



**Senate Fiscal Agency**  
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BILL



ANALYSIS

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Senate Bill 582 (as enrolled)  
Sponsor: Senator Loren Bennett  
Senate Committee: Natural Resources and Environmental Affairs  
House Committee: Conservation, Environment and Great Lakes

**PUBLIC ACT 181 of 1996**

Date Completed: 11-1-96

**RATIONALE**

Public Act 269 of 1995 changed a reimbursement procedure for cleanup activities specified in Part 215 of the Natural Resources and Environmental Protection Act (NREPA), which regulates the program under which an owner or operator of a leaking underground storage tank (or LUST) is reimbursed for certain mandatory cleanup costs by the Michigan Underground Storage Tank Financial Assurance (MUSTFA) Fund. Prior to these changes, the NREPA required payments for reimbursement on claims to be issued either to an owner or operator of a LUST or to a consultant whom he or she hired to effectuate the cleanup. Among other things, Public Act 269 required payments for reimbursement on claims to be issued "jointly" to an owner or operator and to the consultant. It was subsequently pointed out, however, that this payment process did not take into account situations in which the owner or operator had already paid the consultant for his or her services. Some people claimed that it often would be burdensome, costly, and time-consuming for the owner or operator to locate the contractor and have the contractor endorse the reimbursement check to the owner or operator--especially if the contractor had gone out of business since he or she performed the work for the owner or operator. It was suggested, therefore, that the State Treasurer or the MUSTFA Authority be required to issue reimbursement checks solely to an owner or operator under certain circumstances.

**CONTENT**

The bill amended Part 215 of the Natural Resources and Environmental Protection Act to require the State Treasurer or the MUSTFA Fund Administrator to make payments directly to the owner or operator of an underground storage tank

if he or she submits a signed affidavit to the Fund Administrator that the consultant listed on the work invoice has been paid in full and the consultant does not object to the affidavit. The affidavit must list the work invoice and claim to which it applies, a statement that the owner or operator has mailed a copy of the affidavit by first-class mail to the consultant listed on the work invoice, and the date that it was mailed to the consultant. The Department of Natural Resources is not required to verify affidavits submitted. If the Fund Administrator has not received an objection in writing from the consultant listed on the work invoice within 14 days after the affidavit was mailed to the consultant, the State Treasurer or the MUSTFA Authority must make the payment directly to the owner or operator. If a check already has been issued to the owner or operator and the consultant, the owner or operator may return the original check to the Fund Administrator, together with the affidavit. If the Fund Administrator has not received an objection from the consultant listed on the check within 14 days after the affidavit was mailed to the consultant, the State Treasurer or the Authority must reissue a check to the owner or operator. If the consultant objects to an affidavit, and notifies the Fund Administrator in writing within 14 days after the affidavit was mailed to the consultant, the Fund Administrator must notify the State Treasurer and the Authority, and the State Treasurer or the Authority must issue or reissue the check to the owner or operator and the consultant. A consultant may object only on the grounds that he or she has not been paid in full, and the objection must be made by affidavit. The State Treasurer or the Authority must issue checks within 60 days after an affidavit has been received by the Fund Administrator. Once payment is made under these provisions, the Fund is not liable for any

claim on the basis of that payment. A person who submits a false, misleading, or fraudulent affidavit is subject to the same penalties as those that apply to someone who submits a false, misleading, or fraudulent statement, report, invoice, or other request for payment.

The bill also deleted the requirement that work invoices include authorization by the owner or operator of an underground storage tank system as to whether the State Treasurer should make payment to the owner or operator or to the consultant.

Further, the bill increased from \$1 million to \$3 million the maximum limit for the Emergency Response Fund and the maximum that may be spent from the Fund in any year.

MCL 324.21503 et al.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Many oil companies, especially large ones, pay their underground storage tank contractors as the work on the leaking tank sites is being performed. This ensures that the oil companies can specify the work to be done and have it completed in a timely fashion. The contractors know that they will be paid promptly and, therefore, have no reason to delay work or leave it uncompleted. Having to locate a contractor to endorse a two-party reimbursement check would be time-consuming, costly, and burdensome to the company--not to mention unwarranted since the contractor who has been paid in full really has no right to the check. The bill helps alleviate this problem and streamlines the reimbursement process without jeopardizing the financial security of a contractor, who is given the chance to object to the issuance of a single party reimbursement check to the owner or operator.

Legislative Analyst: L. Burghardt

## **FISCAL IMPACT**

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

The bill increases the limit on the Emergency Response Fund to \$3 million, but does not affect generation of revenues to the Fund (which Public Act 269 of 1995 addressed).

Fiscal Analyst: G. Cutler

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.