

Act No. 322
Public Acts of 2006
Approved by the Governor
July 20, 2006
Filed with the Secretary of State
July 20, 2006
EFFECTIVE DATE: July 20, 2006

**STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2006**

Introduced by Reps. Palsrok and Pavlov

ENROLLED HOUSE BILL No. 6202

AN ACT to amend 1994 PA 451, 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, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," (MCL 324.101 to 324.90106) by adding sections 21558, 21559, 21560, 21561, 21562, and 21563.

The People of the State of Michigan enact:

Sec. 21558. (1) In order to receive money under the temporary reimbursement program, an eligible person shall retain a consultant to perform the corrective actions required under part 213.

(2) The consultant shall comply with all of the following requirements:

(a) The consultant shall submit the following items for competitive bidding in accordance with procedures established in this section:

- (i) Well drilling, including monitoring wells.
- (ii) Laboratory analysis.
- (iii) Construction of treatment systems.
- (iv) Removal of contaminated soil.
- (v) Operation of treatment systems.

(b) All bids received by the consultant shall be submitted on a standardized bid form prepared by the department.

(c) A consultant may perform work activities specified in subsection (2)(a) only if the consultant bids for the work activity and the consultant's bid is the lowest responsive bid. A consultant who intends to submit a bid must submit the bid to the department prior to receiving bids from contractors.

(d) Upon receipt of bids, the consultant shall submit to the department a copy of all bid forms received and the bid accepted.

(e) The consultant shall notify the department in writing of the bid accepted. If the lowest responsive bid was not accepted, the consultant shall provide sufficient justification to the department and receive concurrence from the

department before commencing work. Failure of the department to provide a response within 21 days shall be considered as concurrence.

(3) An eligible person may request that the consultant retained by the eligible person add qualified bidders to the list for requests for bids.

(4) Upon hiring a contractor, a consultant may include a markup to the contractor's work invoices only if the consultant pays the contractor and does the billing.

(5) After the consultant employs the competitive bidding process described in this section, the owner or operator may hire contractors directly.

(6) Removal of underground storage tank systems or installation of new or upgraded equipment for the purpose of attaining compliance with part 211, or work performed for any other reason not related to the performance of part 213 corrective actions, is not eligible for temporary reimbursement program funding under this part.

Sec. 21559. (1) For an eligible person to receive money under the temporary reimbursement program for corrective action, all of the following conditions shall be met:

(a) The eligible person, and the consultant retained by the eligible person, 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 to the department, and shall provide other information required by the department relevant to determining compliance with this part and part 213.

(b) The eligible person shall submit a work invoice to the department, with an attached summary report of the work performed under the invoice and results of the work performed, including, but not limited to, laboratory results, soil boring logs, construction logs, site investigation results, and other information that may be requested by the department.

(c) Work invoices shall comply with all of the following:

(i) Be submitted on a standardized work invoice form provided by the department.

(ii) Contain complete information in accordance with the form and the requirements of this section and as requested by the department.

(iii) Be in an amount not less than \$5,000.00, except for the last work invoice submitted for reimbursement under the approved precertification application.

(2) Upon receipt of a work invoice pursuant to subsection (1), the department shall make all of the following determinations:

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

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

(c) Whether the eligible person is eligible to receive funding under this part.

(d) Whether the consultant retained by the eligible person has complied with section 21558.

(3) The department shall deny payment of a work invoice if the department determines that the corrective action work performed is not consistent with the requirements of part 213 or does not comply with the requirements of this part.

(4) Within 45 days after receipt of a work invoice, the department shall determine whether the work invoice complies with subsections (1) to (3). The department shall notify the eligible person in writing of such a determination.

(5) The department shall keep records of approved precertification applications and work invoices. If the eligible person has not exceeded the allowable amount of expenditure provided in sections 21556 and 21557, the department shall forward an approved payment voucher to the state treasurer within 45 days after approval of the work invoice.

(6) Except as provided in subsection (7) or as otherwise provided in this subsection, upon receipt of an approved payment voucher, the state treasurer shall make a payment jointly to the eligible person and the consultant within 30 days. However, the eligible person may submit to the department a signed affidavit stating that the consultant listed on a work invoice has been paid in full. The affidavit shall list the work invoice number and precertification application to which the affidavit applies, a statement that the eligible person has mailed a copy of the affidavit by first-class mail to the consultant listed on the work invoice, and the date that the affidavit was mailed to the consultant. The department is not required to verify affidavits submitted under this subsection. If, within 14 days after the affidavit was mailed to the consultant under this subsection, the department has not received an objection in writing from the consultant listed on the work invoice, the state treasurer shall make the payment directly to the eligible person. If a check has already been issued to the eligible person and the consultant, the eligible person shall return the original check to the department along with the affidavit. If, within 14 days after the affidavit was mailed to the consultant, the department has not received an objection from the consultant listed on the check, the state treasurer shall reissue a check to the eligible person. If a consultant objects to an affidavit received under this subsection and notifies the department in writing within 14 days after the affidavit was mailed to the consultant, the department shall notify the

state treasurer, and the state treasurer shall issue or reissue the check to the eligible person and the consultant. The grounds for an objection by a consultant under this subsection shall be that the consultant has not been paid in full and the objection shall be made by affidavit. The state treasurer shall issue checks under this subsection within 60 days after an affidavit has been received by the department. Once payment has been made under this section, the refined petroleum fund is not liable for any claim on the basis of that payment.

(7) The temporary reimbursement program is subject to section 21548.

(8) Upon direction of the department, the state treasurer may withhold partial payment of money on payment vouchers if there is reasonable cause to believe that there are violations of section 21548 or if necessary to assure acceptable completion of the corrective actions.

Sec. 21560. (1) An eligible person with a precertification application approved pursuant to section 21556 or 21557 for which corrective action is in progress that sells, or has sold, or transfers the property that is the subject of the approved precertification application to another person may assign or transfer the approved precertification application to that other person. The person to whom the assignment or transfer is made is eligible to receive money from the refined petroleum fund temporary reimbursement program as an eligible person for the release which is the subject of the approved precertification application. Previous reimbursements and co-payments of the eligible person making the assignment or transfer shall be counted toward the reimbursement and co-pay amount of the person to whom the assignment or transfer is made.

(2) An eligible person assigning or transferring an approved precertification application pursuant to this section shall notify the department of the proposed assignment or transfer at least 10 days prior to the assignee's or transferee's submittal of work invoices for reimbursement.

Sec. 21561. (1) If the department denies a precertification application or a work invoice submitted under the temporary reimbursement program, the applicant who submitted the precertification application or the eligible person who submitted the work invoice may, within 14 days following the denial, request review by the department. Upon receipt of a request for review under this subsection, the department shall forward the request to the advisory board for a preliminary review. The advisory board shall conduct a review of the denial and shall submit a recommendation to the department as to whether the precertification application or the work invoice complies with this part. Not later than 21 days following review by the advisory board, the department shall approve the precertification application or the work invoice if the department determines that the precertification application or the work invoice substantially complies with the requirements of this part. In making its determination, the department shall give substantial consideration to the recommendations of the advisory board.

(2) An eligible person or applicant who submitted a precertification application who is denied approval by the department after review under subsection (1) may appeal the decision pursuant to section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631, directly to the circuit court for the county of Ingham.

Sec. 21562. (1) The temporary reimbursement program advisory board is created. The advisory board shall conduct reviews of denied work invoices upon the request of eligible persons and provide recommendations to the department upon completion of such reviews. The advisory board shall also advise the department on all matters related to the implementation of the temporary reimbursement program.

(2) The advisory board shall consist of the following:

- (a) Three individuals appointed by the governor, not more than 2 of whom are employed by state departments.
- (b) Two individuals appointed by the speaker of the house of representatives.
- (c) Two individuals appointed by the senate majority leader.

(3) An individual appointed to the advisory board shall serve for a term of 3 years, commencing on the initiation date of the temporary reimbursement program.

(4) A vacancy on the advisory board shall be filled in the same manner as the original appointment was made.

(5) The first meeting of the advisory board shall be called by the department. At its first meeting, the advisory board shall elect from among its members a chairperson and other officers as it considers necessary. After the first meeting, a meeting of the advisory board shall be called by the chairperson on his or her own initiative or by the chairperson on petition of 3 or more members. Upon receipt of a petition of 3 or more members, a meeting shall be called for a date not later than 21 days after the date of receipt of the petition.

(6) The business that the advisory board may perform shall be conducted at a public meeting of the advisory board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(7) A majority of the members of the advisory board constitute a quorum for the transaction of business at a meeting of the advisory board. Action by the advisory board shall be by a majority of the votes cast.

(8) The department may submit to the advisory board, for its review and evaluation, the competitive bidding process employed by a consultant pursuant to section 21558. In conducting this review and evaluation, the advisory board may convene a peer review panel. Following completion of its review and evaluation, the advisory board shall forward a copy of its findings to the department and the consultant. If the advisory board finds the practices employed by a consultant to be inappropriate, the advisory board may recommend that the department revoke the consultant's certification.

(9) A member of the advisory board shall abstain from voting on any matter in which that member has a conflict of interest.

Sec. 21563. (1) The temporary reimbursement program shall cease upon payment of all approved work invoices and resolution of work invoice appeals.

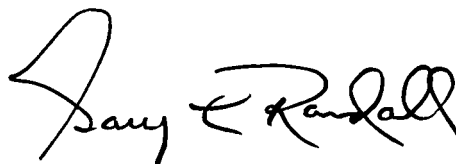
(2) Any temporary reimbursement program funds remaining after approved work invoices are paid, less any dollar amounts held in reserve pending resolution of work invoice appeals, shall be available for future appropriations pursuant to section 21506a(4).

(3) Any temporary reimbursement program funds remaining after resolution of all work invoice appeals shall be available for future appropriations pursuant to section 21506a(4).

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

- (a) House Bill No. 6047.
- (b) Senate Bill No. 1260.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor