

# HOUSE BILL No. 6074

July 6, 2004, Introduced by Rep. Shulman and referred to the Committee on Appropriations.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending sections 21506, 21508, 21546, and 21548 (MCL  
324.21506, 324.21508, 324.21546, and 324.21548), sections 21506  
and 21508 as amended by 1995 PA 269 and sections 21546 and 21548  
as amended by 1996 PA 181; and to repeal acts and parts of acts.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 21506. (1) The Michigan underground storage tank  
2 financial assurance fund is created.

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

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

8       (4) Except as provided in subsection (5), money in the fund

1 shall be expended only as follows and in the following order of  
2 priority:

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

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

20 (c) For payment of rewards under section 21549.

21 (d) For the interest subsidy program established in  
22 section 21522. The money expended under this subdivision shall  
23 not exceed 10% of the fund's projected revenues in any year.  
24 However, 10% of the revenue of the fund during the first year of  
25 the fund's operation shall be expended on the interest subsidy  
26 program. If this money is not expended during the first year,  
27 this money shall be carried over for expenditure in the

1 succeeding years of the fund's operation. Additional fund  
2 revenue shall not be set aside for the interest subsidy program  
3 until all of the first year revenue is expended.

4 (e) For corrective action and indemnification including all  
5 of the following:

6 (i) Payments for work invoices submitted prior to 5 p.m. on  
7 June 29, 1995 and approved by the department pursuant to this  
8 part.

9 (ii) Payments for requests for indemnification submitted  
10 prior to 5 p.m. on June 29, 1995 and approved by the department  
11 pursuant to this part.

12 (iii) Payments for work invoices or requests for  
13 indemnification that were submitted prior to 5 p.m. on June 29,  
14 1995 and denied by the department pursuant to this part but which  
15 denials were subsequently reversed on appeal.

16 (5) Upon payment in full of all obligations listed in  
17 subsection (4), the state treasurer shall ~~file with the~~  
18 ~~secretary of state a notice of final payment of all obligations~~  
19 ~~lawfully payable from the fund~~ **transfer all revenues received by**  
20 **the fund to the cleanup and redevelopment fund created in section**  
21 **20108.**

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

27 Sec. 21508. (1) An environmental protection regulatory fee

1 is imposed on all refined petroleum products sold for resale in  
2 this state or consumption in this state. ~~The regulatory fee~~  
3 ~~shall be used pursuant to section 21506(4) for the cleanup and~~  
4 ~~prevention of environmental contamination resulting from releases~~  
5 ~~of refined petroleum products from underground storage tank~~  
6 ~~systems and to pay off bonds or notes pursuant to this part.~~ The  
7 regulatory fee shall be charged for capacity utilization of  
8 underground storage tanks measured on a per gallon basis. The  
9 regulatory fee shall be charged against all refined petroleum  
10 products sold for resale in this state or consumption in this  
11 state so as to not exclude any products that may be stored in an  
12 underground tank at any point after the petroleum is refined.  
13 The regulatory fee shall be 7/8 cent per gallon for each gallon  
14 of refined petroleum sold for resale in this state or consumption  
15 in this state, with the per gallon charge being a direct measure  
16 of capacity utilization of an underground storage tank system.

17 (2) The department of treasury shall precollect regulatory  
18 fees from persons who refine petroleum in this state for resale  
19 in this state or consumption in this state and persons who import  
20 refined petroleum into this state for resale in this state or  
21 consumption in this state. The department of treasury shall  
22 collect regulatory fees that can be collected at the same time as  
23 the sales tax under section 6a of the general sales tax act, ~~Act~~  
24 ~~No. 167 of the Public Acts of 1933, being section 205.56a of the~~  
25 ~~Michigan Compiled Laws~~ **1933 PA 167, MCL 205.56a**, at that time.  
26 The remainder of the regulatory fees shall be collected in the  
27 manner determined by the state treasurer. ~~Notwithstanding any~~

1 ~~other provision of this part, the department of treasury shall~~  
2 ~~stop collecting regulatory fees under this part when it has~~  
3 ~~received sufficient revenues to pay in full all obligations~~  
4 ~~listed in section 21506(4).~~

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

9 (4) All regulatory fees collected pursuant to this part shall  
10 be deposited into the ~~emergency response fund created in~~  
11 ~~section 21507 until the emergency response fund reaches~~  
12 ~~\$3,000,000.00. When the emergency response fund is at~~  
13 ~~\$3,000,000.00, all regulatory fees shall be deposited into the~~  
14 fund.

15 (5) Consistent with the March 31, 1995 determination by the  
16 state treasurer that revenue will not be sufficient to pay  
17 expected expenditures, and consistent with the April 3, 1995  
18 notice of the fund administrator pursuant to subsection (6),  
19 funding is no longer available under this part for new claims,  
20 work invoices, and requests for indemnification received after 5  
21 p.m. on June 29, 1995. Claims, work invoices, and requests for  
22 indemnification received after 5 p.m. on June 29, 1995 are not  
23 eligible for funding under this part. Work invoices and requests  
24 for indemnification received prior to 5 p.m. on June 29, 1995 may  
25 be paid to the extent money is available in the fund as provided  
26 in this part.

27 (6) If the state treasurer determines that fund revenues will

1 not be sufficient to pay expected expenditures from the fund, the  
2 state treasurer shall notify the administrator, and 90 days after  
3 this notification has been given the administrator shall not  
4 accept any new work invoices or requests for indemnification.  
5 Upon receiving this notification from the state treasurer, the  
6 administrator shall notify by certified mail the owners and  
7 operators of petroleum underground storage tank systems  
8 registered under part 211 that funding under this part will no  
9 longer be available for new claims after the 90-day period has  
10 expired. However, work invoices and requests for indemnification  
11 that were submitted to the administrator prior to or during this  
12 90-day period may be paid to the extent money is available in the  
13 fund as provided in this part.

14 (7) The department of treasury may audit, enforce, collect,  
15 and assess the fee imposed by this part in the same manner and  
16 subject to the same requirements as revenues collected pursuant  
17 to ~~Act No. 122 of the Public Acts of 1941, being sections 205.1~~  
18 ~~to 205.31 of the Michigan Compiled Laws~~ **1941 PA 122, MCL 205.1**  
19 **to 205.31.**

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

23 (2) This part does not relieve any person who may be eligible  
24 to receive money from the fund or the **former** emergency response  
25 fund from any liability that he or she may incur as the owner or  
26 operator of an underground storage tank system. The state is not  
27 assuming the liability of an owner or operator eligible for

1 funding under this part; it is only providing assistance to such  
2 owners or operators in meeting the financial responsibility  
3 requirements.

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

11 Sec. 21548. (1) ~~Beginning August 8, 1993, a~~ A person who  
12 makes or submits or causes to be made or submitted either  
13 directly or indirectly any statement, report, affidavit,  
14 application, claim, bid, work invoice, or other request for  
15 payment or indemnification under this part knowing that the  
16 statement, report, application, claim, bid, work invoice, or  
17 other request for payment or indemnification is false or  
18 misleading is guilty of a felony punishable by imprisonment for  
19 not more than 5 years or a fine of not more than \$50,000.00, or  
20 both. In addition to any penalty imposed under this subsection,  
21 a person convicted under this subsection shall pay restitution to  
22 the fund for the amount received in violation of this  
23 subsection.

24 (2) A person who makes or submits or causes to be made or  
25 submitted either directly or indirectly any statement, report,  
26 application, claim, bid, work invoice, or other request for  
27 payment or indemnification under this part knowing that the

1 statement, report, affidavit, application, claim, bid, work  
2 invoice, or other request for payment or indemnification is  
3 false, misleading, or fraudulent, or who commits a fraudulent  
4 practice, is subject to a civil fine of not more than \$50,000.00  
5 or twice the amount submitted, whichever is greater. In addition  
6 to any civil fine imposed under this subsection, a person found  
7 responsible under this subsection shall pay restitution to the  
8 fund for the amount received in violation of this subsection.  
9 The legislature intends that this subsection be given retroactive  
10 application.

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

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

18 (b) Submitting paperwork for services done or work provided  
19 that was not in fact provided or that was not directly provided  
20 by the individual indicated on the paperwork.

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

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

26 (e) Causing damage intentionally or as the result of gross  
27 negligence to an underground storage tank system, which damage



1 results in a release at a site.

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

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

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

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

13 (j) Loaning to an owner or operator the co-pay amount  
14 required under section 21514 and then submitting or causing to be  
15 submitted inflated claims or invoices designed to recoup the  
16 co-pay amount.

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

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

21 (m) Submitting a false or misleading laboratory report.

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

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

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

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

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

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

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

15       (u) Any other act or omission of a false, fraudulent, or  
16 misleading nature undertaken in order to obtain funding under  
17 this part.

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

21       (5) If the attorney general or county prosecutor has  
22 reasonable cause to believe that a person has information or is  
23 in possession, custody, or control of any document or records,  
24 however stored or embodied, or tangible object which is relevant  
25 to an investigation of a violation or attempted violation of this  
26 part or a crime or attempted crime against the fund, the attorney  
27 general or county prosecutor may, before bringing any action,

1 make an ex parte request to a magistrate for issuance of a  
2 subpoena requiring that person to appear and be examined under  
3 oath or to produce the document, records, or object for  
4 inspection and copying, or both. Service may be accomplished by  
5 any means described in the Michigan court rules. Requests made  
6 by the attorney general may be brought in Ingham county.

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

11 (7) The attorney general or county prosecutor may apply to  
12 the district court for an order granting immunity to any person  
13 who refuses to provide or objects to providing information,  
14 documents, records, or objects sought pursuant to this section.  
15 If the judge is satisfied that it is in the interest of justice  
16 that immunity be granted, he or she shall enter an order granting  
17 immunity to the person and requiring them to appear and be  
18 examined under oath or to produce the document, records, or  
19 object for inspection and copying, or both.

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

25 (9) In addition to any civil fines or criminal penalties  
26 imposed under this part or the criminal laws of this state, the  
27 person found responsible shall repay any money obtained directly

1 or indirectly under this part. Money owed pursuant to this  
2 section constitutes a claim and lien by the fund upon any real or  
3 personal property owned either directly or indirectly by the  
4 person. This lien shall attach regardless of whether the person  
5 is insolvent and may not be extinguished or avoided by  
6 bankruptcy. The lien imposed by this section has the force and  
7 effect of a first in time and right judgment lien.

8 (10) Subsection (1) does not preclude prosecutions under  
9 other laws of the state including, but not limited to, section  
10 157a, 218, 248, 249, 280, or 422 of the Michigan penal code, ~~Act~~  
11 ~~No. 328 of the Public Acts of 1931, being sections 750.157a,~~  
12 ~~750.218, 750.248, 750.249, 750.280, and 750.422 of the Michigan~~  
13 ~~Compiled Laws~~ **1931 PA 328, MCL 750.157a, 750.218, 750.248,**  
14 **750.249, 750.280, and 750.422.**

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

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

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

23 (c) Twenty-five percent shall be paid to a local police  
24 department or sheriff's office, or a city or county health  
25 department, if investigation by that office or department led to  
26 the bringing of the action. If more than 1 office or department  
27 is eligible for payment under this subsection, division of

1 payment shall be on an equal basis. If there is not a local  
2 office or department that is entitled to payment under this  
3 subdivision, the money shall be forwarded to the state treasurer  
4 for deposit into the ~~emergency response fund created in~~  
5 ~~section 21507~~ **fund**.

6 Enacting section 1. Section 21550 of the natural resources  
7 and environmental protection act, 1994 PA 451, MCL 324.21550, is  
8 repealed.