

ASSEMBLY, No. 771

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywoman BUONO

1 AN ACT concerning underground storage tanks, supplementing Title  
2 58 of the Revised Statutes, and making an appropriation.

3

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

6

7 1. As used in this act:

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

10 "Closure" means the permanent elimination from service of any  
11 underground storage tank by removal or abandonment in place.

12 "Commissioner" means the Commissioner of Environmental  
13 Protection.

14 "Department" means the Department of Environmental Protection.

15 "Discharge" means an intentional or unintentional action or  
16 omission resulting in the releasing, spilling, leaking, pumping, pouring,  
17 emitting, emptying, or dumping of a hazardous substance onto the land  
18 or into the waters of the State.

19 "Eligible project costs" means the reasonable costs for work or  
20 services required to effectuate closure, or remediation an upgrade,  
21 which work or services are eligible for payment from the fund.

22 "Facility" means one or more underground storage tanks under  
23 single ownership at a common site.

24 "Fund" means the Underground Storage Tank Closure, Upgrade  
25 and Remediation Fund created pursuant to section 2 of this act.

26 "Hazardous substances" means hazardous substances as defined  
27 pursuant to section 2 of P.L.1986, c.102 (C.58:10A-22).

28 "Operator" means any person in control of, or having responsibility  
29 for, the daily operation of a facility.

30 "Owner" means any person who owns a facility whether or not  
31 there are any operational underground storage tanks at the facility.

32 "Underground storage tank" means a tank of any size, including  
33 appurtenant pipes, lines, fixtures, and other related equipment, that  
34 normally and primarily stores hazardous substances, the volume of  
35 which, including the volume of the appurtenant pipes, lines, fixtures

1 and other related equipment, is 10% or more below the ground.

2 "Underground storage tank" does not include:

3 (1) Septic tanks installed in compliance with regulations adopted  
4 by the department pursuant to "The Realty Improvement Sewerage  
5 and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et seq.);

6 (2) Pipelines, including gathering lines, regulated under the  
7 "Natural Gas Pipeline Safety Act of 1968," Pub.L.90-481 (49 U.S.C.  
8 §1671 et seq.), the "Hazardous Liquid Pipeline Safety Act of 1979,"  
9 Pub.L.96-129 (49 U.S.C. §2001 et seq.), or intrastate pipelines  
10 regulated under State law;

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

15 (4) Stormwater or wastewater collection systems operated in  
16 compliance with regulations adopted by the department pursuant to  
17 the "Water Pollution Control Act";

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

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

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

29 "Remediation" means all necessary actions to investigate and clean  
30 up any known, suspected, or threatened discharge of a hazardous  
31 substance pursuant to rules and regulations of the department.

32 "Upgrade" means the replacement of an underground storage tank,  
33 or the improvement of an underground storage tank, designed to meet  
34 the construction, installation, and operation standards for new and  
35 existing underground storage tanks as provide for in P.L.1986, c.102  
36 (C.58:10A-21 et seq.).

37

38 2. a. There is created in the New Jersey Economic Development  
39 Authority a special nonlapsing fund to be known as the "Underground  
40 Storage Tank Closure, Upgrade and Remediation Fund." The fund  
41 shall be administered by the authority and shall be the depository for:

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

43 (2) sums received as repayment of principal and interest on  
44 outstanding loans made from the fund;

45 (3) all non-refundable application fees collected pursuant to section  
46 3 of P.L. , c. (C. )(pending in the Legislature as this bill); and

- 1 (4) any return on investment of moneys deposited in the fund.
- 2 b. Moneys in the fund shall be allocated and used to provide loan  
3 guarantees to owners or operators of underground storage tanks which  
4 are required to meet the upgrade standards for underground storage  
5 tanks established pursuant to 42 U.S.C. §6991 et seq., or P.L.1986,  
6 c.102 (C.58:10A-21 et seq.), to close an underground storage tank, or  
7 to perform a remediation where a hazardous substance has been  
8 discharged, is suspected of having been discharged, or is threatening  
9 to be discharged, from an underground storage tank. Loan guarantees  
10 shall be made in accordance with criteria and other requirements  
11 adopted by the authority pursuant to sections 3 and 4 of P.L. ,  
12 c. (C. ) (pending in the Legislature as this bill).
- 13 c. The authority may use moneys in the fund for actual costs  
14 incurred in administering the fund, except that the amount of moneys  
15 from the fund that may be used for actual costs incurred in  
16 administering the fund shall not exceed in any fiscal year 3% of the  
17 total dollar amount set aside in reserve for the purpose of loan  
18 guarantees by the fund in that year. The 3% shall be in addition to  
19 such other moneys as may be appropriated for the administration of  
20 the fund by the Legislature.
- 21
- 22 3. a. The authority may use moneys in the fund to provide loan  
23 guarantees for up to 100% of eligible project costs, as determined by  
24 the authority, based upon the lowest responsible bid.
- 25 b. A qualified applicant for a loan guarantee from the fund shall be  
26 awarded a loan guarantee by the authority upon the availability of  
27 sufficient moneys in the fund. Priority rankings shall be based upon  
28 the date an application for a loan guarantee is filed with the authority.  
29 If a loan guarantee application is determined to be incomplete by the  
30 authority, an applicant shall have 30 days from the date of receipt of  
31 written notification of incompleteness to file such additional  
32 information as may be required by the authority for a completed  
33 application. If an applicant fails to file the additional information  
34 within the 30 days, the filing date for that application shall be the date  
35 that such additional information is received by the authority. An  
36 application shall be deemed complete when all the information  
37 required by the authority and a non-refundable application fee paid in  
38 full is received by the authority. The authority shall adopt an  
39 application fee schedule based upon the loan guarantee amount  
40 requested by an applicant, with the amount of the fee not to be less  
41 than \$250 nor more than \$750, except that if an application is  
42 withdrawn by an applicant, the authority shall refund a portion of the  
43 fee after deducting therefrom the actual costs incurred by the authority  
44 in processing the application up to the time of the withdrawal.
- 45 c. An applicant shall have 90 days from receipt of notice of  
46 approval of a loan guarantee application to submit to the authority an

1 executed contract for the closure, upgrade, or remediation that is  
2 consistent with the terms and conditions of the loan guarantee. Failure  
3 to submit an executed contract within the allotted time, without good  
4 cause, may result in an alteration of an applicant's priority ranking.

5 d. (1) Notwithstanding the priority ranking requirements of  
6 subsection b. of this section, the authority may accord a preferential  
7 ranking to a completed application of an applicant who has not  
8 previously received a loan guarantee from the fund over an applicant  
9 who has previously received a loan guarantee from the fund, whenever  
10 the authority determines that fund assets for the fiscal year are  
11 insufficient to guarantee all qualified applications.

12 (2) Notwithstanding the priority ranking requirement of subsection  
13 b. of this section, the authority may accord a preferential ranking to  
14 a completed application for an applicant for the eligible project costs  
15 that involves an emergency situation, as defined by the authority, that  
16 requires immediate action in response to a known, suspected, or  
17 threatened discharge from an underground storage tank.

18 e. No loan shall be guaranteed for an owner or operator of a  
19 facility:

20 (1) unless the facility is properly registered with the department  
21 pursuant to section 3 of P.L.1986, c.102 (C.58:10A-23), as applicable,  
22 and all fees or penalties due and payable on the facility to the  
23 department have been paid, or the nature or amount of the fee or  
24 penalty is contested in accordance with law; or

25 (2) if the owner or operator knowingly provides false information  
26 or withholds information that would materially affect the issuance of  
27 a loan guarantee or the terms and conditions of a loan guarantee.

28 f. If a remediation of a release of a hazardous substance from a  
29 facility for which an application for a loan guarantee is made is  
30 required on- or off-site of that facility, the guarantee of the loan by the  
31 fund for that facility shall be conditional upon commencement of the  
32 remediation within the time prescribed and in accordance with the  
33 rules and regulations of the department.

34  
35 4. a. The authority shall adopt rules and regulations to:

36 (1) prescribe the application forms for loan guarantees and the  
37 procedures for filing such forms;

38 (2) require an operator who is applying for a loan guarantee who  
39 is not the owner of an eligible facility to provide a copy of the  
40 contractual relations between the operator and the owner, and  
41 certification that the owner approves the upgrade for which a loan  
42 guarantee is sought;

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

46 (4) require an applicant:

- 1 (a) to submit documentation or other information on the nature and  
2 scope of the work to be performed, cost estimates thereon, and, as  
3 available, proofs of the actual costs of all work performed; and
- 4 (b) require the applicant to demonstrate an ability to repay the  
5 amount of the loan and to provide adequate collateral to secure the  
6 amount of a loan;
- 7 (5) require loan moneys to be used only for the purposes for which  
8 the loan is made, and prohibit the assignment or encumbrance of a loan  
9 or loan payment;
- 10 (6) require a loan guarantee recipient to provide to the department,  
11 as necessary or upon request, (a) evidence that (i) loan moneys are  
12 being spent for the purposes for which the loan is made, and (ii) the  
13 owner or operator is adhering to all of the terms and conditions of the  
14 loan guarantee, (b) entry at reasonable times to the facility or facility  
15 site for which the loan guarantee is made, to determine compliance  
16 with the terms and conditions of the loan and loan guarantee, and (c)  
17 documentation concerning anticipated and actual costs;
- 18 (7) require that any remediation being undertaken due to discharge  
19 of a hazardous substance from an underground storage tank be  
20 completed in conformance with rules and regulations of the  
21 department;
- 22 (8) require an applicant to represent that during the life of the loan  
23 guarantee, the applicant will comply with all laws, and pay all required  
24 taxes, other governmental assessments, or other payments owing on  
25 the facility for which application is made, or on the loan collateral; and
- 26 (9) adopt such other requirements as may be deemed necessary to  
27 carry out the legislative purposes of the upgrade fund.
- 28 b. Information submitted as part of an application for a loan  
29 guarantee shall be a public record subject to the provisions of  
30 P.L.1963, c.73 (C.47:1A-1 et seq.). An applicant may, however,  
31 request the department to maintain the confidentiality of any  
32 information relating to the personal or business finances of the  
33 applicant.
- 34 c. In establishing requirements for applications for loan guarantees,  
35 the authority:
- 36 (1) may not impose conditions that interfere with the everyday  
37 normal operations of a loan guarantee recipient's business activities,  
38 except to the extent necessary to prevent intentional actions designed  
39 to avoid repayment of the loan, or that significantly affect the value of  
40 the loan collateral;
- 41 (2) shall strive to minimize the complexity and costs to applicants  
42 or recipients of compliance with such requirements; and
- 43 (3) shall expeditiously process all applications in accordance with  
44 a schedule established by the authority for the review thereof and the  
45 taking of final action, which schedule shall reflect the complexity of an  
46 application.

1       5. The department shall not take any enforcement action pursuant  
2 to section 12 of P.L.1986, c.102 (C.58:10A-32) for failure to upgrade,  
3 close or remediate an underground storage tank pursuant to P.L.1986,  
4 c.102 (C.58:10A-1 et seq.), against the owner or operator of that tank  
5 if the owner or operator had submitted an application for a loan  
6 guarantee from the fund prior to the date upon which the upgrade,  
7 closure, or remediation was required to be completed, the authority  
8 has not yet acted on the application as of that date, and the owner or  
9 operator agrees to enter into a consent agreement with the department  
10 to comply with the upgrade, closure, and remediation requirements of  
11 that act upon approval of the loan guarantee by the authority, or if the  
12 guarantee is denied, within 90 days after the denial.

13

14       6. a. Loans guarantees from the fund may only be made to persons  
15 who cannot otherwise finance the cost an upgrade, closure, or  
16 remediation because of economic hardship. Economic hardship shall  
17 be determined on the basis of the applicant's ability to obtain a loan or  
18 otherwise finance the cost of the remediation, which shall be based,  
19 among other things, upon the applicant's gross receipts and financial  
20 reserves and a demonstration that the applicant is unable to obtain a  
21 loan from institutional lenders. Loan guarantees made pursuant to  
22 P.L. ,c. (C ) (pending in the Legislature as this bill) may be  
23 made only for that amount of the eligible project costs of the  
24 remediation for which the owner or operator cannot otherwise finance.

25       b. The date of occurrence of a discharge shall not affect eligibility  
26 for a loan guarantee from fund; but no loan guarantee shall be made  
27 from the fund for the otherwise eligible project costs or parts thereof,  
28 completed prior to the effective date of P.L. , c. (C. )  
29 (pending in the Legislature as this bill), or required to be completed  
30 prior to the effective date of that act pursuant to an order by, or a  
31 consent agreement entered into with, the department.

32       c. No loan guarantee may be made from the fund for an upgrade,  
33 closure, or remediation if a previous loan guarantee from the fund had  
34 been made for that purpose for that underground storage tank. No  
35 loan guarantee may be made from the fund for the remediation of a  
36 discharge from an underground storage tank if the initiation of the  
37 discharge occurred subsequent to the upgrade of that tank.

38

39       7. The authority shall provide a joint application filing, review and  
40 approval procedure whereby a person who is eligible for a loan or  
41 grant from the Underground Storage Tank Closure, Upgrade and  
42 Remediation Fund created pursuant to section 2 of P.L. , c.  
43 (C. )(pending in the Legislature as this bill) and who is eligible for  
44 financial assistance from the hazardous discharge site remediation fund  
45 created pursuant to section 26 of P.L.1993, c.139 (C.58:10B-4) may  
46 file one application for both funds and receive a joint response from

1 the authority that approves or disapproves the application from one or  
2 both funds.

3

4 8. a. Nothing in sections 1 through 7 of P.L. , c.  
5 (C. )(pending in the Legislature as this bill) shall be  
6 construed to:

7 (1) impose any liability on the State or the authority for any  
8 application made to, or approved from, the fund and the extent of the  
9 State's or authority's responsibility, if any, be limited to the amount of  
10 otherwise unobligated moneys available in the fund; or

11 (2) impose any liability on the State or the authority for the quality  
12 of any work performed pursuant to an upgrade, closure or  
13 remediation.

14 b. Nothing in sections 1 through 7 of P.L. , c.  
15 (C. )(pending in the Legislature as this bill) shall be  
16 construed to alter any obligation of an owner or operator of a facility  
17 to comply in a timely manner with all lawful requirements relating to  
18 the facility.

19

20 9. Within 120 days of the effective date of this act, the New Jersey  
21 Economic Development Authority shall adopt, pursuant to the  
22 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
23 seq.), appropriate rules and regulations for the administration of the  
24 fund.

25

26 10. Within 120 days of the effective date of this act, the  
27 Department of Environmental Protection shall adopt, pursuant to the  
28 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
29 seq.), appropriate rules and regulations to effectuate the purposes of  
30 this act.

31

32 11. a. The authority and the department shall present a joint  
33 annual report to the President of the Senate and the Speaker of the  
34 General Assembly and to the chairmen and members of the Assembly  
35 Environment Committee and the Senate Environment Committee, or  
36 their successors, on the status of the loan guarantee program. The  
37 annual report shall include:

38 (1) a statement on receipts and expenditures for the fund;

39 (2) the number of loan guarantee applications received and the  
40 actions taken on the applications;

41 (3) the number and amounts of loan guarantees approved;

42 (4) the identity and location of the facilities receiving the loan  
43 guarantees;

44 (5) an assessment of the adequacy of current funding levels in  
45 meeting the statutory objectives of the fund;

46 (6) an accounting of expenses incurred by the authority in

1 administering the fund; and

2 (7) such other information, including any legislative or  
3 administrative recommendations for program changes, as the authority  
4 may deem appropriate or useful.

5 b. The annual report shall be made not later than March 1 of each  
6 year. The first biennial report shall also contain a needs survey, which  
7 shall estimate the scope and projected costs of all potentially eligible  
8 remediation applications for loan guarantees from the fund, and an  
9 assessment and recommendations.

10

11 12. There is appropriated from the General Fund to the  
12 Underground Storage Tank Closure, Upgrade and Remediation Fund  
13 established pursuant to section 2 of P.L. , c. (C. )(pending in  
14 the Legislature as this bill) the sum of \$10,000,000.

15

16 13. This act shall take effect immediately.

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STATEMENT

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21 This bill would appropriate \$10 million from the General Fund to  
22 the Underground Storage Tank Closure, Upgrade and Remediation  
23 Fund established under this bill.

24 Moneys in the fund would be utilized exclusively by the New Jersey  
25 Economic Development Authority to provide loan guarantees to  
26 owners or operators of underground storage tanks which are required  
27 to meet the upgrade standards for underground storage tanks  
28 established pursuant to federal or State law to close an underground  
29 storage tank, or to perform a remediation where a hazardous substance  
30 has been discharged, is suspected of having been discharged, or is  
31 threatening to be discharged, from an underground storage tank.

32 Loan guarantees would be made in accordance with criteria and  
33 other requirements adopted by the authority under the bill.

34 The authority may use moneys in the fund to provide loan  
35 guarantees for up to 100% of eligible project costs, as determined by  
36 the authority, based upon the lowest responsible bid.

37 A qualified applicant for a loan guarantee from the fund would be  
38 awarded a loan guarantee by the authority upon the availability of  
39 sufficient moneys in the fund. Priority rankings would be based upon  
40 the date an application for a loan guarantee is filed with the authority.

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43

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45 "Underground Storage Tank Closure, Upgrade and Remediation Act."