

**58:10A-37.5b**  
**LEGISLATIVE HISTORY CHECKLIST**  
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**LAWS OF:** 2009                    **CHAPTER:** 134

**NJSA:** 58:10A-37.5b (Requires confirmation of financial assistance for eligible homeowners voluntarily closing or replacing petroleum underground storage tanks, and expands eligibility for financial assistance)

**BILL NO:** A3739 (Substituted for S2568)

**SPONSOR(S)** Wagner and others

**DATE INTRODUCED:** February 9, 2009

**COMMITTEE:**                    **ASSEMBLY:** Environment and Solid Waste

**SENATE:** ---

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**                    **ASSEMBLY:** March 16, 2009

**SENATE:** May 21, 2009

**DATE OF APPROVAL:** October 1, 2009

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL** (First reprint enacted)

**A3739**

**SPONSOR'S STATEMENT:** (Begins on page 6 of original bill) Yes

**COMMITTEE STATEMENT:**                    **ASSEMBLY:** Yes

**SENATE:** No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**S2568**

**SPONSOR'S STATEMENT:** (Begins on page 6 of original bill) Yes

**COMMITTEE STATEMENT:**                    **ASSEMBLY:** No

**SENATE:** Yes

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

(continued)

**VETO MESSAGE:** No

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**NEWSPAPER ARTICLES:** No

LAW/RWH

[First Reprint]

**ASSEMBLY, No. 3739**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

INTRODUCED FEBRUARY 9, 2009

**Sponsored by:**

**Assemblywoman CONNIE WAGNER**

**District 38 (Bergen)**

**Assemblywoman BONNIE WATSON COLEMAN**

**District 15 (Mercer)**

**Assemblywoman NILSA CRUZ-PEREZ**

**District 5 (Camden and Gloucester)**

**Assemblyman JOSEPH CRYAN**

**District 20 (Union)**

**Assemblywoman LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**Assemblyman REED GUSCIORA**

**District 15 (Mercer)**

**Co-Sponsored by:**

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**SYNOPSIS**

Requires confirmation of financial assistance for eligible homeowners voluntarily closing or replacing petroleum underground storage tanks, and expands eligibility for financial assistance.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Environment and Solid Waste Committee on March 12, 2009, with amendments.

(Sponsorship Updated As Of: 5/22/2009)

1 AN ACT concerning 'financial assistance for' the closure or  
2 replacement of certain petroleum underground storage tanks and  
3 amending 'and supplementing' P.L.1997, c.235.

4

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

7

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

10 2. As used in this act:

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

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

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

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

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

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

34 "Eligible owner or operator" means (1) any owner or operator,  
35 other than the owner or operator of a petroleum underground  
36 storage tank storing heating oil for onsite consumption in a  
37 residential building, who owns or operates less than 10 petroleum  
38 underground storage tanks in New Jersey, who has a net worth of  
39 less than \$3,000,000 and who demonstrates to the satisfaction of  
40 the authority, the inability to qualify for and obtain a commercial  
41 loan for all or part of the eligible project costs, (2) the owner or  
42 operator of a petroleum underground storage tank storing heating  
43 oil for onsite consumption in a residential building, (3) a public  
44 entity who owns or operates a petroleum underground storage tank

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AEN committee amendments adopted March 12, 2009.

1 in New Jersey, **[or]** (4) an independent institution of higher  
2 education that owns or operates a petroleum underground storage  
3 tank, or (5) a nonprofit organization, corporation, or association  
4 with not more than 100 paid individuals that is qualified for  
5 exemption from federal taxation pursuant to section 501(c)(3) of the  
6 federal Internal Revenue Code, 26 U.S.C.s.501(c)(3), or a duly  
7 incorporated volunteer fire, ambulance, first aid, emergency, or  
8 rescue company or squad;

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

46 "Facility" means one or more operational or nonoperational  
47 petroleum underground storage tanks under single ownership at a  
48 common site;

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

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

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

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

22 "Person" means any individual, partnership, corporation, society,  
23 association, consortium, joint venture, commercial entity, or public  
24 entity, but does not include the State or any of its departments,  
25 agencies or authorities;

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

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

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

47 (1) Septic tanks installed or regulated pursuant to regulations  
48 adopted by the department pursuant to "The Realty Improvement

1 Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23  
2 et seq.) or the "Water Pollution Control Act," P.L.1977, c.74  
3 (C.58:10A-1 et seq.);

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

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

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

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

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

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

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

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

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

35 "Upgrade" means the replacement of a regulated tank, the  
36 installation of secondary containment, monitoring systems, release  
37 detection systems, corrosion protection, spill prevention, or overflow  
38 prevention therefor, or any other necessary improvement to the  
39 regulated tank in order to meet the standards for regulated tanks  
40 adopted pursuant to section 5 of P.L.1986, c.102 (C.58:10A-25) and  
41 42 U.S.C. s.6991 et seq.<sup>1</sup>

42 (cf: P.L.2006, c.58, s.1)

43

44 '[1.] 2.' Section 5 of P.L.1997, c.235 (C.58:10A-37.5) is  
45 amended to read as follows:

46 5. a. (1) The authority may award financial assistance from the  
47 fund to an eligible owner or operator in the form of a loan or a  
48 conditional hardship grant as provided in this section. An award of

1 financial assistance, either as a loan or a grant, or a combination of  
2 both, may, upon application therefor, be for 100% of the eligible  
3 project costs, except as provided in paragraph (1) of subsection c.  
4 and in '[subsection] subsections' h., j. and k.' of this section.  
5 However, a loan that any applicant may receive from the fund for  
6 an upgrade, remediation, or closure, or any combination thereof, for  
7 any one facility, may not exceed \$2,000,000, except as provided  
8 below, and a grant that any applicant may receive from the fund for  
9 any one facility, may not exceed \$500,000. A loan that an  
10 applicant may receive from the fund for a remediation of a  
11 discharge that poses a threat to a drinking water source may not  
12 exceed \$3,000,000.

13 (2) Notwithstanding the provisions of paragraph (1) of this  
14 subsection to the contrary, an eligible owner or operator of a facility  
15 located within an area designated as a Planning Area 1  
16 (Metropolitan), Planning Area 2 (Suburban), a designated center as  
17 designated pursuant to the "State Planning Act," sections 1 through  
18 12 of P.L.1985, c.398 (C.52:18A-196 et seq.), or the Highlands  
19 Region designated pursuant to section 7 of P.L.2004, c.120  
20 (C.13:20-7), may receive a loan in an amount not to exceed  
21 \$3,000,000 and a grant in an amount not to exceed \$1,000,000 for  
22 each facility so located.

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

26 c. An applicant, other than a public entity, may apply for and  
27 receive a conditional hardship grant for the upgrade, closure or  
28 remediation as provided in paragraph (1) of this subsection, or a  
29 loan for an upgrade, closure or remediation as provided in  
30 paragraph (2) of this subsection, provided that an applicant for a  
31 conditional hardship grant or a loan for an upgrade may be eligible  
32 for financial assistance only for any underground storage tank with  
33 a capacity of over 2,000 gallons used to store heating oil for onsite  
34 consumption in a nonresidential building that has received an  
35 extension of the deadline for compliance with the standards  
36 pursuant to subsection b. of section 9 of P.L.1986, c.102  
37 (C.58:10A-29). Financial assistance awarded an applicant pursuant  
38 to this subsection may consist entirely of a conditional hardship  
39 grant, a loan for an upgrade, a loan for a closure, or a loan for a  
40 remediation, or any combination thereof, except that the total  
41 amount of the award of financial assistance shall be subject to the  
42 per facility dollar limitation enumerated in subsection a. of this  
43 section. Notwithstanding any other provision of this subsection to  
44 the contrary, no tax exempt, nonprofit organization, corporation, or  
45 association shall be awarded a conditional hardship grant pursuant  
46 to paragraph (1) of this subsection, provided that an independent  
47 institution of higher education, a nonprofit organization,  
48 corporation, or association with not more than 100 paid individuals



1 that is qualified for exemption from federal taxation pursuant to  
2 section 501 (c)(3) of the federal Internal Revenue Code, 26  
3 U.S.C.s.501(c)(3), or a duly incorporated volunteer fire, ambulance,  
4 first aid, emergency, or rescue company or squad, may be awarded  
5 a conditional hardship grant pursuant to paragraph (1) of this  
6 subsection.

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

11 In order to be eligible for a conditional hardship grant for closure  
12 or upgrade, in the case of a regulated tank, the applicant shall have  
13 owned or operated the subject regulated tank as of December 1,  
14 2002 and continually thereafter or shall have inherited the property  
15 from a person who owned the regulated tank as of that date. In  
16 order to be eligible for a conditional hardship grant for remediation,  
17 in the case of a regulated tank, the applicant shall have owned or  
18 operated the subject regulated tank at the time of tank closure. No  
19 applicant shall be eligible for a conditional hardship grant if the  
20 applicant has a taxable income of more than \$250,000 or a net  
21 worth, exclusive of the applicant's primary residence and pension,  
22 of over \$500,000. Any applicant with a taxable income of more  
23 than \$200,000 who qualifies for a grant shall be required to pay no  
24 more than \$1,000 of the eligible project costs .

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

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

42 In making a finding of financial hardship for an application for  
43 the upgrade, closure, or remediation of a petroleum underground  
44 storage tank, where the petroleum underground storage tank is a  
45 part of the business property of the owner, the authority shall base  
46 its finding upon the cash flow of the applicant's business, whether  
47 or not any part of the applicant's business is related to the  
48 ownership or operation of that petroleum underground storage tank.

1 In making a finding of financial hardship for an application for the  
2 upgrade or remediation of a petroleum underground storage tank,  
3 where the petroleum underground storage tank is not a part of the  
4 business property of the owner, the authority shall base its finding  
5 upon the applicant's taxable income in the year prior to the date of  
6 the application being submitted.

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

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

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

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

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

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

39 f. An eligible owner or operator may only be awarded that  
40 amount of financial assistance issued as a loan for which the  
41 applicant demonstrates he could not qualify for and obtain as a  
42 commercial loan. The provisions of this subsection shall not apply  
43 to an owner or operator of petroleum underground storage tank used  
44 to store heating oil for onsite consumption in a residential building,  
45 to an independent institution of higher education, or to a duly  
46 incorporated volunteer fire, ambulance, first aid, emergency, or  
47 rescue company or squad.

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

6 h. (1) In the case of a closure of a petroleum underground  
7 storage tank used to store heating oil for onsite consumption in a  
8 residential building in this State where no remediation is required,  
9 an eligible owner or operator may receive a grant 'for the eligible  
10 project costs' in an amount '[up to \$1,200] consistent with the cost  
11 guidelines established by the department pursuant to section 4 of  
12 P.L. , c. (C. ) (pending before the Legislature as this bill) and  
13 in effect at the time the closure is performed'.

14 (2) In the case of a replacement and closure of a petroleum  
15 underground storage tank used to store heating oil for onsite  
16 consumption in a residential building in this State where no  
17 remediation is required, an eligible owner or operator may receive a  
18 grant 'for the eligible project costs' in an amount '[up to \$3,000]  
19 consistent with the cost guidelines established by the department  
20 pursuant to section 4 of P.L. , c. (C. ) (pending before the  
21 Legislature as this bill) and in effect at the time the replacement and  
22 closure is performed'.

23 '(3)' If an eligible owner or operator applies for a grant pursuant  
24 to this subsection prior to the completion of the '[eligible]' project  
25 and the authority determines that the eligible owner or operator  
26 qualifies for the grant, the authority shall issue written confirmation  
27 that the eligible owner or operator will receive the grant upon  
28 completion of the '[eligible]' project. 'The written confirmation  
29 shall be valid for 45 days from the date of issuance. Any eligible  
30 owner or operator who has received written confirmation pursuant  
31 to this subsection and fails to submit the relevant documentation,  
32 certification or other information required by the rules and  
33 regulations adopted by the authority pursuant to section 8 of  
34 P.L.1997, c.235 (C.58:10A-37.8) before the expiration of the  
35 confirmation shall submit a new application for review.'

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

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

46 'j. In the case of a closure or replacement of a petroleum  
47 underground storage tank with a capacity of 2,000 gallons or less,

1 used to store heating oil for onsite consumption in a nonresidential  
2 building that is owned or operated by a nonprofit organization,  
3 corporation, or association with not more than 100 paid individuals  
4 that is qualified for exemption from federal taxation pursuant to  
5 section 501(c)(3) of the federal Internal Revenue Code, 26  
6 U.S.C.s.501(c)(3), or by a duly incorporated volunteer fire,  
7 ambulance, first aid, emergency, or rescue company or squad,  
8 where no remediation is required, the eligible owner or operator  
9 may receive a grant for the eligible project costs of the closure or  
10 replacement in an amount consistent with the cost guidelines  
11 developed by the department pursuant to section 4 of P.L. \_\_\_\_\_,  
12 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill) and in effect  
13 at the time the closure or replacement is performed.

14 No person shall be eligible for grant monies from the fund  
15 pursuant to this subsection if the underground storage tank was  
16 previously replaced using a grant from the fund.

17 k. In the case of an emergency remediation of a discharge from  
18 a petroleum underground storage tank used to store heating oil for  
19 onsite consumption in a residential building in this State, an eligible  
20 owner or operator may receive a grant in an amount equal to the  
21 actual costs incurred by the department or an authorized agent  
22 thereof, and borne by the eligible owner or operator, except that no  
23 award of financial assistance shall be made from the fund for  
24 administrative costs incurred by the department.<sup>1</sup>

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

26

27 <sup>1</sup>3. Section 7 of P.L.1997, c.235 (C.58:10A-37.7) is amended to  
28 read as follows:

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

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

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

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

47 (3) the applicant failed to commence or complete a remediation,  
48 closure, or an upgrade for which an award of financial assistance

1 was made within the time required by the department in accordance  
2 with the applicable rules and regulations, within the time prescribed  
3 in an administrative order, an administrative consent agreement, a  
4 memorandum of agreement, or a court order; or

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

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

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

39 d. Except as provided in this subsection, and in subsection g. of  
40 section 5 of P.L.1997, c.235 (C.58:10A-37.5), no financial  
41 assistance for upgrade shall be awarded for any regulated tank  
42 required to meet the upgrade or closure requirements pursuant to 42  
43 U.S.C.s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.),  
44 unless the application is filed with the authority prior to January 1,  
45 1999 and the application is complete and the application fee is  
46 received by August 1, 1999. Except as provided in subsection g. of  
47 section 5 of P.L.1997, c.235 (C.58:10A-37.5), no financial  
48 assistance for upgrade shall be awarded for any underground

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1 storage tank with a capacity of over 2,000 gallons used to store  
2 heating oil for onsite consumption in a nonresidential building  
3 required to be upgraded pursuant to P.L.1986, c.102 (C.58:10A-21  
4 et seq.) but not pursuant to 42 U.S.C.s.6991 et seq., unless the  
5 applicant has received an extension of the deadline for compliance  
6 with the standards pursuant to subsection b. of section 9 of  
7 P.L.1986, c.102 (C.58:10A-29), the application is filed with the  
8 authority prior to June 30, 2005 and the application is complete and  
9 the application fee is received by December 31, 2005.

10 No financial assistance for closure shall be awarded for any  
11 regulated tank required to meet the upgrade or closure requirements  
12 pursuant to 42 U.S.C.s.6991 et seq. or P.L.1986, c.102 (C.58:10A-  
13 21 et seq.), or for the remediation of a discharge from any such  
14 regulated tank except as provided in subsection c. of this section,  
15 unless the application is filed with the authority prior to June 30,  
16 2010 and the application is complete and the application fee is  
17 received by December 31, 2010.

18 In the case of a regulated tank that is not operational, financial  
19 assistance for the closure or the remediation of any discharge  
20 therefrom may be awarded if the application is filed with the  
21 authority no more than 18 months after the date of discovery of the  
22 existence of the regulated tank, or no later than June 30, 2010,  
23 whichever is later.

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

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

46 g. Notwithstanding any provision of P.L.1997, c.235  
47 (C.58:10A-37.1 et seq.), where an eligible owner or operator has  
48 filed an application for financial assistance from the fund, and there

1 are either insufficient monies in the fund or the authority has not yet  
2 acted upon the application or awarded the financial assistance, the  
3 eligible owner or operator may expend its own funds for the  
4 upgrade, closure, or remediation, and upon approval of the  
5 application, the authority shall award the financial assistance as a  
6 reimbursement of the monies expended for eligible project costs.

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

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

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

39 k. Notwithstanding any provision of P.L.1997, c.235  
40 (C.58:10A-37.1 et seq.) to the contrary, if an applicant that is a  
41 nonprofit organization, corporation, or association with not more  
42 than 100 paid individuals that is qualified for exemption from  
43 federal taxation pursuant to section 501(c)(3) of the federal Internal  
44 Revenue Code, 26 U.S.C.s.501(c)(3), or a duly incorporated  
45 volunteer fire, ambulance, first aid, emergency, or rescue company  
46 or squad, has expended the applicant's own funds on a remediation  
47 of a discharge from a petroleum underground storage tank with a  
48 capacity of 2,000 gallons or less, used to store heating oil for onsite

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1 consumption in a nonresidential building on or after the effective  
2 date of P.L. , c. (C. ) (pending before the Legislature as this  
3 bill) prior to filing an application for financial assistance from the  
4 fund for the eligible project costs of the remediation, the authority,  
5 upon approval of the application, may make a grant from the fund  
6 pursuant to paragraph (1) of subsection c. of section 5 of P.L.1997,  
7 c.235 (C.58:10A-37.5) to reimburse the applicant for expenditures  
8 for the eligible project costs of the remediation.<sup>1</sup>

9 (cf: P.L.2007, c.10, s.2)

10

11 <sup>1</sup>4. (New section) The department shall develop a cost guidance  
12 document that establishes the maximum cost to be paid for the  
13 eligible project costs of the closure or replacement of a petroleum  
14 underground storage tank used to store heating oil for onsite  
15 consumption in a residential building or a petroleum underground  
16 storage tank with a capacity of 2,000 gallons or less used to store  
17 heating oil for onsite consumption in a nonresidential building.  
18 Within 90 days after the effective date of P.L. , c. (C. )  
19 (pending before the Legislature as this bill), the department shall  
20 publish the cost guidance document in the New Jersey Register.  
21 The department may revise the cost guidance document as  
22 necessary and shall publish the revised cost guidance document  
23 within 30 days following adoption of any revision. The adoption of  
24 a cost guidance document, or of any revision thereto, shall not be  
25 subject to the "Administrative Procedure Act," P.L.1968, c.410  
26 (C.52:14B-1 et seq.).<sup>1</sup>

27

28 <sup>1</sup>[2.] 5.<sup>1</sup> This act shall take effect immediately.



# ASSEMBLY, No. 3739

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED FEBRUARY 9, 2009

**Sponsored by:**

**Assemblywoman CONNIE WAGNER**

**District 38 (Bergen)**

**Assemblywoman BONNIE WATSON COLEMAN**

**District 15 (Mercer)**

**Assemblywoman NILSA CRUZ-PEREZ**

**District 5 (Camden and Gloucester)**

**Assemblyman JOSEPH CRYAN**

**District 20 (Union)**

**Assemblywoman LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**Assemblyman REED GUSCIORA**

**District 15 (Mercer)**

**Co-Sponsored by:**

**Assemblymen Green, Albano, Milam, Assemblywoman Pou, Assemblymen Van Pelt, Giblin, Vas, Chiusano, Assemblywomen McHose, Angelini, Assemblyman Greenwald, Assemblywoman Lampitt and Assemblyman P. Barnes, III**

**SYNOPSIS**

Requires confirmation of financial assistance for eligible homeowners voluntarily closing or replacing petroleum underground storage tanks.

**CURRENT VERSION OF TEXT**

As introduced.

(Sponsorship Updated As Of: 3/13/2009)

A3739 WAGNER, WATSON COLEMAN

2

1 AN ACT concerning the closure or replacement of certain petroleum  
2 underground storage tanks and amending P.L.1997, c.235.

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

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

9 5. a. (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 b. A public entity applying for financial assistance from the  
34 fund may only be awarded financial assistance in the form of an  
35 interest 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

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

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

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

38 Notwithstanding the eligibility requirements for net worth and  
39 income, an independent institution of higher education, a nonprofit  
40 organization, corporation, or association with not more than 100  
41 paid individuals that is qualified for exemption from federal  
42 taxation pursuant to section 501(c)(3) of the federal Internal  
43 Revenue Code, 26 U.S.C.s.501(c)(3), or a duly incorporated  
44 volunteer fire, ambulance, first aid, emergency, or rescue company  
45 or squad shall be eligible for a conditional hardship grant for  
46 eligible project costs of a closure or remediation of a petroleum  
47 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  
29 project costs of an upgrade, closure, or remediation shall be  
30 awarded by the authority only upon a finding that the applicant  
31 other than a public 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  
16 State who has met the upgrade requirements pursuant to 42 U.S.C.  
17 s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.) may be  
18 awarded a loan in order to finance an improvement or replacement  
19 of a regulated tank to meet State and federal standards.

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

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

29 If an eligible owner or operator applies for a grant pursuant to  
30 this subsection prior to the completion of the eligible project and  
31 the authority determines that the eligible owner or operator qualifies  
32 for the grant, the authority shall issue written confirmation that the  
33 eligible owner or operator will receive the grant upon completion of  
34 the eligible project.

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

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

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

46

47 2. This act shall take effect immediately.

1       SPONSOR'S       STATEMENT  
2

3       This bill requires the New Jersey Economic Development  
4 Authority (NJEDA) to provide written confirmation that an eligible  
5 owner or operator of a non-leaking petroleum underground storage  
6 tank will receive financial assistance from the Petroleum  
7 Underground Storage Tank Remediation, Upgrade and Closure  
8 Fund for eligible costs associated with a voluntary closure or  
9 replacement of the storage tank.

10       Presently, an eligible owner or operator of a non-leaking  
11 underground storage tank used to store heating oil for onsite  
12 consumption in a residential building may receive financial  
13 assistance for closing a heating oil tank or for voluntarily replacing  
14 the tank with an environmentally safe underground storage tank or  
15 an aboveground storage tank before a petroleum leak occurs. Such  
16 closures or replacements not only protect the environment from  
17 petroleum leaks, but also provide homeowners with increased  
18 energy efficiency and long-term energy cost savings. However,  
19 under current regulations, an eligible owner or operator must  
20 expend his or her own funds to complete the work prior to applying  
21 for reimbursement from the NJEDA, thereby risking an expensive  
22 improvement without assurance of financial assistance.

23       This bill would encourage the voluntary closure or replacement  
24 of non-leaking residential heating oil tanks by permitting an eligible  
25 owner or operator to apply for financial assistance prior to  
26 expending his or her own funds and receive written confirmation  
27 from NJEDA regarding eligibility for reimbursement

ASSEMBLY ENVIRONMENT AND SOLID WASTE  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 3739**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MARCH 12, 2009

The Assembly Environment and Solid Waste Committee reports favorably and with committee amendments Assembly Bill No.3739.

This bill, as amended, requires confirmation of financial assistance for eligible homeowners voluntarily closing or replacing non-leaking petroleum underground storage tanks and expands eligibility for financial assistance from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund (Fund) for certain eligible project costs related to the replacement, closure or remediation of petroleum underground storage tanks.

Presently, an eligible owner or operator of a non-leaking underground storage tank used to store heating oil for onsite consumption in a residential building may receive financial assistance for closing a heating oil tank or for voluntarily replacing the tank with an environmentally safe underground storage tank or an aboveground storage tank before a petroleum leak occurs. However, under current law, an eligible owner or operator must expend his or her own funds to complete the work prior to applying for reimbursement from the New Jersey Economic Development Authority (NJEDA). This bill, as amended, permits an eligible homeowner to apply for financial assistance prior to undertaking such a project and requires the NJEDA to issue written confirmation regarding the homeowner's eligibility for reimbursement.

In addition, the bill requires the Department of Environmental Protection (DEP) to develop a cost guidance document to establish the maximum cost to be paid for eligible project costs for the closure or replacement of a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building or a petroleum underground storage tank with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a nonresidential building. The bill amends the present cap on reimbursement to eligible homeowners to be consistent with the guidance document.

The bill, as amended, also expands eligibility for financial assistance from the Fund to certain eligible owners and operators of petroleum underground storage tanks. First, the bill authorizes financial assistance for eligible project costs to certain nonprofit organizations and to volunteer fire, ambulance, first aid, emergency, or rescue companies or squads who voluntarily close or replace non-leaking underground storage tanks with a capacity of 2,000 gallons, or less, used to store heating oil for onsite consumption in a nonresidential building. The amount of reimbursement for eligible project costs would be consistent with the DEP cost guidance document developed pursuant to the bill.

Second, the bill, as amended, authorizes financial assistance for eligible project costs for the same category of eligible owners and operators when they expend their own funds to conduct a remediation of a discharge from such a heating oil tank prior to filing an application for financial assistance. Presently, only eligible owners or operators of heating oil tanks for residential buildings and institutes of higher education may apply for financial assistance after conducting such a remediation. To qualify under the bill, the remediation must be conducted on or after the effective date of the bill.

Finally, the bill, as amended, allows eligible owners or operators of heating oil tanks for residential buildings who are required to bear the costs of emergency remediation of a leaking petroleum underground storage tank undertaken by the DEP to apply for reimbursement of those costs.

#### COMMITTEE AMENDMENTS:

The committee amendments to the bill:

1) add certain nonprofit organizations and volunteer fire, ambulance, first aid, emergency, or rescue companies or squads to the definition of “eligible owner or operator”;

2) provide that the written confirmation of eligibility for financial assistance for the closure or replacement of non-leaking tanks used to store heating oil for onsite consumption in a residential building will be valid for 45 days, after which the eligible owner or operator must submit a new application for financial assistance;

3) change the maximum grant award for closure or replacement of non-leaking tanks used to store heating oil for onsite consumption in a residential building to be consistent with the cost guidance document developed by DEP pursuant to this bill;

4) provide that certain nonprofit organizations and volunteer fire, ambulance, first aid, emergency, or rescue companies or squads would be eligible for financial assistance to replace non-leaking tanks with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a nonresidential building;

5) permit eligible owners or operators of heating oil tanks for residential buildings to apply for reimbursement of costs associated



with emergency removal, replacement or repair of a leaking petroleum underground storage tank;

6) provide that certain nonprofit organizations and volunteer fire, ambulance, first aid, emergency, or rescue companies or squads would be eligible for financial assistance for eligible project costs when they have expended their own funds to conduct a remediation of a discharge from an underground storage tank with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a nonresidential building after the effective date of the bill but prior to filing an application for financial assistance;

7) require DEP to develop a cost guidance document to establish maximum costs to be paid for eligible project costs; and

8) make technical corrections to update the title and renumber the sections of the bill.

# SENATE, No. 2568

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED FEBRUARY 23, 2009

**Sponsored by:**

**Senator ROBERT M. GORDON**

**District 38 (Bergen)**

**Senator STEVEN V. OROHO**

**District 24 (Sussex, Hunterdon and Morris)**

**Co-Sponsored by:**

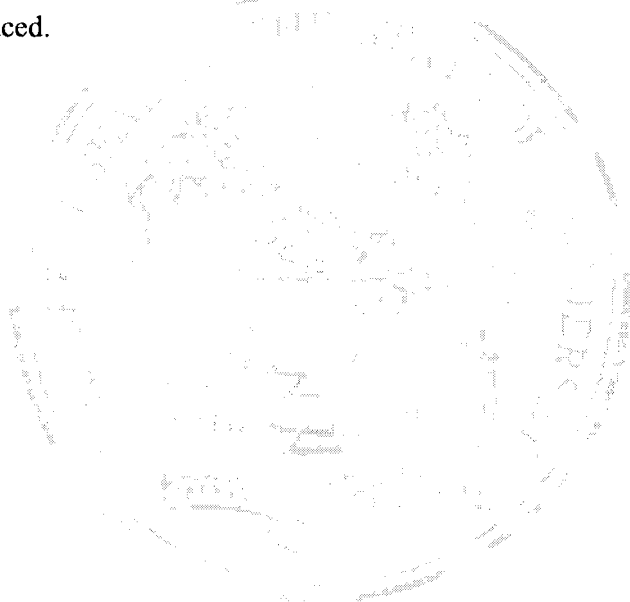
**Senators Weinberg, Bucco, Cardinale, Ciesla, Haines, Karrow, Kyrillos,  
Singer, Van Drew and Bateman**

**SYNOPSIS**

Requires confirmation of financial assistance for eligible homeowners voluntarily closing or replacing petroleum underground storage tanks.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 3/17/2009)**

1 AN ACT concerning the closure or replacement of certain petroleum  
2 underground storage tanks and amending P.L.1997, c.235.

3

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

6

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

9 5. a. (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 b. A public entity applying for financial assistance from the  
34 fund may only be awarded financial assistance in the form of an  
35 interest 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

**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 (C.58:10A-29). Financial assistance awarded an applicant pursuant  
2 to this subsection may consist entirely of a conditional hardship  
3 grant, a loan for an upgrade, a loan for a closure, or a loan for a  
4 remediation, or any combination thereof, except that the total  
5 amount of the award of financial assistance shall be subject to the  
6 per facility dollar limitation enumerated in subsection a. of this  
7 section. Notwithstanding any other provision of this subsection to  
8 the contrary, no tax exempt, nonprofit organization, corporation, or  
9 association shall be awarded a conditional hardship grant pursuant  
10 to paragraph (1) of this subsection, provided that an independent  
11 institution of higher education, a nonprofit organization,  
12 corporation, or association with not more than 100 paid individuals  
13 that is qualified for exemption from federal taxation pursuant to  
14 section 501 (c)(3) of the federal Internal Revenue Code, 26  
15 U.S.C.s.501(c)(3), or a duly incorporated volunteer fire, ambulance,  
16 first aid, emergency, or rescue company or squad, may be awarded  
17 a conditional hardship grant pursuant to paragraph (1) of this  
18 subsection.

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

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

47 A finding of financial hardship by the authority shall be based  
48 upon a determination that an applicant cannot reasonably be

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

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

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

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

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

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

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

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

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

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

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

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

28 If an eligible owner or operator applies for a grant pursuant to  
29 this subsection prior to the completion of the eligible project and  
30 the authority determines that the eligible owner or operator qualifies  
31 for the grant, the authority shall issue written confirmation that the  
32 eligible owner or operator will receive the grant upon completion of  
33 the eligible project.

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.2006, c.58, s.3)

45

46 2. This act shall take effect immediately.

1           SPONSOR'S           STATEMENT

2

3           This bill requires the New Jersey Economic Development  
4 Authority (NJEDA) to provide written confirmation that an eligible  
5 owner or operator of a non-leaking petroleum underground storage  
6 tank will receive financial assistance from the Petroleum  
7 Underground Storage Tank Remediation, Upgrade and Closure  
8 Fund for eligible costs associated with a voluntary closure or  
9 replacement of the storage tank.

10          Presently, an eligible owner or operator of a non-leaking  
11 underground storage tank used to store heating oil for onsite  
12 consumption in a residential building may receive financial  
13 assistance for closing a heating oil tank or for voluntarily replacing  
14 the tank with an environmentally safe underground storage tank or  
15 an aboveground storage tank before a petroleum leak occurs. Such  
16 closures or replacements not only protect the environment from  
17 petroleum leaks, but also provide homeowners with increased  
18 energy efficiency and long-term energy cost savings. However,  
19 under current regulations, an eligible owner or operator must  
20 expend his or her own funds to complete the work prior to applying  
21 for reimbursement from the NJEDA, thereby risking an expensive  
22 improvement without assurance of financial assistance.

23          This bill would encourage the voluntary closure or replacement  
24 of non-leaking residential heating oil tanks by permitting an eligible  
25 owner or operator to apply for financial assistance prior to  
26 expending his or her own funds and receive written confirmation  
27 from NJEDA regarding eligibility for reimbursement.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 2568**

**STATE OF NEW JERSEY**

DATED: MARCH 16, 2009

The Senate Environment Committee favorably reports a Senate Committee Substitute for Senate Bill No.2568.

This committee substitute would require confirmation of financial assistance for eligible homeowners voluntarily closing or replacing non-leaking petroleum underground storage tanks and would expand eligibility for financial assistance from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund (fund) for certain eligible project costs related to the replacement, closure or remediation of petroleum underground storage tanks.

Presently, an eligible owner or operator of a non-leaking underground storage tank used to store heating oil for onsite consumption in a residential building may receive financial assistance for closing a heating oil tank or for voluntarily replacing the tank with an environmentally safe underground storage tank or an aboveground storage tank before a petroleum leak occurs. However, under current law, an eligible owner or operator must expend his or her own funds to complete the work prior to receiving reimbursement from the New Jersey Economic Development Authority (NJEDA). This committee substitute permits an eligible homeowner to apply for financial assistance prior to undertaking such a project and requires the NJEDA to issue written confirmation regarding the homeowner's eligibility for reimbursement. The written confirmation would be valid for 45 days.

In addition, the committee substitute would require the Department of Environmental Protection (DEP) to develop a cost guidance document to establish the maximum cost to be paid for eligible project costs for the closure or replacement of a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building or a petroleum underground storage tank with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a nonresidential building. The committee substitute would replace the present cap on reimbursement to eligible homeowners to allow reimbursement in an amount consistent with the cost guidance document.

The committee substitute would also expand eligibility for a grant from the fund to certain eligible owners and operators of petroleum



underground storage tanks. First, the bill authorizes financial assistance for eligible project costs to certain nonprofit organizations and to volunteer fire, ambulance, first aid, emergency, or rescue companies or squads who voluntarily close or replace non-leaking underground storage tanks with a capacity of 2,000 gallons or less, used to store heating oil for onsite consumption in a nonresidential building. The amount of reimbursement for eligible project costs would be consistent with the DEP cost guidance document developed pursuant to the bill.

Second, the committee substitute would authorize a grant for eligible project costs for the same category of eligible owners and operators when they expend their own funds to conduct a remediation of a discharge from such a heating oil tank prior to filing an application for financial assistance. Presently, only eligible owners or operators of heating oil tanks for residential buildings and institutes of higher education may apply for financial assistance after conducting such a remediation. To qualify under the bill, the remediation must be conducted on or after the effective date of the bill.

Finally, the committee substitute would allow eligible owners or operators of heating oil tanks for residential buildings who are required to bear the costs of emergency remediation of a leaking petroleum underground storage tank undertaken by the DEP to apply for reimbursement of those costs.

The committee substitute is identical to Assembly Bill No. 3739 (1R).