

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1109

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1109

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1109

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 16, 2007

Recorder Job Number: 1175, 1180

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on HB 1109.

Mike Rude: We've been working with the Insurance Commission on tightening up our Petroleum Marketers Tank Release Fund. We've been working on amendments, but at this time we don't feel comfortable in continuing on our part until after I get a chance to review the amendments with the members.

Jim Poolman, Insurance Commissioner: What the bill basically does is provides for two different sections. One of them is to not allow portable tanks to be part and registered under the Petroleum Tank Fund. The second piece of the bill, towards the end of the bill changes and tightens up the way claims would be paid under the Petroleum Tank Fund. We are working with the Petroleum Marketers Association to basically take out that last section, and tighten up how underground and above ground tanks that have been abandoned would be put back into the fund. The concern is if the tank had been abandoned and was potentially leaking, you're sort of buying insurance for a house that's already on fire, so to speak. So, we want to make sure there are some potential underwriting standards that go into place before a tank comes into the fund, so you're not basically covering a tank that has already been leaking.

Hearing Closed.

Reopened hearing on HB 1109.

Jim Poolman, Insurance Commissioner: The concern of the Petroleum Marketers

Association is that there are tanks out there that may be not in operation now, that would be considered technically abandoned tanks, maybe a gas station that isn't in operation that comes back into operation and then wants to get into the fund. The Health Department governs the rules on the cleanup and everything else that goes along with the Petroleum Tank Fund, but we manage the fund itself. So, basically the amendments struck out the last section, section 2 of the bill. It deals with planes for those that make it in to the fund that have not paid a registration fee before, and the proposal in the amendments is to do the underwriting first. We've set up some new definition language in the very front of the bill. The second piece, the most important piece is the Tank integrity test. If somebody has had an inactive tank, and then comes back into the fund, there would have to be a test done previous to them getting into the fund to make sure the tank has the integrity, is not leaking, is in good shape, and that way it protects the financial integrity of the fund. I met with the ND Petroleum Marketers this week, and they said that really should be part of the due diligence of buying a business with the petroleum tanks anyway. The amendments also require back registration to be paid, which currently happens now. The only thing we didn't sign off on is there is a Petroleum Tank Fund Advisory Board, and they wanted the board to be able to have the final say of whether or not they could get into the fund or not. The board is merely an advisory board, and sort of the buck stops with the commissioner, so we didn't check that and they understand that.

Rep. Ruby: If a tank is moved to another location and not put in use right away, do they need to pay into the fund, or state register, or wait until it goes into use?

Jim: The fund is a voluntary fund. So, you do not need to necessarily stay registered with the fund, but of course, you typically can't get paid if something were to happen to the tank.

Page 3

House Industry, Business and Labor Committee

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Hearing Date: January 16, 2007

Rep. Nottestad: I move the amendment.

Rep. Zaiser: Second.

Voice vote taken, motion carries.

Rep. Ruby: I move a do pass, as amended.

Rep. Johnson: Second.

Roll call vote was taken. 14 Yeas, 0 Nays, 0 Absent, Carrier: Rep. Ruby

Hearing Closed

FISCAL NOTE
 Requested by Legislative Council
 01/23/2007

Amendment to: HB 1109

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

There does not appear to be any measurable fiscal impact to either the General Fund or the Petroleum Tank Release Compensation Fund associated with HB 1109.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

See explanation above.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

See explanation above.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

See explanation above.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

See explanation above.

Name:	Charles E. Johnson	Agency:	Insurance Department
Phone Number:	328-2440	Date Prepared:	01/23/2007

January 16, 2007

PROPOSED AMENDMENT TO HOUSE BILL NO. 1109

Page 1, line 1, remove "create and enact a new subsection to section 23-37-18 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to reimbursement for petroleum releases; and"

Page 1, line 3, replace "section" with "sections" and after "23-37-02" insert "and 23-37-17"

Page 1, line 4, after "definitions" and before the period insert "and registration fee"

Page 1, line 15, after "3." insert:

"ASTM" means American society for testing materials.

4."

Page 1, line 16, overstrike "4." and insert "5."

Page 1, line 17, overstrike "5." and insert "6."

Page 1, line 21, overstrike "6." and insert "7."

Page 1, line 23, overstrike "7." and insert "8."

Page 1, after line 23, insert:

"9. "EPA" means environmental protection agency."

Page 1, line 24, overstrike "8." and insert "10."

Page 1, after line 24, insert:

"11. "Location" means a physical address or site which has contiguous properties. Noncontiguous properties within a municipality or other governmental jurisdiction are considered separate locations."

Page 2, line 1, overstrike "9." and insert "12."

Page 2, line 3, overstrike "10." and insert "13."

Page 2, line 5, overstrike "11." and insert "14."

Page 2, line 9, overstrike "12." and insert "15."

Page 2, line 13, overstrike "13." and insert "16."

Page 2, line 15, replace "14." with "17."

Page 2, line 20, replace "15." with "18."

Page 3, after line 24, insert:

"19. "Tank integrity test" means a test to determine that a tank is sound and not leaking. For an underground tank the term means a certified third-party test that meets environmental protection agency leak detection requirements. For an aboveground tank, the term means a test conducted according to steel tank institute SP 001 or American petroleum institute 653."

Page 3, line 25, replace "16." with "20."

Page 3, replace lines 28 through 31 with:

"SECTION 2. AMENDMENT. Section 23-37-17 of the North Dakota Century Code is amended and reenacted as follows:

23-37-17. (Effective through July 31, 2011) Registration fee.

1. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If on the first day of July in any year the amount of money in the petroleum release compensation fund is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If on the first day of July in any year the amount of money in the petroleum release compensation fund is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. Annual registration fees must be reduced to five dollars if on the first day of July in any year the amount of money in the fund exceeds nine million dollars. Annual registration fees must continue at the fee of five dollars until the money in the fund does not exceed nine million dollars. ~~An owner or operator of a tank that was required to be registered by law on or before July 1, 2001, shall pay seventy five dollars for each aboveground tank and one hundred twenty five dollars for each underground tank owned or operated by that person for any previous years that the tank was required to be registered for which a fee was not paid.~~

2. An owner or operator of an existing tank which is discovered at a location which currently and previously has had tanks registered with the fund on or before July 1,2007, shall pay seventy-five dollars for each aboveground tank and one hundred twenty-five dollars for each underground tank owned or operated by that person for each previous year that that tank was required to be registered for which as fee was not paid. The payment includes the fees and the penalty for the failure to register.
3. An owner or operator of an existing tank at a location that was not previously and continuously registered with the fund, whether the registration was required by law or not, on or before July 1, 2007, must provide the fund with a phase two environmental study conducted by a qualified firm according to ASTM standards. A tank integrity test must also be performed. The environmental study and tank integrity tests must be reviewed by the commissioner along with the application for registration with the fund. If the commissioner rejects the application, the applicant is denied eligibility to the fund. However, if the site is remediated and the leaking tank is replaced, the applicant may reapply for registration with the fund. A new installation which is using a used tank must provide tank integrity test results for the used tank. Use of a synthetic liner in an aboveground dike system negates the need for a tank integrity test. A new tank at a new site and a new tank at an existing site which had a tank registered at it previously need only pay the required fees for registration with the fund.
4. If accepted for registration with the fund, the owner or operator of the tank must pay seventy-five dollars for each aboveground tank and one hundred twenty-five dollars for each underground tank for each previous year that the tank was required to be registered for which a fee was not paid, regardless of ownership in each of those years.
5. The registration fees collected under this section must be paid to the fund administrator for deposit in the state treasury for the dedicated credit to the petroleum release compensation fund.

Page 4, remove lines 1 and 2

Renumber accordingly

January 17, 2007

**House Amendments to HB 1109 (70421.0102) - Industry, Business and Labor
Committee 01/19/2007**

Page 1, line 1, remove "create and enact a new subsection to section 23-37-18 of the North Dakota"

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a synthetic liner in an aboveground dike system negates the need for a tank integrity test. The owner or operator of a new tank at a new site or a new tank at an existing site that had a tank registered at the site previously need only pay the required fees for registration with the fund.

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Committee 01/19/2007**

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Date: 1-16-07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1109

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass AS Amended

Motion Made By Rep Ruby Seconded By Rep Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 14 No 0

Absent 0

Floor Assignment Rep Ruby

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1109: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1109 was placed on the Sixth order on the calendar.

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Renumber accordingly

2007 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1109

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1109**

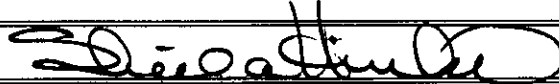
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **February 28, 2007**

Recorder Job Number: **4082**

Committee Clerk Signature



Petrol Tank Release Comp Fund

Representative Frank Wald, District 37, Dickinson - In Favor

The bill deals with the underground storage tank compensation fund. EPA developed regulations about underground storage tanks and pollution if there was a leak. This fund was formed in 1981. Bill updates what is on the records. Talked about the underwriting on pages 3, 4, 5.

Jim Poolman, ND Insurance Commissioner - In Favor

Walked through the bill. The ND Insurance Department manages the Petroleum Tank Fund and the bill has changed since introduced in the house with some Amendments that were worked on with Rep. Wald and folks in the petroleum business. Page 3 is bottom line of the bill makes it clear that portable tanks and smaller tanks, as Jiffy Lube, are not covered by the petroleum tank fund, also, Subsection 17 in the engrossed bill that provides for underwriting guidelines for tanks that have been out of use and not registered with the fund. If placed back in the fund there would have to be underwriting and testing to make sure the tank is not leaking; that the integrity is proper before you get into the fund.

Otherwise it would be like buying home owners insurance as the fire department is on the way to put out the fire. Want to make sure the integrity of the fund is preserved and those coming

into the fund aren't already leaking and it requires a test to be done up front before getting into the fund.

S Heitkamp: Page 4, number 2, you have existing tanks not playing well with others, right? A provision for that. \$75 and \$125, why these amounts?

Jim P: To run the specific fund, those are the prescribed amount of dollars that we charge until the fund reaches a certain level and then we don't charge anything. This is the fee to "catch up" for not being registered under the fund.

S Heitkamp: So we're not putting something into code that's too low.

S Klein: The amount is no high, is it?

Jim P: Actually, if the fund reaches the 9 million dollar level, we have the ability to drop the amount of registration fee to \$5.

S Andrist: Do you anticipate that you're going to reach that \$9 million mark?

Jim P: We're there right now.

S Klein: Have we had a lot of claims?

Jim P: We have had some claims. If the cleanup is significant, cleanup can be expensive. We have some claims that will run quarter of a million dollars.

S Andrist: Case in home town that a leak had occurred many years ago when property is owned by someone else when used for a different purpose and the new property owner became liable for solving the problem he didn't even know existed. Does this fund help him at all?

Jim P: Under this bill, the property owner would have to do a test of that tank before that property owner could get into the fund, that's what we're trying to protect against from the standpoint from buying insurance on your home as the fire has already started. If you have an

underground tank, you need to have it checked before buying anyway before you purchase the property.

S Behm: Gave an example on soil test by the elevator. Does this fall under your jurisdiction?

Jim P: No. If not currently registered, it does not fall under this jurisdiction. If this happened, the owners would have a hard time selling the property, they would never be able to sell it.

S Klein: In S Behm's case, when small gas stations, co-ops go out of business and then come back in, then they would have you come back in and be checked before they get approval before they can participate in this fund?

Jim P: You're right. They would hire an inspection to be done to make sure the tank is not leaking. It would be like underwriting on your home.

S Klein: If they would buy it and it was a continuum and the previous owner had it registered, there would be no issue and you'd continue to...

Jim P: Yes

S Andrist: When a small service station changes hands. Does your department check to see if it was done by the previous owners?

Jim P: The fund is more than likely already registered, if they're in service, changing hands, then they would already be registered, so the test wouldn't have to be completed.

S Andrist: I thought it was an optional thing.

S Potter: The annual registration fee is \$100 for above-ground tanks if you have less than \$6 million dollars in the fund, but the new language would make it \$75 for each above-ground tank, is that an oversight.

Jim P: This was language that was agreed to by all parties.

Jeff

Regarding the fees, when the fund was created in 1991, the fee at that time was \$100, that's where the amendments were derived from and currently \$50. Was for 2001 – 2003.

S Potter: Because the fund has more than \$6 million in it, is that what you're saying? Is it in any danger of falling below \$6 million dollars?

Jeff: No

Mike Rud – ND Petroleum Marketers - In Favor

TESTIMONY # 1 *Covered Testimony*

S Heitkamp: How tough is it to get someone to test the tanks?

Mike R: It's not.

S Heitkamp: Do they put air to them, or what do they do?

Mike R: They'll do a cartotic test where they'll run right down into the tank; there is an outfit in Detroit Lakes, MN that they have a camera that they can drop into the hole on the tank and see what's going on. At the same time it sucks all the junk out of the bottom of the tank, pretty neat system. That costs about \$700-\$800 per tank to have that done.

There is some expense, but when you look at \$103,000 per site for a clean up....

S Heitkamp: The industry has pretty much cleaned itself up, hasn't it? Some of the old guys who would put water in there to keep the gas on top, you fill up a couple cars full of gas...

Mike R: When you go back to late 80's and early 90's when we had to put new tanks in the ground, that cleaned up a lot of things, put leak detectors into place and ND is in pretty good shape. Currently Get \$72 million a year for clean up purposes from Federal funds. There are 117 thousand faulty tanks out there right now. ND is fortunate, we need to keep the fund and longevity of this fund.

S Behm: Before this law was in effect, there were some ways of testing to see if the tank was leaking, using a stick and a gauge and it would show how many gallons of gas was in the tank and had to coordinate with what was on his pump. Was that precaution?

Mike R: That's just sound business. Most marketers still do that. They "stick the tank" although now they have electronic printouts on new systems, most will printout a beginning report and end report per day so you'll know how many gallons you went through by the end of the day. There are still people who stick the tank to make sure the report is correct. If there is a major leak in the line, the pump will shut down.

S Heitkamp: It isn't just gas getting out of the tank they're always looking out for either, there are people that can access the tank from the top.

Ron Ness –ND Interim Council – In Favor

This is a bill to clean up in the industry and intention of the fund. My question on the bill, if you purchase a location that has a tank in it and you don't know about this tank fund and don't get registered right away, and the tank has been registered over its life, is there a Mulligan of some sort for that individual owner? Don't want a situation where we have some unknowns. Is there a one year grace period. How does the notice go out?

Jim Poolman comes back up

The question has come up in the past year. Example: Tank in McClusky, there was a change in ownership, notice went out, didn't get to the owners, owners didn't realize they had to pay a tank registration fee, then had a claim. We made the decision to pay the claim, that was the intent of the fund and the bottom line, that business would have shut down had we not pay that claim. The buck stops with me. I paid the claim and made a decision to pay the claim; there is a Mulligan. It's not prescribed by law what that Mulligan is. It is up to the discretion, the intent

whether someone is deliberately not registering the tank or paying the necessary fee. Not a grace period as prescribed for by law.

S Klein: We're not taking your discretion away with this?

Jim P: No

S Andrist: The situation in my home town was a dry cleaners from 50 years back who made a practice of just throwing the solvent out the back door, not knowing any better. The dry cleaning shop is closed and 40 years later and they were trying to repair some water mains and finding some of the solvent which, when used back then, was quite toxic. It was a surprise to the guy who had the accounting business on the same property. Is there any help for people like this?

Jim P: I saw a situation similar to that, unfortunately there is no help. It falls upon the seller or the buyer of the property.

S Behm: What is the average cost to clean up a leaking tank on the ground?

Jim P: The average is over \$100,000. I've seen several sites that we have participated in that are significantly over that.

S Behm: You have to remove all the contaminated dirt and dispose of it somewhere in some site.

Jim P: I'm not a scientist from the health department, but yes, they have to take away the contaminated soil and either clean it or dispose of it somewhere.

Q? S? O? CLOSE

Motion for a DO PASS by S Andrist

Second by S Heitkamp

Vote on DO PASS HB 1109 – 6-0-1 Passed

Carrier: S Behm

