

Act No. 132
Public Acts of 1993
Approved by the Governor
July 23, 1993
Filed with the Secretary of State
July 23, 1993

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Reps. Alley and Middaugh

ENROLLED HOUSE BILL No. 4785

AN ACT to amend the title and sections 4, 6, 8, 9, 15, 23, 24a, and 25 of Act No. 518 of the Public Acts of 1988, entitled as amended "An act to assist certain owners and operators of certain underground storage tank systems in meeting their financial responsibility requirements; to create certain funds to address certain problems associated with releases from certain underground storage tank systems and their associated equipment; to promote compliance with certain regulatory programs; to provide for the use of these funds; to create a Michigan underground storage tank financial assurance policy board; to prescribe the powers and duties of certain state agencies and officials; to provide for certain regulatory fees; to repeal certain parts of the act on a specific date; and to repeal this act on a specific date," sections 4, 8, 9, 15, and 25 as amended and section 24a as added by Act No. 1 of the Public Acts of 1993, section 6 as amended by Act No. 161 of the Public Acts of 1989, and section 23 as amended by Act No. 152 of the Public Acts of 1989, being sections 299.804, 299.806, 299.808, 299.809, 299.815, 299.823, 299.824a, and 299.825 of the Michigan Compiled Laws; and to add sections 2a, 19a, 19b, 19c, 19d, 19e, 19f, 19g, 19h, 19i, 19j, 19k, 19l, 19m, 19n, 19o, 19p, 19q, 19r, and 24b.

The People of the State of Michigan enact:

Section 1. The title and sections 4, 6, 8, 9, 15, 23, 24a, and 25 of Act No. 518 of the Public Acts of 1988, sections 4, 8, 9, 15, and 25 as amended and section 24a as added by Act No. 1 of the Public Acts of 1993, section 6 as amended by Act No. 161 of the Public Acts of 1989, and section 23 as amended by Act No. 152 of the Public Acts of 1989, being sections 299.804, 299.806, 299.808, 299.809, 299.815, 299.823, 299.824a, and 299.825 of the Michigan Compiled Laws, are amended and sections 2a, 19a, 19b, 19c, 19d, 19e, 19f, 19g, 19h, 19i, 19j, 19k, 19l, 19m, 19n, 19o, 19p, 19q, 19r, and 24b are added to read as follows:

TITLE

An act to assist certain owners and operators of certain underground storage tank systems in meeting their financial responsibility requirements; to create certain funds to address certain problems associated with releases from certain underground storage tank systems and their associated equipment; to promote compliance with certain regulatory programs; to provide for the use of these funds; to create a Michigan underground storage tank financial assurance policy board; to create the Michigan underground storage tank financial assurance authority; to authorize the use, issuance, and payment of bonds, notes, obligations, or other evidence of indebtedness; to prescribe the powers and duties of certain state agencies and officials; to provide for certain regulatory fees; to repeal certain parts of the act on a specific date; and to repeal this act on a specific date.

Sec. 2a. The legislature finds that leaking underground storage tanks are a significant cause of contamination of the natural resources, water resources, and groundwater in this state. It is hereby declared to be the purpose of this act and of the authority created by this act to preserve and protect the water resources of the state and to prevent, abate,

or control the pollution of water resources and groundwater, to protect and preserve the public health, safety, and welfare, to assist in the financing of repair and replacement of petroleum underground storage tanks and to improve property damaged by any petroleum releases from those tanks, and to preserve jobs and employment opportunities or improve the economic welfare of the people of the state.

Sec. 4. As used in this act:

- (a) "Administrator" means the fund administrator provided for in section 12.
- (b) "Approved claim" means a claim that is approved pursuant to section 15.
- (c) "Authority" means the Michigan underground storage tank financial assurance authority created in section 19a.
- (d) "Board" means the Michigan underground storage tank financial assurance policy board created in section 20.
- (e) "Board of directors" means the board of directors of the authority.
- (f) "Bonds or notes" means the bonds, notes, commercial paper, other obligations of indebtedness, or any combination of these, issued by the authority pursuant to this act.
- (g) "Bond proceeds account" means the account or fund in which proceeds of bonds or notes issued under this act have been credited.
- (h) "Claim" means the submission by the owner or operator, or their representative, of documentation requesting payment from the fund. A claim shall include, at a minimum, a completed and signed claim form and legible itemized work invoices.
- (i) "Corrective action" means an action to stop, minimize, eliminate, or clean up a release or its effects, as may be necessary to protect the public health, safety, welfare, or the environment. Corrective action includes, but is not limited to, release investigation, mitigation of fire and safety hazards, tank repair or removal, soil remediation, hydrogeological investigations, free product removal, groundwater remediation and monitoring, exposure assessments, the temporary or permanent relocation of residents, and the provision of alternate water supplies.
- (j) "Deductible" means the deductible provided for in section 13.
- (k) "Department" means the department of management and budget.
- (l) "Director" means the director of the department of management and budget.
- (m) "Financial responsibility requirements" means the financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by a release from an underground storage tank system that the owner or operator of an underground storage tank system must demonstrate under the underground storage tank regulatory act, Act No. 423 of the Public Acts of 1984, being sections 299.701 to 299.712 of the Michigan Compiled Laws, and the rules promulgated under that act.
- (n) "Fund" means the Michigan underground storage tank financial assurance fund created in section 6.
- (o) "Heating oil" means petroleum that is No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6 technical grades of fuel oil; other residual fuel oils including navy special fuel oil and bunker C; and other fuels when used as substitutes for 1 of these fuel oils.
- (p) "Indemnification" means indemnification of a person for a judgment entered against that person in a court of law or for a settlement entered into by that person and approved by the attorney general, if the judgment or settlement arises out of an injury suffered because of a release from a petroleum underground storage tank system operated by that person.
- (q) "Location" means a facility or parcel of property where petroleum underground storage tank systems are registered pursuant to Act No. 423 of the Public Acts of 1984.
- (r) "Operator" means a person who was at the time of discovery of a release, in control of, or responsible for, the operation of a petroleum underground storage tank system or a person to whom an approved claim has been assigned or transferred.
- (s) "Owner" means a person, other than a regulated financial institution, who, at the time of discovery of a release, held a legal, equitable, or possessory interest of any kind in an underground storage tank system, or in the property on which an underground storage tank system is located, including, but not limited to, a trust, vendor, vendee, lessor, or lessee. Owner includes a person to whom an approved claim is assigned or transferred. Owner does not include a person or a regulated financial institution who, without participating in the management of an underground storage tank system and who is not otherwise engaged in petroleum production, refining, or marketing relating to the underground storage tank system, is acting in a fiduciary capacity or who holds indicia of ownership primarily to protect the person's or the regulated financial institution's security interest in the underground storage tank system or the property on which it is located. This exclusion does not apply to a grantor, beneficiary, remainderman, or other person who could directly or indirectly benefit financially from the exclusion other than by the receipt of payment for fees and expenses related to the administration of a trust.

(t) "Oxygenate" means an organic compound containing oxygen and having properties as a fuel that are compatible with petroleum, including, but not limited to, ethanol, methanol, or methyl tertiary butyl ether (MTBE).

Sec. 6. (1) The Michigan underground storage tank financial assurance fund is created.

(2) The state treasurer shall direct the investment of the fund. Interest and earnings from fund investments shall be credited to the fund.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(4) Money in the fund shall be expended only as follows and in the following order of priority:

(a) To pay off bonds or notes pursuant to this act plus any amount necessary to maintain a fully funded debt reserve or other reserve intended to secure the principal and interest on the bonds or notes as may be required by resolution indenture or other agreement of the authority.

(b) For the reasonable administrative cost of implementing this act by the department, the department of natural resources, the department of state police, the department of treasury, the department of attorney general, and the authority as annually appropriated by the legislature. Administrative costs include the actual and necessary expenses incurred by the board and its members in carrying out the duties imposed by this act. Total administrative costs expended under this subdivision shall not exceed 7% of the fund's projected revenues in any year. Costs incurred by the authority for the issuance of bonds or notes which may also be payable from the proceeds of the bonds or notes shall not be considered administrative costs in making such a determination.

(c) For the interest subsidy program established in section 19. The money expended under this subdivision shall not exceed 10% of the fund's projected revenues in any year. However, 10% of the revenue of the fund during the first year of the fund's operation shall be expended on the interest subsidy program. If this money is not expended during the first year, this money shall be carried over for expenditure in the succeeding years of the fund's operation. Additional fund revenue shall not be set aside for the interest subsidy program until all of the first year revenue is expended.

(d) For corrective action and indemnification including both of the following:

(i) Payments for approved work invoices pursuant to this act.

(ii) Payments for approved requests for indemnification pursuant to this act.

(5) The board shall make recommendations to the appropriations committees in the senate and house of representatives on the distribution and amount of administrative costs under subsection (4)(b). The board shall provide a copy of these recommendations to each affected department.

Sec. 8. (1) An environmental protection regulatory fee is imposed on all refined petroleum products sold for resale in this state or consumption in this state. The regulatory fee shall be used pursuant to section 6(4) for the cleanup and prevention of environmental contamination resulting from releases of refined petroleum products from underground storage tank systems and to pay off bonds or notes pursuant to this act. The regulatory fee shall be charged for capacity utilization of underground storage tanks measured on a per gallon basis. The regulatory fee shall be charged against all refined petroleum products sold for resale in this state or consumption in this state so as to not exclude any products that may be stored in an underground tank at any point after the petroleum is refined. The regulatory fee shall be 7/8 cent per gallon for each gallon of refined petroleum sold for resale in this state or consumption in this state, with the per gallon charge being a direct measure of capacity utilization of an underground storage tank system.

(2) The department of treasury shall precollect regulatory fees from persons who refine petroleum in this state for resale in this state or consumption in this state and persons who import refined petroleum into this state for resale or consumption in this state. The department of treasury shall collect regulatory fees that can be collected at the same time as the sales tax under section 6a of the general sales tax act, Act No. 167 of the Public Acts of 1933, being section 205.56a of the Michigan Compiled Laws, at that time. The remainder of the regulatory fees shall be collected in the manner determined by the state treasurer.

(3) A public utility with more than 500,000 customers in this state is exempt from any fee or assessment imposed under this act if that fee or assessment is imposed on petroleum used by that public utility for the generation of steam or electricity.

(4) All regulatory fees collected pursuant to this act shall be deposited into the emergency response fund created in section 7 until the emergency response fund reaches \$1,000,000.00. When the emergency response fund is at \$1,000,000.00, all regulatory fees shall be deposited into the fund.

(5) Beginning July 18, 1990 and every quarter thereafter, the administrator shall determine if fund revenues will be sufficient to pay expected expenditures from the fund. If expected expenditures are anticipated to exceed fund revenues, the state treasurer shall notify the advisory board and, with the advice of the board, shall 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 this act that would improve the security of the fund. If anticipated expenditures

are significantly below anticipated revenues, the state treasurer shall notify the advisory board and, with the advice of the board, shall recommend to the legislature a reduction of the regulatory fee.

(6) If the state treasurer determines that fund revenues will not be sufficient to pay expected expenditures from the fund, the state treasurer shall notify the administrator, and 90 days after this notification has been given, the administrator shall not accept any new work invoices, or requests for indemnification. Upon receiving this notification from the state treasurer, the administrator shall notify, by certified mail, the owners and operators of petroleum underground storage tank systems registered under the underground storage tank regulatory act, Act No. 423 of the Public Acts of 1984, being sections 299.701 to 299.712 of the Michigan Compiled Laws, that funding under this act will no longer be available for new claims after the 90-day period has expired. However, work invoices and requests for indemnification that were submitted to the administrator prior to or during this 90-day period may be paid to the extent money is available in the fund as provided in this act.

(7) The department of treasury may audit, enforce, collect and assess the fee imposed by this act in the same manner and subject to the same requirements as revenues collected pursuant to Act No. 122 of the Public Acts of 1941, being sections 205.1 to 205.31 of the Michigan Compiled Laws.

Sec. 9. (1) An owner or operator is eligible to receive money from the fund or bond proceeds account for corrective action or indemnification only if all of the following requirements are satisfied and the owner or operator otherwise complies with this act:

(a) The release from which the corrective action or indemnification arose was discovered and reported on or after July 18, 1989.

(b) The petroleum underground storage tank from which the release occurred was, at the time of discovery of the release, and is presently, in compliance with the registration requirements of the underground storage tank regulatory act, Act No. 423 of the Public Acts of 1984, being sections 299.701 to 299.712 of the Michigan Compiled Laws, and the rules promulgated under that act.

(c) The owner or operator was at the time of discovery of the release, and is presently, in compliance with the 30-day notice of closure, removal, or change in service reporting requirements and the 24-hour notice of release reporting as required by Act No. 423 of the Public Acts of 1984 and the applicable requirements of the leaking underground storage tank act, Act No. 478 of the Public Acts of 1988, being sections 299.831 to 299.850 of the Michigan Compiled Laws, rules promulgated under each of these acts, or the requirements of subtitle I of title II of the solid waste disposal act, Public Law 89-272, 42 U.S.C. 6991 to 6991i and rules promulgated under that act. Records kept under these acts shall be valid and verifiable.

(d) The owner or operator has provided the administrator with proof of financial responsibility for the deductible amount that will satisfy the requirements for financial responsibility instruments under subtitle I of title II of the solid waste disposal act, Public Law 89-272, 42 U.S.C. 6991 to 6991i.

(e) The owner or operator is not the United States government.

(f) The claim or request for indemnification is submitted to the administrator pursuant to this act and the rules promulgated under this act on or before December 22, 1998.

(2) The owner or operator may receive money from the fund or bond proceeds account for corrective action or indemnification due to a release that originates from an aboveground piping and dispensing portion of a petroleum underground storage tank system, if all of the following requirements are satisfied:

(a) The owner or operator is otherwise in compliance with this act and the rules promulgated under this act.

(b) The release is sudden and immediate.

(c) The release is of a quantity exceeding 25 gallons and is released into groundwater, surface water, or soils.

(d) The release is reported to the department of state police, fire marshal division within 24 hours of discovery of the release.

(3) Either the owner or the operator may receive money from the fund or bond proceeds account under this act for an occurrence but not both.

(4) An owner or operator who is a public utility with more than 500,000 customers in this state is ineligible to receive money from the fund or bond proceeds account for corrective action or indemnification associated with a release from a petroleum underground storage tank system used to supply petroleum for the generation of steam electricity.

(5) If an owner or operator has received money from the fund or bond proceeds account under this act for a release at a location, the owner and operator are not eligible to receive money from the fund or bond proceeds account for a subsequent release at the same location unless the owner or operator has done either or both of the following:

(a) Discovered the subsequent release pursuant to remedial action being taken on a confirmed release and included this subsequent release as part of the corrective action for the confirmed release.

(b) Upgraded, replaced, removed, or properly closed in place all underground storage tank systems at the location of the release so as to meet the requirements of Act No. 423 of the Public Acts of 1984, and the rules promulgated under that act.

(6) An owner or operator who discovers a subsequent release at the same location as an initial release pursuant to subsection (5)(a) may receive money from the fund or bond proceeds account to perform corrective action on the subsequent release, if the owner or operator otherwise complies with the requirements of this act and the rules promulgated under this act. However, the subsequent release shall be considered as part of the claim for the initial release for purposes of determining the total amount of expenditures for corrective action and indemnification under section 10.

(7) An owner or operator who discovers a subsequent release at the same location as an initial release pursuant to subsection (5)(b) may receive money from the fund or bond proceeds account to perform corrective action on the subsequent release, if the owner or operator otherwise complies with the requirements of this act and the rules promulgated under this act. The subsequent release shall be considered a separate claim for purposes of determining the total amount of expenditures for corrective action and indemnification under section 10.

Sec. 15. (1) To be eligible to access the fund or bond proceeds account for corrective action, the owner or operator shall follow the procedures outlined in this section and shall submit reports and work plans as required under the leaking underground storage tank act, Act No. 478 of the Public Acts of 1988, being sections 299.831 to 299.850 of the Michigan Compiled Laws, and rules promulgated under that act.

(2) Upon receipt of a claim, the administrator, within 30 days after responses have been received from the department of natural resources and the department of state police, shall make all of the following determinations:

(a) Whether the department of natural resources has determined that work performed or proposed to be performed is consistent with the requirements of Act No. 478 of the Public Acts of 1988, and rules promulgated under that act.

(b) Whether the cost of performing the work is reasonable.

(c) Whether the owner or operator is eligible to receive funding under this act.

(3) If the administrator fails to make the determinations required under this section within 30 days after receipt of certification from the department of natural resources and the department of state police, the claim is considered to be approved.

(4) If the administrator determines under subsection (2) that the claim is both reasonable in terms of cost and consistent with the requirements of subsection (2)(a) and the owner or operator is eligible for funding under this act, the administrator shall approve the claim and notify the owner or operator who submitted the claim of the approval. If the administrator determines that the cost of the claim is not reasonable, that the work is not consistent with the requirements of subsection (2)(a), or that the owner or operator is not eligible for funding under this act, the administrator shall deny the claim and give notice of the denial to the owner or operator who submitted the claim.

(5) The owner or operator may submit additional work invoices to the administrator after approval of a claim under subsection (4). Upon receipt of a work invoice, the administrator shall make the following determinations:

(a) Whether the work invoice is reasonable in terms of cost and consistent with the requirements of subsection (2)(a).

(b) Whether the owner or operator is currently in compliance with the registration requirements of the underground storage tank regulatory act, Act No. 423 of the Public Acts of 1984, being sections 299.701 to 299.712 of the Michigan Compiled Laws, and the rules promulgated under that act.

(6) If the administrator determines that the work invoice does not meet the requirements of subsection (5), he or she shall deny the work invoice and give notice of the denial to the owner or operator who submitted the work invoice.

(7) The administrator shall keep records of approved work invoices. If the owner or operator has submitted approved work invoices totaling the deductible amount, then the administrator shall forward payment vouchers to the state treasurer or the authority, as long as the owner or operator has not exceeded the allowable amount of expenditure provided in section 10.

(8) The administrator may approve a reimbursement for a work invoice that was submitted by an owner or operator for corrective action taken pursuant to Act No. 478 of the Public Acts of 1988, if the corrective action meets the requirements of Act No. 478 of the Public Acts of 1988. Additionally, the receipt for the payment shall meet the requirements of this act for an approved claim and an approved work invoice.

(9) Except as provided in subsection (10), upon receipt of a payment voucher, the state treasurer or the authority shall make a payment to the owner or operator if the owner or operator submits certified canceled checks, or the owner or operator and the contractor listed on the payment voucher and claim within 30 days if sufficient money exists in the fund or a bond proceeds account.

(10) Upon direction of the administrator, the state treasurer or the authority may withhold partial payment of money on payment vouchers if there is reasonable cause to believe that there are suspected violations of section 24a or if necessary to assure acceptable completion of the proposed work.

Sec. 19a. The Michigan underground storage tank financial assurance authority is created as a body corporate within the department of management and budget and shall exercise its prescribed statutory power, financial duties, and financial functions independently of the director of the department of management and budget or any other department. Funds of the authority shall be handled in the same manner and subject to the same provisions of law applicable to state funds or in a manner specified in a resolution of the authority authorizing the issuance of bonds or notes.

Sec. 19b. (1) The authority shall be governed by a board of directors consisting of the director of the department, the director of the department of state police, and 3 residents of the state appointed by the governor with the advice and consent of the senate. The 3 appointed members shall serve terms of 3 years. However, in making the initial appointments, the governor shall designate 1 appointed member to serve for 3 years, 1 appointed member to serve for 2 years, and 1 appointed member to serve for 1 year.

(2) Upon appointment to the board of directors under subsection (1), and upon the taking and filing of the constitutional oath of office, a member of the board of directors shall enter office and exercise the duties of the office to which he or she is appointed.

(3) A vacancy on the board of directors shall be filled in the same manner as the original appointment. A vacancy shall be filled for the balance of the unexpired term. A member of the board of directors shall hold office until a successor is appointed and qualified.

(4) Members of the board of directors and officers and employees of the authority are subject to Act No. 317 of the Public Acts of 1968, being sections 15.321 to 15.330 of the Michigan Compiled Laws, and Act No. 318 of the Public Acts of 1968, being sections 15.301 to 15.310 of the Michigan Compiled Laws, as applicable. A member of the board of directors or an officer, employee, or agent of the authority shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, a member of the board of directors or an officer, employee, or agent of the authority, when acting in good faith, may rely upon any of the following:

(a) The opinion of counsel for the authority.

(b) The report of an independent appraiser selected with reasonable care by the board of directors.

(c) Financial statements of the authority represented to the member of the board of directors, officer, employee, or agent to be correct by the officer of authority having charge of its books or account, or stated in a written report by the auditor general or a certified public accountant or the firm of the accountants to fairly reflect the financial condition of the authority.

(5) The board of directors shall organize and make its own policies and procedures. The board of directors shall conduct all business at public meetings held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of each meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. Three members of the board of directors constitute a quorum for the transaction of business. An action of the board of directors shall be by a majority of the votes cast. A state officer who is a member of the board of directors may designate a representative from his or her department to serve instead of that state officer as a voting member of the board of directors for 1 or more meetings.

(6) The board of directors shall elect a chairperson from among its members and any other officers the board of directors considers appropriate.

Sec. 19c. (1) The governor shall designate the executive director of the authority. The authority may employ on a permanent or temporary basis legal and technical experts, and other officers, agents, or employees, paid from the funds of the authority. The authority shall determine the qualifications, duties, and compensation of those it employs, but an employee shall not be paid a higher salary than the director of the department of management and budget. The authority may delegate to 1 or more members, officers, agents, or employees any of the powers or duties of the authority as the authority considers proper.

(2) The budgeting, procurement, and related functions of the authority shall be performed under the direction and supervision of the director of the department of management and budget.

(3) The authority may contract with the department of management and budget for the purpose of maintaining and improving the rights and interests of the authority.

(4) The authority shall annually file a written report on its activities of the last year with the legislature. This report shall be submitted not later than 270 days following the end of the fiscal year. This report shall specify the amount and source of revenues received, the status of investments made, and money expended with proceeds of bonds or notes sold under this act.

(5) The accounts of the authority are subject to annual audits by the state auditor general or a certified public accountant appointed by the auditor general. Records shall be maintained according to generally accepted accounting principles.

Sec. 19d. Except as otherwise provided in this act, the board of directors may do all things necessary or convenient to implement this act, and the purposes, objectives, and powers delegated to the board of directors by other laws or executive orders, including, but not limited to, all of the following:

- (a) Adopt an official seal and bylaws for the regulation of its affairs and alter the seal or bylaws.
- (b) Sue and be sued in its own name and plead and be impleaded.
- (c) Borrow money and issue negotiable revenue bonds and notes pursuant to this act.
- (d) Enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers.
- (e) With the prior consent of the director of the department of management and budget, solicit and accept gifts, grants, loans, and other aid from any person, or the federal, state, or local government or any agency of the federal, state, or local government, or participate in any other way in a federal, state, or local government program.
- (f) Procure insurance against loss in connection with the property, assets, or activities of the authority.
- (g) Invest money of the authority, at the board of directors' discretion, in instruments, obligations, securities, or property determined proper by the board of directors, and name and use depositories for its money.
- (h) Contract for goods and services and engage personnel as necessary and engage the services of private consultants, managers, legal counsel, and auditors for rendering professional financial assistance and advice payable out of any money of the authority.
- (i) Indemnify and procure insurance indemnifying members of the board of directors from personal loss or accountability from liability asserted by a person on bonds or notes of the authority, or from any personal liability or accountability by reason of the issuance of the bonds or notes, or by reason of any other action taken or the failure to act by the authority.
- (j) Do all other things necessary or convenient to achieve the objectives and purposes of the authority, this act, rules promulgated under this act, or other laws that relate to the purposes and responsibilities of the authority.

Sec. 19e. (1) The authority may authorize and issue its bonds or notes payable solely from the revenues or funds available to the fund under section 8. Bonds or notes of the authority are not a debt or liability of the state and do not create or constitute any indebtedness, liability, or obligations of the state or be or constitute a pledge of the faith and credit of the state. All authority bonds and notes are payable solely from revenues or funds pledged or available for their payment as authorized in this act. Each bond and note shall contain on its face a statement to the effect that the authority is obligated to pay the principal of and the interest on the bond or note only from revenues or from funds of the authority pledged for such payment and that the state is not obligated to pay that principal or interest and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the bond or note.

(2) All expenses incurred in implementing this act are payable solely from revenues or funds provided or to be provided under this act. This act does not authorize the authority to incur any indebtedness or liability on behalf of or payable by the state.

Sec. 19f. (1) The authority may issue from time to time bonds or notes in principal amounts the authority considers necessary to provide funds for any purpose, including, but not limited to, all of the following:

- (a) The purposes described in section 6(4)(a) and (d).
 - (b) The payment, funding, or refunding of the principal of, interest on, or redemption premiums on bonds or notes issued by the authority whether the bonds or notes or interest to be funded or refunded have or have not become due.
 - (c) The establishment or increase of reserves to secure or to pay authority bonds or notes or interest on those bonds or notes.
 - (d) The payment of interest on the bonds or notes for a period determined by the authority.
 - (e) The payment of all other costs or expenses of the authority incident to and necessary or convenient to carry out its purposes and powers.
- (2) The bonds or notes of the authority are not a general obligation of the authority but are payable solely from the revenues or funds, or both, pledged to the payment of the principal of and interest on the bonds or notes as provided in the resolution authorizing the bond or note.
- (3) The bonds or notes of the authority:
- (a) Shall be authorized by resolution of the authority.

- (b) Shall bear the date or dates of issuance.
- (c) May be issued as either tax-exempt bonds or notes or taxable bonds or notes for federal income tax purposes.
- (d) Shall be serial bonds, term bonds, or term and serial bonds.
- (e) Shall mature at such time or times not exceeding 20 years from the date of issuance.
- (f) May provide for sinking fund payments.
- (g) May provide for redemption at the option of the authority for any reason or reasons.
- (h) May provide for redemption at the option of the bondholder for any reason or reasons.
- (i) Shall bear interest at a fixed or variable rate or rates of interest per annum or at no interest.
- (j) Shall be registered bonds, coupon bonds, or both.
- (k) May contain a conversion feature.
- (l) May be transferable.
- (m) Shall be in the form, denomination or denominations, and with such other provisions and terms as is determined necessary or beneficial by the authority.
- (4) If a member of the board of directors or any officer of the authority whose signature or facsimile of his or her signature appears on the note, bond, or coupon ceases to be a member or officer before the delivery of that bond or note, the signature continues to be valid and sufficient for all purposes, as if the member or officer had remained in office until the delivery.
- (5) Bonds or notes of the authority may be sold at a public or private sale at the time or times, at the price or prices, and at a discount as the authority determines. An authority bond or note is not subject to the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws. The bond or note shall not require the approval of the state treasurer under Act No. 202 of the Public Acts of 1943 and shall not be required to be registered. The bond or note of the authority shall not be required to be filed under the uniform securities act, Act No. 265 of the Public Acts of 1964, being sections 451.501 to 451.818 of the Michigan Compiled Laws.

Sec. 19g. (1) The authority may provide for the issuance of bonds or notes in the amounts the authority considers necessary for the purpose of refunding bonds or notes of the authority then outstanding, including the payment of any redemption premium and interest accrued or to accrue to the earliest or subsequent date of redemption, purchase, or maturity of these bonds or notes. The proceeds of bonds or notes issued for the purpose of refunding outstanding bonds or notes may be applied by the authority to the purchase or retirement at maturity or redemption of outstanding bonds or notes either on the earliest or subsequent redemption date, and pending such applications, may be placed in escrow to be applied to the purchase or retirement at maturity or redemption on the date or dates determined by the authority. Pending such application and subject to agreements with noteholders or bondholders, the escrowed proceeds may be invested and reinvested in the manner the authority determines, maturing at the date or times as appropriate to assure the prompt payment of the principal, interest, and redemption premium, if any, on the outstanding bonds or notes to be refunded. After the terms of the escrow have been fully satisfied and carried out, the balance of the proceeds and interest, income, and profits, if any, earned or realized on the investment of the proceeds shall be returned to the authority for use by the authority in any lawful manner authorized under this act.

(2) In the resolution authorizing bonds or notes to refund bonds or notes, the authority may provide that the bonds or notes to be refunded are considered paid when there has been deposited in escrow, money or investment obligations that would provide payments of principal and interest adequate to pay the principal and interest on the bonds to be refunded, as that principal and interest becomes due whether by maturity or prior redemption and that, upon the deposit of the money or investment obligations, the obligations of the authority to the holders of the bonds or notes to be refunded are terminated except as to the rights to the money or investment obligations deposited in trust.

Sec. 19h. (1) The authority may authorize and approve an insurance contract, an agreement for a line of credit, a letter of credit, a commitment to purchase notes or bonds, an agreement to remarket bonds or notes, an agreement to manage payment, revenue or interest rate exposure, and any other transaction to provide security to assure timely payment of a bond or note.

(2) The authority may authorize payment from the proceeds of the notes or bonds, or other funds available, of the cost of issuance including, but not limited to, fees for placement, charges for insurance, letters of credit, lines of credit, remarketing agreements, agreements to manage payment, revenue or interest rate exposure, reimbursement agreements, or purchase or sales agreements or commitments, or agreements to provide security to assure timely payment of notes or bonds.

Sec. 19i. Within limitations that are contained in the issuance or authorization resolution of the authority, the authority may authorize a member of the board of directors, the executive director, or other officer of the authority to do 1 or more of the following:

- (a) Sell and deliver, and receive payment for bonds or notes.
- (b) Refund bonds or notes by the delivery of new bonds or notes whether or not the bonds or notes to be refunded are mature or are subject to redemption.
- (c) Deliver bonds or notes, partly to refund bonds or notes and partly for any other authorized purpose.
- (d) Buy issued bonds or notes and resell those bonds or notes.
- (e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights at the option of the authority or the holder, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.
- (f) Direct the investment of any and all funds of the authority.
- (g) Approve the terms of any insurance contract, agreement for a line of credit, a letter of credit, a commitment to purchase notes or bonds, an agreement to remarket bonds or notes or any other transaction to provide security to assure timely payment of a bond or note or an agreement to manage payment, revenue or interest rate exposure.
- (h) Execute any power, duty, function, or responsibility of the authority.

Sec. 19j. A resolution authorizing bonds or notes may provide for all or any portion of the following that shall be part of the contract with the holders of the bonds or notes:

(a) A pledge to any payment or purpose all or any part of the fund or authority revenues or assets to which its right then exists or may later come to exist, and of money derived from the revenues or assets, and of the proceeds of bonds or notes or of an issue of bonds or notes, subject to any existing agreements with bondholders or noteholders.

(b) A pledge of a loan, grant, or contribution from the federal or state government.

(c) The establishment and setting aside of reserves or sinking funds and the regulation and disposition of reserves or sinking funds subject to this act.

(d) Authority for and limitations on the issuance of additional bonds or notes for the purposes provided for in the resolution and the terms upon which additional bonds or notes may be issued and secured.

(e) The procedure, if any, by which the terms of a contract with noteholders or bondholders may be amended or abrogated, the number of noteholders or bondholders who are required to consent to the amendment or abrogation, and the manner in which the consent may be given.

(f) A contract with the bondholders as to the custody, collection, securing, investment, and payment of any money of the authority. Money of the authority and deposits of money may be secured in the manner determined by the authority. Banks and trust companies may give security for such deposits.

(g) Vest in a trustee, or a secured party, property, income, revenues, receipts, rights, remedies, powers, and duties in trust or otherwise that the authority determines necessary or appropriate to adequately secure and protect noteholders and bondholders or to limit or abrogate the right of the holders of bonds or notes of the authority to appoint a trustee under this act or to limit the rights, powers, and duties of the trustee.

(h) Provide to a trustee or the noteholders or bondholders remedies that may be exercised if the authority fails or refuses to comply with this act or defaults in an agreement made with the holders of an issue of bonds or notes, which may include any of the following:

(i) By mandamus or other suit, action, or proceeding to enforce the rights of the bondholders or noteholders, and require the authority to implement any other agreements with the holders of those bonds or notes and to perform the authority's duties under this act.

(ii) Bring suit upon the bonds or notes.

(iii) By action or suit, require the authority to account as if it were the trustee of an express trust for the holders of the bonds or notes.

(iv) By action, suit, or proceeding, enjoin any act or thing that may be unlawful or in violation of the rights of the holders of the bonds or notes.

(v) Declare the bonds or notes due and payable, and if all defaults are made good, then, as permitted by such resolution, to annul that declaration and its consequences.

(i) Any other matters of like or different character, which in any way affect the security of protection of the bonds or notes.

Sec. 19k. A pledge made by the authority is valid and binding from the time the pledge is made. The money or property pledged by the authority is immediately subject to the lien of the pledge without a physical delivery or further act. The lien of a pledge is valid and binding against parties having claims of any kind in tort, contract, or otherwise against the authority, and is valid and binding as against the transfers of the money or property pledged, irrespective

of whether parties have notice. Neither the resolution, the trust agreement, nor any other instrument by which a pledge is created is required to be recorded to establish and perfect a lien or security interest in the pledged property.

Sec. 19l. The proceeds of bonds or notes issued pursuant to this act shall be deposited into the fund or bond proceeds account as authorized or designated by resolution indenture or other agreement of the authority.

Sec. 19m. Neither the members of the authority nor any person executing bonds or notes issued under this act or any person executing any agreement on behalf of the authority is liable personally on the bonds or notes by reason of their issuance.

Sec. 19n. The state pledges to and agrees with the holders of bonds or notes issued under this act that the state shall not limit or restrict the rights vested in the authority by this act to fulfill the terms of an agreement made with the holders of authority bonds or notes, or in any way impair the rights or remedies of the holders of the bonds or notes of the authority until the bonds and notes, together with interest on the bonds or notes and interest on any unpaid installments of interest, and all costs and expenses in connection with an action or proceedings by or on behalf of those holders are fully met, paid, and discharged.

Sec. 19o. Notwithstanding any restriction contained in any other law, the state and a public officer, local unit of government, or agency of the state or a local unit of government; a bank, trust company, savings bank and institution, savings and loan association, investment company, or other person carrying on a banking business; an insurance company, insurance association, or other person carrying on an insurance business; or an executor, administrator, guardian, trustee, or other fiduciary may legally invest funds belonging to them or within their control in bonds or notes issued under this act, and authority bonds or notes shall be authorized security for public deposits.

Sec. 19p. (1) Property of the authority is public property devoted to an essential public and governmental function and purpose. Income of the authority is for a public purpose.

(2) The property of the authority and its income and operation are exempt from all taxes and special assessments of the state or a political subdivision of the state.

(3) Bonds or notes issued by the authority, and the interest on and income from those bonds and notes, are exempt from all taxation of the state or a political subdivision of the state.

Sec. 19q. This act shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this act and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

Sec. 19r. The authority may promulgate rules as necessary to implement sections 19a to 19q.

Sec. 23. (1) This act does not create any liability on behalf of the state. This act shall not be construed as making the state the guarantor of the fund.

(2) This act does not relieve any person who may be eligible to receive money from the fund or the emergency response fund from any liability that he or she may incur as the owner or operator of an underground storage tank system. The state is not assuming the liability of an owner or operator eligible for funding under this act, it is only providing assistance to such owners or operators in meeting the financial responsibility requirements.

(3) All bonds or notes of the authority payable from the fund have been fully paid or provided for and if any provision of this act is found to be unconstitutional by a court of competent jurisdiction and the allowable time for filing an appeal has expired or the appellant has exhausted all of his or her avenues of appeal, this whole act shall be considered unconstitutional and invalid.

Sec. 24a. (1) Beginning August 8, 1993, a person who makes or submits or causes to be made or submitted, either directly or indirectly, any statement, report, application, claim, bid, work invoice, or other request for payment or indemnification under this act, knowing the statement, report, application, claim, bid, work invoice, or other request for payment or indemnification is false or misleading is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$50,000.00, or both. In addition to any penalty imposed under this subsection, a person convicted under this subsection shall pay restitution to the fund for the amount received in violation of this subsection.

(2) A person who makes or submits or causes to be made or submitted, either directly or indirectly, any statement or report, application, claim, bid, work invoice, or other request for payment or indemnification under this act, knowing that the statement, report, application, claim, bid, work invoice, or other request for payment or indemnification is false, misleading, or fraudulent, or commits a fraudulent practice is subject to a civil fine of not more than \$50,000.00 or twice the amount submitted, whichever is greater. In addition to any civil fine imposed under this subsection, a person found

responsible under this subsection shall pay restitution to the fund for the amount received in violation of this subsection. The legislature intends that this subsection be given retroactive application.

(3) As used in subsection (2), "fraudulent" or "fraudulent practice" includes, but is not limited to, the following:

(a) Submitting a work invoice for the excavation, hauling, disposal, or provision of soil, sand, or backfill for an amount greater than the legal capacity of the carrying vehicle or for more than was actually carried, excavated, disposed, or provided.

(b) Submission of paperwork for services done or work provided that was not in fact provided or that was not directly provided by the individual indicated on the paperwork.

(c) Contaminating an otherwise clean resource or site with contaminated soil or product from a contaminated resource or site.

(d) Returning any load of contaminated soil to its original site for reasons other than remediation of the soil.

(e) Intentional causing of damage or damage caused as the result of gross negligence to an underground storage tank system that results in a release at a site.

(f) Placing an underground storage tank system at a contaminated site where no underground storage tank system previously existed for purposes of disguising the source of contamination or to obtain funding under this act.

(g) Submitting a work invoice for the excavation of soil from a site that was removed for reasons other than removal of the underground storage tank system or remediation.

(h) Any intentional act or act of gross negligence that causes or allows contamination to spread at a site.

(i) Registration of a nonexistent underground storage tank system with the department.

(j) Loaning to an owner or operator the deductible amount required under section 13 and then submitting or causing to be submitted inflated claims or invoices designed to recoup the deductible amount.

(k) Confirming a release without simultaneously providing notice to the owner or operator.

(l) Inflating bills or work invoices, or both, by adding charges for work that was not performed.

(m) Submitting a false or misleading laboratory report.

(n) Submitting bills or work invoices, or both, for sampling, testing, monitoring, or excavation that are not justified by the site condition.

(o) Falsely characterizing the contents of an underground storage tank system for purposes of obtaining funding under this act.

(p) Submitting or causing to be submitted bills or work invoices by or from a person who did not directly provide the service.

(q) Characterizing legal services as consulting services for purposes of obtaining funding under this act.

(r) Misrepresenting or concealing the identity, credentials, affiliation, or qualifications of principals or persons seeking, either directly or indirectly, funding or approval for participation under this act.

(s) Falsifying a signature on a claim application or a work invoice.

(t) Failing to accurately disclose the actual amount and carrier of unencumbered insurance coverage available for new environmental impairment or professional liability claims.

(u) Any other act or omission of a false, fraudulent, or misleading nature undertaken in furtherance of obtaining funding under this act.

(4) The attorney general or county prosecutor may conduct an investigation of an alleged violation of this section and bring an action for a violation of this section.

(5) If the attorney general or county prosecutor has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or records, however stored or embodied, or tangible object relevant to an investigation for violation of this act, the attorney general or county prosecutor may, before bringing any action, make an ex parte request to a magistrate for issuance of a subpoena requiring that person to appear and be examined under oath or to produce the document, records, or object for inspection and copying, or both. Service may be accomplished by any means described in the Michigan court rules. Requests made by the attorney general may be brought in Ingham county.

(6) If a person objects to or otherwise fails to comply with the subpoena served under subsection (5), an action may be brought in district court to enforce the demand. Actions filed by the attorney general may be brought in Ingham county.

(7) The attorney general or county prosecutor may apply to the district court for an order granting immunity to any person who refuses or objects to providing information, documents, records, or objects sought pursuant to this section. If the judge is satisfied that it is in the interest of justice that immunity be granted, he or she shall enter an order

granting immunity to the person and requiring them to appear and be examined under oath, or to produce the document, records, or object for inspection and copying, or both.

(8) A person who fails to comply with a subpoena issued pursuant to subsection (5), or a requirement to appear and be examined pursuant to subsection (7), is subject to a civil fine of not more than \$25,000.00 for each day of continued noncompliance.

(9) In addition to any civil fines or criminal penalties imposed under this act or the criminal laws of this state, the person shall repay any money obtained directly or indirectly under this act. Money owed pursuant to this section constitutes a claim and lien by the fund upon any real or personal property owned either directly or indirectly by the person. This lien shall attach regardless of whether the person is insolvent and may not be extinguished or avoided by bankruptcy. The lien imposed by this section has the force and effect of a first in time and right judgment lien.

(10) Subsection (1) does not preclude prosecutions under other laws of the state including, but not limited to, section 157a, 218, 248, 249, 280, or 422 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.157a, 750.218, 750.248, 750.249, 750.280, and 750.422 of the Michigan Compiled Laws.

(11) All civil fines collected pursuant to this section shall be apportioned in the following manner:

(a) Fifty percent shall be deposited in the general fund and shall be used by the department to fund fraud investigations under this act.

(b) Twenty-five percent shall be paid to the office of the county prosecutor or attorney general, whichever office brought the action.

(c) Twenty-five percent shall be paid to a local police department or sheriff's office, or city or county health department, if investigation by that office or department led to the bringing of the action. If more than 1 office or department is eligible for payment under this subsection, division of payment shall be on an equal basis. If there is not a local office or department that is entitled to payment under this subdivision, the money shall be forwarded to the state treasurer for deposit into the emergency response fund created in section 7.

Sec. 24b. (1) A person who provides information that materially contributes to the imposition of a civil fine or a criminal conviction under section 24a against any person shall be paid a reward pursuant to rules adopted by the department under subsection (6). The reward shall be the greater of 10% of the amount of the civil fine collected or \$1,000.00.

(2) A person is not eligible for a reward under this section for a violation previously known to the investigating agency unless the information materially contributes to the civil judgment or criminal conviction.

(3) If there is more than 1 person who provides information pursuant to subsection (1) for a single violation, the first person to notify the investigating agency is eligible for the reward. If more than 1 notification is received on the same day, the reward shall be divided equally among those persons providing the information.

(4) Public officers and employees of the United States, the state of Michigan, the states of Wisconsin, Illinois, Indiana, and Ohio, or counties and cities in Michigan, Wisconsin, Illinois, Indiana, and Ohio are not eligible for the reward under this section, unless reporting those violations does not relate in any manner to their responsibilities as public officers or employees.

(5) An employee of a business who provides information that the business violated this act is not eligible for a reward if the employee intentionally caused the violation.

(6) The department shall promulgate rules that establish procedures for the receipt and review of claims for payment of rewards. All decisions concerning the eligibility for an award and the materiality of the provided information shall be made pursuant to these rules. In each case brought under section 24a, whichever office prosecuted the action shall determine whether the information materially contributed to the imposition of a civil fine or a criminal conviction.

(7) The department shall periodically publicize the availability of the rewards provided for in this section to the public.

(8) A claim for a reward under this section may be submitted only for information provided on or after the effective date of this section.

Sec. 25. (1) Section 7 is repealed effective December 22, 1998.

(2) Upon the repeal of section 7, any unexpended money in the emergency response fund reverts to the fund.

(3) This act is repealed effective January 1, 2005.

(4) Upon repeal of this act, any money in the fund or in the possession of the authority reverts to the environmental response fund created in the environmental response act, Act No. 307 of the Public Acts of 1982, being sections 299.601 to 299.618 of the Michigan Compiled Laws.

(5) The authority's obligation to pay off any bonds or notes issued pursuant to this act shall survive the repeal of this act.

This act is ordered to take immediate effect.

Co-Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.