

CHAPTER 567

H.B. No. 2359

An Act relating to creation of the hazardous waste generation and facility fees fund and a hazardous waste disposal fee fund, to expenditures from the funds, and to imposition of fees on hazardous waste generation, hazardous waste facilities, and hazardous waste disposal.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 8, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended by adding Subsection (g) to read as follows:

(g) The penalties imposed under Subsection (a) of this section do not apply to failure to pay a fee under Section 12 of this Act or failure to file a report under Section 13 of this Act. Subsection (a)(9) of this section does not apply to interest and penalties imposed under Section 14 of this Act.

SECTION 2. The Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) is amended by adding Sections 11, 12, 13, and 14 to read as follows:

Sec. 11. HAZARDOUS WASTE GENERATION AND FACILITY FEES FUND AND HAZARDOUS WASTE DISPOSAL FEE FUND. (a) Two special funds are created in the state treasury to be known as the hazardous waste generation and facility fees fund and the hazardous waste disposal fee fund.

(b) The hazardous waste generation and facility fees fund shall consist of money collected by the department of water resources and the department from fees imposed on hazardous waste generation and permitted or interim status solid waste facilities for processing, storing, or disposing of hazardous waste under Section 12 of this Act and from interest and penalties imposed under Section 14 of this Act for late payment of hazardous waste generation or facility fees.

(c) The hazardous waste disposal fee fund shall consist of money collected by the department of water resources from fees imposed on the operator of a solid waste facility for disposal of hazardous waste under Section 12 of this Act and from interest and penalties imposed under Section 14 of this Act for late payment of a disposal fee or late filing of a report.

Sec. 12. HAZARDOUS WASTE GENERATION AND FACILITY FEES AND FEES FOR HAZARDOUS WASTE DISPOSAL. (a) In this section:

(1) "Land disposal facility" includes:

(A) a landfill;

(B) a surface impoundment (excluding an impoundment treating or storing waste that is disposed pursuant to Chapter 26 or 27, Water Code);

(C) a waste pile;

(D) a facility at which land farming or a land application process is used; and

(E) an injection well.

(2) "Land disposal" does not include the normal application of agricultural chemicals or fertilizers, nor does it include disposal of hazardous waste retrieved or created due to remediation of an inactive hazardous waste disposal facility for which no federal or state permit was issued after the effective date of this Act.

(3) "Dry weight" means the weight of all constituents other than water.

(4) "Generator of hazardous waste" or "generator" means any person whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation by the department of water resources or the department.

(5) "Hazardous waste" means those solid wastes not otherwise exempted which have been identified or listed as hazardous wastes by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, 42 U.S.C. 6901 et seq., as amended, as of the effective date of this Act.

(6) "Primary metals high volume, low-hazard waste" is hazardous waste from the extraction, beneficiation, and processing of ores, minerals, or scrap metal and whose constituents, which are subject to the criteria for the identification or listing as a hazardous waste pursuant to Section 3001(a) of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., account for 10 percent or less of its total dry weight volume.

(b) The annual hazardous waste generation fees prescribed herein are imposed on generators of hazardous waste. The department of water resources and the department shall require generators of hazardous waste to register their activities and shall collect the annual hazardous waste generation fees imposed under this subsection. The hazardous waste generation fees shall be deposited in the state treasury to the credit of the hazardous waste generation and facility fees fund. The fee for each year is imposed on each generator which generates hazardous waste during any part of the year.

(1) Generators of hazardous waste who generate more than 100 kilograms or more per month but less than 1,000 kilograms per month--\$50 per annum.

(2) Generators of hazardous waste who generate 1,000 kilograms or more per month but less than 10,000 kilograms per month--\$500 per annum.

(3) Generators of hazardous waste who generate more than 10,000 kilograms or more per month but less than 1 million kilograms per month--\$2,500 per annum.

(4) Generators of hazardous waste who generate 1 million kilograms or more per month--\$5,000 per annum.

(c) An annual facility fee is imposed on a facility which holds one or more permits or is operating under interim status pending issuance of a permit for a solid waste facility for processing, storing, or disposing of hazardous waste. The board, and the Board of Health, by rule, shall adopt a facility fee schedule for determining the amount of fee to be charged. In adopting the facility fee schedule, the board and the Board of Health shall consider the permitted capacity of facilities and variations in the costs necessary to regulate different types of facilities. The annual facility fee

shall not be less than \$250. The maximum fee for a facility that receives less than 1,000 kilograms per month of hazardous waste shall not exceed \$500. The maximum fee for any facility shall not exceed \$20,000. The total amount of facility fees and hazardous waste generation fees collected and deposited in the hazardous waste generation and facility fees fund in any fiscal year shall not be less than \$3.5 million nor more than \$3.75 million. The annual fee to be charged each hazardous waste facility shall be that set by the fee schedule adopted by the board and the Board of Health. The fee for each year is imposed on each facility for which a permit or interim status is in effect during any part of the year.

(1) The department of water resources and the department shall collect the facility fees imposed under this subsection for the facilities within their respective jurisdictions and the fees shall be deposited in the state treasury to the credit of the hazardous waste generation and facility fees fund.

(2) During any year in which an interim status facility receives a final permit, the fee under this subsection may be imposed only on the basis of one of those classifications.

(d) A fee of \$4 for each dry weight ton of hazardous waste disposed through land disposal is imposed on the operator of a hazardous waste land disposal facility, except that the fee for primary metals high volume, low-hazard waste shall be assessed at 25 percent of the fee.

(1) The department of water resources shall make rules providing for methods of calculating the dry weight of hazardous waste.

(2) The generator of hazardous waste shall provide certification of the computation to the operator of the dry weight of the hazardous waste to be disposed of, or in the case of primary metals high volume, low-hazard waste, that the composition of the industrial solid waste meets the definition of a primary metals high volume, low-hazard waste. In addition, the board, by rule, may provide for a method of determining or estimating the dry weight of small volumes of hazardous waste delivered to commercial hazardous waste disposal facilities for which costs of analyzing the waste to determine dry weight are disproportionate.

(3) The department of water resources and the department shall collect the hazardous waste disposal fee imposed under this subsection quarterly on dates established by rule, for the facilities within their respective jurisdictions, and the fees shall be deposited in the state treasury to the credit of the hazardous waste disposal fee fund.

(4) Following each quarterly reporting date the state treasurer shall certify to the governor and the department of water resources the amount deposited in the hazardous waste disposal fee fund during the quarter and the cumulative amount collected, less expenditures, since the start of the current fiscal year. In the event the state treasurer shall certify that the total amount in the hazardous waste disposal fee fund at the end of any quarter equals or exceeds \$10 million, no hazardous waste disposal fee shall be collected for the remainder of the fiscal year unless the board determines that additional revenue is needed in order to qualify for additional federal funds for remedial action which become available as a result of reauthorization of the Comprehensive Environmental Response, Compensation, and Liability Act or additional funds are needed to match federal funds due to the failure of private parties to provide adequate funds.

(5) The board shall monitor the state treasurer's certifications as to the cumulative amount of hazardous waste disposal fees being collected and using available data the board shall on or before June 1, 1986, estimate the total amount of hazardous waste disposal fees that will be collected during the biennium. If the estimate is less than \$10.75 million, on or before September 1, 1986, the board, by rule, shall increase the fee for each dry weight ton of hazardous waste disposed through land disposal to an amount that the board estimates will cause a cumulative amount of not less than \$10.75 million nor more than \$12 million to be collected during the 1986-87 biennium. In the event that additional federal funds for remedial action at sites at which hazardous waste has been disposed become available as a result of reauthorization of the Comprehensive Environmental Response, Compensation, and Liability Act, or additional revenue is necessary to match federal funds due to the failure of private parties to provide adequate funds, the board, by rule, may increase the fee to an amount that the board determines to be adequate to raise the money necessary to qualify for available federal funds, and the cumulative amount of money collected during the 1986-87 biennium may exceed \$12 million by an amount necessary to qualify for available federal funds.

Sec. 13. RECORDS AND REPORTS. The department of water resources and the department by rule shall require operators of solid waste facilities for disposal of hazardous waste to maintain any records and to submit to the department of water resources and the department any reports necessary for the department of water resources to determine the amount of hazardous waste disposal. The board by rule also shall establish the date on which any report required by this section shall be submitted.

Sec. 14. INTEREST AND PENALTIES. (a) If a fee imposed under Section 12 of this Act is not paid when due, interest at an annual rate of 15 percent of the amount of the fee due accrues from the date on which the fee is due.

(b) A person is subject to a civil penalty of \$100 for each day the violation continues for failure to timely submit a report as required by board rule under Section 13 of this Act.

(c) Any interest collected under this section for late payment of generation or facility fees shall be deposited in the state treasury to the credit of the hazardous waste generation and facility fees fund and any interest and penalties collected under this section for late payment of disposal fees and late filing of reports shall be deposited in the state treasury to the credit of the hazardous waste disposal fee fund.

SECTION 3. (a) Money collected and deposited in the hazardous waste generation and facility fees fund shall be restricted to the administration of hazardous waste management programs and shall be used only for the following purposes:

(1) Parks and Wildlife Department for monitoring impact of hazardous waste activity on fish and wildlife in an amount not to exceed \$200,000 for the 1986-87 biennium;

(2) Texas Department of Water Resources for regulation of hazardous waste, including contracting for enforcement-related activities with other state agencies, in an amount not to exceed \$2.9 million per annum; and

(3) Texas Department of Health for regulation of hazardous wastes in an amount not to exceed \$500,000 per annum.

(b) Money collected and deposited in the hazardous waste disposal fee fund shall be used only for the following purposes:

(1) the disposal facility response fund under Subchapter H, Chapter 26, Water Code;

(2) Texas Department of Water Resources for necessary and appropriate remedial action at sites at which hazardous waste has been disposed if funds from a liable party, independent third party, or the federal government are not sufficient for the remedial action; and

(3) Expenditures from the hazardous waste disposal fee fund shall not exceed \$10.75 million in the 1986-87 biennium unless additional federal funds for remedial action become available as a result of reauthorization of the Comprehensive Environmental Response, Compensation, and Liability Act or additional funds are needed to match federal funds due to the failure of private parties to provide adequate funds, in which event expenditures from the disposal fee fund may exceed \$10.75 million in the 1986-87 biennium by an amount necessary to undertake remedial actions made possible by those additional funds.

SECTION 4. (a) Notwithstanding Section 26.304(c), Water Code, of the balance in the disposal facility response fund on September 1, 1985, for the fiscal year beginning September 1, 1985, \$500,000 shall be transferred and for the fiscal year beginning September 1, 1986, \$1 million shall be transferred to a special fund in the state treasury. These amounts are hereby appropriated only for the hazardous waste alternative center at Lamar University at Beaumont.

(b) This section takes effect only if S.B. 223, Acts of the 69th Legislature, Regular Session, 1985, becomes law. If that bill does not become law, this section has no effect.

SECTION 5. Section 12, Solid Waste Disposal Act, as added by this Act, applies to hazardous waste disposed of on or after September 1, 1985, any generator which generates hazardous waste on or after September 1, 1985, and to any permitted or interim status solid waste facility in existence on or after September 1, 1985, for storing, processing, or disposing of hazardous waste.

SECTION 6. In the General Appropriations Act for the biennium beginning September 1, 1985, the legislature may transfer funds to the general revenue fund from the disposal facility response fund established in Section 26.304, Water Code.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 2, 1985, by a non-record vote; House concurred in Senate amendments to H.B. No. 2359 on May 27, 1985, by a non-record vote; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas; passed by the Senate, with amendments, on May 23, 1985, by the following vote: Yeas 31, Nays 0; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas.

Certified by Comptroller of Public Accounts, June 6, 1985, that the amounts appropriated herein are within amounts estimated to be available in the affected fund.

Approved: June 12, 1985

Effective: August 26, 1985