



**House
Legislative
Analysis
Section**

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UNDERGROUND STORAGE TANK FEE

Senate Bill 266 (Substitute H-3)
First Analysis (6-8-89)

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Sponsor: Sen. Vern Ehlers

Senate Committee: Finance

Mich. State Law Library

House Committee: Conservation, Recreation, &
Environment

THE APPARENT PROBLEM:

In response to the growing problems of environmental contamination, the federal government has established a number of programs to address the situation. Leaking underground storage tanks, while not usually concentrated in one area so as to be considered a serious toxic spill, are considered to be a major source of pollution and a threat to the groundwater.

The Federal Leaking Underground Storage Tank Trust Fund was created in 1986 to help states fund petroleum leak cleanups through the Superfund Amendments and Reauthorization Act. Money credited to the fund is derived from gasoline taxes. An amount of \$500 million will be available to the states over a five-year period (which started in 1987). In 1987 and 1988 the Department of Natural Resources (DNR) was operating under a cooperative agreement with the Environmental Protection Agency to receive money from the fund. In order for the state to continue to receive money from the fund, however, the DNR had to demonstrate by October 1988 that it had the legal authority to take corrective action and enforcement that was at least as stringent as federal authority. Legislation was needed to require the DNR to incorporate federal standards regarding leaking underground storage tanks and implement an adequately stringent regulatory program, thus enabling the state to continue to receive money to clean up sites contaminated by underground tanks.

Toward that end, Public Acts 478, 479, and 518 of 1988 provided for the regulation of underground storage tanks and for corrective action to be taken when such tanks are found to be leaking. Most of the provisions of the three acts are scheduled to expire six months after their effective dates. However, Senate Bills 264 and 265 were recently reported from the House Conservation, Recreation, and Environment Committee to remove the sunset date on Public Act 478 (the Leaking Underground Storage Tank Act) and Public Act 479 (an amendatory act to the Underground Storage Tank Regulatory Act). A revenue source has not yet been established, however, for the Michigan Underground Storage Tank Financial Assurance Fund and the Emergency Response Fund, which were created by Public Act 518.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Underground Storage Tank Financial Assurance Act to impose an environmental protection regulatory fee on all refined petroleum products sold for resale or consumption, to be used for the cleanup and prevention of environmental contamination resulting from releases of refined petroleum products from underground storage tank systems. For the period from July 1, 1989, through December 31, 1989, the regulatory fee would be 1/2 cent per gallon for each gallon sold in

the state for resale or consumption. After December 31, 1989, the regulatory fee would be 1/4 cent per gallon for each gallon sold for resale or consumption. The Department of Treasury would be required to precollect the regulatory fees from persons who refine petroleum in the state, or import refined petroleum into the state, for storage and consumption. The department would have to collect the fees that could be collected at the same time as the sales tax is collected from gasoline dealers under the General Sales Tax Act (which requires gasoline dealers to prepay a portion of the sales tax on gasoline purchases twice each month to the department). The remainder of the fees would be collected in a manner determined by the state treasurer.

Beginning one year after the effective date of the bill and every quarter thereafter, the bill would require the assurance fund administrator to determine if fund revenues would be sufficient to pay expected expenditures from the fund. If expected expenditures were anticipated to exceed fund revenues, the state treasurer would advise the legislature of the estimated increase in the regulatory fee that would be necessary to pay expected expenditures or make other recommendations to revise the act that would improve the security of the fund. If anticipated expenditures were significantly below anticipated revenues, the state treasurer would recommend to the legislature a reduction of the regulatory fee.

The act created the Michigan Underground Storage Tank Financial Assurance Fund and the Emergency Response Fund. Money in the Emergency Response Fund is to be spent by the director of the DNR to undertake corrective actions according to the provisions of the Leaking Underground Storage Tank Act. The bill provides that the regulatory fees collected under the bill would be deposited in the Emergency Response Fund until it reached \$1 million; the regulatory fees would then be deposited in the assurance fund. Not more than \$1 million could be spent from the Emergency Response Fund in any one year.

Money in the assurance fund could be spent only for the following reasons, and only in the following order of priority:

- for the reasonable administrative costs of implementing the act by the Department of Management and Budget, the DNR, the Department of State Police, the Department of Treasury, and the attorney general's office as appropriated by the legislature. Administrative costs would include the actual and necessary expenses incurred by the Michigan Underground Storage Tank Financial Assurance Policy Board created by the act. Total administrative costs could not exceed six percent of the assurance fund's projected revenues in any one year.
- for the interest subsidy program that would be established under the bill. (The bill provided that an

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interest subsidy program would be established to provide interest subsidies on loans used for the replacement of underground tanks. Money spent for interest subsidies could not exceed ten percent of the fund's projected revenue in any year. The bill would require that ten percent of the fund's revenue during the first year be used for the interest subsidy program, and that if it were not used, it would be carried over for expenditure in succeeding years. No additional revenue in the fund could be set aside for the interest subsidy program until all of the first year revenue was expended.)

for corrective action and indemnification including payments for work performed by a contractor to stop or clean up a leak, and payments for an approved request for indemnification.

for the recycling and disposal of used tires. (Total expenditures under this subdivision could not exceed five percent of the fund's projected revenues in any year.)

he bill provides that either the owner or operator, but not oth, could receive money from the assurance fund for an occurrence (an accident that resulted in a leak from an underground tank). If an owner or operator received money from the assurance fund for an occurrence, the owner or operator would not be eligible to receive money from the fund for a subsequent occurrence unless the owner or operator had upgraded or replaced all the underground tank systems at the location of the occurrence so as to meet the requirements of the Federal Solid Waste Disposal Act or new tanks installed after January 1, 1989.

n owner or operator could not receive money from the assurance fund for corrective action or indemnification unless a spill or leak from an underground tank, from which the corrective action or indemnification arose, was discovered and reported on or after the effective date of the bill. However, money in the fund could not be expended until the fund began operating. An owner or operator could submit a work invoice (a receipt showing work performed by a contractor to stop or clean up the leak) to the administrator of the assurance fund after approval of a bid (a proposal signed by a contractor showing an itemized list of the work to be completed and its cost). Upon receipt of a work invoice the administrator would have to determine whether the work invoice was reasonable in terms of cost and consistent with the approved bid, and whether the DNR had determined that the work performed was consistent with the plan to correct the spill or leak. If the administrator determined that the work invoice was reasonable in terms of cost or consistent with the bid, he or she could deny the invoice and notify the owner or operator who submitted the invoice. The administrator would approve a payment that was paid by an owner or operator if the receipt met the requirements of the act for an approved bid and an approved work invoice.

urrently, the act provides that the annual expenditures from the assurance fund on behalf of an operator cannot exceed \$1 million for a person who operates up to 100 tanks, and cannot exceed \$2 million for a person who operates 101 tanks or more. The bill would delete these provisions, and provide instead that expenditures on behalf of an operator for corrective action and indemnification could be in amounts of up to \$1 million per occurrence.

urrently, the act requires the Department of Treasury to establish a loan and interest subsidy program to provide owners or operators of tanks systems who meet the requirements of the act. The bill would require the department, in cooperation with the Financial Assurance

Policy Board, to establish only an interest subsidy program. The bill would eliminate references to loan subsidies, and would eliminate a requirement that not more than 20 percent of the money in the assurance fund be spent for loan and interest subsidies in any one year.

The act provides that it will be repealed six months after its effective date. The bill would delete these provisions and provide instead that the portion of the act that creates the assurance fund and provides for its revenue source and distribution would be repealed five years and six months after the effective date of the bill. If any provisions of the act were found to be unconstitutional, the whole act would be considered unconstitutional.

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HOUSE COMMITTEE ACTION:

The House Conservation, Recreation, and Environment Committee adopted a substitute for the bill to clarify certain provisions and to add tire recycling and disposal as uses to be funded by the assurance fund.

FISCAL IMPLICATIONS:

According to the Department of Management and Budget, funds generated under the assurance fund would not be adequate to make the fund financially sound. The assurance fund would generate approximately \$75 million; however, the fund would need \$1.4 billion to meet its projected financial obligations. (6-7-89)

ARGUMENTS:

For:

Leaking underground storage tanks are extremely dangerous to the environment: they can cause extensive groundwater pollution, fires, and explosions. The state must take action to curb this pollution source. While most contamination from underground tank systems is not eligible for Superfund money because the systems don't cause major contamination sites, the cumulative effect of widespread, and many times unknown, underground tank leaks is considered to be a serious threat. The bill would provide the state with a means to begin cleaning up these problems. Further, the bill would allow the state to fulfill and conform to certain federal requirements, in conjunction with Senate Bills 264 and 265, in order to be eligible to receive money from the Federal Leaking Underground Storage Tank Trust Fund created to help states fund petroleum leak cleanups.

Against:

Studies financed by the DNR and research undertaken by the Department of Management and Budget have suggested that at some point claims against the assurance fund will far exceed fund revenues. Failure of the fund would subject owners and operators of underground storage tanks to state and federal enforcement actions and would interrupt cleanups in progress. If the state is administering the fund, and the fund bankrupts, the state will probably be liable for payment of losses incurred by persons investing in the fund. Further, failure of the fund may place most small businesses who own or operate underground storage tanks in jeopardy since they would be unprotected from the financial liabilities resulting from a leaking underground storage tank.

Response: The bill does include provisions for adjustment of the regulatory fee if the fee is not sufficient to cover the costs of the fund.

Against:

Currently, the fee proposed in the bill is agreed to be a regulatory fee. However, the inclusion of tire recycling and tire disposal among the uses to be funded by the assurance fund could jeopardize the fee's regulatory status and may cause the fee to be interpreted as a gas tax because the fee would fund several purposes that have nothing to do with each other. The tire recycling and disposal provision should be deleted.

POSITIONS:

The Associated Petroleum Industries supports the bill.
(6-7-89)

The Service Station Dealers Association of Michigan supports the bill.

The Department of Management and Budget opposes the bill. (6-7-89)