

P.L. 1999, CHAPTER 89, *approved May 3, 1999*
Senate, No. 1679 (*First Reprint*)

1 **AN ACT** concerning financial assistance for petroleum underground
2 storage tanks and amending P.L.1997, c.235.

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

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

9 5. a. The authority may award financial assistance from the fund to
10 an eligible owner or operator in the form of a loan or a conditional
11 hardship grant as provided in this section. An award of financial
12 assistance, either as a loan or a grant, or a combination of both, may,
13 upon application therefor, be for 100% of the eligible project costs.
14 However, a loan that any applicant may receive from the fund for an
15 upgrade, remediation, or closure, or any combination thereof, for any
16 one facility, may not exceed \$1,000,000 and a grant that any applicant
17 may receive from the fund for any one facility, may not exceed
18 \$250,000. The total amount of financial assistance awarded as grants
19 in any one year may not exceed **[10%]** one third of the total amount
20 of financial assistance awarded in that year ¹except that this limitation
21 upon the award of grants shall not apply to financial assistance
22 awarded between January 1, 1999 and March 31, 2000¹.

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

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

39 (1) A conditional hardship grant for eligible project costs of an

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SEN committee amendments adopted February 18, 1999.

1 upgrade, closure or remediation shall be awarded by the authority
2 based upon a finding of eligibility and financial hardship and upon a
3 finding that the applicant meets the criteria set forth in this act.

4 In order to be eligible for a conditional hardship grant, the applicant
5 shall have owned or operated the subject petroleum underground
6 storage tank as of December 1, 1996 and continually thereafter or shall
7 have inherited the property from a person who owned the petroleum
8 underground storage tank as of that date. No applicant shall be
9 eligible for a conditional hardship grant if the applicant has a taxable
10 income of more than \$100,000 or a net worth, exclusive of the
11 applicant's primary residence, of over \$100,000.

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

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

31 If the authority awards a conditional hardship grant in combination
32 with a loan pursuant to this subsection, the authority shall release to
33 the applicant the loan monies prior to the release of the conditional
34 hardship grant monies.

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

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

42 In making a finding of an applicant's ability to repay a loan for the
43 upgrade, closure, and remediation of a regulated tank, or for the
44 remediation of a discharge from a petroleum underground storage
45 tank, the authority shall base its finding, as applicable, upon the cash
46 flow of the applicant's business, the applicant's taxable income and the

1 applicant's personal and business assets, except that the authority may
2 not consider the applicant's primary residence as collateral, except that
3 the authority may consider the applicant's primary residence as
4 collateral with the permission of the applicant or where the subject
5 petroleum underground storage tank or regulated tank is located at the
6 primary residence.

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

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

16 f. An eligible owner or operator may only be awarded that amount
17 of financial assistance issued as a loan for which the applicant
18 demonstrates he could not qualify for and obtain as a commercial loan.
19 The provisions of this subsection shall not apply to an owner or
20 operator or petroleum underground storage tank used to store heating
21 oil for onsite consumption in a residential building.

22 (cf: P.L.1997, c.235, s.5)

23
24 ¹2. Section 6 of P.L.1997, c.235 (C.58:10A-37.6) is amended to
25 read as follows:

26 6. An eligible owner or operator seeking financial assistance from
27 the fund shall file an application on a form to be developed by the
28 authority. The application form shall be submitted with the application
29 fee. The application fee per facility for residential petroleum
30 underground storage tanks shall be \$250. The authority may establish
31 the application fee per facility for nonresidential petroleum
32 underground storage tanks.

33 The authority shall adopt rules and regulations listing the filing
34 requirements for a complete application for financial assistance. If a
35 financial assistance application is determined to be incomplete by the
36 authority, an applicant shall have 30 days from the date of receipt of
37 written notification of incompleteness to file such additional
38 information as may be required by the authority for a completed
39 application. If an applicant fails to file the additional information
40 within the 30 days, the filing date for that application shall be the date
41 that such additional information is received by the authority. If the
42 additional information is filed within the 30 days and is satisfactory to
43 the authority, the filing date for that application shall be the initial date
44 of application with the authority. Notwithstanding the above, if a
45 completed application has been submitted and the applicant fails to
46 submit the filing fee, then the filing date for the application shall not

1 be established until the date on which the authority receives the
2 application fee. A change in the filing date resulting from failure to
3 submit a completed application or from failure to submit the
4 application fee in a timely fashion for applications filed for financial
5 assistance for a regulated tank to meet the upgrade or closure
6 requirements pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102
7 (C.58:10A-21 et seq.) or for the remediation of a discharge from any
8 such regulated tank shall not render the application ineligible for
9 financial assistance as long as the initial date of application is prior to
10 January 1, 1999, or prior to August 31, 1999, as applicable.

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.¹
18 (cf: P.L.1997, c.235, s.6)

19

20 ^{13.} Section 7 of P.L.1997, c.235 (C.58:10A-37.7) is amended to
21 read as follows:

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

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

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

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

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

46 (4) the applicant provided false information or withheld

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

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

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

31 d. Except as provided below, no financial assistance for upgrade
32 or closure shall be awarded for any regulated tank required to meet the
33 upgrade or closure requirements pursuant to 42 U.S.C. s.6991 et seq.
34 or P.L.1986, c.102 (C.58:10A-21 et seq.), or for the remediation of a
35 discharge from any such regulated tank except as provided in
36 subsection c. of this section, unless the application is filed with the
37 authority prior to January 1, 1999 and the application is complete and
38 the application fee is received by ~~[March 1, 1999]~~ August 1, 1999. No
39 financial assistance for upgrade or closure shall be awarded for any
40 underground storage tank with a capacity of over 2,000 gallons used
41 to store heating oil for onsite consumption in a nonresidential building
42 required to be upgraded pursuant to P.L.1986, c.102 (C.58:10A-21 et
43 seq.) but not pursuant to 42 U.S.C. s.6991 et seq. or for the
44 remediation of a discharge from any such regulated tank except as
45 provided in subsection c. of this section, unless the application is filed
46 with the authority prior to August 31, 1999 and the application is

1 complete and the application fee is received by [October 31, 1999]
2 March 31, 2000 .

3 e. The date of occurrence of a discharge shall not affect eligibility
4 for financial assistance from the fund. Except for a preliminary
5 assessment or a site investigation performed after the effective date of
6 P.L.1997, c.235 (C.58:10A-37.1 et seq.), and except as provided in
7 subsection g. of this section, no award of financial assistance shall be
8 made from the fund for the otherwise eligible project costs of a
9 remediation, closure, or an upgrade, or parts thereof, completed prior
10 to an award of financial assistance from the 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 matter
22 when the upgrade was performed.

23 g. Notwithstanding any provision of P.L.1997, c.235
24 (C.58:10A-37.1 et seq.), where an eligible owner or operator has filed
25 an application for financial assistance from the fund, and there are
26 either insufficient monies in the fund or the authority has not yet acted
27 upon the application or awarded the financial assistance, the eligible
28 owner or operator may expend its own funds for the upgrade, closure,
29 or remediation, and upon approval of the application, the authority
30 shall award the financial assistance as a reimbursement of the monies
31 expended for eligible project costs.¹

32 (cf: P.L.1998, c.59, s.3)

33
34 ¹[2.] 4.¹ Section 10 of P.L.1997, c.235 (C.58:10A-37.10) is
35 amended to read as follows:

36 10. a. All loans awarded from the fund shall be for a term not to
37 exceed ten years. Except as provided in subsection b. of section 5 of
38 P.L.1997, c.235 (C.58:10A-37.5), all loans shall be at a rate between
39 two percent and the prime rate at the time of approval, or at the time
40 of loan closing if the prime rate is lower at that time. The authority
41 shall determine the interest rate to be imposed based on the applicant's
42 ability to repay the loan.

43 b. Upon the sale of the facility for which the loan was made, the
44 unpaid balance of the loan shall become immediately payable in full.
45 Upon the sale of a facility for which a conditional hardship grant was
46 made pursuant to section 5 of P.L.1997, c.235 (C.58:10A-37.5), that

1 amount of the conditional hardship grant that must be repaid, as
2 calculated pursuant to section 16 of P.L.1997, c.235
3 (C.58:10A-37.16), shall become immediately payable in full. No
4 repayment of a conditional hardship grant awarded pursuant to
5 paragraph (1) of subsection c. of section 5 of P.L.1997, c.235
6 (C.58:10A-37.5) for a remediation necessitated by a discharge from a
7 petroleum underground storage tank used to store heating oil at the
8 applicant's primary residence shall be required.
9 (cf: P.L.1997, c.235, s.10)

10
11 ¹[3.] 5.¹ Section 16 of P.L.1997, c.235 (C.58:10A-37.16) is
12 amended to read as follows:

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

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

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

38 c. The lien that is filed on real property pursuant to a conditional
39 hardship grant shall be removed upon repayment of the amount of the
40 grant that is unsatisfied or upon the end of a 15- year period in which
41 the site for which the financial assistance was awarded continued to be
42 operated in substantially the same manner as it was operated at the
43 time of the award of financial assistance. The period of operation need
44 not run consecutively. Beginning with the 11th year of operating in
45 substantially the same manner, 20% of the conditional hardship grant
46 shall be deemed satisfied with an additional 20% to be satisfied each

1 year until the entire amount of the conditional hardship grant is
2 satisfied at the end of the 15-year period. The owner or operator of
3 the facility claiming to have satisfied a conditional hardship grant due
4 to the 15-year period of operation, shall submit a certification of this
5 fact to the authority. Upon repayment of the unsatisfied grant award
6 or upon submittal of this certification, unless the authority has made
7 a finding that the certification is not correct, the authority shall remove
8 the lien from the property.

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

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

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

29 (cf: P.L.1997, c.235, s.16)

30
31 ¹[4.] 6.¹ This act shall take effect immediately and shall be
32 retroactive to August 30, 1997.

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35 _____
36
37 Concerns grants from the Petroleum Underground Storage Tank
38 Remediation, Upgrade and Closure Fund.