

Act No. 212
Public Acts of 1993
Approved by the Governor
October 26, 1993
Filed with the Secretary of State
October 26, 1993

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

Introduced by Senators Ehlers, Dingell and McManus

ENROLLED SENATE BILL No. 644

AN ACT to amend sections 4, 5, 6, 9, 9a, 10, 13, 15, 15a, 16, 18, 19, 20, 21, and 24 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 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," sections 4, 6, 9, and 15 as amended by Act No. 132 of the Public Acts of 1993, sections 5, 10, 13, 18, 19, and 24 as amended and sections 9a and 15a as added by Act No. 1 of the Public Acts of 1993, and section 16 as amended by Act No. 152 of the Public Acts of 1989, being sections 299.804, 299.805, 299.806, 299.809, 299.809a, 299.810, 299.813, 299.815, 299.815a, 299.816, 299.818, 299.819, 299.820, 299.821, and 299.824 of the Michigan Compiled Laws; to add sections 15b, 17a, and 21a; and to repeal certain parts of the act.

The People of the State of Michigan enact:

Section 1. Sections 4, 5, 6, 9, 9a, 10, 13, 15, 15a, 16, 18, 19, 20, 21, and 24 of Act No. 518 of the Public Acts of 1988, sections 4, 6, 9, and 15 as amended by Act No. 132 of the Public Acts of 1993, sections 5, 10, 13, 18, 19, and 24 as amended and sections 9a and 15a as added by Act No. 1 of the Public Acts of 1993, and section 16 as amended by Act No. 152 of the Public Acts of 1989, being sections 299.804, 299.805, 299.806, 299.809, 299.809a, 299.810, 299.813, 299.815, 299.815a, 299.816, 299.818, 299.819, 299.820, 299.821, and 299.824 of the Michigan Compiled Laws, are amended and sections 15b, 17a, and 21a are added to read as follows:

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 on an application requesting payment from the fund. A claim shall include, at a minimum, a completed and signed claim form, the name, address, telephone number, and federal tax identification number of the consultant retained by the owner or operator to carry out responsibilities pursuant to 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.

(i) "Consultant" means a person on the list of qualified underground storage tank consultants prepared pursuant to section 21.

(j) "Co-pay amount" means the co-pay amount provided for in section 13.

(k) "Corrective action" means the investigation, assessment, cleanup, removal, containment, isolation, treatment, or monitoring of regulated substances released into the environment, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, the environment, or natural resources.

(l) "Department" means the department of management and budget.

(m) "Director" means the director of the department of management and budget.

(n) "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.

(o) "Fund" means the Michigan underground storage tank financial assurance fund created in section 6.

(p) "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.

(q) "Indemnification" means indemnification of an owner or operator for a legally enforceable judgment entered against the owner or operator by a third party, or a legally enforceable settlement entered between the owner or operator and a third party, compensating that third party for bodily injury or property damage, or both, caused by an accidental release as those terms are defined in R 29.2163 of the Michigan administrative code.

(r) "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.

(s) "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.

(t) "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.

(u) "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. 5. (1) "Payment voucher" means a form prepared by the department that specifies payment authorization by the department to the department of treasury.

(2) "Person" means an individual, partnership, joint venture, trust, firm, joint stock company, corporation, including a government corporation, association, local unit of government, commission, the state, a political subdivision of the state, an interstate body, the federal government, a political subdivision of the federal government, or any other legal entity.

(3) "Petroleum" means crude oil, crude oil fractions, and refined petroleum fractions including gasoline, kerosene, heating oils, and diesel fuels.

(4) "Petroleum underground storage tank system" means an underground storage tank system used for the storage of petroleum.

(5) "Refined petroleum" means aviation gasoline, middle distillates, jet fuel, kerosene, gasoline, residual oils, and any oxygenates that have been blended with any of these.

(6) "Regulated financial institution" means a state or nationally chartered bank, savings and loan association or savings bank, credit union, or other state or federally chartered lending institution, or a regulated affiliate or a regulated subsidiary of any of these entities.

(7) "Regulatory fee" means the environmental protection regulatory fee imposed under section 8.

(8) "Release" means any spilling, leaking, emitting, discharging, escaping, or leaching from a petroleum underground storage tank system into groundwater, surface water, or subsurface soils.

(9) "Rule" means a rule promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(10) "Underground storage tank system" means an existing tank or combination of tanks, including underground pipes connected to the tank or tanks, which is or was used to contain an accumulation of regulated substances, and is not currently being used for any other purpose, and the volume of which, including the volume of the underground pipes connected to the tank or tanks, is 10% or more beneath the surface of the ground. An underground storage tank system includes an underground storage tank that is properly closed in place pursuant to 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 rules promulgated under that act. An underground storage tank system does not include any of the following:

(a) A farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(b) A tank used for storing heating oil for consumptive use on the premises where the tank is located.

(c) A septic tank.

(d) A pipeline facility, including gathering lines regulated under either of the following:

(i) The natural gas pipeline safety act of 1968, Public Law 90-481, 49 U.S.C. Appx 1671 to 1677, 1679a to 1682, and 1683 to 1687.

(ii) Sections 201 to 215, 217, and 219, of the hazardous liquid pipeline safety act of 1979, title II of the pipeline safety act of 1979, Public Law 96-129, 49 U.S.C. Appx 2001 to 2015.

(e) A surface impoundment, pit, pond, or lagoon.

(f) A storm water or wastewater collection system.

(g) A flow-through process tank.

(h) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(i) A storage tank situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

(j) Any pipes connected to a tank that is described in subdivisions (a) to (i).

(k) An underground storage tank system holding hazardous wastes listed or identified under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to 6939e or a mixture of such hazardous waste and other regulated substances.

(l) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) of title III or section 402 of title IV of the federal water pollution control act, 33 U.S.C. 1317 and 1342.

(m) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(n) An underground storage tank system with a capacity of 110 gallons or less.

(o) An underground storage tank system that contains a de minimis concentration of regulated substances.

(p) An emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.

(q) A wastewater treatment tank system.

(r) An underground storage tank system containing radioactive material that is regulated under the atomic energy act of 1954, chapter 1073, 68 Stat. 919.

(s) An underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 C.F.R. part 50, appendix A to part 50 of title 10 of the code of federal regulations.

(t) Airport hydrant fuel distribution systems.

(u) Underground storage tank systems with field-constructed tanks.

(11) "Work invoice" means an original billing acceptable to the administrator and signed by the owner or operator and a consultant that includes all of the following:

- (a) The name, address, and federal tax identification number of each contractor who performed work.
- (b) The name and social security number of each employee who performed work.
- (c) A specific itemized list of the work performed by each contractor and an itemized list of the cost of each of these items.
- (d) A statement that the consultant employed a documented sealed competitive bidding process for any contract award exceeding \$5,000.00.
- (e) If the consultant did not accept the lowest responsive bid received, a specific reason why the lowest responsive bid was not accepted.
- (f) Upon request of the administrator, a list of all bids received.
- (g) Proof of payment of the co-pay amount as required under section 13.
- (h) Authorization by the owner or operator as to whether the state treasurer should make payment to the owner or operator or to the consultant.

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 payment of rewards under section 24b.

(d) 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.

(e) 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. 9. (1) Except as provided in section 18, 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 and fee 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 or a consultant retained by the owner or operator reported the release within 24 hours after its discovery as required by Act No. 423 of the Public Acts of 1984 and the rules promulgated under that act.

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

(e) 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.

(f) Until January 1, 1997, the claim is not for a release from an underground storage tank closed prior to January 1, 1974, in compliance with the fire prevention code, Act No. 207 of the Public Acts of 1941, being sections 29.1 to 29.33 of the Michigan Compiled Laws, and the rules promulgated under that act.

(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 corrective 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 following compliance with subsection (5)(b) may receive money from the fund or bond proceeds account to perform corrective action on the subsequent release, if there have been not more than 2 releases at the location, the owner or operator pays the subsequent release co-pay amount pursuant to section 13, and 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. 9a. (1) Subject to subsection (2), a regulated financial institution or land contract vendor may receive money from the fund for corrective action or indemnification if, prior to the discovery of a release, the regulated financial institution makes a loan to an owner or operator or makes a loan to an approved claimant under the interest subsidy program, or a land contract vendor enters into a land contract with the owner, and subsequently the regulated financial institution or the land contract vendor takes title or assumes ownership of the petroleum underground storage tank system or the property on which it is located by foreclosure, acceptance of a deed in lieu of foreclosure, or forfeiture.

(2) A regulated financial institution or land contract vendor that meets the requirements of subsection (1) may receive money from the fund if the release was discovered on or after July 18, 1989, and upon taking title to or assuming ownership of the petroleum underground storage tank system or the property on which it is located, the regulated financial institution or land contract vendor meets all of the following requirements:

- (a) Within 24 hours of taking title or assuming ownership reports the release to the Michigan state police fire marshal division, if it has not already been reported.
- (b) Within 7 days of taking title or assuming ownership comes into compliance with the registration and fee 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) Is not the United States government.

(d) Meets the requirements of section 9(1)(e) and (2) through (6).

(e) Meets the requirements of section 15.

(3) A regulated financial institution or land contract vendor meeting the requirements of subsections (1) and (2) may do 1 or more of the following:

(a) Receive money from the fund for corrective action or indemnification.

(b) Accept a transfer or assignment of an approved claim.

(c) Utilize any co-pay amount provided by the owner or operator or pay the co-pay amount specified in section 13.

(4) The state or a local unit of government that acquires ownership or control of an underground storage tank system or the property on which it is located involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title or control by virtue of its governmental function may receive money from the fund as an owner or operator if the state or local unit of government meets all of the following requirements:

(a) Within 24 hours of taking title or assuming ownership reports the release to the Michigan state police fire marshal division, if it has not already been reported.

(b) Within 7 days of taking title or assuming ownership comes into compliance with the registration and fee 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) Is not the United States government.

(d) Meets the requirements of section 9(1)(e) and (2) through (6).

(e) Meets the requirements of section 15.

However, the state or a local unit of government that seeks to receive money from the fund pursuant to this subsection is not responsible for the co-pay amount.

(5) At any time after obtaining title to property pursuant to this section, a regulated financial institution or land contract vendor may sell the property on which a claim has been approved, in a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, and time, and at a price that takes into account the property's fair market value and the costs associated with holding the property, and other such relevant factors. Upon sale, a regulated financial institution or land contract vendor may retain the loan balance plus interest and reasonable costs of obtaining title and maintaining or repairing the property, and 10% of the sale price as a brokerage fee, minus the co-pay amount. Upon sale by a local unit of government, the local unit of government may retain 10% of the sale price as a brokerage fee.

(6) A regulated financial institution, land contract vendor, or local unit of government that applies for reimbursement under this section shall enter into an agreement to repay the state, out of any excess proceeds of a sale, if any, pursuant to subsection (5). Upon a sale of the property, the new owner shall be able to accept an assignment of the approved claim pursuant to section 15a.

Sec. 10. (1) Except as provided in subsection (4), the administrator shall approve expenditures for corrective action and indemnification, on behalf of an owner or operator, of not more than a total of the following amounts per claim submitted if the owner or operator has met the requirements of this act and the rules promulgated under this act:

(a) For underground storage tank systems that, on the effective date of the amendatory act that added subsection (4), have been upgraded pursuant to 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:

(i) Claims submitted through December 31, 1994	\$1,000,000.00
(ii) Claims submitted from January 1, 1995 to December 31, 1995	\$ 800,000.00
(iii) Claims submitted from January 1, 1996 to December 31, 1996	\$ 600,000.00
(iv) Claims submitted from January 1, 1997 to December 31, 1997	\$ 400,000.00
(v) Claims submitted from January 1, 1998 to December 22, 1998	\$ 200,000.00

(b) For underground storage tank systems that, on the effective date of the amendatory act that added subsection (4), have not been upgraded pursuant to Act No. 423 of the Public Acts of 1984 and the rules promulgated under that act:

(i) Claims submitted through December 31, 1996	\$1,000,000.00
(ii) Claims submitted from January 1, 1997 through December 31, 1997	\$ 800,000.00
(iii) Claims submitted from January 1, 1998 through December 31, 1998	\$ 600,000.00

(2) Beginning December 23, 1998, the fund will not be available to provide any portion of an owner's or operator's financial responsibility requirements.

(3) The approved expenditure under subsection (1) shall be reduced by the amount of the interest subsidy paid to an owner or operator who has defaulted on a loan subsidized through the interest subsidy program established in this section.

(4) If, upon review of the study conducted under section 24, the director of the department, in consultation with the insurance commissioner, determines that insurance is not available to meet the owner's and operator's portion of financial responsibility requirements, or that the insurance that is available is not available for a reasonable cost, then the director of the department may delay implementation of the schedule provided in subsection (1). Upon making such a determination, the director of the department shall publish notice of the revised schedule. However, the revised implementation schedule shall not require the fund to provide any portion of an owner's or operator's financial responsibility requirements after December 22, 1998.

Sec. 13. (1) Except as provided in subsection (2) and section 9a, an owner or operator who is eligible under section 9 or 9a to receive money from the fund in the event of a release is responsible for the payment of 10% of each work invoice submitted up to a maximum of \$15,000.00 of corrective action or indemnification costs associated with the release. This amount or the amount provided for in subsection (2) may be referred to as the co-pay amount. An owner or operator who has paid \$10,000.00 of corrective action costs on the effective date of this 1993 amendatory act for a release in which a claim has been submitted is exempt from any additional co-pay amounts for that release.

(2) An owner or operator who is eligible to receive money from the fund in the event of a second release at a location is responsible for the payment of 30% of each work invoice up to a maximum of \$45,000.00 of corrective action or indemnification costs associated with the release.

(3) An owner or operator is not eligible to receive money from the fund for more than 2 releases at a location.

(4) Upon transfer or sale of any legal, equitable, or possessory interest in property, which at the time of transfer is otherwise in compliance with this act and the rules promulgated under this act, or upon which an approved claim and the corresponding corrective action is in progress, any co-pay amount paid, by written agreement, may be transferred.

Sec. 15. (1) To receive money from the fund or bond proceeds account for corrective action, the owner or operator, or a consultant retained by the owner or operator, shall follow the procedures outlined in this section and shall submit reports, work plans, feasibility analyses, hydrogeological studies, and corrective action plans prepared 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 to the department, and shall provide other information required by the administrator relevant to determining compliance with this act.

(2) To receive money from the fund for corrective action, an owner or operator shall submit a claim to the administrator. An owner or operator shall not submit a claim until work invoices in excess of \$5,000.00 of costs of corrective action have been incurred.

(3) Upon receipt of a completed claim pursuant to subsection (2), the administrator shall make all of the following determinations:

(a) Whether the department of natural resources has objected to payment on the claim because the work performed or proposed to be performed is not consistent with the requirements of Act No. 478 of the Public Acts of 1988, and rules promulgated under that act.

(b) Whether the work performed is necessary and appropriate considering conditions at the site of the release.

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

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

(e) Whether the consultant retained by the owner or operator has complied with section 15b.

(4) If the administrator fails to make the determinations required under this section within 30 days after receipt of certification from the department of state police that the owner or operator has met the requirements of section 9(1)(b) and (c), the claim is considered to be approved.

(5) If the administrator determines under subsection (3) that the work invoices included with the claim are necessary and appropriate considering conditions at the site of the release and reasonable in terms of cost 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 work described on the work invoices submitted was not necessary or appropriate or the cost of the work is not reasonable, or that the owner or operator is not eligible for funding under this act, the administrator shall deny the claim or any portion of the work invoices submitted and give notice of the denial to the owner or operator who submitted the claim.

(6) The owner or operator may submit additional work invoices to the administrator after approval of a claim under subsection (5). Within 45 days after receipt of a work invoice, the administrator shall make the following determinations:

(a) Whether the work invoice complies with subsection (3).

(b) Whether the owner or operator is currently in compliance with the registration and fee 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 for the underground storage tank system from which the release occurred.

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

(8) The administrator shall keep records of approved work invoices. If the owner or operator has not exceeded the allowable amount of expenditure provided in section 10, the administrator shall forward payment vouchers to the state treasurer within 45 days of making the determinations under subsection (6).

(9) The administrator may approve a reimbursement for a work invoice that was submitted by an owner or operator for corrective action taken if the work invoice meets the requirements of this act for an approved claim and an approved work invoice.

(10) Except as provided in subsection (11), upon receipt of a payment voucher, the state treasurer or the authority shall make a payment to the owner or operator or the consultant as authorized in the work invoice within 30 days if sufficient money exists in the fund or a bond proceeds account.

(11) 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.

(12) The department shall prepare and make available to owners and operators and consultants standardized claim and work invoice forms.

Sec. 15a. (1) An owner or operator with a claim approved pursuant to section 15 for which corrective action is in progress who sells or transfers the property that is the subject of the approved claim to another person may assign or transfer the approved claim to that other person. The person to whom the assignment or transfer is made is eligible to receive money from the fund as an owner or operator for the release which is the subject of the approved claim. Allowable, outstanding approved or paid work invoices of the owner or operator making the assignment or transfer may be counted toward the co-pay amount of the person to whom the assignment or transfer is made.

(2) An owner or operator assigning or transferring an approved claim pursuant to this section shall notify the administrator of the proposed assignment or transfer at least 10 days before the effective date of the assignment or transfer.

Sec. 15b. (1) In order to receive money from the fund, an owner or operator shall retain a consultant to perform the responsibilities 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 the consultant shall comply with all of the following requirements:

(a) The consultant shall submit the following items for competitive bidding in accordance with procedures established by the department:

(i) Well drilling, including monitoring wells.

(ii) Laboratory analysis.

(iii) Construction of treatment systems.

(iv) Removal of contaminated soil.

(v) Operation of treatment systems.

(b) All bids received by the consultant shall be submitted on a standardized bid form prepared by the department.

(c) A consultant may perform work activities only if the consultant bids for the work activity and the consultant's bid is the lowest responsive bid. A consultant who intends to submit a bid must submit the bid to the administrator prior to receiving bids from contractors.

(d) Upon receipt of bids, the consultant shall submit to the administrator a copy of all bid forms received and the bid accepted. If the lowest responsive bid was not accepted, the consultant shall provide a specific reason why the lowest responsive bid was not accepted.

(2) Bids are not required for initial response actions under section 6 of Act No. 478 of the Public Acts of 1988, being section 299.836 of the Michigan Compiled Laws.

(3) An owner or operator may request that the consultant retained by the owner or operator add qualified bidders to the list for requests for bids.

(4) After the consultant employs the competitive bidding process described in this section, the owner or operator may hire contractors directly.

(5) Upon hiring a contractor, a consultant may mark up the contractor's work invoice only if the consultant pays the contractor and does the billing.

(6) Removal of underground storage tank systems is not eligible for funding under this act. If a release is discovered during the removal, the consultant shall allow the contractor removing the underground storage tank system to complete the underground storage tank system removal.

(7) The owner or operator may receive funding under this act to implement a corrective action alternative that is not the preferred corrective action alternative only if the owner or operator pays the difference between the selected corrective action alternative and the preferred corrective action alternative.

Sec. 16. (1) To receive money from the fund for indemnification, the owner or operator shall submit to the administrator a request for indemnification containing the information required by the administrator, including a copy of the judgment obtained by a third party from a court of law against the owner or operator, or the settlement entered into between the owner or operator and the third party, all documentation supporting the reasonableness and justification for the judgment or settlement, and work invoices which conform to the requirements of section 5(11)(a) to (e). If the administrator determines that the owner or operator is eligible for funding under this act, is eligible for the amount requested, has paid the co-pay amount, has not exceeded the allowable amount of expenditure provided in section 10, is eligible under section 11, and that the work invoices are reasonable in terms of cost, the administrator shall forward a copy of the request for indemnification along with all supporting documentation to the attorney general. The attorney general shall approve the request for indemnification if there is a legally enforceable judgment against, or settlement with, the owner or operator which was caused by an accidental release and which is reasonable and consistent with the purposes of this act. The attorney general may raise as a defense to the request any rights or defenses which were or are available to the owner or operator and, in the case of a judgment, which were not heard and ruled upon by the court. If a request for indemnification is approved by the attorney general, the administrator shall forward the approved request for indemnification to the department of treasury.

(2) The administrator shall keep records of all approved requests for indemnifications.

(3) The state treasurer shall make a payment to an owner or operator for an approved indemnification request within 30 days if sufficient money exists in the fund.

Sec. 17a. The department shall establish an audit program to monitor compliance with this act. As part of the audit program, the department shall employ or contract with qualified individuals to provide on-site inspections of locations where there has been a release. The on-site inspectors shall assure that the preferred corrective action alternative selected by the consultant and the work performed on sites eligible for funding under this act are necessary and appropriate considering conditions at the location, and that work is performed in a cost-effective manner. The department shall annually evaluate the need for on-site inspectors, and if the department determines that they are unnecessary due to other cost containment procedures implemented by the department, the department may discontinue the on-site inspections.

Sec. 18. (1) If the administrator denies a claim or work invoice, or request for indemnification, the owner or operator who submitted the claim, work invoice, or request for indemnification may, within 14 days following the denial, request review by the board. Upon review by the board, the administrator shall approve the claim, work invoice, or request for indemnification if the board determines upon review that the claim, work invoice, or request for indemnification substantially complies with the requirements of this act. However, the board shall not approve a claim, work invoice, or request for indemnification for a release that was discovered prior to July 18, 1989.

(2) If the board approves a claim based upon substantial compliance pursuant to subsection (1), the board may refuse to pay for costs incurred during the time the owner or operator was not in strict compliance with this act.

(3) A person who is denied approval by the board after review under subsection (1) may appeal the decision directly to the circuit court for the county of Ingham.

Sec. 19. (1) The department of treasury in cooperation with the board shall establish an interest subsidy program through rules. This program shall provide for interest subsidies, upon application, to the owner or operator of a petroleum underground storage tank system who meets the applicable requirements of section 9(1). Money in the fund shall not be used for loans but shall be used to provide interest subsidies to lenders on loans for the replacement of a petroleum underground storage tank system.

(2) Interest subsidies shall be made under this section, upon application, for the replacement of existing petroleum underground storage tank systems with petroleum underground storage tank systems that meet 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 for new underground storage tank systems installed after January 1, 1989 and the rules promulgated 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.

(3) Applications for the interest subsidy program under this section shall be submitted prior to December 22, 1998.

(4) Beginning August 1, 1993, the department of treasury shall provide all applicants who otherwise qualify for the interest subsidy program, an interest rate subsidy 1% above the 6-month United States treasury bill rate in effect at the beginning of the calendar quarter in which an owner or operator is eligible, but no more than the actual interest rate paid. The maximum loan amount that an interest rate subsidy will be provided for is \$200,000.00. The maximum loan period shall be 10 years.

Sec. 20. (1) The Michigan underground storage tank financial assurance policy board is created in the department.

(2) The board shall consist of the following:

(a) The director of the department, or his or her designee.

(b) The director of the department of natural resources, or his or her designee.

(c) The director of the department of state police, or his or her designee.

(d) The state treasurer, or his or her designee.

(e) Nine individuals appointed by the governor with the advice and consent of the senate as follows:

(i) One individual representing an independent petroleum wholesale distributor-marketer trade association.

(ii) One individual representing a petroleum refiner-supplier trade association.

(iii) One individual representing a service station dealers' trade association.

(iv) One individual representing a truck stop operators trade association.

(v) One individual representing an environmental public interest organization who is not associated with any of the organizations listed in subparagraphs (i) to (iv).

(vi) Two individuals representing the general public who are not associated with any of the organizations listed in subparagraphs (i) to (iv).

(vii) One individual representing local government.

(3) The governor shall appoint individuals to the board under subsection (2)(e) within 60 days after the effective date of this act. An individual appointed to the board shall serve for a term of 2 years.

(4) A vacancy on the board shall be filled in the same manner as the original appointment.

(5) The first meeting of the board shall be called by the director of the department of management and budget. At its first meeting, the board shall elect from among its members a chairperson and other officers as it considers necessary. After the first meeting, a meeting of the board shall be called by the chairperson on his or her own initiative or by the chairperson on petition of 3 or more members. Upon receipt of a petition of 3 or more members, a meeting shall be called for a date no later than 14 days after the date of receipt of the petition.

(6) The business which the board may perform shall be conducted at a public meeting of the board 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.

(7) A majority of the members of the board constitutes a quorum for the transaction of business at a meeting of the board. Action by the board shall be by a majority of the votes cast.

(8) The board shall advise the department and the administrator on all matters related to the implementation of this act.

(9) The administrator or the department may submit to the board for its review and evaluation, the competitive bidding process employed by a consultant pursuant to section 15b. In conducting this review and evaluation, the board may convene a peer review panel. Following completion of its review and evaluation, the board shall forward a copy of its findings to the department, the administrator, and the consultant. If the board finds the practices employed by a consultant to be inappropriate, the board may recommend that the department remove the consultant from the list of qualified consultants.

(10) Upon request of the administrator or the department, the board shall make a recommendation to the department on whether a consultant should be removed from the list of qualified consultants. Prior to making this recommendation, the board may convene a peer review panel to evaluate the conduct of the consultant with regard to compliance with this act.

(11) A member of the board shall abstain from voting on any matter in which that member has a conflict of interest.

Sec. 21. (1) The department, after consultation with the board, shall prepare and annually update a list of qualified underground storage tank consultants who, based on department guidelines, are qualified to carry out the responsibilities of consultants as provided in 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 to oversee corrective actions. However, in preparing this list of consultants, the department is not responsible or liable for the performance of the consultants. The department shall make this list of consultants available to a person upon request.

(2) The department shall include a person on the list of qualified consultants upon application, if the person meets all of the following requirements:

(a) The person demonstrates experience in all phases of underground storage tank work, including tank removal oversight, site assessment, soil removal, feasibility, design, remedial system installation, remediation management activities, and site closure.

(b) The person has 1 or more individuals actively on staff who are certified underground storage tank professionals. Each certified underground storage tank professional shall provide a letter declaring that he or she is employed by the applicant and that the individual has an active operational role in the daily activities of the applicant.

(c) The person demonstrates that the person has or will be able to obtain, if approved, all of the following:

(i) Workers' compensation insurance.

(ii) Professional liability errors and omissions insurance. This policy may not exclude bodily injury, property damage, or claims arising out of pollution for environmental work and shall be issued with a limit of not less than \$1,000,000.00 per occurrence.

(iii) Contractor pollution liability insurance with limits of not less than \$1,000,000.00 per occurrence, if not included under the professional liability errors and omissions required under subparagraph (ii). The insurance requirement under this subparagraph is not required for consultants who do not perform contracting functions.

(iv) Commercial general liability insurance with limits of not less than \$1,000,000.00 per occurrence, \$2,000,000.00 aggregate.

(v) Automobile liability insurance with limits of not less than \$1,000,000.00 per occurrence.

Deductibles in excess of 10% of the insurance limits provided in this subdivision, or the use of self-insurance, must be approved by the department. Insurance policies must be written by carriers authorized to write such business, or approved as an eligible surplus lines insurer, by the state. The insurance utilized must be placed with an insurer listed in A.M. Best's with a rating of no less than B+ VII.

(d) The person demonstrates compliance with the occupational safety and health act of 1970, Public Law 91-596, 84 Stat. 1590, and the regulations promulgated under that act, and the Michigan occupational safety and health act, Act No. 154 of the Public Acts of 1974, being sections 408.1001 to 408.1094 of the Michigan Compiled Laws, and the rules promulgated under that act and that all such rules and regulations have been complied with during the person's previous corrective action activity.

(3) The person applying to be placed on the list of qualified consultants under this section shall submit an application to the department along with documentation that the person meet the requirements of subsection (2). If the person is a corporation, the person shall include a copy of its most recent annual report.

(4) After submitting an application under this section, or any time after a consultant is included on the list of qualified consultants, within 10 days of a change in any of the requirements of subsection (2), or any material change in the person's operations or organizational status that might affect the person's ability to operate as a consultant, the person shall notify the department.

(5) A consultant shall be suspended or removed from the list for fraud or other cause as determined by the department, including, but not limited to, failing to select and employ the most cost effective corrective action measures. As used in this subsection, "cost effective" includes a consideration of timeliness of implementation of the corrective action measures.

Sec. 21a. (1) Upon request, the department shall certify an individual as an underground storage tank professional if the individual meets the requirements of 1 or more of the following:

(a) The individual is a licensed professional engineer and has 3 or more years of relevant soil corrective action experience in the state, preferably involving petroleum underground storage tanks.

(b) The individual is a certified professional geologist (CPG) or holds a similar approved designation such as a professional hydrologist or a certified groundwater professional, and has 3 or more years of relevant soil corrective action experience in the state, preferably involving petroleum underground storage tanks.

(c) The individual is able to demonstrate that he or she has 3 or more years of relevant environmental assessment and corrective action experience in the state and 10 or more years of specific experience in relevant environmental work with increasing responsibilities. This demonstrated experience shall be documented with professional and personal references, past employment references and histories, and documentation that all OSHA and MIOSHA regulation requirements have been met.

(2) An individual requesting to be granted certification under this section shall submit a copy of all of his or her credentials to the department along with a letter requesting consideration. The letter shall also include a statement that attests that the information being submitted is a true and accurate reflection of the individual's capabilities and qualifications. False or erroneous information contained in the documents submitted or representations made will

constitute fraud on the part of the individual involved and may involve enactment of legal proceedings, revocation of certification, and permanent suspension from all activities funded by the fund.

Sec. 24. Not later than June 22, 1994, the department shall conduct a study to determine the availability and cost of environmental impairment insurance for owners and operators of petroleum underground storage tank systems and shall report to the legislature and the insurance commissioner on the results of this study.

Section 2. Section 11 of Act No. 518 of the Public Acts of 1988, being section 299.811 of the Michigan Compiled Laws, is repealed.

Section 3. This amendatory act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

(a) Senate Bill No. 645.

(b) House Bill No. 4783.

This act is ordered to take immediate effect.

Secretary of the Senate.

Co-Clerk of the House of Representatives.

Approved _____

Governor.