



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 791 (as introduced 2-18-14)
Sponsor: Senator Mike Green
Committee: Natural Resources, Environment and Great Lakes

Date Completed: 3-26-14

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:

- Rename Part 215 "Underground Storage Tank Corrective Action Funding".
- Eliminate from the allowed uses of the Refined Petroleum Fund (RPF) gasoline inspection programs and implementation of a temporary program to reimburse UST system owners and operators for the costs of corrective actions.
- Create the Underground Storage Tank Authority and the "Underground Storage Tank Cleanup Fund", and designate the 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, and require the first \$20.0 million collected from the fee annually to be deposited in the proposed Cleanup Fund.
- Allow Cleanup Fund money to be spent to pay approved claims for corrective action costs, interest and other costs associated with the issuance of bonds or notes, and the Authority's costs.
- 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.
- Establish conditions that expenses would have to meet in order to count toward meeting the deductible.
- Prescribe conditions under which the 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 require the Authority 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, if the Authority determined it was prudent to do so, issue bonds and notes.**
- **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 Authority of any liability he or she incurred as a UST system owner or operator.**
- **Retain civil and criminal penalties that applied to the submission of false, misleading, or fraudulent claims under the former Michigan Underground Storage Tank Financial Assurance (MUSTFA) program, and also require a violator to pay restitution to the UST Authority.**

The bill also would repeal a number of provisions related to the program.

Refined Petroleum Fund

Part 215 provides for the RPF and requires money in the Fund to be spent, upon appropriation, only for the following purposes:

- Gasoline inspection programs under the Weights and Measures Act and the Motor Fuels Quality Act.
- The refined petroleum product cleanup initial program and the administrative costs of the Department of Environmental Quality (DEQ) associated with the temporary reimbursement program.
- Implementation of the temporary reimbursement program.
- Corrective actions necessary to address release of refined petroleum products under a cleanup program established by law.
- The reasonable administrative costs of the DEQ, the Michigan Department of Agriculture and Rural Development, the Department of Attorney General, and the Department of Treasury in administering the RPF and in implementing the programs receiving revenue from the Fund.

The bill would eliminate these authorized expenditures. The bill also would repeal Sections 21553 through 21563, which pertain to the temporary reimbursement program.

Under the bill, RPF money could be used, upon appropriation, only for the following:

- Corrective actions performed by the DEQ pursuant to Section 21320.
- The reasonable costs of the DEQ in administering the RPF and implementing Part 213.
- Other purposes as determined by the Legislature.

(Under Section 21320, if the DEQ learns of a suspected or confirmed release from an UST system, the Department may undertake corrective actions necessary to protect the public health, safety, or welfare or the environment at sites where people who are liable are not financially viable or readily identifiable, and at sites where people who are liable have not implemented corrective action necessary to abate an imminent and substantial endangerment, or to facilitate brownfield redevelopment.)

Underground Storage Tank Cleanup Fund

The bill would create the Underground Storage Tank Cleanup Fund within the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund. The Treasurer would have to direct the investment of the Fund, and credit it to any interest and earnings. Money in the Fund at the close of the fiscal year would remain in the Fund and would not lapse to the General Fund. The UST Authority would be the administrator of the Fund for auditing purposes. The Authority would have to spend Fund money, upon appropriation, to pay only the following:

- Approved claims as provided for in Part 215.
- Interest and other costs associated with the issuance of bonds or notes under Part 215.
- The Authority's costs.

Environmental Protection Regulatory Fee

Under Part 215, an environmental protection regulatory fee of 7/8th cent per gallon is imposed on all refined petroleum products sold for resale or consumption in Michigan. The fee must be charged for capacity use of USTs measured on a per gallon basis, and must be charged against all refined petroleum products sold for resale or consumption so as to not exclude any products that might be stored in an UST at any point after the petroleum is refined.

Section 21550 establishes a sunset date of December 31, 2015, on the provisions regarding this fee. The bill would repeal that section, eliminating the expiration date.

Currently, all of collected fees must be deposited in the RPF. Under the bill, each State fiscal year, the first \$20.0 million that was collected would have to be deposited in the proposed Underground Storage Tank Cleanup Fund. The remainder would have to be deposited in the RPF.

Eligibility

Under the bill, an owner or operator of an UST system would be eligible to receive money from the UST Authority for corrective action or indemnification due to a release from a refined petroleum UST system only if all of the following requirements were satisfied and the owner or operator otherwise complied with Part 215:

- The release was discovered and reported on or after the bill's effective date.

- The UST from which the release occurred was, at the time it was discovered, and presently, in compliance with the registration and fee requirements of Part 211 and rules promulgated under that part.
- The owner or operator reported the release within 24 hours after its discovery as required by Part 211 and the rules promulgated under that part.
- The owner or operator was not the U.S. government.
- The claim was not for a release from a refined petroleum UST closed before January 1, 1974, in compliance with the Fire Prevention Code and rules promulgated under the Code.
- The owner or operator had maintained financial responsibility requirements for the deductible amount, and had paid that amount.
- The owner or operator was otherwise eligible to receive money from the Authority under Part 215.
- The total amount of expenditures, including the deductible amount, did not exceed the claim limit.

("Claim limit" would mean \$1.0 million for all claims of owners and operators and their affiliates during a one-year claim period for owners and operators of one to 100 USTs, or, for owners or operators of more than 100 USTs, \$2.0 million.)

An owner or operator could submit to the Authority a request for a determination that the owner or operator would be eligible for funding under Part 215 in the event of release from a refined petroleum UST. Upon receiving a request, the Authority would have to make a determination and give the owner written notice of that determination.

Claims for Corrective Action

Under the bill, before submitting a claim under Part 215, as a rule, an owner or operator would be responsible for a deductible amount of \$50,000 per claim. If the owner or operator or its affiliate, however, owned or operated fewer than eight USTs and paid the Authority an annual fee of \$500 per UST, the deductible amount would be \$15,000. For this purpose, each compartment of a multiple-compartment UST would be considered an UST for the purpose of calculating the annual fee. The Authority would have to set the due date for the annual fee.

(Under Section 21514, an owner or operator who was eligible to receive MUSTFA Fund money in the event of a release was responsible for payment of 10% of each work invoice submitted, up to a maximum of \$15,000 of corrective action or indemnification costs associated with the release. In the event of a second release at a particular location, the owner or operator was responsible for payment of 30% of the work invoice, up to \$45,000. The bill would repeal this section.)

The deductible amount would apply to each claim. Two or more claims arising out of the same, interrelated, associated, repeated, or continuous releases or a series of related releases would have to be considered a single claim and would be subject to one claim limit and one deductible amount. Any claim that took place over two or more claim periods would be subject to one claim limit and one deductible amount.

An owner or operator that submitted a claim would have to include work invoices or other evidence that the required deductible amount had been met. The expenses toward meeting the deductible amount would have to be documented. Expenses for items listed in the schedule of costs (described below) would have to be at or below the allowable reimbursement amount listed in the schedule. Expenses for items that were not listed in the scheduled would have to be reasonable and necessary considering conditions at the site based upon a competitive bidding process established by the Authority.

The Authority would have to establish a schedule of costs that itemized corrective actions that were generally conducted at a site and listed an allowable reimbursement amount that could be paid for each action as part of a claim. If the Authority determined that costs for particular corrective actions varied in different regions of the State, the Authority could establish allowable reimbursement amounts that reflected regional differences. The Authority would have to review and update the schedule of costs annually as necessary or appropriate. The DEQ would have to post the schedule and any updates to it on the Department's website.

The Authority could not approve a claim for any of the following:

- A release that was expected or intended by an owner or operator, or an employee of an owner or operator.
- Punitive, exemplary, or multiplied damages, fines, taxes, penalties, assessments, punitive or statutory assessments, or any civil, administrative, or criminal fines, sanctions, or penalties.
- A claim made by an owner or operator against any other person who also was an owner or operator of the UST system.
- A release caused by, based upon, resulting from, or attributable to the owner's or operator's intentional, knowing, willful, or deliberate noncompliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body.
- A release arising from the ownership, maintenance, use, or entrustment to others of any aircraft, auto, rolling stock, or watercraft, including loading and unloading.
- Costs, charges, or expenses the owner or operator incurred for goods supplied by the owner or operator or services performed by the staff or employees of the owner or operator, or its parent, subsidiary, or affiliate, unless the costs, charges, or expenses were incurred with the Authority's prior written approval.
- A release arising from any consequence of war, invasion, act of a foreign enemy, act of terrorists, hostilities, whether war was declared or not, civil war, rebellion, revolution, insurrection or military or usurped power, strike, riot, or civil commotion.
- Costs arising out of the reconstruction, repair, replacement, upgrading of an UST system, or any other improvements and any site enhancements or routine maintenance on, within, or under a location.
- Costs arising out of the removal, replacement, or recycling of the contents of an UST system.
- Costs, charges, or expenses incurred to investigate or verify that a confirmed release had taken place.
- Any obligation of the owner or operator under worker's compensation, unemployment compensation, or disability benefits law or similar law.
- Any liability or claim for liability of others assumed by the owner or operator under any contract or agreement, unless the owner or operator would have been liable in the absence of the contract or agreement.
- A release on, within, under, or emanating from a location if the release began after the location was sold, given away, or abandoned.

The Authority also could not approve a claim for costs related to the injury of an employee of the owner or operator or its parent, subsidiary, or affiliate arising out of and in the course of that employment or performing duties related to the conduct of related business by a spouse, child, parent, brother, or sister of that employee. This would apply whether the owner or operator could be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who had to pay damages because of the injury.

To receive money from the Authority for corrective action, the owner or operator would have to follow the procedures prescribed in Part 215 and submit to the Authority administrator a claim containing required information relevant to determining compliance

with Part 215. An owner or operator could not submit a claim until work invoices exceeded the prescribed deductible amount. (Under the former MUSTFA program, work invoices had to exceed \$5,000 of the costs of corrective action before the owner or operator was eligible for reimbursement.)

Upon receiving a completed claim, the administrator would have to determine all of the following:

- Whether the owner or operator was eligible to receive funding under Part 215.
- Whether the work performed or proposed to be performed was consistent with the requirements of Part 213, and whether those activities were consistent with achieving site closure.
- Whether the corrective action performed was reasonable and necessary considering conditions at the site of the release.
- Whether the cost of performing the corrective action work was at or below the allowable reimbursement amount in the schedule of costs or, if the work were not a listed item, whether the cost was reasonable and necessary.

The administrator could consult with the DEQ and the Department of Licensing and Regulatory Affairs to make these determinations.

Part 215 contains provisions that applied under the MUSTFA program regarding the approval of claims that included necessary and appropriate work invoices, denial of claims that did not meet that criterion, and the submission of additional work invoices to the MUSTFA administrator after approval of an initial claim. Under the bill, all of these provisions would apply to a claim made to the UST Authority. The bill also would refer to "reasonable and necessary" work and work invoices.

Payment of Claims

If the UST Authority administrator determined that a work invoice did not meet applicable requirements, the administrator would have to deny it and give written notice to the owner or operator who submitted it.

The administrator would have to keep records of approved invoices. If the owner or operator did not exceed the allowable amount of expenditure, the administrator would have to pay the claim within 45 days after making the required determinations. The administrator could approve a reimbursement for a work invoice if it met the requirements of Part 215 for an approved claim and an approved work invoice. Except as otherwise provided, the Authority would have to make a payment to the owner or operator within 30 days. Once payment was made, the Authority would not be liable for any claim on the basis of that payment. The Authority could withhold partial payment of money on payment vouchers if there were reasonable cause to suspect that a submitted claim was false, misleading, or fraudulent. (Similar provisions applied under the former MUSTFA program.)

Part 215 contains provisions that applied to the former MUSTFA program regarding the sale of property that was the subject of an approved claim. Under the bill, these provisions would apply under the proposed program.

Requests for Indemnification

The bill would require an owner or operator, in order to receive money from the Authority for indemnification, to submit to the administrator a request containing certain information, including a copy of the judgment obtained by a third party from a court of law against the owner or operator or the settlement entered into between the owner or operator and the third party, all documentation supporting the reasonableness of and justification for the judgment or settlement, and work invoices. If the administrator determined that the owner

or operator was eligible for funding, was eligible for the amount requested, had paid the required deductible amount, and had not exceeded the allowable amount of expenditures, and that the work invoices were payable, the administrator would have to forward a copy of the request along with all supporting documentation to the Attorney General.

The Attorney General would have to approve the 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. The Attorney General could raise as a defense to the request any rights or defenses that were available to the owner or operator and, in the case of a judgment, were not heard and ruled upon by the court. If the Attorney General approved an indemnification request, the Authority would have to pay the indemnification amount within 30 days if sufficient money were available to make the payment.

(Similar provisions applied to the former MUSTFA program.)

Payment Priorities

The bill would require the Authority to make payments on claims in the order in which they were received. If there were insufficient money available to make payment on all approved claims, however, the Authority would have to notify each owner that was eligible to submit a claim advising the owner of the financial situation. The Authority would have to prioritize payments based upon the risks at the site to the public health, safety, or welfare or the environment. Payments on claims that were not funded would have to be paid if revenue subsequently became available.

The Authority and the State would not be liable for work invoices or requests for indemnification if Authority revenue were insufficient to meet these claims.

Denied Claims

Under the bill, if the administrator denied a claim or work invoice, or a request for indemnification, the owner or operator who submitted it could request review by the Authority's board of directors within 14 days following the denial. If the administrator, however, believed that the dispute could be resolved without the board's review, the administrator could contact the owner or operator regarding the issues in dispute and negotiate a resolution before the review. The board would have to conduct a review of the denial to determine whether the claim, work invoice, or indemnification request was payable under Part 215. A person who was denied approval after board review could appeal the decision directly to the circuit court.

Underground Storage Tank Authority

The bill would create the Authority as a body corporate within the DEQ, and require it to exercise its prescribed statutory power, financial duties, and financial functions independently of the Director of the DEQ or any other department. Authority funds would have to be handled in the same manner and subject to the same provisions of law as applicable to State funds or in a manner specified in an Authority resolution authorizing the issuance of bonds or notes.

The Authority would have to be governed by a board of directors consisting of the DEQ Director and six Michigan residents appointed by the Governor with the advice and consent of the Senate. The six appointed members would have to include one individual representing each of the following:

- Petroleum refiners.
- Independent petroleum marketers.

- A statewide motor fuel retail association.
- A statewide business association that included owners or operators of refined petroleum USTs.
- A statewide environmental organization.
- The general public.

The appointed members would serve terms of three years. In making the initial appointments, however, the Governor would have to designate two members to serve for three years, two members to serve for two years, and two members to serve for one year.

Board members and Authority officers and employees would be subject to Public Acts 317 and 318 of 1968 (which govern contracts of public servants with public entities and conflicts of interest, respectively), as applicable. A board member or an officer, employee, or agent of the Authority would have to discharge the duties of his or her position in a nonpartisan manner, with good faith, and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position.

The board would have to organize and make its own policies and procedures. The board would be subject to the Open Meetings Act. Four board members would constitute a quorum for the transaction of business. An action of the board would have to be by a majority of the votes cast. The DEQ Director could designate a representative from the Department to serve as a voting member for one or more meetings.

The board would have to elect a chairperson from among its members and could elect any other officers it considered appropriate.

Authority Board & Procedures

The bill would require the board of directors to appoint an administrator of the Authority. The board could delegate to the administrator responsibilities for acting on behalf of the Authority. The Authority could employ legal and technical experts and other officers, agents, or employees to be paid from Authority funds. The Authority would have to determine the qualifications, duties, and compensation of its employees, but an employee could not be paid a higher salary than the DEQ Director. The Authority could delegate to one or more members, officers, agents, or employees any of the powers or duties of the Authority as it considered proper.

The Authority could contract with the DEQ for the purpose of maintaining and improving the Authority's rights and interests.

The Authority would have to file with the Legislature an annual written report on its activities of the last year. The report would have to be submitted within 270 days after the end of the fiscal year. The report would have to specify the amount and source of revenue received, the status of investments made, and money spent with proceeds of bonds or notes sold under Part 215.

The Authority's accounts would be subject to annual audits by the Auditor General or a CPA appointed by the Auditor General. Records would have to be maintained according to generally accepted accounting principles.

Except as otherwise provided, the board of directors could do all things necessary or convenient to implement Part 215 and the purposes, objectives, and powers delegated to the board by other laws or executive orders, including borrowing money and issuing negotiable revenue bonds and notes, and investing Authority money.

Bonds & Notes

The bill would require the Authority to assess the potential demand for payment of claims under Part 215 and, if the Authority determined that it would be prudent to do so, issue bonds or notes. The Authority would have to authorize and issue its bonds or notes payable solely from revenue or funds available to the proposed Fund from the environmental protection regulatory fee. Bonds or notes of the Authority would not be a debt or liability of the State, and would not constitute a pledge of the faith and credit of the State. All Authority bonds and notes would be payable solely from revenue or funds pledged or available for their payment as authorized in Part 215.

All expenses incurred in implementing Part 215 would be payable solely from revenue or funds provided or to be provided under the part. Part 215 would not authorize the Authority to incur any indebtedness or liability on behalf of or payable by the State.

The Authority could issue bonds or notes in principal amounts the Authority considered necessary to provide funds for any purpose, including payment of approved claims under Part 215.

Liability

Part 215 provides that it does not create any liability on behalf of the State, and that it should not be construed as making the State the guarantor of the MUSTFA Fund. The bill would refer to the proposed UST Cleanup Fund.

Part 215 also provides that it does not relieve any person who might be eligible to receive money from the MUSTFA Fund from any liability that he or she might incur as the owner or operator of a UST system. Under the bill, this would apply to a person eligible to submit a claim to the UST Authority, rather than eligible to receive MUSTFA money.

With regard to the former MUSTFA, Part 215 provides that if all MUSTFA bonds or notes payable from the MUSTFA Fund were fully paid and provided for and if any provision of Part 215 was found to be unconstitutional and the allowable time for filing an appeal expired or the appellant exhausted all of his or her avenues of appeal, Part 215 as a whole would be considered unconstitutional and invalid. Under the bill, an identical provision would apply to bonds or notes of the UST Authority payable from the UST Cleanup Fund.

Penalties

Under the previous MUSTFA program, a person who made or submitted or caused to be made or submitted any statement, report, affidavit, application, claim, bid, work invoice, or other request for payment or indemnification under Part 215 knowing that it was false or misleading was guilty of a felony punishable by imprisonment for a maximum of five years and/or a maximum fine of \$50,000. A person who made or submitted or caused to be made or submitted any statement, report, application, claim, bid, work invoice, or other request for payment or indemnification knowing the it was false, misleading, or fraudulent, or a person who committed a fraudulent practice, was subject to a maximum civil fine of \$50,000 or twice the amount submitted, whichever was greater.

In addition, a person convicted or found responsible under these provisions had to pay restitution to the MUSTFA Fund for the amount received in violation of the law.

Under the bill, the same penalties would apply with regard to documents submitted to the UST Authority, and a person who was convicted or found responsible would have to pay restitution to the Authority. (The bill would retain the definitions of "fraudulent" and "fraudulent practice" that applied under the former MUSTFA program.)

The bill would retain a provision stating, "The legislature intends that this subsection [which establishes the penalties] be given retroactive application".

Under the bill, the Attorney General or a county prosecutor could conduct an investigation of an alleged violation and bring an action for a violation. If the Attorney General or county prosecutor had reasonable cause to believe that a person had information or was in possession, custody, or control of any document or records or tangible object that was relevant to an investigation or a crime or attempted crime against the UST Cleanup Fund, before bringing any action, he or she could make an ex parte request to a magistrate for issuance of a subpoena requiring the person to appear and be examined under oath or to produce the document, records, or object for inspection and/or copying. If a person objected to or otherwise failed to comply with a subpoena, an action could be brought in district court to enforce the demand.

The Attorney General or county prosecutor also could apply to the district court for an order granting immunity to any person who refused to provide or objected to providing the information, documents, records, or objects. If the judge were satisfied that granting immunity was in the interest of justice, he or she would have to enter an order granting immunity to the person and requiring him or her to appear and be examined under oath or to produce the document, records, or object for inspection and/or copying.

A person who failed to comply with a subpoena or a requirement to appear and be examined would be subject to a maximum civil fine of \$25,000 for each day of continued noncompliance.

In addition to any civil fines or criminal penalties imposed under Part 215 or the criminal laws of Michigan, the person found responsible would have to repay any money obtained directly or indirectly under Part 215. Owed money would constitute a claim and lien by the UST Authority upon any real or personal property owned directly or indirectly by the person. The lien would attach regardless of whether the person was insolvent and could not be extinguished or avoided by bankruptcy. The lien would have the force and effect of a first in time and right judgment lien.

Under the bill, the formula for apportionment of civil fines collected under the previous MUSTFA program would apply to the civil fines collected under proposed program. That formula requires the civil fines to be apportioned as follows:

- Fifty percent must be deposited in the General Fund and used by the DEQ to fund fraud investigations under Part 215.
- Twenty-five percent must be paid to the office of the county prosecutor or Attorney General, whichever office brought the action.
- Twenty-five percent must 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 one office or department was involved in the investigation, that 25% must be divided on an equal basis. If there is no local office or department that is entitled to this payment, the money must be forwarded to the State Treasurer for deposit into the RPF.

The bill would repeal Section 21549, which required the payment of a reward to a person who provided information that materially contributed to the imposition of a civil fine against or the criminal conviction of any person under the MUSTFA program. The reward had to be the greater of 10% of the amount of the fine or \$1,000.

Deleted MUSTFA Provisions

The bill would repeal Section 21506, which created the MUSTFA Fund, prescribed the allowed uses of Fund money, and eventually required the Fund balance to be transferred to the RPF. The bill also would repeal Section 21512, which phased out payments from the MUSTFA Fund starting in 1995, providing that the Fund would not be available to provide any portion of an owner's or operator's financial responsibility requirements beginning December 23, 1998.

Additionally, the bill would repeal Sections 21511, 21513, 21517, and 21522, which also contain general provisions that applied to the MUSTFA program.

The bill would eliminate provisions limiting MUSTFA Fund reimbursement to those claims filed on or before June 29, 1995.

MCL 324.21502 et al.

BACKGROUND

Public Act 518 of 1980 established the MUSTFA Fund to assist UST owners in meeting financial assurance requirements required by Federal rules. Subsequent legislation provided for the phase-out of the MUSTFA program by prohibiting the acceptance of new claims for remediation and indemnification after December 22, 1998. The last day for filing a MUSTFA claim was later moved, however, to June 29, 1995, because the Fund became insolvent. Public Act 390 of 2004 earmarked some of the Fund revenue to be used for paying off bonds, and transferred the remaining balance into the newly created Refined Petroleum Fund for fuel inspection programs, cleanup of leaking underground storage tanks (LUSTs) as allowed by law, and administrative costs associated with the RPF and programs receiving RPF dollars. Public Act 318 of 2006 added two allowable uses of the RPF: up to \$15.0 million for the DEQ to establish a cleanup program for orphan sites; and up to \$45.0 million to establish a temporary reimbursement program for UST owners and operators. The temporary program allowed a limited pool of applicants to receive reimbursements until September 2009 for remediation actions taken on LUSTs.

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.

Fiscal Analyst: Josh Sefton

SAS\S1314\s791sa

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.