

SFA

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 1018 (as enrolled)

PUBLIC ACT 479 of 1988

✓ Senate Bill 1040 (as enrolled)

Sponsor: Senator Vern Ehlers

Senate Committee: Natural Resources and Environmental Affairs

House Committee: Conservation and Environment

Date Completed: 1-11-89

SUMMARY OF SENATE BILLS 1018 and 1040 as enrolled:

Senate Bills 1018 and 1040 would amend Public Act 423 of 1984 and create the "Michigan Underground Storage Tank Financial Assurance Act", respectively, to provide for the regulation of underground storage tanks and assist operators of underground storage tanks in meeting their financial responsibilities in taking corrective actions to repair leaking underground storage tanks.

Senate Bill 1018

The bill would amend Public Act 423 of 1984, which provides for the registration of underground storage tanks, to transfer the Act's regulatory responsibilities for six months from the Department of Natural Resources (DNR) to the Fire Marshal Division of the Department of State Police. (Six months after the bill's effective date, those responsibilities would revert to the DNR.) The bill also would do the following for six months:

- Change the name of the Act to the "Underground Storage Tank Regulatory Act".
- Expand the Act to cover the regulation of underground storage tank systems, rather than underground storage tanks.
- Require owners of underground storage tank systems to register and annually renew their registration.
- Create the "Underground Storage Tank Regulatory Enforcement Fund" in the State Treasury.
- Provide for the Act's enforcement by the Fire Marshal Division or local units of government.
- Make other provisions pertaining to an owner's financial responsibility, temporary deferments from regulation, and violations and penalties.

The bill also would repeal Section 5 of the Act, which provides for the imposition of fines for failure to register an underground storage tank by August 7, 1986.

Underground Storage Tank Systems

Under the bill, an underground storage tank system would be any tank or combination of tanks, including connecting underground pipes, used to contain regulated substances (i.e., petroleum and those substances defined in the Federal Comprehensive Environmental Response, Compensation, and Liability Act), of which 10% or more was located beneath the surface of the ground. The bill would specifically exclude all of the following from the definition of "underground storage tank system":

- Storage tank systems that had a capacity of 110 gallons or less; farm or residential tanks that had a capacity of 1,100 gallons or less that were used for the storage of motor fuel for noncommercial purposes; tanks used for the storage of heating oil for consumptive, on-premises use; and septic tanks.
- Pipeline facilities, including gathering lines regulated under the Federal Natural Gas Pipeline Safety Act, or the Federal Hazardous Liquid Pipeline Safety Act; and liquid traps or associated gathering lines that were directly related to oil or gas production and gathering operations.
- Surface impoundments, pits, ponds, or lagoons; storm water or wastewater collections systems; and flow-through process tanks.
- Storage tanks placed in an underground area (e.g., a basement, mine shaft, or tunnel) if situated on or above the surface of the floor.
- Storage tank systems that held hazardous wastes listed or identified in Subtitle C of the Federal Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.
- Wastewater treatment tank systems that were part of a treatment facility regulated under the Federal Water Pollution Control Act.
- Equipment or machinery that contained regulated substances for operational purposes, such as hydraulic lift tanks and electrical equipment tanks.
- Underground storage tanks that contained a minimal concentration of regulated substances, and emergency spill or overflow containment tank systems that were emptied expeditiously after use.

Registration

The bill would require an owner of an underground storage tank system to register the system and annually renew the registration with the Fire Marshal Division of the Department of State Police. (Previously, the Act required registration of tanks subject to the notification requirements of the Federal Solid Waste Disposal Act with the Department of Natural Resources by May 8, 1986.) The bill would require the registration before the tank system was brought into use; previously, registration was required within 30 days after a tank was brought into use. The Fire Marshal Division could accept a tank system's registration only if the owner paid the registration fee required under the Act. Consistent with the current Act, the bill would not require notification of a test conducted on the tank (unless otherwise required under the Act when there is a suspected or confirmed release of a regulated substance), but the bill would require the owner to furnish information of such tests upon the request of the Fire Marshal Division.

The bill specifies that, beginning six months after its effective date, an owner of a tank system would have to pay a fee of \$100, upon registration or renewal of registration for each tank included in an underground storage tank system. The Fire Marshal Division would have to deposit all registration fees into the proposed Underground Storage Tank Regulatory Enforcement Fund. The State Fire Safety Board could promulgate rules requiring proof of registration to be attached to the tank systems or the property where systems were located. (NOTE: Although the bill specifies that the fee would be required beginning six months after the bill's effective date, it also would repeal the section that would require the fee six months after the bill's effective date.)

A tank that was closed or removed would be exempt from the registration and fee requirements. An owner of a tank system that had been closed or removed would have to notify the Fire Marshal Division of closure or removal. Until such notification was provided, the owner would have to continue to pay registration fees on the closed or removed tanks.

The Act requires notification of the DNR and the filing of certain information pertaining to the ownership and history of a tank if there is a leak in a tank. The bill, in addition to changing the notification requirement to the Fire Marshal Division, would require such notification if there were a "suspected or confirmed release" from a tank system.

Underground Storage Tank Regulatory Enforcement Fund

The Fund could receive money as provided by law and the State Treasurer would have to direct its investment. Interest and earnings would be credited to the Fund. Money in the Fund at the end of a fiscal year could not revert to the General Fund.

The Fund could be used only by the Fire Marshal Division to enforce the Act, its rules, and rules promulgated under the Fire Prevention Code pertaining to the delivery and dispensing operations or regulated substances. If the Fund's balance exceeded \$8 million at the end of any fiscal year, the Fire Marshal Division could not collect registration fees for the following year for existing underground storage tank systems. The suspended fee could be reinstated only if the Fund's balance were less than \$2 million at the close of a fiscal year. Before November 1 of every year, the Department of Treasury would have to notify the Fire Marshal Division of the Fund's balance at the close of the preceding fiscal year.

Fire Marshal Division and Local Enforcement

The Fire Marshal Division would have to enforce the Act and its rules. It could delegate that authority to a local unit of government, however, if the local unit had sufficient employees who were certified by the Division as underground storage tank system inspectors. A local unit could apply for the delegation of enforcement authority by submitting a resolution of its governing body and an application that contained information required by the Fire Marshal Division. The Division could revoke a delegation of enforcement authority for a violation of the Act, its rules, or a contract entered into by the Division and the local unit.

Under the bill, the Fire Marshal Division could certify individuals as underground storage tank system inspectors to enforce the Act and its rules. The Division could revoke an individual's certification for a violation of the Act or its rules.

If the Fire Marshal Division chose to delegate enforcement authority to local units of government, the Fire Safety Board would have to promulgate rules that established criteria for such delegation and qualifications for the certification of individuals as inspectors. The Division could contract with a local unit for the purpose of enforcing the Act and its rules.

In addition, upon a resolution of the governing body of a local unit of government in whose jurisdiction an underground storage tank facility was being installed, the Fire Marshal Division could require safeguards in addition to those specified in rules, if the public health, welfare, or the environment were endangered. Local units could not enact or enforce an ordinance that was inconsistent with the Act or its rules, or required a permit, license, approval, inspection, fee, or tax for the installation of a tank system.

Other Provisions

Financial Responsibility. The Fire Safety Board would have to promulgate rules relating to underground storage tank systems that were at least as stringent as those promulgated by the United State Environmental Protection Agency. The rules would have to include a requirement that the owner or operator of a tank system provide financial responsibility in the event of a release from the underground storage tank system.

Temporary Deferments. The bill would defer all of the following from regulation under the Act "until such time as the director [of the Department of State Police] determines that they should be regulated":

- Wastewater treatment tank systems.
- Underground storage tank systems that contained radioactive material and that are regulated under the Federal Atomic Energy Act.
- Underground storage tank systems that are part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under the Code of Federal Regulations.
- Airport hydrant fuel distribution systems.
- Underground storage tank systems with field-constructed tanks.

Violations and Penalties. The bill specifies that a person could not repair, test, or knowingly deliver a regulated substance into a tank system that was not properly registered. A violation of the Act or its rules would be a misdemeanor, punishable by up to six months' imprisonment, a maximum fine of \$500, or both. A person who violated the Act or its rules also would be subject to a civil fine of \$500. Civil fines would have to be deposited into the Fund.

Repeal. Six months after the bill's effective date, all of the above provisions would be repealed and the bill would return the responsibility to register and regulate underground storage tanks to the DNR. The previous provisions for the registration of underground storage tanks under the Act, and the Act's notification requirements in the event of a leak, would be reinstated.

MCL 299.701 et al.

Senate Bill 1040

The bill would create the "Michigan Underground Storage Tank Financial Assurance Act" to assist people in Michigan in meeting the financial responsibility requirements provided for in the Federal Solid Waste Disposal Act, to address problems associated with releases from petroleum underground storage tank systems, and to promote compliance with the Underground Storage Tank Regulatory Act (amended by Senate Bill 1018) and the Leaking Underground Storage Tank Act (created by House Bill 5508). The bill would do all of the following:

- Create the "Michigan Underground Storage Tank Financial Assurance Fund" and the "Emergency Response Fund".
- Allow and regulate access to the financial assurance fund.
- Require the Department of Treasury to establish a loan and interest subsidy program.
- Create the "Michigan Underground Storage Tank Financial Assurance Policy Board" within the Department of Management and Budget (DMB).
- Make other provisions pertaining to a tank system operator's financial responsibility in the event of a release; the DNR's responsibility under the proposed Act; liability; a Department of Treasury study on environmental impairment insurance; and reserves of the financial assurance fund after the bill's repeal.
- Repeal the bill six months after its effective date.

The bill is tie-barred to House Bill 5508 (Public Act 478 of 1988) and Senate Bill 1018 (Public Act 479 of 1988). Public Act 478 created the Leaking Underground Storage Tank Act to regulate and provide for corrective action to be taken due to releases from underground storage tank systems, and will be repealed six months after its effective date.

Funds

The State Treasurer would have to direct the investment of the Michigan Underground Storage Tank Financial Assurance Fund. Interest and earnings from the investments would have to be credited to the fund and money in it at the close of a fiscal year could not revert to the General Fund. Money in the financial assurance fund could be spent only for the following:

- Approved work invoices, or approved requests for indemnification, pursuant to the bill.
- Actual and necessary expenses incurred by the proposed policy board or its members in carrying out the duties that would be imposed by the bill.
- The loan and interest subsidy program that the bill would require the Department of Treasury to establish.

- Reasonable administrative costs of implementing the bill incurred by the DMB, the DNR, the Department of State Police, the Department of Treasury, and the Department of Attorney General. (Administrative costs could not exceed 10% of the Fund's expenditures in any year.)
- The cost of the Department of Treasury's report on environmental impairment insurance as required by the bill.

The policy board would have to make recommendations to the Appropriations Committees on the distribution and amount of administrative costs from the Fund. Those recommendations would have to be provided to each affected department.

The State Treasurer also would have to direct the investment of the Emergency Response Fund, whose interest and earnings would have to remain in the Fund. Money in the Emergency Response Fund at the end of a fiscal year could not revert to the General Fund. The Emergency Response Fund's balance could not exceed \$1 million, except that, upon the repeal of the bill's section that would create the financial assurance Fund, all money in that Fund would have to revert to the Emergency Response Fund. (NOTE: Since the bill would be repealed six months after its effective date, both sections creating Funds would be repealed at the same time.)

The bill would require that money from the Emergency Response Fund be spent to undertake corrective action pursuant to the Leaking Underground Storage Tank Act. The persons responsible for the corrective action then would be liable to the State for all the expenditures.

The DMB would have to employ a person to serve as the Administrator of the financial assurance Fund. The Administrator would be responsible for processing and approving requests for payments from the Fund. Beginning six months after the bill's effective date, the Fund would have to begin operating and the Administrator would have to begin accepting work invoices, work receipts, and requests for indemnification. (NOTE: While the Fund would have to begin operating six months after the bill's effective date, the bill would be repealed on that date as well.)

The Legislature would have to provide a revenue source to implement the proposed Act before June 1, 1989. A public utility with more than 500,000 customers in Michigan would be exempt from any fee or assessment imposed under the bill, if such a fee or assessment were imposed on petroleum used by that public utility for the generation of steam or electricity. Of the revenue collected under the bill, 80% would have to be deposited into the financial assurance Fund and 20% in the Emergency Response Fund. If the Emergency Response Fund reached its prescribed limit of \$1 million, however, all of the revenue would have to be deposited into the financial assurance Fund.

Access to the Michigan Underground Storage Tank Financial Assurance Fund

An operator of an underground storage tank system could receive money from the Fund for corrective action or indemnification only if the following requirements were met:

- The petroleum underground storage tank from which a release occurred was in compliance with the registration requirements of the Underground Storage Tank Regulatory Act at the time the release was discovered.
- The operator was in compliance with all record-keeping and reporting requirements of the Underground Storage Tank Regulatory Act, the Leaking Underground Storage Tank Act, rules promulgated under either of those Acts, Subtitle I of Title II of the Federal Solid Waste Disposal Act, or rules promulgated under the Federal Act. (Records would have to be valid and verifiable.)
- The operator provided the Fund Administrator with proof of financial responsibility for the deductible amount that satisfied the requirements under the Federal Solid Waste Disposal Act.
- The operator had not defaulted on a loan subsidized through the bill's loan and interest subsidy program.
- The operator was not the United States government.

A public utility with more than 500,000 customers in Michigan would be ineligible to receive money from the Fund for corrective action or indemnification associated with a release from a petroleum underground storage tank system used to supply petroleum for the generation of steam electricity.

For corrective action and indemnification, the Fund Administrator would have to approve expenditures on behalf of an operator for approved work receipts, approved work invoices, and approved requests for indemnification per petroleum underground storage tank system per release, provided that the operator met the bill's requirements. Such expenditures could not exceed \$1 million, except that a person who operated 101 or more tanks could receive a maximum of \$2 million annually from the Fund.

In order to have access to the Fund for corrective action, an operator of a storage tank system would have to prepare a corrective action plan as required by the Leaking Underground Storage Tank Act. After preparing a plan, the operator could submit work invoices or work receipts to the Administrator. After receiving invoices or receipts, the Administrator would have to approve the invoice or receipt, if he or she determined all of the following:

- That the DNR had determined that work performed or proposed was consistent with the corrective action plan.
- That the cost of performing the work was reasonable.
- That the operator was eligible to receive funding under the bill.

If the cost of the receipt or invoice were not reasonable, the work not consistent with the plan, or the operator not eligible for funding, the Administrator would have to deny the work receipt or work invoice and notify the operator of the denial.

The Administrator would have to keep records of approved receipts and invoices. If an operator's approved receipts totaled the deductible amount, the Administrator would have to forward approved work invoices or additionally submitted approved work receipts to the State Treasurer, providing that the operator had not exceeded the amount of funding allowed

by the bill. The State Treasurer would have to pay the contractor listed on an approved work invoice or work receipt within 30 days if there were sufficient money in the Fund, unless the Administrator directed the Treasurer to withhold partial payment on an invoice to assure acceptable completion of the proposed work.

In order to have access to the Fund for indemnification, an operator would have to submit a request to the Fund Administrator containing information required by the Administrator. If the operator were eligible for funding under the bill, the Administrator would have to forward a copy of the indemnification request to the Attorney General. The Attorney General would have to approve the request if there were a legally enforceable judgment against the operator that was caused by a release from an underground storage tank or if a third party settlement due to a release were reasonable. If the Attorney General approved a request, the Fund Administrator would have to review whether the operator had met the bill's deductible requirement, had not exceeded the bill's allowable amount of expenditure, and was eligible for funding. If, after review, the operator were determined eligible for indemnification funding, the Administrator would have to forward the approved request to the Department of Treasury. The Administrator would have to keep records of all approved requests and the Treasurer would have to make a payment for an approved indemnification request within 30 days, if the Fund had sufficient money.

The Treasurer would have to pay approved work invoices, work receipts, and requests for indemnification in the order that they were received. If there were insufficient money in the Fund to make a payment, then approved work invoices, work receipts, and requests for indemnification could be paid only if revenues of the Fund became available. Neither the Fund nor the State could be considered liable for approved work invoices, work receipts, or requests for indemnification if the Fund had insufficient money to meet the claims.

If a work receipt, work invoice, or indemnification request were denied by the Fund Administrator, the operator, within 14 days, could request a review by the Board. If the Board determined that approval should have been granted, the Administrator would have to do so. A person who was denied approval after a review by the Board could request a contested case hearing pursuant to the Administrative Procedures Act.

Loan and Interest Subsidy Program

The Department of Treasury would be required to establish a loan and interest subsidy program that would provide loan and interest subsidies to operators of a petroleum underground storage tank system who were eligible to receive funding for corrective actions or indemnification. Money in the Fund could not be used for loans, but to provide loan subsidies to lenders in the event of a default on a loan for the replacement of a petroleum underground storage tank system and to provide interest subsidies on such loans. The subsidy program would have to have a three-year open application period beginning on the date that the Fund began operating. (NOTE: The bill is repealed six months after its effective date.)

Subsidies would have to be made, upon application, for the replacement of existing petroleum underground storage tank systems with systems that met the requirements of the Federal Solid Waste Disposal Act for new underground storage tank systems installed after January 1, 1989. A subsidy would be valid for the entire loan period and the Department of Treasury would have to structure the subsidy to provide for full payment to approved applicants or their lending institutions prior to the repeal of the bill's section requiring the subsidy program. A maximum of 20% of the Fund's annual expenditures could be used for the subsidy program.

Policy Board

The Michigan Underground Storage Tank Financial Assurance Policy Board would consist of 11 members including the Directors of the DMB, the DNR, and the Department of State Police (or their designees), the State Treasurer (or the Treasurer's designee), and seven members appointed by the Governor with the advice and consent of the Senate. The Governor's appointments would have to be made within 60 days after the bill's effective date and include one member from each of the following:

- An independent petroleum wholesale distributor-marketer trade association.
- A petroleum refiner-supplier trade association.
- A service station dealers' trade association.
- A truck stop operators trade association.
- An environmental public interest organization.
- The general public.
- Local government.

Appointed members of the Board would serve for a two-year term and vacancies would be filled in the same manner as original appointment. The Director of the DMB would have to call the Board's first meeting, at which it would elect a chairperson and other necessary officers from among its members. Subsequent meetings would be called by the chairperson on his or her own initiative or by the chairperson on petition of three or more members. A meeting would have to be called for no later than 14 days after receipt of such a petition. The board would have to comply with the Open Meetings Act and a majority would constitute a quorum for the transaction of business. Action could be taken by the Board by a majority of the votes cast. The Board would have to advise the DMB and the Administrator on all matters related to the bill's implementation.

Other Provisions

Financial Responsibility. Before being eligible to receive money from the financial assurance Fund in the event of a release, an operator of a tank system would be responsible for the first \$10,000 per underground storage tank system per release. (The bill specifies that this could be referred to as a deductible amount.)

DNR Responsibilities. If the DNR approved a corrective action plan under the Leaking Underground Storage Tank Act, it would have to forward a copy of the approved plan to the Fund Administrator.

In addition, after consultation with the Policy Board, the DNR would have to prepare and annually update a list of approved contractors qualified to undertake corrective actions. The list would have to be made available upon request. The bill specifies, however, that in preparing the list, the DNR would not be responsible or liable for the performance of the approved contractors. A contractor would have to be suspended or removed from the list for fraud or other cause, as the DNR determined.

Liability. The bill could not be construed as creating any liability to the State or making the State a guarantor of the financial assurance Fund. In addition, the bill could not be construed to relieve those eligible for funding from any liability that could be incurred as the operator of an underground storage tank system. The State would not be assuming any liability of an operator eligible for funding; it would only be providing such an operator assistance in meeting financial responsibility requirements.

Department of Treasury Study. The bill would require the Department of Treasury to conduct a study, during the year preceding the repeal of the section that would create the financial assurance Fund, "to determine the availability and cost of environmental impairment insurance for owners and operators of underground storage tank systems". The Department would have to report to the Legislature on the results of the study. (NOTE: The entire bill would be repealed six months after its effective date, so the Department would not have a year before the section's repeal.)

Fund Reserves. Prior to the repeal of the section that would create the financial assurance Fund, the State Treasurer would have to reserve enough money in that Fund to pay for work invoices, work receipts, and indemnification requests denied by the Fund Administrator, if the operator requested a review or contested hearing subsequent to the denial or filed a related lawsuit that was still pending. After the money held in reserve reverted to the Emergency Response Fund, it would have to be used to pay for work receipts, work invoices, and indemnification requests for successful challenges to a denial by the Fund Administrator.

FISCAL IMPACT

Senate Bill 1018

Since the bill would allow for the collection of fees only after six months from the time of its enactment, and the bill would be repealed in six months, there would be no fiscal impact. If the bill's registration and enforcement programs were to be implemented on a permanent basis, however, there would be increased revenues and costs to the State, as follows.

Revenues: This bill would assess a \$100 registration fee for all underground storage tanks. Since there are approximately 65,000 tanks currently registered, annual revenues could yield \$6,500,000. The Department of State Police also estimates that approximately 25,000 tanks are unregistered which could, with increased enforcement, generate additional revenue. There also could be some revenue loss due to those individuals' closing their tanks due to the new fees.

Costs: The Department of State Police would require an additional 22 FTEs to enforce this bill. These employees would be paid from registration fees at an estimated annual cost of \$1,142,000. The Department would also need to contract for an estimated 100 field inspectors at the local level at a cost of approximately \$5,400,000. Vehicles, supplies, rentals and other contractual supplies, services and materials (CSS&M) costs are estimated at \$950,000. Therefore, total costs would equal \$7,492,000.

Fiscal Analyst: M. Hansen

Senate Bill 1040

The bill's provisions, if established on a full-year basis, would cost the Department of Management and Budget an estimated \$300,000 for first-year administration. Based upon an estimate of 250 claims, the bill would require the employment of an Administrator and either three claim adjusters or funds with which to provide similar support on a contractual basis. A funding source for such regulatory costs has not yet been determined.

Fiscal Analyst: B. Baker

Costs to the Departments of Treasury and Natural Resources are not available at this time.

Fiscal Analyst: G. Cutler

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.