

By: Senator(s) Dearing

To: Environment Prot,
Cons and Water Res

SENATE BILL NO. 2281
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 49-17-407, MISSISSIPPI CODE OF 1972,
2 WHICH PROVIDES FOR AN ENVIRONMENTAL PROTECTION FEE ON MOTOR FUEL;
3 PROVIDES FOR THE DEPOSIT OF SUCH FEES INTO THE GROUNDWATER
4 PROTECTION TRUST FUND; AND PROVIDES FOR THE DISBURSEMENT OF SUCH
5 FUNDS BY REMOVING THE REPEALER ON SUCH SECTION; AND FOR RELATED
6 PURPOSES. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF
7 MISSISSIPPI:

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9 SECTION 1. Section 49-17-407, Mississippi Code of 1972, is
10 amended as follows:

11 49-17-407. (1) (a) An environmental protection fee of
12 Four-tenths of One Cent (4/10 of 1¢) per gallon is hereby levied
13 upon any bonded distributor, as defined by Sections 49-17-401
14 through 49-17-433, who sells or delivers motor fuels to a retailer
15 or user in this state.

16 (b) Every person, other than a bonded distributor, who
17 shall purchase or acquire motor fuels within this state on which
18 the environmental protection fee has not accrued, shall be liable
19 for the environmental protection fee.

20 (c) The environmental protection fee shall be imposed
21 only one (1) time on motor fuels sold in the state.

22 (d) The environmental protection fee shall be collected
23 by the State Tax Commission and shall be designated separately
24 from the excise taxes on fuels.

25 (e) Any person liable for the environmental protection
26 fee shall be subject to the same requirements and penalties as
27 distributors under the provisions of Section 27-55-301 et seq.

28 (f) Any person liable for the environmental protection
29 fee shall file a report and remit any fees due at the same time

30 provided for filing reports under Section 27-55-319 on forms
31 prescribed by the State Tax Commission.

32 (g) The State Tax Commission is hereby authorized and
33 empowered to promulgate all rules and regulations necessary for
34 the administration of the environmental protection fee.

35 (2) (a) On or before the fifteenth day of each month the
36 environmental protection fees collected during the previous month
37 shall be deposited into the Mississippi Groundwater Protection
38 Trust Fund established in Section 49-17-405. When the unobligated
39 balance in the fund reaches or exceeds Ten Million Dollars
40 (\$10,000,000.00), the administrator of the fund shall notify in
41 writing the State Tax Commission no later than the twenty-fifth
42 day of the month to abate the environmental protection fee. The
43 abatement shall become effective on the last day of the month
44 succeeding the month in which such notice was given. All
45 environmental protection fees accrued shall be reported and paid.

46 (b) When the fund balance is reduced below Six Million
47 Dollars (\$6,000,000.00), the fee shall again be imposed at the
48 rate of Four-tenths of One Cent ($\frac{4}{10}$ of 1¢) per gallon until such
49 time as the fund shall reach or exceed Ten Million Dollars
50 (\$10,000,000.00). The administrator of the fund shall notify, no
51 later than the twenty-fifth day of the month, the State Tax
52 Commission to reimpose the environmental protection fee. The
53 imposition of the fee shall become effective on the first day of
54 the second month succeeding the month in which the notice to
55 reimpose the fee was given.

56 (3) This fund shall be used for the purposes set forth in
57 Sections 49-17-401 through 49-17-435 and for no other governmental
58 purposes, nor shall any portion hereof ever be available to borrow
59 from by any branch of government; it being the intent of the
60 Legislature that this fund and its increments shall remain intact
61 and inviolate. Any interest earned on monies in this fund shall
62 remain in this fund.

63 (4) Monies held in the fund established under Sections
64 49-17-401 through 49-17-435 shall be used only at an active site
65 and shall be disbursed in accordance with the commission
66 requirements and as follows:

67 (a) Payments shall be made to any third party who
68 brings a third-party claim against any owner of an underground
69 storage tank and the commission as trustee of the Mississippi
70 Groundwater Protection Trust Fund and who obtains a final judgment
71 in such action which is valid and enforceable in this state
72 against such parties. Payment shall be paid to the third party
73 upon filing by such party an application with the department
74 attaching the original or a certified copy of the final judgment.

75 (b) Payments shall be made in reasonable amounts to
76 approved response action contractors and other parties involved in
77 the site study and cleanup. Payment shall be made to the party
78 incurring the costs by filing of a sworn application with the
79 department indicating the fair and reasonable value of the costs
80 of site rehabilitation, subject to the regulations and limitations
81 as set by the department.

82 (5) Payments from the fund are limited as follows:

83 (a) For cleanup purposes, a maximum of One Million
84 Dollars (\$1,000,000.00) may be disbursed from the fund for any one
85 (1) site, per confirmed release occurrence.

86 (b) For third-party judgments, a maximum of One Million
87 Dollars (\$1,000,000.00) may be disbursed from the fund for any one
88 (1) site, per confirmed release occurrence.

89 (c) Nothing in Sections 49-17-401 through 49-17-435
90 shall establish or create any liability or responsibility on the
91 part of the department or the State of Mississippi to pay any
92 cleanup costs or third-party claims if the fund created herein is
93 insufficient to do so.

94 (6) Monies held in the fund established under Sections
95 49-17-401 through 49-17-435 shall not be used for purchases of
96 equipment needed to assist in cleanup operations.

97 (7) Nothing in Sections 49-17-401 through 49-17-435 shall
98 serve to limit any recovery against an owner of an underground
99 storage tank in excess of One Million Dollars (\$1,000,000.00).

100 (8) Substantial compliance shall in no way be construed to
101 be an absolute defense to civil liability.

102 * * *

103 SECTION 2. This act shall take effect and be in force from
104 and after its passage.