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LAW/RWH 9/1/2009

[Second Reprint]

ASSEMBLY, No. 2438

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED MARCH 3, 2008

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Assemblywoman ELEASE EVANS

District 35 (Bergen and Passaic)

Co-Sponsored by:

**Assemblymen Vas, Chivukula, Assemblywoman Lampitt, Senators
B.Smith and Turner**

SYNOPSIS

Increases cap for underground storage tank remediation grants to independent colleges.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on December 11, 2008, with amendments.

(Sponsorship Updated As Of: 2/24/2009)

1 AN ACT concerning underground storage tank remediation grants,
2 and amending P.L.1997, c.235.

3

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

6

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

9 5. a. (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.
15 and in subsection h. of this section. However, a loan that any
16 applicant may receive from the fund for an upgrade, remediation, or
17 closure, or any combination thereof, for any one facility, may not
18 exceed \$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), a designated center as
27 designated pursuant to the "State Planning Act," sections 1 through
28 12 of P.L.1985, c.398 (C.52:18A-196 et seq.), or the Highlands
29 Region designated pursuant to section 7 of P.L.2004, c.120
30 (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 \$1,000,000 for
32 each facility so located.

33 (3) Notwithstanding the provisions of paragraphs (1) and (2) of
34 this subsection to the contrary, an applicant that is an independent
35 institution of higher education may receive a grant from the fund
36 for the eligible project costs of a remediation of a discharge from a
37 petroleum underground storage tank in an amount not to exceed
38 \$1,500,000 for each independent institution of higher education.

39 ²The maximum total amount in grants that an independent
40 institution of higher education may receive pursuant to this section
41 and subsection i. of section 7 of P.L.1997, c.235 (C.58:10A-37.7)
42 shall not exceed \$1,500,000.²

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AEN committee amendments adopted May 12, 2008.

²Senate SBA committee amendments adopted December 11, 2008.

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

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

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

39 In order to be eligible for a conditional hardship grant for closure
40 or upgrade, in the case of a regulated tank, the applicant shall have
41 owned or operated the subject regulated tank as of December 1,
42 2002 and continually thereafter or shall have inherited the property
43 from a person who owned the regulated tank as of that date. In
44 order to be eligible for a conditional hardship grant for remediation,
45 in the case of a regulated tank, the applicant shall have owned or
46 operated the subject regulated tank at the time of tank closure. No
47 applicant shall be eligible for a conditional hardship grant if the

1 applicant has a taxable income of more than \$250,000 or a net
2 worth, exclusive of the applicant's primary residence and pension,
3 of over \$500,000. Any applicant with a taxable income of more
4 than \$200,000 who qualifies for a grant shall be required to pay no
5 more than \$1,000 of the eligible project costs.

6 Notwithstanding the eligibility requirements for net worth and
7 income, an independent institution of higher education, a nonprofit
8 organization, corporation, or association with not more than 100
9 paid individuals that is qualified for exemption from federal
10 taxation pursuant to section 501(c)(3) of the federal Internal
11 Revenue Code, 26 U.S.C. s.501(c)(3), or a duly incorporated
12 volunteer fire, ambulance, first aid, emergency, or rescue company
13 or squad shall be eligible for a conditional hardship grant for
14 eligible project costs of a closure or remediation of a petroleum
15 underground storage tank.

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

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

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

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

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

47 In making a finding of an applicant's ability to repay a loan for
48 the upgrade, closure, and remediation of a regulated tank, or for the

1 remediation of a discharge from a petroleum underground storage
2 tank, the authority shall base its finding, as applicable, upon the
3 cash flow of the applicant's business, the applicant's taxable income
4 and the applicant's personal and business assets, except that the
5 authority may not consider the applicant's primary residence as
6 collateral, except that the authority may consider the applicant's
7 primary residence as collateral with the permission of the applicant
8 or where the subject petroleum underground storage tank or
9 regulated tank is located at the primary residence.

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

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

20 f. An eligible owner or operator may only be awarded that
21 amount of financial assistance issued as a loan for which the
22 applicant demonstrates he could not qualify for and obtain as a
23 commercial loan. The provisions of this subsection shall not apply
24 to an owner or operator of petroleum underground storage tank used
25 to store heating oil for onsite consumption in a residential building,
26 to an independent institution of higher education, or to a duly
27 incorporated volunteer fire, ambulance, first aid, emergency, or
28 rescue company or squad.

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

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

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

44 No person shall be eligible for grant monies from the fund to
45 replace a petroleum underground storage tank that stores heating oil
46 for onsite consumption in a residential building if the tank that
47 stores heating oil for that residential building was previously
48 replaced using a grant from the fund.

1 i. In the case of a closure and replacement of a petroleum
2 underground storage tank used to store heating oil for onsite
3 consumption in a residential building in this State, to the maximum
4 extent feasible, the owner or operator shall replace the petroleum
5 underground storage tank with an aboveground tank.

6 (cf: P.L.2006, c.58, s.3)

7

8 2. This act shall take effect immediately.

1 SPONSOR'S STATEMENT

2

3 This bill would increase the cap on the maximum grant amount
4 that may be made from the Petroleum Underground Storage Tank
5 Fund to an applicant that is an institution of higher education for the
6 remediation of a discharge from a petroleum underground storage
7 tank. The bill would change the cap from \$500,000 to \$1.5 million.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2438

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 12, 2008

The Assembly Environment and Solid Waste Committee reports favorably and with committee amendments Assembly Bill No. 2438.

This bill would increase the cap on the maximum grant amount that may be made from the Petroleum Underground Storage Tank Fund to an applicant that is an institution of higher education for the remediation of a discharge from a petroleum underground storage tank. The bill would change the cap from \$500,000 to \$1.5 million.

COMMITTEE AMENDMENTS:

The committee amendments to the bill make technical changes to correct a section reference.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2438

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 11, 2008

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 2438 (1R).

The bill increases the maximum grant amount that may be made from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund. At present, a qualified institution of higher education may receive a grant of up to \$500,000 for the remediation of discharge from a petroleum underground storage tank. This bill raises the grant limit from \$500,000 to \$1.5 million.

As reported, this bill is identical to Senate Bill No. 717, as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

The amendments clarify that the \$500,000 limit, for reimbursements to independent institutions of higher education for remediation costs incurred before the filing of an approved application under subsection i. of N.J.S.A.58:10A-37.7, is subject to and not in addition to the bill's \$1.5 million grant limit.

FISCAL IMPACT:

The Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund is used to provide loans and grants to public and private entities for the upgrade, closure or remediation of underground storage tanks. The fund is supported by constitutionally dedicated revenues from the Corporation Business Tax (CBT) and is administered jointly by the Department of Environmental Protection (DEP) and the N.J. Economic Development Authority (EDA).

According to the Office of Legislative Services' fiscal estimate for this bill's counterpart, S717, the fund currently has a balance of over \$80 million and normally awards approximately \$10 million to \$12 million annually in grants and loans. Although recent constitutional amendments ended annual CBT allocations to the Fund (unless its balance goes below \$20 million), the Fund still accrues approximately

\$7.5 million annually in revenues from loan and grant repayments, interest income and financing fees.

S717 B. SMITH

6

1 2. This act shall take effect immediately.

2

3

4 SPONSOR'S STATEMENT

5

6 This bill would increase the cap on the maximum grant amount
7 that may be made from the Petroleum Underground Storage Tank
8 Fund to an applicant that is an institution of higher education for the
9 remediation of a discharge from a petroleum underground storage
10 tank. The bill would change the cap from \$500,000 to \$1.5 million.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 717

STATE OF NEW JERSEY

DATED: MARCH 10, 2008

The Senate Environment Committee favorably reports Senate Bill No. 717.

This bill would increase the cap on the maximum grant amount that may be made from the Petroleum Underground Storage Tank Fund to an applicant that is an institution of higher education for the remediation of a discharge from a petroleum underground storage tank. The bill would change the cap from \$500,000 to \$1.5 million.

This bill was pre-filed for introduction in the 2008-2009 session pending technical review which has been performed.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 717

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 11, 2008

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 717.

The bill increases the maximum grant amount that may be made from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund. At present, a qualified institution of higher education may receive a grant of up to \$500,000 for the remediation of discharge from a petroleum underground storage tank. This bill raises the grant limit from \$500,000 to \$1.5 million.

As reported, this bill is identical to Assembly Bill No. 2438(1R), as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

The first component of the amendments is technical changes to the bill's internal references. The second component clarifies that the \$500,000 limit, for reimbursements to independent institutions of higher education for remediation costs incurred before the filing of an approved application under subsection i. of N.J.S.A.58:10A-37.7, is subject to and not in addition to the bill's \$1.5 million grant limit.

FISCAL IMPACT:

The Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund is used to provide loans and grants to public and private entities for the upgrade, closure or remediation of underground storage tanks. The fund is supported by constitutionally dedicated revenues from the Corporation Business Tax (CBT) and is administered jointly by the Department of Environmental Protection (DEP) and the N.J. Economic Development Authority (EDA).

According to the Office of Legislative Services' fiscal estimate for this bill, the fund currently has a balance of over \$80 million and normally awards approximately \$10 million to \$12 million annually in grants and loans. Although recent constitutional amendments ended annual CBT allocations to the Fund (unless its balance goes below \$20 million), the Fund still accrues approximately \$7.5 million annually in

revenues from loan and grant repayments, interest income and financing fees.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 717
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: DECEMBER 12, 2008

SUMMARY

- Synopsis:** Increases cap for underground storage tank remediation grants to independent colleges.
- Type of Impact:** No impact. Bill affects allocation of constitutionally dedicated Corporation Business Tax revenues in 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>
State Cost	No impact - See comments below		

- The bill increases the maximum grant amount, from \$500,000 to \$1.5 million, that may be awarded from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund (PUSTRUCF) to an independent institution of higher education for the remediation of a discharge from a petroleum underground storage tank.
- The PUSTRUCF provides loans and grants to public and private entities for the upgrade, closure or remediation of underground storage tanks. It is supported by constitutionally dedicated revenues from the Corporation Business Tax (CBT) and is administered jointly by the Department of Environmental Protection (DEP) and the N.J. Economic Development Authority (EDA).
- The Office of Legislative Services (OLS) estimates that the bill will have no fiscal impact on State funds because it affects a dedicated funding source that is sufficiently capitalized to absorb any potential increase in grant awards resulting from the bill.

BILL DESCRIPTION

Senate Bill No. 717 of 2008 amends the “Underground Storage Tank Finance Act,” P.L.1997, c.235, to increase the cap from \$500,000 to \$1.5 million on the maximum grant amount that may be made from the PUSTRUCF to an independent institution of higher education for the remediation of a discharge from a petroleum underground storage tank.

FISCAL ANALYSIS***EXECUTIVE BRANCH***

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill will have no fiscal impact on the General Fund or the State Budget because the grant and loan program addressed by the bill is wholly supported by CBT revenues that are constitutionally dedicated to provide grants and loans for underground storage tank remediation, upgrade and closure.

The grant and loan program, which is jointly administered through the PUSTRUCF by the DEP and the EDA, currently has a balance of over \$80 million and normally awards approximately \$10 million to \$12 million annually in grants and loans. Although recent constitutional amendments ended annual CBT allocations to the Fund (unless its balance goes below \$20 million), the Fund still accrues approximately \$7.5 million annually in revenues from loan and grant repayments, interest income and financing fees. Given these facts, the OLS can safely assume that the Fund will have sufficient balances to cover any increases in grant awards provided under the bill.

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 (C. 52:13B-1 et seq.).