



**House
Legislative
Analysis
Section**

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MUSTFA FUND

**House Bill 5349 (Substitute H-2)
Sponsor: Rep. Clyde LeTarte**

**Senate Bill 738 as passed by the Senate
Sponsor: Senator Loren Bennett**

First Analysis (12-6-95)

**House Committee: Conservation,
Environment, and Great Lakes
Senate Committee: Natural Resources
and Environmental Affairs**

THE APPARENT PROBLEM:

Under the Leaking Underground Storage Tank Act, environmental protection regulatory fees are imposed on the sale of all refined petroleum products, and deposited into the Michigan Underground Storage Tank Financial Assurance (MUSTFA) Fund, from which money is made available to owners of leaking underground storage tank systems (LUSTs) for corrective actions for accidents that result in leaks, or for indemnification pursuant to a judgment or settlement associated with a release. (For the history of the MUSTFA fund, see *BACKGROUND INFORMATION*.) However, as has been the case with similar programs in other states, MUSTFA has become insolvent. The state treasurer determined on March 31, 1995 that there would not be sufficient revenue to pay expected expenditures under MUSTFA. Subsequently, on April 3, 1995, as required under the act, the fund administrator notified the owners and operators of registered underground tanks that funding would no longer be available for new claims or requests for indemnification received 90 days after the state treasurer's determination. Specifically, no claims, work invoices, and requests for indemnification received after 5 p.m. on June 29, 1995 would be eligible for funding. The state has since been sued by organizations representing gas stations to keep MUSTFA open, and, under a temporary restraining order, the state must continue to receive claims and invoices. Consequently, it is proposed that the state continue to collect the regulatory fees on petroleum sales and pay for claims received by June 29, 1995 -- the date that MUSTFA was officially declared insolvent. It is also proposed that a MUSTFA review panel be appointed to review options to fund corrective actions for LUSTs occurring prior to December 22, 1998, the initial submittal deadline under the act for a claim or request for indemnification, and to decide

whether a new funding mechanism should be enacted to address funding for corrective actions.

THE CONTENT OF THE BILLS:

The bills would amend Part 215 of the Environmental Protection Act concerning the Michigan Underground Storage Tanks Financial Assurance Fund (MUSTFA) to establish a MUSTFA Review Panel, and to place a June 29, 1995 deadline on corrective action work invoices and requests for indemnification that may be funded through the MUSTFA Fund. The bills are tie-barred to each other.

House Bill 5349 (MCL 324.21508a et. al.) would amend Part 215 of the Environmental Protection Act, concerning MUSTFA, to -- among other provisions -- establish a MUSTFA Review Panel, which would review options for funding corrective actions for releases from leaking underground storage tank systems (LUSTs) that would not otherwise be funded under the act.

MUSTFA Review Panel. The MUSTFA Review Panel would be created within the Legislative Council, and would consist of three members of the Senate, appointed by the Senate Majority Leader; three members of the House, appointed by the Speaker of the House; and three individuals appointed jointly by both leaders as follows: one individual representing underground storage tank system owners and operators; one individual representing environmental consultants and contractors; and one individual with knowledge and expertise in state financial assurance mechanisms for underground storage tank system releases in other states.

House Bill 5349 and Senate Bill 738 (12-6-95)

The bill would require that the panel be appointed within 30 days after the bill's effective date, and, upon appointment, review options to fund corrective actions for LUSTs occurring prior to December 22, 1998, that would not otherwise be funded under the act. Within six months after the effective date of the bill, the panel would be required to make recommendations to the legislature on whether it believed that amendments were needed to address the funding of these corrective actions, and whether a new state funding mechanism should be enacted. In making these recommendations, the panel would have to consider all of the following:

- The role of the state in financing environmental cleanups.
- Whether the lack of state funding for corrective actions required under the provisions of the act affected the state's transportation needs, and whether it had a disparate impact on small businesses.
- Whether the state should distinguish between historical and new releases in any new funding mechanism.
- The role of private insurance in addressing environmental cleanups.

The Department of Environmental Quality (DEQ) would provide information and assistance throughout the panel's deliberations. The panel would disband after issuing its recommendations.

Indemnification Procedures. The bill would also change some of the requirements for an owner or operator to be eligible to receive money for indemnification or corrective action from the fund or bond proceeds account. Specifically, the bill would require that a work invoice or request for indemnification be submitted on or before 5 pm on June 29, 1995. (The act currently requires claims or requests for indemnification to be submitted before December 22, 1998.) The bill would also make permanent the requirement that the claim not arise from an underground storage tank closed prior to January 1, 1974 in compliance with the fire prevention code. The act currently would extend this requirement only through January 1, 1997.

Other Provisions. The bill would change the provision which provides for repeal of this part of the act on January 1, 2005, and, instead, would schedule the repeal of part 215 to coincide with the date the state treasurer files a notice of final payment of all obligations lawfully payable from the fund with the secretary of state. Finally, the bill would remove the requirement that the Department of Natural Resources

annually evaluate and report to the legislature the impact on the solvency of the fund of the submittal date of December 22, 1998, as well as the requirement that the legislature examine the report and take such actions as are necessary to assure the fund's solvency. The bill would also remove the provision requiring the department to study and report on the fiscal soundness of the fund, calculate costs and revenues over the remaining life of the fund, and consider and outline appropriate cost containment measures to assure the fund's long term viability by May 1, 1995.

Senate Bill 738 (MCL 324.21506 et. al.) would amend the Natural Resources and Environmental Protection Act generally to place a June 29, 1995, deadline on corrective action work invoices and requests for indemnification that may be funded through the MUSTFA fund, and to increase, from \$1 million to \$3 million, the amount that could be deposited into the emergency response fund before that money is transferred to the MUSTFA fund. The bill would also replace references to the Department of Natural Resources with references to the Department of Environmental Quality.

The bill specifies that, consistent with the March 31, 1995, determination by the state treasurer that revenue will not be sufficient to pay expected expenditures and the April 3, 1995, notice of the fund administrator, funding would no longer be available under the MUSTFA provisions of the act for new claims, work invoices, and requests for indemnification received after 5 p.m. on June 29, 1995. Further, the bill provides that work invoices and requests for indemnification received prior to 5 p.m. on June 29, 1995, could be paid to the extent money was available in the fund, including payments that had been submitted and denied and for which the denials had been reversed on appeal; and that the Department of Treasury would stop collecting regulatory fees when it had received sufficient revenues to pay all MUSTFA obligations in full.

Currently, the act provides that all regulatory fees collected under the act are to be deposited in the Emergency Response Fund until it reaches \$1 million, at which time the fees are to be deposited in the MUSTFA fund. Senate Bill 738 would amend the act to specify that regulatory fees would be deposited into the MUSTFA fund when the emergency response fund reaches \$3 million.

BACKGROUND INFORMATION:

In the 1980s, both the state and the federal government attempted to battle the growing problem of environmental contamination through a myriad of

legislation. For example, in 1984, in light of the contribution that leaking underground storage tanks (LUSTs) make to groundwater contamination, the state established a program under the Underground Storage Tank Regulatory Act (Public Act 423 of 1984) that required owners of underground storage tanks to register them with the Department of Natural Resources (DNR). The act was consistent with new federal laws, and was a preliminary step in gathering data to assess the problem. Despite efforts to clean up contaminated sites, however, incidents of groundwater contamination continued to increase, and each year approximately 250 new sites were added to the state's Environmental Response Priority List of contaminated sites, to become eligible for money from the Environmental Response Fund. Although LUSTs were not given high priority on the environmental response list, approximately 25 percent of the contaminated sites contained leaking underground storage tanks, and states could obtain funding for cleanup of these sites from the federal Leaking Underground Storage Tank Trust Fund (LUST Trust), which was created for that purpose by the federal Superfund Amendments and Reauthorization Act of 1986. Money from the fund was made available to the states over a five-year period, which started in 1987, provided that they incorporated federal standards regarding leaking underground storage tanks and implemented a regulatory program. Michigan created its own LUST Act in 1988 (Public Act 478 of 1988) to assure that it would receive money from the federal trust. The act required the fire marshal division of the Department of State Police to develop rules regarding the procedure for reporting suspected releases, and outlined owner, operator, and departmental responsibilities regarding leaking storage tanks. In addition, Public Act 479 of 1988 amended the Underground Storage Tank Regulatory Act to require the owners of underground storage tank systems to register annually with the state fire marshal, rather than with the DNR. (The registration provisions of the act do not apply to all storage tanks. Small storage tank systems with a capacity of 110 gallons or less, natural gas pipelines, storm water systems, storage tank systems that held hazardous waste as identified under the federal Solid Waste Disposal Act, or a mixture of such hazardous waste were among those excluded from the requirement).

Under Public Act 479 of 1988, money from the registration fees was to be deposited by the fire marshal division into a proposed Underground Storage Tank Regulatory Enforcement Fund and used only by the fire marshal division to enforce the act. In addition, Public Act 518 of 1988 created the Michigan Underground Storage Tank Financial Assurance (MUSTFA) Fund (administered by an employee of the Department of

Management and Budget) and the Emergency Response Fund to assist people in Michigan in meeting the financial requirements of the federal Solid Waste Disposal Act, and also to promote compliance with the Underground Storage Tank Regulatory Act and the Leaking Underground Storage Tank Act, and to provide for corrective actions to be taken when underground storage tanks are found to be leaking. Under Public Act 518, money from the MUSTFA fund was to be used, among other things, for payments (up \$1 million per release) for approved work in cleaning up contamination from storage tank releases from owners or operators who had registered their tanks prior to reporting releases. The fund was also to be used to cover the administrative costs incurred by the various departments involved in carrying out the duties imposed under the act: the state fire marshal division, which inspects petroleum releases, determines if a tank was registered at the time of the release, and notifies the DNR of confirmed releases; the DNR (now the DEQ), which has the responsibility for approving cleanup work plans and project completions for the cleanup of environmental contamination resulting from releases of refined petroleum products; the Department of Management and Budget (DMB), which administers the financial transactions of the program; the Department of Treasury, which collects the environmental protection regulatory fees and administers the interest subsidy portion of the program; and the Department of Attorney General, which handles civil suits on behalf of the DNR. Money in the Emergency Response Fund is used by the DEQ to undertake corrective actions under the LUST Act for leaking underground storage tanks that may contain several substances, including petroleum.

Public Act 152 of 1989 established a revenue source for the MUSTFA Fund and the Emergency Response Fund. Under this act, an "environmental protection regulatory fee" of 1/2 cents per gallon (later raised to 7/8 cents per gallon) was imposed on the sale of all refined petroleum products. The regulatory fees collected under the act were to be deposited in the Emergency Response Fund until it reached \$1 million, at which time the fees were to be deposited in the assurance fund. Not more than \$1 million can be spent from the emergency fund in any one year. The assurance fund began operating on February 15, 1990. However, portions of Public Act 518, including those that created the fund and provided for its revenue source and distribution were scheduled to expire on January 1, 1995. With that deadline approaching, Public Act 1 of 1993 extended the sunset for the regulatory fee and the act's repeal to January 1, 2000, and -- in response to concerns that the fund would be in debt by 1995 -- deleted the sunset on sections providing for the MUSTFA fund, the 7/8-cent regulatory fee, and payments from the fund for

indemnification and corrective action. As concern over the fund's projected insolvency grew, a Michigan Underground Storage Tank Financial Assurance Authority was created under Public Act 132 of 1993 to administer the assurance fund. This year, Public Act 12 of 1995 extended for one year the maximum funding amounts for certain claims against the MUSTFA fund, and required the Department of Environmental Quality (DEQ) to complete a study of the fund's fiscal soundness by May 1, 1995.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would result in an indeterminate increase in costs and revenues to the state, dependent on the amount and terms of revenue bonds issued to cover MUSTFA invoices through June 29, 1995. In addition, some administrative costs would be incurred by the MUSTFA review panel, dependent upon whether or not some of these could be absorbed by existing Department of Environmental Quality (DEQ) resources.

According to the DEQ, as of June 29, 1995, there were approximately \$252 million in invoices and reserves for challenged claims. Under current law, \$184 million in revenue is available between now and the year 2005 (after subtracting \$206 million in bond repayment, an estimated \$84 million in interest payments, and \$36 million in administrative costs). This means there is approximately \$68 million in claims for which there will be insufficient revenue.

The department estimates that the 7/8 cent per gallon fee regulatory fee would need to be extended for at least seven years beyond 2005 to generate \$357 million in revenue to cover principal and interest payments on a \$252 million bond. (This amount includes consideration of the \$185 million in potential revenue as part of bond calculations.) (12-5-95)

ARGUMENTS:

For:

The provisions of the bills would allow the state a temporary breathing period in which to study the problem of MUSTFA's insolvency and to comply with a court order requiring that the state continue to receive claims and invoices and to make payments for work invoices or requests for indemnification that have been submitted and denied by the department, and for which the denials have subsequently been reversed on appeal.

Against:

Rather than introduce another "stop-gap" measure by assigning to a MUSTFA review panel the responsibility of deciding what should be done; the state should make a commitment now to appropriate money for the MUSTFA fund. The fund was established to assist underground storage tank owners and operators in meeting the cleanup costs for leaking tanks. Few gas station and other storage tank owners could afford to meet these financial responsibilities on their own. The assurance fund also served as an insurance program in cases where a service station or other business owner sought a business loan, since financial institutions are reluctant to make loans unless they receive assurance that funds would be provided to cover the costs of corrective actions should the property being purchased contain leaking underground tanks. Without the MUSTFA fund, many service stations and businesses that had relied on having until 1998 to have invoices paid could be forced out of business because they can't afford the cleanup costs. In addition, some municipalities that have active cleanup programs for underground storage tanks have incurred -- and continue to incur -- hundreds of thousands of dollars in costs for programs that were established before MUSTFA's insolvency became public knowledge. The state made a commitment to these property owners to offset their cleanup costs and should honor that commitment.

Against:

It is obvious to many people that Michigan can no longer afford to hang onto a failed program and that new options must be found to fund corrective actions for LUSTs. For example, as an alternative to the MUSTFA fund, it has been suggested in the past that MUSTFA should be phased out and private insurance companies allowed to provide coverage to owners of underground storage tank systems.

POSITIONS:

The Department of Environmental Quality (DEQ) supports the bills. (12-5-95)

The Service Station Dealers Association of Michigan supports the bills. (12-6-95)

The Michigan Petroleum Association supports the bills. (12-6-95)

Martin Environmental, Inc., of Livonia, Michigan, supports the bills. (12-6-95)

The Superior Environmental Corporation of Marne, Michigan supports the bills. (12-6-95)

The Metro Detroit Service Stations Association supports the bills, but also submitted testimony stressing that the state should not abandon the MUSTFA fund. (12-6-95)

MacKenzie Environmental Services, Inc., of Grand Ledge, Michigan, supports the bills. (12-6-95)

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