

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: S3/17/03

A Bill

SENATE BILL 935

5 By: Senator Steele
6
7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH A TRUST FUND FOR THE
10 REIMBURSEMENT OF OWNERS OR OPERATORS THAT INSTALL
11 VAPOR RECOVERY SYSTEMS AT FACILITIES THAT
12 DISPENSE MOTOR FUEL; AND FOR OTHER PURPOSES.
13

Subtitle

15 AN ACT TO ESTABLISH A TRUST FUND FOR THE
16 REIMBURSEMENT OF OWNERS OR OPERATORS
17 THAT INSTALL VAPOR RECOVERY SYSTEMS AT
18 FACILITIES THAT DISPENSE MOTOR FUEL.
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 *SECTION 1. Arkansas Code Title 8, Chapter 3, is amended by adding an*
24 *additional subchapter to read as follows:*

25 8-3-501. Short Title.

26 This subchapter shall be known and may be cited as the "Arkansas Vapor
27 Recovery System Trust Fund Act".
28

29 8-3-502. Legislative Findings and Declarations.

30 The General Assembly finds and declares that:

31 (1) The Environmental Protection Agency has promulgated
32 revisions to the Federal Clean Air Act Ozone National Ambient Air Quality
33 Standards that make them much more stringent;

34 (2) Certain areas in Arkansas may violate the new ozone National
35 Ambient Air Quality Standards;

36 (3) The Environmental Protection Agency may therefore designate



1 one (1) or more areas in Arkansas air nonattainment for the ozone National
2 Ambient Air Quality Standard;

3 (4) A nonattainment designation would impose federal mandates on
4 those areas resulting in an impediment to economic development;

5 (5) The expeditious reduction of emissions of air pollutants
6 that are ozone precursors is needed for certain areas of Arkansas to avoid a
7 nonattainment designation or minimize the amount of time it takes them to be
8 reclassified as attainment;

9 (6) The voluntary installation of control equipment at Arkansas
10 motor fuel dispensing facilities to minimize evaporative emissions of
11 volatile organic contaminants will assist in reducing ambient ozone
12 concentrations; and

13 (7) Providing owners or operators of the motor fuel dispensing
14 facilities the funds to expeditiously install the control equipment to reduce
15 the emissions will benefit the environment, public health, and economic
16 development.

17
18 8-3-503. Definitions. For purposes of this subchapter:

19 (1) "Acquisition" means a transaction under which title to an
20 item is transferred for consideration, or a lease for a period of at least
21 three (3) years, regardless of whether title to the item is transferred at
22 the end of the period;

23 (2)(A) "Allowable costs" means those costs which are approved by
24 the department and derived directly from the installation and acquisition of
25 a vapor recovery system at a motor fuel dispensing facility.

26 (B) "Allowable costs" does not include expenditures for
27 land, feasibility studies, equipment used to service the vapor recovery
28 system, service contracts, sales tax, maintenance, and repair;

29 (3) "Commission" means the Arkansas Pollution Control and
30 Ecology Commission;

31 (4) "Department" means the Arkansas Department of Environmental
32 Quality;

33 (5) "Director" means the Director of the Arkansas Department of
34 Environmental Quality;

35 (6) "Distributor" means any person, including the State of
36 Arkansas and its political subdivision, but not including the United States

1 of America or its instrumentalities, except to the extent permitted by the
2 Arkansas Constitution or laws, who is customarily in the wholesale business
3 of offering motor fuels for resale or delivery to dealers, consumers, or
4 others in tanks of two hundred (200) gallons or more that are not connected
5 to motor vehicles and is:

6 (A) Making the first sale in the State of Arkansas of any
7 motor fuel, imported into the state from any state, territory, or foreign
8 country, after it has been received within this state within the meaning of
9 the Motor Fuel Tax Act, § 26-55-201 et seq.;

10 (B) Consuming or using in the State of Arkansas any motor
11 fuel imported from out of this state and who has purchased it before it has
12 been received by any other person in this state, within the meaning of the
13 Motor Fuel Tax Law, § 26-55-201 et seq.; or

14 (C) Producing, refining, preparing, distilling,
15 manufacturing, blending, or compounding motor fuel in this state;

16 (7) "Fund" means the Vapor Recovery System Fund created by this
17 subchapter;

18 (8)(A) "Motor fuel dispensing facility" means a stationary
19 facility that dispenses motor fuel to motor vehicles.

20 (B) "Motor fuel dispensing facility" does not include that
21 portion of a facility or operation that consists of a terminal;

22 (9) "Operator" means any person in control of, or having
23 responsibility for, the daily operation of the motor fuel dispensing
24 facility;

25 (10) "Owner" means any person who owns a motor fuel dispensing
26 facility;

27 (11) "Person" means any individual, corporation, company, firm,
28 partnership, association, trust, joint stock company or trust, venture,
29 municipal, state or federal government or agency, or any other legal entity;

30 (12) "Reasonable costs" means the costs or a range of costs
31 commensurate with the costs necessary to acquire and install a vapor recovery
32 system at a motor fuel dispensing facility, based upon an evaluation of
33 typical costs expected for the particular vapor recovery system that is being
34 acquired and installed;

35 (13)(A) "Supplier" means any person who is customarily in the
36 wholesale business of offering distillate special fuels or liquefied gas

1 special fuels for resale or use to any person in this state and who makes
2 bulk sales of fuel.

3 (B) "Supplier" includes pipeline importers, first
4 receivers, and second receivers;

5 (14) "Terminal" means a bulk storage facility for storing
6 petroleum products supplied by a pipeline or marine vessels; and

7 (15) "Vapor recovery system" means equipment used to capture
8 vapors associated with the transfer of motor fuel at a motor fuel dispensing
9 facility and generally denominated by applicable federal or Arkansas
10 regulations as:

11 (A) Stage one vapor recovery system, which is generally
12 applicable to the transfer of motor fuel from a transport tank into a
13 stationary storage tank; or

14 (B) Stage two vapor recovery system, which is generally
15 applicable to the transfer of motor fuel from the stationary storage tank
16 into a motor vehicle fuel tank.

17
18 8-3-504. Rules and regulations - Powers of department.

19 (a) The Director of the Arkansas Department of Environmental Quality
20 may adopt appropriate rules and regulations not inconsistent with this
21 subchapter as the director may deem necessary to carry out the intent and
22 purpose of and to assure compliance with this subchapter.

23 (b) The Arkansas Pollution Control and Ecology Commission may adopt
24 appropriate rules and regulations not inconsistent with this subchapter to
25 carry out the intent and purposes of and assure compliance with this
26 subchapter.

27 (c) The department personnel may enter upon the property of any owner
28 or operator of a motor fuel dispensing facility to obtain information,
29 conduct surveys, or review records for the purpose of determining eligibility
30 for reimbursement for installation of vapor recovery systems at any time.

31
32 8-3-505. Vapor Recovery System Trust Fund.

33 (a) There is created on the books of the Treasurer of State, the
34 Auditor of State, and the Chief Fiscal Officer of the State a fund to be
35 known as the "Vapor Recovery System Trust Fund".

36 (b) The fund shall be administered by the Director of the Arkansas

1 Department of Environmental Quality, who shall make disbursements from the
2 fund as authorized by this subchapter.

3 (c) The fund shall consist of gifts, grants, donations, and such other
4 funds as may be made available by the General Assembly, including all
5 interest earned upon money deposited in the fund, fees assessed under this
6 subchapter, and any other moneys legally designed for the fund.

7 (d) Moneys in the fund may be expended by the director solely for the
8 following purposes:

9 (1) To pay costs incurred by the Arkansas Pollution Control and
10 Ecology Commission and the director in the performance of their duties under
11 this subchapter; and

12 (2) To pay reimbursement to owners or operators of motor fuel
13 dispensing facilities for the acquisition and installation of vapor recovery
14 systems at certain motor fuel dispensing facilities as prescribed by this
15 subchapter.

16 (e) The liability or obligation of the fund is not the liability or
17 obligation of the State of Arkansas.

18 (f) Nothing in this subchapter shall be construed to abrogate or waive
19 the provisions of the Arkansas Constitution, Article 5 § 20.

20 (g)(1) Five (5) years after the effective date of this subchapter, the
21 fund shall no longer provide reimbursement for the acquisition and
22 installation of vapor recovery systems as prescribed in § 8-3-507 and the
23 fees collected shall be remitted to the counties in proportion to the rate of
24 collection from the counties to be used for transportation improvements
25 directly related to reducing motor vehicle emissions, including, but not
26 limited to, congestion relief measures, traffic signal coordination, traffic
27 management systems, air pollution reduction credit programs, ride sharing,
28 driver information, incident management, and public transit.

29 (2) Expenditures shall be based upon a plan agreed upon by the
30 county government, the municipalities in the county, the Arkansas State
31 Highway and Transportation Department, and in counties in metropolitan
32 statistical areas, the metropolitan planning organization.

33
34 8-3-506. Ozone precursor reduction fee.

35 (a) Except as provided in subsection (d) of this section, there is
36 authorized an ozone precursor reduction fee of two cents (2¢) to be paid, on

1 each gallon of motor fuel or distillate special fuel purchased in or imported
2 into a county that has adopted an ordinance levying the fee.

3 (b) The commission may require that the ozone precursor reduction fee
4 be levied in all counties that it deems are contributing to the failure of
5 any county to meet the air quality standards for ozone as determined by the
6 United States Environmental Protection Agency, if through the normal
7 regulatory process the commission requires the installation of vapor recovery
8 systems at facilities that dispense motor fuel.

9 (c) The fee shall be paid by the first distributor or supplier
10 receiving fuel from a terminal in this state, or, if the fuel will never be
11 stored in a terminal in this state, then by the distributor or supplier who
12 first imports fuel into this state by tanker truck.

13 (d) Exchanges of fuels on a gallon for gallon basis within a terminal
14 or fuels exported from this state are exempt from the fee.

15 (e) Proof of payment shall be provided to the owner or operator.

16 (f) The fee shall be remitted to the Director of the Department of
17 Finance and Administration at the time, in the manner, and on forms
18 prescribed by the Director of the Department of Finance and Administration
19 and may be collected and remitted at the same time and in the same manner as
20 the motor fuels tax and special motor fuels tax under the Motor Fuel Tax law,
21 § 26-55-201 et seq. and the Special Motor Fuels Tax Law, § 26-56-101 et seq.

22 (g) All fees shall be subject to collection and enforcement of
23 collection under the Arkansas Tax Procedure Act, § 26-18-101 et seq.

24
25 8-3-507. Payment for acquisition and installation of vapor recovery
26 systems.

27 The fund shall reimburse an owner or operator of a motor fuel
28 dispensing system the allowable costs and reasonable costs for the
29 acquisition and installation of a vapor recovery system following proof that:

30 (1) The motor fuels dispensing system was constructed and in
31 operation prior to the effective date of this subchapter; and

32 (2) The motor fuel dispensing system is located in a county that
33 has levied the fee referenced in § 8-3-506; or

34 (3) The commission has promulgated a final regulation requiring
35 that motor fuel dispensing facilities install vapor recovery systems.

36

1 8-3-508. Procedures.

2 The procedures of the Arkansas Department of Environmental Quality and
3 the Arkansas Pollution Control and Ecology Commission for issuance of rules
4 and regulations, conduct of hearings, notice, power of subpoena, right of
5 appeal, presumptions, finality of actions, and related matters shall be as
6 provided in §§ 8-4-202, 8-4-210, 8-4-214, 8-4-218, 8-4-229 to the extent that
7 those statutes are not in conflict with the revisions of this subchapter.

8
9 8-3-509. Audits.

10 (a) The Director of the Arkansas Department of Environmental Quality
11 may cause audits to be performed as necessary to ensure that the costs for
12 which reimbursement is sought or has been paid were incurred and necessary,
13 that the work was performed, and that reimbursement would be or is reasonable
14 and allowable.

15 (b) The audits may be performed by the department or by any qualified
16 person at the direction of the director.

17 (c) Moneys in the fund may be expended by the director as necessary to
18 pay the cost of audits performed by persons other than the department.

19
20 8-3-510. Cost recovery.

21 The Arkansas Department of Environmental Quality may initiate
22 proceedings against any owner or operator for recovery of moneys that were
23 solicited or received from the fund, regardless whether it was approved by
24 the director, if the funds were solicited or received through willful or
25 accidental utilization of incorrect information, the work was not performed
26 or was unnecessary, or the equipment is not operable.

27
28 8-3-511. Fund liability.

29 All claims for reimbursement submitted under the provisions of this
30 subchapter are subject to the availability of the moneys in the fund.

31
32 8-3-512. Confidential treatment of information.

33 (a) Any records, reports, or information obtained by the Arkansas
34 Department of Environmental Quality or its employees in the administration of
35 this subchapter shall be kept confidential upon a showing satisfactory to the
36 Director of the Arkansas Department of Environmental Quality that the

1 records, reports, or information would constitute a trade secret under §§ 4-
2 75-601 through 4-75-607.

3 (b) As necessary to carry out the provisions of this subchapter,
4 information afforded confidential treatment may be transmitted under a
5 continuing claim of confidentiality to other officers or employees of the
6 state or of the United States if the owner or operator of the facility to
7 which the information pertains is informed of the transmittal and if the
8 information has been acquired by the department under the provisions of this
9 subchapter.

10 (c) The provisions of this section shall not be construed to limit the
11 department's authority to release confidential information during emergency
12 situations.

13 (d) Any violation of this section shall constitute an unclassified
14 misdemeanor.

15
16 SECTION 2. Arkansas Code § 26-55-209 is amended to read as follows:
17 26-55-209. Local taxes prohibited.

18 No Except as provided in the Arkansas Vapor Recovery System Trust Fund
19 Act, §§ 8-3-501 et seq. no city, village, town, county, township, or other
20 subdivision or municipal corporation of this state shall levy or collect any
21 excise tax upon or measured by the sale, receipt, or distribution of motor
22 fuel.

23
24 /s/ Steele