LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 27, 2009

TO: Honorable Allan Ritter, Chair, House Committee on Natural Resources

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB4667** by Merritt (Relating to the amount and use of the coastal protection fee.), **As Introduced**

Depending upon the validity of the fee increase and expansion proposed by the bill, there could be an indeterminate revenue gain to the state.

The bill would expand the types of petroleum products subject to the Coastal Protection Fee to include 24 petroleum-based products and liquefied natural gas. The bill would increase the current 1-1/3 cents per barrel of crude oil to 25 cents per barrel. The bill would require the Comptroller to deposit proceeds of the fee to the credit of the General Revenue Fund after receiving certification from the Land Commissioner that the unencumbered balance of the General Revenue-Dedicated Coastal Protection Account No. 27 has reached $20 million. If the balance in the Coastal Protection Account No 27 would fall below $20 million, fee revenue would then accrue to the Coastal Protection Account No. 27 again until such time as the $20 million ceiling would be reached again.

The Comptroller reports that, under current law, approximately 1.2 billion barrels of crude oil are subject to the 1-1/3 cent per barrel fee in a fiscal year. In addition to crude oil imports, the Comptroller reports that approximately 200 million barrels of petroleum products (e.g., gasoline, diesel fuel, etc.) are currently being imported. If the fee increase and expansion were applied to all such oil and petroleum products, as much as $334.0 million in new revenues could be generated each fiscal year, with a small portion being deposited to the Coastal Protection Account No. 27 (less than $ $3 million based on $17.3 million in unencumbered balances estimated by the General Land Office to be remaining in the account on August 31, 2010), and the rest being deposited to the credit of the General Revenue Fund.

The Comptroller reports that the bill may violate Article 1, § 10, Clause 2 of the U.S. Constitution, which prohibits the states from placing a duty or impost on imports or exports. The Comptroller reports that because the bill removes the cap on fees collected, fee revenues could be considered to have a direct relationship between the volume of imports and the fees ultimately paid, and, thus a duty or impost on the volume of product being imported, rather than related to a specific activity, such as the transfer of oil, and, thus, a fee. In addition, if amounts collected in excess of the cap are directed to the General Revenue Fund, fee revenues would no longer be used exclusively in connection with the activity on which the fee is imposed. As such, it is not clear that the fee could be collected and any fiscal impact cannot be estimated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 305 General Land Office and Veterans' Land Board

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