



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 528 (Substitute S-2 as reported by the Committee of the Whole)
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Senate Bill 532 (Substitute S-2 as reported by the Committee of the Whole)
Senate Bill 533 (Substitute S-1 as reported)
Sponsor: Senator Tom Casperson (S.B. 528)
 Senator Darwin L. Booher (S.B. 529)
 Senator Phil Pavlov (S.B. 530)
 Senator Arlan Meekhof (S.B. 531)
 Senator Mike Kowall (S.B. 532)
 Senator Mike Green (S.B. 533)

Committee: Natural Resources, Environment and Great Lakes

CONTENT

Senate Bill 528 (S-2) would amend Part 213 (Leaking Underground Storage Tanks) of the Natural Resources and Environmental Protection Act to revise procedures for the cleanup of environmental contamination caused by leaking underground storage tanks, which are based on the American Society for Testing and Materials (ASTM) Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites ("RBCA"). Specifically, the bill would do the following:

- Require leaking underground storage tank (UST) sites to be classified consistent with the process outlined in RCBA; and delete a requirement that the Department of Environmental Quality (DEQ) establish a classification system considering impacts on public health, safety, and welfare, and the environment.
- Allow the DEQ to audit only final assessment and closure reports, rather than all aspects of corrective actions.
- Require the DEQ to determine within 90 days if it would audit a report, and establish a 180-day window for the DEQ to complete the audit.
- Allow the DEQ 270 days after the bill took effect to selectively audit reports submitted within six months before the bill took effect.
- Allow the DEQ to audit a report only once.
- Provide that a report would be considered approved if the DEQ did not perform an audit and provide a written response to the owner or operator.
- Allow an owner or operator whose report was denied to revise and resubmit it for approval, petition the Response Activity Review Panel under Part 201 for review, or petition the DEQ's Office of Administrative Hearings for a contested case hearing.
- Provide that an owner or operator that was responsible for a release or threat of release would be liable under Part 213.
- Provide that a person who became an owner or operator on or after June 5, 1995, would be liable under Part 213 unless the person conducted a baseline environmental assessment.
- Exempt certain people from liability.

- Provide that a person who desired to change land use or resource use restrictions specified in a closure report would be responsible for any necessary additional corrective action.
- Provide that an owner or operator whose corrective action failed to meet performance objectives would be liable for the corrective action needed to satisfy the objectives.
- Provide that the DEQ would bear the burden of proof in establishing liability under Part 213.
- Authorize the Attorney General to bring an action to abate an imminent and substantial endangerment to the public health, safety, or welfare, or the environment.
- Establish joint and several liability for a liable person.
- Provide for the apportionment of liability in the case of two or more liable people acting independently.
- Allow a person to seek contribution from any other liable person during or after a civil action.
- Establish maximum liability for a release or threat of release of the total cost of corrective action and fines, plus \$50.0 million in damages for the destruction of natural resources.
- Allow the State to give a person a covenant not to sue concerning liability, under certain circumstances.
- Authorize the DEQ and the Attorney General to enter into a consent order with a liable person to perform corrective action.
- Allow a person whose health or enjoyment of the environment was adversely affected by a release, a violation of Part 213, or a failure to perform a nondiscretionary act or duty, to commence a civil action.
- Limit the time period for filing actions under Part 213.
- Provide that all unpaid costs and damages for which a person was liable would constitute a lien in favor of the State upon property that the person owned and was the subject of corrective action by the State.
- If the lien were insufficient to protect the State's interest in recovering corrective action costs, authorize the Attorney General to petition the court for a lien that would take priority over all other liens and encumbrances that were recorded on the property, and/or a lien upon the person's other real or personal property.
- Eliminate various references to a consultant retained by an owner or operator, and instead require an owner or operator to employ a qualified UST consultant, and establish consultant qualifications.

Senate Bill 529 (S-2) would amend Parts 201 (Environmental Remediation), 213, and 215 (Refined Petroleum Fund) to do the following:

- Allow a person who submitted an initial assessment, final assessment report, or closure report under Part 213 to appeal a DEQ decision regarding a technical or scientific dispute by petitioning the DEQ Director.
- Require at least three of the members selected for a Response Activity Review Panel meeting regarding a dispute involving a UST system to have relevant experience in the ASTM RBCA process.
- Allow an owner or operator to petition the DEQ for a contested case hearing to resolve disputes with the Department.

The bill also would repeal sections that require the DEQ to prepare an annual list of qualified UST consultants, establishing consultant qualifications, and require the Department to certify UST professionals who meet specific requirements. (As noted above, Senate Bill 528 (S-2) would establish requirements for qualified UST consultants.)

Senate Bill 530 (S-2) would amend Part 213 to do the following:

- Require a consultant to submit an initial assessment report to the DEQ within 180 days after a release was discovered, rather than within 90 days as required currently.
- Revise the information that must be included in an initial assessment, final assessment, or closure report.
- Prohibit the DEQ from requiring a report to include information beyond that specified in Part 213.
- Require a closure report to contain signed affidavits attesting to the fact that the information in the report was complete and true, and that all corrective actions complied with the requirements of the applicable RBCA standard.
- Require a person who submitted a closure report to retain all related documents and data for at least six years, and make them available to the DEQ upon request.

Senate Bill 531 (S-2) would amend Part 213 to revise the definitions of terms used in that part and the other bills, and add new definitions.

Senate Bill 532 (S-2) would amend Part 213 to do the following:

- Revise the penalties for a person who fails to comply with an administrative order requiring corrective action.
- Authorize the Attorney General, on behalf of the DEQ, to commence a civil action seeking declaratory judgment on liability for future corrective action costs.
- Eliminate a provision allowing a person who is fined for failing to submit a report by the prescribed deadline to appeal to the circuit court.

The bill also would delete provisions allowing a person to whom an administrative order is issued and who believes the order is arbitrary and capricious to petition the DEQ for reimbursement of costs incurred, and file an action against the Department in court if the DEQ refuses to grant the petition. Under the bill, instead, the person could file a petition to resolve any disputes with the DEQ related to the order.

Senate Bill 533 (S-1) would amend Part 213 to do the following:

- Prohibit the DEQ from promulgating rules to implement Part 213, beginning on the bill's effective date.
- Provide that a DEQ guideline, bulletin, interpretive statement, operational memorandum, or form with instructions published under Part 213 would be advisory, and could not be given the force of law.

The bills are tie-barred to each other.

MCL 324.21301a et al. (S.B. 528)
 324.20114e & 324.21541 (S.B. 529)
 324.21308a (S.B. 530)
 324.21302 & 324.21303 (S.B. 531)
 324.21313a et al. (S.B. 532)
 324.21326 & 324.21327 (S.B. 533)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Overall, the package of bills would have an indeterminate fiscal impact on the Department of Environmental Quality.

Under current law, leaking underground storage tanks (LUSTs) that have no liable party are the responsibility of the State, and funds from the Refined Petroleum Fund are used to perform remediation activities at these sites. According to Department estimates, there are over 9,000 known sites containing LUSTs, approximately half of which have no liable party.

The total estimated cost to remediate these sites is estimated to be \$1.8 billion. To the extent that this package of bills caused more or fewer parties to be held liable for releases, that \$1.8 billion figure could increase or decrease. Practically speaking, however, the DEQ is appropriated \$20.0 million per year to address these releases, so marginal changes in the State's total LUST liability would have little effect on the Department's finances.

Senate Bill 528 (S-2) would increase the responsibilities and costs of the Attorney General by an unknown amount, which would depend on the number of cases that required participation of the Attorney General in lawsuits or consent judgments that would be authorized by the bill.

Senate Bill 528 (S-2) also would allow LUST owners or operators to petition for a review of a denied final assessment report for a reduced fee. Currently, these appeals are accompanied by a \$3,500 fee. The bill would reduce this fee to \$300. This reduction would result in an unknown amount of lost revenue for the DEQ. To the extent that a lower fee would result in a larger number of appeals, the DEQ could have additional work to do, as well.

Senate bill 529 (S-2) would allow LUST owners or operators to go through the administrative hearing process to contest various types of disputes with the DEQ regarding LUSTs. To the extent that owners and operators would use this new allowance, additional work could be generated for the DEQ.

Senate Bill 533 (S-1) would prohibit the DEQ from promulgating rules to implement Part 213 of the Act. This provision would save the DEQ from any future rule promulgation costs, but otherwise would have an indeterminate effect on DEQ finances.

Date Completed: 1-19-12

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.