



**House  
Legislative  
Analysis  
Section**

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## MUSTFA ENFORCEMENT

House Bill 5233 (Substitute H-1)  
First Analysis (12-15-93)

Sponsor: Rep. James M. Middaugh  
Committee: Conservation, Environment,  
& Great Lakes

### ***THE APPARENT PROBLEM:***

Sweeping changes were made in the acts pertaining to underground storage tanks this year, in view of the rumors and complaints that were circulating concerning inefficiencies in the administration of the Michigan Underground Storage Tank Financial Assurance (MUSTFA) Fund. Public Act 132 of 1993 amended the MUSTFA Act to -- among other things -- assure that eligible owners and operators would receive money for work performed on leaking tanks. Public Act 132 also established new civil penalties for violations of the act, specifying that it is a felony to intentionally submit a fraudulent request for payment, and permitting the attorney general or county prosecutor to issue subpoenas on suspected violators and on those suspected of harboring information regarding violations. Reportedly, these provisions will provide the Department of State Police and the Office of the Attorney General with an important tool in their investigations of suspected fraudulent claims from the MUSTFA fund. However, since the MUSTFA act specifies that its enforcement provisions apply only to instances of fraud that occur after August 8, 1993, legislation is necessary that would allow law enforcement agencies to investigate violations that might have occurred before this date.

### ***THE CONTENT OF THE BILL:***

Under the Michigan Underground Storage Tank Financial Assurance (MUSTFA) Act, it is a felony to knowingly submit a fraudulent request for payment. The attorney general or county prosecutor may conduct an investigation and bring an action against those who attempt to defraud the MUSTFA fund. In addition, a subpoena may be issued requiring a person to appear and be examined in court if that person is suspected of concealing information or records relevant to an investigation for a violation of the act. House Bill 5233 would extend this provision to add that a person could be subpoenaed when there is

reasonable cause to believe that the person has information, or is in possession of records, relevant to a crime against the fund, or an attempted violation of the act or crime against the fund.

MCL 299.824a

### ***FISCAL IMPLICATIONS:***

According to the Office of the Attorney General, the subpoena provision of the bill would result in costs to the state for the employment of a court reporter, the exact costs of which are unknown. (12-14-93)

### ***ARGUMENTS:***

#### ***For:***

According to testimony presented to the House Conservation, Environment and Great Lakes Committee, the agencies involved in the investigation of persons suspected of defrauding the MUSTFA fund must either produce witnesses who will confirm that the fraud occurred, or sift through voluminous documents to produce the necessary evidence. However, in many instances, these witnesses are employed by the very people they are asked to testify against and are understandably reluctant to testify for fear of losing their jobs. The subpoena powers provided under the act have, therefore, provided enforcement agencies with an invaluable tool to compel these witnesses to testify, and reduced the time needed to develop these cases. However, the act only provides subpoena power for instances of fraud that occurred prior to August 8, 1993. Reportedly, all cases of suspected fraudulent claims currently under investigation occurred prior to August 8, 1993. Accordingly, the governor and the attorney general have requested that legislation be introduced that would allow enforcement agencies to issue subpoenas for

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investigations of fraud perpetrated prior to that date. The bill would accomplish this by specifying that a subpoena could be issued for suspected crimes against the MUSTFA fund, in addition to violations of the act itself.

***POSITIONS:***

Representatives of the Office of the Attorney General and the Department of State Police testified before the committee in support of the bill. (12-14-93)

The Prosecuting Attorneys Association of Michigan has no position on the bill. (12-14-93)