

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 1220*

Short Title: Leaking UST Fund Liquidity. (Public)

Sponsors: Senator Clodfelter.

Referred to: Agriculture/Environment/Natural Resources.

May 20, 2004

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE AND ACCELERATE PROCESSING OF CLAIMS UNDER
3 THE LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP
4 PROGRAM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW
5 COMMISSION.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Part 2A of Article 21A of Chapter 143 of the General Statutes
8 is amended by adding a new section to read:

9 "**§ 143-215.94Q. Liquidity program.**

10 (a) The General Assembly finds that the Department and the State have existing
11 obligations under this Part, including the obligation under G.S. 143-215.94E to pay
12 claims for reimbursement duly filed with the Department by owners, operators, and
13 landowners from the Commercial Fund and the Noncommercial Fund, which
14 obligations impose substantial burdens on the State. The General Assembly has
15 previously found under G.S. 143-215.94V that solvency of the Commercial Fund and
16 the Noncommercial Fund is essential to the goals of the underground storage tank
17 program. The General Assembly finds that:

18 (1) An appropriate means of managing and ensuring the solvency of the
19 Funds is a liquidity program that will facilitate the sale of claims made
20 against the Commercial Fund and the Noncommercial Fund by
21 owners, operators, and landowners who may require liquidity in
22 anticipation of the ultimate payment of the claims by the Commercial
23 Fund and the Noncommercial Fund.

24 (2) The most cost-effective means to provide a liquidity program is for the
25 Department to arrange for and incur obligations to provide funding to
26 be used to purchase claims or in lieu thereof to participate in the
27 establishment and operation of a nonprofit organization that will incur
28 the liquidity obligations and purchase the claims.

1 (3) Cost efficiency may be improved if the nonprofit organization operates
2 in one or more states in addition to the State.

3 (b) The Department, acting by and through the Secretary, is hereby authorized to
4 enter into discussions with the incorporator of a nonprofit corporation to be formed to
5 provide liquidity for owners, operators, and landowners with claims against the
6 Commercial Fund and the Noncommercial Fund and against similar funds in one or
7 more other states and with officials of appropriate agencies or political subdivisions of
8 such other states. If the Secretary makes a written determination that he reasonably
9 expects that claimholders participating in the liquidity program will benefit from the
10 State's participation in the liquidity program, the Department is authorized to enter into
11 agreements with the nonprofit corporation and other agencies or political subdivisions
12 to establish a liquidity program.

13 (c) The State may be represented on the governing body of the nonprofit
14 corporation by one or more directors, as provided in the organizational documents of the
15 nonprofit corporation, each of whom shall be appointed by and serve at the pleasure of
16 the Governor. The Office of Budget and Management may provide advice and guidance
17 to any director appointed under this subsection on any financial matters relating to the
18 nonprofit corporation and its operation of the liquidity program, including its annual
19 budget and financial statements.

20 (d) The Department may make payments with respect to any claim made by an
21 owner, operator, or landowner under G.S. 143-215.94E directly to the nonprofit
22 corporation, provided that the owner, operator, or landowner shall have delivered to the
23 Department a copy of an assignment showing the nonprofit corporation as assignee of
24 such claim. The Department shall develop and approve the claim assignment form.

25 (e) If the Secretary is unable to make the finding described in subsection (b) of
26 this section with respect to the nonprofit corporation, the Department is authorized to
27 arrange for and incur liquidity obligations and use the proceeds thereof to provide
28 liquidity either directly or through one or more nonprofit organizations to owners,
29 operators, or landowners holding claims against the Commercial Fund and
30 Noncommercial Fund.

31 (f) Under no circumstances will the Department be authorized in any agreement
32 relating to the liquidity program entered into with the nonprofit corporation, any agency
33 or political subdivision of any other state, any other for-profit or nonprofit organization
34 or provider of liquidity obligations to commit in any way to make payments in excess of
35 the aggregate face amount of approved claims against the Commercial Fund and
36 Noncommercial Fund purchased under the liquidity program. No liquidity obligation
37 shall constitute an obligation of the State, the Department, or any other agency,
38 department, or political subdivision of the State, payable from other than the approved
39 claims against the Commercial Fund or Noncommercial Fund purchased with the
40 proceeds thereof, and nothing in this section shall be deemed to amend
41 G.S. 143-215.94J or otherwise change the limitation of the State's liability contained in
42 that section.

43 (g) The Department is directed to implement this section expeditiously. The
44 implementation of a liquidity program through the Department will provide a significant

1 service to the State by reducing its administrative burden of maintaining the solvency of
2 the Funds."
3 **SECTION 2.** This act is effective when it becomes law.