

# Legislative Analysis

---



## LEGACY RELEASE PROGRAM

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4583 (H-1) as reported from committee**

**Sponsor: Rep. Mary Whiteford**

**Committee: Natural Resources**

**Complete to 7-18-17**

Analysis available at  
<http://www.legislature.mi.gov>

*(Enacted as Public Act 134 of 2017)*

### ***BRIEF SUMMARY:***

House Bill 4583 would amend the Natural Resources and Environmental Protection Act (NREPA) by creating the Legacy Release Program (Program) to provide partial reimbursements for costs associated with corrective actions related to "historic" releases from underground storage tanks.

### ***FISCAL IMPACT:***

House Bill 4583 would have an unknown fiscal impact on costs for the Department of Environmental Quality (DEQ). The creation of this program would enable DEQ to reimburse owners or operators of leaking underground storage tanks for remediation actions not currently reimbursable under the existing underground storage tank cleanup program due to the age of the release. These legacy reimbursements would be capped at \$50,000 per release. The bill may increase departmental costs by creating an additional avenue for funding remediation actions but the extent of this potential increase is unknown. Reimbursements would be paid from the Refined Petroleum Fund (RPF) which is used primarily to clean up sites contaminated by a petroleum release. The RPF currently has a fund balance of approximately \$75.0 million.

The bill would not have a fiscal impact on departmental revenues nor local government costs or revenues.

### ***THE APPARENT PROBLEM:***

Public Act 416 of 2014 created the Underground Storage Tank Authority and the temporary Underground Storage Tank Cleanup Fund to assist landowners with safely remediating underground storage tanks.<sup>1</sup> The program assisted qualified applicants with the remediation of hazardous materials pertaining to underground petroleum storage tanks. The sponsor of House Bill 4583 believes that Michigan should encourage owners and operators of the approximately 6,000 underground storage tanks to clean the sites. Such encouragement would be accomplished through the expansion of the Underground Storage Tank Cleanup Fund (renamed the "Legacy Release Program"). According to the Michigan Petroleum Association, around 400 sites may be closed through the program since it was enacted on December 30, 2014.

---

<sup>1</sup> <http://legislature.mi.gov/doc.aspx?2014-SB-0791>

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

Generally speaking, the Program would allow certain eligible persons, as described below, to receive partial reimbursement for costs associated with corrective actions related to "historic" releases from underground storage tanks, which are not eligible under the existing program.

The relevant sections discussed in the bill, including the newly created section for the program, all fall under Chapter 8 of NREPA, which regulates underground storage tanks. Part 211 encompasses Sections 21101-21113 and refers to underground storage tank regulations; Part 213 of NREPA encompasses Sections 21301-21334 and concerns leaking underground storage tanks; and Part 215 encompasses Sections 21501-21563 and pertains to underground storage tank corrective action funding.

### ***Legacy Release Program***

Under the bill, DEQ would establish the program while the Underground Storage Tank Authority (authority) would administer the program and reimburse eligible persons for costs associated with corrective actions for certain historic releases from refined petroleum underground storage tank systems. An "eligible person" would mean the owner or operator of a refined petroleum underground storage tank system at the time the release was reported, who could be reimbursed for corrective action costs incurred if all of the following are demonstrated:

- The release from which the corrective action or indemnification arose was discovered and reported prior to December 30, 2014.
- The release upon which the request for reimbursement is based has not been closed pursuant to Part 213 prior to December 30, 2014.
- Any refined petroleum underground storage tank systems that are operating at the location from which the release occurred are currently in compliance with the registration requirements of Part 211.
- The request for reimbursement does not include reimbursement for money that was reimbursed from any other source, including insurance policies.
- The claim submitted to the program shall not be approved by the authority for any of the prohibitions listed under Section 21510c.
- The request for reimbursement is for corrective action performed on or after December 30, 2014.

To be reimbursed under the program, an eligible person would have to submit a form to the authority, plus any other required documents. The authority would have to provide such a form, and approve a request for reimbursement as follows:

- The amount approved for reimbursement shall be 50% of the aggregate indemnification and corrective action costs incurred, but not more than 50% of the reasonable and necessary eligible costs as determined by the administrator pursuant to Section 21515(2) to (10).

- The total amount approved for reimbursement shall not exceed a total of \$50,000 for all releases from refined petroleum underground storage tank systems at a single location.
- An owner or operator may request a review of a denied claim of work invoice per Section 21521.

### ***Refined Petroleum Fund***

NREPA regulates the Refined Petroleum Fund (Fund). Currently, money in the fund at the end of the fiscal year remains and does not lapse to the General Fund. Money from the fund may be expended for one or more of the following purposes:

- Corrective actions performed by the underground storage tank division of the Department of Natural Resources (DNR) under Section 21320.
- The reasonable costs of the DNR in administering the fund and implementing Part 213.
- Not more than \$5 million annually for petroleum product inspection programs under the Weights and Measures Act and Motor Fuels Quality Act.
- Not more than \$3 million annually for the Bureau of Fire Services and Office of the State Fire Marshal, storage tank division, in the Department of Licensing and Regulatory Affairs (LARA).
- Other purposes as determined by the legislature.

The bill would remove the last provision and add "the Legacy Release Program" to allow expenditures from the fund for the newly created program. The bill also would add the following allowable expenditures from the fund:

- Reimbursement by the authority to local units of government and county road commissions for the costs of corrective action to manage, relocate, or dispose of any media contaminated by regulated substances left in place within a public highway pursuant to section 21310a if all of the following occur:
  - The local unit of government or county road commission has submitted to the authority a claim for reimbursement on a form created by the authority.
  - The claim for reimbursement is for reasonable and necessary eligible corrective action costs determined by the administrator pursuant to section 21515(2) to (10).
  - The amount of reimbursement is not more than \$200,000 per claim.
- Not more than \$5.0 million annually for DEQ to provide grants and loans in accordance with part 196 to facilitate brownfield redevelopment at part 213 properties. However, funds under this subsection may not fund response activities at a part 213 property to address contamination that is solely attributable to a release regulated under part 201 (Environmental Remediation).
- The permanent closure of an underground storage tank system by DEQ under R 29.2153<sup>2</sup> of the Michigan Administrative Code or DEQ determines it is necessary to protect public health, safety, welfare, or the environment.

---

<sup>2</sup> [http://w3.lara.state.mi.us/orr/Files/AdminCode/1565\\_2015-060LR\\_AdminCode.pdf](http://w3.lara.state.mi.us/orr/Files/AdminCode/1565_2015-060LR_AdminCode.pdf)

The law currently states that an owner or operator who intends to rely on the fund to meet financial responsibility requirements must submit to the authority a request for a determination that the owner or operator would be eligible for funding in the event of a release from a refined petroleum underground storage tank system. The authority then makes a determination and provides notice, in writing, to the owner or operator, which may include conditions for maintenance of that eligibility. A determination is based upon a demonstration of all of the following:

- The owner or operator is not ineligible for funding under Section 21510(4) and (5).
- The refined petroleum underground storage tank or tanks are presently in compliance with the registration and fee requirements of part 211.
- The owner or operator is not the United States government.
- The owner or operator has financial responsibility for the deductible amount.

The bill would add provisions to the last requirement to specify how an owner or operator may demonstrate financial responsibility for the deductible amount under this section or Section 21510(1)(f). The owner or operator may rely upon any financial assurance mechanism listed in the federal requirements for owners and operators of underground storage tanks<sup>3</sup>, or either of the following:

- A financial test of self-insurance. To pass the financial test of self-insurance, the owner or operator must submit, on a form developed by the authority, financial information certified as accurate by the chief financial officer or comparable position that demonstrates a tangible net worth of at least three times the deductible required under this part.
- A deposit account in the amount of the deductible required under this part in a financial institution as defined in Section 1202 of the Banking Code,<sup>4</sup> if access to the deposit account is restricted by a deposit account control agreement or similar restriction as approved by the authority that requires the approval of the administrator for a withdrawal from the deposit account.

"Financial responsibility requirements" means the financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by a release from a refined petroleum underground storage tank system that the owner or operator must demonstrate under Part 211 and the rules promulgated under that part.

MCL 324.21506a et al.

---

<sup>3</sup> 40 CFR 280.95 through 280.107 [https://www.ecfr.gov/cgi-bin/text-idx?SID=c502a1a85434286d631c187554478155&mc=true&tpl=/ecfrbrowse/Title40/40cfr280\\_main\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?SID=c502a1a85434286d631c187554478155&mc=true&tpl=/ecfrbrowse/Title40/40cfr280_main_02.tpl)

<sup>4</sup> MCL 487.11202 "an organization that is licensed, chartered, or regulated by the department under the laws of this state."

## **ARGUMENTS:**

### ***For:***

Both supporters and critics of the bill agree that continued cleanup of hazardous sites is good for the environment and the public health, and would like to see the temporary Underground Storage Tank Cleanup Program become permanent. However, supporters of the bill would like to prioritize properties with known owners. Supporters of the bill fear that if sites with known owners cannot receive help to decontaminate their site, the sites will be added to the roughly 7,000 “orphan” sites (properties with no known, claimed, or actual owner). Then, the fund would have to pay for the entire cleanup rather than reimburse just a part of the cleanup.

### ***Against:***

Critics of the bill fear there will not be enough money left in the program for contaminated orphan sites. The other properties have owners that can take corrective actions while orphan sites are solely reliant on the money in the fund. According to the Michigan Environmental Council, about \$37.0 million in the fund will be directed to the program, leaving \$11.0 million, an insufficient amount to address the roughly 7,000 orphan sites, of which an estimated 500 to 1,000 pose an immediate public health risk. If more money is directed out of the fund for other purposes, these orphan sites will remain public health risks.

## **POSITIONS:**

Representatives from the following testified in support of the bill:

- Michigan Petroleum Association (6-7-17)
- Michigan DEQ (6-7-17, 6-14-17)

A representative from the Michigan Environmental Council testified in opposition to the bill. (6-7-17 and 6-14-17)

Representatives from the following indicated support for the bill:

- Michigan Chamber of Commerce (6-14-17)
- American Petroleum Institute of Michigan (6-14-17)
- Michigan Townships Association (6-14-17)

A representative from the Michigan Chapter Sierra Club indicated opposition to the bill. (6-14-17)

Legislative Analyst: Emily S. Smith  
Fiscal Analyst: Austin Scott

---

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