

**SUBSTITUTE FOR  
HOUSE BILL NO. 5302**

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending sections 21542 and 21543 (MCL 324.21542 and  
324.21543) and by adding sections 21312b, 21312c, and 21543a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1        SEC. 21312B. (1) AFTER SUBMITTING A CLOSURE REPORT UNDER  
2 SECTION 21312A, AN OWNER OR OPERATOR OR A CONSULTANT RETAINED BY  
3 AN OWNER OR OPERATOR MAY SUBMIT A REQUEST FOR A DEPARTMENT CERTI-  
4 FICATION OF CLOSURE. AN ADMINISTRATIVE FEE OF \$1,250.00 SHALL BE  
5 SUBMITTED ALONG WITH THE REQUEST.

6        (2) WITHIN 90 DAYS AFTER RECEIPT OF A REQUEST FOR A DEPART-  
7 MENT CERTIFICATION OF CLOSURE UNDER SUBSECTION (1), THE DEPART-  
8 MENT SHALL DETERMINE WHETHER THE SITE MEETS THE CLEANUP CRITERIA  
9 UNDER THIS PART. IF THE SITE MEETS THE CLEANUP CRITERIA, THE  
10 DEPARTMENT SHALL ISSUE A CLOSURE LETTER THAT CERTIFIES THAT THE

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1 DEPARTMENT HAS VISITED THE SITE, CONDUCTED AN INVESTIGATION, AND  
2 DETERMINED THAT THE SITE MEETS THE CLEANUP CRITERIA. IF THE  
3 DEPARTMENT DETERMINES THAT THE SITE DOES NOT MEET THE CLEANUP  
4 CRITERIA, THE DEPARTMENT SHALL NOTIFY THE OWNER OR OPERATOR OF  
5 ITS DETERMINATION AND THE BASIS FOR ITS DETERMINATION. UPON  
6 RECEIPT OF NOTIFICATION THAT THE SITE DOES NOT MEET THE CLEANUP  
7 CRITERIA, A CONSULTANT RETAINED BY THE OWNER OR OPERATOR MAY CON-  
8 DUCT ADDITIONAL CORRECTIVE ACTION AT THE SITE AND FOLLOWING COM-  
9 PLETION OF THAT CORRECTIVE ACTION, THE OWNER OR OPERATOR OR THE  
10 CONSULTANT RETAINED BY THE OWNER OR OPERATOR MAY RESUBMIT THE  
11 REQUEST FOR DEPARTMENT CERTIFICATION OF CLOSURE. THE RESUBMITTAL  
12 SHALL INCLUDE A SUMMARY OF THE ADDITIONAL CORRECTIVE ACTION  
13 ACTIVITIES THAT WERE UNDERTAKEN AND THE RESULTS OF ANY SAMPLING  
14 CONDUCTED. THE DEPARTMENT SHALL REVIEW 1 RESUBMITTAL FREE OF  
15 CHARGE. THE ADMINISTRATIVE FEE PROVIDED FOR IN SUBSECTION (1)  
16 SHALL ACCOMPANY ANY ADDITIONAL RESUBMITTALS.

17 (3) IF THE DEPARTMENT DOES NOT COMPLETE ITS DETERMINATION  
18 UNDER THIS SECTION WITHIN 90 DAYS AS REQUIRED BY SUBSECTION (2),  
19 THE DEPARTMENT SHALL REFUND THE OWNER OR OPERATOR THE ADMINISTRA-  
20 TIVE FEE THAT WAS SUBMITTED AND SHALL COMPLETE ITS DETERMINATION  
21 AS SOON AS POSSIBLE. IF THE DEPARTMENT DOES NOT MAKE A DETERMI-  
22 NATION UNDER THIS SECTION WITHIN 180 DAYS AFTER THE REQUEST FOR  
23 DEPARTMENT CERTIFICATION OF CLOSURE WAS SUBMITTED TO THE DEPART-  
24 MENT, THE SITE SHALL BE CONSIDERED CLOSED AND THE DEPARTMENT  
25 SHALL ISSUE A CLOSURE LETTER.

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1       (4) ADMINISTRATIVE FEES COLLECTED UNDER THIS SECTION SHALL  
2 BE FORWARDED TO THE STATE TREASURER FOR DEPOSIT IN THE CLOSURE  
3 CERTIFICATION FUND CREATED IN SECTION 21312C.

4       SEC. 21312C. (1) THE CLOSURE CERTIFICATION FUND IS CREATED  
5 WITHIN THE STATE TREASURY.

6       (2) THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS  
7 FROM ANY SOURCE FOR DEPOSIT INTO THE CLOSURE CERTIFICATION FUND.  
8 THE STATE TREASURER SHALL DIRECT THE INVESTMENT OF THE CLOSURE  
9 CERTIFICATION FUND. THE STATE TREASURER SHALL CREDIT TO THE CLO-  
10 SURE CERTIFICATION FUND INTEREST AND EARNINGS FROM FUND  
11 INVESTMENTS.

12       (3) MONEY IN THE CLOSURE CERTIFICATION FUND AT THE CLOSE OF  
13 THE FISCAL YEAR SHALL REMAIN IN THE CLOSURE CERTIFICATION FUND  
14 AND SHALL NOT LAPSE TO THE GENERAL FUND.

15       (4) THE DEPARTMENT SHALL EXPEND MONEY FROM THE CLOSURE CER-  
16 TIFICATION FUND, UPON APPROPRIATION, ONLY TO CONDUCT CLOSURE CER-  
17 TIFICATIONS AND ISSUE CLOSURE LETTERS PURSUANT TO SECTION 21312B.

18       Sec. 21542. (1) The department, after consultation with the  
19 board, shall prepare and annually update a list of qualified  
20 underground storage tank consultants who, based on department  
21 guidelines, are qualified to carry out the responsibilities of  
22 consultants as provided in part 213 and to oversee corrective  
23 actions. However, in preparing this list of consultants, the  
24 department is not responsible or liable for the performance of  
25 the consultants. The department shall make this list of consul-  
26 tants available to a person upon request.

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1       (2) The department shall ANNUALLY include a person on the  
2 list of qualified consultants upon application AND PAYMENT OF THE  
3 FEE PROVIDED FOR IN SUBSECTION (6), if the person meets all of  
4 the following requirements:

5       (a) The person demonstrates experience in all phases of  
6 underground storage tank work, including tank removal oversight,  
7 site assessment, soil removal, feasibility, design, remedial  
8 system installation, remediation management activities, and site  
9 closure.

10       (b) The person has 1 or more individuals actively on staff  
11 who are certified underground storage tank professionals. Each  
12 certified underground storage tank professional shall provide a  
13 letter declaring that he or she is employed by the applicant and  
14 that the individual has an active operational role in the daily  
15 activities of the applicant.

16       (c) The person demonstrates that the person has or will be  
17 able to obtain, if approved, all of the following:

18       (i) Workers' compensation insurance.

19       (ii) Professional liability errors and omissions insurance.  
20 This policy may not exclude bodily injury, property damage, or  
21 claims arising out of pollution for environmental work and shall  
22 be issued with a limit of not less than \$1,000,000.00 per  
23 occurrence.

24       (iii) Contractor pollution liability insurance with limits  
25 of not less than \$1,000,000.00 per occurrence, if not included  
26 under the professional liability errors and omissions insurance  
27 required under subparagraph (ii). The insurance requirement

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1 under this subparagraph is not required for consultants who do  
2 not perform contracting functions.

3 (iv) Commercial general liability insurance with limits of  
4 not less than \$1,000,000.00 per occurrence and \$2,000,000.00  
5 aggregate.

6 (v) Automobile liability insurance with limits of not less  
7 than \$1,000,000.00 per occurrence.

8 Deductibles in excess of 10% of the insurance limits provided in  
9 this subdivision, or the use of self-insurance, must be approved  
10 by the department. Insurance policies must be written by carri-  
11 ers authorized to write such business, or approved as an eligible  
12 surplus lines insurer, by the state. The insurance utilized must  
13 be placed with an insurer listed in A.M. Best's with a rating of  
14 no less than B+ VII.

15 (d) The person demonstrates compliance with the occupational  
16 safety and health act of 1970, Public Law 91-596, 84 Stat. 1590,  
17 and the regulations promulgated under that act, and the Michigan  
18 occupational safety and health act, ~~Act No. 154 of the Public~~  
19 ~~Acts of 1974, being sections 408.1001 to 408.1094 of the Michigan~~  
20 ~~Compiled Laws~~ 1974 PA 154, MCL 408.1001 TO 408.1094, and the  
21 rules promulgated under that act, and demonstrates that all such  
22 rules and regulations have been complied with during the person's  
23 previous corrective action activity.

24 (3) A person applying to be placed on the list of qualified  
25 consultants under this section shall submit an application to the  
26 department along with documentation that the person meets the  
27 requirements of subsection (2) ALONG WITH THE FEE PROVIDED FOR IN

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1 SUBSECTION (6). If the person is a corporation, the person shall  
2 include a copy of its most recent annual report.

3 (4) After submitting an application under this section, or  
4 any time after a consultant is included on the list of qualified  
5 consultants, the person shall notify the department within 10  
6 days of a change in any of the requirements of subsection (2), or  
7 any material change in the person's operations or organizational  
8 status that might affect the person's ability to operate as a  
9 consultant.

10 (5) A consultant shall be suspended or removed from the list  
11 of qualified consultants for fraud or other cause as determined  
12 by the department, including, but not limited to, failing to  
13 select and employ the most cost effective corrective action  
14 measures. As used in this subsection, "cost effective" includes  
15 a consideration of timeliness of implementation of the corrective  
16 action measures.

17 (6) THE ANNUAL ADMINISTRATIVE FEE FOR INCLUSION ON THE LIST  
18 OF QUALIFIED CONSULTANTS UNDER THIS SECTION IS \$1,500.00.  
19 HOWEVER, IF THE DEPARTMENT UPON REVIEW OF THE APPLICATION DETER-  
20 MINES THAT AN APPLICANT DOES NOT MEET THE REQUIREMENTS OF THIS  
21 SECTION, THE DEPARTMENT SHALL REFUND THE APPLICANT \$500.00.

22 (7) ADMINISTRATIVE FEES COLLECTED UNDER THIS SECTION SHALL  
23 BE FORWARDED TO THE STATE TREASURER FOR DEPOSIT INTO THE QUALI-  
24 FIED CONSULTANT AND UNDERGROUND STORAGE TANK PROFESSIONAL OVER-  
25 SIGHT FUND CREATED IN SECTION 21543A.

26 Sec. 21543. (1) Upon request, the department shall certify  
27 an individual as an underground storage tank professional UPON

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1 SUBMITTAL OF AN APPLICATION AND THE FEE PROVIDED FOR IN

2 SUBSECTION (4) if the individual meets 1 or more of the following  
3 requirements:

4 (a) The individual is a licensed professional engineer and  
5 has 3 or more years of relevant soil corrective action  
6 experience, ~~in the state,~~ preferably involving petroleum under-  
7 ground storage tanks.

8 (b) The individual is a certified professional geologist  
9 (CPG) or holds a similar approved designation such as a profes-  
10 sional hydrologist or a certified groundwater professional, and  
11 has 3 or more years of relevant soil corrective action  
12 experience, ~~in the state,~~ preferably involving petroleum under-  
13 ground storage tanks.

14 (c) The individual is able to demonstrate that he or she has  
15 3 or more years of relevant environmental assessment and correc-  
16 tive action experience in the state and 10 or more years of spe-  
17 cific experience in relevant environmental work with increasing  
18 responsibilities. This demonstrated experience shall be docu-  
19 mented with professional and personal references, past employment  
20 references and histories, and documentation that all requirements  
21 of the occupational safety and health act of 1970, Public Law  
22 91-596, 84 Stat. 1590, and regulations promulgated under that  
23 act, and the Michigan occupational safety and health act, ~~Act~~  
24 ~~No. 154 of the Public Acts of 1974, being sections 408.1001 to~~  
25 ~~408.1094 of the Michigan Compiled Laws~~ 1974 PA 154, MCL 408.1001  
26 TO 488.1094, and rules promulgated under that act have been met.

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1       (2) An individual requesting to be granted certification  
2 under this section shall submit AN APPLICATION, THE FEE PROVIDED  
3 FOR IN SUBSECTION (4), AND a copy of all of his or her creden-  
4 tials to the department. ~~along with a letter requesting~~  
5 ~~consideration.~~ The ~~letter~~ APPLICATION shall also include a  
6 statement that attests that the information being submitted is a  
7 true and accurate reflection of the individual's capabilities and  
8 qualifications. False or erroneous information contained in the  
9 documents submitted or representations made constitutes fraud on  
10 the part of the individual involved and may involve enactment of  
11 legal proceedings, revocation of certification, and permanent  
12 suspension from all activities funded by the fund, THE SMALL  
13 BUSINESS CLEANUP REVOLVING LOAN FUND CREATED IN SECTION 20507, OR  
14 THE CLEANUP AND REDEVELOPMENT FUND CREATED IN SECTION 20108.

15       (3) A CERTIFICATION GRANTED UNDER THIS SECTION IS VALID FOR  
16 1 YEAR AND MAY BE RENEWED UPON SUBMITTAL OF AN APPLICATION IN  
17 SUBSEQUENT YEARS.

18       (4) THE ADMINISTRATIVE FEE FOR CERTIFICATION AS AN UNDER-  
19 GROUND STORAGE TANK PROFESSIONAL IS \$1,000.00. HOWEVER, IF THE  
20 DEPARTMENT DETERMINES UPON REVIEW OF AN APPLICATION THAT THE  
21 APPLICANT DOES NOT MEET THE REQUIREMENTS OF THIS SECTION, THE  
22 DEPARTMENT SHALL REFUND THE APPLICANT \$250.00.

23       (5) THE ADMINISTRATIVE FEES COLLECTED UNDER THIS SECTION  
24 SHALL BE FORWARDED TO THE STATE TREASURER FOR DEPOSIT INTO THE  
25 QUALIFIED CONSULTANT AND UNDERGROUND STORAGE TANK PROFESSIONAL  
26 OVERSIGHT FUND CREATED IN SECTION 21543A.



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1        SEC. 21543A. (1) THE QUALIFIED CONSULTANT AND UNDERGROUND  
2 STORAGE TANK PROFESSIONAL OVERSIGHT FUND IS CREATED WITHIN THE  
3 STATE TREASURY.

4        (2) THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS  
5 FROM ANY SOURCE FOR DEPOSIT INTO THE FUND. THE STATE TREASURER  
6 SHALL DIRECT THE INVESTMENT OF THE FUND. THE STATE TREASURER  
7 SHALL CREDIT TO THE FUND INTEREST AND EARNINGS FROM FUND  
8 INVESTMENTS.

9        (3) MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR SHALL  
10 REMAIN IN THE FUND AND SHALL NOT LAPSE TO THE GENERAL FUND.

11        (4) THE DEPARTMENT SHALL EXPEND MONEY FROM THE FUND, UPON  
12 APPROPRIATION, ONLY FOR 1 OR MORE OF THE FOLLOWING PURPOSES:

13        (A) TO REVIEW APPLICATIONS FOR QUALIFIED CONSULTANTS AND  
14 UNDERGROUND STORAGE TANK PROFESSIONALS UNDER SECTIONS 21542 AND  
15 21543.

16        (B) TO OVERSEE QUALIFIED CONSULTANTS AND CERTIFIED UNDER-  
17 GROUND STORAGE TANK PROFESSIONALS' RESPONSIBILITIES UNDER PARTS  
18 213 AND 216.

19        Enacting section 1. This amendatory act does not take  
20 effect unless House Bill No. 5301 of the 89th Legislature is  
21 enacted into law.