

S  
SB 490 S  
OK

FILED

2007 APR -3 PM 4: 25

OFFICE WEST VIRGINIA  
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.]

FILED

2007 APR -3 PM 4:25

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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.]

---

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  
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  
7 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  
16 Underground Storage Tank Insurance Fund.

17 (b) At the end of each fiscal year, any unexpended  
18 balance of such assessment shall not be transferred to  
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  
28 section. Because the fund was intended to be self

29 funding, the secretary is not bound by any terms,  
30 limitations or conditions contained in any insurance  
31 policies issued by the fund, but in no case may  
32 reimburse any person for an amount in excess of the  
33 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  
48 collected. As a result, the fund became insolvent.  
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.

65 (d) The secretary shall request that the Governor  
66 include in each budget submitted to the Legislature  
67 funding to cause remediation of these existing sites as  
68 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.

83 (f) Any agreements with insured persons for payment  
84 of remediations shall provide that, prior to any  
85 remediation activities on any site or for reimbursement  
86 for expenses previously incurred, an agreement be  
87 executed that provides that the insured person or  
88 persons agree that the site will be remediated pursuant  
89 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  
106 alternative program or method.

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

*White*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Russell Hobbs*  
.....  
Clerk of the Senate

*Gregg H. Seal*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

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

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 20 2007

Time 1:50 pm