

By: Senator(s) McCaughn, Jackson (11th),
Branning

To: Environment Prot, Cons
and Water Res; Appropriations

SENATE BILL NO. 2158

1 AN ACT TO AMEND SECTIONS 49-17-405, 49-17-407 AND 49-17-421,
2 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT WHEN UNDERGROUND STORAGE
3 TANK FEES ARE INSUFFICIENT TO COVER ADMINISTRATIVE COSTS, THE
4 COSTS ASSOCIATED WITH ADMINISTRATION OF THE MISSISSIPPI
5 GROUNDWATER PROTECTION TRUST FUND AND RELATED PURPOSES SHALL BE
6 PAID FROM THE FUND; AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** Section 49-17-405, Mississippi Code of 1972, is
9 amended as follows:

10 49-17-405. (1) There is hereby created the Mississippi
11 Groundwater Protection Trust Fund, hereinafter referred to as the
12 "fund" to be administered by the Executive Director of the
13 Department of * * * Environmental Quality. The commission shall
14 adopt regulations for administering this fund.

15 (2) The commission shall expend or utilize monies up to One
16 Million Dollars (\$1,000,000.00) annually in the fund by an annual
17 appropriation approved by the Legislature to supplement all
18 reasonable direct and indirect costs associated with the
19 development and administration of the Underground Storage Tank
20 (UST) Program if the annual tank regulatory fee in Section



21 49-17-421 does not adequately cover the costs associated with
22 Sections 49-17-401 through 49-17-435. All reasonable direct and
23 indirect costs associated with development and administration of
24 the UST Program, including, but not limited to, the reasonable
25 costs of the following activities as they relate to the UST
26 Program:

27 (a) Preparing generally applicable regulations or
28 guidance regarding the UST Program or its implementation or
29 enforcement;

30 (b) Administering the UST Program, including the
31 supporting and tracking of UST owners/operators and associated UST
32 systems, compliance with UST regulations, the fund, UST-certified
33 contractors, tank fees and related data entry;

34 (c) Implementing and enforcing the terms of the UST
35 regulations; and

36 (d) Investigation, assessment and rehabilitation of
37 contamination sites with restoration or replacement of potable
38 water supplies.

39 At no time shall an annual fund appropriation result in more
40 than supplemental funding for the current annual cost of
41 administering the UST Program.

42 (3) Whenever in the executive director's determination a
43 release of motor fuels at an active site may pose a threat to the
44 environment or the public health, safety or welfare, the



45 department shall obligate monies available in the fund to provide
46 for:

47 (a) Investigation and assessment of contamination
48 sites;

49 (b) Restoration or replacement of potable water
50 supplies;

51 (c) Rehabilitation of contamination sites, which may
52 consist of cleanup of affected soil, groundwater and inland
53 surface waters, using cost-effective alternatives that are
54 technologically feasible and reliable, and that provide adequate
55 protection of the public health, safety and welfare and minimize
56 environmental damage, in accordance with the site selection and
57 clean-up criteria established by the commission, except that
58 nothing herein shall be construed to authorize the commission to
59 obligate funds for payment of costs which may be associated with,
60 but are not integral to, site rehabilitation, such as the cost for
61 retrofitting or replacing underground storage tanks.

62 (* * *4) Whenever the commission has expended funds from
63 the fund created by Sections 49-17-401 through 49-17-433, the
64 owner of the underground storage tank shall not be liable to the
65 department for such costs if the owner was in substantial
66 compliance on the date on which the discharge of the motor fuels
67 which necessitates the cleanup was reported to the department.
68 Otherwise owners are responsible for reimbursement and the
69 reimbursed monies shall go back into the fund. In such



70 circumstances the commission is authorized to take any necessary
71 action to recover these monies from responsible owners.

72 (* * *5) Any provisions of this section and chapter
73 regarding liability for the costs of cleanup, removal, remediation
74 or abatement of any pollution, hazardous waste or solid waste
75 shall be limited as provided in Section 49-17-42 and rules adopted
76 thereto.

77 **SECTION 2.** Section 49-17-407, Mississippi Code of 1972, is
78 amended as follows:

79 49-17-407. (1) (a) An environmental protection fee of
80 Four-tenths of One Cent (4/10 of 1¢) per gallon is hereby levied
81 upon any bonded distributor, as defined by Sections 49-17-401
82 through 49-17-433, who sells or delivers motor fuels to a retailer
83 or user in this state.

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

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

90 (d) The environmental protection fee shall be collected
91 by the Department of Revenue and shall be designated separately
92 from the excise taxes on fuels.

93 (e) Any person liable for the environmental protection
94 fee shall be subject to the same requirements and penalties as



95 distributors under the provisions of the Mississippi Special Fuel
96 Tax Law.

97 (f) Any person liable for the environmental protection
98 fee shall file a report and remit any fees due at the same time
99 provided for filing reports under Section 27-55-523, on forms
100 prescribed by the Department of Revenue.

101 (g) The Department of Revenue is hereby authorized and
102 empowered to promulgate all rules and regulations necessary for
103 the administration of the environmental protection fee.

104 (2) (a) On or before the fifteenth day of each month the
105 environmental protection fees collected during the previous month
106 shall be deposited into the Mississippi Groundwater Protection
107 Trust Fund established in Section 49-17-405. When the unobligated
108 balance in the fund reaches or exceeds Ten Million Dollars
109 (\$10,000,000.00), the administrator of the fund shall notify in
110 writing the Department of Revenue no later than the twenty-fifth
111 day of the month to revise the distribution of the environmental
112 protection fee and the Department of Revenue shall deposit the fee
113 into the State Highway Fund. Such distribution shall become
114 effective on the last day of the month succeeding the month in
115 which such notice was given. All environmental protection fees
116 accrued shall be reported and paid.

117 (b) When the fund balance is reduced below Six Million
118 Dollars (\$6,000,000.00), the fee shall again be deposited into the
119 Mississippi Groundwater Protection Trust Fund until such time as



120 the fund shall reach or exceed Ten Million Dollars
121 (\$10,000,000.00). The administrator of the fund shall notify, no
122 later than the twenty-fifth day of the month, the Department of
123 Revenue to deposit the environmental protection fee into the
124 Mississippi Groundwater Protection Trust Fund and such
125 distribution shall become effective on the first day of the second
126 month succeeding the month in which the notice to deposit the fee
127 into the fund was given.

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

135 (4) Monies held in the fund established under Sections
136 49-17-401 through 49-17-435 shall be used for supplemental funding
137 of the Underground Storage Tank (UST) Program as described in
138 Section 49-17-405 and only at an active site and shall be
139 disbursed in accordance with the commission requirements and as
140 follows:

141 (a) Payments shall be made to any third party who
142 brings a third-party claim against any owner of an underground
143 storage tank and the commission as trustee of the Mississippi
144 Groundwater Protection Trust Fund and who obtains a final judgment



145 in such action which is valid and enforceable in this state
146 against such parties. Payment shall be paid to the third party
147 upon filing by such party an application with the department
148 attaching the original or a certified copy of the final judgment.

149 (b) Payments shall be made in reasonable amounts to
150 approved response action contractors and other parties involved in
151 the site study and cleanup. Payment shall be made to the party
152 incurring the costs by filing of a sworn application with the
153 department indicating the fair and reasonable value of the costs
154 of site rehabilitation, subject to the regulations and limitations
155 as set by the department.

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

157 (a) For cleanup purposes, a maximum of One Million Five
158 Hundred Thousand Dollars (\$1,500,000.00) may be disbursed from the
159 fund for any one (1) site, per confirmed release occurrence.

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

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



168 (6) Monies held in the fund established under Sections
169 49-17-401 through 49-17-435 shall not be used for purchases of
170 equipment needed to assist in cleanup operations.

171 (7) Nothing in Sections 49-17-401 through 49-17-435 shall
172 serve to limit any recovery against an owner of an underground
173 storage tank in excess of the fund payment limits established
174 under this section.

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

177 **SECTION 3.** Section 49-17-421, Mississippi Code of 1972, is
178 amended as follows:

179 49-17-421. (1) After receiving the annual report and
180 recommendation of the Underground Storage Tank (UST) Advisory
181 Council, the commission may assess and collect an annual tank
182 regulatory fee in an amount sufficient to administer Sections
183 49-17-401 through 49-17-435, but not to exceed Two Hundred Dollars
184 (\$200.00) per tank. The fee, as set by the commission, shall be
185 assessed per tank per year and shall be collected from the owner
186 of each underground storage tank available for use in Mississippi
187 on July 1, 1988, or brought into use or available for use after
188 that date, as provided in the Mississippi Underground Storage Tank
189 Act of 1988 (Sections 49-17-401 through 49-17-435). The fee
190 assessed under this section is a debt due by the owner of each
191 tank in use in Mississippi on July 1, 1988, or brought into use
192 after that date.



193 (2) The commission shall establish the amount of the tank
194 regulatory fee to cover the costs of the Underground Storage Tank
195 Program. The fee for each state fiscal year shall be set by order
196 of the commission, which shall include:

197 (a) A receipt of the report and recommendations of the
198 UST Advisory Council, and

199 (b) A public notice to allow the public a period of at
200 least thirty (30) days to provide comments regarding the
201 underground storage tank fee report and recommendation, or to
202 request a public hearing in accordance with Section
203 49-17-29(4)(a).

204 The department may conduct a public hearing on the tank
205 regulatory fee when a significant level of public interest exists
206 or when warranted by other factors. Notwithstanding the
207 provisions of this subsection (2), the commission may proceed with
208 entry of the order if the UST Advisory Council fails to submit its
209 report in a timely manner.

210 The tank regulatory fee shall be due July 1 of each year, and
211 if any part of the fee is not paid within thirty (30) days after
212 the due date, a penalty of fifty percent (50%) of the amount due
213 shall accrue at once and be added to the fee, unless the owner of
214 the underground storage tank demonstrates to the commission that
215 the failure to make timely payment was unavoidable due to
216 financial hardship or otherwise beyond the control of the owner.



217 Monies collected under this section shall be deposited in a
218 special fund which is created in the State Treasury. Unexpended
219 amounts remaining in the special fund at the end of the fiscal
220 year shall not lapse into the General Fund and any interest earned
221 on amounts in the special fund shall be credited to the special
222 fund by the Treasurer. The fund may receive monies from any
223 available public or private source, including, but not limited to,
224 the fund, collection of fees, interest, grants, taxes, public or
225 private donations and judicial actions. Monies in this special
226 fund shall be expended by annual appropriation approved by the
227 Legislature to administer Sections 49-17-401 through 49-17-435.

228 **SECTION 4.** This act shall take effect and be in force from
229 and after its passage.

