

## CLEANUP OF UNDERGROUND STORAGE TANKS

Mary Ann Cleary, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**Senate Bill 791 (Substitute H-1)**

**Sponsor: Sen. Mike Green**

**House Committee: Natural Resources**

**Senate Committee: Natural Resources, Environment, and Great Lakes**

**Complete to: 12-8-14**

## A SUMMARY OF SENATE BILL 791 AS REPORTED FROM HOUSE COMMITTEE

**BRIEF SUMMARY:** Senate Bill 791 would amend multiple sections of the Natural Resources and Environmental Protection Act (NREPA, PA 451 of 1994) that relate to leaking underground storage tanks. Notable changes include the creation of a separate account to pay for corrective action to be taken on leaking underground tanks and the revision of eligibility requirements that must be met by claimants. A sunset date of December 31, 2016, would be created for funding certain inspection programs carried out by the Michigan Department of Agriculture and Rural Development using funds from the Refined Petroleum Fund.

The title of Part 215 would also be changed from "Refined Petroleum Fund" to "Underground Storage Tank Corrective Action Funding."

Changes made to the funding mechanism are detailed under the "Fiscal Impact" section, while changes to the board which oversees the Michigan Underground Storage Tank Financial Assurance Authority (which would be renamed the Underground Storage Tank Authority) are detailed under "Content of the Bill."

**FISCAL IMPACT:** The Refined Petroleum Fund (RPF) established by the Natural Resources and Environmental Protection Act (1994 PA 451) receives an environmental protection fee of 7/8 cent per gallon on all refined petroleum sold for resale in Michigan. This fee has generated an average of \$51.3 million in revenue for the RPF over the past five years; \$52 million in revenue is estimated for FY 2014-15. It is important to note that appropriation levels have exceeded revenue for the RPF in recent years: \$57.5 million was appropriated to departments from the RPF for FY 2014-15 but only \$52 million in revenue is expected. The DEQ (\$53.6 million) and the MDARD (\$3.9 million) received RPF appropriations in FY 2014-15. This bill would impact the DEQ by eliminating the environmental protection fee sunset that is scheduled for December 31, 2015.

This bill amends the RPF by creating an Underground Storage Tank Cleanup Fund to be administered by an Underground Storage Tank Cleanup Fund Authority. The first \$20 million collected from the 7/8 cent environmental protection fee would be deposited into this new fund with the remainder of revenues being deposited to the existing RPF. The Underground Storage Tank Cleanup Fund would be used for three purposes:

- To pay principal and interest on bonds or notes issued from the fund by the Finance Authority
- To pay administrative costs of the fund equivalent to no more than 7% of the fund's projected annual revenue
- To pay approved claims made by owners/operators of leaking underground storage tanks (LUSTs)

This new fund allows for owners/operators of refined petroleum underground storage tanks to be reimbursed for their respective efforts to bring their leaking tanks into compliance with environmental protection standards (established by 1994 PA 451) by cleaning up their contaminated sites. Owners/operators would be required to pay a deductible and submit documentation of qualifying expenses as established by the fund authority's schedule of costs in order to receive reimbursement on their claim(s).

Senate Bill 791 also revises the general uses of the RPF. Previously, the RPF was used by MDARD to fund gasoline inspection programs, and by DEQ to fund the refined petroleum cleanup program and the temporary reimbursement program, as well as to cover administrative costs incurred while administering the RPF. This bill will narrow the uses of the RPF to funding LUST corrective actions by DEQ, administrative costs of the fund, and other purposes determined by the legislature.

The use of the RPF to fund the aforementioned MDARD gasoline inspection programs would be extended to December 31, 2016. These changes in RPF uses could leave the DEQ with less flexibility to use RPF appropriations for the water and air quality initiatives that are presently funded by the RPF. The DEQ does not anticipate a reduced capacity to clean up orphaned LUSTs as a result of the creation of this new cleanup fund. Environmental protection fee revenues are projected to remain steady at \$50-52 million annually.

The Michigan Finance Authority is also given the authority to issue bonds or notes payable from the revenues of Underground Storage Tank Cleanup Fund. These bonds or notes would be used to pay qualifying LUST claims. The issuance of these bonds or notes would be based solely on revenue generated by the fund and would not be backed by the full faith and credit of the DEQ or the State of Michigan.

#### ***DETAILED CONTENT OF THE BILL:***

In addition to the creation of the Underground Storage Tank Cleanup Fund and the addition of a sunset date for drawing funds from the RPF to pay for certain gasoline inspection programs, the bill also would add or modify several definitions and modify the composition of the authority's board.

The meaning of several terms would be changed to match the definitions for those terms that are found in Sections 21302 and 21303 (MCL 324.21302 and 324.21303). Generally speaking, the current definitions in Section 21502 that are being amended are similar in wording to those found in Sections 21302 and 21303.

The bill also would establish the following *claim limits*:

- \$1 million for all claims of owners or operators and their affiliates during a claim period for owners/operators of 1 to 100 refined petroleum underground storage tanks
- \$2 million for all claims of owners or operators and their affiliates during a claim period for owners/operators of more than 100 tanks.

The following *deductibles* also would be established as follows:

- For owners/operators with fewer than 8 tanks, that owner/operator would pay an annual fee of \$500 per tank along with a deductible of \$15,000 per claim.
- For owners/operators with 8 or more tanks, the deductible is \$50,000 per claim.

For determination purposes, each compartment of a multiple compartment tank is considered a separate tank. For example, an owner/operator with an underground storage tank with four chambers would pay \$2,000 in annual fees (\$500 x 4 tanks).

The deductible amount applies to each claim, unless two or more claims arise out of the same, interrelated incident or series of incidents. In that situation, all related cases would be considered a single claim and subject to the single claim deductible and maximum payout limit. Any claim which takes place over two or more claim periods would also be subject to the one claim limit and one deductible amount.

### **Supporting Documentation**

An owner/operator that submits a claim also would be required to submit work invoices or other evidence that the applicable deductible amount has been met. The authority would be responsible for creating a schedule of allowable costs and corresponding reimbursement amounts that could be paid for each corrective action taken as part of a claim. If costs for a particular allowable cost vary in different regions of Michigan, the authority could establish different allowable reimbursements that reflect the regional variations. Items not listed on the schedule established by the authority can be counted toward the deductible if they are "reasonable and necessary considering conditions at the site based upon a competitive bidding process established by the authority." The schedule of costs would be posted to the department's website, reviewed annually, and updated as necessary or appropriate.

The bill also would establish criteria under which a claim can be denied. Generally, claims would be denied if the leakage was caused by intentional or negligent actions on the part of the owner/operator.

While the authority would be required to make payments on claims in the order the claims are received, should the fund lack the monies necessary to pay out all approved claims, the authority would be able to prioritize claims based upon which pose the greatest danger to public health and safety or the environment. The authority also would be required to send notice to all claimants of the fund's depletion. Claimants not paid out

of the fund would still be eligible for payment if additional monies later become available.

Currently, the authority is governed by a board of directors, consisting of the director of the Department of Technology, Management, and Budget; the director of the Department of State Police; and three residents appointed by the governor. The governor also currently appoints an administrator of the authority. The bill would amend this by having the board appoint an administrator and by changing the board's composition to six residents with the following affiliations:

- Petroleum refiners
- Independent petroleum marketers
- Statewide motor fuel retail association members
- Statewide business association that includes owners/operators of refined petroleum underground storage tanks.
- An individual from a statewide environmental organization
- A member of the general public.

The number of members needed to be present in order to constitute a quorum would be increased from three to four under the bill.

Currently, the budgeting, procurement, and related functions are performed under the direction and supervision of the director of the Department of Technology, Management, and Budget. That requirement would be removed. Also eliminated would be the ability of the board to borrow money and issue negotiable revenue bonds and notes. Bonds and notes would be issued at the discretion of the finance authority, based upon information provided by the Underground Storage Tank Authority.

### ***POSITIONS:***

The following indicated support for the bill:

Michigan Petroleum Association (12-2-14)  
Department of Environmental Quality (12-2-14)  
Michigan Environmental Council (12-2-14)  
Michigan Bankers Association (12-2-14)  
American Petroleum Institute (12-2-14)  
Associated Food and Petroleum Dealers (12-2-14)

Legislative Analyst: Josh Roesner  
Fiscal Analyst: Austin Scott

---

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.