

SUBJECT: Transfer of up to \$120 million to Petroleum Tank Remediation Fund

COMMITTEE: Appropriations — favorable, with amendments

VOTE: 18 ayes — Junell, Delisi, Coleman, Cook, Conley, H. Cuellar, R. Cuellar, Davis, Gallego, Glaze, Gray, Heflin, Hernandez, Johnson, Kubiak, Mowery, Raymond, Swinford

0 nays

9 absent — Carona, Clemons, Greenberg, Haggerty, Harris, McDonald, Ogden, Park, S. Turner

WITNESSES: For — None

Against — None

On — Dan Pearson, Joe Woodard, John Hall, Texas Natural Resource Conservation Commission; Gilbert Herrera

BACKGROUND: In 1984 Congress enacted the Solid Waste amendments to the Resource Conservation Recovery Act, which directed the Environmental Protection Agency (EPA) to develop a regulatory program for underground storage tanks.

In 1987 the Texas Legislature authorized the Texas Water Commission to establish a program to regulate the state's underground storage tanks. The program was established to monitor and prevent leaks from underground storage tanks and to take corrective action to halt and prevent the contamination of groundwater supplies. An underground storage tank fund was established, funded by a \$25 registration fees imposed on all underground storage tanks.

In 1989 a Petroleum Storage Tank Remediation Fund (PSTRF) was created to reimburse tank owners for allowable costs associated with remediation of petroleum storage tank sites. The PSTRF also enabled tank owners to comply with EPA financial responsibility guidelines, requiring that operators of underground petroleum storage tanks provide proof of financial

responsibility for no less than \$1 million for each spill or leak that occurred.

The program followed federal guidelines in order that the state, rather than EPA would administer the program. Money for the fund was derived from petroleum-product delivery loading fees, based on the cargo capacity of the delivery vehicles. Those involved in wholesale delivery of petroleum products paid the fees.

In 1991 the program was revised to expand eligibility criteria for reimbursement and establish a sliding scale for deductibles. Claimants could apply for reimbursement of their remediation expenses, less a deductible amount varying from \$1000 to \$10,000 depending on the number of tanks a claimant owned. The scope of liability of lenders and lienholder for property containing storage tanks was also defined.

Water Code sec. 26.3574(b) requires the following fees to be charged for the delivery from bulk facilities of petroleum products to cargo tanks (vehicles that transport petroleum products). Petroleum product delivery loading fees are based on the cargo capacity of the delivery vehicle:

- \$12.50 for delivery of less than 2,500 gallons
- \$25 for delivery of less than 5,000 gallons
- \$37.50 for delivery of 5,000 to 8,000 gallons
- \$50 for delivery to 8,000 to 10,000 gallons
- \$25 for delivery of increments of up to 5,000 gallons
(delivered to a tank of 10,000 gallons or more)

Texas Natural Resource Conservation Commission froze the Petroleum Storage Tank Remediation Fund (PSTRF) after a dramatic increase in claims in 1992. TNRCC suspended all reimbursements for costs associated with cleanup of pollution associated with petroleum storage tank sites because over \$150 million of claims had been made in excess of funds available. The TNRCC notified tank owners that there would be no reimbursements until the general revenue loan was repaid. The PSTRF currently generates about \$60 million dollars annually and, according to the TNRCC, fee revenues are not sufficient to fund all the claims received.

In 1993, partly in response to the growing deficit in the PSTRF fund, the 73rd Legislature enacted SB 1243 by Montford, which provided for a \$120 million loan from the general revenue fund to the PSTRF as reimbursement for the backlog of claims. After September 1, 1993, claims could no longer be reimbursed from that loan, which is projected to be repaid on time during the fiscal 1994-1995 biennium.

DIGEST: HB 843 as amended, would permit the comptroller to temporarily transfer \$120 million from the general revenue fund to the Petroleum Storage Tank Remediation Fund (PSTRF) during fiscal 1996-1997.

The funds would be transferred to pay reimbursement claims against the PSTRF that were filed with Texas Natural Resource Conservation Commission (TNRCC) on or before August 31, 1995. The transfer would be made on September 1, 1995, or as soon as practicable. The transferred amount would be available for appropriation by the Legislature. The money transferred from the general revenue fund would be considered a "receivable" for Texas Constitution Art. 3, sec. 49a certification purposes.

The fund transfer provisions of HB 843 would expire either on August 31, 1997, or the date the entire \$120 million was repaid to the general revenue fund, whichever was later.

No later than August 31, 1996, \$80 million of the delivery fees would be deposited in the general revenue fund, and \$40 million deposited no later than May 31, 1997, notwithstanding other law.

The current fees that wholesale petroleum facilities are required to charge wholesalers for off-loading petroleum products to their cargo tanks (trucks which transport petroleum products), would be doubled September 1, 1995.

Additional fees could not be assessed one month after the unobligated fund balance in the PSTRF reached \$50 million, after the \$120 million had been repaid to the general revenue fund. If the unobligated fund balance dropped below \$25 million, however, delivery fees would be reinstated a month later at one-half the increased rates authorized by HB 843, returning

the rates to the current amounts mandated by Water Code, sec. 26.3574 (b).

In order to be eligible for reimbursement, the owner/operator of a PST installed on or after December 1, 1995, would have to register within 30 days after installation. The owner/operator of an underground or aboveground petroleum storage tank installed before December 1, 1995, but not registered by December 31 1995, would not be eligible to receive reimbursement from the PSTRF.

The petroleum tank remediation reimbursement program would expire September 1, 2001. On or after that date, the TNRCC could not use PSTRF money to reimburse an owner/operator, or a person contracted with an owner/operator, for any expenses of corrective action.

TNRCC would be required to pay reimbursement claims in the order they were received, but without its prior approval TNRCC could not pay a claim for remediation started after September 1, 1993, until all pre-approved claims were paid.

The TNRCC could, by rule, authorize the privatization of any part of the Underground Storage Tank Program.

The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

HB 843 is part of a package of bills (along with HB 3032 and HB 2587, also on today's calendar, stemming from recommendations of the Joint Interim Committee on Petroleum Storage Tanks. There are 161,260 registered PSTs in Texas, and approximately 29,845 of them have reported that their sites are leaking. The average site has 2.5 tanks which costs approximately \$32,000 each to clean up. Leaking tanks are a very real threat to the environment and can contaminate groundwater supplies. It is vital that Texas clean them up as soon as possible since leakage and migration from tanks can cause serious water pollution as well as being dangerous to people who live nearby.

The pollution caused by leaking storage tanks was not created by the industry because of lax enforcement, cost cutting measure or other preventable actions. At the time those tanks were installed, the best

available technology was used to ensure their safety, but unfortunately, over time, some of the tanks began to leak.

There is currently a two-year backlog of claims on the PSTRF dating from September 1, 1993, and the fees assessed on petroleum products on delivery are not sufficient to fund all the claims received. The state must raise the fees in order to cover these claims.

The fees need to be raised so the proposed \$120 million dollar loan from general revenue can be repaid. The increase in fees, however, would not be permanent and would only last as long as was necessary to sufficiently replenish the fund. The bill as amended would provide that once the unobligated balance of the fund exceeded \$50 million, the fees would be suspended, and would drop back down to their current level if the fund dropped below \$25 million.

Although the bulk delivery fee increase authorized by the bill could result in increased costs of petroleum fuels for local units of government, those same units of government would benefit from the bill to the same extent as all tank owners would because funds would be available for reimbursement claims.

Bigger operators pay more into the fund. The deductible they are required to pay before they can claim reimbursement is higher.

The Petroleum Storage Tank Remediation Fund (PSTRF) was temporarily shut down in 1992, making the state vulnerable to EPA sanctions. HB 843 would help ensure that the PSTRF is not threatened again. The PSTRF is used as a state financed insurance program to satisfy owner/operator financial responsibility obligations that are required by the federal government. Owners and operators of petroleum storage tanks are required to provide at least \$1 million in insurance coverage for each tank in the event of a spill. This coverage is to demonstrate that tank owners have the capability to finance direct cleanup costs. The EPA accepts the PSTRF as proof of financial responsibility for tank owners and some small operators and owners would be hard-pressed to self-insure without the fund.

HB 843 as amended would permit TNRCC, by rule, to authorize the privatization of any part of the Underground Storage Tank Program. This is necessary for the agency to efficiently implement the program without adding additional staff. TNRCC's current fees and staff are already insufficient to address all cases, and privatization could allow the agency to contract out some of the labor on various parts of the programs.

OPPONENTS
SAY:

Those who create environmental hazards, in this case, through leaks or spills from petroleum storage tanks, should be held responsible for their actions.

Reimbursing tank owners for costs they incur cleaning up the pollution caused by their tanks, shifts a large portion of the financial burden for damage to the environment to the public, since the increased tank fees would be passed to the public in the form of higher gasoline prices. The state should not, even temporarily, bail out the petroleum storage tank remediation fund with money from general revenue.

The money in the PSTRF from the \$120 million loan would go to bail out the big operators as well as the small independent station owners who really cannot afford remediation costs. The bigger operators, who can afford to pay for their own cleanup, should be held accountable for the damage caused by their industry.

Increasing delivery tank fees means increasing what is essentially a tax on gasoline, since the increase will be passed on to the public.

Fees should also be paid by those who are bulk consumers of petroleum products, but now escape delivery tank fees, such as utility companies and airports.

NOTES:

The committee amendments would provide a deadline for the registration of reimbursement claims after which reimbursement would be prohibited, would prohibit reimbursement for work after September 1, 1993, without prior approval until all other claims were paid, provide that higher fees could not be reduced until the entire \$120 million was repaid, allow TNRCC to privatize the storage tank program and provide for the reimbursement program to expire on September 1, 2001.

The companion bill, SB 396 by Sims and Brown, was referred to Senate Natural Resources on February 2.

A related bill, HB 2587 by Alexander, which would prohibit PSTRF reimbursement for actions reported to TNRCC after 1998 and give TNRCC enforcement power over those who repair and install storage tanks, is also on today's calendar, as is HB 3032 by Alexander, which would permit TNRCC to place noncomplying facilities "out-of-service", limit lender liability for remediation loans and require "risk based corrective action."

HB 2587's companion bill, SB 1105 by Sims/Brown, was amended in the Senate Natural Resources committee to incorporate provisions from SB 396 by Sims and Brown, SB 1501 by Sims and Brown (the companion to HB 3032) and several new provisions. The bill was left pending in the Senate Natural Resources committee on April 27.