to paragraphs (1)  
11 and (2) of this subsection or pursuant to subsections c. and f. of this  
12 section, but the authority may receive, file, and deem complete any  
13 application for financial assistance it receives prior to that date.

14 Upon the authority's approval of an application for financial  
15 assistance, the authority shall award financial assistance to an  
16 applicant upon the availability of sufficient monies in the fund.  
17 When monies in the fund are not sufficient at any point in time to  
18 fully fund all applications for financial assistance that have been  
19 approved by the authority, the authority shall award financial  
20 assistance to approved applicants, notwithstanding the date of  
21 approval of the application, in the following order of priority:

22 (1) Upgrades of regulated tanks required to be upgraded  
23 pursuant to 42 U.S.C. s.6991 et seq., and including any necessary  
24 remediation at the site of the regulated tank, shall be given first  
25 priority;

26 (2) Closure of any regulated tank required to be upgraded  
27 pursuant to 42 U.S.C. s.6991 et seq., and including any necessary  
28 remediation at the site of the regulated tank, shall be given second  
29 priority;

30 (3) Upgrades of regulated tanks required to be upgraded  
31 pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.), but not pursuant  
32 to 42 U.S.C. s.6991 et seq., and including any necessary  
33 remediation at the site of the regulated tank, shall be given third  
34 priority;

35 (4) Any necessary remediations at the sites of petroleum  
36 underground storage tanks other than those given priority pursuant  
37 to paragraph (1), (2), or (3) of this subsection shall be given fourth  
38 priority;

39 (5) Closure of any regulated tank required to be upgraded  
40 pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.), but not pursuant  
41 to 42 U.S.C. s.6991 et seq., shall be given last priority.

42 c. Notwithstanding the priority for the award of financial  
43 assistance set forth in subsection b. of this section, whenever there  
44 has been a discharge, and the discharge poses a threat to a drinking  
45 water source, to human health, or to a sensitive or significant  
46 ecological area, an approved application for the award of financial  
47 assistance for the remediation and upgrade or closure, if necessary,  
48 shall be given priority over all other applications for financial

1 assistance.

1 d. The priority ranking of applicants within any priority  
2 category enumerated in paragraphs (1), (2), (3), (4), and (5) of  
3 subsection b. and in subsection c. of this section shall be based upon  
4 the date an application for financial assistance is filed with the  
5 authority as determined pursuant to section 6 of P.L.1997, c.235  
6 (C.58:10A-37.6).

7 e. Whenever a facility consists of petroleum underground  
8 storage tanks from more than one priority category as enumerated in  
9 paragraphs (1) through (5) of subsection b. of this section, and  
10 subsection c. of this section, all the petroleum underground storage  
11 tanks at that facility shall be accorded the priority that would be  
12 accorded the highest priority petroleum underground storage tank at  
13 that facility.

14 f. Notwithstanding the priority rankings established in this  
15 section, one-tenth of the amount annually appropriated to the  
16 Petroleum Underground Storage Tank Remediation, Upgrade and  
17 Closure Fund shall be used to provide financial assistance to owners  
18 or operators of petroleum underground storage tanks used to store  
19 heating oil for onsite consumption in a residential building, in order  
20 to finance the eligible project costs of remediations that are  
21 necessary due to the discharge of heating oil from those petroleum  
22 underground storage tanks or closures of those petroleum  
23 underground storage tanks. The authority shall provide financial  
24 assistance pursuant to this subsection notwithstanding the owner or  
25 operator's ability to obtain commercial loans for all or part of the  
26 financing. The priority ranking of applicants for these funds shall  
27 be based upon the date an application for financial assistance is  
28 filed with the authority as determined pursuant to section 6 of  
29 P.L.1997, c.235 (C.58:10A-37.6). If the authority does not receive  
30 qualified applications for financial assistance from owners and  
31 operators of petroleum underground storage tanks used to store  
32 heating oil for onsite consumption that meet the criteria set forth in  
33 this act and in any rules or regulations issued pursuant thereto,  
34 sufficient to enable the award of financial assistance an amount  
35 equal to one-tenth of the amount annually appropriated to the fund  
36 in any one year as required pursuant to this subsection, the authority  
37 may award that financial assistance in the order of priority as  
38 provided in this section. In addition to the monies dedicated  
39 pursuant to this subsection, the authority may award financial  
40 assistance to an owner or operator of a petroleum underground  
41 storage tank used to store heating oil for onsite consumption when  
42 the criteria enumerated in subsection c. of this section are met.

43 (cf: P.L.2003, c.148, s.2)

44  
45 3. This act shall take effect immediately.

STATEMENT

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This bill would authorize loans and grants from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund for the closure and replacement of petroleum underground storage tanks used to store heating oil for onsite consumption in a residential building. Existing law allows the use of the moneys in the fund for those tanks only to finance the remediation in the case of a leak. This bill would make the owners of those tanks eligible for loans or grants for closure and replacement with an above-ground or underground tank even if there is not a leak.

ASSEMBLY ENVIRONMENT AND SOLID WASTE  
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY, No. 1896

**STATE OF NEW JERSEY**

DATED: FEBRUARY 6, 2006

This committee substitute would authorize grants and loans from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund (“fund”) for the closure and replacement of petroleum underground storage tanks used to store heating oil for onsite consumption in a residential building. Existing law allows the use of the moneys in the fund for those tanks used to store heating oil for onsite consumption in a residential building only to finance the remediation in the case of a leak.

This committee substitute would make the owners of those tanks eligible for grants and loans for closure and replacement with an above-ground or underground tank even if there is not a leak. Under the provisions of this committee substitute, the maximum allowable grant amount for the closure of a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building where no remediation is required would be \$1,200, and the maximum allowable grant amount for the closure and replacement of such a tank would be \$3,000. In addition, an eligible owner or operator of such a tank may only receive a grant once from the fund for the closure or replacement of each tank on the property.

Lastly, the committee substitute would increase the eligibility criteria for grants available from the fund. Under the committee substitute, in order to qualify for a grant, an owner or operator's income must be under \$250,000 per year (increased from \$200,000) and net worth, exclusive of primary residence and pension, must be under \$500,000 (raised from \$200,000).



# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 1896 (ACS) and** **ASSEMBLY, No. 2160 (ACS)**

# STATE OF NEW JERSEY

DATED: JUNE 23, 2006

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 1896 (ACS) and Assembly No.2160 (ACS).

This Assembly Committee Substitute for Assembly Bill No. 1896 (ACS) and Assembly Bill No. 2160 (ACS) would make various changes to the law governing the uses of money in the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund.

The committee substitute would authorize loans and grants from the fund for the replacement and closure of petroleum underground storage tanks that are not regulated pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.) or 42 U.S.C. s.6991 et seq. Existing law allows the use of the moneys in the fund for those tanks only to finance the remediation in the case of a leak. This committee substitute would make the owners of those tanks eligible for loans or grants for replacement and closure with an aboveground or underground tank even if there is not a leak. Grants for the closure of an underground storage tank used to store heating oil for onsite consumption in a residential building in the State where no remediation is required would be limited to up to \$1,200. Grants for the replacement and closure of an underground storage tank used to store heating oil for onsite consumption in a residential building in the State where no remediation is required would be limited to up to \$3,000. In addition, the committee substitute would require that to the maximum extent feasible, an underground storage tank shall be replaced with an aboveground tank. Further, if a petroleum underground storage tank that stores heating oil for onsite consumption in a residential building has already been replaced once using a grant from the fund, no other grants would be made available to replace that tank again.

The committee substitute would also make loans available to regulated tank owners who have met the upgrade requirements under federal and State law in order to improve or replace their systems to meet State or federal standards.

The committee substitute would increase the overall net worth cap for eligibility for financing from \$2 million to \$3 million. Further, the

committee substitute would increase the eligibility criteria for grants. Under the committee substitute, in order to qualify for a grant, an owner or operator's income must be under \$250,000 per year and his net worth, exclusive of primary residence and pension, must be under \$500,000. However, for a grant applicant with an income over \$200,000 per year, the applicant must pay no more than \$1,000 of the eligible project costs.

Existing law allows for higher grant and loan caps for facilities located in areas designated under the "State Planning Act" as Planning Areas 1 and 2 and as designated centers. This committee substitute would increase the grant cap for facilities in those areas from \$750,000 to \$1,000,000 and would allow the higher loan and grant cap for financial assistance for facilities located in the Highlands Region.

The committee substitute would reduce the time over which a property must be operated in substantially the same manner in order to satisfy a conditional hardship grant from 15 years to five years.

The committee substitute would require that for the certification program for persons who perform services on regulated tanks and on unregulated tanks, the Department of Environmental Protection shall include standards for pricing, customer service, compliance with applicable rules and regulations, adequate submissions to the department, and any other standards relevant to the performance, qualifications, and business practices of persons or business firms seeking certification. In addition, the committee substitute would allow the department to deny, revoke, suspend or refuse to renew a certification for failure to meet the standards or requirements of the certification program.

The committee substitutes authorizes the department to adopt interim rules and regulations establishing a program for the certification of persons qualified to perform tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on unregulated heating oil tanks as provided in P.L.1999, c.322 within 60 days after the effective date of the bill. The rules and regulations would be effective as regulations immediately upon filing with the Office of Administrative Law for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the department in accordance with the provisions of the "Administrative Procedure Act." The committee substitute provides that upon the adoption of interim rules and regulations, a grant or loan from the fund to close or replace an unregulated heating oil tank may only be made to reimburse the applicant for work performed by a person certified pursuant to section 3 of P.L.1991, c.123 (C.58:10A-24.3).

Finally, the committee substitute requires persons who perform tank services on an unregulated heating oil tank to provide copies of any submissions made to the department to the governing body of the municipality in which the tank is located within 10 days after their submission to the department.

As reported by the committee, this committee substitute for Assembly Bill No. 1896 (ACS) and Assembly Bill No. 2160 (ACS) is identical to Senate Bill No. 482 (SCS).

**FISCAL IMPACT:**

The committee substitute will have no fiscal impact on the General Fund or other State funds because the program, including administrative costs, is entirely supported by constitutionally dedicated CBT funds.

**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY COMMITTEE SUBSTITUTE FOR**  
**ASSEMBLY, No. 1896**  
**STATE OF NEW JERSEY**  
**212th LEGISLATURE**

DATED: JULY 11, 2006

**SUMMARY**

- Synopsis:** Makes residential underground storage tanks eligible for grants and loans for closure and replacement; and increases eligibility criteria for certain grants from Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund.
- Type of Impact:** No impact on the constitutional dedication of Corporation Business Tax revenues to the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund.
- Agencies Affected:** Department of Environmental Protection and the New Jersey Economic Development Authority.

**Office of Legislative Services Estimate**

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
<b>State Cost</b>	\$0	\$0	\$0

- The committee substitute makes various changes to the underground storage tank grant and loan program in order to provide more money to more recipients. This is accomplished by expanding or changing the uses and criteria under which these funds are awarded.
- The underground storage grant and loan program is supported by the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund, which is financed annually by the constitutional dedication of Corporation Business Tax (CBT) revenues.
- The program is jointly administered by the Department of Environmental Protection (DEP) and the New Jersey Economic Development Authority (EDA).
- The Office of Legislative Services (OLS) estimates that the committee substitute will facilitate the spending of available CBT funds for this program. It will have no fiscal impact on the General Fund or State Treasury.

## **BILL DESCRIPTION**

Assembly Committee Substitute for Assembly Bill No. 1896 of 2006 would authorize grants and loans from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund for the closure and replacement of petroleum underground and above-ground storage tanks used to store heating oil for onsite consumption in a residential building. Existing law allows the use of Fund assistance for the remediation of such tanks only in cases where there is a tank leak.

The committee substitute also establishes maximum allowable grant amounts at \$1,200 for the closure of a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building where no remediation is required, and \$3,000 for the closure and replacement of such a tank. In addition, an eligible owner or operator of such a tank may only receive a grant once from the Fund for the closure or replacement of each tank on the property.

Last, the committee substitute would increase the eligibility criteria for grants available from the Fund. In order to qualify for a grant, an owner or operator's income must be under \$250,000 per year (increased from \$200,000) and net worth, exclusive of primary residence and pension, must be under \$500,000 (raised from \$200,000).

The Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund is supported annually by the constitutional dedication of CBT revenues and is co-managed by the DEP and the EDA. It was created in 1997 to provide loans and grants to homeowners and businesses to upgrade, remove or remediate underground storage tanks in order to help meet federal and State deadlines for completing these activities.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

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

The OLS estimates that the committee substitute will have no fiscal impact on the General Fund or other State funds because the program, including administrative costs, is entirely supported by constitutionally dedicated CBT funds. The OLS further notes that in facilitating or expanding the ways in which these funds may be awarded, the committee substitute will enable current and future balances of CBT funds dedicated for this purpose to be spent more efficiently at higher expenditure levels.

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

*Analyst:* Richard M. Handelman  
Senior Fiscal Analyst

*Approved:* David J. Rosen  
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.