

# Legislative Analysis

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## REFINED PETROLEUM INITIAL PROGRAM

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**House Bill 6047 as introduced**  
**Sponsor: Rep. Chris Kolb**

**House Bill 6202 as introduced**  
**Sponsor: Rep. David Palsrok**

**Senate Bill 1260 (Substitute S-1)**  
**Sponsor: Sen. Michelle A. McManus**

**House Committee: Natural Resources, Great Lakes, Land Use, and Environment**  
**Senate Committee: Appropriations**

**Complete to 6-21-06**

## A SUMMARY OF HOUSE BILLS 6047 AND 6202 AND SENATE BILL 1260

Public Act 390 of 2004 (House Bill 6074) established the Refined Petroleum Fund (RPF), transferred approximately \$60 million from the balance of the Michigan Underground Storage Tank Financial Assurance Fund to the RPF, and directed all future revenue—approximately \$60 million annually—from a 7/8-cent-per-gallon environmental regulatory fee on refined petroleum products to the RPF. Under Part 215 (Refined Petroleum Fund) of the Natural Resources and Environmental Protection Act, money in the fund shall be expended, upon appropriation, for gasoline inspection programs, for corrective actions necessary to address releases of refined petroleum products under a refined petroleum product cleanup program, and for reasonable administrative costs of the various departments implementing programs receiving revenue from the fund.

The omnibus FY 2006 appropriations act includes two line item appropriations from the RPF for the Department of Environmental Quality: (1) \$57 million for petroleum-related cleanup projects and (2) \$45 million for a temporary reimbursement program for previously approved MUSTFA claims by owners and operators of underground storage tanks for cleanup activities undertaken independently. Boilerplate language concerning the \$57 million appropriation provides that \$42 million is prohibited from expenditure until the program is established by law following the issuance of recommendations for a permanent cleanup program by from the seven-member Refined Petroleum Cleanup Advisory Council. The boilerplate section also includes a list of sites for which corrective actions may receive funding from the RPF.

Together, the bills included in this summary amend Part 215 (Refined Petroleum Fund) of the Natural Resources and Environmental Protection Act (MCL 324.21501 et seq.) to create an initial program and a temporary reimbursement program for cleanup activities ("corrective actions") at underground storage tanks. **House Bill 6047** creates these two

programs. **Senate Bill 1260** authorizes expenditures from the Refined Petroleum Fund for these two programs, and also includes definitions relevant to the two programs.

**House Bill 6202** combines the provisions of House Bill 6047 and Senate Bill 1260 into one bill. House Bill 6047 and Senate Bill 1260 are tie-barred to each other.

### **House Bills 6047 & 6202**

The bills create a refined petroleum product initial program to conduct corrective actions associated with releases from petroleum underground storage tank systems, based on the recommendations of the Refined Petroleum Advisory Council. Aside from the provision (Section 21553) requiring the DEQ to establish the initial program, the bills contain no other provisions referencing the program.

The bills also create a temporary reimbursement program to promote site closure of releases from underground storage tanks by providing financial incentives to owners and operators of underground storage tanks. (The specific provisions concerning the reimbursement program are based on recommendations from the Refined Petroleum Cleanup Advisory Council submitted to the Governor, Speaker of the House, and Senate Majority Leader on June 7, 2005.)

The reimbursement program would provide funding for cleanup activities in two rounds. In both rounds, each site would be eligible for up to \$50,000 of funding for 80 percent of the cost of cleanup activities incurred in the future (up to 540 days after "precertification"). The remaining 20 percent would be considered a "co-pay" amount. Funding would be available under a second round if, after the first round, additional funding is available. The program would be initiated by the department within 120 days of the bills' effective date.

#### First Round

*Eligibility* – To be eligible for funding under the first round, a person would have to show the following:

- That it was the owner or operator of a leaking underground storage tank who submitted an "approved claim" under the original MUSTFA program.
- That the MUSTFA-eligible release at that site has not been closed pursuant to Part 213 (Leaking Underground Storage Tanks) of NREPA.
- That the site is determined by the DEQ to be a Class 1 or Class 2 site based on most recently submitted data or reports prior to May 9, 2005 or as otherwise determined by the DEQ prior to May 9, 2005.

*Process* – To receive funding in the first round, eligible persons must submit a precertification application (showing that the person is eligible, as described above) to the DEQ within 180 days of the initiation date. Applications would be considered by the DEQ on a first-come, first-served basis, and the DEQ could not approve more than 900

applications. Once the application is approved, the person would have 18 months to complete the necessary corrective actions at the site. (Only those costs incurred within that time would be eligible for reimbursement.) All work invoices for which reimbursement is sought would have to be submitted to the DEQ within 20 months after the application is approved (i.e. two months after the work at the site is complete). To receive funding, the person would have to retain a "consultant" that performs the corrective actions in accordance with Part 213.

The DEQ would receive work invoices to determine whether the work is necessary and appropriate considering the conditions at the site; whether the costs are reasonable; whether the person is eligible to receive reimbursement; and whether the consultant has complied with the necessary requirements. The DEQ would have to determine whether the invoice meets the above criteria within 45 days of receiving the invoice and would forward an approved payment voucher to the state treasurer within 45 days of approving an invoice. If the DEQ denies a work invoice submitted for reimbursement, the invoice could be reviewed by an advisory board consisting of the advisory council and two additional representatives of the DEQ. The board would review the denial and submit a recommendation to the DEQ on whether to approve or deny that invoice. The DEQ wouldn't be bound by the board's recommendation, but would give it "substantial consideration." If the appeal to the DEQ is denied, the person could file an appeal with the Ingham County Circuit Court.

The state treasurer would generally have to provide the reimbursement payment within 30 days, though a payment maybe withheld if the treasurer believes the person made a fraudulent claim.

### Second Round

The DEQ would be required to determine whether there is sufficient funding for the second round within 210 days after the initiation of the first round. Application for the second round would have to be submitted to the DEQ within 30 days from the close of the precertification process. The person would have to meet the same eligibility criteria as provided for the first round. Applications would be approved on a first-come, first-served basis, although first priority would be given to persons that did not receive reimbursement in the first round. Second priority would be given to persons who received reimbursements in the first round, but are submitting applications for different locations requiring corrective actions. The process for providing reimbursements would be the same process for the first round.

### Other Provisions

If the property is sold or transferred, the approved application could be assigned to the new owner, who would then be eligible to receive funding under the temporary reimbursement program. Any previous reimbursements and co-pays would be counted toward the new owner.

The temporary reimbursement program would cease upon payment of all approved work orders and the resolution of any appeals. Any funds remaining for the program would be available, upon appropriation, for current allowable uses of the fund.

### **Senate Bill 1260 & House Bill 6202**

The bills amend Part 215 of NREPA to authorize up to \$15 million of the amount in the Refined Petroleum Fund transferred from the MUSTFA Fund to be used for the Refined Petroleum Product Cleanup Initial Program and the DEQ's administrative expenses related to the Temporary Reimbursement Program. The bills also authorize up to \$45 million of the amount in the RPF transferred from the MUSTFA Fund to be used for the Temporary Reimbursement Program.

In addition, the existence of the Refined Petroleum Cleanup Advisory Council is set to expire on August 1, 2006. The bills would push this date back to December 31, 2006.

### **FISCAL IMPACT:**

The appropriation for FY 2005-06 includes \$60,000,000 from the Refined Petroleum Fund, contingent on passage of amendatory legislation. The bills would meet this requirement. If these bills are enacted in their current form, \$15,000,000 would be available for the Initial Program, and \$45,000,000 would be available for the Temporary Reimbursement Program. A site listing is included in the appropriation act for FY 2005-06 (2005 PA 154, Section 702). This list is available from the House Fiscal Agency. There would be no fiscal impact on local governmental units.

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