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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 266 (as enrolled)

Sponsor: Senator Vern Ehlers

Senate Committee: Finance

House Committee: Conservation, Recreation, and Environment

PUBLIC ACT 152 of 1989

Date Completed: 7-20-89

RATIONALE

In response to the growing problems of environmental contamination, the Federal government 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 (House Bill 5508, Senate Bill 1018, and Senate Bill 1040, respectively) provided for

the regulation of underground storage tanks and for corrective action to be taken when such tanks are found to be leaking. Although most of the provisions of the three Acts were scheduled to sunset six months after their effective dates, Senate Bills 264 and 265 have been enacted. The bills removed the sunset date on Public Act 478, which created the Leaking Underground Storage Tank Act, and Public Act 479, which amended the Underground Storage Tank Regulatory Act, re-enacted provisions that had expired, and made other revisions. A revenue source still is needed, however, for the Michigan Underground Storage Tank Financial Assurance Fund and the Emergency Response Fund, which were created by Public Act 518.

CONTENT

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 in the State, to be used for the cleanup and prevention of environmental contamination resulting from releases of refined petroleum products from underground storage tank systems. Beginning August 1, 1989, the regulatory fee would be seven-eighths of a cent per gallon for each gallon sold in the State for resale or consumption. The bill would define "refined petroleum" as gasoline, aviation gasoline, middle distillates, jet fuel, kerosene, and residual oils. The Department of Treasury would be required to precollect the regulatory

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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.

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:

- 1) The reasonable administrative costs of implementing the Act by the Department of Management and Budget (DMB), the DNR, the Department of State Police, the Department of Treasury, and the Department of Attorney General 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 7% of the Assurance Fund's projected revenues in any one year. Within two years of the effective date of the bill, the DMB would have to conduct an audit of the actual administrative costs of implementing the Act and report the results to the Legislature.
- 2) An interest subsidy program that would provide interest subsidies on loans used for the replacement of underground

tanks. Money spent for interest subsidies could not exceed 10% of the Fund's projected revenue in any year. The bill provides that 10% of the Fund's revenue during the first year would have to 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 spent.

- 3) 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.

As of 18 months after the effective date of the bill, if a State drinking water standard for a particular substance had been promulgated under the Safe Drinking Water Act, money in the Assurance Fund could not be used for a corrective action that resulted in a cleanup of that substance in excess of that standard, unless a public or private drinking water supply was endangered by the contamination.

Beginning one year after the effective date of the bill and every quarter thereafter, the Assurance Fund's administrator (employed by the DMB) would have to determine if the Fund's revenues would be sufficient to pay expected expenditures. If expenditures were anticipated to exceed revenues, the State Treasurer would have to notify the Michigan Underground Storage Tank Financial Assurance Policy Board (created by the Act) and, with the advice of the Board, advise the Legislature of the estimated increase in the regulatory fee that would be necessary to pay expenditures, or make recommendations to improve the security of the Fund. If anticipated expenditures were "significantly below" anticipated revenues, the State Treasurer would have to notify the Board and, with the advice of the Board, recommend to the Legislature a reduction in the regulatory fee.

Beginning January 1, 1991, if the State Treasurer determined that revenues in the Assurance Fund would not be sufficient to pay expected expenditures, the Treasurer would have to notify the administrator; 90 days after

notification the administrator could not accept new bids, work invoices, or requests for indemnification. The administrator would have to notify, by certified mail, the owners and operators of tank systems registered under the Underground Storage Tank Regulatory Act that funding would no longer be available for new claims after the 90-day period.

Beginning six months after the bill's effective date, the Assurance Fund would have to begin operating and the administrator would have to begin to accept work orders, bids, and requests for indemnification. If the State Treasurer determined that there was sufficient money in the Assurance Fund, however, the Treasurer could establish an earlier date to begin operations.

Within five months after the bill took effect, the DMB would have to enter into a contract for the preparation of a study to analyze the public and private costs associated with various levels of cleanup standards for corrective actions on tank systems. The study would have to be completed within six months, and the DMB would have to submit copies of the study to the Legislature.

The Act contains provisions regarding the regulation and responsibilities of tank systems operators. The bill provides that an "owner" of a tank system would be a person who holds, or at the time of a petroleum leak held, a legal, equitable, or possessory interest of any kind in an underground storage tank system, or in the property on which a system is located. "Owner" would not include a person or a regulated financial institution acting in a fiduciary capacity who, without participating in the management of an underground storage tank system and who is not otherwise engaged in petroleum production, refining, or marketing related to tank systems, holds indicia of ownership primarily to protect the person's security interest in the system or property on which it is located.

The bill provides that either the owner or operator, but not both, could receive money from the Assurance Fund for an occurrence (an accident that results 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 first occurrence so as to meet the requirements of the Federal Solid Waste Disposal Act for new tanks installed after January 1, 1989.

An 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. 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 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 not 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 could approve a payment that was made by an owner or operator if the receipt for the payment met the requirements of the Act for an approved bid and an approved work invoice.

Currently, the Act provides that 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.

Currently, the Act requires the Department of Treasury to establish a loan and interest subsidy program to provide for loan and interest subsidies to owners or operators of tank systems who meet the requirements of the

Act for an owner or operator to receive money from the Assurance Fund. 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% of the money in the Assurance Fund be spent for loan and interest subsidies in any one year. Applications for an interest subsidy would have to be submitted within two years after the effective date of the bill.

The Act provides that it will be repealed six months after its effective date. The bill would delete this provision, 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. The bill provides that if any provision of the Act were found unconstitutional by a court of competent jurisdiction, and the allowable time for filing an appeal had expired or the appellant had exhausted all avenues of appeal, the entire Act would be considered unconstitutional and invalid.

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FISCAL IMPACT

The bill would result in increased revenues and costs to the State.

Potential revenue could be \$40.25 million from the \$.00875 (seven-eighths of a cent) per-gallon fee. This is based on Department of Transportation estimates of 4.6 billion gallons of gasoline and diesel fuel sold in the State.

Increased costs would be borne by the Michigan Underground Storage Tank Financial Assurance Fund. For FY 1989-90, the Department of Treasury has requested \$165,000 to administer the Fund.

ARGUMENTS

Supporting Argument

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.

Opposing Argument

The DNR and the DMB have suggested that at some point claims against the Assurance Fund would far exceed 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 goes bankrupt, will the State be liable for payment of losses incurred by persons investing in the Fund? Further, failure of the Fund could jeopardize most small businesses that own or operate underground storage tanks since they would be unprotected from the financial liabilities resulting from a leaking underground storage tank.

Response: The bill includes provisions that would require the State Treasurer, if expected expenses would exceed expected revenues, to advise the Legislature of ways to improve the security of the Fund or the estimated increase in the regulatory fee that would be necessary to pay the expenditures. The bill also would allow for the cessation of the operation of the Fund, beginning in 1991, if the Treasurer determined that anticipated expenditures would exceed anticipated revenues.

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