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BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 264 (as enrolled)

Senate Bill 265 (as enrolled)

Sponsor: Senator Vern Ehlers

Senate Committee: Natural Resources and Environmental Affairs

House Committee: Conservation, Recreation, and Environment

PUBLIC ACT 150 OF 1989**PUBLIC ACT 151 OF 1989**

Date Completed: 7-21-89

RATIONALE

Public Acts 478, 479, and 518 of 1988 (House Bill 5508, Senate Bill 1018, and Senate Bill 1040, respectively) provide for the regulation of underground storage tanks and for corrective actions to be taken when such tanks are found to be leaking. A revenue source was not established in 1988, however, for the Michigan Underground Storage Tank Financial Assurance Fund and the Emergency Response Fund, which were created by Public Act 518. As a result, most of the provisions of those Acts expired on June 29, 1988, six months after their effective dates. (Senate Bill 266 amended Public Act 518 to address the revenue source issue.) Since strong State regulation of underground storage tanks is necessary for the State to meet Federal standards and continue to receive Federal funds, many people feel that the expired provisions of the 1988 Acts should be re-enacted. In addition, some feel that there is a need for technical revisions to provisions pertaining to definitions, fines, effective dates, and repealers.

CONTENT

Senate Bills 264 and 265 would remove the six-month sunset dates contained in Public Act 478 of 1988, which created the Leaking Underground Storage Tank Act, and Public Act 479 of 1988, which amended the Underground Storage Tank Regulatory Act, respectively.

Senate Bill 264 also would increase from 30 to 45 the number of days that the Director of the Department of Natural Resources has, to approve or disapprove a corrective action plan, and would do all of the following:

- Require the Director to respond within 60 days after receiving a statement from an owner or operator asserting that all corrective action had been completed and including documentation showing full compliance with the approved corrective action plan and the Act. The Director would have to respond by executing a document either stating that the corrective actions had been completed or indicating what actions remained to be completed. Failure to respond would be considered a response that corrective action remained to be completed, and the owner or operator could request a hearing before the Natural Resources Commission.
- Amend the definition of "owner" as it pertains to an exclusion for persons acting in a fiduciary capacity. (That exclusion would not apply to "a grantor, beneficiary, remainderman, or other person" who could receive a financial benefit, directly or indirectly, from the exclusion other than by the receipt of payment for fees and expenses related to the administration of a trust.)
- Revise provisions pertaining to the

S.B. 264 & 265 (7-21-89)

effective date of a lien on a tank system and land on which it is located for unpaid costs incurred by the State for taking corrective action.

- Provide that the Act would be repealed 12 months after the Underground Storage Tank Financial Assurance Act became invalid if it were found unconstitutional by a court.

Senate Bill 265 would require registration of underground storage tank systems; require tank system owners to pay a \$100 annual fee for each tank in a system; create the Underground Storage Tank Regulatory Enforcement Fund; provide for enforcement of the Act; and impose penalties for violations of the Act. (These provisions had been enacted in 1988 but expired on June 29, 1989.) The bill also would do all of the following:

- Make it a misdemeanor punishable by up to six months' imprisonment and/or a fine up to \$500 for a person knowingly to submit false information when registering a tank system, and subject the person to a civil fine.
- Increase the maximum civil fine for violations of the Act from \$500, to \$5,000 for each system for each day of violation.
- Set an effective date of October 1, 1990, on the provision under which a local unit of government cannot enact or enforce an ordinance that requires a permit, license, approval, inspection, or the payment of a fee or tax for the installation or use of a tank system, and include the closure or removal of a tank system in that provision.
- Provide that the Act would be repealed 12 months after the Underground Storage Tank Financial Assurance Act became invalid if it were found unconstitutional by a court.
- Repeal sections that took effect on June 29, 1989, and that provide for registering tanks and filing information regarding leaks.

MCL 299.838, 299.842, and 299.849 (S.B. 264)
Proposed MCL 299.701 et al. (S.B. 265)

FISCAL IMPACT

Senate Bill 264

The bill would have no fiscal impact on State or local government.

Senate Bill 265

Revenues: The bill could generate up to \$8.4 million in revenue to the State through the \$100 registration fee for all underground storage tanks, credited to the Underground Storage Tank Regulatory Enforcement Fund. This is based on Department of State Police estimates of approximately 59,000 currently registered tanks and 25,000 unregistered tanks. There also could be additional revenue generated from fines charged for violations of the Act.

Costs: The FY 1989-90 Department of State Police budget includes a 20-FTE and \$6.2 million increase to administer this program. This includes contracting for an additional 100 field inspectors, vehicles, supplies, and other materials.

ARGUMENTS

Supporting Argument

The bills are necessary for Michigan's regulation of underground storage tanks to continue to meet Federal standards and for the State to remain eligible for any available Federal funds. In addition, increasing the number of days that the DNR Director would have to approve or disapprove corrective action plans would ensure that proposed plans received an adequate and thorough review. Further, the maximum civil penalty of \$5,000 per day per tank system proposed by Senate Bill 265 would provide a more adequate deterrent to violating the Act than would Public Act 478's maximum penalty of \$500.

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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.

SFA BILL ANALYSIS

Senate Bill 265

Analysis First

See SB 264

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HOUSE LEGISLATIVE ANALYSIS SECTION

Senate Bill 265

Analysis 1st 6-8-89

See 264

SFA BILL ANALYSIS

Senate Bill 265

Analysis Enrolled

See SB 264