3/19/18 3:44 P.M.

Chapter No. 397
18/HR43/R1546
SO / EH

HOUSE BILL NO. 813

Originated in House _____ Clerk

HOUSE BILL NO. 813

AN ACT TO AMEND SECTION 49-17-403, MISSISSIPPI CODE OF 1972, TO INCLUDE CERTAIN UNDERGROUND STORAGE TANKS WITHIN THE DEFINITION OF AN ACTIVE SITE UNDER THE MISSISSIPPI UNDERGROUND STORAGE TANK ACT OF 1988; TO AMEND SECTION 49-17-421, MISSISSIPPI CODE OF 1972, TO INCREASE THE CAP ON THE ANNUAL TANK REGULATORY FEE ASSESSED BY THE COMMISSION ON ENVIRONMENTAL QUALITY; TO REQUIRE THAT THE COMMISSION SET THE AMOUNT OF THE FEE BY ORDER; TO ESTABLISH CERTAIN REQUIREMENTS FOR THE ORDER DETERMINING THE FEE; TO AUTHORIZE A PUBLIC HEARING TO BE HELD REGARDING THE FEE; TO CREATE NEW SECTION 49-17-422, MISSISSIPPI CODE OF 1972, TO CREATE THE UNDERGROUND STORAGE TANK ADVISORY COUNCIL; TO REQUIRE THE COUNCIL TO CONDUCT AN INDEPENDENT STUDY OF THE COSTS RELATED TO THE UNDERGROUND STORAGE TANK PROGRAM; TO REQUIRE THAT THE COUNCIL RECOMMEND AN EQUITABLE FEE SYSTEM FOR THE PROGRAM; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 49-17-403, Mississippi Code of 1972, is amended as follows:

49-17-403. For the purposes of Sections 49-17-401 through 49-17-433, the following * * * shall have the meaning ascribed in this section:

(a) "Active site" means a site of an underground storage tank where an owner can be identified and where the tank

is * * * available for use * * * in the management and handling of motor fuels, including tanks currently in service, tanks temporarily closed and tanks temporarily out of service.

(b) "Bonded distributor" means any person holding a distributor's permit issued under either Section 27-55-7 or Section 27-55-507.

(c) "Commission" means the Mississippi Commission on Environmental Quality.

(d) "Contamination" means the presence or discharge of regulated substances in or on the land or in the waters of the state.

(e) "Department" means the Mississippi Department of Environmental Quality.

(f) "Director" means the Executive Director of the Mississippi Department of Environmental Quality.

(g) "Groundwater" means water located beneath the land surface located wholly or partially within the boundaries of the state.

(h) "Motor fuels" means gasoline and aviation gasoline as defined in Section 27-55-5 and special fuel as defined in Section 27-55-505, except for those "motor fuels" used in electric power generating plants for the commercial production of electricity.

(i) "Operator" means any person in control of, or having responsibility for, the daily operation of an underground storage tank.

(j) "Owner of an underground storage tank" means:

(i) In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use or dispensing of regulated substances; and

(ii) In the case of an underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such tank immediately before the discontinuation of its use.

(k) "Person" means an individual, trust, firm, joint-stock company, federal agency, corporation, state municipality, commission, political subdivision of a state, any interstate body, a consortium, a joint venture, a commercial entity or the United States government.

(l) "Regulated substance" means:

(i) Any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law No. 96-510, as amended and extended (but not including any substance regulated as a hazardous waste under Section 17-17-1 et seq., Mississippi Code of 1972); and

(ii) Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (sixty (60) degrees Fahrenheit and fourteen and seven-tenths (14-7/10) pounds per square inch absolute).

(m) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an underground storage tank into groundwater, surface water or subsurface soils.

(n) "Response action" means any activity, including evaluation, planning, design, engineering, construction and ancillary services, which is carried out in response to any discharge, release or threatened release of motor fuels.

(o) "Response action contractor" means a person who has been approved by the commission and is carrying out any response action, including a person retained or hired by such person to provide services relating to a response action.

(p) "Retailer" means any person other than a bonded distributor who sells motor fuel as defined in this section.

(q) "Substantial compliance" means that an owner or operator of an underground storage tank has registered that tank with the department, and has made a good-faith effort to comply with the law; and the rules and regulations adopted pursuant thereto.

(r) "Third-party claim" means any civil action brought or asserted by any person against any owner of any underground

storage tank for damages to person or property which damages are the direct result of a release of motor fuels from an underground storage tank.

(s) "Underground storage tank" means any one (1) or combination of containers including tanks, vessels, enclosures or structures together with appurtenances thereto used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground. Such term does not include any:

(i) Farm or residential tanks of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel for noncommercial purposes;

(ii) Tanks used for storing heating oil for consumptive use on the premises where stored;

(iii) Septic tanks;

(iv) Pipeline facilities (including gathering lines regulated under:

1. The Natural Gas Pipeline Safety Act of 1968, Public Law No. 90-481, 49 USCS 1671-1684, as amended and extended,

2. The Hazardous Liquid Pipeline Safety Act of 1979, Public Law No. 96-129, 49 USCS 2001 et seq., as amended and extended, or

3. An intrastate pipeline facility regulated under state laws comparable to the provisions of law in Clause 1 or 2 of this subparagraph);

(v) Surface impoundments, pits, ponds or lagoons;

(vi) Storm water or wastewater collection systems;

(vii) Flow-through process tanks;

(viii) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operation;

(ix) Storage tanks situated in an underground area such as a basement, cellar, mine working, drift, shaft or tunnel if the storage tank is situated upon or above the surface of the floor;

(x) Other tanks exempted by the Administrator of the federal Environmental Protection Agency; and

(xi) Piping connected to any of the above exemptions.

(t) "User" means any person who purchases or acquires motor fuels as defined in this section for consumption.

SECTION 2. Section 49-17-421, Mississippi Code of 1972, is amended as follows:

49-17-421. <u>(1) After receiving the annual report and recommendation of the Underground Storage Tank (UST) Advisory Council,</u> the commission may assess and collect * * * <u>an annual</u> tank regulatory fee in an amount sufficient to administer Sections 49-17-401 through 49-17-435<u>,</u> but not to exceed * * * <u>Two Hundred</u>

Dollars ($200.00) per tank. The fee, as set by the commission, shall be assessed per tank per year and shall be collected from the owner of each underground storage tank * * * available for use in Mississippi on July 1, 1988, or brought into use or available for use after that date, as provided in the Mississippi Underground Storage Tank Act of 1988 (Sections 49-17-401 through 49-17-435). The * * * fee assessed under this section is a debt due by the owner of each * * * tank in use in Mississippi on July 1, 1988, or brought into use after that date.

(2) The commission shall establish the amount of the tank regulatory fee to cover the costs of the underground storage tank program. The fee for each state fiscal year shall be set by order of the commission, which shall include:

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

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

The department may conduct a public hearing on the tank regulatory fee when a significant level of public interest exists or when warranted by other factors. Notwithstanding the provisions of this subsection (2), the commission may proceed with

entry of the order if the UST Advisory Council fails to submit its report in a timely manner.

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

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

SECTION 3. The following shall be codified as Section 49-17-422, Mississippi Code of 1972:

49-17-422. (1) An Underground Storage Tank (UST) Advisory Council is created to consult with the commission on all matters

relating to the UST program, to conduct an independent study of the development and administration costs of the program and to conduct an annual review of administering such program. The costs to be included in the study for the program shall be those costs as provided in Section 49-17-421. The council shall include in the study the type and quantity of underground storage tanks in the state that are covered by the program. After completing a study of the needs and costs of the program, the council shall recommend an equitable fee system for the program that is based on the type and quantity of underground storage tanks. The annual review for the program shall determine if the fee system is collecting sufficient funds to meet program needs and include any recommendation by the council regarding changes to the fee system. Each annual review report shall be due January 1 of each year to the commission and the executive director of the department.

(2) The UST Advisory Council shall be comprised of the following five (5) members:

(a) The President of the Mississippi Petroleum Marketers and Convenience Store Association (MPMCSA) or his or her designee;

(b) A member of the MPMCSA appointed by the Board of Directors of the MPMCSA for a term of four (4) years;

(c) A representative appointed by the President of the Mississippi Engineering Society, experienced in the assessment and

remediation of petroleum contamination, for a term of four (4) years;

(d) A representative appointed by the Governor, of any company doing business in Mississippi in the installation, closure and/or testing of underground storage tanks; and

(e) A representative appointed by the Lieutenant Governor, of any company doing business in Mississippi in the installation, closure and/or testing of underground storage tanks.

The council members who are appointed by the Governor and Lieutenant Governor shall have terms that are concurrent with the term of the appointing official.

(3) Original appointments to the UST Advisory Council must be made no later than January 1, 2019, and vacancies on the council shall be filled by appointment in the same manner as the original appointments. The council shall convene within sixty (60) days following the date of the appointment of the members, and must select from their membership a chairperson to preside over meetings and a vice chairperson to preside in the absence of the chairperson or when the chairperson is excused. The council shall adopt procedures governing the manner of conducting its business. A majority of the members constitutes a quorum to do business.

(4) Members of the UST Advisory Council shall serve without salary, but shall be entitled to receive a reimbursement of their actual travel and expenses, as provided in Section 25-3-41, that

are incurred while performing in the scope of their duties as council members. These expenses are to be paid on an itemized statement that is approved by the State Fiscal Officer from fees collected under Section 49-17-421.

(5) The executive director of the department shall provide technical, clerical and other support services, including service by contract, as the council requires in the performance of its functions.

SECTION 4. This act shall take effect and be in force from and after July 1, 2018.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 6, 2018

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 6, 2018

Tate Reeves

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

3/19/18
3:44pm