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OFFICE WAS VINGINIA SECRETARY OF STATE

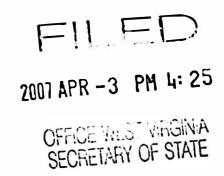
WEST VIRGINIA LEGISLATURE SEVENTY-EIGHTH LEGISLATURE REGULAR SESSION, 2007

ENROLLED

Senate Bill No. 490

(By Senators Hunter, Foster, Kessler, Minard, Oliverio, White, Caruth, Deem and Jenkins)

[Passed March 8, 2007; in effect ninety days from passage.]



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(By Senators Hunter, Foster, Kessler, Minard, Oliverio, White, Caruth, Deem and Jenkins)

[Passed March 8, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §22-17-22 of the Code of West Virginia, 1931, as amended, relating to the Underground Storage Tank Insurance Fund; providing for expiration of the fund and disposal of its assets; directing the Department of Environmental Protection to assist certain policyholders reclaim sites insured by the fund; providing that the Department of Environmental Protection is not liable for claims against the fund nor may be bound to policy terms; providing legislative findings; directing the Secretary of the Department of Environmental Protection to develop a plan to cause remediation of these sites; authorizing the Secretary of the Department of Environmental Protection to place conditions remediation recipients; establishing criteria and preconditions for remediations; allowing persons who have undertaken remediation or expended funds to undertake remediation of sites to be reimbursed expenses; and

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allowing the secretary to establish conditions for reimbursement for prior or future remediations of insured sites.

Be it enacted by the Legislature of West Virginia:

That §22-17-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. UNDERGROUND STORAGE TANK ACT.

§22-17-22. Underground storage tank insurance fund.

- (a) The secretary may establish an Underground 2 Storage Tank Insurance Fund for the purpose of 3 satisfying the financial responsibility requirements 4 established pursuant to section ten of this article. In 5 addition to the capitalization fee to be assessed against 6 all owners or operators of underground storage tanks provided by subdivision (6), subsection (b), section six 8 of this article, the secretary shall promulgate rules 9 establishing an annual financial responsibility 10 assessment to be assessed on and paid by owners or 11 operators of underground storage tanks who are unable 12 to obtain insurance or otherwise meet the financial 13 responsibility requirements established pursuant to 14 section ten of this article. Assessments shall be paid into 15 the State Treasury into a special fund designated the
- 17 (b) At the end of each fiscal year, any unexpended balance of such assessment shall not be transferred to 18 19 the General Revenue Fund but shall remain in the 20 Underground Storage Tank Insurance Fund. Upon the 21 effective date of the enactment of the amendment to this 22 section passed during the two thousand seven regular 23 session of the West Virginia Legislature, the 24 Underground Storage Tank Insurance Fund shall cease 25 to operate as an insurance fund. Any remaining assets 26 of the fund shall be administered by the secretary 27 pursuant to subsections (c), (d), (e), (f), (g) and (h) of this section. Because the fund was intended to be self 28

Underground Storage Tank Insurance Fund.

- funding, the secretary is not bound by any terms, limitations or conditions contained in any insurance policies issued by the fund, but in no case may reimburse any person for an amount in excess of the limits of liability.
- 34 (c) Legislative Findings Regarding Cessation of the 35 Fund — The Underground Storage Tank Insurance Fund 36 was established by the Legislature to assist storage tank 37 owners who were mandated by federal law to have 38 insurance but were unable to find insurance in the 39 private market, and was funded solely by assessments 40 of policyholders paid to the fund. Policies were issued 41 from the years one thousand nine hundred ninety to two 42 thousand. As private insurance coverage became 43 available and a number of the insured left the business. 44 premiums paid into the fund decreased. These factors, 45 combined with greater than anticipated remediation 46 costs at sites remediated during the fund's solvency, 47 caused claims against the fund to exceed moneys collected. As a result, the fund became insolvent. 48 49 Although the fund was not intended to and does not 50 create any legal obligation for the state for any claims 51 made against the fund, it is the sense of the Legislature 52 that to the extent public funds are determined by the 53 Legislature to be available, they may be appropriated to 54 assist individuals with the remediation of these sites 55 and to prevent potential adverse environmental impacts 56 and harm to human health that could result from a 57 failure to remediate. This assistance by the state in 58 funding these remediations would be intended to 59 provide an option for the insured to fulfill their legal 60 duty to reclaim these sites and the Department of 61 Environmental Protection may not assume any legal 62 liability for remediation of these sites beyond the 63 assistance provided pursuant to subsections (d), (e), (f), 64 (g) and (h) of this section.
- (d) The secretary shall request that the Governor include in each budget submitted to the Legislature funding to cause remediation of these existing sites as identified by the secretary. The secretary shall submit

- 69 a proposal to undertake or cause to be undertaken these 70 remediations to the Joint Committee of Government and 71 Finance by the first day of November, two thousand 72 seven. The secretary's proposal shall provide, at a 73 minimum, budget amounts needed each year for 74 completing these remediation activities by the thirty-75 first day of December, two thousand nine, but in no case 76 later than the thirty-first day of December, two 77 thousand twelve.
- 78 (e) The secretary shall also request funding to 79 reimburse insured persons and vendors who have 80 incurred costs not yet reimbursed as of the effective 81 date of this section by the fund for work undertaken at 82 insured sites previously authorized by the secretary.
- (f) Any agreements with insured persons for payment of remediations shall provide that, prior to any remediation activities on any site or for reimbursement for expenses previously incurred, an agreement be executed that provides that the insured person or persons agree that the site will be remediated pursuant to either subsection (g) or (h) of this section.
- 90 (g) The secretary may cause remediation of an insured 91 site to a voluntary remediation standard as provided in 92 article twenty-two of this chapter, including any 93 appropriate land-use covenant and other deed 94 restrictions and any other conditions as established by 95 the secretary prior to payment for any costs associated 96 with a site remediation.
- 97 (h) If an insured person demonstrates to the secretary 98 that it is more cost effective to clean up a site through 99 an alternative program or method that will result in 100 remediation at a standard equal to or greater than 101 provided for in subsection (g) of this section, then the 102 secretary may, as an alternative, authorize use of that 103 method or program. The secretary may place any 104 appropriate requirements upon the insured person as a 105 condition for undertaking a remediation by an alternative program or method. 106

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee
Chairman House Committee
Originated in the Senate.
In effect ninety days from passage.
Clerk of the Senate
Clerk of the House of Delegates
al Ry London. President of the Senate
Speaker House of Delegates
The within M. Approved this the 3d Day of 1,2007.
Governor

PRESENTED TO THE GOVERNOR

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