



**House
Legislative
Analysis
Section**

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone: 517/373-6466

UNDERGROUND STORAGE TANK FIN. ASSURANCE

House Bill 4528 (Substitute H-2)
First Analysis (5-18-89)

RECEIVED

JUN 08 1989

Sponsor: Rep. Mary C. Brown
Committee: Conservation, Recreation, & Environment

MICH. State Law Library

THE APPARENT PROBLEM:

The federal Solid Waste Disposal Act recently established regulations to ensure financial responsibility for coverage of problems associated with releases from petroleum underground storage tank systems. Due to the scarcity and high cost of pollution insurance, the federal regulations allow states to establish "assurance funds" to help provide compliance for those small businesses that might otherwise be required to close because they cannot meet the federal requirements. The Michigan Underground Storage Tank Financial Assurance Act, Public Act 518 of 1988, was created to assist people in Michigan in meeting the financial responsibility requirements concerning petroleum underground storage tank systems provided for in the act. However, although the Michigan financial assurance act established a framework for the implementation of the Michigan Underground Storage Tank Financial Assurance Fund, an actual revenue source for the fund was not included in the act. The Michigan storage tank financial assurance act will sunset June 1, 1989, and legislation is needed to maintain the framework for implementation of the fund until a revenue source for the fund is agreed upon.

THE CONTENT OF THE BILL:

House Bill 4528 would amend the Michigan Underground Storage Tank Financial Assurance Act to set priorities for the use of the money in the Michigan Underground Storage Tank Financial Assurance Fund and to provide for a source of revenue to implement the act. Under the bill, money would be spent in the following order of priority. First, money would be spent for the reasonable administrative cost of implementing the bill by the responsible departments, as well as the actual and necessary expenses incurred by the Michigan Underground Storage Tank Financial Assurance Policy Board. Money in the fund would also be used for the interest subsidy program under the act. The bill would specify that interest subsidies would only be made for the replacement of existing petroleum underground storage tank systems that met requirements of the rules promulgated under the Underground Storage Tank Regulatory Act in addition to other requirements. Money expended for the program could not exceed ten percent of the fund's projected revenues in any year. However, during the first year of the fund's operation, the bill would require the expenditure of ten percent of the revenue of the fund on the interest subsidy program. The next priority for fund expenditures would be corrective action and indemnification costs. Under the act, owners or operators can only receive money from the fund for corrective action or indemnification under certain circumstances, and the bill would specify that, in order to receive money, releases from which the action or indemnification arose would have to be discovered and reported on or after the effective date of the bill. In addition, the bill would require payments from the fund for recycling of tires in accordance with a legislatively enacted tire recycling program. The bill would require the

fund to begin operation and the administrator of the fund to begin to accept work invoices, bids, and requests for indemnification six months after the effective date of the bill. The bill would repeal provisions creating the fund upon the expiration of five years and six months after the effective date of the bill. (Although the Emergency Response Fund would not be repealed by this provision, the funding source for the emergency fund would be repealed.)

The bill would clarify that owners of leaking underground storage tanks would also be subject to the act's provisions and would allow either an owner or an operator to receive money from the storage tank financial assurance fund for a tank. If an owner or operator received money from the 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 underground storage tank systems at the location of the first occurrence to meet the requirements of the federal Solid Waste Disposal Act for a new underground storage tank system installed after January 1, 1989, and the rules promulgated under the state's Underground Storage Tank Regulatory Act. Currently, the fund administrator is prohibited from expending more than \$2 million from the fund on behalf of an operator with 101 or more tanks. Under the bill, the administrator could approve expenditures for corrective action and indemnification of not more than a total of \$1 million on behalf of an owner or operator. The bill would require owners and operators to meet provisions of the rules promulgated under the Underground Storage Tank Regulatory Act in addition to federal requirements in order to become eligible to receive money from the fund for indemnification. In addition, the bill would clarify that the administrator could approve a payment for a work invoice that was paid by an owner or operator for certain corrective action taken under the Leaking Underground Storage Tank Act if the payment met the requirements of the storage tank financial assurance act for an approved bid and an approved work invoice.

The bill would prohibit the expenditure of more than \$1 million from the Emergency Response Fund in any year. The bill would establish an environmental protection regulatory fee to be imposed on all refined petroleum products sold for resale or consumption in the state. The fee would be used for the cleanup and prevention of environmental contamination resulting from releases of refined petroleum products from underground storage tanks systems. The fee would be set by law and imposed on each gallon of refined petroleum sold for resale or consumption in the state, with the per gallon charge being a direct measure of capacity utilization of an underground storage tank system. The Department of Treasury would precollect regulatory fees from persons who refined petroleum in the state for storage and consumption in the state and persons who imported refined petroleum into the state for storage and consumption in the state. Currently,

H.B. 4528 (5-18-89)

OVER

80 percent of the revenues collected under the act are to be deposited into the storage tank financial assurance fund and 20 percent of the money is to be deposited into the Emergency Response Fund. The bill would require all regulatory fees collected under the act to be deposited into the Emergency Response Fund until it reaches \$1 million. When the Emergency Response Fund reached \$1 million, all regulatory fees would be deposited into the storage tank financial assurance fund. The bill would provide measures to ensure the financial stability of the storage tank financial assurance fund.

The act would be repealed effective December 31, 1989.

MCL 299.804 et al.

FISCAL IMPLICATIONS:

Fiscal information is not available. (5-17-89)

ARGUMENTS:

For:

According to the Michigan Petroleum Association, the federal act requires owners of more than 100 petroleum underground storage tanks to ensure financial responsibility by October 1, 1989. Owners of 13-99 tanks would be required to ensure financial responsibility by approximately April 1, 1990, and owners of 1-12 tanks would have to ensure responsibility by October 1, 1990. The federal regulations would require aggregate financial assurance of \$2 million for owners of more than 100 tanks and assurance of \$1 million for owners of less than 100 tanks. The bill will clarify and set priorities for fund expenditures, thus providing for better implementation of the fund, and extend the sunset date of the act so that owners of storage tanks can meet federal financial assurance requirements before expiration of federal deadlines.

Against:

One of the reasons that a sunset date was placed on the Michigan storage tank financial assurance act was so that those parties affected by the act would have a chance to agree upon a source of revenue for the fund. The bill does not address the fee issue and should be held up until a fee is established, instead of providing for another sunset date. According to an actuarial study titled "State of Michigan Financial Responsibility for Underground Storage Tanks" (March 1989), revenue generated in the following amounts would be needed to maintain the stability of the assurance fund:

- \$113 million for the first year;
- \$245 million for the second year;
- \$337 million for the third year;
- \$373 million for the fourth year; and
- \$412 million for the fifth year.

Senate Bill 266, currently pending before the Senate, provides for the generation of \$125 million for the assurance fund, but this amount is only sufficient to provide revenue for the fund for the first year. If the assurance fund is underfunded, it will probably be exhausted. If a fee is not established to generate revenue in the amounts needed, several small businesses will close. In addition, if the act is extended only for another six months owners of more than 100 storage tanks will not meet federal deadlines and may have to close.

Response: Under the federal act, a corporation or owner with \$10 million in net worth could self-insure. Therefore,

many owners of more than 100 tanks will be able to take advantage of this provision and will not have to close.

POSITIONS:

The Michigan Petroleum Association supports the concept of the bill. (5-17-89)

The Service Station Dealers Association of Michigan supports the bill. (5-17-89)

The Department of Management and Budget opposes the bill. (5-17-89)