

2024 Regular Session

SENATE BILL NO. 247

BY SENATOR CATHEY

ENVIRONMENTAL CONTROL. Provides for the Motor Fuels Underground Storage Tank Trust Dedicated Fund Account. (8/1/24)

1 AN ACT

2 To amend and reenact R.S. 30:2194(B)(4) and (11), (C)(2), and (4), 2194.1, 2195(D) and
3 (F)(3), 2195.2(A)(1)(c)(ii), 2195.4(A)(1) and (3)(c), and 2195.10(D), and to repeal
4 R.S. 30:2195.4(A)(3)(d), relative to the Motor Fuels Underground Storage Tank
5 Trust Dedicated Fund Account; to provide for definitions; to provide for storage of
6 heating oil; to provide for registration of underground storage tanks; to provide for
7 pipeline facilities; to provide for dispensing into unregistered tanks; to provide for
8 abandoned motor fuel underground storage tanks; to provide for uses of the Tank
9 Trust Account; to provide for disbursements from the Tank Trust Account; to
10 provide for financial responsibility for noncompliance; and to provide for related
11 matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 30:2194(B)(4) and (11), (C)(2), and (4), 2194.1, 2195(D) and (F)(3),
14 2195.2(A)(1)(c)(ii), 2195.4(A)(1) and (3)(c), and 2195.10(D) are hereby amended and
15 reenacted to read as follows:

16 §2194. Underground storage tanks; registration

17 * * *

1 B. As used in R.S. 30:2194 through 2195.11, the following terms shall have
2 the meaning ascribed to them in this Subsection, unless the context clearly indicates
3 otherwise:

4 (1)(a) * * *

5 (4) "Eligible participant" means any owner of an underground storage tank
6 who has registered a newly installed or operating **or temporarily closed** tank with
7 the department prior to the date of a release, has paid the annual tank registration
8 fees along with any late payment fees, **and has not been excluded from coverage,**
9 **as provided in** ~~has met the financial responsibility requirements imposed by R.S.~~
10 ~~30:2195.9, and has met the noncompliance financial responsibility amounts imposed~~
11 ~~by R.S. 30:2195.10.~~

12 * * *

13 (11) "Specialized services" means activities associated with the preparation
14 of a reimbursement application, laboratory analysis, **site assessment and**
15 **characterization,** or any construction activity, construction of trenches, excavations,
16 installing monitoring wells, conducting borings, heavy equipment work, surveying,
17 plumbing, and electrical work, which is carried out by a response action contractor
18 or a subcontractor hired or retained by a response action contractor in response to a
19 discharge or release or threatened release of motor fuels into the groundwater,
20 surface waters, or soils.

21 * * *

22 C. The secretary shall promulgate regulations requiring the registration of all
23 underground storage tanks with a capacity in excess of one hundred ten gallons
24 which contain regulated substances. The secretary may adopt rules and regulations
25 to require the registration of certain underground storage tanks; establish
26 requirements for ensuring sound underground storage tank management for
27 preventing, controlling, remediating, and abating actual or potential contamination
28 of surface water, groundwater, or soils; establish requirements for reporting of
29 known releases and for taking corrective action in response to known releases from

1 underground storage tank systems; establish a field citation program with penalty
2 imposing authority; and establish a certification program for persons installing,
3 repairing, or closing underground storage tank systems. For the purpose of this
4 Section, "underground storage tank" shall not include a:

5 * * *

6 (2) Tank used for storing heating oil, except heating oils blended with
7 hazardous waste, for consumptive use on the premises where stored.

8 * * *

9 (4) Pipeline facility, including gathering lines that are either of the
10 following:

11 (a) Regulated under ~~the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C.A.~~
12 ~~1671 et seq.~~ 49 U.S.C. 601.

13 (b) Regulated under ~~the Hazardous Liquid Pipeline Safety Act of 1979, 49~~
14 ~~U.S.C.A. 2001 et seq.~~; or

15 (c) Which is an intrastate pipeline facility regulated under state laws
16 comparable to the provisions of law referred to in Subparagraph (a) ~~or (b) above~~ of
17 this Paragraph and which is determined by the secretary of the United States
18 Department of Transportation to be connected to a pipeline, or to be operated
19 or intended to be capable of operating at pipeline pressure or as an integral part
20 of the pipeline.

21 * * *

22 §2194.1. Prohibitions

23 No person shall place or dispense a regulated substance into an underground
24 storage tank that has not been registered with the Louisiana Department of
25 Environmental Quality ~~and that does not have a current registration certificate.~~

26 §2195. Motor Fuels Underground Storage Tank Trust Dedicated Fund Account

27 * * *

28 D. The funds placed in the Tank Trust Account shall only be used in
29 accordance with the terms and conditions of R.S. 30:2194 through ~~2195.9~~ 2195.11

1 and shall not be placed in the general fund but shall be subject to the appropriation
 2 process of the legislature. The monies in the Tank Trust Account shall be invested
 3 by the state treasurer in the same manner as monies in the state general fund. Monies
 4 deposited into this account shall be **used to defray the cost of investment fees, and**
 5 **shall be** categorized as fees and self-generated revenue for the sole purpose of
 6 reporting related to the executive budget, supporting documents, and general
 7 appropriation bills and shall be available for annual appropriation by the legislature.

8 **All unexpended and unencumbered monies in the account at the end of the**
 9 **fiscal year shall remain in the account and be available for expenditure in**
 10 **future fiscal years.**

11 * * *

12 F.(1) * * *

13 (3) A tank may be declared to be an abandoned motor fuel underground
 14 storage tank by the secretary upon a finding that ~~all~~ **any** of the following apply ~~to the~~
 15 ~~site:~~

16 (a) **The release at the site is not eligible for the Tank Trust Account and**
 17 **the secretary has determined that action by the department is the most timely**
 18 **and efficient way to address conditions at the site.**

19 **(b) All of the following apply to the site:**

20 **(i)** It has received motor fuels in an underground storage tank.

21 ~~(b)~~**(ii)** The motor fuel underground storage tank was not closed or the site
 22 was not assessed or remediated in accordance with the requirements of this Subtitle
 23 and the regulations adopted hereunder.

24 ~~(e)~~**(iii)** It constitutes or may constitute a danger or potential danger to the
 25 public health or the environment.

26 ~~(d)~~**(iv)** It has no financially responsible owner or operator who can be
 27 located, or such person has failed or refused to undertake action ordered by the
 28 secretary pursuant to R.S. 30:2194 and the regulations adopted thereunder.

29 ~~(e) The release at the site is not eligible for the Tank Trust Account or the~~

1 ~~secretary has determined that action by the department is the most timely and~~
2 ~~efficient way to address conditions at the site.~~

3 §2195.2. Uses of the Tank Trust Account

4 A. The department shall administer the Tank Trust Account and shall make
5 disbursements from the account for all necessary and appropriate expenditures.
6 Pursuant to the authorization in R.S. 30:2195, the secretary of the Department of
7 Environmental Quality shall use the Tank Trust Account as follows:

8 (1) Whenever in the secretary's determination incidence of surface water,
9 groundwater, or soils contamination resulting from the storage of motor fuels may
10 pose a threat to the environment or the public health, safety, and welfare and the
11 owner of the motor fuel underground storage tank has been found to be an eligible
12 participant, the department shall obligate monies available in the Tank Trust Account
13 to provide for the following response actions:

14 * * *

15 (c)(i) * * *

16 (ii) The monies expended from the Tank Trust Account for any of the above
17 approved costs shall be spent only up to such sums as that which is necessary to
18 satisfy federal petroleum underground storage tank financial responsibility
19 requirements (40 CFR 280.93) or ~~one~~ two million ~~five hundred thousand~~ dollars per
20 occurrence, whichever is greater. This amount shall include any third-party claim
21 arising from the release of motor fuels from a motor fuel underground storage tank.

22 However, if the secretary determines that further action is needed to address a
23 condition that constitutes or may constitute a danger or potential danger to the
24 public health or the environment, monies from the Tank Trust Account may be
25 expended above the aggregate financial responsibility requirements of 40 CFR
26 280.93.

27 * * *

28 §2195.4. Procedures for disbursements from the Tank Trust Account

29 A. Monies held in the Tank Trust Account established hereunder shall be

1 disbursed by the secretary in the following manner:

2 (1) ~~Payments shall be made in reasonable amounts to motor fuel underground~~
3 ~~storage tank owners for reimbursement of payment to approved response action~~
4 ~~contractors~~ **Notwithstanding any provision of R.S. 30:2194 through 2195.11 to**
5 **the contrary, any remediation work contracted for on or after August 1, 1995,**
6 **shall be paid by the department to the response action contractor who**
7 **performed the department-approved assessment or remediation work upon the**
8 **presentation of proper invoices** for response actions taken when authorized by the
9 secretary or his designee ~~only after the amounts required by R.S. 30:2195.9 and~~
10 ~~2195.10 have been paid by the underground motor fuels storage tank owner or those~~
11 ~~authorized to act for the owner.~~ The secretary may substitute a lien with the same
12 ranking as that authorized by R.S. 30:2195(F)(2) for the amount required by R.S.
13 30:2195.9 and 2195.10, but such lien shall not be substituted on behalf of an owner
14 or operator who continues to operate the system. An underground motor fuel storage
15 tank owner who is an eligible participant and a response action contractor will not
16 be reimbursed for response actions, excluding emergency response actions
17 performed during the first seventy-two hours following a release, performed at his
18 own site. Underground motor fuel storage tank owners will not be reimbursed for
19 response actions, excluding emergency response actions performed during the first
20 seventy-two hours following a release, performed by a response action contractor
21 who is known to have performed actions which contributed to or resulted in the
22 release.

23 * * *

24 (3)(a) * * *

25 (c) ~~Initial assessments shall be initiated within two years from the receipt of~~
26 ~~a request for assessment made by the secretary to be eligible for disbursement from~~
27 ~~the Tank Trust Account.~~

28 (d) When the department's action results in a reimbursement application not
29 being submitted within two years of the date the work was performed, the applicant

1 will have ninety days from the date the issue is resolved to submit the reimbursement
2 application.

3 * * *

4 §2195.10. Financial responsibility for noncompliance

5 * * *

6 D. Annually the advisory board shall review the financial responsibility
7 requirements for noncompliance and may recommend adjustments to the
8 requirements to the secretary. The secretary shall determine and set the financial
9 responsibility amounts for noncompliance annually. ~~Adjustments to the financial~~
10 ~~responsibility for noncompliance shall be no less than the amounts currently~~
11 ~~established by law.~~

12 Section 2. R.S. 30:2195.4(A)(3)(d) is hereby repealed.

The original instrument was prepared by Jacob K. Wilson. The following
digest, which does not constitute a part of the legislative instrument, was
prepared by Dawn Romero Watson.

DIGEST

SB 247 Reengrossed

2024 Regular Session

Cathey

Present law provides for the Motor Fuels Underground Storage Tank Trust Dedicated Fund Account and for definitions of "eligible participant" and "specialized services".

Proposed law retains present law and adds that eligible participants include an owner who has registered a temporarily closed tank and has not been excluded from coverage for noncompliance. Proposed law provides that specialized services includes site assessment and characterization.

Present law defines "underground storage tank", provides for registration of such tanks, and provides for certain exceptions.

Proposed law retains present law and specifies that tanks used to store heating oil blended with hazardous waste are not excluded from registration. Proposed law excludes pipeline facilities regulated under federal law and intrastate pipeline facilities determined by the secretary of U.S. Dept. of Transportation to be connected, operated, or intended to be capable of operating as an integral part of a pipeline, from registration.

Present law prohibits placing of a regulated substance into a tank that has not been registered with the department and which has no current certificate.

Proposed law retains present law but removes the requirement of no certificate.

Present law provides for uses of account funds for closure of abandoned tanks and provides for prohibitions.

Proposed law retains present law and adds that account funds shall be used to defray

investment fees. Proposed law further provides that all unexpended and unencumbered monies in the account at the end of the fiscal year shall remain in the account and be available for expenditure in future fiscal years.

Proposed law provides that the secretary may declare a tank abandoned where a release is not eligible for the account or where action by the department is the most efficient way to address conditions at the site.

Present law limits account expenditures to the greater of an amount necessary to satisfy federal requirements or \$1,500,000, per occurrence.

Proposed law changes the dollar amount from \$1,500,000 to \$2,000,000, and adds that expenditures may exceed federal requirements where the secretary determines necessary.

Present law provides for reasonable disbursements from the account to tank owners for reimbursement of payment to approved response action contractors, only after amounts required by law have been paid by the owner.

Proposed law provides that for remediation work contracted on or after August 1, 1995, the department shall pay the response action contractor directly upon presentation of invoices.

Present law provides that no disbursement from the account may be made until an eligibility verification is made and that initial assessments shall be made within two years of receipt of a request.

Proposed law retains present law but removes the requirement that an initial assessment be made within two years of request.

Present law provides for financial responsibility for noncompliance, for annual review of requirements and recommendation of adjustments thereto, and requires that adjustments be no less than amounts currently established by law.

Proposed law retains present law but removes the requirement that adjustments be no less than amounts in current law.

Effective August 1, 2024.

(Amends R.S. 30:2194(B)(4) and (11), (C)(2), and (4)(a) and (b), 2194.1, 2195(D) and (F)(3), 2195.2(A)(1)(c)(ii), 2195.4(A)(1) and (3)(c), and 2195.10(D); repeals R.S. 30:2195.4(A)(3)(d))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Finance to the original bill

1. Provides that all unexpended and unencumbered monies in the account at the end of the fiscal year shall remain in the account and be available for expenditure in future fiscal years.
2. Clarifies that the secretary may declare a tank abandoned where a release is not eligible for the account or where action by the department is the most efficient way to address conditions at the site.
3. Provides for technical corrections.

Senate Floor Amendments to engrossed bill

1. Make technical corrections.