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Senate Bill 791 (Substitute S-1 as reported)
Sponsor: Senator Mike Green
Committee: Natural Resources, Environment and Great Lakes

CONTENT

The bill would amend Part 215 (Refined Petroleum Fund) of the Natural Resources and Environmental Protection Act to revise the State's program for funding corrective actions to address releases from refined petroleum underground storage tank (UST) systems. Specifically, the bill would do the following:

- Create the Underground Storage Tank Authority and the "Underground Storage Tank Cleanup Fund", and designate the UST Authority as the administrator of the Fund.
- Eliminate a December 31, 2015, sunset on the environmental protection regulatory fee imposed on refined petroleum product sales; require the first \$20.0 million collected from the fee annually to be deposited in the proposed Cleanup Fund; and require the balance to be deposited in the Refined Petroleum Fund (RPF) (which presently receives all of the fee revenue).
- Allow the RPF to be used for other purposes determined by the Legislature, as well as corrective actions performed by the Department of Environmental Quality (DEQ) and the DEQ's administrative costs.
- Eliminate from the allowed uses of the RPF gasoline inspection programs and implementation of a temporary program to reimburse UST system owners and operators for the costs of corrective actions.
- Prescribe the uses for which Cleanup Fund money could be spent (as described below).
- Allow an UST owner or operator to receive money from the Authority for a release that was discovered and reported after the bill's effective date.
- Prescribe eligibility requirements, including financial responsibility requirements and payment of a deductible amount, for an owner or operator to receive money from the Cleanup Fund.
- Prescribe a deductible amount of \$50,000 per corrective action claim, or \$15,000 per claim if the owner or operator owned fewer than eight refined petroleum USTs and paid the Authority an annual fee of \$500 per tank.
- Require the Authority to establish a schedule of costs that itemized corrective actions and listed an allowable reimbursement amount that could be paid for each.
- Describe conditions under which UST Authority could not approve a claim for corrective action reimbursement.
- Require the Authority administrator to make certain determinations upon receiving a completed claim, and approve the claim if the administrator determined that the work invoices were reasonable and necessary.
- Require the administrator to pay an approved claim for reimbursement within 45 days after making the required determinations, and require the Authority to pay the owner or operator within 30 days.
- Allow an owner or operator to seek Cleanup Fund money for indemnification by submitting a request to the administrator, who would have to determine whether the person was eligible and, if so, forward the request to the Attorney General.

- Require the Attorney General to approve the indemnification request if there were a legally enforceable judgment against, or settlement with, the owner or operator that was caused by an accidental release and that was reasonable and consistent with the purposes of Part 215.
- Require the Authority to pay the indemnification amount, if the Attorney General approved the request, and to make the payment within 30 days if sufficient money were available.
- Require the Authority to notify each eligible owner and prioritize payments based upon the risks to public health, safety, or welfare or the environment, if there were insufficient money available to pay all approved claims.
- Provide that the Authority and the State would not be liable for work invoices or indemnification requests if Authority revenue were insufficient to meet the claims.
- Allow an owner or operator whose claim or request was denied to request review by the Authority's board of directors, and allow the administrator to attempt to negotiate a resolution before the board's review.
- Allow a person who was denied approval after the board's review to appeal the decision to the circuit court.
- Require the Authority to assess the potential demand for payment of claims and provide the assessment results to the Michigan Finance Authority.
- Allow the Finance Authority to issue bonds and notes, if it determined that doing so was prudent upon review of the assessment results.
- Provide that Part 215 would not make the State the guarantor of the Cleanup Fund or relieve a person who was eligible to submit a claim to the UST Authority of any liability he or she incurred as a UST system owner or operator.
- Rename Part 215 "Underground Storage Tank Corrective Action Funding".

Under the bill, the UST Authority and the Michigan Finance Authority could spend Cleanup Fund money, upon appropriation, only for the following purposes:

- As a first priority, payment of principal and interest due on Finance Authority bonds or notes, plus any amount necessary to maintain a fully funded debt reserve or other reserve as required by resolution, indenture, or other agreement of the Finance Authority.
- A maximum of 7% of the Fund's projected revenue in any year for the reasonable administrative cost of implementing Part 215 incurred by the applicable State departments and the Finance Authority.
- Payment of approved claims for corrective action costs.

MCL 324.21502 et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have a minor, but negative, fiscal impact on the Department of Environmental Quality and no fiscal impact on local units of government. The bill would change how the 7/8th cent environmental protection regulatory fee paid on each gallon of refined petroleum products is used and create a new Underground Storage Tank Authority.

Currently, all revenue from the environmental protection regulatory fee is credited to the Refined Petroleum Fund (RPF); in fiscal year (FY) 2012-13, \$51.7 million was credited to the RPF. Under current law, the RPF may be used, upon appropriation, for the following purposes:

- The Weights and Measures and Motor Fuel Quality programs in the Michigan Department of Agriculture and Rural Development (MDARD).
- The Refined Petroleum Product Initial Program.
- DEQ administrative costs for the Temporary Reimbursement Program.
- Implementation of the Temporary Reimbursement Program.

- Corrective actions to address refined petroleum product releases.
- Reasonable administrative expenses of MDARD, the Attorney General, and the Department of Treasury for administration of the RPF and programs receiving RPF revenue.

The bill would strike all of those uses of the RPF and replace them with the following:

- Cleanup and corrective actions taken on orphaned leaking underground storage tanks (LUSTs).
- Reasonable costs in administering the RPF.
- Implementing Part 213 of NREPA (LUSTs).
- Other purposes as determined by the Legislature.

These changes would have the practical impact on the affected Departments only if appropriations of RPF money to those Departments were changed. The provision in the bill that would allow the RPF to be used for "other purposes as determined by the legislature" could be used to justify appropriations for programs removed by the bill from the list of allowable uses. Future uses of the RPF, then, would likely be determined by appropriations made by the current and future Legislatures.

The bill also would create the Underground Storage Tank Cleanup Fund, and credit the first \$20.0 million of revenue from the environmental protection regulatory fee to the Cleanup Fund. The Fund would be used, upon appropriation, to pay approved claims, to pay interest and other costs associated with issuance of bonds or notes, and to pay for costs of the Authority. The \$20.0 million would not be new revenue, but would instead be revenue redirected from what is currently credited to the RPF. Redirecting environmental protection regulatory fee revenue from the RPF to the Cleanup Fund would have the effect of reducing funds available for orphaned LUSTs and Part 213 administration, and increasing funds available for the cleanup of other LUSTs where there is a responsible party. Since the amount of revenue available to the DEQ to administer LUST cleanups would be reduced, it is possible that this would reduce the need for DEQ Remediation Division staff to administer these cleanups. It is important to note, however, that LUST cleanups are often long-term projects that can span several years, so any reduction in the need for staff would occur in the future once current projects are completed.

The bill would allow the Authority to employ experts and other employees, which would create new costs not currently borne by revenue from the environmental protection regulatory fee. Some of these new costs could be offset by a provision in the bill that would allow owners or operators of fewer than eight USTs to pay a \$500-per-tank annual fee to the Authority in exchange for a lowered deductible for claims filed with the Cleanup Fund.

Finally, the bill would allow the Authority to issue bonds or notes for the payment of claims against the Cleanup Fund or for other costs of the Authority. These bonds or notes would be revenue-dedicated and payable solely from Fund revenue. Any bonds or notes issued would be serviced by the Fund and would have the practical impact of providing increased short-term resources for claim payments at the cost of reduced resources for claim payments in the future. These bonds or notes would be issued at the discretion of the Authority.

Date Completed: 5-19-14

Fiscal Analyst: Josh Sefton

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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.