

58:10A-37.1 to 58:10A-37.23

LEGISLATIVE HISTORY CHECKLIST

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(Underground Storage Tank)

NJSA: 58:10A-37.1 to 58:10A-37.23

LAWS OF: 1997 CHAPTER: 235

BILL NO: S1756

SPONSOR(S): Bennett

DATE INTRODUCED: December 19, 1996

COMMITTEE: ASSEMBLY: Appropriations  
SENATE: Environment

AMENDED DURING PASSAGE: Yes Amendments during passage  
Third reprint enacted denoted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: June 19, 1997  
SENATE: March 24, 1997

DATE OF APPROVAL: August 30, 1997

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes  
SENATE: Yes

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VETO MESSAGE: No

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FOLLOWING WERE PRINTED:

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§§1 - 22,24  
C. 58:10A-37.1  
To  
58:10A-37.23  
§23  
Repealer  
§25  
Approp.

P.L. 1997, CHAPTER 235, *approved August 30, 1997*  
Senate, No. 1756 (*Third Reprint*)

1 **AN ACT** concerning the upgrade, remediation, and closure of certain  
2 underground storage tanks, supplementing Title 58 of the Revised  
3 Statutes, repealing sections 17 and 18 of P.L.1986, c.102, and  
4 making an appropriation.

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

8  
9 1. This act shall be known and may be cited as the "Underground  
10 Storage Tank Finance Act."

11  
12 2. As used in this act:

13 "Applicant" means a person who files an application for financial  
14 assistance from the Petroleum Underground Storage Tank  
15 Remediation, Upgrade, and Closure Fund for payment of eligible  
16 project costs of a remediation due to a discharge of petroleum from  
17 a petroleum underground storage tank and for payment of eligible  
18 project costs of an upgrade or closure of a regulated tank;

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

21 "Closure" means the proper closure or removal of a petroleum  
22 underground storage tank necessary to meet all regulatory  
23 requirements of federal, State, or local law <sup>1</sup>[:] <sup>1</sup>.

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

26 "Department" means the Department of Environmental Protection;

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

30 "Eligible owner or operator" means <sup>1</sup>(1) <sup>1</sup> any owner or operator

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

**Matter underlined thus is new matter.**

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

<sup>1</sup> Senate SEN committee amendments adopted February 10, 1997.

<sup>2</sup> Senate SBA committee amendments adopted March 10, 1997.

<sup>3</sup> Assembly AAP committee amendments adopted June 9, 1997.

1 <sup>1</sup>other than the owner or operator of a petroleum underground storage  
2 tank storing heating oil for onsite consumption in a residential  
3 building<sup>1</sup> who owns or operates less than <sup>1</sup>[25] 10<sup>1</sup> petroleum  
4 underground storage tanks in New Jersey, who has a net worth of less  
5 than <sup>1</sup>[\$10,000,000] \$2,000,000<sup>1</sup> and who demonstrates to the  
6 satisfaction of the authority, the inability to qualify for and obtain a  
7 commercial loan for all or part of the eligible project costs <sup>1</sup>, (2) the  
8 owner or operator of a petroleum underground storage tank storing  
9 heating oil for onsite consumption in a residential building, or (3) a  
10 public entity who owns or operates a petroleum underground storage  
11 tank in New Jersey<sup>1</sup>;

12 "Eligible project costs" means the reasonable costs for equipment,  
13 work or services required to effectuate a remediation, an upgrade, or  
14 a closure which equipment, work or services are eligible for payment  
15 from the Petroleum Underground Storage Tank Remediation,  
16 Upgrade, and Closure Fund. In the case of an upgrade or closure of  
17 a regulated tank, eligible project costs shall be limited to the cost of  
18 the minimal effective system necessary to meet all the regulatory  
19 requirements of federal and State law. The limitation of eligible  
20 project costs to the minimal effective system shall not be construed to  
21 deem ineligible those project costs expended to replace a regulated  
22 tank rather than to improve the regulated tank. An owner or operator  
23 may perform an upgrade or a closure beyond the minimal effective  
24 system in which case the eligible project costs that may be awarded  
25 from the fund as financial assistance shall be that amount that would  
26 represent the cost of a minimal effective system. <sup>2</sup>In the case of a  
27 remediation, eligible project costs shall not include the cost to  
28 remediate a site to meet residential soil remediation standards if the  
29 local zoning ordinances adopted pursuant to the "Municipal Land Use  
30 Law," P.L.1975, c.291 (C.40:55D-1 et seq.) does not allow for  
31 residential use.<sup>2</sup> Eligible project costs shall include the cost of a  
32 preliminary assessment and site investigation, even if performed prior  
33 to the award of financial assistance from the fund if the preliminary  
34 assessment and site investigation were performed after the effective  
35 date of P.L. , c. (now before the Legislature as this bill) <sup>1</sup>. Eligible  
36 project costs shall not include the costs of any remediation performed  
37 at a site where the petroleum underground storage tank was removed  
38 prior to December 1, 1996<sup>1</sup>;

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

42 "Financial assistance" means a grant or loan or a combination of  
43 both that may be awarded by the authority from the fund to an eligible  
44 owner or operator as provided in section 5 of P.L. , c. (C. )(now  
45 before the Legislature as this bill);

46 "Operator" means any person in control of, or having responsibility

- 1 for, the daily operation of a facility;
- 2 "Owner" means any person who owns a facility;
- 3 "Person" means any individual, partnership, corporation, society,  
4 association, consortium, joint venture, commercial entity, or public  
5 entity, but does not include the State or any of its departments,  
6 agencies or authorities;
- 7 "Petroleum" means all hydrocarbons which are liquid at one  
8 atmosphere pressure (760 millimeters or 29.92 inches Hg) and  
9 temperatures between -20°F and 120°F (-29°C and 49°C), and all  
10 hydrocarbons which are discharged in a liquid state at or nearly at  
11 atmospheric pressure at temperatures in excess of 120°F (49°C)  
12 including, but not limited to, gasoline, kerosene, fuel oil, oil sludge, oil  
13 refuse, oil mixed with other wastes, crude oil, and purified  
14 hydrocarbons that have been refined, re-refined, or otherwise  
15 processed for the purpose of being burned as a fuel to produce heat or  
16 usable energy or which is suitable for use as a motor fuel or lubricant  
17 in the operation or maintenance of an engine;
- 18 "Petroleum Underground Storage Tank Remediation, Upgrade and  
19 Closure Fund" or "fund" means the fund established pursuant to  
20 section 3 of P.L. , c. (C. ) (now before the Legislature as this  
21 bill);
- 22 "Petroleum underground storage tank" means a tank of any size,  
23 including appurtenant pipes, lines, fixtures, and other related  
24 equipment, that normally and primarily stores petroleum, the volume  
25 of which, including the volume of the appurtenant pipes, lines, fixtures  
26 and other related equipment, is 10% or more below the ground.
- 27 "Petroleum underground storage tank" does not include:
- 28 (1) Septic tanks installed or regulated pursuant to regulations  
29 adopted by the department pursuant to "The Realty Improvement  
30 Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et  
31 seq.) or <sup>1</sup>["The] the <sup>1</sup> Water Pollution Control Act," P.L.1977, c.74  
32 (C.58:10A-1 et seq.);
- 33 (2) Pipelines, including gathering lines, regulated under <sup>1</sup>[the  
34 "Natural Gas Pipeline Safety Act of 1968," Pub.L.90-481  
35 (49 U.S.C.§1671 et seq.), the "Hazardous Liquid Pipeline Safety Act  
36 of 1979," Pub.L.96-129 (49 U.S.C.§2001 et seq.)] 49 U.S.C.§60101  
37 et seq.<sup>1</sup>, or intrastate pipelines regulated under State law;
- 38 (3) Surface impoundments, pits, ponds, or lagoons, operated in or  
39 regulated pursuant to regulations adopted by the department pursuant  
40 to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et  
41 seq.);
- 42 (4) Storm water or wastewater collection systems operated or  
43 regulated pursuant to regulations adopted by the department pursuant  
44 to the "Water Pollution Control Act";
- 45 (5) Liquid traps or associated gathering lines directly related to oil  
46 or gas production and gathering operations;

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

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

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

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

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

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

27

28 3. a. The Petroleum Underground Storage Tank Remediation,  
29 Upgrade, and Closure Fund is established in the authority as a special,  
30 revolving fund. The fund shall be administered by the authority and  
31 shall be credited with:

32 (1) such moneys as are appropriated by the Legislature;

33 (2) sums received as repayment of principal and interest on  
34 outstanding loans made from the State Underground Storage Tank  
35 Improvement Fund established pursuant to P.L.1986, c.102  
36 (C.58:10A-21 et seq.);

37 (3) such monies as are appropriated pursuant to section 21  
38 of P.L. , c. (C. )(pending in the Legislature as this bill);

39 (4) all non-refundable application fees collected pursuant to section  
40 6 of P.L. , c. (C. )(now before the Legislature as this bill);

41 (5) sums received as repayment of principal and interest on  
42 outstanding loans made from the fund;

43 (6) any monies recovered by the authority pursuant to sections 14  
44 and 15 of P.L. , c. (C. )(now before the Legislature as this  
45 bill);

46 (7) any return on investment of monies deposited in the fund;

1 (8) any monies recovered through liens pursuant to section 10 or  
2 16 of P.L. , c. (C. )(now before the Legislature as this bill);  
3 and

4 (9) payments of the annual surcharge imposed pursuant to section  
5 18 of P.L. , c. (C. )(now before the Legislature as this bill).

6 b. Monies in the fund shall be used by the authority solely for  
7 providing financial assistance pursuant to section 4 of P.L. , c.  
8 (C. )(now before the Legislature as this bill) except that the  
9 authority may use <sup>2</sup>any return on investment of monies deposited in  
10 the fund.<sup>2</sup> application fees collected pursuant to section 6 of P.L. ,  
11 c. (C. ), moneys recovered by the authority pursuant to sections 14  
12 and 15 of P.L. , c. (C. ), and payments of the annual surcharge  
13 imposed pursuant to section 18 of P.L. , c. (C. ) for actual costs  
14 incurred in administering the fund, and for costs of any action to  
15 recover monies owing to the fund.

16

17 4. a. Monies in the fund shall be allocated and used to provide  
18 financial assistance only to (1) eligible owners or operators of  
19 regulated tanks in this State in order to finance the eligible project  
20 costs of the upgrade or closure of those regulated tanks as may be  
21 required pursuant to 42 U.S.C. §6991 et seq. or P.L. 1986, c. 102  
22 (C. 58:10A-21 et seq.); and (2) eligible owners and operators of  
23 petroleum underground storage tanks in this State in order to finance  
24 the eligible project costs of remediations that are necessary due to the  
25 discharge of petroleum from one or more of those petroleum  
26 underground storage tanks. Priority for the issuance of financial  
27 assistance from the fund, and the terms and conditions of that financial  
28 assistance, shall be based upon the criteria set forth in this section.

29 b. Upon a determination that an application for financial assistance  
30 meets all established criteria for the award of financial assistance from  
31 the fund, the authority shall approve the application. Prior to  
32 December 22, 1998, the authority may approve only those applications  
33 given priority pursuant to <sup>2</sup>[paragraph] paragraphs<sup>2</sup> (1) <sup>2</sup>and (2)<sup>2</sup> of  
34 this subsection or pursuant to <sup>1</sup>[subsection] subsections<sup>1</sup> c. <sup>1</sup>and f.<sup>1</sup> of  
35 this section, but the authority may receive, file, and deem complete  
36 any application for financial assistance its receives prior to that date.

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

45 (1) Upgrades of regulated tanks required to be upgraded pursuant  
46 to 42 U.S.C. §6991 et seq., and including any necessary remediation at

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

1 subsection notwithstanding the owner or operator's ability to obtain  
2 commercial loans for all or part of the financing. The priority ranking  
3 of applicants for these funds shall be based upon the date an  
4 application for financial assistance is filed with the authority as  
5 determined pursuant to subsection 6 of P.L. , c. (C. ) (now in the  
6 Legislature as this bill).<sup>1</sup> <sup>2</sup>If the authority does not receive qualified  
7 applications for financial assistance from owners and operators of  
8 petroleum underground storage tanks used to store heating oil for  
9 onsite consumption that meet the criteria set forth in this act and in  
10 any rules or regulations issued pursuant thereto, sufficient to enable  
11 the award of financial assistance an amount equal to one tenth of the  
12 amount annually appropriated to the fund in any one year as required  
13 pursuant to this subsection, the authority may award that financial  
14 assistance in the order of priority as provided in this section. In  
15 addition to the monies dedicated pursuant to this subsection, the  
16 authority may award financial assistance to an owner or operator of a  
17 petroleum underground storage tank used to store heating for onsite  
18 consumption when the criteria enumerated in subsection c. of this  
19 section are met.<sup>2</sup>

20

21 5. a. The authority may award financial assistance from the fund  
22 to an eligible owner or operator in the form of a loan or a conditional  
23 hardship grant as provided in this section. An award of financial  
24 assistance, either as a loan or a grant, or a combination of both,  
25 <sup>1</sup>[shall] may<sup>1</sup>, upon application therefore, be for 100% of the eligible  
26 project costs. However, <sup>2</sup>[an award of financial assistance] a loan<sup>2</sup> that  
27 any applicant may receive from the fund for an upgrade, remediation,  
28 or closure, or any combination thereof, for any one facility, may not  
29 exceed \$1,000,000 <sup>2</sup>and a grant that any applicant may receive from  
30 the fund for any one facility, may not exceed \$250,000. The total  
31 amount of financial assistance awarded as grants in any one year may  
32 not exceed 10% of the total amount of financial assistance awarded in  
33 that year<sup>2</sup>.

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

37 c. An applicant, other than a public entity, may apply for and  
38 receive a conditional hardship grant as provided in paragraph (1) of  
39 this subsection, or a loan for an upgrade, closure, or remediation as  
40 provided in paragraph (2) of this subsection. Financial assistance  
41 awarded an applicant pursuant to this subsection may consist entirely  
42 of a conditional hardship grant, a loan for an upgrade, or loan for a  
43 closure, or a loan for a remediation, or any combination thereof,  
44 except that the total amount of the award of financial assistance shall  
45 be subject to the per facility dollar limitation enumerated in subsection  
46 a. of this section. Notwithstanding any other provision of this



1 subsection to the contrary, no tax exempt, nonprofit organization,  
2 corporation, or association shall be awarded a conditional hardship  
3 grant pursuant to paragraph (1) of this subsection.

4 (1) A conditional hardship grant for eligible project costs of an  
5 upgrade, closure or remediation shall be awarded by the authority  
6 based upon a finding of eligibility and financial hardship and upon a  
7 finding that the applicant <sup>1</sup>is an eligible owner or operator meets the  
8 criteria set forth in this act<sup>1</sup>.

9 In order to be eligible for a conditional hardship grant, the applicant  
10 shall have owned or operated the subject petroleum underground  
11 storage tank as of December 1, 1996 and continually thereafter or shall  
12 have inherited the property from a person who owned <sup>1</sup>or operated<sup>1</sup>  
13 the <sup>1</sup>[facility] petroleum underground storage tank<sup>1</sup> as of that date.  
14 No applicant shall be eligible for a conditional hardship grant if the  
15 applicant has a taxable income of more than \$100,000 or a net worth,  
16 exclusive of the applicant's primary residence, of over \$100,000.

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

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

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

40 Conditional hardship grants awarded to an applicant shall be subject  
41 to the lien provisions enumerated in section 16 of P.L. , c.  
42 (C. )(now before the Legislature as this bill).

43 (2) A loan <sup>1</sup>to an eligible owner or operator<sup>1</sup> for the eligible project  
44 costs of an upgrade, closure, <sup>1</sup>[and] or<sup>1</sup> remediation shall be awarded  
45 by the authority only upon a finding that the applicant <sup>1</sup>other than a  
46 public entity<sup>1</sup> is able to repay the amount of the loan <sup>1</sup>[and that the

1 applicant is an eligible owner or operator]<sup>1</sup>.

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

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

19 e. Nothing in this section is intended to alter the priority or criteria  
20 for awarding financial assistance established pursuant to section 4 of  
21 P.L. , c. (C. )(now before the Legislature as this bill.

22 f. An eligible owner or operator may only be awarded that amount  
23 of financial assistance issued as a loan<sup>1</sup> for which the applicant  
24 demonstrates he could not qualify for and obtain as a commercial loan.

25 <sup>1</sup>The provisions of this subsection shall not apply to an owner or  
26 operator or petroleum underground storage tank used to store heating  
27 oil for onsite consumption in a residential building.<sup>1</sup>

28

29 6. An eligible owner or operator seeking financial assistance from  
30 the fund shall file an application on a form to be developed by the  
31 authority. The application form shall be submitted with the application  
32 fee. The application fee per facility for residential petroleum  
33 underground storage tanks shall be \$250. The authority may establish  
34 the<sup>2</sup> application fee per facility for nonresidential petroleum  
35 underground storage tanks <sup>2</sup>[shall be \$500 for facilities with up to six  
36 tanks, and \$1,000 for facilities with seven or more tanks]<sup>2</sup>.

37 The authority shall adopt rules and regulations listing the filing  
38 requirements for a complete application for financial assistance. If a  
39 financial assistance application is determined to be incomplete by the  
40 authority, an applicant shall have 30 days from the date of receipt of  
41 written notification of incompleteness to file such additional  
42 information as may be required by the authority for a completed  
43 application. If an applicant fails to file the additional information  
44 within the 30 days, the filing date for that application shall be the date  
45 that such additional information is received by the authority. If the  
46 additional information is filed within the 30 days and is satisfactory to

1 the authority, the filing date for that application shall be the initial date  
2 of application with the authority. Notwithstanding the above, if a  
3 completed application has been submitted and the applicant fails to  
4 submit the filing fee, then the filing date for the application shall not  
5 be established until the date on which the authority receives the  
6 application fee.

7 An applicant shall have 120 days from receipt of notice of approval  
8 of a financial assistance award to submit to the authority an executed  
9 contract for the upgrade, closure, or remediation, or all three, as the  
10 case may be, that is consistent with the terms and conditions of the  
11 financial assistance approval. Failure to submit an executed contract  
12 within the allotted time, without good cause, may result in an  
13 alteration of an applicant's priority ranking.

14

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

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

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

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

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

39 (4) the applicant provided false information or withheld  
40 information on a loan or grant application, or other relevant  
41 information required to be submitted to the authority, on any matter  
42 that would otherwise render the applicant ineligible for financial  
43 assistance from the fund, that would alter the priority of the applicant  
44 to receive financial assistance from the fund, that resulted in the  
45 applicant receiving a larger grant <sup>1</sup>or loan<sup>1</sup> award than the applicant  
46 would otherwise be eligible, or that resulted in payments from the fund

1 in excess of the actual eligible project costs incurred by the applicant  
2 or the amount to which the applicant is legally eligible.

3 Nothing in this subsection shall be construed to require the  
4 authority to undertake an investigation or make any findings  
5 concerning the conduct described in this subsection.

6 c. An application for financial assistance from the fund for an  
7 upgrade or closure of a regulated tank shall include all regulated tanks  
8 at the facility for which the applicant is seeking financial assistance.  
9 Once financial assistance for an upgrade, closure or a remediation is  
10 awarded for a facility, no additional award of financial assistance may  
11 be made for that facility. <sup>2</sup>However, if an applicant discovers while  
12 performing upgrade or closure activities that a remediation is  
13 necessary at the site of a facility, and if financial assistance was  
14 previously awarded for that site only for an upgrade or closure of a  
15 regulated tank, the applicant may amend his application and apply for  
16 financial assistance for the required remediation subject to the  
17 limitations enumerated in section 5 of this act.<sup>2</sup> An application for  
18 financial assistance for an upgrade or closure of a regulated tank shall  
19 be conditioned upon the applicant <sup>1</sup>[entering into an agreement with  
20 the department] agreeing<sup>1</sup> to perform, at the time of the upgrade or  
21 closure, any remediation necessary as a result of a discharge from the  
22 regulated tank and commencement of the remediation within the time  
23 prescribed and in accordance with the rules and regulations of the  
24 department.

25 d. No financial assistance shall be awarded for any regulated tank  
26 to meet the upgrade or closure requirements pursuant to  
27 42 U.S.C. §6991 et seq. or P.L. 1986, c. 102 (C.58:10A-21 et seq.), or  
28 for the remediation of a discharge from any such regulated tank  
29 <sup>2</sup>except as provided in subsection c. of this section,<sup>2</sup> unless the  
30 application is filed with the authority prior to January 1, 1999 and the  
31 application is complete and the application fee is received by  
32 <sup>2</sup>[February] March<sup>2</sup> 1, 1999.

33 e. The date of occurrence of a discharge shall not affect eligibility  
34 for financial assistance from the fund. Except for a preliminary  
35 assessment or a site investigation performed after the effective date of  
36 P.L. , c. (C. ) (now before the legislature as this bill), and  
37 except as provided in subsection g. of this section, no award of  
38 financial assistance shall be made from the fund for the otherwise  
39 eligible project costs of a remediation, closure, or an upgrade, or  
40 parts thereof, completed prior to an award of financial assistance from  
41 the fund.

42 f. No financial assistance may be awarded from the fund for the  
43 remediation of a discharge from a petroleum underground storage tank  
44 if financial assistance from the Hazardous Discharge Site Remediation  
45 Fund established pursuant to section 26 of P.L. 1993, c. 139  
46 (C.58:10B-4) has previously been made for a remediation at that site

1 as a result of a discharge from that petroleum underground storage  
2 tank. No financial assistance may be awarded from the fund for the  
3 remediation of a discharge from a petroleum underground storage tank  
4 if the discharge began subsequent to the completion of an upgrade of  
5 that petroleum underground storage tank, which upgrade was intended  
6 to meet all applicable upgrade regulations of the department, no  
7 matter when the upgrade was performed.

8 g. Notwithstanding any provision of P.L. , c. (C. )(now  
9 before the Legislature as this bill), where an eligible owner or operator  
10 has filed an application for financial assistance from the fund, and there  
11 are either insufficient monies in the fund or the authority has not yet  
12 acted upon the application or awarded the financial assistance, the  
13 eligible owner or operator may expend its own funds for the upgrade,  
14 closure, or remediation, and upon approval of the application, the  
15 authority shall award the financial assistance as a reimbursement of the  
16 monies expended for eligible project costs.

17

18 8. a. The authority shall adopt, pursuant to the <sup>1</sup>Administrative  
19 Procedure Act, <sup>1</sup>P.L.1968, c.410 (C.52:14B-1 et seq.), rules and  
20 regulations to:

21 (1) <sup>1</sup>[prescribe the application forms for financial assistance and the  
22 procedures for filing such forms;

23 (2) require an operator who is applying for financial assistance who  
24 is not the owner of the facility to provide a copy of the contractual  
25 relations between the operator and the owner, a certification that the  
26 owner approves the upgrade, closure, or remediation for which  
27 financial assistance is sought and a certification that the owner  
28 consents to a lien being placed upon the real property at which the  
29 facility is located;

30 (3) if the applicant is an owner who is not the operator, require the  
31 owner to provide a copy of the contractual relations between the  
32 owner and the operator;

33 (4) <sup>1</sup>require an applicant:

34 (a) <sup>1</sup>[to solicit at least three bids on the upgrade, closure and the  
35 remediation prior to entering into any contract to have any work  
36 performed;

37 (b) <sup>1</sup>to submit documentation or other information on the nature  
38 and scope of the work to be performed, cost estimates thereon, and,  
39 as available, proofs of the actual costs of all work performed;

40 <sup>1</sup>[(c)] (b) <sup>1</sup>to demonstrate, where applicable, an ability to repay the  
41 amount of any loan and to provide adequate collateral to secure the  
42 amount of a loan;

43 <sup>1</sup>[(d)] (c) <sup>1</sup>to submit a certification that the applicant has not  
44 engaged in any of the conduct described in subsection b. of section  
45 <sup>1</sup>[6] <sup>1</sup> of P.L. , c. (C. )(now before the Legislature as this bill);

46 <sup>1</sup>[(e)] (d) <sup>1</sup>to submit a certification that any upgrade, closure, and

1 remediation being undertaken will be or was completed or was in  
2 conformance with rules and regulations of the department;

3 <sup>1</sup>[(f) to submit documentation concerning anticipated and actual  
4 upgrade and remediation costs; and]

5 (e) require the loan or grant recipient to provide access at  
6 reasonable times to the subject property to determine compliance with  
7 the terms and conditions of the loan or grant; and<sup>1</sup>

8 <sup>1</sup>[(g)] (f)<sup>1</sup> to submit documentation and a certification <sup>1</sup>, as  
9 applicable,<sup>1</sup> that the applicant was unable to qualify for and obtain a  
10 commercial loan for all or part of the eligible project costs;

11 <sup>1</sup>[(5)] (2)<sup>1</sup> require any financial assistance awarded to be used only  
12 for the purposes for which the award is made <sup>1</sup>and that the applicant  
13 is adhering to all of the terms and conditions of the loan agreement<sup>1</sup>;  
14 and

15 <sup>1</sup>[(6)] (3)<sup>1</sup> adopt such other requirements as may be deemed  
16 necessary to carry out its responsibilities pursuant to this act.

17 b. Information submitted as part of an application that results in the  
18 award of a grant from the fund shall be a public record subject to the  
19 provisions of P.L.1963, c.73 (C.47:1A-1 et seq.). Information  
20 submitted as part of an application that results solely in the award of  
21 a loan from the fund shall not be a public record subject to the  
22 provisions of P.L.1963, c.73 (C.47:1A-1 et seq.).

23 c. The authority may file a lien on real property <sup>1</sup>[(of) owned by]  
24 the applicant <sup>1</sup>[(other than)] in addition to<sup>1</sup> the property at which the  
25 subject facility is located to secure a loan, except that such a filing  
26 shall be subject to the restrictions on the use of the applicant's primary  
27 residence as collateral, as provided in section 5 of P.L. <sup>1</sup>,<sup>1</sup> c. <sup>1</sup>[(,)]  
28 (C. ) (now before the Legislature as this bill) <sup>1</sup>and paragraph (3) of  
29 subsection d. of this section<sup>1</sup>. Liens filed pursuant to this subsection  
30 shall not affect any valid lien, right or interest in the real property filed  
31 in accordance with established procedure prior to the filing of this  
32 notice of lien.

33 d. In establishing requirements for applications for financial  
34 assistance, the authority:

35 (1) may not impose conditions that interfere with the everyday  
36 normal operations of a financial assistance recipient's business  
37 activities, except to the extent necessary to <sup>1</sup>[(prevent intentional  
38 actions designed to avoid repayment of any loan, or that significantly  
39 diminish)] ensure the recipient's ability to repay the loan and to  
40 preserve<sup>1</sup> the value of any loan collateral;

41 (2) shall strive to minimize the complexity and costs to applicants  
42 or recipients of compliance with such requirements;

43 (3) may not require as collateral for any loan, except with the  
44 applicant's consent, the primary residence of the applicant, except that  
45 this paragraph shall not apply to a loan issued from the fund for the  
46 eligible project costs for a petroleum underground storage tank at the

1 site of the primary residence; and

2 (4) shall expeditiously process all applications in accordance with  
3 a schedule established by the authority for the review thereof and the  
4 taking of final action, which schedule shall reflect the complexity of an  
5 application.

6  
7 9. <sup>1</sup>a.<sup>1</sup> The department and the Office of the Attorney General may  
8 not take any enforcement action pursuant to section 12 of P.L.1986,  
9 c.102 (C.58:10A-32) against the owner or operator of a regulated tank  
10 for failure to upgrade or close a regulated tank or for failure to  
11 maintain evidence of financial responsibility pursuant to section 5 of  
12 P.L.1986, c.102 (C.58:10A-25), if the owner or operator, (1) has  
13 submitted an application for financial assistance from the fund prior to  
14 the date upon which the upgrade or closure is required by law to be  
15 completed, (2) the authority has not yet acted on the application as of  
16 that date, (3) the owner or operator agrees to enter into a consent  
17 agreement or a memorandum of agreement with the department to  
18 comply with the upgrade, closure, remediation, and financial  
19 responsibility requirements, <sup>2</sup>[and] <sup>2</sup>(4) the owner or operator  
20 complies with the provisions of the consent agreement or the  
21 memorandum of agreement <sup>2</sup>, and (5) the owner or operator maintains  
22 <sup>3</sup>[inventory records as required pursuant to section 7 of P.L.1986,  
23 c.102 (C.58:10A-27)<sup>2</sup>] an acceptable method of release detection for  
24 the regulated tanks that are the subject of the application for financial  
25 assistance as required pursuant to section 5 of P.L.1986, c.102  
26 (C.58:10-25)<sup>3</sup>.

27 <sup>1</sup>b. The provisions of subsection a. of this section shall not apply  
28 upon the denial of an application for financial assistance or in the case  
29 of a knowing discharge that may result in a serious threat to <sup>2</sup>the  
30 public health or<sup>2</sup> the environment. The department shall make an  
31 annual report to the Senate Environment Committee and the Assembly  
32 Agriculture and Waste Management Committee <sup>2</sup>or their successors<sup>2</sup>  
33 listing any enforcement actions taken against an owner or operator of  
34 a regulated tank who meets the requirements of subsection a. of this  
35 section. The report shall list the name of the violator, the specific  
36 statute or regulation alleged to have been violated, the status of the  
37 case at the time of the report, and the penalty imposed.<sup>1</sup>

38  
39 10. a. All loans awarded from the fund shall be for a term not to  
40 exceed ten years. Except as provided in subsection b. of section 5 of  
41 P.L. , c. (C. )(now before the Legislature as this bill), all loans  
42 shall be at a rate between two percent and the <sup>1</sup>[Federal Discount]  
43 Prime<sup>1</sup> Rate at the time of approval, or at the time of loan closing if  
44 the <sup>1</sup>[discount] prime<sup>1</sup> rate is lower at that time. The authority shall  
45 determine the interest rate to be imposed based on the applicant's  
46 ability to repay the loan.

1 b. Upon the sale of the facility for which the loan was made, the  
2 unpaid balance of the loan shall become immediately payable in full.  
3 Upon the sale of a facility for which a conditional hardship grant was  
4 made pursuant to section 5 of P.L. , c. (C )(now before the  
5 Legislature as this bill), that amount of the conditional hardship grant  
6 that must be repaid, as calculated pursuant to section 16 of P.L. ,  
7 c. (C. )(now pending before the Legislature as this bill), shall  
8 become immediately payable in full.

9  
10 11. Notwithstanding any other provision of P.L. , c. (C. )  
11 (now before the Legislature as this bill), if an owner or operator  
12 maintains environmental liability or other insurance coverage for the  
13 remediation of a discharge, the insurance coverage shall be the primary  
14 coverage for the costs of a remediation. Eligible owners and operators  
15 may apply for financial assistance from the fund for any excess thereof,  
16 including any deductible, up to the per facility monetary limits set forth  
17 in section 5 of P.L. , c. (C. )(now before the Legislature as  
18 this bill). An eligible owner or operator shall file a notice of a claim  
19 with its insurance carrier prior to filing an application for financial  
20 assistance from the fund. The notice of claim shall list the fund as a  
21 beneficiary of the claim to the extent of an award of financial  
22 assistance is made from the fund. As a condition of receiving an  
23 award of financial assistance from the fund, the eligible owner or  
24 operator shall agree to diligently pursue the claim against its insurance  
25 carrier.

26  
27 12. The authority and the department may enter into a  
28 memorandum of agreement whereby any of the powers or  
29 responsibilities that the authority may exercise pursuant to P.L. ,  
30 c. (C. )(now before the Legislature as this bill), may be exercised  
31 by the department. The authority may require an applicant for  
32 financial assistance to enter into an agreement with the department  
33 prior to an application being deemed complete, which agreement shall  
34 provide that any upgrade, closure, or remediation will be performed  
35 pursuant to rules and regulations of the department. Any agreement,  
36 review of documents, or other powers to be exercised by the  
37 department pursuant to this section must be completed by the  
38 department within <sup>1</sup>[30] <sup>45</sup> days of the application being submitted to  
39 the department. Pursuant to the memorandum of agreement, the  
40 authority and the department may provide that any of the monies in the  
41 fund that may be used for administrative expenses by the authority  
42 pursuant to section 3 of P.L. , c. (C. )(now before the  
43 Legislature as this bill), may be used by the department in carrying out  
44 its responsibilities under this section.

45 13. The authority shall establish a joint application filing, review  
46 and approval procedure whereby a person who is eligible for financial



1 assistance from the fund, created pursuant to section 3 of P.L. ,  
2 c. (C. )(now before the Legislature as this bill) and who is  
3 eligible for financial assistance from the Hazardous Discharge Site  
4 Remediation Fund, created pursuant to section 26 of P.L.1993, c.139  
5 (C.58:10B-4), may file one application for financial assistance from  
6 both funds and receive a joint response from the authority that  
7 approves or disapproves the application in whole or in part.

8  
9 14. a. Payment of any grant from the fund, or of a loan from the  
10 fund where the loan is in default and is uncollectible, for any costs  
11 relating to a remediation, shall be conditioned upon the authority being  
12 subrogated to all of the rights of an owner or operator against any  
13 insurance carrier, against any previous owner or operator of the  
14 facility where the previous owner or operator engaged in any conduct  
15 identified in paragraphs (1) or (2) of subsection b. of section 7 of  
16 P.L. , c. (C. ) (now before the Legislature as this bill), and  
17 against any other person liable for the discharge pursuant to subsection  
18 c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), for the costs of  
19 the remediation necessitated by the discharge. In an action by the  
20 authority to enforce a right of subrogation, the authority shall be  
21 entitled to invoke all the rights and defenses available to the grant or  
22 loan recipient if the action had been brought by the grant or loan  
23 recipient against such other person. Nothing in this subsection shall  
24 be construed to affect or limit any right that an owner or operator of  
25 a petroleum underground storage tank may have under statutory or  
26 common law against any other person concerning a discharge of  
27 petroleum from that tank.

28 b. The authority may seek to recover any financial assistance or  
29 that part of an award of financial assistance that exceeds the eligible  
30 project costs or that was obtained as a result of conduct described in  
31 paragraph (4) of subsection b. of section 7 of P.L. , c. (C. )(now  
32 before the Legislature as this bill). If the authority is the prevailing  
33 party in an action to recover financial assistance payments made from  
34 the fund, the authority shall be entitled to all investigative and legal  
35 costs incurred by the authority in bringing and prosecuting the action,  
36 as well as interest charges which shall accrue as of the date such  
37 payments were made from the fund, unless the court makes a finding  
38 of a lack of intent to defraud the fund. The rate of interest shall be the  
39 interest rate for judgments established pursuant to the Rules  
40 Governing the Courts of the State of New Jersey.

41  
42 15. a. A person who purposely, knowingly, recklessly, or  
43 negligently provides false documents or false information to the  
44 authority or to the department, or withholds documents or  
45 information, in relation to an application for financial assistance from  
46 the fund or in relation to documents or information that may be

1 required as a condition of receiving an award of financial assistance  
2 from the fund, shall be subject to a civil penalty not to exceed  
3 \$50,000. Any penalty incurred under this subsection may be recovered  
4 with costs in a summary proceeding pursuant to "the penalty  
5 enforcement law," N.J.S.2A:58-1 et seq. in the Superior Court.

6 b. (1) The authority may commence a civil action in Superior  
7 Court to recover any financial assistance awarded to an applicant from  
8 the fund if financial assistance was obtained, in whole or in part, as the  
9 result of providing false documents or false information to the  
10 authority or to the department or by withholding documents or  
11 information from the authority or the department. The action to  
12 recover money awarded by the authority may be combined with any  
13 action to impose penalties provided for in subsection a. of this section.

14 (2) The authority may commence a civil action in Superior Court  
15 to recover any financial assistance awarded as a loan where the  
16 recipient of the loan has not made loan repayments in accordance with  
17 the loan agreement, where any condition or provision of the loan  
18 agreement has been violated by the loan recipient, or to enforce any  
19 lien filed pursuant to the issuance of financial assistance.

20 c. (1) A person who purposely or knowingly provides false  
21 documents or false information to the authority or to the department,  
22 or withholds documents or information, in relation to an application  
23 for financial assistance from the fund or in relation to documents or  
24 information that may be required as a condition of receiving an award  
25 of financial assistance from the fund, with the intent to alter the  
26 applicant's eligibility for financial assistance from the fund, alter the  
27 priority of the applicant's application to receive financial assistance  
28 from the fund, cause the applicant to receive a larger grant award than  
29 the applicant would otherwise be eligible for, or obtain financial  
30 assistance from the fund in excess of the eligible project costs, shall be  
31 guilty of a crime of the third degree.

32 (2) A person who recklessly provides false documents or false  
33 information to the authority or to the department, or withholds  
34 documents or information, in relation to an application for financial  
35 assistance from the fund or in relation to documents or information  
36 that may be required as a condition of receiving an award of financial  
37 assistance from the fund, <sup>1</sup>[with the intent to alter] which results in the  
38 alteration of<sup>1</sup> the applicant's eligibility for financial assistance from the  
39 fund, <sup>1</sup>[alter] the alteration of<sup>1</sup> the priority of the applicant's  
40 application to receive financial assistance from the fund, <sup>1</sup>[cause]  
41 which causes<sup>1</sup> the applicant to receive a larger grant award than the  
42 applicant would otherwise be eligible for, or obtain financial assistance  
43 from the fund in excess of the eligible project costs, shall be guilty of  
44 a crime of the fourth degree.

45 16. a. In addition to any other financial assistance requirements  
46 imposed by the authority pursuant to P.L. , c. (C. )(now before

1 the Legislature as this bill), any award of financial assistance from the  
2 fund shall constitute, in each instance, a debt of the applicant to the  
3 fund. The debt shall constitute a lien on the real property at which the  
4 subject facility is located. The lien shall be in the amount of the  
5 financial assistance awarded the applicant. The lien shall attach when  
6 a notice of lien, incorporating <sup>2</sup>the name of the property owner,<sup>2</sup> a  
7 description of the real property on which the subject facility is located  
8 and an identification of the amount of the financial assurance awarded,  
9 is duly filed with the <sup>2</sup>[clerk of the Superior Court. The clerk shall  
10 promptly enter upon the civil judgment or order docket the name and  
11 address of the applicant, the address of the real property on which the  
12 subject facility is located, and the amount of the lien as set forth in the  
13 notice of lien. Upon entry by the clerk, the lien shall attach to the real  
14 property on which the subject facility is located, whether or not the  
15 applicant is insolvent] county recording officer in the county in which  
16 the property is located<sup>2</sup>.

17 Where financial assistance from the fund is awarded as a  
18 combination of a loan and a grant, separate liens for the loan and the  
19 grant shall be filed. No lien shall be placed on any real property of an  
20 applicant based on a conditional hardship grant awarded pursuant to  
21 paragraph (1) of subsection c. of section 5 of P.L. , c. (C. )(now  
22 before the Legislature as this bill), for a remediation necessitated by a  
23 discharge from a petroleum underground storage tank used to store  
24 heating oil at the applicant's primary residence.

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

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

44 Where real property for which a conditional hardship grant was  
45 awarded is not being operated in substantially the same manner, the 15  
46 year period to satisfy the lien shall be tolled. If at any time prior to the

1 satisfaction of the lien the property is developed or operated<sup>1</sup>[, or  
2 proposed for development or operation,]<sup>1</sup> for a purpose that is not  
3 substantially the same as its operation at the time of the award of the  
4 conditional hardship grant, the grant recipient shall so certify to the  
5 authority upon the change in operation. Upon receipt of this  
6 certification, the authority shall determine, based upon the new  
7 operation of the property if the financial assistance shall continue as a  
8 conditional hardship grant or if it shall be converted into a loan. In  
9 making this determination, the authority shall base its decision on the  
10 financial hardship factors used in determining the original eligibility for  
11 the conditional hardship grant.

12 The authority may take whatever enforcement actions it deems  
13 necessary to verify the operation of any property for which a  
14 conditional hardship grant was made. <sup>1</sup> The terms and conditions of  
15 any loan converted from a grant pursuant to this subsection shall be  
16 <sup>2</sup>[established by the authority] the same as those authorized pursuant  
17 to this act<sup>2</sup>.<sup>1</sup>

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

20

21 17. a. Within 180 days of the effective date of this act, the New  
22 Jersey Economic Development Authority shall adopt, pursuant to the  
23 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
24 seq.), rules and regulations for the administration of the Petroleum  
25 Underground Storage Tank Remediation, Upgrade, and Closure Fund  
26 and the issuance of financial assistance therefrom as necessary to  
27 implement this act.

28 b. Within 180 days of the effective date of this act, the Department  
29 of Environmental Protection shall adopt, pursuant to the  
30 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
31 seq.), rules and regulations for the administration of the Petroleum  
32 Underground Storage Tank Remediation, Upgrade, and Closure Fund  
33 and the issuance of financial assistance therefrom as necessary to  
34 implement this act.

35 <sup>2</sup>c. Prior to the adoption of rules and regulations pursuant to this  
36 section, the authority and the department may, notwithstanding the  
37 provisions of the "Administrative Procedure Act," adopt procedures  
38 for the acceptance and review of financial assistance applications from  
39 the fund. No financial assistance may be awarded however, until the  
40 rules and regulations are adopted pursuant to this section.<sup>2</sup>

41

42 18. There is imposed upon the owner or operator of a facility who  
43 is required to maintain evidence of financial responsibility pursuant to  
44 section 5 of P.L.1986, c.102 (C.58:10A-25) or pursuant  
45 to 42 U.S.C. §6991 et seq., and any regulations adopted pursuant  
46 thereto, and who does not maintain that evidence of financial

1 responsibility, an annual surcharge. The annual surcharge shall be  
2 \$1,500 for facilities with one or two petroleum underground storage  
3 tanks, \$3,500 for facilities with three to six petroleum underground  
4 storage tanks, and \$6,000 for facilities with seven or more petroleum  
5 underground storage tanks. The owner or operator shall pay this  
6 surcharge to the authority for deposit into the Petroleum Underground  
7 Storage Tank Remediation, Upgrade, and Closure Fund. <sup>1</sup>The New  
8 Jersey Spill Compensation Fund shall not be considered as evidence of  
9 financial responsibility for the purposes of this section.<sup>1</sup>

10 Nothing in this section shall be construed to negate the requirement  
11 of an owner or operator of a facility to maintain evidence of financial  
12 responsibility as may be required pursuant to section 5 of P.L.1986,  
13 c.102 (C.58:10A-25) or pursuant to 42 U.S.C.§6991 et seq.

14 The New Jersey Economic Development Authority, in consultation  
15 with the Department of Environmental Protection shall adopt,  
16 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
17 (C.52:14B-1 et seq.), rules and regulations imposing the surcharge.

18

19 19. a. The New Jersey Economic Development Authority and the  
20 Department of Environmental Protection shall present a joint annual  
21 report to the presiding officers of the two houses of the Legislature  
22 and to the chairmen and members of the Assembly Agriculture and  
23 Waste Management Committee and the Senate Environment  
24 Committee, or their successors, on the status of the financial assistance  
25 program, which shall include: a statement on receipts and expenditures  
26 for the Petroleum Underground Storage Tank Remediation, Upgrade,  
27 and Closure Fund; the number of applications for financial assistance  
28 received and the actions taken on the applications; the amount of  
29 financial assistance awarded as loans or as grants for both public  
30 entities and other applicants; the identity and location of the facilities  
31 receiving the financial assistance; an assessment of the adequacy of  
32 current funding levels in meeting the statutory objectives of the fund;  
33 an accounting of expenses incurred by the authority in administering  
34 the fund; and such other information, including any legislative or  
35 administrative recommendations for program changes, as the authority  
36 and the department may deem appropriate or useful. The annual  
37 reports shall be made not later than March <sup>1</sup>[1] 31<sup>1</sup> of each year  
38 beginning one year following the effective date of this act. The first  
39 report shall also contain a needs survey, which shall estimate the scope  
40 and projected costs of all potentially eligible remediation applications  
41 for financial assistance from the fund.

42

43 20. Nothing in P.L. , c. (C. ) (pending in the Legislature as  
44 this bill) shall be construed to:

45 (1) impose any liability on the State or the authority for any claims  
46 made to, or approved from, the Petroleum Underground Storage Tank

1 Remediation, and Closure Upgrade Fund, and the extent of the State's  
2 or authority's responsibility for the payment or reimbursement of an  
3 approved application shall be limited to the amount of otherwise  
4 unobligated moneys available in the fund;

5 (2) impose any liability on the State or the authority for the quality  
6 of any work performed pursuant to a remediation, closure or an  
7 upgrade for which financial assistance is made; or

8 (3) alter any obligation of an owner or operator of a facility, who  
9 is eligible for financial assistance from the fund, to comply in a timely  
10 manner with all lawful requirements relating to the facility.

11  
12 21. There is appropriated from the special account in the General  
13 Fund created pursuant to Article VIII, Section II, paragraph 6 of the  
14 New Jersey Constitution <sup>1</sup>[\$8,000,000] \$9,900,000<sup>1</sup> to the New Jersey  
15 Economic Development Authority which shall be deposited into the  
16 Petroleum Underground Storage Tank Remediation, Upgrade and  
17 Closure Fund, established pursuant to section 3 of P.L. , c.  
18 (C. ) (pending in the Legislature as this bill), for use for any of  
19 the purposes for which that fund has been established. Expenditures  
20 of moneys in the fund shall be subject to the conditions set forth in  
21 Article VIII, Section II, paragraph 6 of the New Jersey Constitution  
22 and the provisions in P.L. , c. (C. ) (now before the Legislature as  
23 this bill).

24  
25 22. Any person who has owned or operated an underground  
26 storage tank as defined pursuant to section 2 of P.L.1986, c.102  
27 (C.58:10A-22) who has not registered that tank pursuant to the  
28 provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), shall not be  
29 subject to a civil penalty for the failure to register that underground  
30 storage tank if the person, within one year of the effective date of this  
31 act, registers the tank pursuant to P.L.1986, c.102. The department  
32 may require that person to pay any registration fees that would have  
33 been paid had the underground storage tank been registered in  
34 accordance with law.

35  
36 23. Sections 17 and 18 of P.L.1986, c.102 (C.58:10A-36 and  
37 C.58:10A-37) are repealed, except that in order to assure the  
38 uninterrupted funding of loans for regulated tank upgrades pending the  
39 adoption of rules and regulations pursuant to section 17 of P.L. ,  
40 c. , (C. )(pending in the Legislature as this bill), rules and  
41 regulations adopted pursuant to section 17 of P.L.1986, c.102  
42 (C.58:10A-37) that are in effect on the effective date of P.L. ,  
43 c. , (C. )(pending in the Legislature as this bill), shall continue in  
44 force until the adoption of rules and regulations by the authority  
45 pursuant to section 17 of P.L. , c. (C. )(now before the  
46 Legislature as this bill). The repayment of any outstanding loans made

1 from the State Underground Storage Tank Improvement Fund shall be  
2 made to the New Jersey Economic Development Authority for deposit  
3 into the Petroleum Underground Storage Tank Remediation, and  
4 Closure Upgrade Fund. Any monies in the State Underground  
5 Storage Tank Improvement Fund is transferred to the New Jersey  
6 Economic Development Authority for deposit into the Petroleum  
7 Underground Storage Tank Remediation, Upgrade, and Closure  
8 Fund.

9

10 24. Prior to July 1, 1997, or within six months of an underground  
11 storage tank being upgraded and the site remediated as required  
12 pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.), whichever is later,  
13 the owner or operator of that underground storage tank shall submit  
14 to the department evidence of financial responsibility for taking  
15 corrective action and compensating third parties as is required  
16 pursuant to section 5 of P.L. 1986, c.102 (C.58:10A-25) or pursuant  
17 to 42 U.S.C.§6991 et seq. After a regulated tank is upgraded, the  
18 New Jersey Spill Compensation Fund, created pursuant to the "Spill  
19 Compensation and Control Act," <sup>1</sup>[P.L.197, C.] P.L.1976, c.141<sup>1</sup>  
20 (C.58:10-23.11 et seq.) shall no longer serve as the evidence of  
21 financial responsibility for the regulated tank.

22

23 25. There is appropriated from the General Fund to the New Jersey  
24 Economic Development Authority the sum of \$50,000 for the adoption  
25 of rules and regulations for administering the Petroleum Underground  
26 Storage Tank Remediation, Upgrade, and Closure Fund, established  
27 pursuant to section 3 of P.L. , c. (C. ). The authority shall  
28 transfer such sums from this appropriation to the Department of  
29 Environmental Protection as the authority and the department deem  
30 necessary to allow the department to adopt rules and regulations as  
31 necessary pursuant to this act. Upon sufficient monies being deposited  
32 into the Petroleum Underground Storage Tank Remediation,  
33 Upgrade, and Closure Fund that may be used for these purposes, the  
34 authority shall reimburse the General Fund the amount of this  
35 appropriation.

36

37 26. This act shall take effect immediately <sup>2</sup>[], but sections 4 through  
38 20 of this act shall remain inoperative until the adoption of appropriate  
39 rules and regulations therefor. Upon the effective date of this act, the  
40 New Jersey Economic Development Authority, the Department of  
41 Environmental Protection, and the Department of the Treasury may  
42 take such actions as necessary to carry out the purposes of this act<sup>2</sup>.

1



2

3 Creates New Jersey Underground Storage Tank Remediation,

4 Upgrade, and Closure Fund; makes an appropriation.



SENATE, No. 1756

STATE OF NEW JERSEY

INTRODUCED DECEMBER 19, 1996

By Senators McNAMARA and BENNETT

1 AN ACT concerning the upgrade, remediation, and closure of certain  
2 underground storage tanks, supplementing Title 58 of the Revised  
3 Statutes, repealing sections 17 and 18 of P.L.1986, c.102, and  
4 making an appropriation.

5

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

8

9 1. This act shall be known and may be cited as the "Underground  
10 Storage Tank Finance Act."

11

12 2. As used in this act:

13 "Applicant" means a person who files an application for financial  
14 assistance from the Petroleum Underground Storage Tank  
15 Remediation, Upgrade, and Closure Fund for payment of eligible  
16 project costs of a remediation due to a discharge of petroleum from  
17 a petroleum underground storage tank and for payment of eligible  
18 project costs of an upgrade or closure of a regulated tank;

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

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

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

26 "Department" means the Department of Environmental Protection;

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

30 "Eligible owner or operator" means any owner or operator who  
31 owns or operates less than 25 petroleum underground storage tanks  
32 in New Jersey, who has a net worth of less than \$10,000,000 and who  
33 demonstrates to the satisfaction of the authority, the inability to qualify  
34 for and obtain a commercial loan for all or part of the eligible project  
35 costs;

36 "Eligible project costs" means the reasonable costs for equipment,  
37 work or services required to effectuate a remediation, an upgrade, or

1 a closure which equipment, work or services are eligible for payment  
2 from the Petroleum Underground Storage Tank Remediation,  
3 Upgrade, and Closure Fund. In the case of an upgrade or closure of  
4 a regulated tank, eligible project costs shall be limited to the cost of  
5 the minimal effective system necessary to meet all the regulatory  
6 requirements of federal and State law. The limitation of eligible  
7 project costs to the minimal effective system shall not be construed to  
8 deem ineligible those project costs expended to replace a regulated  
9 tank rather than to improve the regulated tank. An owner or operator  
10 may perform an upgrade or a closure beyond the minimal effective  
11 system in which case the eligible project costs that may be awarded  
12 from the fund as financial assistance shall be that amount that would  
13 represent the cost of a minimal effective system. Eligible project costs  
14 shall include the cost of a preliminary assessment and site  
15 investigation, even if performed prior to the award of financial  
16 assistance from the fund if the preliminary assessment and site  
17 investigation were performed after the effective date of P.L. , c.  
18 (now before the Legislature as this bill);

19 "Facility" means one or more operational or nonoperational  
20 petroleum underground storage tanks under single ownership at a  
21 common site;

22 "Financial assistance" means a grant or loan or a combination of  
23 both that may be awarded by the authority from the fund to an eligible  
24 owner or operator as provided in section 5 of P.L. , c. (C. )(now  
25 before the Legislature as this bill);

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

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

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

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

44 "Petroleum Underground Storage Tank Remediation, Upgrade and  
45 Closure Fund" or "fund" means the fund established pursuant to  
46 section 3 of P.L. , c. (C. )(now before the Legislature as this

1 bill);

2 "Petroleum underground storage tank" means a tank of any size,  
3 including appurtenant pipes, lines, fixtures, and other related  
4 equipment, that normally and primarily stores petroleum, the volume  
5 of which, including the volume of the appurtenant pipes, lines, fixtures  
6 and other related equipment, is 10% or more below the ground.

7 "Petroleum underground storage tank" does not include:

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

13 (2) Pipelines, including gathering lines, regulated under the  
14 "Natural Gas Pipeline Safety Act of 1968," Pub.L.90-481 (49 U.S.C.  
15 §1671 et seq.), the "Hazardous Liquid Pipeline Safety Act of 1979,"  
16 Pub.L.96-129 (49 U.S.C. §2001 et seq.), or intrastate pipelines  
17 regulated under State law;

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

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

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

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

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

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

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

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

46 "Upgrade" means the replacement of a regulated tank, the

1 installation of secondary containment, monitoring systems, release  
2 detection systems, corrosion protection, spill prevention, or overflow  
3 prevention therefor, or any other necessary improvement to the  
4 regulated tank in order to meet the standards for regulated tanks  
5 adopted pursuant to section 5 of P.L.1986, c.102 (C.58:10A-25) and  
6 42 U.S.C. §6991 et seq.

7

8 3. a. The Petroleum Underground Storage Tank Remediation,  
9 Upgrade, and Closure Fund is established in the authority as a special,  
10 revolving fund. The fund shall be administered by the authority and  
11 shall be credited with:

12 (1) such moneys as are appropriated by the Legislature;

13 (2) sums received as repayment of principal and interest on  
14 outstanding loans made from the State Underground Storage Tank  
15 Improvement Fund established pursuant to P.L.1986, c.102  
16 (C.58:10A-21 et seq.);

17 (3) such monies as are appropriated pursuant to section 21  
18 of P.L. , c. (C. )(pending in the Legislature as this bill);

19 (4) all non-refundable application fees collected pursuant to section  
20 6 of P.L. , c. (C. )(now before the Legislature as this bill);

21 (5) sums received as repayment of principal and interest on  
22 outstanding loans made from the fund;

23 (6) any monies recovered by the authority pursuant to sections 14  
24 and 15 of P.L. , c. (C. )(now before the Legislature as this  
25 bill);

26 (7) any return on investment of monies deposited in the fund;

27 (8) any monies recovered through liens pursuant to section 10 or  
28 16 of P.L. , c. (C. )(now before the Legislature as this bill);  
29 and

30 (9) payments of the annual surcharge imposed pursuant to section  
31 18 of P.L. , c. (C. )(now before the Legislature as this bill).

32 b. Monies in the fund shall be used by the authority solely for  
33 providing financial assistance pursuant to section 4 of P.L. , c.  
34 (C. )(now before the Legislature as this bill) except that the  
35 authority may use application fees collected pursuant to section 6 of  
36 P.L. , c. (C. ), moneys recovered by the authority pursuant to  
37 sections 14 and 15 of P.L. , c. (C. ), and payments of the annual  
38 surcharge imposed pursuant to section 18 of P.L. , c. (C. ) for  
39 actual costs incurred in administering the fund, and for costs of any  
40 action to recover monies owing to the fund.

41

42 4. a. Monies in the fund shall be allocated and used to provide  
43 financial assistance only to (1) eligible owners or operators of  
44 regulated tanks in this State in order to finance the eligible project  
45 costs of the upgrade or closure of those regulated tanks as may be  
46 required pursuant to 42 U.S.C. §6991 et seq. or P.L.1986, c.102

1 (C.58:10A-21 et seq.); and (2) eligible owners and operators of  
2 petroleum underground storage tanks in this State in order to finance  
3 the eligible project costs of remediations that are necessary due to the  
4 discharge of petroleum from one or more of those petroleum  
5 underground storage tanks. Priority for the issuance of financial  
6 assistance from the fund, and the terms and conditions of that financial  
7 assistance, shall be based upon the criteria set forth in this section.

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

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

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

27 (2) Upgrades of regulated tanks required to be upgraded pursuant  
28 to P.L.1986, c.102 (C.58:10A-21 et seq.), but not pursuant to 42  
29 U.S.C. §6991 et seq., and including any necessary remediation at the  
30 site of the regulated tank, shall be given second priority;

31 (3) Any necessary remediations at the sites of petroleum  
32 underground storage tanks other than those given priority pursuant to  
33 paragraphs (1) or (2) of this subsection shall be given third priority;

34 (4) Closure of any regulated tank shall be given last priority.

35 c. Notwithstanding the priority for the award of financial assistance  
36 set forth in subsection b. of this section, whenever there has been a  
37 discharge, and the discharge poses an imminent and significant threat  
38 to a drinking water source, to human health, or to a sensitive or  
39 significant ecological area, an approved application for the award of  
40 financial assistance for the remediation and upgrade or closure, if  
41 necessary, shall be given priority over all other applications for  
42 financial assistance.

43 d. The priority ranking of applicants within any priority category  
44 enumerated in paragraphs (1), (2), (3), and (4) of subsection b. and  
45 in subsection c. of this section shall be based upon the date an  
46 application for financial assistance is filed with the authority as

1 determined pursuant to section 6 of P.L. , c. (C. )(now before  
2 the Legislature as this bill).

3 e. Whenever a facility consists of petroleum underground storage  
4 tanks from more than one priority category as enumerated in  
5 paragraphs (1) through (4) of subsection b. of this section, all the  
6 petroleum underground storage tanks at that facility shall be accorded  
7 the priority that would be accorded the highest priority petroleum  
8 underground storage tank at that facility.

9  
10 5. a. The authority may award financial assistance from the fund  
11 to an eligible owner or operator in the form of a loan or a conditional  
12 hardship grant as provided in this section. An award of financial  
13 assistance, either as a loan or a grant, or a combination of both, shall,  
14 upon application therefore, be for 100% of the eligible project costs.  
15 However, an award of financial assistance that any applicant may  
16 receive from the fund for an upgrade, remediation, or closure, or any  
17 combination thereof, for any one facility, may not exceed \$1,000,000.

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

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

34 (1) A conditional hardship grant for eligible project costs of an  
35 upgrade, closure or remediation shall be awarded by the authority  
36 based upon a finding of eligibility and financial hardship and upon a  
37 finding that the applicant is an eligible owner or operator.

38 In order to be eligible for a conditional hardship grant, the applicant  
39 shall have owned or operated the subject petroleum underground  
40 storage tank as of December 1, 1996 and continually thereafter or shall  
41 have inherited the property from a person who owned or operated the  
42 facility as of that date. No applicant shall be eligible for a conditional  
43 hardship grant if the applicant has a taxable income of more than  
44 \$100,000 or a net worth, exclusive of the applicant's primary  
45 residence, of over \$100,000.

46 A finding of financial hardship by the authority shall be based upon

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

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

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

23 Conditional hardship grants awarded to an applicant shall be subject  
24 to the lien provisions enumerated in section 16 of P.L. , c.  
25 (C. )(now before the Legislature as this bill).

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

30 In making a finding of an applicant's ability to repay a loan for the  
31 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 cash  
34 flow of the applicant's business, the applicant's taxable income and the  
35 applicant's personal and business assets, except that the authority may  
36 not consider the applicant's primary residence as collateral, except that  
37 the authority may consider the applicant's primary residence as  
38 collateral with the permission of the applicant or where the subject  
39 petroleum underground storage tank or regulated tank is located at  
40 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 three  
44 years prior to the date of the application, the most recent interim  
45 financial statement for the year of the application, the applicant's  
46 federal income tax returns, or other relevant documentation.

1 e. Nothing in this section is intended to alter the priority or criteria  
2 for awarding financial assistance established pursuant to section 4 of  
3 P.L. , c. (C. )(now before the Legislature as this bill.

4 f. An eligible owner or operator may only be awarded that amount  
5 of financial assistance for which the applicant demonstrates he could  
6 not qualify for and obtain as a commercial loan.

7  
8 6. An eligible owner or operator seeking financial assistance from  
9 the fund shall file an application on a form to be developed by the  
10 authority. The application form shall be submitted with the application  
11 fee. The application fee per facility for residential petroleum  
12 underground storage tanks shall be \$250. The application fee per  
13 facility for nonresidential petroleum underground storage tanks shall  
14 be \$500 for facilities with up to six tanks, and \$1,000 for facilities with  
15 seven or more tanks.

16 The authority shall adopt rules and regulations listing the filing  
17 requirements for a complete application for financial assistance. If a  
18 financial assistance application is determined to be incomplete by the  
19 authority, an applicant shall have 30 days from the date of receipt of  
20 written notification of incompleteness to file such additional  
21 information as may be required by the authority for a completed  
22 application. If an applicant fails to file the additional information  
23 within the 30 days, the filing date for that application shall be the date  
24 that such additional information is received by the authority. If the  
25 additional information is filed within the 30 days and is satisfactory to  
26 the authority, the filing date for that application shall be the initial date  
27 of application with the authority. Notwithstanding the above, if a  
28 completed application has been submitted and the applicant fails to  
29 submit the filing fee, then the filing date for the application shall not  
30 be established until the date on which the authority receives the  
31 application fee.

32 An applicant shall have 120 days from receipt of notice of approval  
33 of a financial assistance award to submit to the authority an executed  
34 contract for the upgrade, closure, or remediation, or all three, as the  
35 case may be, that is consistent with the terms and conditions of the  
36 financial assistance approval. Failure to submit an executed contract  
37 within the allotted time, without good cause, may result in an  
38 alteration of an applicant's priority ranking.

39  
40 7. a. The authority shall award financial assistance to an owner or  
41 operator of a facility only if the facility is properly registered with the  
42 department pursuant to section 3 of P.L.1986, c.102 (C.58:10A-23),  
43 where applicable, and if all fees or penalties due and payable on the  
44 facility to the department pursuant to P.L.1986, c.102 have either been  
45 paid or the nature or the amount of the fee or penalty is being  
46 contested in accordance with law.



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

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

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

11       (3) the applicant failed to commence or complete a remediation,  
12 closure, or an upgrade for which an award of financial assistance was  
13 made within the time prescribed in an administrative order, an  
14 administrative consent agreement, a memorandum of agreement, or a  
15 court order; or

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

26       Nothing in this subsection shall be construed to require the  
27 authority to undertake an investigation or make any findings  
28 concerning the conduct described in this subsection.

29       c. An application for financial assistance from the fund for an  
30 upgrade or closure of a regulated tank shall include all regulated tanks  
31 at the facility for which the applicant is seeking financial assistance.  
32 Once financial assistance for an upgrade, closure or a remediation is  
33 awarded for a facility, no additional award of financial assistance may  
34 be made for that facility. An application for financial assistance for an  
35 upgrade or closure of a regulated tank shall be conditioned upon the  
36 applicant entering into an agreement with the department to perform,  
37 at the time of the upgrade or closure, any remediation necessary as a  
38 result of a discharge from the regulated tank and commencement of  
39 the remediation within the time prescribed and in accordance with the  
40 rules and regulations of the department.

41       d. No financial assistance shall be awarded for any regulated tank  
42 to meet the upgrade or closure requirements pursuant to 42 U.S.C.  
43 §6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.), or for the  
44 remediation of a discharge from any such regulated tank unless the  
45 application is filed with the authority prior to January 1, 1999 and the  
46 application is complete and the application fee is received by February

1 1, 1999.

2 e. The date of occurrence of a discharge shall not affect eligibility  
3 for financial assistance from the fund. Except for a preliminary  
4 assessment or a site investigation performed after the effective date of  
5 P.L. , c. (C. ) (now before the legislature as this bill), and except  
6 as provided in subsection g. of this section, no award of financial  
7 assistance shall be made from the fund for the otherwise eligible  
8 project costs of a remediation, closure, or an upgrade, or parts  
9 thereof, completed prior to an award of financial assistance from the  
10 fund.

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

23 g. Notwithstanding any provision of P.L. , c. (C. )(now  
24 before the Legislature as this bill), where an eligible owner or operator  
25 has filed an application for financial assistance from the fund, and there  
26 are either insufficient monies in the fund or the authority has not yet  
27 acted upon the application or awarded the financial assistance, the  
28 eligible owner or operator may expend its own funds for the upgrade,  
29 closure, or remediation, and upon approval of the application, the  
30 authority shall award the financial assistance as a reimbursement of the  
31 monies expended for eligible project costs.

32

33 8. a. The authority shall adopt, pursuant to the Administrative  
34 Procedure Act, P.L.1968, c.410 (C.52:14B-1 et seq.), rules and  
35 regulations to:

36 (1) prescribe the application forms for financial assistance and the  
37 procedures for filing such forms;

38 (2) require an operator who is applying for financial assistance  
39 who is not the owner of the facility to provide a copy of the  
40 contractual relations between the operator and the owner, a  
41 certification that the owner approves the upgrade, closure, or  
42 remediation for which financial assistance is sought and a certification  
43 that the owner consents to a lien being placed upon the real property  
44 at which the facility is located;

45 (3) if the applicant is an owner who is not the operator, require the  
46 owner to provide a copy of the contractual relations between the

- 1 owner and the operator;
- 2 (4) require an applicant:
- 3 (a) to solicit at least three bids on the upgrade, closure and the  
4 remediation prior to entering into any contract to have any work  
5 performed;
- 6 (b) to submit documentation or other information on the nature and  
7 scope of the work to be performed, cost estimates thereon, and, as  
8 available, proofs of the actual costs of all work performed;
- 9 (c) to demonstrate, where applicable, an ability to repay the  
10 amount of any loan and to provide adequate collateral to secure the  
11 amount of a loan;
- 12 (d) to submit a certification that the applicant has not engaged in  
13 any of the conduct described in subsection b. of section 6 of P.L. ,  
14 c. (C. )(now before the Legislature as this bill);
- 15 (e) to submit a certification that any upgrade, closure, and  
16 remediation being undertaken will be or was completed or was in  
17 conformance with rules and regulations of the department;
- 18 (f) to submit documentation concerning anticipated and actual  
19 upgrade and remediation costs; and
- 20 (g) to submit documentation and a certification that the applicant  
21 was unable to qualify for and obtain a commercial loan for all or part  
22 of the eligible project costs;
- 23 (5) require any financial assistance awarded to be used only for the  
24 purposes for which the award is made; and
- 25 (6) adopt such other requirements as may be deemed necessary to  
26 carry out its responsibilities pursuant to this act.
- 27 b. Information submitted as part of an application that results in the  
28 award of a grant from the fund shall be a public record subject to the  
29 provisions of P.L.1963, c.73 (C.47:1A-1 et seq.). Information  
30 submitted as part of an application that results solely in the award of  
31 a loan from the fund shall not be a public record subject to the  
32 provisions of P.L.1963, c.73 (C.47:1A-1 et seq.).
- 33 c. The authority may file a lien on real property of the applicant  
34 other than the property at which the subject facility is located to  
35 secure a loan, except that such a filing shall be subject to the  
36 restrictions on the use of the applicant's primary residence as  
37 collateral, as provided in section 5 of P.L. c. , (C. )(now before  
38 the Legislature as this bill). Liens filed pursuant to this subsection  
39 shall not affect any valid lien, right or interest in the real property filed  
40 in accordance with established procedure prior to the filing of this  
41 notice of lien.
- 42 d. In establishing requirements for applications for financial  
43 assistance, the authority:
- 44 (1) may not impose conditions that interfere with the everyday  
45 normal operations of a financial assistance recipient's business  
46 activities, except to the extent necessary to prevent intentional actions

1 designed to avoid repayment of any loan, or that significantly diminish  
2 the value of any loan collateral;

3 (2) shall strive to minimize the complexity and costs to applicants  
4 or recipients of compliance with such requirements;

5 (3) may not require as collateral for any loan, except with the  
6 applicant's consent, the primary residence of the applicant, except that  
7 this paragraph shall not apply to a loan issued from the fund for the  
8 eligible project costs for a petroleum underground storage tank at the  
9 site of the primary residence; and

10 (4) shall expeditiously process all applications in accordance with  
11 a schedule established by the authority for the review thereof and the  
12 taking of final action, which schedule shall reflect the complexity of an  
13 application.

14

15 9. The department and the Office of the Attorney General may not  
16 take any enforcement action pursuant to section 12 of P.L.1986, c.102  
17 (C.58:10A-32) against the owner or operator of a regulated tank for  
18 failure to upgrade or close a regulated tank or for failure to maintain  
19 evidence of financial responsibility pursuant to section 5 of P.L.1986,  
20 c.102 (C.58:10A-25), if the owner or operator, (1) has submitted an  
21 application for financial assistance from the fund prior to the date upon  
22 which the upgrade or closure is required by law to be completed, (2)  
23 the authority has not yet acted on the application as of that date, (3)  
24 the owner or operator agrees to enter into a consent agreement or a  
25 memorandum of agreement with the department to comply with the  
26 upgrade, closure, remediation, and financial responsibility  
27 requirements, and (4) the owner or operator complies with the  
28 provisions of the consent agreement or the memorandum of  
29 agreement.

30

31 10. a. All loans awarded from the fund shall be for a term not to  
32 exceed ten years. Except as provided in subsection b. of section 5 of  
33 P.L. , c. (C. )(now before the Legislature as this bill), all loans  
34 shall be at a rate between two percent and the Federal Discount Rate  
35 at the time of approval, or at the time of loan closing if the discount  
36 rate is lower at that time. The authority shall determine the interest  
37 rate to be imposed based on the applicant's ability to repay the loan.

38 b. Upon the sale of the facility for which the loan was made, the  
39 unpaid balance of the loan shall become immediately payable in full.  
40 Upon the sale of a facility for which a conditional hardship grant was  
41 made pursuant to section 5 of P.L. , c. (C. )(now before the  
42 Legislature as this bill), that amount of the conditional hardship grant  
43 that must be repaid, as calculated pursuant to section 16 of P.L. ,  
44 c. (C. )(now pending before the Legislature as this bill),  
45 shall become immediately payable in full.

1 11. Notwithstanding any other provision of P.L. , c. (C. )  
2 (now before the Legislature as this bill), if an owner or operator  
3 maintains environmental liability or other insurance coverage for the  
4 remediation of a discharge, the insurance coverage shall be the primary  
5 coverage for the costs of a remediation. Eligible owners and operators  
6 may apply for financial assistance from the fund for any excess thereof,  
7 including any deductible, up to the per facility monetary limits set forth  
8 in section 5 of P.L. , c. (C. )(now before the Legislature as this  
9 bill). An eligible owner or operator shall file a notice of a claim with  
10 its insurance carrier prior to filing an application for financial  
11 assistance from the fund. The notice of claim shall list the fund as a  
12 beneficiary of the claim to the extent of an award of financial  
13 assistance is made from the fund. As a condition of receiving an  
14 award of financial assistance from the fund, the eligible owner or  
15 operator shall agree to diligently pursue the claim against its insurance  
16 carrier.

17

18 12. The authority and the department may enter into a  
19 memorandum of agreement whereby any of the powers or  
20 responsibilities that the authority may exercise pursuant to P.L. ,  
21 c. (C. )(now before the Legislature as this bill), may be exercised  
22 by the department. The authority may require an applicant for  
23 financial assistance to enter into an agreement with the department  
24 prior to an application being deemed complete, which agreement shall  
25 provide that any upgrade, closure, or remediation will be performed  
26 pursuant to rules and regulations of the department. Any agreement,  
27 review of documents, or other powers to be exercised by the  
28 department pursuant to this section must be completed by the  
29 department within 30 days of the application being submitted to the  
30 department. Pursuant to the memorandum of agreement, the authority  
31 and the department may provide that any of the monies in the fund that  
32 may be used for administrative expenses by the authority pursuant to  
33 section 3 of P.L. , c. (C. )(now before the Legislature as this  
34 bill), may be used by the department in carrying out its responsibilities  
35 under this section.

36

37 13. The authority shall establish a joint application filing, review  
38 and approval procedure whereby a person who is eligible for financial  
39 assistance from the fund, created pursuant to section 3 of P.L. ,  
40 c. (C. )(now before the Legislature as this bill) and who is eligible  
41 for financial assistance from the Hazardous Discharge Site  
42 Remediation Fund, created pursuant to section 26 of P.L. 1993, c. 139  
43 (C.58:10B-4), may file one application for financial assistance from  
44 both funds and receive a joint response from the authority that  
45 approves or disapproves the application in whole or in part.

1        14. a. Payment of any grant from the fund, or of a loan from the  
2 fund where the loan is in default and is uncollectible, for any costs  
3 relating to a remediation, shall be conditioned upon the authority being  
4 subrogated to all of the rights of an owner or operator against any  
5 insurance carrier, against any previous owner or operator of the  
6 facility where the previous owner or operator engaged in any conduct  
7 identified in paragraphs (1) or (2) of subsection b. of section 7 of  
8 P.L. , c. (C. ) (now before the Legislature as this bill), and  
9 against any other person liable for the discharge pursuant to subsection  
10 c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), for the costs of  
11 the remediation necessitated by the discharge. In an action by the  
12 authority to enforce a right of subrogation, the authority shall be  
13 entitled to invoke all the rights and defenses available to the grant or  
14 loan recipient if the action had been brought by the grant or loan  
15 recipient against such other person. Nothing in this subsection shall  
16 be construed to affect or limit any right that an owner or operator of  
17 a petroleum underground storage tank may have under statutory or  
18 common law against any other person concerning a discharge of  
19 petroleum from that tank.

20        b. The authority may seek to recover any financial assistance or  
21 that part of an award of financial assistance that exceeds the eligible  
22 project costs or that was obtained as a result of conduct described in  
23 paragraph (4) of subsection b. of section 7 of P.L. , c. (C. )(now  
24 before the Legislature as this bill). If the authority is the prevailing  
25 party in an action to recover financial assistance payments made from  
26 the fund, the authority shall be entitled to all investigative and legal  
27 costs incurred by the authority in bringing and prosecuting the action,  
28 as well as interest charges which shall accrue as of the date such  
29 payments were made from the fund, unless the court makes a finding  
30 of a lack of intent to defraud the fund. The rate of interest shall be the  
31 interest rate for judgments established pursuant to the Rules  
32 Governing the Courts of the State of New Jersey.

33  
34        15. a. A person who purposely, knowingly, recklessly, or  
35 negligently provides false documents or false information to the  
36 authority or to the department, or withholds documents or  
37 information, in relation to an application for financial assistance from  
38 the fund or in relation to documents or information that may be  
39 required as a condition of receiving an award of financial assistance  
40 from the fund, shall be subject to a civil penalty not to exceed  
41 \$50,000. Any penalty incurred under this subsection may be recovered  
42 with costs in a summary proceeding pursuant to "the penalty  
43 enforcement law," N.J.S.2A:58-1 et seq. in the Superior Court.

44        b. (1) The authority may commence a civil action in Superior Court  
45 to recover any financial assistance awarded to an applicant from the  
46 fund if financial assistance was obtained, in whole or in part, as the

1 result of providing false documents or false information to the  
2 authority or to the department or by withholding documents or  
3 information from the authority or the department. The action to  
4 recover money awarded by the authority may be combined with any  
5 action to impose penalties provided for in subsection a. of this section.

6 (2) The authority may commence a civil action in Superior Court to  
7 recover any financial assistance awarded as a loan where the recipient  
8 of the loan has not made loan repayments in accordance with the loan  
9 agreement, where any condition or provision of the loan agreement has  
10 been violated by the loan recipient, or to enforce any lien filed  
11 pursuant to the issuance of financial assistance.

12 c. (1) A person who purposely or knowingly provides false  
13 documents or false information to the authority or to the department,  
14 or withholds documents or information, in relation to an application  
15 for financial assistance from the fund or in relation to documents or  
16 information that may be required as a condition of receiving an award  
17 of financial assistance from the fund, with the intent to alter the  
18 applicant's eligibility for financial assistance from the fund, alter the  
19 priority of the applicant's application to receive financial assistance  
20 from the fund, cause the applicant to receive a larger grant award than  
21 the applicant would otherwise be eligible for, or obtain financial  
22 assistance from the fund in excess of the eligible project costs, shall be  
23 guilty of a crime of the third degree.

24 (2) A person who recklessly provides false documents or false  
25 information to the authority or to the department, or withholds  
26 documents or information, in relation to an application for financial  
27 assistance from the fund or in relation to documents or information  
28 that may be required as a condition of receiving an award of financial  
29 assistance from the fund, with the intent to alter the applicant's  
30 eligibility for financial assistance from the fund, alter the priority of the  
31 applicant's application to receive financial assistance from the fund,  
32 cause the applicant to receive a larger grant award than the applicant  
33 would otherwise be eligible for, or obtain financial assistance from the  
34 fund in excess of the eligible project costs, shall be guilty of a crime of  
35 the fourth degree.

36  
37 16. a. In addition to any other financial assistance requirements  
38 imposed by the authority pursuant to P.L. , c. (C. )(now before  
39 the Legislature as this bill), any award of financial assistance from the  
40 fund shall constitute, in each instance, a debt of the applicant to the  
41 fund. The debt shall constitute a lien on the real property at which the  
42 subject facility is located. The lien shall be in the amount of the  
43 financial assistance awarded the applicant. The lien shall attach when  
44 a notice of lien, incorporating a description of the real property on  
45 which the subject facility is located and an identification of the amount  
46 of the financial assurance awarded, is duly filed with the clerk of the

1 Superior Court. The clerk shall promptly enter upon the civil  
2 judgment or order docket the name and address of the applicant, the  
3 address of the real property on which the subject facility is located,  
4 and the amount of the lien as set forth in the notice of lien. Upon  
5 entry by the clerk, the lien shall attach to the real property on which  
6 the subject facility is located, whether or not the applicant is insolvent.

7 Where financial assistance from the fund is awarded as a  
8 combination of a loan and a grant, separate liens for the loan and the  
9 grant shall be filed. No lien shall be placed on any real property of an  
10 applicant based on a conditional hardship grant awarded pursuant to  
11 paragraph (1) of subsection c. of section 5 of P.L. , c. (C. )(now  
12 before the Legislature as this bill), for a remediation necessitated by a  
13 discharge from a petroleum underground storage tank used to store  
14 heating oil at the applicant's primary residence.

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

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

34 Where real property for which a conditional hardship grant was  
35 awarded is not being operated in substantially the same manner, the 15  
36 year period to satisfy the lien shall be tolled. If at any time prior to the  
37 satisfaction of the lien the property is developed or operated, or  
38 proposed for development or operation, for a purpose that is not  
39 substantially the same as its operation at the time of the award of the  
40 conditional hardship grant, the grant recipient shall so certify to the  
41 authority upon the change in operation. Upon receipt of this  
42 certification, the authority shall determine, based upon the new  
43 operation of the property if the financial assistance shall continue as a  
44 conditional hardship grant or if it shall be converted into a loan. In  
45 making this determination, the authority shall base its decision on the  
46 financial hardship factors used in determining the original eligibility for



1 the conditional hardship grant.

2 The authority may take whatever enforcement actions it deems  
3 necessary to verify the operation of any property for which a  
4 conditional hardship grant was made.

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

7

8 17. a. Within 180 days of the effective date of this act, the New  
9 Jersey Economic Development Authority shall adopt, pursuant to the  
10 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
11 seq.), rules and regulations for the administration of the Petroleum  
12 Underground Storage Tank Remediation, Upgrade, and Closure Fund  
13 and the issuance of financial assistance therefrom as necessary to  
14 implement this act.

15 b. Within 180 days of the effective date of this act, the Department  
16 of Environmental Protection shall adopt, pursuant to the  
17 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
18 seq.), rules and regulations for the administration of the Petroleum  
19 Underground Storage Tank Remediation, Upgrade, and Closure Fund  
20 and the issuance of financial assistance therefrom as necessary to  
21 implement this act.

22

23 18. There is imposed upon the owner or operator of a facility who  
24 is required to maintain evidence of financial responsibility pursuant to  
25 section 5 of P.L.1986, c.102 (C.58:10A-25) or pursuant to 42 U.S.C.  
26 §6991 et seq., and any regulations adopted pursuant thereto, and who  
27 does not maintain that evidence of financial responsibility, an annual  
28 surcharge. The annual surcharge shall be \$1,500 for facilities with one  
29 or two petroleum underground storage tanks, \$3,500 for facilities with  
30 three to six petroleum underground storage tanks, and \$6,000 for  
31 facilities with seven or more petroleum underground storage tanks.  
32 The owner or operator shall pay this surcharge to the authority for  
33 deposit into the Petroleum Underground Storage Tank Remediation,  
34 Upgrade, and Closure Fund.

35 Nothing in this section shall be construed to negate the requirement  
36 of an owner or operator of a facility to maintain evidence of financial  
37 responsibility as may be required pursuant to section 5 of P.L.1986,  
38 c.102 (C.58:10A-25) or pursuant to 42 U.S.C. §6991 et seq.

39 The New Jersey Economic Development Authority, in consultation  
40 with the Department of Environmental Protection shall adopt,  
41 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
42 (C.52:14B-1 et seq.), rules and regulations imposing the surcharge.

43

44 19. a. The New Jersey Economic Development Authority and the  
45 Department of Environmental Protection shall present a joint annual  
46 report to the presiding officers of the two houses of the Legislature

1 and to the chairmen and members of the Assembly Agriculture and  
2 Waste Management Committee and the Senate Environment  
3 Committee, or their successors, on the status of the financial assistance  
4 program, which shall include: a statement on receipts and expenditures  
5 for the Petroleum Underground Storage Tank Remediation, Upgrade,  
6 and Closure Fund; the number of applications for financial assistance  
7 received and the actions taken on the applications; the amount of  
8 financial assistance awarded as loans or as grants for both public  
9 entities and other applicants; the identity and location of the facilities  
10 receiving the financial assistance; an assessment of the adequacy of  
11 current funding levels in meeting the statutory objectives of the fund;  
12 an accounting of expenses incurred by the authority in administering  
13 the fund; and such other information, including any legislative or  
14 administrative recommendations for program changes, as the authority  
15 and the department may deem appropriate or useful. The annual  
16 reports shall be made not later than March 1 of each year beginning  
17 one year following the effective date of this act. The first report shall  
18 also contain a needs survey, which shall estimate the scope and  
19 projected costs of all potentially eligible remediation applications for  
20 financial assistance from the fund.

21

22 20. Nothing in P.L. , c. (C. ) (pending in the Legislature as  
23 this bill) shall be construed to:

24 (1) impose any liability on the State or the authority for any claims  
25 made to, or approved from, the Petroleum Underground Storage Tank  
26 Remediation, and Closure Upgrade Fund, and the extent of the State's  
27 or authority's responsibility for the payment or reimbursement of an  
28 approved application shall be limited to the amount of otherwise  
29 unobligated moneys available in the fund;

30 (2) impose any liability on the State or the authority for the quality  
31 of any work performed pursuant to a remediation, closure or an  
32 upgrade for which financial assistance is made; or

33 (3) alter any obligation of an owner or operator of a facility, who  
34 is eligible for financial assistance from the fund, to comply in a timely  
35 manner with all lawful requirements relating to the facility.

36

37 21. There is appropriated from the special account in the General  
38 Fund created pursuant to Article VIII, Section II, paragraph 6 of the  
39 New Jersey Constitution \$8,000,000 to the New Jersey Economic  
40 Development Authority which shall be deposited into the Petroleum  
41 Underground Storage Tank Remediation, Upgrade and Closure Fund,  
42 established pursuant to section 3 of P.L. , c. (C. ) (pending  
43 in the Legislature as this bill), for use for any of the purposes for  
44 which that fund has been established. Expenditures of moneys in the  
45 fund shall be subject to the conditions set forth in Article VIII, Section  
46 II, paragraph 6 of the New Jersey Constitution and the provisions in

1 P.L. , c. (C. ) (now before the Legislature as this bill).

2

3 22. Any person who has owned or operated an underground  
4 storage tank as defined pursuant to section 2 of P.L.1986, c.102  
5 (C.58:10A-22) who has not registered that tank pursuant to the  
6 provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), shall not be  
7 subject to a civil penalty for the failure to register that underground  
8 storage tank if the person, within one year of the effective date of this  
9 act, registers the tank pursuant to P.L.1986, c.102. The department  
10 may require that person to pay any registration fees that would have  
11 been paid had the underground storage tank been registered in  
12 accordance with law.

13

14 23. Sections 17 and 18 of P.L.1986, c.102 (C.58:10A-36 and  
15 C.58:10A-37) are repealed, except that in order to assure the  
16 uninterrupted funding of loans for regulated tank upgrades pending the  
17 adoption of rules and regulations pursuant to section 17 of P.L. ,  
18 c. , (C. )(pending in the Legislature as this bill), rules and  
19 regulations adopted pursuant to section 17 of P.L.1986, c.102  
20 (C.58:10A-37) that are in effect on the effective date of P.L. ,  
21 c. , (C. )(pending in the Legislature as this bill), shall continue in  
22 force until the adoption of rules and regulations by the authority  
23 pursuant to section 17 of P.L. , c. (C. )(now before the  
24 Legislature as this bill). The repayment of any outstanding loans made  
25 from the State Underground Storage Tank Improvement Fund shall be  
26 made to the New Jersey Economic Development Authority for deposit  
27 into the Petroleum Underground Storage Tank Remediation, and  
28 Closure Upgrade Fund. Any monies in the State Underground  
29 Storage Tank Improvement Fund is transferred to the New Jersey  
30 Economic Development Authority for deposit into the Petroleum  
31 Underground Storage Tank Remediation, Upgrade, and Closure  
32 Fund.

33

34 24. Prior to July 1, 1997, or within six months of an underground  
35 storage tank being upgraded and the site remediated as required  
36 pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.), whichever is later,  
37 the owner or operator of that underground storage tank shall submit  
38 to the department evidence of financial responsibility for taking  
39 corrective action and compensating third parties as is required  
40 pursuant to section 5 of P.L. 1986, c.102 (C.58:10A-25) or pursuant  
41 to 42 U.S.C.§6991 et seq. After a regulated tank is upgraded, the  
42 New Jersey Spill Compensation Fund, created pursuant to the "Spill  
43 Compensation and Control Act," P.L.197, C. (C.58:10-23.11 et seq.)  
44 shall no longer serve as the evidence of financial responsibility for the  
45 regulated tank.

1 25. There is appropriated from the General Fund to the New  
2 Jersey Economic Development Authority the sum of \$50,000 for the  
3 adoption of rules and regulations for administering the Petroleum  
4 Underground Storage Tank Remediation, Upgrade, and Closure  
5 Fund, established pursuant to section 3 of P.L. , c. (C. ). The  
6 authority shall transfer such sums from this appropriation to the  
7 Department of Environmental Protection as the authority and the  
8 department deem necessary to allow the department to adopt rules and  
9 regulations as necessary pursuant to this act. Upon sufficient monies  
10 being deposited into the Petroleum Underground Storage Tank  
11 Remediation, Upgrade, and Closure Fund that may be used for these  
12 purposes, the authority shall reimburse the General Fund the amount  
13 of this appropriation.  
14

15 26. This act shall take effect immediately, but sections 4 through  
16 20 of this act shall remain inoperative until the adoption of appropriate  
17 rules and regulations therefor. Upon the effective date of this act, the  
18 New Jersey Economic Development Authority, the Department of  
19 Environmental Protection, and the Department of the Treasury may  
20 take such actions as necessary to carry out the purposes of this act.  
21  
22

#### 23 STATEMENT

24  
25 This bill, the "Underground Storage Tank Finance Act," implements  
26 the policy adopted by the public when it overwhelmingly voted to  
27 amend the State Constitution to dedicate moneys to underground  
28 storage tank upgrades, closures, and remediations.

29 This bill appropriates the first of the dedicated moneys, \$8 million,  
30 to the newly created Petroleum Underground Storage Tank  
31 Remediation, Upgrade, and Closure Fund. The fund, to be  
32 administered by the New Jersey Economic Development Authority,  
33 would be used to give loans and grants to eligible owners and  
34 operators for the upgrade or closure of underground storage tanks or  
35 for remediations of discharges therefrom. Eligible owners and  
36 operators must have fewer than 25 tanks, have a net worth of less than  
37 \$10 million, and be unable to obtain a commercial loan.

38 Strict criteria is established to obtain a hardship grant including a  
39 demonstration of an inability to pay a loan. Grant recipient must stay  
40 in business for 15 years or a portion of the grant must be repaid.  
41 Loans will be given only if a person can repay the loan. The interest  
42 on loans to governmental entities will be at zero percent and will be  
43 set at low levels for all others. Loans or grants for upgrades and  
44 closures will only be made for regulated tanks.

45 The bill gives funding priority to 1) environmental need; 2) federally  
46 regulated tanks; 3) State regulated tanks; 4) remediations; and 5)

1 closures. The bill prevents enforcement actions from being taken for  
2 failure to upgrade if a person applies for financial assistance and is  
3 waiting for it to be provided. The bill also requires all upgraded tanks  
4 to obtain evidence of financial responsibility, requires all tanks that do  
5 not have such evidence to pay a surcharge, and provides that the New  
6 Jersey Spill Compensation Fund will not serve as such evidence once  
7 a tank has been upgraded.

8

9

10

11

12 Creates New Jersey Underground Storage Tank Remediation,  
13 Upgrade, and Closure Fund; makes an appropriation.

[Passed Both Houses]

[Third Reprint]

SENATE, No. 1756

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# STATE OF NEW JERSEY

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INTRODUCED DECEMBER 19, 1996

By Senators McNAMARA, BENNETT, Casey, Assemblymen  
Corodemus, Russo, Bucco, Barnes and Assemblywoman Buono

1 AN ACT concerning the upgrade, remediation, and closure of certain  
2 underground storage tanks, supplementing Title 58 of the Revised  
3 Statutes, repealing sections 17 and 18 of P.L.1986, c.102, and  
4 making an appropriation.

5

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

8

9 1. This act shall be known and may be cited as the "Underground  
10 Storage Tank Finance Act."

11

12 2. As used in this act:

13 "Applicant" means a person who files an application for financial  
14 assistance from the Petroleum Underground Storage Tank  
15 Remediation, Upgrade, and Closure Fund for payment of eligible  
16 project costs of a remediation due to a discharge of petroleum from  
17 a petroleum underground storage tank and for payment of eligible  
18 project costs of an upgrade or closure of a regulated tank;

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

21 "Closure" means the proper closure or removal of a petroleum  
22 underground storage tank necessary to meet all regulatory  
23 requirements of federal, State, or local law <sup>1</sup>[:].<sup>1</sup>

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

26 "Department" means the Department of Environmental Protection;

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

**Matter underlined thus is new matter.**

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

<sup>1</sup> Senate SEN committee amendments adopted February 10, 1997.

<sup>2</sup> Senate SBA committee amendments adopted March 10, 1997.

<sup>3</sup> Assembly AAP committee amendments adopted June 9, 1997.

1 "Discharge" means the intentional or unintentional release by any  
2 means of petroleum from a petroleum underground storage tank into  
3 the environment;

4 "Eligible owner or operator" means <sup>1</sup>(1) any owner or operator  
5 other than the owner or operator of a petroleum underground storage  
6 tank storing heating oil for onsite consumption in a residential  
7 building<sup>1</sup> who owns or operates less than <sup>1</sup>[25] 10<sup>1</sup> petroleum  
8 underground storage tanks in New Jersey, who has a net worth of less  
9 than <sup>1</sup>[\$10,000,000] \$2,000,000<sup>1</sup> and who demonstrates to the  
10 satisfaction of the authority, the inability to qualify for and obtain a  
11 commercial loan for all or part of the eligible project costs <sup>1</sup>, (2) the  
12 owner or operator of a petroleum underground storage tank storing  
13 heating oil for onsite consumption in a residential building, or (3) a  
14 public entity who owns or operates a petroleum underground storage  
15 tank in New Jersey<sup>1</sup>;

16 "Eligible project costs" means the reasonable costs for equipment,  
17 work or services required to effectuate a remediation, an upgrade, or  
18 a closure which equipment, work or services are eligible for payment  
19 from the Petroleum Underground Storage Tank Remediation,  
20 Upgrade, and Closure Fund. In the case of an upgrade or closure of  
21 a regulated tank, eligible project costs shall be limited to the cost of  
22 the minimal effective system necessary to meet all the regulatory  
23 requirements of federal and State law. The limitation of eligible  
24 project costs to the minimal effective system shall not be construed to  
25 deem ineligible those project costs expended to replace a regulated  
26 tank rather than to improve the regulated tank. An owner or operator  
27 may perform an upgrade or a closure beyond the minimal effective  
28 system in which case the eligible project costs that may be awarded  
29 from the fund as financial assistance shall be that amount that would  
30 represent the cost of a minimal effective system. <sup>2</sup>In the case of a  
31 remediation, eligible project costs shall not include the cost to  
32 remediate a site to meet residential soil remediation standards if the  
33 local zoning ordinances adopted pursuant to the "Municipal Land Use  
34 Law," P.L.1975, c.291 (C.40:55D-1 et seq.) does not allow for  
35 residential use.<sup>2</sup> Eligible project costs shall include the cost of a  
36 preliminary assessment and site investigation, even if performed prior  
37 to the award of financial assistance from the fund if the preliminary  
38 assessment and site investigation were performed after the effective  
39 date of P.L. , c. (now before the Legislature as this bill) <sup>1</sup>, Eligible  
40 project costs shall not include the costs of any remediation performed  
41 at a site where the petroleum underground storage tank was removed  
42 prior to December 1, 1996<sup>1</sup>;

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

46 "Financial assistance" means a grant or loan or a combination of

1 both that may be awarded by the authority from the fund to an eligible  
2 owner or operator as provided in section 5 of P.L. , c. (C. )(now  
3 before the Legislature as this bill);

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

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

7 "Person" means any individual, partnership, corporation, society,  
8 association, consortium, joint venture, commercial entity, or public  
9 entity, but does not include the State or any of its departments,  
10 agencies or authorities;

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

22 "Petroleum Underground Storage Tank Remediation, Upgrade and  
23 Closure Fund" or "fund" means the fund established pursuant to  
24 section 3 of P.L. , c. (C. )(now before the Legislature as this  
25 bill);

26 "Petroleum underground storage tank" means a tank of any size,  
27 including appurtenant pipes, lines, fixtures, and other related  
28 equipment, that normally and primarily stores petroleum, the volume  
29 of which, including the volume of the appurtenant pipes, lines, fixtures  
30 and other related equipment, is 10% or more below the ground.

31 "Petroleum underground storage tank" does not include:

32 (1) Septic tanks installed or regulated pursuant to regulations  
33 adopted by the department pursuant to "The Realty Improvement  
34 Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et  
35 seq.) or <sup>1</sup>["The] the" Water Pollution Control Act," P.L.1977, c.74  
36 (C.58:10A-1 et seq.);

37 (2) Pipelines, including gathering lines, regulated under <sup>1</sup>[the  
38 "Natural Gas Pipeline Safety Act of 1968," Pub.L.90-481  
39 (49 U.S.C.§1671 et seq.), the "Hazardous Liquid Pipeline Safety Act  
40 of 1979," Pub.L.96-129 (49 U.S.C.§2001 et seq.)] 49 U.S.C.§60101  
41 et seq.<sup>1</sup>, or intrastate pipelines regulated under State law;

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

46 (4) Storm water or wastewater collection systems operated or



1 regulated pursuant to regulations adopted by the department pursuant  
2 to the "Water Pollution Control Act";

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

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

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

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

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

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

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

31

32 3. a. The Petroleum Underground Storage Tank Remediation,  
33 Upgrade, and Closure Fund is established in the authority as a special,  
34 revolving fund. The fund shall be administered by the authority and  
35 shall be credited with:

36 (1) such moneys as are appropriated by the Legislature;

37 (2) sums received as repayment of principal and interest on  
38 outstanding loans made from the State Underground Storage Tank  
39 Improvement Fund established pursuant to P.L.1986, c.102  
40 (C.58:10A-21 et seq.);

41 (3) such monies as are appropriated pursuant to section 21  
42 of P.L. , c. (C. )(pending in the Legislature as this bill);

43 (4) all non-refundable application fees collected pursuant to section  
44 6 of P.L. , c. (C. )(now before the Legislature as this bill);

45 (5) sums received as repayment of principal and interest on  
46 outstanding loans made from the fund;

1 (6) any monies recovered by the authority pursuant to sections 14  
2 and 15 of P.L. , c. (C. )(now before the Legislature as this  
3 bill);  
4 (7) any return on investment of monies deposited in the fund;  
5 (8) any monies recovered through liens pursuant to section 10 or  
6 16 of P.L. , c. (C. )(now before the Legislature as this bill);  
7 and  
8 (9) payments of the annual surcharge imposed pursuant to section  
9 18 of P.L. , c. (C. )(now before the Legislature as this bill).

10 b. Monies in the fund shall be used by the authority solely for  
11 providing financial assistance pursuant to section 4 of P.L. , c.  
12 (C. )(now before the Legislature as this bill) except that the  
13 authority may use <sup>2</sup>any return on investment of monies deposited in  
14 the fund.<sup>2</sup> application fees collected pursuant to section 6 of P.L. ,  
15 c. (C. ), moneys recovered by the authority pursuant to sections 14  
16 and 15 of P.L. , c. (C. ), and payments of the annual surcharge  
17 imposed pursuant to section 18 of P.L. , c. (C. ) for actual costs  
18 incurred in administering the fund, and for costs of any action to  
19 recover monies owing to the fund.  
20

21 4. a. Monies in the fund shall be allocated and used to provide  
22 financial assistance only to (1) eligible owners or operators of  
23 regulated tanks in this State in order to finance the eligible project  
24 costs of the upgrade or closure of those regulated tanks as may be  
25 required pursuant to 42 U.S.C. §6991 et seq. or P.L. 1986, c. 102  
26 (C. 58:10A-21 et seq.); and (2) eligible owners and operators of  
27 petroleum underground storage tanks in this State in order to finance  
28 the eligible project costs of remediations that are necessary due to the  
29 discharge of petroleum from one or more of those petroleum  
30 underground storage tanks. Priority for the issuance of financial  
31 assistance from the fund, and the terms and conditions of that financial  
32 assistance, shall be based upon the criteria set forth in this section.

33 b. Upon a determination that an application for financial assistance  
34 meets all established criteria for the award of financial assistance from  
35 the fund, the authority shall approve the application. Prior to  
36 December 22, 1998, the authority may approve only those applications  
37 given priority pursuant to <sup>2</sup>[paragraph] paragraphs<sup>2</sup> (1) <sup>2</sup>and (2)<sup>2</sup> of this  
38 subsection or pursuant to <sup>1</sup>[subsection] subsections<sup>1</sup> c. <sup>1</sup>and f.<sup>1</sup> of this  
39 section, but the authority may receive, file, and deem complete any  
40 application for financial assistance its receives prior to that date.

41 Upon the authority's approval of an application for financial  
42 assistance, the authority shall award financial assistance to an applicant  
43 upon the availability of sufficient monies in the fund. When monies in  
44 the fund are not sufficient at any point in time to fully fund all  
45 applications for financial assistance that have been approved by the  
46 authority, the authority shall award financial assistance to approved

1 applicants, notwithstanding the date of approval of the application, in  
2 the following order of priority:

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

6 ~~(2) Closure of any regulated tank required to be upgraded~~  
7 ~~pursuant to 42 U.S.C. §6991 et seq., and including any necessary~~  
8 ~~remediation at the site of the regulated tank, shall be given second~~  
9 ~~priority;~~

10 (3)<sup>1</sup> Upgrades of regulated tanks required to be upgraded pursuant  
11 to P.L.1986, c.102 (C.58:10A-21 et seq.), but not pursuant to 42  
12 U.S.C. §6991 et seq., and including any necessary remediation at the  
13 site of the regulated tank, shall be given ~~second~~ third<sup>1</sup> priority;

14 ~~[(3)] (4)~~<sup>1</sup> Any necessary remediations at the sites of petroleum  
15 underground storage tanks other than those given priority pursuant to  
16 paragraphs (1) ~~or~~ <sup>1</sup>(2)<sup>1</sup>, ~~or~~ <sup>1</sup>(3)<sup>1</sup> of this subsection shall be given  
17 ~~third~~ fourth<sup>1</sup> priority;

18 ~~[(4)] (5)~~<sup>1</sup> Closure of any regulated tank ~~required to be upgraded~~  
19 ~~pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.), but not pursuant~~  
20 ~~to 42 U.S.C. §6991 et seq.~~<sup>1</sup> shall be given last priority.

21 c. Notwithstanding the priority for the award of financial assistance  
22 set forth in subsection b. of this section, whenever there has been a  
23 discharge, and the discharge poses an imminent and significant threat  
24 to a drinking water source, to human health, or to a sensitive or  
25 significant ecological area, an approved application for the award of  
26 financial assistance for the remediation and upgrade or closure, if  
27 necessary, shall be given priority over all other applications for  
28 financial assistance.

29 d. The priority ranking of applicants within any priority category  
30 enumerated in paragraphs (1), (2), (3), ~~and~~ <sup>1</sup>(4)<sup>1</sup>, ~~and~~ <sup>1</sup>(5)<sup>1</sup> of  
31 subsection b. and in subsection c. of this section shall be based upon  
32 the date an application for financial assistance is filed with the  
33 authority as determined pursuant to section 6 of P.L. , c. (C. )  
34 (now before the Legislature as this bill).

35 e. Whenever a facility consists of petroleum underground storage  
36 tanks from more than one priority category as enumerated in  
37 paragraphs (1) through ~~[(4)] (5)~~<sup>1</sup> of subsection b. of this section, <sup>2</sup>and  
38 ~~subsection c. of this section,~~<sup>2</sup> all the petroleum underground storage  
39 tanks at that facility shall be accorded the priority that would be  
40 accorded the highest priority petroleum underground storage tank at  
41 that facility.

42 ~~f. Notwithstanding the priority rankings established in this section,~~  
43 ~~one tenth of the amount annually appropriated to the Petroleum~~  
44 ~~Underground Storage Tank Remediation, Upgrade and Closure Fund~~  
45 ~~shall be used to provide financial assistance to owners or operators of~~  
46 ~~petroleum underground storage tanks used to store heating oil for~~

1 onsite consumption in a residential building, in order to finance the  
2 eligible project costs of remediations that are necessary due to the  
3 discharge of heating oil from those petroleum underground storage  
4 tanks. The authority shall provide financial assistance pursuant to this  
5 subsection notwithstanding the owner or operator's ability to obtain  
6 commercial loans for all or part of the financing. The priority ranking  
7 of applicants for these funds shall be based upon the date an  
8 application for financial assistance is filed with the authority as  
9 determined pursuant to subsection 6 of P.L. , c. (C. ) (now in the  
10 Legislature as this bill).<sup>1</sup> <sup>2</sup>If the authority does not receive qualified  
11 applications for financial assistance from owners and operators of  
12 petroleum underground storage tanks used to store heating oil for  
13 onsite consumption that meet the criteria set forth in this act and in  
14 any rules or regulations issued pursuant thereto, sufficient to enable  
15 the award of financial assistance an amount equal to one tenth of the  
16 amount annually appropriated to the fund in any one year as required  
17 pursuant to this subsection, the authority may award that financial  
18 assistance in the order of priority as provided in this section. In  
19 addition to the monies dedicated pursuant to this subsection, the  
20 authority may award financial assistance to an owner or operator of a  
21 petroleum underground storage tank used to store heating for onsite  
22 consumption when the criteria enumerated in subsection c. of this  
23 section are met.<sup>2</sup>

24

25 5. a. The authority may award financial assistance from the fund  
26 to an eligible owner or operator in the form of a loan or a conditional  
27 hardship grant as provided in this section. An award of financial  
28 assistance, either as a loan or a grant, or a combination of both, <sup>1</sup>[shall]  
29 may<sup>1</sup>, upon application therefore, be for 100% of the eligible project  
30 costs. However, <sup>2</sup>[an award of financial assistance]a loan<sup>2</sup> that any  
31 applicant may receive from the fund for an upgrade, remediation, or  
32 closure, or any combination thereof, for any one facility, may not  
33 exceed \$1,000,000 <sup>2</sup>and a grant that any applicant may receive from  
34 the fund for any one facility, may not exceed \$250,000. The total  
35 amount of financial assistance awarded as grants in any one year may  
36 not exceed 10% of the total amount of financial assistance awarded in  
37 that year<sup>2</sup>.

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

41 c. An applicant, other than a public entity, may apply for and  
42 receive a conditional hardship grant as provided in paragraph (1) of  
43 this subsection, or a loan for an upgrade, closure, or remediation as  
44 provided in paragraph (2) of this subsection. Financial assistance  
45 awarded an applicant pursuant to this subsection may consist entirely  
46 of a conditional hardship grant, a loan for an upgrade, or loan for a

1 closure, or a loan for a remediation, or any combination thereof,  
2 except that the total amount of the award of financial assistance shall  
3 be subject to the per facility dollar limitation enumerated in subsection  
4 a. of this section. Notwithstanding any other provision of this  
5 subsection to the contrary, no tax exempt, nonprofit organization,  
6 corporation, or association shall be awarded a conditional hardship  
7 grant pursuant to paragraph (1) of this subsection.

8 (1) A conditional hardship grant for eligible project costs of an  
9 upgrade, closure or remediation shall be awarded by the authority  
10 based upon a finding of eligibility and financial hardship and upon a  
11 finding that the applicant <sup>1</sup>[is an eligible owner or operator] meets the  
12 criteria set forth in this act<sup>1</sup>.

13 In order to be eligible for a conditional hardship grant, the applicant  
14 shall have owned or operated the subject petroleum underground  
15 storage tank as of December 1, 1996 and continually thereafter or shall  
16 have inherited the property from a person who owned <sup>1</sup>[or operated]  
17 the <sup>1</sup>[facility] petroleum underground storage tank<sup>1</sup> as of that date. No  
18 applicant shall be eligible for a conditional hardship grant if the  
19 applicant has a taxable income of more than \$100,000 or a net worth,  
20 exclusive of the applicant's primary residence, of over \$100,000.

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

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

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

44 Conditional hardship grants awarded to an applicant shall be subject  
45 to the lien provisions enumerated in section 16 of P.L. , c.  
46 (C. )(now before the Legislature as this bill).

1 (2) A loan 'to an eligible owner or operator'<sup>1</sup> for the eligible project  
2 costs of an upgrade, closure, '[and] or'<sup>1</sup> remediation shall be awarded  
3 by the authority only upon a finding that the applicant 'other than a  
4 public entity'<sup>1</sup> is able to repay the amount of the loan '[and that the  
5 applicant is an eligible owner or operator]'<sup>1</sup>.

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

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

23 e. Nothing in this section is intended to alter the priority or criteria  
24 for awarding financial assistance established pursuant to section 4 of  
25 P.L. , c. (C. )(now before the Legislature as this bill.

26 f. An eligible owner or operator may only be awarded that amount  
27 of financial assistance 'issued as a loan'<sup>1</sup> for which the applicant  
28 demonstrates he could not qualify for and obtain as a commercial loan.  
29 'The provisions of this subsection shall not apply to an owner or  
30 operator or petroleum underground storage tank used to store heating  
31 oil for onsite consumption in a residential building.'<sup>1</sup>

32  
33 6. An eligible owner or operator seeking financial assistance from  
34 the fund shall file an application on a form to be developed by the  
35 authority. The application form shall be submitted with the application  
36 fee. The application fee per facility for residential petroleum  
37 underground storage tanks shall be \$250. The <sup>2</sup>authority may establish  
38 the<sup>2</sup> application fee per facility for nonresidential petroleum  
39 underground storage tanks <sup>2</sup>[shall be \$500 for facilities with up to six  
40 tanks, and \$1,000 for facilities with seven or more tanks]<sup>2</sup>.

41 The authority shall adopt rules and regulations listing the filing  
42 requirements for a complete application for financial assistance. If a  
43 financial assistance application is determined to be incomplete by the  
44 authority, an applicant shall have 30 days from the date of receipt of  
45 written notification of incompleteness to file such additional  
46 information as may be required by the authority for a completed

1 application. If an applicant fails to file the additional information  
2 within the 30 days, the filing date for that application shall be the date  
3 that such additional information is received by the authority. If the  
4 additional information is filed within the 30 days and is satisfactory to  
5 the authority, the filing date for that application shall be the initial date  
6 of application with the authority. Notwithstanding the above, if a  
7 completed application has been submitted and the applicant fails to  
8 submit the filing fee, then the filing date for the application shall not  
9 be established until the date on which the authority receives the  
10 application fee.

11 An applicant shall have 120 days from receipt of notice of approval  
12 of a financial assistance award to submit to the authority an executed  
13 contract for the upgrade, closure, or remediation, or all three, as the  
14 case may be, that is consistent with the terms and conditions of the  
15 financial assistance approval. Failure to submit an executed contract  
16 within the allotted time, without good cause, may result in an  
17 alteration of an applicant's priority ranking.

18

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

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

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

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

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

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

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

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

10 c. An application for financial assistance from the fund for an  
11 upgrade or closure of a regulated tank shall include all regulated tanks  
12 at the facility for which the applicant is seeking financial assistance.  
13 Once financial assistance for an upgrade, closure or a remediation is  
14 awarded for a facility, no additional award of financial assistance may  
15 be made for that facility. <sup>2</sup>However, if an applicant discovers while  
16 performing upgrade or closure activities that a remediation is  
17 necessary at the site of a facility, and if financial assistance was  
18 previously awarded for that site only for an upgrade or closure of a  
19 regulated tank, the applicant may amend his application and apply for  
20 financial assistance for the required remediation subject to the  
21 limitations enumerated in section 5 of this act.<sup>2</sup> An application for  
22 financial assistance for an upgrade or closure of a regulated tank shall  
23 be conditioned upon the applicant <sup>1</sup>[entering into an agreement with  
24 the department] agreeing<sup>1</sup> to perform, at the time of the upgrade or  
25 closure, any remediation necessary as a result of a discharge from the  
26 regulated tank and commencement of the remediation within the time  
27 prescribed and in accordance with the rules and regulations of the  
28 department.

29 d. No financial assistance shall be awarded for any regulated tank  
30 to meet the upgrade or closure requirements pursuant to  
31 42 U.S.C. §6991 et seq. or P.L. 1986, c. 102 (C. 58:10A-21 et seq.), or  
32 for the remediation of a discharge from any such regulated tank  
33 <sup>2</sup>except as provided in subsection c. of this section.<sup>2</sup> unless the  
34 application is filed with the authority prior to January 1, 1999 and the  
35 application is complete and the application fee is received by  
36 <sup>2</sup>[February] March<sup>2</sup> 1, 1999.

37 e. The date of occurrence of a discharge shall not affect eligibility  
38 for financial assistance from the fund. Except for a preliminary  
39 assessment or a site investigation performed after the effective date of  
40 P.L. , c. (C. ) (now before the legislature as this bill), and  
41 except as provided in subsection g. of this section, no award of  
42 financial assistance shall be made from the fund for the otherwise  
43 eligible project costs of a remediation, closure, or an upgrade, or  
44 parts thereof, completed prior to an award of financial assistance from  
45 the fund.

46 f. No financial assistance may be awarded from the fund for the



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

12 g. Notwithstanding any provision of P.L. , c. (C. )(now  
13 before the Legislature as this bill), where an eligible owner or operator  
14 has filed an application for financial assistance from the fund, and there  
15 are either insufficient monies in the fund or the authority has not yet  
16 acted upon the application or awarded the financial assistance, the  
17 eligible owner or operator may expend its own funds for the upgrade,  
18 closure, or remediation, and upon approval of the application, the  
19 authority shall award the financial assistance as a reimbursement of the  
20 monies expended for eligible project costs.

21

22 8. a. The authority shall adopt, pursuant to the <sup>1</sup>Administrative  
23 Procedure Act, <sup>1</sup>P.L.1968, c.410 (C.52:14B-1 et seq.), rules and  
24 regulations to:

25 (1) <sup>1</sup>[prescribe the application forms for financial assistance and the  
26 procedures for filing such forms;

27 (2) require an operator who is applying for financial assistance who  
28 is not the owner of the facility to provide a copy of the contractual  
29 relations between the operator and the owner, a certification that the  
30 owner approves the upgrade, closure, or remediation for which  
31 financial assistance is sought and a certification that the owner  
32 consents to a lien being placed upon the real property at which the  
33 facility is located;

34 (3) if the applicant is an owner who is not the operator, require the  
35 owner to provide a copy of the contractual relations between the  
36 owner and the operator;

37 (4) <sup>1</sup>require an applicant:

38 (a) <sup>1</sup>[to solicit at least three bids on the upgrade, closure and the  
39 remediation prior to entering into any contract to have any work  
40 performed;

41 (b) <sup>1</sup>to submit documentation or other information on the nature  
42 and scope of the work to be performed, cost estimates thereon, and,  
43 as available, proofs of the actual costs of all work performed;

44 <sup>1</sup>[(c)] (b) <sup>1</sup>to demonstrate, where applicable, an ability to repay the  
45 amount of any loan and to provide adequate collateral to secure the  
46 amount of a loan;

1       ~~'[(d)] (c)'~~ to submit a certification that the applicant has not  
 2 engaged in any of the conduct described in subsection b. of section ~~'[6]~~  
 3 ~~7'~~ of P.L. , c. (C. )(now before the Legislature as this bill);

4       ~~'[(e)] (d)'~~ to submit a certification that any upgrade, closure, and  
 5 remediation being undertaken will be or was completed or was in  
 6 conformance with rules and regulations of the department;

7       ~~'[(f) to submit documentation concerning anticipated and actual~~  
 8 ~~upgrade and remediation costs; and]~~

9       ~~(e) require the loan or grant recipient to provide access at~~  
 10 ~~reasonable times to the subject property to determine compliance with~~  
 11 ~~the terms and conditions of the loan or grant; and'~~

12       ~~'[(g)] (f)'~~ to submit documentation and a certification ~~, as~~  
 13 ~~applicable,~~ that the applicant was unable to qualify for and obtain a  
 14 commercial loan for all or part of the eligible project costs;

15       ~~'[(5)] (2)'~~ require any financial assistance awarded to be used only  
 16 for the purposes for which the award is made ~~'and that the applicant~~  
 17 ~~is adhering to all of the terms and conditions of the loan agreement~~ ~~';~~  
 18 and

19       ~~'[(6)] (3)'~~ adopt such other requirements as may be deemed  
 20 necessary to carry out its responsibilities pursuant to this act.

21       b. Information submitted as part of an application that results in the  
 22 award of a grant from the fund shall be a public record subject to the  
 23 provisions of P.L.1963, c.73 (C.47:1A-1 et seq.). Information  
 24 submitted as part of an application that results solely in the award of  
 25 a loan from the fund shall not be a public record subject to the  
 26 provisions of P.L.1963, c.73 (C.47:1A-1 et seq.).

27       c. The authority may file a lien on real property ~~'[of] owned by'~~ the  
 28 applicant ~~'[other than] in addition to'~~ the property at which the subject  
 29 facility is located to secure a loan, except that such a filing shall be  
 30 subject to the restrictions on the use of the applicant's primary  
 31 residence as collateral, as provided in section 5 of P.L. '1, c. '[,]'  
 32 (C. )(now before the Legislature as this bill) ~~'and paragraph (3) of~~  
 33 ~~subsection d. of this section'~~. Liens filed pursuant to this subsection  
 34 shall not affect any valid lien, right or interest in the real property filed  
 35 in accordance with established procedure prior to the filing of this  
 36 notice of lien.

37       d. In establishing requirements for applications for financial  
 38 assistance, the authority:

39       (1) may not impose conditions that interfere with the everyday  
 40 normal operations of a financial assistance recipient's business  
 41 activities, except to the extent necessary to ~~'[prevent intentional~~  
 42 ~~actions designed to avoid repayment of any loan, or that significantly~~  
 43 ~~diminish] ensure the recipient's ability to repay the loan and to~~  
 44 ~~preserve'~~ the value of any loan collateral;

45       (2) shall strive to minimize the complexity and costs to applicants  
 46 or recipients of compliance with such requirements;

1 (3) may not require as collateral for any loan, except with the  
2 applicant's consent, the primary residence of the applicant, except that  
3 this paragraph shall not apply to a loan issued from the fund for the  
4 eligible project costs for a petroleum underground storage tank at the  
5 site of the primary residence; and

6 (4) shall expeditiously process all applications in accordance with  
7 a schedule established by the authority for the review thereof and the  
8 taking of final action, which schedule shall reflect the complexity of an  
9 application.

10

11 9. <sup>1</sup>a. <sup>1</sup>The department and the Office of the Attorney General may  
12 not take any enforcement action pursuant to section 12 of P.L.1986,  
13 c.102 (C.58:10A-32) against the owner or operator of a regulated tank  
14 for failure to upgrade or close a regulated tank or for failure to  
15 maintain evidence of financial responsibility pursuant to section 5 of  
16 P.L.1986, c.102 (C.58:10A-25), if the owner or operator, (1) has  
17 submitted an application for financial assistance from the fund prior to  
18 the date upon which the upgrade or closure is required by law to be  
19 completed, (2) the authority has not yet acted on the application as of  
20 that date, (3) the owner or operator agrees to enter into a consent  
21 agreement or a memorandum of agreement with the department to  
22 comply with the upgrade, closure, remediation, and financial  
23 responsibility requirements, <sup>2</sup>[and] <sup>2</sup>(4) the owner or operator complies  
24 with the provisions of the consent agreement or the memorandum of  
25 agreement <sup>2</sup>, and (5) the owner or operator maintains <sup>3</sup>[inventory  
26 records as required pursuant to section 7 of P.L.1986, c.102  
27 (C.58:10A-27)<sup>2</sup>] an acceptable method of release detection for the  
28 regulated tanks that are the subject of the application for financial  
29 assistance as required pursuant to section 5 of P.L.1986, c.102  
30 (C.58:10-25)<sup>3</sup>.

31 <sup>1</sup>b. The provisions of subsection a. of this section shall not apply  
32 upon the denial of an application for financial assistance or in the case  
33 of a knowing discharge that may result in a serious threat to <sup>2</sup>the  
34 public health or <sup>2</sup>the environment. The department shall make an  
35 annual report to the Senate Environment Committee and the Assembly  
36 Agriculture and Waste Management Committee <sup>2</sup>or their successors<sup>2</sup>  
37 listing any enforcement actions taken against an owner or operator of  
38 a regulated tank who meets the requirements of subsection a. of this  
39 section. The report shall list the name of the violator, the specific  
40 statute or regulation alleged to have been violated, the status of the  
41 case at the time of the report, and the penalty imposed.<sup>1</sup>

42

43 10. a. All loans awarded from the fund shall be for a term not to  
44 exceed ten years. Except as provided in subsection b. of section 5 of  
45 P.L. , c. (C. )(now before the Legislature as this bill), all loans  
46 shall be at a rate between two percent and the <sup>1</sup>[Federal Discount]

1 Prime<sup>1</sup> Rate at the time of approval, or at the time of loan closing if  
2 the '[discount] prime<sup>1</sup> rate is lower at that time. The authority shall  
3 determine the interest rate to be imposed based on the applicant's  
4 ability to repay the loan.

5 b. Upon the sale of the facility for which the loan was made, the  
6 unpaid balance of the loan shall become immediately payable in full.  
7 Upon the sale of a facility for which a conditional hardship grant was  
8 made pursuant to section 5 of P.L. , c. (C )(now before the  
9 Legislature as this bill), that amount of the conditional hardship grant  
10 that must be repaid, as calculated pursuant to section 16 of P.L. ,  
11 c. (C. )(now pending before the Legislature as this bill), shall  
12 become immediately payable in full.

13

14 11. Notwithstanding any other provision of P.L. , c. (C. )  
15 (now before the Legislature as this bill), if an owner or operator  
16 maintains environmental liability or other insurance coverage for the  
17 remediation of a discharge, the insurance coverage shall be the primary  
18 coverage for the costs of a remediation. Eligible owners and operators  
19 may apply for financial assistance from the fund for any excess thereof,  
20 including any deductible, up to the per facility monetary limits set forth  
21 in section 5 of P.L. , c. (C. )(now before the Legislature as  
22 this bill). An eligible owner or operator shall file a notice of a claim  
23 with its insurance carrier prior to filing an application for financial  
24 assistance from the fund. The notice of claim shall list the fund as a  
25 beneficiary of the claim to the extent of an award of financial  
26 assistance is made from the fund. As a condition of receiving an  
27 award of financial assistance from the fund, the eligible owner or  
28 operator shall agree to diligently pursue the claim against its insurance  
29 carrier.

30

31 12. The authority and the department may enter into a  
32 memorandum of agreement whereby any of the powers or  
33 responsibilities that the authority may exercise pursuant to P.L. ,  
34 c. (C. )(now before the Legislature as this bill), may be exercised  
35 by the department. The authority may require an applicant for  
36 financial assistance to enter into an agreement with the department  
37 prior to an application being deemed complete, which agreement shall  
38 provide that any upgrade, closure, or remediation will be performed  
39 pursuant to rules and regulations of the department. Any agreement,  
40 review of documents, or other powers to be exercised by the  
41 department pursuant to this section must be completed by the  
42 department within '[30] 45<sup>1</sup> days of the application being submitted to  
43 the department. Pursuant to the memorandum of agreement, the  
44 authority and the department may provide that any of the monies in the  
45 fund that may be used for administrative expenses by the authority  
46 pursuant to section 3 of P.L. , c. (C. )(now before the

1 Legislature as this bill), may be used by the department in carrying out  
2 its responsibilities under this section.

3 13. The authority shall establish a joint application filing, review  
4 and approval procedure whereby a person who is eligible for financial  
5 assistance from the fund, created pursuant to section 3 of P.L. ,  
6 c. (C. )(now before the Legislature as this bill) and who is  
7 eligible for financial assistance from the Hazardous Discharge Site  
8 Remediation Fund, created pursuant to section 26 of P.L.1993, c.139  
9 (C.58:10B-4), may file one application for financial assistance from  
10 both funds and receive a joint response from the authority that  
11 approves or disapproves the application in whole or in part.

12

13 14. a. Payment of any grant from the fund, or of a loan from the  
14 fund where the loan is in default and is uncollectible, for any costs  
15 relating to a remediation, shall be conditioned upon the authority being  
16 subrogated to all of the rights of an owner or operator against any  
17 insurance carrier, against any previous owner or operator of the  
18 facility where the previous owner or operator engaged in any conduct  
19 identified in paragraphs (1) or (2) of subsection b. of section 7 of  
20 P.L. , c. (C. ) (now before the Legislature as this bill), and  
21 against any other person liable for the discharge pursuant to subsection  
22 c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), for the costs of  
23 the remediation necessitated by the discharge. In an action by the  
24 authority to enforce a right of subrogation, the authority shall be  
25 entitled to invoke all the rights and defenses available to the grant or  
26 loan recipient if the action had been brought by the grant or loan  
27 recipient against such other person. Nothing in this subsection shall  
28 be construed to affect or limit any right that an owner or operator of  
29 a petroleum underground storage tank may have under statutory or  
30 common law against any other person concerning a discharge of  
31 petroleum from that tank.

32 b. The authority may seek to recover any financial assistance or  
33 that part of an award of financial assistance that exceeds the eligible  
34 project costs or that was obtained as a result of conduct described in  
35 paragraph (4) of subsection b. of section 7 of P.L. , c. (C. )(now  
36 before the Legislature as this bill). If the authority is the prevailing  
37 party in an action to recover financial assistance payments made from  
38 the fund, the authority shall be entitled to all investigative and legal  
39 costs incurred by the authority in bringing and prosecuting the action,  
40 as well as interest charges which shall accrue as of the date such  
41 payments were made from the fund, unless the court makes a finding  
42 of a lack of intent to defraud the fund. The rate of interest shall be the  
43 interest rate for judgments established pursuant to the Rules  
44 Governing the Courts of the State of New Jersey.

45

46 15. a. A person who purposely, knowingly, recklessly, or

1 negligently provides false documents or false information to the  
2 authority or to the department, or withholds documents or  
3 information, in relation to an application for financial assistance from  
4 the fund or in relation to documents or information that may be  
5 required as a condition of receiving an award of financial assistance  
6 from the fund, shall be subject to a civil penalty not to exceed  
7 \$50,000. Any penalty incurred under this subsection may be recovered  
8 with costs in a summary proceeding pursuant to "the penalty  
9 enforcement law," N.J.S.2A:58-1 et seq. in the Superior Court.

10 b. (1) The authority may commence a civil action in Superior  
11 Court to recover any financial assistance awarded to an applicant from  
12 the fund if financial assistance was obtained, in whole or in part, as the  
13 result of providing false documents or false information to the  
14 authority or to the department or by withholding documents or  
15 information from the authority or the department. The action to  
16 recover money awarded by the authority may be combined with any  
17 action to impose penalties provided for in subsection a. of this section.

18 (2) The authority may commence a civil action in Superior Court  
19 to recover any financial assistance awarded as a loan where the  
20 recipient of the loan has not made loan repayments in accordance with  
21 the loan agreement, where any condition or provision of the loan  
22 agreement has been violated by the loan recipient, or to enforce any  
23 lien filed pursuant to the issuance of financial assistance.

24 c. (1) A person who purposely or knowingly provides false  
25 documents or false information to the authority or to the department,  
26 or withholds documents or information, in relation to an application  
27 for financial assistance from the fund or in relation to documents or  
28 information that may be required as a condition of receiving an award  
29 of financial assistance from the fund, with the intent to alter the  
30 applicant's eligibility for financial assistance from the fund, alter the  
31 priority of the applicant's application to receive financial assistance  
32 from the fund, cause the applicant to receive a larger grant award than  
33 the applicant would otherwise be eligible for, or obtain financial  
34 assistance from the fund in excess of the eligible project costs, shall be  
35 guilty of a crime of the third degree.

36 (2) A person who recklessly provides false documents or false  
37 information to the authority or to the department, or withholds  
38 documents or information, in relation to an application for financial  
39 assistance from the fund or in relation to documents or information  
40 that may be required as a condition of receiving an award of financial  
41 assistance from the fund, <sup>1</sup>[with the intent to alter] which results in the  
42 alteration of<sup>f</sup> the applicant's eligibility for financial assistance from the  
43 fund, <sup>1</sup>[alter] the alteration of<sup>f</sup> the priority of the applicant's application  
44 to receive financial assistance from the fund, <sup>1</sup>[cause] which causes<sup>1</sup> the  
45 applicant to receive a larger grant award than the applicant would  
46 otherwise be eligible for, or obtain financial assistance from the fund

1 in excess of the eligible project costs, shall be guilty of a crime of the  
2 fourth degree.

3  
4 16. a. In addition to any other financial assistance requirements  
5 imposed by the authority pursuant to P.L. , c. (C. )(now before  
6 the Legislature as this bill), any award of financial assistance from the  
7 fund shall constitute, in each instance, a debt of the applicant to the  
8 fund. The debt shall constitute a lien on the real property at which the  
9 subject facility is located. The lien shall be in the amount of the  
10 financial assistance awarded the applicant. The lien shall attach when  
11 a notice of lien, incorporating <sup>2</sup>the name of the property owner,<sup>2</sup> a  
12 description of the real property on which the subject facility is located  
13 and an identification of the amount of the financial assurance awarded,  
14 is duly filed with the <sup>2</sup>[clerk of the Superior Court. The clerk shall  
15 promptly enter upon the civil judgment or order docket the name and  
16 address of the applicant, the address of the real property on which the  
17 subject facility is located, and the amount of the lien as set forth in the  
18 notice of lien. Upon entry by the clerk, the lien shall attach to the real  
19 property on which the subject facility is located, whether or not the  
20 applicant is insolvent] county recording officer in the county in which  
21 the property is located<sup>2</sup>.

22 Where financial assistance from the fund is awarded as a  
23 combination of a loan and a grant, separate liens for the loan and the  
24 grant shall be filed. No lien shall be placed on any real property of an  
25 applicant based on a conditional hardship grant awarded pursuant to  
26 paragraph (1) of subsection c. of section 5 of P.L. , c. (C. )(now  
27 before the Legislature as this bill), for a remediation necessitated by a  
28 discharge from a petroleum underground storage tank used to store  
29 heating oil at the applicant's primary residence.

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

32 c. The lien that is filed on real property pursuant to a conditional  
33 hardship grant shall be removed upon repayment of the amount of the  
34 grant that is unsatisfied or upon the end of a 15 year period in which  
35 the site for which the financial assistance was awarded continued to be  
36 operated in substantially the same manner as it was operated at the  
37 time of the award of financial assistance. The period of operation need  
38 not run consecutively. Beginning with the 11th year of operating in  
39 substantially the same manner, 20% of the conditional hardship grant  
40 shall be deemed satisfied with an additional 20% to be satisfied each  
41 year until the entire amount of the conditional hardship grant is  
42 satisfied at the end of the 15 year period. The owner or operator of  
43 the facility claiming to have satisfied a conditional hardship grant due  
44 to the 15 year period of operation, shall submit a certification of this  
45 fact to the authority. Upon repayment of the unsatisfied grant award  
46 or upon submittal of this certification, unless the authority has made

1 a finding that the certification is not correct, the authority shall remove  
2 the lien from the property.

3 Where real property for which a conditional hardship grant was  
4 awarded is not being operated in substantially the same manner, the 15  
5 year period to satisfy the lien shall be tolled. If at any time prior to the  
6 satisfaction of the lien the property is developed or operated<sup>1</sup>[, or  
7 proposed for development or operation,]<sup>1</sup> for a purpose that is not  
8 substantially the same as its operation at the time of the award of the  
9 conditional hardship grant, the grant recipient shall so certify to the  
10 authority upon the change in operation. Upon receipt of this  
11 certification, the authority shall determine, based upon the new  
12 operation of the property if the financial assistance shall continue as a  
13 conditional hardship grant or if it shall be converted into a loan. In  
14 making this determination, the authority shall base its decision on the  
15 financial hardship factors used in determining the original eligibility for  
16 the conditional hardship grant.

17 The authority may take whatever enforcement actions it deems  
18 necessary to verify the operation of any property for which a  
19 conditional hardship grant was made. <sup>1</sup> The terms and conditions of  
20 any loan converted from a grant pursuant to this subsection shall be  
21 <sup>2</sup>[established by the authority] the same as those authorized pursuant  
22 to this act<sup>2,1</sup>.

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

25  
26 17. a. Within 180 days of the effective date of this act, the New  
27 Jersey Economic Development Authority shall adopt, pursuant to the  
28 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
29 seq.), rules and regulations for the administration of the Petroleum  
30 Underground Storage Tank Remediation, Upgrade, and Closure Fund  
31 and the issuance of financial assistance therefrom as necessary to  
32 implement this act.

33 b. Within 180 days of the effective date of this act, the Department  
34 of Environmental Protection shall adopt, pursuant to the  
35 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
36 seq.), rules and regulations for the administration of the Petroleum  
37 Underground Storage Tank Remediation, Upgrade, and Closure Fund  
38 and the issuance of financial assistance therefrom as necessary to  
39 implement this act.

40 <sup>2</sup>c. Prior to the adoption of rules and regulations pursuant to this  
41 section, the authority and the department may, notwithstanding the  
42 provisions of the "Administrative Procedure Act," adopt procedures  
43 for the acceptance and review of financial assistance applications from  
44 the fund. No financial assistance may be awarded however, until the  
45 rules and regulations are adopted pursuant to this section.<sup>2</sup>

46 18. There is imposed upon the owner or operator of a facility who



1 is required to maintain evidence of financial responsibility pursuant to  
2 section 5 of P.L.1986, c.102 (C.58:10A-25) or pursuant  
3 to 42 U.S.C.§6991 et seq., and any regulations adopted pursuant  
4 thereto, and who does not maintain that evidence of financial  
5 responsibility, an annual surcharge. The annual surcharge shall be  
6 \$1,500 for facilities with one or two petroleum underground storage  
7 tanks, \$3,500 for facilities with three to six petroleum underground  
8 storage tanks, and \$6,000 for facilities with seven or more petroleum  
9 underground storage tanks. The owner or operator shall pay this  
10 surcharge to the authority for deposit into the Petroleum Underground  
11 Storage Tank Remediation, Upgrade, and Closure Fund. The New  
12 Jersey Spill Compensation Fund shall not be considered as evidence of  
13 financial responsibility for the purposes of this section.<sup>1</sup>

14 Nothing in this section shall be construed to negate the requirement  
15 of an owner or operator of a facility to maintain evidence of financial  
16 responsibility as may be required pursuant to section 5 of P.L.1986,  
17 c.102 (C.58:10A-25) or pursuant to 42 U.S.C.§6991 et seq.

18 The New Jersey Economic Development Authority, in consultation  
19 with the Department of Environmental Protection shall adopt,  
20 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
21 (C.52:14B-1 et seq.), rules and regulations imposing the surcharge.  
22

23 19. a. The New Jersey Economic Development Authority and the  
24 Department of Environmental Protection shall present a joint annual  
25 report to the presiding officers of the two houses of the Legislature  
26 and to the chairmen and members of the Assembly Agriculture and  
27 Waste Management Committee and the Senate Environment  
28 Committee, or their successors, on the status of the financial assistance  
29 program, which shall include: a statement on receipts and expenditures  
30 for the Petroleum Underground Storage Tank Remediation, Upgrade,  
31 and Closure Fund; the number of applications for financial assistance  
32 received and the actions taken on the applications; the amount of  
33 financial assistance awarded as loans or as grants for both public  
34 entities and other applicants; the identity and location of the facilities  
35 receiving the financial assistance; an assessment of the adequacy of  
36 current funding levels in meeting the statutory objectives of the fund;  
37 an accounting of expenses incurred by the authority in administering  
38 the fund; and such other information, including any legislative or  
39 administrative recommendations for program changes, as the authority  
40 and the department may deem appropriate or useful. The annual  
41 reports shall be made not later than March <sup>1</sup>[1] <sup>31</sup> of each year  
42 beginning one year following the effective date of this act. The first  
43 report shall also contain a needs survey, which shall estimate the scope  
44 and projected costs of all potentially eligible remediation applications  
45 for financial assistance from the fund.

46 20. Nothing in P.L. , c. (C. ) (pending in the Legislature as

1 this bill) shall be construed to:

2 (1) impose any liability on the State or the authority for any claims  
3 made to, or approved from, the Petroleum Underground Storage Tank  
4 Remediation, and Closure Upgrade Fund, and the extent of the State's  
5 or authority's responsibility for the payment or reimbursement of an  
6 approved application shall be limited to the amount of otherwise  
7 unobligated moneys available in the fund;

8 (2) impose any liability on the State or the authority for the quality  
9 of any work performed pursuant to a remediation, closure or an  
10 upgrade for which financial assistance is made; or

11 (3) alter any obligation of an owner or operator of a facility, who  
12 is eligible for financial assistance from the fund, to comply in a timely  
13 manner with all lawful requirements relating to the facility.

14

15 21. There is appropriated from the special account in the General  
16 Fund created pursuant to Article VIII, Section II, paragraph 6 of the  
17 New Jersey Constitution '[~~\$8,000,000~~] \$9,900,000' to the New Jersey  
18 Economic Development Authority which shall be deposited into the  
19 Petroleum Underground Storage Tank Remediation, Upgrade and  
20 Closure Fund, established pursuant to section 3 of P.L. , c.  
21 (C. ) (pending in the Legislature as this bill), for use for any of  
22 the purposes for which that fund has been established. Expenditures  
23 of moneys in the fund shall be subject to the conditions set forth in  
24 Article VIII, Section II, paragraph 6 of the New Jersey Constitution  
25 and the provisions in P.L. , c. (C. ) (now before the Legislature as  
26 this bill).

27

28 22. Any person who has owned or operated an underground  
29 storage tank as defined pursuant to section 2 of P.L.1986, c.102  
30 (C.58:10A-22) who has not registered that tank pursuant to the  
31 provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), shall not be  
32 subject to a civil penalty for the failure to register that underground  
33 storage tank if the person, within one year of the effective date of this  
34 act, registers the tank pursuant to P.L.1986, c.102. The department  
35 may require that person to pay any registration fees that would have  
36 been paid had the underground storage tank been registered in  
37 accordance with law.

38

39 23. Sections 17 and 18 of P.L.1986, c.102 (C.58:10A-36 and  
40 C.58:10A-37) are repealed, except that in order to assure the  
41 uninterrupted funding of loans for regulated tank upgrades pending the  
42 adoption of rules and regulations pursuant to section 17 of P.L. ,  
43 c. , (C. )(pending in the Legislature as this bill), rules and  
44 regulations adopted pursuant to section 17 of P.L.1986, c.102  
45 (C.58:10A-37) that are in effect on the effective date of P.L. ,  
46 c. , (C. )(pending in the Legislature as this bill), shall continue in

1 force until the adoption of rules and regulations by the authority  
2 pursuant to section 17 of P.L. , c. (C. )(now before the  
3 Legislature as this bill). The repayment of any outstanding loans made  
4 from the State Underground Storage Tank Improvement Fund shall be  
5 made to the New Jersey Economic Development Authority for deposit  
6 into the Petroleum Underground Storage Tank Remediation, and  
7 Closure Upgrade Fund. Any monies in the State Underground  
8 Storage Tank Improvement Fund is transferred to the New Jersey  
9 Economic Development Authority for deposit into the Petroleum  
10 Underground Storage Tank Remediation, Upgrade, and Closure  
11 Fund.

12

13 24. Prior to July 1, 1997, or within six months of an underground  
14 storage tank being upgraded and the site remediated as required  
15 pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.), whichever is later,  
16 the owner or operator of that underground storage tank shall submit  
17 to the department evidence of financial responsibility for taking  
18 corrective action and compensating third parties as is required  
19 pursuant to section 5 of P.L. 1986, c.102 (C.58:10A-25) or pursuant  
20 to 42 U.S.C.§6991 et seq. After a regulated tank is upgraded, the  
21 New Jersey Spill Compensation Fund, created pursuant to the "Spill  
22 Compensation and Control Act," <sup>1</sup>[P.L.197, C.] P.L.1976, c.141<sup>1</sup>  
23 (C.58:10-23.11 et seq.) shall no longer serve as the evidence of  
24 financial responsibility for the regulated tank.

25

26 25. There is appropriated from the General Fund to the New Jersey  
27 Economic Development Authority the sum of \$50,000 for the adoption  
28 of rules and regulations for administering the Petroleum Underground  
29 Storage Tank Remediation, Upgrade, and Closure Fund, established  
30 pursuant to section 3 of P.L. , c. (C. ). The authority shall  
31 transfer such sums from this appropriation to the Department of  
32 Environmental Protection as the authority and the department deem  
33 necessary to allow the department to adopt rules and regulations as  
34 necessary pursuant to this act. Upon sufficient monies being deposited  
35 into the Petroleum Underground Storage Tank Remediation,  
36 Upgrade, and Closure Fund that may be used for these purposes, the  
37 authority shall reimburse the General Fund the amount of this  
38 appropriation.

39

40 26. This act shall take effect immediately <sup>2</sup>[, but sections 4 through  
41 20 of this act shall remain inoperative until the adoption of appropriate  
42 rules and regulations therefor. Upon the effective date of this act, the  
43 New Jersey Economic Development Authority, the Department of  
44 Environmental Protection, and the Department of the Treasury may  
45 take such actions as necessary to carry out the purposes of this act]<sup>2</sup>.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[Second Reprint]

**SENATE, No. 1756**

with Assembly Committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 9, 1997

The Assembly Appropriations Committee reports favorably Senate Bill No. 1756 (2R), with committee amendments.

Senate Bill No. 1756 (2R), as amended, creates a loan and grant program to fund the upgrade and closure of underground storage tanks (USTs) and any necessary remediation funded by corporation business tax revenues dedicated by the New Jersey Constitution for those purposes.

The Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund will be used by the Economic Development Authority (EDA) for loans and grants to eligible owners and operators to upgrade or close underground storage tanks or to remediate tank discharges. The EDA may use interest on fund monies for administrative costs. Tank owners and operators must have 10 or fewer tanks, have a net worth of less than \$2 million, and be unable to obtain a commercial loan to be eligible. Homeowners will be eligible for loans and grants to clean up discharges from underground storage tanks that store heating oil, based on homeowner's ability to repay. Public entities will also be eligible for financial assistance. Loans or grants for upgrades will be available for regulated tanks only.

Interest free loans will be available to governmental entities and loans at rates between 2% and prime, depending on the recipient's ability to repay, will be available to private parties. Loans will be available to an eligible commercial owner or operator who can demonstrate the inability to obtain a commercial loan, but can still demonstrate the ability to repay a loan from the fund. Loans will be for a 10 year term with a \$1 million cap per facility.

The bill makes hardship grants available to persons with a net worth no greater than \$100,000 and an income of no more than \$100,000. No applicant may receive a grant in excess of \$250,000. The total amount in grants that may be awarded may not exceed 10% of the total assistance awarded in any one year. Hardship is determined by a finding that some eligible project costs could not be repaid if made in the form of a loan; any part of the financial assistance

that a person can repay will be given as a loan with the remainder given as a grant. A grant recipient must stay in business for 15 years or a portion of the grant must be repaid. The portion that must be repaid will decrease each year beginning in the tenth year after the grant is awarded. Beginning in the tenth year and each year thereafter, twenty percent of the amount of the grant is forgiven so that by the fifteenth year the entire amount of the grant is forgiven.

The bill requires that grants used for upgrades be converted into loans if the property's use changes. If a grant is converted to a loan, the terms of the loan will be the same as other loans issued under the bill.

The bill gives funding priority to 1) environmental need; 2) upgrade and remediation of federally regulated tanks; 3) closure and remediation of federally regulated tanks; 3) upgrade and remediation of State regulated tanks; 4) remediations of unregulated tanks; and 5) closure of State regulated tanks.

The bill sets aside ten percent of the amount annually appropriated to the fund for remediations for owners or operators of residential heating oil tanks. Applicants for this financial assistance would be eligible notwithstanding their ability to qualify for a commercial loan. Financial assistance may not be awarded to clean up to residential standards if a site is not zoned for residential use. If a residential UST fits the environmental risk priority category, moneys over the 10 % set aside for residential USTs may be awarded if it meets the other priority category's criteria. If the EDA does not receive sufficient applications for the 10% set aside for residential USTs, it may award that money in that year to other applicants.

If contamination is discovered at a regulated tank when only funding for upgrade or closure was requested, then the applicant may amend the application to request remediation funding.

The deadline for completed applications and payment of application fees for regulated tanks is March 1, 1999. The deadline for upgrades is December 22, 1998.

The bill prevents enforcement actions from being taken for failure to upgrade and remediate if a person applies for financial assistance and is waiting for it to be provided. However, an enforcement action may be taken if there is a serious threat to public health. During the waiting period, the applicant must maintain an acceptable method of release detection. If an application for financial assistance is denied, the authority to take enforcement action is restored. Also, enforcement action may be taken even when an application is pending in the case of a knowing discharge that may result in a serious threat to the environment or public health.

The bill requires the owner of an upgraded tank to obtain evidence of financial responsibility, requires owners of tanks that do not have such evidence to pay a surcharge, and provides that the New Jersey Spill Compensation Fund will not serve as such evidence once a tank has been upgraded.

The bill repeals section 17 and 18 of P.L.1986, c.102 (C.58:10A-36 and C.58:10A-37). These sections established the State Underground Storage Tank Improvement Fund and provided for its administration. The fund was established to provide loans to owners of facilities to replace or repair one or more underground storage tanks and to install monitoring systems. The repayment of any outstanding loans made from this existing fund will be made to the new fund created by this bill.

As amended and reported by this committee, Senate Bill No.1756 (2R) is identical to Assembly Bill No. 2649 ACS as reported by this committee.

**FISCAL IMPACT:**

The bill appropriates \$9.9 million to the Department of Environmental Protection from Constitutionally dedicated tax revenues for deposit to the newly created Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund.

The New Jersey Constitution, as amended by the voters in November 1996, dedicates 4 %of the revenues annually generated by the Corporation Business Tax for environmental purposes and requires that a minimum of one-third of that amount be appropriated for funding, including the provision of loans or grants, for the upgrade, replacement, or closure of underground storage tanks that store or were used to store hazardous substances, and for the costs of remediating any discharge therefrom

The bill also appropriates \$50,000 to the EDA from the General Fund for the cost of adopting rules and regulations needed to administer the fund. The EDA is required to repay this \$50,000 appropriation when sufficient monies are available in the fund.

**COMMITTEE AMENDMENTS:**

The committee amendments clarify the standards for denial of an application and change a standard for not taking legal action against the owner or operator of a regulated tank from the maintenance of inventory records to maintenance of a release detection method.

# SENATE ENVIRONMENT COMMITTEE

## STATEMENT TO

### SENATE, No. 1756

with committee amendments

# STATE OF NEW JERSEY

DATED: FEBRUARY 10, 1997

The Senate Environment Committee favorably reports Senate Bill No. 1756 with committee amendments.

This bill, the "Underground Storage Tank Finance Act," would create a loan and grant program to fund the upgrade and closure of underground storage tanks and any necessary remediation resulting therefrom. The program would be funded by moneys dedicated in the State Constitution for those purposes pursuant to the newly adopted Constitutional amendment.

This bill, as amended, appropriates the first of the dedicated moneys, \$9.9 million, to the newly created Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund. The fund, to be administered by the New Jersey Economic Development Authority, would be used to give loans and grants to eligible owners and operators for the upgrade or closure of underground storage tanks or for the remediation of a discharge therefrom. Eligible owners and operators must have 10 or fewer tanks, have a net worth of less than \$2 million, and be unable to obtain a commercial loan. Homeowners would also be eligible for loans and grants to clean up discharges from underground storage tanks that store heating oil based on their ability to repay. Finally, public entities would be eligible for financial assistance as well. Loans or grants for upgrades will be available for regulated tanks only.

Interest free loans would be made available to governmental entities and loans at between 2% and the Prime Rate would be made available to private parties depending on the recipient's ability to repay. Loans would be available to an eligible commercial owner or operator who can demonstrate the inability to obtain a commercial loan but can still demonstrate the ability to repay a loan from the fund. The loans would be for a 10 year term with a \$1 million cap per facility.

The bill makes grants available to persons with a net worth no greater than \$100,000 or an income of no more than \$100,000. Further, a grant may only be awarded to an applicant who cannot repay a loan. Any part of the financial assistance that a person can repay will be given as a loan with the remainder given as a grant. A

grant recipient must stay in business for 15 years or a portion of the grant must be repaid. The portion that must be repaid will decrease each year beginning in the tenth year after the grant is awarded. Beginning in the tenth year and each year thereafter, twenty percent of the amount of the grant forgiven so that by the fifteenth year the entire amount of the grant is forgiven. At this point the grant would never have to be repaid even if the grant recipient no longer stays in business.

The bill gives funding priority to 1) environmental need; 2) upgrade and remediation of federally regulated tanks; 3) closure and remediation of federally regulated tanks; 3) upgrade and remediation of State regulated tanks; 4) remediations of unregulated tanks; and 5) closure of State regulated tanks. The bill, as amended, would set aside ten percent annually to fund remediations for owners or operators of residential heating oil tanks. Applicants for this financial assistance would be eligible notwithstanding their ability to qualify for a commercial loan.

The bill prevents enforcement actions from being taken for failure to upgrade and remediate if a person applies for financial assistance and is waiting for it to be provided. If an application for financial assistance is denied, the authority to take enforcement action is restored. Also, enforcement action may be taken even when an application is pending in the case of a knowing discharge that may result in a serious threat to the environment.

The bill also requires the owner of an upgraded tank to obtain evidence of financial responsibility, requires owners of tanks that do not have such evidence to pay a surcharge, and provides that the New Jersey Spill Compensation Fund will not serve as such evidence once a tank has been upgraded.

The committee amendments:

(1) change the eligibility criteria for commercial owners or operators from those with 25 or fewer tanks and a net worth of no more than \$10 million to those with 10 or fewer tanks and a net worth no greater than \$2 million;

(2) eliminate certain requirements in the application process;

(3) alter the priority system to provide funding for closure and any necessary remediation of a tank regulated pursuant to the federal law as the third priority;

(4) set aside one tenth of the amount annually appropriated for loans and grants to remediate discharges from residential heating oil tanks;

(5) change the upper interest rate that EDA may charge from the Federal Discount Rate to the Prime rate;

(6) allow for the enforcement against a regulated tank owner for failure to upgrade or close a regulated tank or failure to maintain evidence of financial responsibility upon the denial of an application for financial assistance or in the case of a knowing discharge that may result in a serious threat to the environment;



- (7) increase the appropriation from \$8 million to \$9.9 million;
- and
- (8) make numerous other technical and procedural changes.



## OFFICE OF THE GOVERNOR NEWS RELEASE

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**RELEASE: SATURDAY**  
**Aug. 30, 1997**

### **Gov. Whitman Earmarks \$44.7 Million in Corporate Tax Dollars to Protect the Environment**

During a bill signing ceremony in Avon-By-The-Sea, Gov. Christie Whitman today appropriated \$44.7 million in environmental preservations funds, \$24.7 million of which will be used for a loan and grant program for remediation of underground storage tanks and to clean up hazardous waste sites. She also signed a bill to establish an economic development pilot program for the Pinelands.

"Today is an historic event because for the first time since we amended the state constitution a year ago, we are appropriating corporate tax dollars to help preserve the environment," Gov. Whitman said. "By bringing business and environmental groups together, there is no limit to what we can do to protect our precious natural resources."

S-1749 / A-2650, implements a November, 1996, amendment to the state constitution that allows the state to use corporate business tax dollars to clean up hazardous waste sites.

This bill appropriates \$14.8 million from the Corporate Business Tax fund to the Department of Environmental Protection to be used for costs incurred by the state for conducting environmental cleanups of contaminated waste sites.

It also reappropriates \$20 million from the "Hazardous Discharge Fund of 1986," that will be placed in the New Jersey Economic Development Authority's "Hazardous Discharge Site Remediation Fund."

This legislation was sponsored by Senators John O. Bennett (R-Monmouth) and Henry P. McNamara (R-Bergen / Passaic) and Assembly Member Steve Corodemus (R-Monmouth).

-- more --

Gov. Whitman also signed S-1756 / A-2649, that creates the "Underground Storage Tank Finance Act," which establishes a loan and grant program to fund the upgrade and closure of underground storage tanks as well as remediation made necessary from a leaking tank.

The bill also establishes the "Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund" to be run by the New Jersey Economic Development Authority. The bill appropriates \$9.9 million in corporate business tax dollars for the fund.

Sponsors of this legislation were Senators John D. Bennett (R-Monmouth) and Henry P. McNamara (R-Bergen / Passaic) and Assembly Members Steve Corodemus (R-Monmouth).

"We are all familiar with the potential threat posed by underground oil tanks," Gov. Whitman said. "Both state and federal law require that many existing underground storage tanks be either upgraded or removed. This is usually very expensive, especially for homeowners and small businesses."

The Governor also signed S-1262 / A-2131, which establishes a pilot project in the Pinelands that will provide for economic development in non-business growth areas of the Pinelands.

The program would promote economic development in communities of the Pinelands where large portions of the municipality are within environmentally-sensitive areas, where there are large areas of state property in the municipality, where there are limited sites available for development, where sewer service is not available and where there are no resources available for planning or economic development. The development would be compatible with the environmental characteristics of the area.

S-1262 / A-2131 was sponsored by the late Senator C. William Haines (R-Atlantic / Burlington / Camden), Senator Joseph M. Kyrillos (R-Middlesex / Monmouth) and Assembly Members Nicholas Asselta (R-Cape May / Atlantic / Cumberland) and Francis F. Bodine (R-Atlantic / Burlington / Camden).

"For the past three and a half years we have been working hard to improve, preserve and protect our environment," Gov. Whitman said. "We have preserved more than 80,000 acres of open space through our Green Acres program, we've fought to stop Midwest states from exporting their smog to our state and just two days ago, I signed an historic agreement with the State of New York and the EPA to restore and protect our ocean from Cape May to Montauk, N.Y. We have built a strong record of environmental protection, one that we can all be proud of."

###