

AN ACT

ENTITLED, An Act to create a statewide underground tank cleanup program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read as follows:

There is hereby created within the petroleum release compensation fund, a new program to be known as the abandoned tank removal program. Under this program, the director may provide payments for tank pulling and corrective action at abandoned sites where the owner or the person having legal custody of an abandoned site has voluntarily requested such action in the manner and time established by the secretaries of the departments of transportation and environment and natural resources and if the following criteria are met:

- (1) The owner or person having legal custody of the abandoned site has submitted to the director a written request to have the tank removed. The request shall be made in the manner established by the secretary of the Department of Transportation to include documentation of eligibility for the site to participate in the abandoned tank removal program, proof of ownership, and legal description;
- (2) The owner or person having legal custody of the abandoned site has, in writing, waived all claims against the state, its officers, agents, and employees for damages resulting directly or indirectly from the tank pulling or corrective action;
- (3) If the abandoned site is on private property, all property taxes are current; and
- (4) The owner or person having legal custody of the abandoned site has agreed to transfer ownership of the removed tank and its contents to the state.

No tank is eligible for coverage under this program if the tank is located at the site of a commercially operational motor fuel vendor in service on or after April 1, 1988.

Section 2. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read as

follows:

Payments made from the director for tank pulling and corrective action under the abandoned tank removal program may include:

- (1) Tank pulling, as defined in this chapter, including the disposal of tank contents and specifically excluding the replacement of surface above the backfill area; and
- (2) Removal of abandoned waste oil tanks and corrective action of a waste oil release located on an abandoned site.

Section 3. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read as follows:

The owner or person having legal custody of the abandoned site shall, as a condition of approval for participation in the abandoned tank removal program, execute a legally binding five-year lien running with the affected property providing that any compensation received by the owner, the owner's heirs, successors in interest, or assigns, for transfer of any interest in or part of the site, shall be paid to the secretary of the Department of Transportation and deposited in the fund. No lien may be for an amount more than ten thousand dollars or the cost of tank pulling and corrective action identified in the lien by the director, whichever is less. Any lien provided by this section is valid for five years from the date of recordation and the priority of the lien is established as of the date it is recorded in the office of the register of deeds of the county in which the site is located.

Section 4. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read as follows:

The Department of Environment and Natural Resources shall be responsible for the tank removal and corrective actions subject to this Act. The department may contract directly with consultants, contractors, other service providers, state agencies, subdivisions of government, counties, cities, townships, and tribes to carry out the provisions of this Act. After receiving itemized documentation of all actual costs from the department, the director of the petroleum release compensation fund shall

make payment within thirty days of receipt. All tank removals, pollution assessments, and corrective actions taken under this Act shall comply with chapters 34A-2 and 34A-12 and the rules promulgated thereunder.

Section 5. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read as follows:

The secretaries of the departments of transportation and environment and natural resources may promulgate, pursuant to chapter 1-26, rules regarding practices and procedures necessary to carry out the provisions of the abandoned tank removal program including the form and procedure for application for qualifying for tank pulling and corrective action.

Section 6. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read as follows:

Except at sites determined to be high risk by the secretary of the Department of Environment and Natural Resources using risk-based corrective action criteria, the director shall suspend payments for tank pulling and corrective action at abandoned sites eligible for the abandoned tank removal program if the balance of the fund is five million dollars or below. The director shall resume payments for tank pulling and corrective action at abandoned sites eligible for the abandoned tank removal program if the fund balance exceeds five million dollars. Except as provided in this Act, all other limits of coverage, conditions, and criteria in this chapter apply to tank pulling and corrective action taken at abandoned sites.

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I certify that the attached Act
originated in the

SENATE as Bill No. 197

Secretary of the Senate

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 197
File No. _____
Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Ass. Secretary of State