

Act No. 269  
Public Acts of 1995  
Approved by the Governor  
January 7, 1996  
Filed with the Secretary of State  
January 8, 1996

**STATE OF MICHIGAN  
88TH LEGISLATURE  
REGULAR SESSION OF 1995**

Introduced by Senators Bennett, Gast, McManus, North, Rogers, Cisky, Van Regenmorter, Schwarz, Geake, Gougeon, Dunaskiss, Schuette, Steil, Stille, Koivisto and Dingell

# **ENROLLED SENATE BILL No. 738**

AN ACT to amend sections 21506, 21508, and 21515 of Act No. 451 of the Public Acts of 1994, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," being sections 324.21506, 324.21508, and 324.21515 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Sections 21506, 21508, and 21515 of Act No. 451 of the Public Acts of 1994, being sections 324.21506, 324.21508, and 324.21515 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 21506. (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 lapse to the general fund.

(4) Except as provided in subsection (5), money in the fund shall be expended only as follows and in the following order of priority:

(a) To pay off bonds or notes pursuant to this part plus any amount necessary to maintain a fully funded debt reserve or other reserve intended to secure the principal and interest on the bonds or notes as may be required by resolution indenture or other agreement of the authority.

(b) For the reasonable administrative cost of implementing this part by the department, the department of treasury, the department of attorney general, and the authority as annually appropriated by the legislature. Administrative costs include the actual and necessary expenses incurred by the board and its members in carrying out the duties imposed by this part. Total administrative costs expended under this subdivision shall not exceed 7% of the fund's projected revenues in any year. Costs incurred by the authority for the issuance of bonds or notes which may also be payable from the proceeds of the bonds or notes shall not be considered administrative costs in making such a determination.

(c) For payment of rewards under section 21549.

(d) For the interest subsidy program established in section 21522. 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. Additional fund revenue shall not be set aside for the interest subsidy program until all of the first year revenue is expended.

(e) For corrective action and indemnification including all of the following:

(i) Payments for work invoices submitted prior to 5 p.m. on June 29, 1995 and approved by the department pursuant to this part.

(ii) Payments for requests for indemnification submitted prior to 5 p.m. on June 29, 1995 and approved by the department pursuant to this part.

(iii) Payments for work invoices or requests for indemnification that were submitted prior to 5 p.m. on June 29, 1995 and denied by the department pursuant to this part but which denials were subsequently reversed on appeal.

(5) Upon payment in full of all obligations listed in subsection (4), the state treasurer shall file with the secretary of state a notice of final payment of all obligations lawfully payable from the fund.

(6) 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)(b). The board shall provide a copy of these recommendations to each affected department.

Sec. 21508. (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 21506(4) for the cleanup and prevention of environmental contamination resulting from releases of refined petroleum products from underground storage tank systems and to pay off bonds or notes pursuant to this part. 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. 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 in this state 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. Notwithstanding any other provision of this part, the department of treasury shall stop collecting regulatory fees under this part when it has received sufficient revenues to pay in full all obligations listed in section 21506(4).

(3) A public utility with more than 500,000 customers in this state is exempt from any fee or assessment imposed under this part 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 part shall be deposited into the emergency response fund created in section 21507 until the emergency response fund reaches \$3,000,000.00. When the emergency response fund is at \$3,000,000.00, all regulatory fees shall be deposited into the fund.

(5) Consistent with the March 31, 1995 determination by the state treasurer that revenue will not be sufficient to pay expected expenditures, and consistent with the April 3, 1995 notice of the fund administrator pursuant to subsection (6), funding is no longer available under this part for new claims, work invoices, and requests for indemnification received after 5 p.m. on June 29, 1995. Claims, work invoices, and requests for indemnification received after 5 p.m. on June 29, 1995 are not eligible for funding under this part. Work invoices and requests for indemnification received prior to 5 p.m. on June 29, 1995 may be paid to the extent money is available in the fund as provided in this part.

(6) 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 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 petroleum underground storage tank systems registered under part 211 that funding under this part 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 to the administrator prior to or during this 90-day period may be paid to the extent money is available in the fund as provided in this part.

(7) The department of treasury may audit, enforce, collect, and assess the fee imposed by this part 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. 21515. (1) To receive money from the fund or bond proceeds account for corrective action, the owner or operator, or a consultant retained by the owner or operator, shall follow the procedures outlined in this section and shall submit reports, work plans, feasibility analyses, hydrogeological studies, and corrective action plans prepared under part 213 and rules promulgated under that part to the department, and shall provide other information required by the administrator relevant to determining compliance with this part.

(2) To receive money from the fund for corrective action, an owner or operator shall submit a claim to the administrator. An owner or operator shall not submit a claim until work invoices in excess of \$5,000.00 of the costs of corrective action have been incurred.

(3) Upon receipt of a completed claim pursuant to subsection (2), the administrator shall make all of the following determinations:

(a) Whether the department of environmental quality, underground storage tank division has objected to payment on the claim because the work performed or proposed to be performed is not consistent with the requirements of part 213 and rules promulgated under that part.

(b) Whether the work performed is necessary and appropriate considering conditions at the site of the release.

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

(d) Whether the owner or operator is eligible to receive funding under this part.

(e) Whether the consultant retained by the owner or operator has complied with section 21517.

(4) If the administrator fails to make the determinations required under this section within 30 days after receipt of certification from the department of environmental quality, underground storage tank division that the owner or operator has met the requirements of section 21510(1)(b) and (c), the claim is considered to be approved.

(5) If the administrator determines under subsection (3) that the work invoices included with the claim are necessary and appropriate considering conditions at the site of the release and reasonable in terms of cost and the owner or operator is eligible for funding under this part, the administrator shall approve the claim and notify the owner or operator who submitted the claim of the approval. If the administrator determines that the work described on the work invoices submitted was not necessary or appropriate or the cost of the work is not reasonable, or that the owner or operator is not eligible for funding under this part, the administrator shall deny the claim or any portion of the work invoices submitted and give notice of the denial to the owner or operator who submitted the claim.

(6) The owner or operator may submit additional work invoices to the administrator after approval of a claim under subsection (5). Within 45 days after receipt of a work invoice, the administrator shall make the following determinations:

(a) Whether the work invoice complies with subsection (3).

(b) Whether the owner or operator is currently in compliance with the registration and fee requirements of part 211 and the rules promulgated under that part for the underground storage tank system from which the release occurred.

(7) If the administrator determines that the work invoice does not meet the requirements of subsection (6), he or she shall deny the work invoice and give written notice of the denial to the owner or operator who submitted the work invoice.

(8) The administrator shall keep records of approved work invoices. If the owner or operator has not exceeded the allowable amount of expenditure provided in section 21512, the administrator shall forward payment vouchers to the state treasurer within 45 days of making the determinations under subsection (6).

(9) The administrator may approve a reimbursement for a work invoice that was submitted by an owner or operator for corrective action taken if the work invoice meets the requirements of this part for an approved claim and an approved work invoice.

(10) Except as provided in subsection (11), upon receipt of a payment voucher, the state treasurer or the authority shall make a payment jointly to the owner or operator and the consultant within 30 days if sufficient money exists in the fund or a bond proceeds account.

(11) Upon direction of the administrator, the state treasurer or the authority may withhold partial payment of money on payment vouchers if there is reasonable cause to believe that there are suspected violations of section 21548 or if necessary to assure acceptable completion of the proposed work.

(12) The department of environmental quality shall prepare and make available to owners and operators and consultants standardized claim and work invoice forms.

Section 2. This amendatory act shall not take effect unless House Bill No. 5349 of the 88th Legislature is enacted into law.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved -----

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Governor.

