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BILL ANALYSIS



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Senate Bill 791 (as enacted)

PUBLIC ACT 416 of 2014

Sponsor: Senator Mike Green

Senate Committee: Natural Resources, Environment and Great Lakes

House Committee: Natural Resources

Date Completed: 8-11-15

CONTENT

The bill amended Part 215 of the Natural Resources and Environmental Protection Act to do the following, with respect to the State's program for funding corrective actions at refined petroleum underground storage tank (UST) systems:

- Create the Underground Storage Tank Authority and the "Underground Storage Tank Cleanup 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 Cleanup Fund, and require the balance to be deposited in the Refined Petroleum Fund.
- Allow Cleanup Fund money to be used to pay principal and interest on bonds and notes; administrative costs; and approved claims under Part 215.
- Allow an UST owner or operator to receive money from the Authority for a release that is discovered and reported after the bill's effective date.
- Establish eligibility criteria, including financial responsibility requirements and payment of a deductible amount, for an owner or operator to receive money from the Authority.
- Prescribe a deductible amount of \$50,000 per corrective action claim, or \$15,000 per claim if the owner or operator owns fewer than eight refined petroleum USTs and pays the Authority an annual fee of \$500 per tank.
- Require the Authority to establish a schedule of costs that itemizes corrective actions and lists an allowable reimbursement amount that may be paid for each.
- Prescribe conditions under which the Authority may not approve a claim for corrective action reimbursement.
- Require the administrator of the Authority to make certain determinations upon receiving a completed claim, and approve the claim if the administrator determines that the work invoices are reasonable and necessary and the owner or operator is eligible for funding.
- Establish an annual claim limit of \$1.0 million for all claims of owners or operators with not more than 100 USTs, and \$2.0 million for all claims of owners or operators with more than 100 USTs.
- Allow an owner or operator to submit to the administrator a request seeking Cleanup Fund money for indemnification for a judgment or settlement for injury or damage caused by an accidental release.
- Require the administrator to determine whether a person is eligible for indemnification and, if so, forward the request to the Attorney General for approval.

- **Require the Authority to pay the indemnification amount, if the Attorney General approves the request.**
- **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 is insufficient money available to pay all approved claims.**
- **Allow an owner or operator whose claim or request is 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 is 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 results to the Michigan Finance Authority; and authorize the Finance Authority to issue bonds or notes if it determines that doing so is prudent.**

The bill also does the following:

- **Establishes a sunset of December 31, 2016, on use of the Refined Petroleum Fund for gasoline inspection programs.**
- **Exempts from the regulatory fee a bulk transfer of, or a two-way exchange involving, refined petroleum.**
- **Changes the title of Part 215 from "Refined Petroleum Fund" to "Underground Storage Tank Corrective Action Funding".**

In addition, the bill repealed sections of the Act related to the former Michigan Underground Storage Tank Financial Assurance (MUSTFA) program and a temporary reimbursement program.

The bill took effect on December 30, 2014.

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 bill repealed Section 21550, which had established a sunset date of December 31, 2015, on the section imposing this fee.

Each State fiscal year, the bill requires the first \$20.0 million that is collected to be deposited in the Underground Storage Tank Cleanup Fund, and requires the remainder to be deposited in the Refined Petroleum Fund (RPF). Previously, the RPF received all of the fee revenue.

The bill provides that, beginning January 1, 2015, the regulatory fee may not be imposed on a bulk transfer of, or a two-party exchange involving, refined petroleum or refined petroleum products. The bill defines "bulk transfer", "2-party exchange", and related terms.

Previously, Part 215 required the Department of Treasury to collect the regulatory fee from a person who received refined petroleum in this State for resale or consumption in Michigan pursuant to a product exchange agreement. Under the bill, this applied until January 1, 2015.

Refined Petroleum Fund

Part 215 previously required money in the Refined Petroleum 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 deleted this requirement. Under the bill, RPF money may 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 (Leaking Underground Storage Tanks).
- Until December 31, 2016, gasoline inspection programs under the Weights and Measures Act and the Motor Fuels Quality Act.
- 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. Part 213 (Leaking Underground Storage Tanks) regulates corrective action at sites when releases are discovered or reported.)

The bill also repealed Sections 21554 through 21563, which pertained to the temporary reimbursement program.

Underground Storage Tank Cleanup Fund

The bill created the Underground Storage Tank Cleanup Fund within the State Treasury. The State Treasurer must establish a bond proceeds account within the Fund and may establish procedures for accounting for deposits and expenditures from the account. The State Treasurer may receive money or other assets from any source for deposit into the Fund. The Treasurer must 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 will remain in the Fund and not lapse to the General Fund. The UST Authority is the administrator of the Fund for auditing purposes.

The UST Authority and the Michigan Finance Authority (MFA) must spend money from the Fund, upon appropriation, to pay only the following:

- As a first priority, principal and interest due on bonds or notes issued by the MFA pursuant to Part 215, plus any amount necessary to maintain a fully funded debt reserve or other reserve intended to secure the principal and interest on bonds or notes as may be required by resolution, indenture, or other agreement of the MFA.
- The reasonable administrative cost of implementing Part 215 incurred by the DEQ, the Department of Treasury, the Department of Attorney General, and the MFA, including the actual and necessary expenses incurred by the MFA and its members in carrying out the duties imposed by Part 215.
- Approved claims as provided for in Part 215.

Total administrative costs may not exceed 7% of the Fund's projected revenue in any year. Costs incurred by the Finance Authority for the issuance of bonds or notes that also may be payable from their proceeds are not considered administrative costs.

Eligibility

Under the bill, an owner or operator of an UST system is 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 are satisfied and the owner or operator otherwise complies 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 is presently, in compliance with the registration and fee requirements of Part 211 (Underground Storage Tanks) 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 is not the U.S. government.
- The claim is 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 has maintained financial responsibility requirements for the deductible amount, and has paid that amount.
- The owner or operator is otherwise eligible to receive money from the Authority under Part 215.
- The total amount of expenditures, including the deductible amount, does not exceed the claim limit.

The bill defines "claim limit" as \$1.0 million for all claims of owners and operators and their affiliates during a claim period for owners and operators of one to 100 USTs, or \$2.0 million for all claims of owners or operators and their affiliates during a claim period for owners or operators of more than 100 USTs. "Claim period" means a one-year period beginning on October 1 of each year and ending on September 30 of the following year.

An owner or operator also may 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 must make a determination and give the owner written notice of that determination, which may contain conditions for maintaining eligibility.

Claims for Corrective Action

Under the bill, before submitting a claim under Part 215, an owner or operator is responsible for a deductible amount of \$50,000 per claim. If the owner or operator or its affiliate, however, owns or operates fewer than eight USTs and pays the Authority an annual fee of \$500 per UST, the deductible amount is \$15,000. Each compartment of a multiple-compartment UST will be considered an UST for the purpose of calculating the annual fee. The Authority must set the due date for the annual fee.

The deductible amount applies to each claim. Two or more claims arising out of the same, interrelated, associated, repeated, or continuous releases or a series of related releases, however, must be considered a single claim and will be subject to one claim limit and one deductible amount. Any claim that takes places over two or more claim periods will be subject to one claim limit and one deductible amount.

An owner or operator that submits a claim must include work invoices or other evidence that the required deductible amount has been met. The expenses toward meeting the deductible

amount must be documented. Expenses for items listed in the schedule of costs (described below) must be at or below the allowable reimbursement amount listed in the schedule. Expenses for items that are not listed in the schedule must be reasonable and necessary considering conditions at the site based upon a competitive bidding process established by the Authority.

The Authority must establish a schedule of costs that itemizes corrective actions that are generally conducted at a site and lists an allowable reimbursement amount that may be paid for each action as part of a claim. If the Authority determines that costs for particular corrective actions vary in different regions of the State, the Authority may establish allowable reimbursement amounts that reflect regional differences. The Authority must review and update the schedule of costs annually as necessary or appropriate. The DEQ must post the schedule and any updates to it on the Department's website.

The Authority may 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 is 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 are 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 has been 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 (a parcel of property where refined petroleum USTs are registered under Part 211).
- 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 has 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 may 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 the business of the owner, operator, parent, subsidiary, or affiliate by a spouse, child, parent, brother, or sister of that

employee. This applies whether the owner or operator may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

To receive money from the Authority for corrective action, the owner or operator must 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 may not submit a claim until work invoices in excess of the prescribed deductible amount have been incurred.

Upon receiving a completed claim, the administrator must determine all of the following:

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

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

Payment of Claims

If the UST Authority administrator determines that the work invoices included with a claim are reasonable and necessary considering conditions at the time of the release, and reasonable in terms of cost, and the owner or operator is eligible for funding, the administrator must approve the claim and notify the owner or operator.

If the administrator determines that the work described on a work invoice was not reasonable and necessary, or the cost of the work is not reasonable, or that the owner or operator is not eligible for funding, the administrator must deny the claim or any portion of it and notify the owner or operator.

After a claim has been approved, the owner or operator may submit additional work invoices. The administrator must determine compliance within 45 days after receiving a work invoice.

If the owner or operator has not exceeded the allowable amount of expenditure (the claim limit), the administrator must pay the claim within 45 days after making the required determinations.

The administrator may approve a reimbursement for a work invoice submitted by an owner or operator for corrective action taken if the invoice meets the requirements of Part 215 for an approved claim and an approved work invoice.

The Authority must make a payment to the owner or operator within 30 days if sufficient money in the Fund exists. The Authority may withhold partial payment of money on payment vouchers if there is reasonable cause to suspect that a submitted claim is false, misleading, or fraudulent, or if necessary to assure acceptable completion of the proposed work.

Requests for Indemnification

In addition to claims for corrective action, Part 215 allows claims for indemnification, which means indemnification of an owner or operator for a legally enforceable judgment entered against the owner or operator by a third party, or a legally enforceable settlement entered into between the owner or operator and a third party, compensating that third party for bodily injury or property damage, or both, caused by an accidental release.

The bill requires an owner or operator, in order to receive money from the Authority for indemnification, to submit to the administrator a request containing information required by the administrator, 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 that meet the requirements of Part 215. If the administrator determines that the owner or operator is eligible for funding, is eligible for the amount requested, has paid the required deductible amount, and has not exceeded the allowable amount of expenditure, and that the work invoices are payable, the administrator must forward a copy of the request along with all supporting documentation to the Attorney General.

The Attorney General must approve the request if there is a legally enforceable judgment against, or settlement with, the owner or operator that was caused by an accidental release and that is reasonable and consistent with the purposes of Part 215. The Attorney General may raise as a defense to the request any rights or defenses that were or are 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 approves an indemnification request, the Authority must pay the indemnification amount. Payment must be made within 30 days if sufficient money is available.

Payment Priorities

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

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

Denied Claims

Under the bill, if the administrator denies a claim or work invoice, or a request for indemnification, the owner or operator who submitted it, within 14 days after the denial, may request review by the Authority's board. If the administrator, however, believes that the dispute may be resolved without the board's review, the administrator may contact the owner or operator regarding the issues in dispute and negotiate a resolution before the review.

The board must conduct a review of the denial to determine whether the claim, work invoice, or indemnification request is payable under Part 215. A person who is denied approval after board review may appeal the decision directly to the circuit court.

Underground Storage Tank Authority

The bill created the Authority as a body corporate within the DEQ, and requires the Authority to exercise its prescribed statutory power, financial duties, and financial functions independently of the Director of the DEQ or any other department. Authority funds must 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 a resolution of the Authority authorizing the issuance of bonds or notes.

The Authority must 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 must include one individual representing each of the following:

- Petroleum refiners.
- Independent petroleum marketers.
- A statewide motor fuel retail association.
- A statewide business association that includes owners or operators of refined petroleum USTs.
- A statewide environmental organization.
- The general public.

Of the initial appointments, two members must be designated to serve for three years, two members for two years, and two for one year. Otherwise, appointed members must serve three-year terms.

Board members and Authority officers and employees are 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 must 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 is subject to the Open Meetings Act. Four members will constitute a quorum for the transaction of business. An action of the board must be by a majority of the votes cast. The DEQ Director may designate a representative from the Department to serve as a voting member for one or more meetings.

Except as otherwise provided, the board of directors may 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.

Authority Administrator & Procedures

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

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

Within 270 days after the end of the fiscal year, the Authority must file with the Legislature an annual written report on its activities of the last year. The report must specify the amount and source of revenue received, the status of investments made, and money spent with proceeds of bonds or notes issued by the Michigan Finance Authority under Part 215.

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

Bonds & Notes

The bill requires the Authority to assess the potential demand for payment of claims under Part 215 and to provide the results of the assessment to the Michigan Finance Authority. Upon review of the results, if it determines that issuing bonds or notes is prudent, the MFA may do so. The MFA may authorize and issue its bonds or notes payable solely from the revenue or funds available to the Cleanup Fund from the regulatory fee. Bonds or notes of the Finance Authority are not a debt or liability of the State, and do not constitute a pledge of the faith and credit of the State. All MFA bonds and notes are payable solely from revenue or funds pledged or available for their payment as authorized in Part 215.

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

The Finance Authority may issue bonds or notes in principal amounts it considers necessary to provide funds for any purpose, including payment of approved claims under Part 215; payment of the principal of and interest on bonds or notes issued by the MFA; and payment of all other costs and expenses of the MFA necessary to implement its purposes.

Repeals

In addition to the repealed sections noted above, the bill repealed 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 repealed 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 repealed Sections 21511, 21513, 21514, 21517, 21522, and 21551, which contained provisions that applied to the MUSTFA program.

The bill also repealed Section 21520, which required the DEQ to establish an audit program to monitor compliance with Part 215; Section 21545, which required the DEQ to promulgate rules to implement Part 215; Section 21547, which required the DEQ to conduct a study of the availability and cost of environmental impairment insurance; Section 21549, which provided for a reward to a person who provided information that materially contributed to the imposition of a civil fine or criminal penalty; and Section 21553, which required the DEQ to establish a refined petroleum product cleanup initial program.

MCL 324.21502 et al.

BACKGROUND

When the Natural Resources and Environmental Protection Act (NREPA) was enacted in 1994, legislation repealed and recodified numerous statutes. These included three laws regulating underground storage tanks, which became Part 211 (Underground Storage Tanks), Part 213 (Leaking Underground Storage Tanks), and Part 215 (originally titled Underground Storage Tank Financial Assurance, then Refined Petroleum Fund, and now Underground Storage Tank Corrective Action Funding) of NREPA.

Part 211 originated in 1984 as the Underground Storage Tank Regulatory Act, which was enacted in response to Federal legislation that required the U.S. Environmental Protection

Agency (EPA) to promulgate a regulatory structure for underground storage tanks that held petroleum or other hazardous materials. Michigan's Act required all owners of USTs to register them with the Fire Marshal Division in Department of State Police (now in the Department of Licensing and Regulatory Affairs) and to comply with regulations regarding the installation and removal of USTs. As amended over the years, these requirements now are found in Part 211.

Part 213 originated as the Leaking Underground Storage Tank Act. In response to EPA regulations, this statute was enacted in 1988 to regulate and provide for corrective action upon the discovery or report of releases. Under the original legislation, owners and operators were strictly liable to perform corrective actions to address contamination emanating from USTs and for damages to third parties or natural resources without regard to fault, and contamination was required to be remediated to generic criteria without regard to site-specific risk posed to public health, safety, or welfare, or the environment. These requirements were revised in the mid-1990s and comprehensively amended in 2012. Among other things, the changes moved from a performance-based standard to a risk-based clean-up standard, and provided some liability protection for people who did not cause a release.

The Michigan Underground Storage Tank Financial Assurance Act also was enacted in 1988 in response to EPA regulations, and subsequently was re-enacted as Part 215 of NREPA. This Act created the Michigan Underground Storage Tank Financial Assurance Fund to assist UST owners in meeting financial assurance requirements established by Federal rules. Under the original program, owners of USTs who complied with the registration and reporting requirements of the UST Regulatory Act would be eligible for money from the Fund for corrective actions in the event a leak was detected. To support the program, the 7/8th-cent-per-gallon regulatory fee was enacted in 1989.

Changes to the program were enacted in 1993 after demand far exceeded what had been anticipated. Among other things, the amendments delayed a sunset on the fee to January 1, 2005; created the MUSTFA Authority and authorized it to issue revenue bonds; and reduced the amount the program would pay out for eligible claims. In addition, the 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. Approximately \$215.0 million in revenue bonds were sold, but the proceeds were rapidly spent or encumbered as a significant backlog of claims had accumulated before the bonds were issued. In March 1995, the State Treasurer determined that the revenue in the Fund was no longer sufficient to cover claims, and legislation set June 29, 1995, as the last day for filing a MUSTFA claim.

Amendments enacted in 2004 earmarked some of the Fund revenue to pay off bonds; transferred the balance to a newly created Refined Petroleum Fund for fuel inspection programs, cleanup of leaking underground storage tanks as allowed by law, and administrative costs associated with the RPF and programs receiving RPF dollars; retroactively extended the requirement to pay the regulatory fee; and allocated the fee revenue to the RPF. In 2006, amendments added two allowable uses of the RPF: up to \$15.0 million for the DEQ to establish a cleanup program for orphan sites (USTs that have no legally responsible owner); and up to \$45.0 million to establish a temporary reimbursement program, which allowed a limited pool of applicants to receive reimbursements until September 2009 for remediation actions taken on leaking underground storage tanks (LUSTs).

Legislation enacted in 2012 significantly amended Parts 213 and 215 to revise cleanup procedures and criteria, as well as liability provisions. The legislation also delayed the sunset date on the regulatory fee to December 31, 2015, and created an UST Cleanup Advisory

Board, which was required to submit a report and recommendations to the Governor and the Legislature by March 1, 2013.¹

According to the Advisory Board's report, "The [regulatory] fee has generated approximately \$50 million annually since its inception in 1989. However, since 2005, \$850 million has been appropriated for uses outside the original intent of the program." The report also indicated that "recent appropriations have demonstrated an effort to re-focus the use of RPF revenue back to its intended purpose".

In its Recommendations section, the report stated, "The Advisory Board strongly recommends that all of the annual RPF revenue be restored to fund the State's UST programs to: (1) Provide financial responsibility for owners and operators to address future releases; (2) Fund a reimbursement program to provide assistance to qualified owners and operators undertaking corrective action to address historical releases; and (3) Conduct corrective action to mitigate imminent and substantial threats to public health or the environment at LUST sites where no liable or viable owner or operator is identified or [able] to undertake corrective actions (otherwise known as 'orphan sites'). The Advisory Board has concluded that establishing a financial responsibility program with RPF revenue is the preferred way in which to meet the goal of a predictable and reliable method of protecting public health and the environment from UST releases."

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FISCAL IMPACT

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

The bill exempts certain refined petroleum products from the 7/8th cent environmental protection regulatory fee. These products had been subject to a fee and credit system that effectively netted no revenue for the Refined Petroleum Fund for those products, as they are not destined for retail sale in Michigan. The changes in the bill will simplify the transactions; the fee will no longer be collected on these products and they will therefore not require an offsetting credit.

Previously, all revenue from the environmental protection regulatory fee was credited to the Refined Petroleum Fund, which included \$51.7 million in fiscal year (FY) 2012-13 and \$55.1 million in FY 2013-14. Previously, the RPF could 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.

¹ For a detailed description of the legislation enacted in 2012, please see the Senate Fiscal Agency (SFA) summary of enacted [Senate Bills 528-533](#) and the SFA summary of enacted [Senate Bill 1328](#). These documents may be found on the Michigan Legislature's website: <http://www.legislature.mi.gov>.

The bill struck all of those uses of the RPF and replaces them with the following:

- Cleanup and corrective actions taken on orphaned leaking underground storage tanks.
- Reasonable costs in administering the RPF.
- Implementation of Part 213 of NREPA.
- Until December 31, 2016, the Weights and Measures and Motor Fuel Quality programs in MDARD.
- Other purposes as determined by the Legislature.

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

The bill also creates the Underground Storage Tank Cleanup Fund, and credits the first \$20.0 million of revenue from the environmental protection regulatory fee to the Cleanup Fund. The Fund will be used, upon appropriation, to pay approved claims; to pay principal, interest, and other costs associated with issuance of bonds or notes; and to pay for costs of the Underground Storage Tank Authority. The \$20.0 million will not be new revenue, but instead will be revenue redirected from what had been credited to the RPF. Redirecting environmental protection regulatory fee revenue from the RPF to the Cleanup Fund will 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 is reduced, it is possible that this will 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 will occur in the future once current projects are completed.

The bill allows the Authority to employ experts and other employees, which will create new costs not previously borne by revenue from the environmental protection regulatory fee. Some of these new costs could be offset by a provision in the bill that allows 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 allows the Michigan Finance Authority to issue bonds or notes for the payment of claims against the Cleanup Fund or for other costs of the UST Authority. These bonds or notes will be revenue-dedicated and payable solely from Fund revenue. Any bonds or notes issued will be serviced by the Fund and will 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 will be issued at the discretion of the Finance Authority.

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