

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1936*

Short Title: Underground Storage Tank Pgrm Amends-2008.

(Public)

Sponsors: Senator Albertson.

Referred to: Agriculture/Environment/Natural Resources.

May 22, 2008

A BILL TO BE ENTITLED

AN ACT (1) TO PROVIDE ADDITIONAL FUNDS FOR THE CLEANUP OF RELEASES AND DISCHARGES OF PETROLEUM FROM UNDERGROUND STORAGE TANKS BY INCREASING THE FEES PAID BY OWNERS AND OPERATORS OF COMMERCIAL UNDERGROUND STORAGE TANKS, (2) TO REDUCE THE INCIDENCE OF LEAKS BY REQUIRING SECONDARY CONTAINMENT FOR ALL COMPONENTS OF REGULATED PETROLEUM UNDERGROUND STORAGE TANK SYSTEMS, (3) TO PROVIDE FOR EXPEDITED ASSESSMENT AND CLEANUP OF RELEASES AND DISCHARGES FROM PETROLEUM UNDERGROUND STORAGE TANKS BY REQUIRING THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ESTABLISH A PILOT PROGRAM TO EVALUATE THE USE OF SITE-SPECIFIC CLEANUP STANDARDS, (4) TO PROVIDE FOR VARIOUS STUDIES AND REPORTS, AND (5) TO MAKE OTHER IMPROVEMENTS TO THE UNDERGROUND STORAGE TANK CLEANUP PROGRAM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.94C reads as rewritten:

"§ 143-215.94C. **Commercial leaking petroleum underground storage tank cleanup fees.**

(a) For purposes of this subsection, each compartment of a commercial underground storage tank that is designed to independently contain a petroleum product is a separate petroleum commercial underground storage tank. The owner or operator of a commercial petroleum underground storage tank shall pay to the Secretary for deposit into the Commercial Fund an annual operating fee of four-hundred twenty dollars (\$420.00) ~~according to the following schedule:~~

(1) ~~For for each petroleum commercial underground storage tank, tank of 3,500 gallons or less capacity two hundred dollars (\$200.00).~~

1 ~~(2) For each petroleum commercial underground storage tank of more~~
2 ~~than 3,500 gallon capacity — three hundred dollars (\$300.00).~~

3 (b) The annual operating fee shall be determined on a calendar year basis. For
4 petroleum commercial underground storage tanks in use on 1 January and remaining in
5 use on or after 1 December of that year, the annual operating fee due for that year shall
6 be as specified in subsection (a) of this section. For a petroleum commercial
7 underground storage tank that is first placed in ~~use-service~~ in any year, the annual
8 operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of
9 the amount specified in subsection (a) of this section by the number of months
10 remaining in the calendar year. For a petroleum commercial underground storage tank
11 that is permanently removed from ~~use-service~~ in any year, the annual operating fee due
12 for that year shall be determined by multiplying one-twelfth (1/12) of the amount
13 specified in subsection (a) of this section by the number of months in the calendar year
14 preceding the permanent removal from use. In calculating the pro rata annual operating
15 fee for a tank that is first placed in use or permanently removed during a calendar year
16 under the preceding two sentences, a partial month shall count as a month, except that
17 where a tank is permanently removed and replaced by another tank, the total of the
18 annual operating fee for the tank that is removed and the replacement tank shall not
19 exceed the annual operating fee for the replacement tank. The annual operating fee shall
20 be due and payable on the first day of the month in accordance with a staggered
21 schedule established by the Department. The Department shall implement a staggered
22 schedule to the end that the total amount of fees to be collected by the Department is
23 approximately the same each quarter. A person who owns or operates more than one
24 petroleum commercial underground storage tank may request that the fee for all tanks
25 be due at the same time. The fee for all commercial underground storage tanks located
26 at the same facility shall be due at the same time. A person who owns or operates 12 or
27 more commercial petroleum storage tanks may request that the total of all fees be paid
28 in four equal payments to be due on the first day of each calendar quarter, provided that
29 the fee for all commercial underground storage tanks located at the same facility shall
30 be due at the same time.

31 (c) Beginning no later than sixty days before the first due date of the annual
32 operating fee imposed by this section, any person who deposits a petroleum product in a
33 commercial underground storage tank that would be subject to the annual operating fee
34 shall, at least once in each calendar year during which such deposit of a petroleum
35 product is made, notify the owner or operator of the duty to pay the annual operating
36 fee. The requirement to notify pursuant to this subsection does not constitute a duty
37 owed by the person depositing a petroleum product in a commercial underground
38 storage tank to the owner or operator and the person depositing a petroleum product in
39 an underground storage tank shall not incur any liability to the owner or operator for
40 failure to give notice of the duty to pay the operating fee.

41 (d) Repealed by Session Laws 1991, c. 538, s. 3.1.

42 (e) An owner or operator of a commercial underground storage tank who fails to
43 pay an annual operating fee due under this section within 30 days of the date that the fee
44 is due shall pay, in addition to the fee, a late penalty of five dollars (\$5.00) per day per

1 commercial underground storage tank, up to a maximum equal to the annual operating
2 fee due. The Department may waive a late penalty in whole or in part if:

- 3 (1) The late penalty was incurred because of the late payment or
4 nonpayment of an annual operating fee by a previous owner or
5 operator.
- 6 (2) The late penalty was incurred because of a billing error for which the
7 Department is responsible.
- 8 (3) Where the late penalty was incurred because the annual operating fee
9 was not paid by the owner or operator due to inadvertence or accident.
- 10 (4) Where payment of the late penalty will prevent the owner or operator
11 from complying with any substantive law, rule, or regulation
12 applicable to underground storage tanks and intended to prevent or
13 mitigate discharges or releases or to facilitate the early detection of
14 discharges or releases. "

15 **SECTION 2.(a)** G.S. 143-215.94E is amended by adding two new
16 subsections to read:

17 "(j) An owner, operator, or landowner shall request that the Department
18 determine whether any of the costs of assessment and cleanup of a discharge or release
19 from a petroleum underground storage tank are eligible to be paid or reimbursed from
20 either the Commercial Fund or the Noncommercial Fund within one year after
21 completion of any task that is eligible to be paid or reimbursed under
22 G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1).

23 (k) An owner, operator, or landowner shall request payment or reimbursement
24 from the Commercial Fund or the Noncommercial Fund for the cost of a task within one
25 year after the completion of the task. The Department shall deny any request for
26 payment or reimbursement of the cost of any task that would otherwise be eligible to be
27 paid or reimbursed if the request is not received within 12 months after the later of the
28 date on which the:

- 29 (1) Department determines that the cost is eligible to be paid or
30 reimbursed.
- 31 (2) Task is completed."

32 **SECTION 2.(b)** Notwithstanding G.S. 143-215.94E(k), as enacted by
33 subsection (a) of this section, an owner, operator, or landowner shall request payment or
34 reimbursement of the cost of any task completed prior to 1 January 2009 that is eligible
35 to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund no
36 later than 1 January 2010. The Department shall deny any request for payment or
37 reimbursement of the cost of any task to which this subsection applies that is made after
38 1 January 2010.

39 **SECTION 3.** G.S. 143-215.94G is amended by adding four new subsections
40 to read:

41 "(g) If the Department paid or reimbursed costs that are not authorized to be paid
42 or reimbursed under G.S. 143-215.94B or G.S. 143-215.94D as a result of a
43 misrepresentation by an agent who acted on behalf of an owner, operator, or landowner,

1 the Department shall first seek reimbursement, pursuant to subdivision (1) of subsection
2 (d) of this section, from the agent of monies paid to or retained by the agent.

3 (h) The Department shall take administrative action to recover costs or bring a
4 civil action pursuant to subdivision (1) of subsection (d) of this section to seek
5 reimbursement of costs in accordance with the time limits set out in this subsection.

6 (1) The Department shall take administrative action to recover costs or
7 bring a civil action to seek reimbursement of costs that are not
8 authorized to be paid from the Commercial Fund under subdivisions
9 (1), (2), (3), or (9) of G.S. 143-215.94B(d) or from the Noncommercial
10 Fund under subdivisions (1), (2), or (3) of G.S. 143-215.94D(d) within
11 five years after payment.

12 (2) The Department shall take administrative action to recover costs or
13 bring a civil action to seek reimbursement of costs other than those
14 described in subdivision (1) of this subsection within three years after
15 payment.

16 (3) Notwithstanding the time limits set out in subdivisions (1) and (2) of
17 this subsection, the Department may take administrative action to
18 recover costs or bring a civil action to seek reimbursement of costs
19 paid as a result of fraud or misrepresentation at any time.

20 (i) An administrative action or civil action that is not commenced within the time
21 allowed by subsection (h) of this section is barred.

22 (j) Except with the consent of the claimant, the Department may not withhold
23 payment or reimbursement of costs that are authorized to be paid from the Commercial
24 Fund or the Noncommercial Fund in order to recover any other costs that are in dispute
25 unless the Department is authorized to withhold payment by a final decision of the
26 Commission pursuant to G.S. 150B-36 or an order or final decision of a court."

27 **SECTION 4.** G.S. 143-215.94H reads as rewritten:

28 "**§ 143-215.94H. Financial responsibility.**

29 (a) The Department shall require each owner and operator of a petroleum
30 underground storage tank who is required to demonstrate financial responsibility under
31 rules promulgated by the United States Environmental Protection Agency pursuant to
32 42 U.S.C. § 6991b(d) to maintain evidence of financial responsibility ~~of not less than~~
33 that is the lesser of:

34 (1) The full amount of the financial responsibility that an owner or
35 operator is required to demonstrate under rules promulgated by the
36 United States Environmental Protection Agency pursuant to 42 U.S.C.
37 § 6991b(d).

38 (2) The amounts required to be paid for by the owner or operator pursuant
39 to G.S. 143-215.94E(b) per occurrence for costs described in
40 G.S. 143-215.94B(b) and ~~G.S. 143-215.94D(b1).~~
41 G.S. 143-215.94B(b1) if costs are eligible to be paid under those
42 subsections.

43 (b) Financial responsibility may be established in accordance with rules adopted
44 by the Commission which shall provide that financial responsibility may be established

1 by either insurance, guarantee, surety bond, letter of credit, qualification as a
2 self-insurer, or any combination thereof. The compliance date schedule for
3 demonstrating financial responsibility shall conform to the schedule adopted by the
4 Environmental Protection Agency."

5 **SECTION 5.** G.S. 143-215.94T reads as rewritten:

6 **"§ 143-215.94T. Adoption and implementation of regulatory program.**

7 (a) The Commission shall adopt, and the Department shall implement and
8 enforce, rules relating to underground storage tanks as provided by
9 G.S. 143-215.3(a)(15) and G.S. 143B-282(2)h. These rules shall include standards and
10 requirements applicable to both existing and new underground storage tanks and tank
11 systems, may include different standards and requirements based on tank capacity, tank
12 location, tank age, and other relevant factors, and shall include, at a minimum, standards
13 and requirements for:

- 14 (1) Design, construction, and installation, including monitoring systems.
- 15 (2) Notification to the Department, inspection, and registration.
- 16 (3) Recordation of tank location.
- 17 (4) Modification, retrofitting, and upgrading.
- 18 (5) General operating requirements.
- 19 (6) Release detection.
- 20 (7) Release reporting, investigation, and confirmation.
- 21 (8) Corrective action.
- 22 (9) Repair.
- 23 (10) Closure.
- 24 (11) Financial responsibility.
- 25 (12) Tank tightness testing procedures and certification of persons who
26 conduct tank tightness tests.
- 27 (13) Secondary containment for ~~non~~all components of petroleum
28 underground storage tank systems.

29 (b) Rules adopted pursuant to subsection (a) of this section that apply only to
30 commercial underground storage tanks shall not apply to any:

- 31 (1) Farm or residential underground storage tank of 1,100 gallons or less
32 capacity used for storing motor fuel for noncommercial purposes.
- 33 (2) Underground storage tank of 1,100 gallons or less capacity used for
34 storing heating oil for consumptive use on the premises where stored.
- 35 (3) Underground storage tank of more than 1,100 gallon capacity used for
36 storing heating oil for consumptive use on the premises where stored
37 by four or fewer households.

38 (c) Rules adopted pursuant to subdivision (13) of subsection (a) of this section
39 shall require secondary containment for all ~~non~~ components of underground storage
40 tank systems, ~~including all piping and~~ including, but not limited to, tanks, piping,
41 fittings, pump heads, and dispensers. Secondary containment requirements shall include
42 standards for double wall ~~piping tanks, piping,~~ and fittings and for sump containment
43 for pump heads and dispensers. The rules shall provide for ~~monthly release detection~~
44 monitoring of double wall interstices and sump containments. The rules shall apply to

1 any underground storage tank system that is installed on or after the date on which the
2 rules become effective and to the replacement of any ~~non~~ tank component of an
3 underground storage tank system on or after that date."

4 **SECTION 6.** G.S. 143-215.94U reads as rewritten:

5 "**§ 143-215.94U. Registration of petroleum commercial underground storage**
6 **tanks; operation of petroleum underground storage tanks; operating**
7 **permit required.**

8 (a) The owner or operator of each petroleum commercial underground storage
9 tank shall annually obtain an operating permit from the Department for the facility at
10 which the tank is located. The Department shall issue an operating permit only if the
11 owner or ~~operator~~ operator has done all of the following:

12 (1) ~~Has notified~~ Notified the Department of the existence of all tanks as
13 required by 40 Code of Federal Regulations § 280.22 (1 July 1994
14 Edition) or 42 U.S.C. § 6991a, if applicable, at the ~~facility~~ facility.

15 (2) ~~Has paid~~ Paid all fees required under G.S. 143-215.94C for all
16 commercial petroleum underground storage tanks located at the
17 ~~facility~~ facility.

18 (3) Complies with applicable release detection, spill and overfill
19 protection, and corrosion protection requirements set out in rules
20 adopted pursuant to this Chapter, notifies the Department of the
21 method or combination of methods of leak detection, spill and overfill
22 protection, and corrosion protection in use, and certifies to the
23 Department that all applicable release detection, spill and overfill
24 protection, and corrosion protection requirements are being met for all
25 petroleum underground storage tanks located at the ~~facility~~ facility.

26 (4) If applicable, complies with the Stage I vapor control requirements set
27 out in 15A North Carolina Administrative Code 2D.0928, effective 1
28 March 1991, notifies the Department of the method or combination of
29 methods of vapor control in use, and certifies to the Department that
30 all Stage I vapor control requirements are being met for all petroleum
31 underground storage tanks located at the ~~facility~~ and facility.

32 (5) ~~Has substantially~~ Substantially complied with the air quality,
33 groundwater quality, and underground storage tank standards
34 applicable to any activity in which the applicant has previously
35 engaged and has been in substantial compliance with federal and State
36 laws, regulations, and rules for the protection of the environment. In
37 determining substantial compliance, the compliance history of the
38 owner or operator and any parent, subsidiary, or other affiliate of the
39 owner, operator, or parent may be considered.

40 (6) Demonstrated financial responsibility as required by
41 G.S. 143-215.94H.

42 (b) The operating permit shall be issued at the time the commercial underground
43 storage annual tank operating fee required under G.S. 143-215.94C(a) is paid and shall
44 be valid from the first day of the month in which the fee is due through the last day of

1 the last month for which the fee is paid in accordance with the schedule established by
2 the Department under G.S. 143-215.94C(b).

3 (c) No person shall place a petroleum product, and no owner or operator shall
4 cause a petroleum product to be placed, into an underground storage tank at a facility
5 for which the owner or operator does not hold a currently valid operating permit.

6 (d) The Department shall issue an operating permit certificate for each facility
7 that meets the requirements of subsection (a) of this section. The operating permit
8 certificate shall identify the number of tanks at the facility and shall conspicuously
9 display the date on which the permit expires. Except for the owner or operator, no
10 person shall be liable under subsection (c) of this section if an unexpired operating
11 permit certificate is displayed at the facility, unless the person knows or has reason to
12 know that the owner or operator does not hold a currently valid operating permit for the
13 facility.

14 (e) The Department may revoke an operating permit only if the owner or
15 operator fails to continuously meet the requirements set out in subdivisions (1) through
16 (4) of subsection (a) of this section. If the Department revokes an operating permit, the
17 owner or operator of the facility for which the operating permit was issued shall
18 immediately surrender the operating permit certificate to the Department, unless the
19 revocation is stayed pursuant to G.S. 150B-33. An owner or operator may challenge a
20 decision by the Department to deny or revoke an operating permit by filing a contested
21 case under Article 3 of Chapter 150B of the General Statutes. The Secretary shall make
22 the final agency decision regarding the revocation of a permit under this section."

23 **SECTION 7.(a)** The definitions set out in G.S. 143-215.94A apply to this
24 section. As used in this section, "Department" means the Department of Environment
25 and Natural Resources and, with respect to any power or duty assigned to the
26 Environmental Management Commission under Article 21A of Chapter 143 of the
27 General Statutes, includes the Environmental Management Commission. As used in
28 this section, "site-specific cleanup standards" means standards developed using the
29 methodology described in the Standard Guide for Risk-Based Corrective Action
30 Applied at Petroleum Release Sites adopted by the American Society for Testing and
31 Materials (ASTM) as E1739-95(2002).

32 **SECTION 7.(b)** The Department shall establish a pilot program to evaluate
33 the use of site-specific cleanup standards for the cleanup of discharges or releases of
34 petroleum from underground storage tanks as an alternative to the use of the risk-based
35 assessment and corrective action standards set out in 15A NCAC 2L.0115. The purpose
36 of the pilot program is to determine the extent to which the use of site-specific standards
37 would provide effective protection of public health, safety, and the environment in a
38 cost-effective manner and at a lower overall cost as compared with the use of the
39 risk-based standards set out in 15A NCAC 2L.0115. The pilot program shall apply only
40 to discharges or releases that are classified as intermediate risk under 15A NCAC
41 2L.0115(d). The pilot program shall evaluate the use of site-specific standards in the
42 cleanup of contamination that results from a discharge or release of petroleum from: (i)
43 an underground storage tank; and (ii) an underground storage tank that is commingled

1 with petroleum contamination from a source of contamination other than an
2 underground storage tank, as provided in G.S. 143-215.94V(h).

3 **SECTION 7.(c)** Participation in the pilot program shall be at the election of
4 the owner, operator, or landowner. To participate in the pilot program, an owner,
5 operator, or landowner shall perform a site-specific risk assessment and submit the
6 assessment to the Department. If the Department determines that the use of site-specific
7 cleanup standards will provide effective protection of public health, safety, and the
8 environment, the Department shall set site-specific soil and groundwater cleanup
9 standards for the discharge or release. These site-specific standards shall apply in lieu of
10 the risk-based assessment and corrective action standards set out in 15A NCAC
11 2L.0115.

12 **SECTION 7.(d)** If soil and groundwater contamination from a discharge or
13 release is no greater than the site-specific soil and groundwater cleanup standards set by
14 the Department, the Department shall notify an owner, operator, or landowner that no
15 cleanup, further cleanup, or further action will be required. If soil and groundwater
16 contamination from a discharge or release is greater than the site-specific soil and
17 groundwater cleanup standards set by the Department, the owner, operator, or
18 landowner shall submit a corrective action plan to achieve the standards. The
19 Department may require the owner, operator, or landowner to evaluate the impact of the
20 site-specific cleanup standards on public health, safety, and the environment through
21 use of an appropriate model. The Department shall not set site-specific soil and
22 groundwater cleanup standards for the discharge or release that allow for contamination
23 in excess of unrestricted use standards, as defined in G.S. 143B-279.9, on any real
24 property that is not subject to land-use restrictions under G.S. 143B-279.9 and
25 recordation under G.S. 143B-279.11.

26 **SECTION 7.(e)** Except as provided in this section, the provisions of Part 2A
27 and Part 2B of Article 21A of Chapter 143 of the General Statutes apply to this section.

28 **SECTION 7.(f)** The Department shall annually report to the Environmental
29 Review Commission on the number of site-specific risk assessments submitted to the
30 Department under the pilot program, the disposition of those submissions, and, for any
31 submissions for which site-specific soil and groundwater cleanup standards are not set,
32 the basis for the decision not to set site-specific cleanup standards. The report shall
33 include a comparison of assessment and corrective action of discharges or releases
34 under the pilot program to assessment and corrective action of intermediate risk
35 discharges or releases pursuant to the risk-based assessment and corrective action
36 standards set out in 15A NCAC 2L.0115. The comparison shall include all of the
37 following:

- 38 (1) The costs associated with investigation, assessment, initial response,
39 abatement, analysis of risk, and development and implementation of a
40 corrective action plan.
- 41 (2) The immediate and long-term impacts on public health, safety, and the
42 environment.
- 43 (3) The need for and use of land-use restrictions as part of the corrective
44 action plan.

1 (4) The extent to which corrective action addresses vapor intrusion.

2 **SECTION 7.(g)** The Department shall submit the first report required by
3 subsection (f) of this section on or before 1 September 2009. The Department shall
4 include in the report due on or before 1 September 2013 any recommendations,
5 including legislative proposals, based on the findings of the pilot program.

6 **SECTION 8.(a)** The definitions set out in Section 8(a) of this act apply to
7 this section. It is the policy of the State that a discharge or release be reclassified as
8 low-risk if, based on site-specific cleanup standards, investigation, assessment, initial
9 response, abatement, risk-based corrective action, or other corrective action, the
10 Department determines that the discharge or release poses no significant risk to human
11 health or the environment. An owner, operator, or landowner may request that a
12 discharge or release be reclassified to a lower risk classification. If the Department
13 denies a request to reclassify a discharge or release to a lower risk classification, the
14 owner, operator, or landowner may file a petition for a contested case hearing as
15 provided in Article 3 of Chapter 150B of the General Statutes.

16 **SECTION 8.(b)** The Department shall report on or before 1 September of
17 each year to the Environmental Review Commission on the number of sites for which
18 reclassification was requested based on site-specific information and the disposition of
19 each request. The Department shall submit the first report required by this section on or
20 before 1 September 2009.

21 **SECTION 9.** The Department of Environment and Natural Resources shall
22 establish a process to provide informal notice of any proposed policy change or rule
23 interpretation that is not a rule, as defined in G.S. 150B-2, to interested parties. Except
24 in a situation that requires immediate action, the Department shall receive and consider
25 oral and written comment from interested parties before the Department implements the
26 proposed policy change or rule interpretation. Except in a situation that requires
27 immediate action, the Department shall provide written notice of a policy change or rule
28 interpretation to interested parties at least 30 days prior to its implementation.

29 **SECTION 10.** The Department of Insurance, in consultation with the
30 Petroleum Underground Storage Tank Funds Council and the Department of
31 Environment and Natural Resources, shall provide guidance and technical assistance for
32 the formation of an insurance pool pursuant to G.S. 143-215.94I to any responsible
33 entity that requests assistance.

34 **SECTION 11.** Section 8 of S.L. 2001-442 reads as rewritten:

35 "**SECTION 8.** Sections 1 through 5 of this act become effective 1 October 2001.
36 Sections 6, 7, and 8 of this act are effective when this act becomes law. ~~Sections 1, 2, 3,~~
37 ~~4, 5, and 7 of this act expire 1 October 2006."~~

38 **SECTION 12.** Notwithstanding any provision of Part 2A of Article 21A of
39 Chapter 143 of the General Statutes, the Department of Environment and Natural
40 Resources shall annually use up to three million dollars (\$3,000,000) of the increase in
41 receipts credited to the Commercial Fund as a result of the increase in the annual
42 operating fee set out in G.S. 143-215.94C(a), as amended by Section 1 of this act, solely
43 for the removal of free petroleum from groundwater as a first priority and shall use the
44 balance of these receipts to address the other concerns raised in the letter from the

1 United States Environmental Protection Agency Region 4 Administrator to the
2 Secretary of Environment and Natural Resources dated 19 September 2006.

3 **SECTION 13.** Sections 3, 4, 5, 9, 10, and 11 of this act are effective when
4 this act becomes law. Sections 1, 6, and 12 of this act become effective 1 January 2009.
5 G.S. 143-215.94C(a) as amended by Section 1 of this act expires 1 January 2019.
6 Section 2 of this act becomes effective 1 January 2009 and applies to determinations of
7 eligibility and requests for payments made on or after that date. Sections 7 and 8 of this
8 act are effective when it becomes law and expire 1 September 2014. Section 11 of this
9 act is effective retroactively to 1 October 2006.