



**House
Legislative
Analysis
Section**

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MUSTFA FUND

House Bill 5349 as enrolled
Public Act 252 of 1995
Sponsor: Rep. Clyde LeTarte

Senate Bill 738 as enrolled
Public Act 269 of 1995
Sponsor: Senator Loren Bennett

Revised Second Analysis (2-2-96)

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

THE APPARENT PROBLEM:

Under Part 215 of the Natural Resources and Environmental Protection Act, regulating underground storage tanks, 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, or requests for indemnification received after 5 p.m. on June 29, 1995 would be eligible for funding. The state was then sued by organizations representing gas stations to keep MUSTFA open. A preliminary injunction was issued on September 5, 1995, requiring the state to continue to receive claims and invoices; the injunction was lifted on January 19, 1996. A special work group has been established to research available options to fund corrective actions for LUSTs occurring up 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. Meanwhile, it is proposed that the state continue to collect the regulatory fees on petroleum sales to pay for work invoices and requests for indemnification (but not for claims) received by June 29, 1995 -- the date that MUSTFA was officially declared insolvent.

THE CONTENT OF THE BILLS:

The bills would amend Part 215 of the Natural Resources and Environmental Protection Act concerning the Michigan Underground Storage Tanks Financial Assurance Fund (MUSTFA) to place a June 29, 1995 deadline on corrective action work invoices and requests for indemnification for reimbursement from the MUSTFA Fund; to increase, from \$1 million to \$3 million, the amount that is to be deposited in the Emergency Response Fund before that money is transferred to the MUSTFA Fund; and to require that the Department of Treasury cease collecting the regulatory fees of 7/8 cents per gallon -- which are currently imposed on the sale of all refined petroleum products -- when sufficient revenues have been collected to pay the fund's obligations. The bills are tie-barred to each other.

House Bill 5349 would amend Part 215 of the Natural Resources and Environmental Protection Act, concerning MUSTFA (MCL 324.21510 et. al.), to -- among other provisions -- require that only those work

House Bill 5349 (2-2-96)

invoices or requests for indemnification submitted on or before 5 p.m. on June 29, 1995, be eligible for reimbursement from the MUSTFA Fund, rather than those received by December 22, 1998.

Invoice and 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 p.m. on June 29, 1995. (The act currently requires invoices 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 would amend the Natural Resources and Environmental Protection Act (MCL 324.21506 et. al.) 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 specify that these could be paid to the extent money was available in the fund.

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. However, 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. The bill would also replace the current requirement that payments for reimbursement on claims be issued to either an owner and/or operator or the consultant with the provision that they be issued jointly to an owner or operator and to a consultant, rather than being made to either party, and replace references to the Department of Natural Resources with references to the Department of Environmental Quality.

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 to \$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 Department of Environmental Quality, 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 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.) (1-11-96)

MUSTFA should be phased out and private insurance companies allowed to provide coverage to owners of underground storage tank systems.

ARGUMENTS:

For:

The provisions of the bills would limit eligibility of claims, work invoices, and requests for indemnification to those received before 5 p.m. on June 29, 1995, in accordance with the state treasurer's determination of March 31, 1995, that there would not be sufficient revenue to pay expected expenditures under MUSTFA, and the fund administrator's subsequent ninety-day notification. This would allow the state a temporary breathing period in which to study the problem of MUSTFA's insolvency.

Against:

Rather than introduce another temporary measure; 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

■ 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.