

LEGACY UNDERGROUND STORAGE TANK CLEANUP PROGRAM

Phone: (517) 373-8080
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House Bill 4583 as introduced
Sponsor: Rep. Mary Whiteford
Committee: Natural Resources
Complete to 6-6-17

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

SUMMARY:

House Bill 4583 would amend the Natural Resources and Environmental Protection Act (NREPA) by creating the Legacy Underground Storage Tank Cleanup Program (Program).

Generally speaking, this 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.

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 Underground Storage Tank Cleanup Program

Under the bill, the Department of Environmental Quality (DEQ) would establish the cleanup 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 that is liable under Section 21323a, and may 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.
- 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 request for reimbursement is for corrective action performed on or after December 30, 2014.

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

- The amount approved for reimbursement must be 50% of the cost incurred for corrective action, but not more than 50% of the amount specific to particular corrective action activities established in the schedule of costs approved by the authority.
- The total amount approved for reimbursement must not exceed \$50,000 for a release from a refined petroleum underground storage tank system.

Refined Petroleum Fund

The Michigan Treasury created the Refined Petroleum Fund (Fund), but it is regulated under NREPA. Currently, money in the fund at the end of the fiscal year remains and does not lapse to the General Fund. Instead, money from the fund is 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 or 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 Underground Storage Tank Cleanup Program" to allow expenditures from the fund for the newly created program.

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 contain 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).¹

¹ MCL 324.21510 Eligibility of owner or operator to receive money from authority for corrective action or indemnification; (4) An owner or operator that is a public utility with more than 500,000 customers in this state is ineligible to receive money from the authority for corrective action or indemnification associated with a release from a refined petroleum underground storage tank system used to supply refined petroleum for the generation of steam electricity. (5) If an owner or operator has received money from the authority under this part for a release at a location, the owner and operator are not eligible to receive money from the authority for a subsequent release at the same location unless the owner or operator has done either or both of the following: (a) Discovered the subsequent release pursuant to corrective action being taken on a confirmed release and included this subsequent release as part of the corrective action for the confirmed release; (b) Upgraded, replaced, removed, or properly closed in place all

- 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 more provisions to the last requirement in the list above to include how an owner or operator may demonstrate financial responsibility for the deductible amount under this section, as well as Section 21510(1)(f).² The owner or operator may rely upon any financial assurance mechanism listed in the federal requirements for owners and operators of underground storage tanks (40 CFR 280.95 through 280.103), 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 that demonstrates a tangible net worth of at least three times the deductible amount required under this part.
- A deposit account in the amount of the deductible amount required under this part in a financial institution as defined in Section 1202 of the Banking Code (MCL 487.11202), 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.

FISCAL IMPACT:

House Bill 4583 would have an unknown fiscal impact on costs for the DEQ. The creation of this program would enable the department 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. However, the number of

refined petroleum underground storage tank systems at the location of the release so as to meet the requirements of part 211 and the rules promulgated under that part.

² MCL 324.21510, (1) An owner or operator is eligible to receive money from the authority for corrective action or indemnification due to a release from a refined petroleum underground storage tank system only if all of the following requirements are satisfied and the owner or operator otherwise complies with this part: (f) The owner or operator was in compliance with the financial responsibility requirements of part 211 and the rules promulgated under that part at the time of the discovery of the release or releases for which the claim is filed.

qualifying applications for reimbursement is currently unclear. The department does not have an estimate of the number of reimbursement requests to expect nor the total cost of these requests. The bill may increase departmental costs by creating an additional avenue for the funding of 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 cleanup sites contaminated by a petroleum release. The RPF currently have 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.

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.