

SENATE BILL No. 529

June 28, 2011, Introduced by Senators BOOHER, PROOS, KOWALL, PAPPAGEORGE and WALKER and referred to the Committee on Natural Resources, Environment and Great Lakes.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 21502 and 21541 (MCL 324.21502 and 324.21541), section 21502 as amended by 2006 PA 318.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 21502. As used in this part:

2 (a) "Administrator" means the fund administrator provided for
3 in section 21513.

4 (b) "Advisory board" means the temporary reimbursement program
5 advisory board established under section 21562.

6 (c) "Approved claim" means a claim that is approved pursuant
7 to section 21515.

8 (d) "Authority" means the Michigan underground storage tank
9 financial assurance authority created in section 21523.

1 (e) "Board" means the Michigan underground storage tank
2 ~~financial assurance policy~~ board created in section 21541.

3 (f) "Board of directors" means the board of directors of the
4 authority.

5 (g) "Bond proceeds account" means the account or fund to which
6 proceeds of bonds or notes issued under this part have been
7 credited.

8 (h) "Bonds or notes" means the bonds, notes, commercial paper,
9 other obligations of indebtedness, or any combination of these,
10 issued by the authority pursuant to this part.

11 (i) "Claim" means the submission by the owner or operator or
12 his or her representative of documentation on an application
13 requesting payment from the fund. A claim shall include, at a
14 minimum, a completed and signed claim form and the name, address,
15 telephone number, and federal tax identification number of the
16 consultant retained by the owner or operator to carry out
17 responsibilities pursuant to part 213.

18 (j) "Class 1 site" means a site posing the highest degree of
19 threat to the public and environment as determined by the
20 department, based on the classification system developed by the
21 department pursuant to section 21314a.

22 (k) "Class 2 site" means a site posing the second highest
23 degree of threat to the public and environment as determined by the
24 department, based on the classification system developed by the
25 department pursuant to section 21314a.

26 (l) "Consultant" means a person on the list of qualified
27 underground storage tank consultants prepared pursuant to section

1 21542.

2 (m) "Co-pay amount" means the co-pay amount provided for in
3 section 21514.

4 (n) "Corrective action" means the investigation, assessment,
5 cleanup, removal, containment, isolation, treatment, or monitoring
6 of regulated substances released into the environment or the taking
7 of such other actions as may be necessary to prevent, minimize, or
8 mitigate injury to the public health, safety, or welfare, the
9 environment, or natural resources.

10 (o) "Department" means the department of environmental
11 quality.

12 (p) "Eligible person" means an owner or operator who meets the
13 eligibility requirements in section 21556 or 21557 and received
14 approval of his or her precertification application by the
15 department.

16 (q) "Financial responsibility requirements" means the
17 financial responsibility for taking corrective action and for
18 compensating third parties for bodily injury and property damage
19 caused by a release from an underground storage tank system that
20 the owner or operator of an underground storage tank system must
21 demonstrate under part 211 and the rules promulgated under that
22 part.

23 (r) "Fund" means the Michigan underground storage tank
24 financial assurance fund created in section 21506.

25 (s) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-
26 light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical
27 grades of fuel oil; other residual fuel oils including navy special

1 fuel oil and bunker C; and other fuels when used as substitutes for
2 1 of these fuel oils.

3 (t) "Indemnification" means indemnification of an owner or
4 operator for a legally enforceable judgment entered against the
5 owner or operator by a third party, or a legally enforceable
6 settlement entered between the owner or operator and a third party,
7 compensating that third party for bodily injury or property damage,
8 or both, caused by an accidental release as those terms are defined
9 in R 29.2163 of the Michigan administrative code.

10 (u) "Location" means a facility or parcel of property where
11 petroleum underground storage tank systems are registered pursuant
12 to part 211.

13 (v) "Operator" means a person who was, at the time of
14 discovery of a release, in control of or responsible for the
15 operation of a petroleum underground storage tank system or a
16 person to whom an approved claim has been assigned or transferred.

17 (w) "Owner" means a person, other than a regulated financial
18 institution, who, at the time of discovery of a release, held a
19 legal, equitable, or possessory interest of any kind in an
20 underground storage tank system or in the property on which an
21 underground storage tank system is located, including, but not
22 limited to, a trust, vendor, vendee, lessor, or lessee. Owner
23 includes a person to whom an approved claim is assigned or
24 transferred. Owner does not include a person or a regulated
25 financial institution who, without participating in the management
26 of an underground storage tank system and without being otherwise
27 engaged in petroleum production, refining, or marketing relating to

1 the underground storage tank system, is acting in a fiduciary
 2 capacity or who holds indicia of ownership primarily to protect the
 3 person's or the regulated financial institution's security interest
 4 in the underground storage tank system or the property on which it
 5 is located. This exclusion does not apply to a grantor,
 6 beneficiary, remainderman, or other person who could directly or
 7 indirectly benefit financially from the exclusion other than by the
 8 receipt of payment for fees and expenses related to the
 9 administration of a trust.

10 (x) "Oxygenate" means an organic compound containing oxygen
 11 and having properties as a fuel that are compatible with petroleum,
 12 including, but not limited to, ethanol, methanol, or methyl
 13 tertiary butyl ether (MTBE).

14 Sec. 21541. (1) The Michigan underground storage tank
 15 ~~financial assurance policy board is created in the department. of~~
 16 ~~natural resources.~~

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

18 ~~— (a) The director of the department of management and budget or~~
 19 ~~his or her designee.~~

20 (A) ~~(b) The director of the department of natural resources or~~
 21 his or her designee.

22 ~~— (c) The director of the department of state police or his or~~
 23 ~~her designee.~~

24 ~~— (d) The state treasurer or his or her designee.~~

25 (B) ~~(e) Eight~~ **SEVEN** individuals appointed by the governor with
 26 the advice and consent of the senate, as follows:

27 (i) One individual representing an independent petroleum

1 wholesale distributor-marketer trade association.

2 (ii) One individual representing a petroleum refiner-supplier
3 trade association.

4 (iii) One individual representing a service station dealers'
5 trade association.

6 ~~(iv) One individual representing a truck stop operators trade~~
7 ~~association.~~

8 (iv) ~~(v)~~ One individual representing an environmental public
9 interest organization who is not associated with any of the
10 organizations listed in subparagraphs (i) to ~~(iv)~~ **(iii)**.

11 (v) ~~(vi)~~ Two individuals representing the general public who
12 are not associated with any of the organizations listed in
13 subparagraphs (i) to ~~(iv)~~ **(iii) AND WHO ARE CERTIFIED PROFESSIONALS**
14 **EXPERIENCED IN THE RBCA PROCESS.**

15 (vi) ~~(vii)~~ One individual representing local government.

16 (3) An individual appointed to the board shall serve for a
17 term of ~~2-4~~ years.

18 (4) A vacancy on the board shall be filled in the same manner
19 as the original appointment.

20 (5) The first meeting of the board shall be called by the
21 department. At its first meeting, the board shall elect from among
22 its members a chairperson and other officers as it considers
23 necessary. After the first meeting, a meeting of the board shall be
24 called by the chairperson on his or her own initiative or by the
25 chairperson on petition of 3 or more members. Upon receipt of a
26 petition of 3 or more members, a meeting shall be called for a date
27 no later than 14 days after the date of receipt of the petition.

1 (6) The business that the board may perform shall be conducted
2 at a public meeting of the board held in compliance with the open
3 meetings act, ~~Act No. 267 of the Public Acts of 1976, being~~
4 ~~sections 15.261 to 15.275 of the Michigan Compiled Laws.~~ **1976 PA**
5 **267, MCL 15.261 TO 15.275.**

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

9 (8) The board shall advise the department ~~and the~~
10 ~~administrator~~ on all matters related to the implementation of this
11 part.

12 ~~—— (9) The administrator or the department may submit to the~~
13 ~~board, for its review and evaluation, the competitive bidding~~
14 ~~process employed by a consultant pursuant to section 21517. In~~
15 ~~conducting this review and evaluation, the board may convene a peer~~
16 ~~review panel. Following completion of its review and evaluation,~~
17 ~~the board shall forward a copy of its findings to the department,~~
18 ~~the administrator, and the consultant. If the board finds the~~
19 ~~practices employed by a consultant to be inappropriate, the board~~
20 ~~may recommend that the department remove the consultant from the~~
21 ~~list of qualified consultants.~~

22 ~~—— (10) Upon request of the administrator or the department, the~~
23 ~~board shall make a recommendation to the department on whether a~~
24 ~~consultant should be removed from the list of qualified~~
25 ~~consultants. Prior to making this recommendation, the board may~~
26 ~~convene a peer review panel to evaluate the conduct of the~~
27 ~~consultant with regard to compliance with this part.~~

1 (9) THE BOARD SHALL CONDUCT HEARINGS ON PETITIONS TO RESOLVE
2 DISPUTES BETWEEN EITHER AN OWNER, AN OPERATOR, A CERTIFIED
3 UNDERGROUND STORAGE TANK PROFESSIONAL, OR A QUALIFIED UNDERGROUND
4 STORAGE TANK CONSULTANT AND THE DEPARTMENT REGARDING THE FOLLOWING:

5 (A) THE DEPARTMENT'S REFUSAL TO PLACE A PERSON ON THE LIST OF
6 QUALIFIED UNDERGROUND STORAGE TANK CONSULTANTS.

7 (B) THE DEPARTMENT'S REFUSAL TO CERTIFY AN INDIVIDUAL AS A
8 QUALIFIED UNDERGROUND STORAGE TANK PROFESSIONAL.

9 (C) THE ATTEMPT TO REMOVE A QUALIFIED UNDERGROUND STORAGE TANK
10 CONSULTANT FROM THE APPROVED LIST.

11 (D) THE ATTEMPT TO SUSPEND OR REVOKE THE CERTIFICATION OF A
12 CERTIFIED UNDERGROUND STORAGE TANK PROFESSIONAL.

13 (E) CORRECTIVE ACTION UNDERTAKEN PURSUANT TO PART 213.

14 (F) THE IMPOSITION OF PENALTIES PURSUANT TO SECTION 21313A OF
15 PART 213.

16 (G) THE RESULTS OF ANY AUDIT PERFORMED UNDER SECTION 21315 OF
17 PART 213.

18 (H) THE PLACEMENT OR REMOVAL OF PLACARDS ON AN UNDERGROUND
19 STORAGE TANK SYSTEM PURSUANT TO SECTION 21316A OF PART 213.

20 (I) THE ISSUANCE OF AN ADMINISTRATIVE ORDER PURSUANT TO
21 SECTION 21319A OF PART 213.

22 (J) THE REQUEST FOR INFORMATION BY THE DEPARTMENT PURSUANT TO
23 SECTION 21326 OF PART 213.

24 (10) HEARINGS RELATED TO SUBSECTION (9) (C) AND (D) OF THIS
25 SECTION SHALL BE CONDUCTED PURSUANT TO CHAPTER 5 OF THE
26 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.291 TO
27 24.301.

1 (11) HEARINGS RELATED TO SUBSECTION (9) (A), (B), AND (E) TO
2 (J) SHALL BE CONDUCTED PURSUANT TO CHAPTER 4 OF THE ADMINISTRATIVE
3 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO 24.287.

4 (12) ~~(11)~~—A member of the board shall abstain from voting on
5 any matter in which that member has a conflict of interest.

6 Enacting section 1. This amendatory act does not take effect
7 unless all of the following bills of the 96th Legislature are
8 enacted into law:

9 (a) Senate Bill No. 528.

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11 (b) Senate Bill No. 531.

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13 (c) Senate Bill No. 533.

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15 (d) Senate Bill No. 530.

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17 (e) Senate Bill No. 532.

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