

Act No. 152
Public Acts of 1989
Approved by the Governor
July 18, 1989
Filed with the Secretary of State
July 18, 1989

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1989**

Introduced by Senators Ehlers and Dingell

ENROLLED SENATE BILL No. 266

AN ACT to amend the title and sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 23, 25, and 26 of Act No. 518 of the Public Acts of 1988, entitled "An act to assist certain operators of certain underground storage tank systems in meeting their financial responsibility requirements; to create certain funds to address certain problems associated with releases from certain underground storage tank systems; to promote compliance with certain regulatory programs; to provide for the use of these funds; to create a Michigan underground storage tank financial assurance policy board; to prescribe the powers and duties of certain state agencies and officials; to provide for certain regulatory fees; and to repeal this act on a specific date," being sections 299.804, 299.805, 299.806, 299.807, 299.808, 299.809, 299.810, 299.811, 299.812, 299.813, 299.815, 299.816, 299.817, 299.818, 299.819, 299.823, 299.825, and 299.826 of the Michigan Compiled Laws; and to repeal certain parts of the act on a specific date.

The People of the State of Michigan enact:

Section 1. The title and sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 23, 25, and 26 of Act No. 518 of the Public Acts of 1988, being sections 299.804, 299.805, 299.806, 299.807, 299.808, 299.809, 299.810, 299.811, 299.812, 299.813, 299.815, 299.816, 299.817, 299.818, 299.819, 299.823, 299.825, and 299.826 of the Michigan Compiled Laws, are amended to read as follows:

TITLE

An act to assist certain owners and operators of certain underground storage tank systems in meeting their financial responsibility requirements; to create certain funds to address certain problems associated with releases from certain underground storage tank systems; to promote compliance with certain regulatory programs; to provide for the use of these funds; to create a Michigan underground storage tank financial assurance policy board; to prescribe the powers and duties of certain state agencies and officials; to provide for certain regulatory fees; and to repeal certain parts of this act on a specific date.

Sec. 4. As used in this act:

- (1) "Administrator" means the fund administrator provided for in section 12.
- (2) "Bid" means a proposal signed by a contractor listed on the approved contractor list provided for in section 21 stating the name and address of the contractor, a specific itemized list of the work proposed to be completed by the contractor, and the itemized cost of the work proposed to be completed.
- (3) "Board" means the Michigan underground storage tank financial assurance policy board created in section 20.
- (4) "Corrective action" means an action to stop, minimize, eliminate, or clean up a release or its effects, as may be necessary to protect the public health, safety, welfare, or the environment. This includes, but is not limited to, release investigation, mitigation of fire and safety hazards, tank repair or removal, soil remediation, hydrogeological investigations, free product removal, groundwater remediation and monitoring, exposure assessments, the temporary or permanent relocation of residents, and the provision of alternate water supplies.

(5) "Corrective action plan" means a corrective action plan submitted under section 8 of the leaking underground storage tank act, Act No. 478 of the Public Acts of 1988, being section 299.838 of the Michigan Compiled Laws.

(6) "Deductible" means the deductible provided for in section 13.

(7) "Department" means the department of management and budget.

(8) "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 an underground storage tank system that the owner or operator of an underground storage tank system must demonstrate under subtitle I of title II of the solid waste disposal act, Public Law 89-272, 42 U.S.C. 6991 to 6991i.

(9) "Fund" means the Michigan underground storage tank financial assurance fund created in section 6.

(10) "Heating oil" means petroleum that is No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6 technical grades of fuel oil; other residual fuel oils including navy special fuel oil and bunker C; and other fuels when used as substitutes for 1 of these fuel oils.

(11) "Indemnification" means indemnification of a person for a judgment entered against that person in a court of law or for a settlement entered into by that person and approved by the attorney general, if the judgment or settlement arises out of an injury suffered because of a release from a petroleum underground storage tank system operated by that person.

(12) "Location" means a facility or parcel of property where petroleum underground storage tank systems are situated as identified by the underground storage tank notification filed pursuant to the underground storage tank regulatory act, Act No. 423 of the Public Acts of 1984, being sections 299.701 to 299.711 of the Michigan Compiled Laws.

(13) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a release from an underground storage tank system.

(14) "Operator" means a person who is presently, or was at the time of a release, in control of, or responsible for, the operation of a petroleum underground storage tank system.

(15) "Owner" means a person who holds, or at the time of a release held, a legal, equitable, or possessory interest of any kind in an underground storage tank system, or in the property on which an underground storage tank system is located, including, but not limited to, a trust, vendor, vendee, lessor, or lessee. However, owner does not include a person or a regulated financial institution who, without participating in the management of an underground storage tank system and who is not otherwise engaged in petroleum production, refining, or marketing relating to the underground storage tank system, is acting in a fiduciary capacity or who holds indicia of ownership primarily to protect the person's or the regulated financial institution's security interest in the underground storage tank system or the property on which it is located. This exclusion does not apply to a grantor, beneficiary, remainderman, or other person who could directly or indirectly benefit financially from the exclusion other than by the receipt of payment for fees and expenses related to the administration of a trust.

Sec. 5. (1) "Person" means an individual, partnership, joint venture, trust, firm, joint stock company, corporation, including a government corporation, association, local unit of government, commission, the state, a political subdivision of the state, an interstate body, the federal government, a political subdivision of the federal government, or any other legal entity.

(2) "Petroleum" means crude oil, crude oil fractions, and refined petroleum fractions including gasoline, kerosene, heating oils, and diesel fuels.

(3) "Petroleum underground storage tank system" means an underground storage tank system used for the storage of petroleum.

(4) "Refined petroleum" means aviation gasoline, middle distillates, jet fuel, kerosene, gasoline, and residual oils.

(5) "Regulatory fee" means the environmental protection regulatory fee imposed under section 8.

(6) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a petroleum underground storage tank system into groundwater, surface water, or subsurface soils.

(7) "Rule" means a rule promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(8) "Underground storage tank system" means a tank or combination of tanks, including underground pipes connected to the tank or tanks, which is or was used to contain an accumulation of regulated substances, and is not currently being used for any other purpose, 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. An underground storage tank system does not include any of the following:

(a) A farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(b) A tank used for storing heating oil for consumptive use on the premises where the tank is located.

(c) A septic tank.

(d) A pipeline facility, including gathering lines regulated under either of the following:

(i) The natural gas pipeline safety act of 1968, Public Law 90-481, 49 U.S.C. Appx 1671 to 1677, 1679a to 1682, and 1683 to 1686.

(ii) Sections 201 to 215 and 217 of the hazardous liquid pipeline safety act of 1979, title II of Public Law 96-129, 49 U.S.C. Appx 2001 to 2014.

(e) A surface impoundment, pit, pond, or lagoon.

(f) A storm water or wastewater collection system.

(g) A flow-through process tank.

(h) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(i) A storage tank situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

(j) Any pipes connected to a tank that is described in subdivisions (a) to (i).

(k) An underground storage tank system holding hazardous wastes listed or identified under subtitle c of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to 6931 and 6933 to 6939b or a mixture of such hazardous waste and other regulated substances.

(l) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) of title III or section 402 of title IV of the federal water pollution control act, 33 U.S.C. 1317 and 1342.

(m) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(n) An underground storage tank system with a capacity of 110 gallons or less.

(o) An underground storage tank system that contains a de minimis concentration of regulated substances.

(p) An emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.

(q) A wastewater treatment tank system.

(r) An underground storage tank system containing radioactive material that is regulated under the atomic energy act of 1954, chapter 1073, 68 Stat. 919.

(s) An underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 C.F.R. part 50, appendix A to part 50 of title 10 of the code of federal regulations.

(t) Airport hydrant fuel distribution systems.

(u) Underground storage tank systems with field-constructed tanks.

(9) "Work invoice" means a receipt signed by a contractor listed on the approved contractor list provided for in section 21 stating the name and address of the contractor, a specific itemized list of the work performed by the contractor, and an itemized list of the cost of each of these items.

Sec. 6. (1) The Michigan underground storage tank financial assurance fund is created.

(2) The state treasurer shall direct the investment of the fund. Interest and earnings from fund investments shall be credited to the fund.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(4) Money in the fund shall be expended only as follows and in the following order of priority:

(a) For the reasonable administrative cost of implementing this act by the department, the department of natural resources, the department of state police, the department of treasury, and the department of attorney general as annually appropriated by the legislature. Administrative costs shall include the actual and necessary expenses incurred by the board and its members in carrying out the duties imposed by this act. Total administrative costs expended under this subdivision shall not exceed 7% of the fund's projected revenues in any year. Within 2 years of the effective date of this 1989 amendatory act, the department shall conduct an audit of the actual administrative costs of implementing this act and shall report the results of this audit to the legislature.

(b) For the interest subsidy program established in section 19. The money expended under this subdivision shall not exceed 10% of the fund's projected revenues in any year. However, 10% of the revenue of the fund during the first year of the fund's operation shall be expended on the interest subsidy program. If this money is not expended during the first year, this money shall be carried over for expenditure in the succeeding years of the fund's operation. No additional fund revenue shall be set aside for the interest subsidy program until all of the first year revenue is expended.

(c) For corrective action and indemnification including both of the following:

(i) Payments for approved work invoices pursuant to this act.

(ii) Payments for approved requests for indemnification pursuant to this act.

(5) The board shall make recommendations to the appropriations committees in the senate and house of representatives on the distribution and amount of administrative costs under subsection (4). The board shall provide a copy of these recommendations to each affected department.

(6) Beginning 18 months after the effective date of this subsection, if a state drinking water standard for a particular substance has been promulgated under the safe drinking water act, Act No. 399 of the Public Acts of 1976, being sections 325.1001 to 325.1023 of the Michigan Compiled Laws, money in the fund shall not be expended for a corrective action that results in a cleanup of that substance in excess of that state drinking water standard, unless a public or private drinking water supply is endangered by the contamination.

Sec. 7. (1) The emergency response fund is created.

(2) The state treasurer shall direct the investment of the emergency response fund. Interest and earnings of the emergency response fund shall remain in the emergency response fund.

(3) Money in the emergency response fund at the close of the fiscal year shall remain in the emergency response fund and shall not revert to the general fund.

(4) Except as provided in section 27, money in the emergency response fund shall not exceed \$1,000,000.00.

(5) Except as provided in section 26, money in the emergency response fund shall be expended by the director of the department of natural resources to undertake corrective actions pursuant to the leaking underground storage tank act, Act No. 478 of the Public Acts of 1988, being sections 299.831 to 299.850 of the Michigan Compiled Laws.

(6) Not more than \$1,000,000.00 shall be expended from the fund in any year.

(7) If money in the emergency response fund is expended under subsection (5), the person or persons responsible for the corrective action shall be liable to the state for all such expenditures.

Sec. 8. (1) An environmental protection regulatory fee is imposed on all refined petroleum products sold for resale in this state or consumption in this state. The regulatory fee shall be used pursuant to section 6(4) for the cleanup and prevention of environmental contamination resulting from releases of refined petroleum products from underground storage tank systems. The regulatory fee shall be charged for capacity utilization of underground storage tanks measured on a per gallon basis. The regulatory fee shall be charged against all refined petroleum products sold for resale in this state or consumption in this state so as to not exclude any products that may be stored in an underground tank at any point after the petroleum is refined. Beginning August 1, 1989, the regulatory fee shall be 7/8 cent per gallon for each gallon of refined petroleum sold for resale in this state or consumption in this state, with the per gallon charge being a direct measure of capacity utilization of an underground storage tank system.

(2) The department of treasury shall precollect regulatory fees from persons who refine petroleum in this state for resale in this state or consumption in this state and persons who import refined petroleum into this state for resale or consumption in this state. The department of treasury shall collect regulatory fees that can be collected at the same time as the sales tax under section 6a of the general sales tax act, Act No. 167 of the Public Acts of 1933, being section 205.56a of the Michigan Compiled Laws, at that time. The remainder of the regulatory fees shall be collected in the manner determined by the state treasurer.

(3) A public utility with more than 500,000 customers in this state is exempt from any fee or assessment imposed under this act if that fee or assessment is imposed on petroleum used by that public utility for the generation of steam or electricity.

(4) All regulatory fees collected pursuant to this act shall be deposited into the emergency response fund created in section 7 until the emergency response fund reaches \$1,000,000.00. When the emergency response fund is at \$1,000,000.00, all regulatory fees shall be deposited into the fund.

(5) Beginning 1 year after the effective date of the amendatory act that added this subsection and every quarter thereafter, the administrator shall determine if fund revenues will be sufficient to pay expected expenditures from the fund. If expected expenditures are anticipated to exceed fund revenues, the state treasurer shall notify the advisory board and, with the advice of the board, shall advise the legislature of the

estimated increase in the regulatory fee that would be necessary to pay expected expenditures or make other recommendations to revise this act that would improve the security of the fund. If anticipated expenditures are significantly below anticipated revenues, the state treasurer shall notify the advisory board and, with the advice of the board, shall recommend to the legislature a reduction of the regulatory fee.

(6) Beginning January 1, 1991, if the state treasurer determines that fund revenues will not be sufficient to pay expected expenditures from the fund, the state treasurer shall notify the administrator, and 90 days after this notification has been given, the administrator shall not accept any new bids, work invoices, or requests for indemnification. Upon receiving this notification from the state treasurer, the administrator shall notify, by certified mail, the owners and operators of underground storage tank systems registered under the underground storage tank regulatory act, Act No. 423 of the Public Acts of 1984, being sections 299.701 to 299.711 of the Michigan Compiled Laws, that funding under this act will no longer be available for new claims after the 90-day period has expired. However, work invoices and requests for indemnification that were submitted prior to or during this 90-day period may be paid to the extent money is available in the fund as provided in this act.

(7) The department of treasury shall have all powers and authority to audit, enforce, collect and assess the fee imposed by this act in the same manner and subject to the same requirements as revenues collected pursuant to Act No. 122 of the Public Acts of 1941, being sections 205.1 to 205.31 of the Michigan Compiled Laws.

Sec. 9. (1) An owner or operator may receive money from the fund for corrective action or indemnification only if all of the following requirements are satisfied:

(a) The release from which the corrective action or indemnification arose was discovered and reported on or after the effective date of this 1989 amendatory act. However, money in the fund shall not be expended until the fund begins operating pursuant to section 12.

(b) The petroleum underground storage tank from which the release occurred was, at the time of discovery of the release, in compliance with the registration requirements of the underground storage tank regulatory act, Act No. 423 of the Public Acts of 1984, being sections 299.701 to 299.711 of the Michigan Compiled Laws.

(c) The owner or operator was at the time of discovery of the release in compliance with all record-keeping and reporting requirements of the underground storage tank regulatory act, Act No. 423 of the Public Acts of 1984, the fire prevention code, Act No. 207 of the Public Acts of 1941, being sections 29.1 to 29.33 of the Michigan Compiled Laws, the leaking underground storage tank act, Act No. 478 of the Public Acts of 1988, being sections 299.831 to 299.850 of the Michigan Compiled Laws, rules promulgated under each of these acts, or subtitle I of title II of the solid waste disposal act, Public Law 89-272, 42 U.S.C. 6991 to 6991i or rules promulgated under that act. Records kept under these acts shall be valid and verifiable.

(d) The owner or operator has provided the administrator with proof of financial responsibility for the deductible amount that will satisfy the requirements for financial responsibility instruments under subtitle I of title II of the solid waste disposal act, Public Law 89-272, 42 U.S.C. 6991 to 6991i.

(e) The owner or operator has not defaulted on a loan subsidized through the interest subsidy program established in section 19.

(f) The owner or operator is not the United States government.

(2) Either the owner or the operator may receive money from the fund under this act for an occurrence but not both.

(3) An owner or operator who is a public utility with more than 500,000 customers in this state is ineligible to receive money from the fund for corrective action or indemnification associated with a release from a petroleum underground storage tank system used to supply petroleum for the generation of steam electricity.

(4) If an owner or operator has received money from the fund under this act for an occurrence, the owner and operator are not eligible to receive money from the fund for a subsequent occurrence unless the owner or operator has upgraded or replaced all underground storage tank systems at the location of the occurrence so as to meet the requirements of subtitle I of title II of the solid waste disposal act, Public Law 89-272, 42 U.S.C. 6991 to 6991i for a new underground storage tank system installed after January 1, 1989 and the rules promulgated under the underground storage tank regulatory act, Act No. 423 of the Public Acts of 1984, being sections 299.701 to 299.711 of the Michigan Compiled Laws.

Sec. 10. The administrator shall approve expenditures for corrective action and indemnification, on behalf of an owner or operator, of not more than a total of \$1,000,000.00 of approved work invoices, and approved requests for indemnification per petroleum underground storage tank system per occurrence provided that the owner or operator has met the requirements of this act.

Sec. 11. Notwithstanding any other provision of this act, effective 3 years after the date the fund begins operating as provided in section 12, an owner or operator of a petroleum underground storage tank system that has not met the standards provided in subtitle I of title II of the solid waste disposal act, Public Law 89-272, 42 U.S.C. 6991 to 6991i and the rules promulgated under the underground storage tank regulatory act, Act No. 423 of the Public Acts of 1984, being sections 299.701 to 299.711 of the Michigan Compiled Laws, for a new underground storage tank system installed after January 1, 1989, and who has not submitted a complete application and satisfied all other requirements of the department for an interest subsidy under section 19 on a loan that would bring the petroleum underground storage tank system into compliance with the standards provided in subtitle I of title II of the solid waste disposal act, Public Law 89-272, 42 U.S.C. 6991 to 6991i and the rules promulgated under Act No. 423 of the Public Acts of 1984 for a new underground storage tank system installed after January 1, 1989, is ineligible to receive money from the fund for indemnification associated with a release from that petroleum underground storage tank system.

Sec. 12. (1) The department shall employ a person to serve as the fund administrator. The administrator shall be responsible for processing requests for payments from the fund and approving those requests as provided in this act. Beginning 6 months after the effective date of this 1989 amendatory act, the fund shall begin operating and the administrator shall begin to accept work invoices, bids, and requests for indemnification. However, if the state treasurer determines that there is sufficient money in the fund, the state treasurer may establish an earlier date in which the fund may begin operating.

(2) Within 5 months after the effective date of this subsection, the department shall enter into a contract for the preparation of a study that analyzes the public and private costs associated with various levels of cleanup standards for corrective actions on underground storage tank systems. The contract shall provide for the study to be completed within 6 months. Prior to entering into the contract, the department shall consult with the department of natural resources, the chairperson of the House of Representatives committee on conservation, recreation, and environment, and the chairperson of the Senate committee on natural resources and environmental affairs regarding the design and the scope of the study. The study required under this subsection may be conducted in conjunction with other related studies. Upon completion of the study, the department shall submit copies of the study to the legislature.

Sec. 13. (1) Prior to being eligible to receive money from the fund in the event of an occurrence, the owner or operator shall be responsible for the payment of the first \$10,000.00 of corrective action or indemnification costs associated with the occurrence per underground storage tank system per occurrence.

(2) This amount may be referred to as the deductible amount.

Sec. 15. (1) To access the fund for corrective action, the owner or operator shall follow the procedures outlined in this section. The owner or operator shall prepare a corrective action plan pursuant to the leaking underground storage tank act, Act No. 478 of the Public Acts of 1988, being sections 299.831 to 299.850 of the Michigan Compiled Laws. After preparing a corrective action plan, the owner or operator may submit a bid to the administrator.

(2) Upon receipt of a bid under subsection (1), the administrator shall make all of the following determinations:

(a) Whether the department of natural resources has determined that work performed or proposed to be performed is consistent with the corrective action plan.

(b) Whether the cost of performing the work is reasonable.

(c) Whether the owner or operator is eligible to receive funding under this act.

(3) If the administrator determines under subsection (2) that the bid is both reasonable in terms of cost and consistent with the corrective action plan and the owner or operator is eligible for funding under this act, the administrator shall approve the bid and notify the owner or operator who submitted the bid of the approval. If the administrator determines that the cost of the bid is not reasonable, that the work is not consistent with the corrective action plan, or that the owner or operator is not eligible for funding under this act, the administrator shall deny the bid and give notice of the denial to the owner or operator who submitted the bid.

(4) The owner or operator may submit work invoices to the administrator after approval of a bid under subsection (3). Upon receipt of a work invoice, the administrator shall make the following determinations:

(a) Whether the work invoice is reasonable in terms of cost and consistent with the approved bid.

(b) Whether the department of natural resources has determined that the work performed is consistent with the corrective action plan.

(5) If the administrator determines that the work invoice does not meet the requirements of subsection (4), he or she shall deny the work invoice and give notice of the denial to the owner or operator who submitted the work invoice.

(6) The administrator shall keep records of approved bids and approved work invoices. If the owner or operator has submitted approved work invoices totaling the deductible amount, then the administrator shall forward approved work invoices to the state treasurer, as long as the owner or operator has not exceeded the allowable amount of expenditure provided in section 10.

(7) The administrator may approve a reimbursement for a work invoice that was paid by an owner or operator for corrective action taken pursuant to Act No. 478 of the Public Acts of 1988, being sections 299.831 to 299.850 of the Michigan Compiled Laws, if the corrective action meets the requirements of Act No. 478 of the Public Acts of 1988. Additionally, the receipt for the payment shall meet the requirements of this act for an approved bid and an approved work invoice.

(8) The department of natural resources shall determine whether the work performed is consistent with the approved corrective action plan.

(9) Except as provided in subsection (10), upon receipt of an approved work invoice, the state treasurer shall make a payment to the contractor listed on the approved work invoice and bid within 30 days if sufficient money exists in the fund.

(10) Upon direction of the administrator, the state treasurer may withhold partial payment of money on approved work invoices to assure acceptable completion of the proposed work.

(11) Upon receipt of an approved work invoice, the state treasurer shall make a payment to the owner or operator within 30 days if sufficient money exists in the fund.

Sec. 16. (1) To access the fund for indemnification, the owner or operator shall submit to the administrator a request for indemnification containing the information required by the administrator. If the owner or operator is eligible for funding under this act, the administrator shall forward a copy of the request for indemnification to the attorney general. The attorney general shall approve the request for indemnification if there is a legally enforceable judgment against the owner or operator caused by a release or if a settlement with a third party due to a release is reasonable. If a request for indemnification is approved by the attorney general, the administrator shall review whether the owner or operator has met the deductible requirements as provided in this act, has not exceeded the allowable amount of expenditure provided in section 10, and is eligible under section 11. If, upon review, the owner or operator is eligible to receive funding for the indemnification under this act for the amount requested, the administrator shall forward the approved request for indemnification to the department of treasury.

(2) The administrator shall keep records of all approved requests for indemnifications.

(3) The state treasurer shall make a payment to an owner or operator for an approved indemnification request within 30 days if sufficient money exists in the fund.

Sec. 17. (1) The state treasurer shall pay approved work invoices and approved requests for indemnification in the order in which they are received. If there is insufficient money in the fund to make a payment, then a payment shall not be made. However, approved work invoices and approved requests for indemnification that are not funded may be paid if revenues of the fund become available.

(2) In no case shall the fund or the state be considered liable for approved bids, approved work invoices, or approved requests for indemnification if money in the fund is insufficient to meet these claims.

Sec. 18. (1) If the administrator denies a bid or work invoice, or request for indemnification, the owner or operator who submitted the claim may, within 14 days following the denial, request review by the board. Upon review, if the board determines that the bid, work invoice, or request for indemnification should be approved, the administrator shall approve it.

(2) A person who is denied approval by the board after review under subsection (1) may request a contested case hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

Sec. 19. (1) The department of treasury in cooperation with the board shall establish an interest subsidy program through rules. This program shall provide for interest subsidies, upon application, to the owner or operator of a petroleum underground storage tank system who meets the applicable requirements of section 9(1). Money in the fund shall not be used for loans but shall be used to provide interest subsidies to lenders on loans for the replacement of a petroleum underground storage tank system.

(2) Interest subsidies shall be made under this section, upon application, for the replacement of existing petroleum underground storage tank systems with petroleum underground storage tank systems that meet the requirements of subtitle I of title II of the solid waste disposal act, Public Law 89-272, 42 U.S.C. 6991 to 6991i for new underground storage tank systems installed after January 1, 1989 and the rules promulgated under the

underground storage tank regulatory act, Act No. 423 of the Public Acts of 1984, being sections 299.701 to 299.711 of the Michigan Compiled Laws.

(3) The interest subsidy provided in this section shall be valid for the entire loan period.

(4) Applications for the interest subsidy program under this section shall be submitted within 2 years after the effective date of this 1989 amendatory act.

Sec. 23. (1) This act shall not be construed as creating any liability on behalf of the state. This act shall not be construed as making the state the guarantor of the fund.

(2) This act shall not be construed as to relieve any person who may be eligible to receive money from the fund or the emergency response fund from any liability that he or she may incur as the owner or operator of an underground storage tank system. The state is not assuming the liability of an owner or operator eligible for funding under this act, it is only providing assistance to such owners or operators in meeting the financial responsibility requirements.

(3) If any provision of this act is found to be unconstitutional by a court of competent jurisdiction and the allowable time for filing an appeal has expired or the appellant has exhausted all of his or her avenues of appeal, this whole act shall be considered unconstitutional and invalid.

Sec. 25. Sections 6 and 8 to 24 of this act, being sections 299.806 and 299.808 to 299.824 of the Michigan Compiled Laws, are repealed upon the expiration of 5 years and 6 months after the effective date of this 1989 amendatory act.

Sec. 26. Notwithstanding any provision of this act, prior to the repeal of section 6, the state treasurer shall reserve enough money in the fund to pay for interest subsidies pursuant to section 19, and for bids, work invoices, and requests for indemnification that were denied by the administrator, if subsequent to the denial the owner or operator requested review by the board, requested a contested case hearing, or filed a lawsuit related to the denial, and the case is still pending. After this money that is reserved reverts to the emergency response fund, it shall be used to pay for interest subsidies, and for bids, work invoices, and requests for indemnification in cases where an owner or operator is successful in persuading the board, the department, or a court that the administrator's denial was in error.

This act is ordered to take immediate effect.

.....
Secretary of the Senate.

.....
Clerk of the House of Representatives.

Approved.....

.....
Governor.

