

**SUBJECT:** Financial responsibility for underground storage tanks

**COMMITTEE:** Environmental Regulation — committee substitute recommended

**VOTE:** 6 ayes — Bonnen, Hancock, Lucio, T. King, Kuempel, West  
0 nays  
1 absent — Driver

**WITNESSES:** For — (*Registered, but did not testify:* Walt Baum, Association of Electric Companies of Texas; Scott B. Fisher, Texas Petroleum Marketers and Convenience Store Association; Debbie Hastings, Texas Oil and Gas Association; Beth O'Brien, Public Citizen; Bill Oswald, Koch Industries and Flint Hill Resources)  
  
Against — None

**BACKGROUND:** The Petroleum Storage Tank (PST) program was enacted by the 70th Legislature in 1987. It sets standards for the performance, maintenance, monitoring, registration, and financial responsibility of petroleum storage tanks. The program currently is managed by the Texas Commission on Environmental Quality (TCEQ).

As part of this program, the PST State-Lead Program directs state contractors to take corrective action at certain leaking PST sites. The leakages at these sites cannot be addressed by owners/operators, who therefore are released from responsibility. Release-incident cases involve parties that are unknown, unwilling, or financially unable to comply with state standards. A site also may qualify for the State-Lead program in the case of an emergency or multi-source contamination.

The PST Remediation fund provides reimbursement for remediation of contamination from leaking petroleum storage tanks. HB 2587 by Alexander, enacted in 1995, amended the Water Code to specify that the fund cannot be used to pay for the remediation of leakages discovered and reported after December 22, 1998. The bill also authorized the commission to impose administrative and civil penalties on tank owners

and operators who fail to maintain financial responsibility. Under HB 2587, the commission can seek injunctive relief to force the closure of an underground storage tank.

**DIGEST:**

CSHB 1956 would amend Water Code, sec. 26.352, to allow TCEQ to order the closure of certain underground storage tanks when a tank owner or operator failed to maintain evidence of financial responsibility. The bill would require TCEQ to impose an administrative or civil penalty on an owner or operator who failed to maintain financial responsibility for an underground storage tank. The penalty would be greater than or equal to the estimated annual cost of maintaining minimum insurance coverage on the tank.

Under CSHB 1956, an entity that provided insurance coverage or financial assurance to an underground storage tank owner or operator would be required to notify TCEQ if the coverage was canceled or not renewed on or after January 1, 2008. This entity would have to mail, fax, or e-mail this information within 30 days of coverage termination. The Texas Department of Insurance could adopt rules to carry out this provision.

An owner or operator of an underground storage tank used for storing petroleum products would be required to submit a compliance certification form annually, which would serve as proof that the owner or operator was maintaining financial responsibility for the tank. An underground storage tank owner or operator could submit a registration certificate issued by TCEQ to the federal Environmental Protection Agency as evidence of funding eligibility for expenses incurred for corrective action on releases discovered and reported prior to December 22, 1998.

This bill would take effect September 1, 2007, and its provisions would not apply retroactively.

**SUPPORTERS  
SAY:**

CSHB 1956 would enable TCEQ to better protect the environment by authorizing the commission to order the closure of underground petroleum storage tanks owned by noncompliant owners and operators. By setting more specific civil penalties, the bill would increase the incentive for tank owners and operators to adequately insure sites against leakages.

Tank leakage represents a serious environmental hazard. Under the current system, the state incurs the cost of remedying leakages or spillages at sites under the PST State-Lead program. CSHB 1956 would attach financial

responsibility for petroleum storage tank management to tank owners and operators, which would allow tank owners and operators to file insurance claims to pay for future clean-ups. This would result in cost-savings for the state by reducing the number of sites entering the PST State-Lead Program and decreasing the state's liability for tank releases. By requiring tank owners and operators to take financial responsibility, the bill could facilitate the eventual phase-out of the PST program.

Insurance for petroleum storage tank owners and operators was not widely available prior to the implementation of HB 2587 in 1995. It was easier to obtain by the cutoff date of December 22, 1998, however, because of the large number of tanks that had been improved and updated by then under the PST program. Nevertheless, it is estimated that half of the state's petroleum storage tank owners and operators still do not have financial coverage. The bill's requirement that insurance companies report the cancellation and non-renewal of coverage would help achieve the overall objective of requiring tank owners and operators to assume financial responsibility.

OPPONENTS  
SAY:

No apparent opposition.

NOTES:

Many of the provisions in the committee substitute are similar to those in the original bill as introduced, but each version would change current law by adding or modifying different sections of the Water Code. Both would:

- require tank owners and operators to maintain financial responsibility;
- allow TCEQ to place a tank out of service if the owner or operator failed to maintain financial responsibility; and
- require insurers to notify TCEQ when a tank owner canceled or failed to renew a policy.

The committee substitute also would:

- require tank owners and operators to submit evidence of financial responsibility annually with the TCEQ-issued compliance certificate; and
- set the administrative or civil penalty for failure to maintain financial responsibility at not less than the annual estimated cost of maintaining minimum insurance coverage.

A related bill, SB 1671 by Averitt, was reported favorably as substituted by the Senate Natural Resources Committee on April 3 and was placed on the April 12 Local and Uncontested Calendar. Like CSHB 1951, SB 1671 would permit TCEQ to order tank closure if an owner or operator did not possess evidence of financial responsibility and also would require an insurance entity to notify TCEQ in the event of a canceled or non-renewed policy.