



**House
Legislative
Analysis
Section**

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**UNDERGROUND TANK REGISTRATION
RECEIVED**

House Bill 5150 as introduced DEC 10 1987
First Analysis (11-23-87)

Mich. State Law Library

Sponsor: Rep. Mary Brown
Committee: Conservation and Environment

THE APPARENT PROBLEM:

Public Act 423 of 1984 requires owners of underground storage tanks — as defined by federal law — to register them with the Department of Natural Resources (DNR). (See Background Information.) The act, as amended, also required the department to submit a report to the legislature by September 30, 1987, containing a compilation of the underground storage tank registration data and an assessment of the actual and potential environmental hazard posed by the tanks. When the bill was introduced, Michigan farmers expressed concerns over implementation of the required procedures and the degree of complexity of the requirements of the act. A December 31, 1987, expiration date was therefore inserted into the bill. It is now felt that the procedures required by the act have proved to be satisfactory, and that the sunset date of the act should be eliminated.

Further, whenever an act repeals something, or provides for the future expiration of itself, parts of itself, or all or part of some other act, this fact — according to the attorney general — must be mentioned in the act's title. Accordingly, several years ago, the Legislative Service Bureau began to use boilerplate language that provided this notice. Whether the act provided for an outright repeal of something or a future expiration of something, the title language would include: "and to repeal certain acts and parts of acts." This same language was also used whether the repealer or sunset date applied to the amendatory act itself ("this act"), the underlying parent act ("the act"), or some other act. Public Act 423 of 1984 contains a section which states: "This act shall expire on December 31, 1987." Unfortunately, Public Act 423, in its title, gave no notice to this repeal. In his recent opinion, the attorney general ruled that the repealer language within the act did not provide sufficient notice of the repeal, because "the title to 1984 PA 423 gave no notice of the repeal of the Act." The effect of the attorney general opinion is that Public Act 423 of 1984 is unconstitutional as presently worded.

THE CONTENT OF THE BILL:

The bill would repeal the December 31, 1987, expiration date of the act.

MCL 299.706 et al.

BACKGROUND INFORMATION:

Congress created a federal underground tank regulatory program in the Hazardous and Solid Waste Amendments of 1984 — amendments to the federal Solid Waste Disposal Act — which were signed into law on November 8, 1984. Among other things, the law required the registration of many underground storage tanks. "Underground storage tank" is defined as a tank or combination of tanks, including pipes, which are at least ten percent beneath the surface of the ground and used for certain regulated substances, including petroleum. The term does not include: a farm or residential tank of no more than 1,000

gallons which is used for motor fuel; a tank used for storing heating oil on the premises where the oil is consumed; a pipeline facility registered under any of several laws; a surface impoundment, pit, pond, or lagoon; a storm or waste water collection system; a flow-through process tank; a liquid trap used in oil or gas production operations; or a storage tank on or above the surface of the floor in an underground room. The law mandated studies on underground storage tanks and farm and heating oil tanks, and allowed states to undertake more stringent regulation of underground storage tanks than was required by federal law.

In Michigan, groundwater contamination problems were becoming of increasing concern, as more and more contaminated aquifers were discovered and more and more drinking water supplies were affected. Estimates in 1982 put the number of known and suspected sites at over 1,000, with new problems being discovered at the rate of about 60 per year; about half of the new sites coming to the state's attention involved drinking water wells. The underground storage tank is a common but insidious source of contamination, since it is apt to corrode and leak toxic chemicals into the groundwater for years before the problem is detected. Frequently, groundwater is found to be contaminated with gasoline or other petroleum products, which can ruin drinking water in concentrations as low as one part per million. The widespread use and storage of petroleum products and the relative rapidity with which they can migrate through the soils makes them of particular concern.

Public Act 423 of 1984 was created to require owners of underground storage tanks, as defined by federal law, to register them with the DNR. The act, as later amended to conform more closely with federal law, requires owners of underground storage tanks brought into use on or after May 8, 1986, to register the tanks within 30 days (federal law does not require registration of tanks taken out of operation before January 1, 1974). Registration must be provided either on a form which is provided by DNR or on one which complies with federal notification requirements, and is approved by DNR. The act authorizes DNR to require the owner of a leaking tank to name the owner of the property where the tank is located, detail current and previous contents of the tank, provide the dates on which contents were changed or removed, and describe the monitoring and leak detection tests and methods used on the tank. The act also made provisions for civil fines for late registration or failure to register, and required the DNR to submit a report by September 30, 1987, compiling registration data and an assessment of the actual and potential environmental hazard posed by the tanks.

FISCAL IMPLICATIONS:

According to the Department of Natural Resources, the program set into motion by Public Act 423 of 1984 has

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already been funded; the bill would result in no additional costs to the state. (11-20-87)

ARGUMENTS:

For:

The act required that the DNR provide the legislature with a report by September 30, 1987, containing the compiled registration data and an assessment of the actual and potential environmental hazard posed by the tanks. The report demonstrates the continuing need for the program: leaking underground storage tanks account for 14 percent of the documented sites of environmental contamination in the state, and 90 percent of these tanks are contaminating water. (These documented sites are found in the Michigan Sites of Environmental Contamination Priority Lists, Act 307, February 1987. The list, however, does not include sites unreported but filed in field offices, leaks unreported by owner-operators, recent leaks, and undiscovered leaking tanks; DNR uses other reports to obtain a more accurate leaking underground storage tank estimate). The seriousness of this situation, according to the report, is underscored by examining the resources affected by the leaks. The time it takes for leaked products to be sensed by an individual is also sufficient to contaminate groundwater. While 90 percent of the leaking sites in Michigan (198 out of 220) are contaminating groundwater, the other 22 sites have contaminated soils which threaten groundwater: 20 have contaminated residential or municipal wells, while another 71 residential or municipal wells are potentially affected. The report also quotes a national survey conducted by the Environmental Protection Agency, which found operating retail gasoline stations to be the single greatest source of leaking underground storage tanks in the nation.

For:

Eventually, any underground storage tank will leak, and many of the large numbers of steel tanks buried in the fifties and sixties are already corroded and leaking. Records on some tanks may be lost forever, and so it is essential that action continue to be taken to gather as much information as possible on underground tanks. Decisions on how to address groundwater contamination problems — whether on a statewide or case-by-case basis — will continue to be hampered by a lack of information until the extent of the current and potential problem can be better determined with the data on underground tanks that the act provides.

For:

Control of groundwater contamination is especially important in Michigan with its porous soils, shallow aquifers, reliance on groundwater for drinking water, and population sensitized to chemical contamination problems. Frequently, groundwater has been found to be contaminated with gasoline or other petroleum products, which can ruin drinking water in concentrations as low as one part per million. The widespread use and storage of petroleum products and the relative rapidity with which they can migrate through the soils makes them of particular concern. Solving the state's groundwater contamination problems will be a monumental, perhaps impossible, task, but a necessary preliminary step in the process is to gather the data necessary for a better assessment of the problem. No one knows exactly how many aging and abandoned underground tanks might exist in the state, or what they might still contain, and it could be that we will never know. However, many consider it important that existing and future tanks be identified wherever possible, so that

information will be available when needed for future decisions on regulatory programs and for responses to contamination incidents.

For:

By removing the problematic phrase "this act shall expire..." from the act, the bill would eliminate the dilemma of the act being considered unconstitutional by virtue of the attorney general's opinion.

Against:

The act may err in exempting homeowners' fuel oil tanks, considering how much damage can be done by very small leaks. Further, a registration requirement might tend to discourage homeowners from installing the potentially harmful underground tanks.

Response: Indications are that homeowners' tanks are but a very small part of the problem — only about one percent of the known groundwater contamination incidents are attributed to leaky residential storage tanks. Many believe that applying the registration requirements to residential tanks would be unnecessarily burdensome.

POSITIONS:

The Michigan Petroleum Association supports the bill. (11-20-87)

The Public Interest Research Group in Michigan (PIRGIM) supports the bill. (11-20-87)

LICA (Liquid Industrial Control Association) supports the bill. (11-20-87)

The Michigan Truck Stop Operators Association supports the bill. (11-20-87)