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LEGISLATIVE HISTORY OF PA 89-373, AN ACT CONCERNING UNDERGROUND STORAGE TANKS

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You asked for a legislative history of PA 89-373 (sSB 915), which increased the quarterly gross earnings tax on the sale of petroleum products from 2% to 3% to finance the newly created Underground Storage Tank Petroleum Cleanup Fund (USTPCF), which the act also created.

SUMMARY

In 1989, the General Assembly passed PA 89-373 that among other things:

1. created the USTPCF;
2. raised the quarterly gross earnings tax on the sale of petroleum products from 2% to 3% to finance the USTPCF;
3. established a board to review applications for reimbursement from the fund to responsible parties for costs incurred due to leaking tank systems; and
4. required the responsible party to pay the first \$10,000 of costs incurred and any costs over \$1 million, with the USTPCF to reimburse up to \$990,000.

The act's purpose was to provide liability protection for nonresidential underground storage tank owners as required by new Federal Environmental Protection Agency (EPA) regulations. These regulations require owners of nonresidential underground storage tanks to maintain financial protection of at least \$1 million for accidental petroleum release occurrences.

The Environment Committee held a public hearing on the original bill, which would have created a one cent excise tax on motor fuels to fund the USTPCF. Bill supporters argued, among other things, that the bill would provide the necessary insurance coverage for the tank owners and protect the environment in the event of an underground tank's spill or leak. Opponent's generally argued that the bill did not provide for adequate environmental protection from leaking tanks, and that the excise tax on motor fuels could harm Connecticut motorists by increasing the cost of gasoline. The Department of Transportation (DOT) asserted that the tax would be illegal.

The Environment Committee gave the bill a joint favorable substitute change of reference to the Finance, Revenue and Bonding Committee, which favorably reported a substitute bill to the Senate floor. One or both committees (it is not clear from the committee joint favorable reports) made substantive changes to the bill, including substituting the excise tax with an increase in the quarterly gross earnings tax on the sale of petroleum products from 2% to 3%.

The Senate took up the bill and passed it with two amendments. The first amendment gave school districts an additional year to comply with DEP requirements for replacing underground storage tanks. The second gave the Senate minority leader the responsibility to appoint a member of the review board. The Senate rejected a third amendment, which would have authorized the relining of tanks. After some discussion, the amended bill passed 30-5.

The House took up the bill and rejected the Senate amendments, opting instead for a House amendment that incorporated the Senate's changes and included other technical changes. After some discussion, the amended bill passed 130-18.

The Senate took up the bill again and passed the bill in concurrence with the House. The governor signed the bill into law shortly thereafter.

LEGISLATIVE HISTORY OF PA 89-373

Public Hearing and Committee Action

In March 1989, the Environment Committee held a public hearing on SB 915. Under the bill, a one cent per gallon excise tax on motor vehicle fuels sold would finance the USTPCF. The USTPCF would reimburse responsible parties (defined as a person or entity liable for the release of petroleum) for costs incurred due to leaking tank systems. The USTPCF would also provide liability protection for tank owners, ensuring compliance with new EPA regulations requiring proof of financial responsibility for potential tank spills or leaks. The bill also would require that owners upgrade their tanks to comply with new federal tank standards. Ten individuals testified: six people spoke in favor of the bill and four spoke against it.

Proponents included individuals from the Independent Connecticut Petroleum Association, Connecticut Gasoline Retailers Association, Service Station Dealers of America, Connecticut School Transportation Association, and the Connecticut Bus Association. They generally argued that the bill would provide the necessary insurance coverage for retailers and protect the environment in the event of a spill or a leak. They also asserted that by requiring tank owner compliance with all state and federal standards for tank systems before they could qualify for fund reimbursement, owners would be encouraged to ensure their tanks met safety standards.

Opponents, including the then Department of Environmental Protection (DEP), Department of Public Safety, DOT, and the Clean Water Coalition, generally argued that the language of the bill did not provide for adequate environmental protection from leaking tanks, and that the excise tax on motor fuels could “harm” Connecticut motorists.

The Clean Water Coalition suggested that while it is good environmental policy to have readily available funds to do speedy clean-up, clean-up should not be viewed as an acceptable alternative to proper maintenance and upkeep of underground fuel tanks and reduction of pollution at the source. It was concerned that the bill would reduce the liability of responsible parties and therefore create a disincentive for protecting against leaking tanks.

The DOT argued that it would be illegal to divert the motor fuels excise tax for anything besides (1) amortizing bonds and (2) paying for the department's transportation facilities' costs. With respect to the bonds, DOT asserted that it would be illegal according to the covenants of the bond holders, as all the money collected from the tax was pledged to them.

The Environment Committee favorably reported a substitute version of the bill to the Finance, Revenue and Bonding Committee by a 13-11 vote. (We could not locate the substitute language.)

Finance, Revenue and Bonding Committee Meeting

The Finance, Revenue and Bonding Committee also gave the bill a favorable report with substitute language by a 29-11 vote. (Here again, the substitute language was not available.)

Joint Favorable Substitute Bill to Senate

Although the legislative history and bill file do not reveal which of the two committees made the substantive changes to the bill, the version the senate took up:

1. removed the one cent excise tax on motor fuels and instead increased the quarterly gross earnings tax on the sale of petroleum from 2% to 3%;
2. credited 1% of the collected gross earnings tax into the newly created USTPCF;
3. capped the balance of the fund at \$15 million and suspended crediting of tax payments to the fund until the balance fell below \$5 million, instead of depositing the excess of \$15 million in the General Fund;
4. directed the DEP commissioner, instead of the Office of Policy and Management secretary, to administer the fund; and
5. made minor technical changes.

Senate Debate

Moving for the bill's passage, Senator Spellman immediately offered Senate Amendment "A," which gave school districts an additional year to comply with DEP requirements for the replacement of underground

storage tanks. The senator noted that a number of municipalities had been concerned with the original time allotted. The Senate adopted the amendment on a voice vote.

Senate minority leader Smith then offered Senate Amendment “B,” which authorized the Senate minority leader to appoint one of the review board members. The senator characterized the amendment as correcting a drafting oversight. Senator Spellman spoke in favor of the amendment, saying it preserved the balance of power on the board. The amendment passed on a voice vote.

Senator Gunther offered Senate Amendment “C,” which would require DEP to adopt regulations authorizing the relining of underground storage tanks. The senator stated that there was no regulation establishing relining procedures, which could extend the life of storage tanks for 10 to 15 years. Senator Somma opposed the amendment, saying that while he supported the amendment on its merits, he was concerned that it might cause the bill to fail given the session’s time constraints. Senator Gunther disputed this argument. The amendment failed by a 18-23 vote.

Speaking in favor of the amended bill, Senator Spellman argued that it would (1) allow small gas stations to comply with federal financial liability regulations and (2) protect people who potentially could be exposed to risk or damage from spills.

For purposes of a legislative history, Senator Meotti asked Senator Spellman whether municipalities would be eligible parties under the bill. Senator Spellman responded that it was clearly the intent to include municipalities as eligible parties and that the definition (1) supported that assertion and (2) should be “carried by implication throughout the bill.” (The House subsequently added language to clarify this, see below.)

Senator Robertson asked a series of questions, suggesting that although the bill’s increase in tax would be imposed on wholesalers, it could be passed on to consumers through increases in gasoline prices. Senator Robertson also asked if the tax would be reduced back to 2% once the fund created by the bill was filled to the maximum \$15 million. Senator Spellman clarified that the tax would continue to be imposed and that any additional revenue beyond the cap would go into the General Fund. Senator Robertson then spoke in opposition of the bill, characterizing it as a new \$15 million tax on consumers.

The Senate passed the amended bill by a vote of 30-5.

House Debate

The House took up the bill and immediately referred it to the Judiciary Committee. The Judiciary Committee gave the bill a favorable report and returned it to the House, which took it up again.

Representative Mulready explained the purpose of the bill, stating that it addressed the new EPA regulations. The representative then moved for rejection of both Senate amendments, stating that a House amendment would incorporate the changes in the Senate amendments and include additional changes. Both Senate amendments were rejected by voice votes.

Representative Mulready then offered House Amendment "A" that, in addition to the Senate changes, clarified that a responsible party under the act would include any political subdivision of the state that owns or operates an underground storage tank or system. The amendment passed on a voice vote.

Representative Tiffany asked Representative Mulready if gas prices would increase if the bill passed. Both representatives stated that at current gas prices of about \$1 per gallon, the 1% tax increase would result in a penny-per-gallon increase.

Representative Belden asked for clarification on the amount of damage that would be covered by the fund, whether purely private entities would be covered, and whether there were limits on the size of tanks covered. He also asked if the tax was imposed on suppliers at the wholesale level. Representative Mulready stated that the tax would be paid by suppliers.

Representative Farr asked whether the bill would reduce the cost of insurance for petroleum distributors. Representative Mulready explained that most entities covered under the act were unable to obtain insurance, which was why the bill was needed. Representative Farr asked whether, since the insurance was required by federal law, the cost of the fund would be replacing the cost the entities would have had to pay for insurance to avoid going out of business. Representative Mulready agreed, but explained that the entities could also show financial responsibility of \$1 million or more in order to comply with the federal law. Representative Farr asked whether the tax would be removed after the fund was filled. Representative Mulready responded that the tax would not be removed and that any revenues beyond the cap would go into the General Fund.

The House passed the bill on a 130-18 vote and sent it back to the Senate.

Second Senate Debate and Governor's Approval

The Senate moved for passage of the bill in concurrence with the House. The Senate passed the amended bill on a 31-4 vote.

Governor O'Neill signed the bill into law on July 5, 1989. The tax was imposed on sales for calendar quarters beginning on and after July 1, 1989.

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