

Act No. 181
Public Acts of 1996
Approved by the Governor
May 3, 1996
Filed with the Secretary of State
May 3, 1996

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Senator Bennett

ENROLLED SENATE BILL No. 582

AN ACT to amend sections 21503, 21507, 21515, 21528, 21546, and 21548 of Act No. 451 of the Public Acts of 1994, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," section 21515 as amended by Act No. 269 of the Public Acts of 1995, being sections 324.21503, 324.21507, 324.21515, 324.21528, 324.21546, and 324.21548 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 21503, 21507, 21515, 21528, 21546, and 21548 of Act No. 451 of the Public Acts of 1994, section 21515 as amended by Act No. 269 of the Public Acts of 1995, being sections 324.21503, 324.21507, 324.21515, 324.21528, 324.21546, and 324.21548 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 21503. (1) "Payment voucher" means a form prepared by the department that specifies payment authorization by the department to the department of treasury.

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

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

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

(5) "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 regulated subsidiary of any of these entities.

(6) "Regulatory fee" means the environmental protection regulatory fee imposed under section 21508.

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

(8) "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 part 211 and rules promulgated under that part. 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 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.

(9) "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 21514.

Sec. 21507. (1) The emergency response fund is created.

(2) The state treasurer shall direct the investment of the emergency response fund. Interest and earnings of the emergency response fund shall remain in the emergency response fund.

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

(4) Money in the emergency response fund shall not exceed \$3,000,000.00.

(5) Money in the emergency response fund shall be expended by the department to undertake corrective actions to address releases from petroleum underground storage tank systems pursuant to part 213.

(6) Not more than \$3,000,000.00 shall be expended from the emergency response fund in any year.

(7) If money in the emergency response fund is expended under subsection (5), the person or persons responsible for the corrective action shall be liable to the state for all such expenditures.

Sec. 21515. (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 part 213 and rules promulgated under that part to the department, and shall provide other information required by the administrator relevant to determining compliance with this part.

(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 the 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 environmental quality, underground storage tank division has objected to payment on the claim because the work performed or proposed to be performed is not consistent with the requirements of part 213 and rules promulgated under that part.

(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 part.

(e) Whether the consultant retained by the owner or operator has complied with section 21517.

(4) If the administrator fails to make the determinations required under this section within 30 days after receipt of certification from the department of environmental quality, underground storage tank division that the owner or operator has met the requirements of section 21510(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 part, 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 part, 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 part 211 and the rules promulgated under that part 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 21512, 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 part for an approved claim and an approved work invoice.

(10) Except as provided in subsection (11) or as otherwise provided in this subsection, upon receipt of a payment voucher, the state treasurer or the authority shall make a payment jointly to the owner or operator and the consultant within 30 days if sufficient money exists in the fund or a bond proceeds account. However, the owner or operator may submit to the fund administrator a signed affidavit stating that the consultant listed on a work invoice has been paid in full. The affidavit shall list the work invoice and claim to which the affidavit 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 the affidavit was mailed to the consultant. The department is not required to verify affidavits submitted under this subsection. If, within 14 days after the affidavit was mailed to the consultant under this subsection, the fund administrator has not received an objection in writing from the consultant listed on the work invoice, the state treasurer or the authority shall make the payment directly to the owner or operator. If a check has already been issued to the owner or operator and the consultant, the owner or operator may return the original check to the fund administrator along with the affidavit. If within 14 days after the affidavit was mailed to the consultant the fund administrator has not received an objection from the consultant listed on the check, the state treasurer or the authority shall reissue a check to the owner or operator. If a consultant objects to an affidavit received under this subsection, and notifies the fund administrator in writing within 14 days after the affidavit was mailed to the consultant, the fund administrator shall notify the state treasurer and the authority, and the state treasurer or the authority shall issue or reissue the check to the owner or operator and the consultant. The grounds for an objection by a consultant under this subsection must be that the consultant has not been paid in full and the objection must be made by affidavit. The state treasurer or the authority shall issue checks under this subsection within 60 days after an affidavit has been received by the fund administrator. Once payment has been made under this section, the fund is not liable for any claim on the basis of that payment.

(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 21548 or if necessary to assure acceptable completion of the proposed work.

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

Sec. 21528. (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 21506(4)(a) and (e).

(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 implement 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. 21546. (1) This part does not create any liability on behalf of the state. This part shall not be construed as making the state the guarantor of the fund.

(2) This part 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 part; it is only providing assistance to such owners or operators in meeting the financial responsibility requirements.

(3) If all bonds or notes of the authority payable from the fund have been fully paid or provided for and if any provision of this part 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 part shall be considered unconstitutional and invalid.

Sec. 21548. (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, affidavit, application, claim, bid, work invoice, or other request for payment or indemnification under this part knowing that 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, report, application, claim, bid, work invoice, or other request for payment or indemnification under this part knowing that the statement, report, affidavit, application, claim, bid, work invoice, or other request for payment or indemnification is false, misleading, or fraudulent, or who 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 greater than was actually carried, excavated, disposed, or provided.

(b) Submitting 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) Causing damage intentionally or as the result of gross negligence to an underground storage tank system, which damage 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 part.

(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 co-pay amount required under section 21514 and then submitting or causing to be submitted inflated claims or invoices designed to recoup the co-pay 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 part.

(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 part.

(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 part.

(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 order to obtain funding under this part.

(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 which is relevant to an investigation of a violation or attempted violation of this part or a crime or attempted crime against the fund, 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 a 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 to provide 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 part or the criminal laws of this state, the person found responsible shall repay any money obtained directly or indirectly under this part. 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 part.

(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 a 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 21507.

This act is ordered to take immediate effect.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.