



Senate Fiscal Agency
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Senate Bill 991 (as enacted)
Sponsor: Senator Rick Outman
Senate Committee: Environmental Quality
House Committee: Natural Resources and Outdoor Recreation

PUBLIC ACT 160 of 2022

Date Completed: 12-5-22

RATIONALE

Underground storage tanks often contain petroleum products, such as gasoline. Part 211 (Underground Storage Tank Regulations) of the Natural Resources and Environmental Protection Act (NREPA) regulates these tanks and grants the Department of Licensing and Regulatory Affairs (LARA), Bureau of Fire Services rulemaking authority. Among other requirements, administrative rules require underground storage tanks to meet specified setback distances from many types of wells. (These setback distances are the same as those prescribed by the bill.) Administrative rules do not allow LARA to offer exemptions to the setback distances, and some people believe that exemptions to setback distances should be allowed. Accordingly, it was suggested that the setback distances provided by administrative rule be codified and that an exemption to these distances be established if certain requirements are met.

CONTENT

The bill amended Part 211 of NREPA to do the following:

- **Prohibit the installation of an underground storage tank within certain distances of existing water wells.**
- **Specify that a person who wishes to install an underground storage tank that does not meet the distance requirements prescribed by the bill could replace only an active underground storage tank if the replacement tank is more likely to prevent and detect a release than the existing tank and the existing tank is in compliance with Part 211.**

The bill took effect July 19, 2022.

Specifically, except as provided below, the bill prohibits a person from installing an underground storage tank that meets any of the following conditions:

- The tank is within 2,000 feet of an existing type I community or type IIa noncommunity water well.
- The tank is within 800 feet of an existing type IIb or type III noncommunity public water well.
- The tank is within 300 feet of any other type of well not described above.

(Part 211 defines "underground storage tank system" as a tank or combination of tanks, including underground pipes connected to the tank or tanks, which is, was, or may have been used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected to the tank or tanks, is 10% or more beneath the surface of the ground. See **BACKGROUND** for information concerning water well types.)

The bill specifies that a person who wishes to install an underground storage tank that does not meet the conditions described above may replace only an active underground storage tank if both of the following requirements are met:

- A professional engineer or qualified underground storage tank consultant certifies that a combination of the construction material of the underground storage tank and the leak detection used to monitor the underground storage tank is more likely to prevent and detect a release from the replacement underground storage tank than the existing underground storage tank.
- The facility where the active, existing underground storage tank is located is in compliance with Part 211 and the rules promulgated under Part 211.

(Part 211 defines "release" as any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank system into groundwater, surface water, or subsurface soils.)

The bill defines "professional engineer" as that term is defined in Section 2001 of the Occupational Code: a person who, by reason of knowledge of mathematics, the physical sciences, and the principles of engineering, acquired by professional education and practical experience, is qualified to engage in the practice of professional engineering. "Qualified underground storage tank consultant" means an individual who meets the requirements under Section 21325. (Section 21325 of NREPA specifies that a person is considered a qualified underground storage tank consultant if the person has experience in all phases of underground storage tank work, possesses certain licenses, certifications, or educational attainment, has several insurance policies, such as worker's compensation insurance, and demonstrates compliance with Occupational Safety and Health Act regulations.)

MCL 324.21102a

BACKGROUND

According to the Department of Environment, Great Lakes, and Energy, water wells are classified by the nature and size of the population they serve. Type I community water wells provide year-round service to at least 25 people or at least 15 living units. Type II noncommunity water wells serve at least 25 people for at least six months per year or at least 60 days per year, depending on their usage. Type II wells are further classified based on their water production: 1) type IIa wells have an average production of 20,000 gallons or more per day during their peak month; and 2) type IIb wells have an average production of less than 20,000 gallons per day during their peak month. Type III noncommunity public water wells are any wells not considered type I or type II water wells that serve fewer than 25 people and 15 connections, or that operate for fewer than 60 days a year.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to the United States Environmental Protection Agency, most underground storage tanks were made of steel until the 1980s and were likely to corrode over time. Corrosion can lead to tanks releasing their contents into surrounding soil, potentially polluting groundwater. Newer tanks are made of corrosion-resistant materials and have other qualities to prevent release, such as double walls, moisture alarms, and catch basins.

Many underground storage tank owners want to replace old tanks with newer, safer ones; however, LARA does not have the authority to exempt tanks from setback requirements established under administrative rules. This prevents owners of existing underground storage tanks that received a

variance in the past from replacing these tanks. The bill provides an exemption to setback distance requirements if owners show that a new tank would be better at protecting against corrosion and release. The exemption will allow owners to replace old tanks and improve the safety of underground storage tanks in the State.

Legislative Analyst: Tyler P. VanHuyse

FISCAL IMPACT

The bill will have no fiscal impact on the Department of Licensing and Regulatory Affairs or local units of government. The bill modifies an existing permitting process at the Department and will not increase operating costs.

Fiscal Analyst: Jonah Houtz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.