WEST VIRGINIA LEGISLATURE
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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 on 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
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.

1 (a) The secretary may establish an Underground Storage Tank Insurance Fund for the purpose of satisfying the financial responsibility requirements established pursuant to section ten of this article. In addition to the capitalization fee to be assessed against all owners or operators of underground storage tanks provided by subdivision (6), subsection (b), section six of this article, the secretary shall promulgate rules establishing an annual financial responsibility assessment to be assessed on and paid by owners or operators of underground storage tanks who are unable to obtain insurance or otherwise meet the financial responsibility requirements established pursuant to section ten of this article. Assessments shall be paid into the State Treasury into a special fund designated the Underground Storage Tank Insurance Fund.

17 (b) At the end of each fiscal year, any unexpended balance of such assessment shall not be transferred to the General Revenue Fund but shall remain in the Underground Storage Tank Insurance Fund. Upon the effective date of the enactment of the amendment to this section passed during the two thousand seven regular session of the West Virginia Legislature, the Underground Storage Tank Insurance Fund shall cease to operate as an insurance fund. Any remaining assets of the fund shall be administered by the secretary pursuant to subsections (c), (d), (e), (f), (g) and (h) of this section. Because the fund was intended to be self
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.

(c) Legislative Findings Regarding Cessation of the Fund—The Underground Storage Tank Insurance Fund was established by the Legislature to assist storage tank owners who were mandated by federal law to have insurance but were unable to find insurance in the private market, and was funded solely by assessments of policyholders paid to the fund. Policies were issued from the years one thousand nine hundred ninety to two thousand. As private insurance coverage became available and a number of the insured left the business, premiums paid into the fund decreased. These factors, combined with greater than anticipated remediation costs at sites remediated during the fund's solvency, caused claims against the fund to exceed moneys collected. As a result, the fund became insolvent. Although the fund was not intended to and does not create any legal obligation for the state for any claims made against the fund, it is the sense of the Legislature that to the extent public funds are determined by the Legislature to be available, they may be appropriated to assist individuals with the remediation of these sites and to prevent potential adverse environmental impacts and harm to human health that could result from a failure to remediate. This assistance by the state in funding these remediations would be intended to provide an option for the insured to fulfill their legal duty to reclaim these sites and the Department of Environmental Protection may not assume any legal liability for remediation of these sites beyond the assistance provided pursuant to subsections (d), (e), (f), (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
a proposal to undertake or cause to be undertaken these
remediations to the Joint Committee of Government and
Finance by the first day of November, two thousand
seven. The secretary's proposal shall provide, at a
minimum, budget amounts needed each year for
completing these remediation activities by the thirty-
first day of December, two thousand nine, but in no case
later than the thirty-first day of December, two
thousand twelve.

(e) The secretary shall also request funding to
reimburse insured persons and vendors who have
incurred costs not yet reimbursed as of the effective
date of this section by the fund for work undertaken at
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.

(g) The secretary may cause remediation of an insured
site to a voluntary remediation standard as provided in
article twenty-two of this chapter, including any
appropriate land-use covenant and other deed
restrictions and any other conditions as established by
the secretary prior to payment for any costs associated
with a site remediation.

(h) If an insured person demonstrates to the secretary
that it is more cost effective to clean up a site through
an alternative program or method that will result in
remediation at a standard equal to or greater than
provided for in subsection (g) of this section, then the
secretary may, as an alternative, authorize use of that
method or program. The secretary may place any
appropriate requirements upon the insured person as a
condition for undertaking a remediation by an
alternative program or method.
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

President of the Senate

Speaker House of Delegates

The within is approved this the 3rd. Day of , 2007.

Governor