AN ACT
relating to the regulation of underground and aboveground storage tanks.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 7.156(c), Water Code, is amended to read as follows:
(c) A person commits an offense if the person is an owner or operator of an underground storage tank regulated under Chapter 26 into which any regulated substance is delivered unless the underground storage tank has been issued a valid, current underground storage tank registration and certificate of compliance under Section 26.346.

SECTION 2. Section 26.342, Water Code, is amended by adding Subdivision (16-a) to read as follows:
(16-a) "Subsurface soil" does not include backfill or native material that is placed immediately adjacent to or surrounding an underground storage tank system when the system is installed or the system's individual components are replaced unless free phase petroleum product is present in the backfill or native material.

SECTION 3. Sections 26.3467(a) and (b), Water Code, are amended to read as follows:
(a) The owner or operator of an underground storage tank into which a regulated substance is to be deposited shall provide the common carrier a copy of the certificate of compliance for the specific underground storage tank into which the regulated substance is to be deposited before accepting delivery of the regulated substance into the underground storage tank. The owner or operator of an underground storage tank may comply with this subsection by obtaining a current copy of the certificate from the commission's Internet website.

(b) An owner or operator of an underground storage tank [a person] who [knowingly] violates Subsection (a) commits an offense that is punishable as provided by Section 7.156 for an offense under that section.

SECTION 4. Section 26.351(f), Water Code, is amended to read as follows:

(f) The person performing corrective action under this section, if the release was reported to the commission on or before December 22, 1998, shall meet the following deadlines:

(1) a complete site assessment and risk assessment (including, but not limited to, risk-based criteria for establishing target concentrations), as determined by the executive director, must be received by the agency no later than September 1, 2002;

(2) a complete corrective action plan, as determined by the executive director and including, but not limited to, completion of pilot studies and recommendation of a cost-effective and technically appropriate remediation methodology, must be
received by the agency no later than September 1, 2003. The person
may, in lieu of this requirement, submit by this same deadline a
demonstration that a corrective action plan is not required for the
site in question under commission rules. Such demonstration must
be to the executive director's satisfaction;

(3) for those sites found under Subdivision (2) to
require a corrective action plan, that plan must be initiated and
proceeding according to the requirements and deadlines in the
approved plan no later than March 1, 2004;

(4) for sites which require either a corrective action
plan or groundwater monitoring, a comprehensive and accurate annual
status report concerning those activities must be submitted to the
agency;

(5) for sites which require either a corrective action
plan or groundwater monitoring, all deadlines set by the executive
director concerning the corrective action plan or approved
groundwater monitoring plan shall be met; and

(6) for sites that require either a corrective action
plan or groundwater monitoring, have met all other deadlines under
this subsection, and have submitted annual progress reports that
demonstrate progress toward meeting closure requirements, a site
closure request must be submitted to [requests for all sites where]
the executive director [agreed in writing that no corrective action
plan was required must be received by the agency] no later than
September 1, 2007 [2005]. The request must be complete, as judged
by the executive director.

SECTION 5. Section 26.355(b), Water Code, is amended to
A owner or operator of an underground or aboveground storage tank from which a regulated substance is released is liable to the state unless:

1. the release was caused by:
   A. an act of God;
   B. an act of war;
   C. the negligence of the State of Texas or the United States; or
   D. an act or omission of a third party; or

2. the site at which the release occurred has been admitted into the petroleum storage tank state-lead program under Section 26.3573(r-1).

SECTION 6. Section 26.3573, Water Code, is amended by amending Subsections (d), (r), and (s) and adding Subsection (r-1) to read as follows:

1. The commission may use the money in the petroleum storage tank remediation account to pay:

   a. necessary expenses associated with the administration of the petroleum storage tank remediation account and the groundwater protection cleanup program, not to exceed an amount equal to: 11.8 percent of the gross receipts of that account for FY02/03; 16.4 percent of the gross receipts of that account for FY04/05; and 21.1 percent of the gross receipts of that account for FY06/07;

   b. expenses associated with investigation, cleanup,
or corrective action measures performed in response to a release or threatened release from a petroleum storage tank, whether those expenses are incurred by the commission or pursuant to a contract between a contractor and an eligible owner or operator as authorized by this subchapter; and

(3) subject to the conditions of Subsection (e) [of this section], expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release of hydraulic fluid or spent oil from hydraulic lift systems or tanks located at a vehicle service and fueling facility and used as part of the operations of that facility.

(r) Except as provided by Subsection (r-1), the [The] petroleum storage tank remediation account may not be used to reimburse any person for corrective action performed after September 1, 2005.

(r-1) In this subsection, "state-lead program" means the petroleum storage tank state-lead program administered by the commission. The executive director shall grant an extension for corrective action reimbursement to a person who is an eligible owner or operator under Section 26.3571. The petroleum storage tank remediation account may be used to reimburse an eligible owner or operator for corrective action performed under an extension before August 31, 2007. Not later than July 1, 2007, an eligible owner or operator who is granted an extension under this subsection may apply to the commission in writing using a form provided by the commission to have the site subject to corrective action placed in the state-lead program. The eligible owner or operator must agree
in the application to allow site access to state personnel and state contractors as a condition of placement in the state-lead program under this subsection. On receiving the application for placement in the state-lead program under this subsection, the executive director by order shall place the site in the state-lead program until the corrective action is completed to the satisfaction of the commission. An eligible owner or operator of a site that is placed in the state-lead program under this subsection is not liable to the commission for any costs related to the corrective action.

(s) The petroleum storage tank remediation account may not be used to reimburse any person for corrective action contained in a reimbursement claim filed with the commission after March 1, 2008 [2006].

SECTION 7. Section 26.361, Water Code, is amended to read as follows:

Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM. Notwithstanding any other provision of this subchapter, the reimbursement program established under this subchapter expires September 1, 2008 [2006]. On or after September 1, 2008 [2006], the commission may not use money from the petroleum storage tank remediation account to reimburse an eligible owner or operator for any expenses of corrective action or to pay the claim of a person who has contracted with an eligible owner or operator to perform corrective action.

SECTION 8. (a) Section 26.3467(b), Water Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an
An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 9. This Act takes effect September 1, 2005.
H.B. No. 1987

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President of the Senate  Speaker of the House

I certify that H.B. No. 1987 was passed by the House on April 22, 2005, by a non-record vote.

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Chief Clerk of the House

I certify that H.B. No. 1987 was passed by the Senate on May 25, 2005, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: ________________________

Date

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Governor