

SECOND REGULAR SESSION

**HOUSE BILL NO. 2215**

**100TH GENERAL ASSEMBLY**

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INTRODUCED BY REPRESENTATIVE KOLKMEYER.

4958H.011

DANA RADEMAN MILLER, Chief Clerk

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**AN ACT**

To repeal sections 319.129, 319.131, and 319.133, RSMo, and to enact in lieu thereof three new sections relating to the petroleum storage tank insurance fund.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 319.129, 319.131, and 319.133, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 319.129, 319.131, and 319.133, to read as follows:

319.129. 1. There is hereby created a special trust fund to be known as the "Petroleum Storage Tank Insurance Fund" within the state treasury which shall be the successor to the underground storage tank insurance fund, **and which shall be administered as required by this chapter and not in the manner of an express trust.** Moneys in such special trust fund shall not be deemed to be state funds **and shall not be deemed insurance for the purposes of chapter 375.** Notwithstanding the provisions of section 33.080 to the contrary, moneys in the fund shall not be transferred to general revenue at the end of each biennium.

2. ~~[The owner or operator of any underground storage tank, including the state of Missouri and its political subdivisions and public transportation systems, in service on August 28, 1989, shall submit to the department a fee of one hundred dollars per tank on or before December 31, 1989.]~~ The owner or operator of any underground storage tank who seeks to participate in the petroleum storage tank insurance fund, including the state of Missouri and its political subdivisions and public transportation systems, and whose underground storage tank is brought into service after August 28, 1998, shall transmit one hundred dollars per tank to the board with his or her initial application. Such amount shall be a one-time payment, and shall be in addition to the payment required by section 319.133. The owner or operator of any

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 aboveground storage tank regulated by this chapter, including the state of Missouri and its  
18 political subdivisions and public transportation systems, who seeks to participate in the  
19 petroleum storage tank insurance fund, shall transmit one hundred dollars per tank to the board  
20 with his or her initial application. Such amount shall be a one-time payment and shall be in  
21 addition to the payment required by section 319.133. Moneys received pursuant to this section  
22 shall be transmitted to the director of revenue for deposit in the petroleum storage tank insurance  
23 fund.

24 3. The state treasurer may deposit moneys in the fund in any of the qualified depositories  
25 of the state. All such deposits shall be secured in a manner and upon the terms as are provided  
26 by law relative to state deposits. Interest earned shall be credited to the petroleum storage tank  
27 insurance fund.

28 4. The general administration of the fund and the responsibility for the proper operation  
29 of the fund, including all decisions relating to payments from the fund, are hereby vested in a  
30 board of trustees. The board of trustees shall consist of the commissioner of administration or  
31 the commissioner's designee, the director of the department of natural resources or the director's  
32 designee, the director of the department of agriculture or the director's designee, and eight  
33 citizens appointed by the governor with the advice and consent of the senate. Three of the  
34 appointed members shall be owners or operators of retail petroleum storage tanks, including one  
35 tank owner or operator of greater than ~~[one hundred]~~ **fifty tanks located within the state of**  
36 **Missouri**; one tank owner or operator of less than ~~[one hundred]~~ **fifty tanks located within the**  
37 **state of Missouri**; and one ~~[aboveground storage tank]~~ owner or operator **of at least one**  
38 **aboveground storage tank located in the state of Missouri**. One appointed trustee shall  
39 represent a financial lending institution, and one appointed trustee shall represent the insurance  
40 underwriting industry. One appointed trustee shall represent industrial or commercial users of  
41 petroleum. The two remaining appointed citizens shall have no petroleum-related business  
42 interest, and shall represent the nonregulated public at large. The members appointed by the  
43 governor shall serve four-year terms ~~[except that the governor shall designate two of the original~~  
44 ~~appointees to be appointed for one year, two to be appointed for two years, two to be appointed~~  
45 ~~for three years and two to be appointed for four years]~~. Any vacancies occurring on the board  
46 shall be filled in the same manner as provided in this section.

47 5. The board shall meet ~~[in Jefferson City, Missouri, within thirty days following August~~  
48 ~~28, 1996. Thereafter, the board shall meet]~~ upon the written call of the ~~[chairman]~~ **chair** of the  
49 board or by the agreement of any six members of the board. Notice of each meeting shall be  
50 delivered to all other trustees in person or by registered mail not less than six days prior to the  
51 date fixed for the meeting. The board may meet at any time by unanimous mutual consent.  
52 There shall be at least one meeting in each quarter.

53 6. Six trustees shall constitute a quorum for the transaction of business, and any official  
54 action of the board shall be based on a majority vote of the trustees present.

55 7. The trustees shall serve without compensation but shall receive from the fund their  
56 actual and necessary expenses incurred in the performance of their duties for the board.

57 8. The board of trustees shall be a type III agency and **a state agency for all pertinent**  
58 **purposes, including but not limited to sections 105.711 and 537.600. The board** shall  
59 appoint an executive director and other employees as needed, who shall be state employees and  
60 be eligible for all corresponding benefits. The executive director shall have charge of the offices,  
61 operations, records, and other employees of the board, subject to the direction of the board.  
62 Employees of the board shall receive such salaries and necessary expenses as shall be fixed by  
63 the board.

64 9. ~~[Staff resources for the Missouri petroleum storage tank insurance fund may be~~  
65 ~~provided by the department of natural resources or another state agency as otherwise specifically~~  
66 ~~determined by the board. The fund shall compensate the department of natural resources or other~~  
67 ~~state agency for all costs of providing staff required by this subsection. Such compensation shall~~  
68 ~~be made pursuant to contracts negotiated between the board and the department of natural~~  
69 ~~resources or other state agency.~~

70 ~~10.]~~ In order to carry out the fiduciary management of the fund, the board may select and  
71 employ, or may contract with, persons experienced in insurance underwriting, accounting, the  
72 servicing of claims and rate making, and legal counsel to defend third-party claims, who shall  
73 serve at the board's pleasure. Invoices for such services shall be presented to the board in  
74 sufficient detail to allow a thorough review of the costs of such services. **The board may also**  
75 **enter into contingency contracts to subrogate on behalf of fund participants; such contracts**  
76 **shall not be subject to section 34.378.**

77 ~~[11. At the first meeting of the board,]~~

78 **10.** The board shall elect one of its members as ~~[chairman]~~ **chair**. The ~~[chairman]~~ **chair**  
79 shall preside over meetings of the board and perform such other duties as shall be required by  
80 action of the board.

81 ~~[12.]~~ **11.** The board shall elect one of its members as vice ~~[chairman]~~ **chair**, and the vice  
82 ~~[chairman]~~ **chair** shall perform the duties of the ~~[chairman]~~ **chair** in the absence of the latter or  
83 upon the ~~[chairman's]~~ **chair's** inability or refusal to act.

84 ~~[13.]~~ **12.** The board shall determine and prescribe all rules and regulations as they relate  
85 to fiduciary management of the fund, pursuant to the purposes of sections 319.100 to 319.137.  
86 In no case shall the board have oversight regarding environmental cleanup standards for  
87 petroleum storage tanks.

88           ~~[14.]~~ **13.** No ~~[trustee or staff]~~ member of the ~~[fund]~~ **board or its staff** shall receive any  
89 gain or profit from any moneys or transactions of the fund. This shall not preclude any eligible  
90 trustee from making a claim or receiving benefits from the petroleum storage tank insurance fund  
91 as provided by sections 319.100 to 319.137, **provided that such a trustee shall not participate**  
92 **in deliberations or decisions of the board regarding that claim.**

93           ~~[15.]~~ **14.** The board may reinsure all or a portion of the fund's liability. Any insurer who  
94 sells environmental liability insurance in this state may, at the option of the board, reinsure some  
95 portion of the fund's liability.

96           ~~[16.]~~ **15.** The petroleum storage tank insurance fund shall expire on December 31, 2025,  
97 unless extended by action of the general assembly. After December 31, 2025, the board of  
98 trustees may continue to function for the sole purpose of completing payment of claims made  
99 prior to December 31, 2025. **On December 31, 2025, and each year thereafter so long as**  
100 **moneys remain in the fund, the board shall report to the state treasurer an estimate of its**  
101 **remaining obligations, and by January thirtieth of the succeeding year the treasurer shall**  
102 **report to the general assembly the amount remaining in the fund and the board's estimate**  
103 **of remaining obligations. When all claims have been paid, the board shall so report to the**  
104 **treasurer, and the treasurer shall in turn report to the general assembly the amount, if any,**  
105 **remaining in the fund.**

106           ~~[17.]~~ **16.** The board shall annually commission an independent financial audit of the  
107 petroleum storage tank insurance fund. The board shall biennially commission an actuarial  
108 analysis of the petroleum storage tank insurance fund. The results of the financial audit and the  
109 actuarial analysis shall be made available to the public. The board may contract with third  
110 parties to carry out the requirements of this subsection.

          319.131. 1. Any owner or operator of one or more petroleum storage tanks may ~~elect~~  
2 **apply** to participate in the petroleum storage tank insurance fund ~~[to meet the financial~~  
3 ~~responsibility requirements of sections 319.114 and 414.036]~~. **Participation shall be subject**  
4 **to the terms of a participation agreement issued by the board of trustees. The board may**  
5 **offer more than one such form. Among the terms the board may include in such forms are**  
6 **provisions authorizing the board to assign claim benefits to a successor owner. The board**  
7 **also may issue special endorsements on individual participation agreements for good cause.**  
8 Subject to regulations of the board of trustees, owners or operators may elect to continue their  
9 participation in the fund subsequent to the transfer of their property to another party. Current or  
10 former refinery sites or petroleum pipeline or marine terminals are not eligible for participation  
11 in the fund. **Notwithstanding any other provision of sections 319.100 to 319.133, owners**  
12 **and operators of airport hydrant systems and other underground or aboveground storage**

13 **tanks used to store and distribute fuel for railroad corporations and airline companies**  
14 **shall not be eligible to participate in the fund.**

15         2. The board shall establish an advisory committee which shall be composed of insurers,  
16 owners and operators of petroleum storage tanks, and other interested parties. The advisory  
17 committee established pursuant to this subsection shall report to the board. The committee shall  
18 monitor the fund **and its operation by the board** and recommend statutory and administrative  
19 changes as may be necessary to assure efficient operation of the fund. The committee, in  
20 consultation with the board and the department of commerce and insurance, shall report every  
21 two years to the general assembly on the availability and affordability of the private insurance  
22 market as a viable method of meeting the financial responsibilities required by state and federal  
23 law in lieu of the petroleum storage tank insurance fund.

24         3. (1) Except as otherwise provided by this section, any person seeking to participate  
25 in the insurance fund shall submit an application to the board of trustees and shall certify that the  
26 petroleum tanks meet or exceed and are in compliance with all ~~[technical standards established~~  
27 ~~by the United States Environmental Protection Agency, except those standards and regulations~~  
28 ~~pertaining to spill prevention control and counter-measure plans, and rules]~~ **petroleum storage**  
29 **tank regulations** established by the Missouri department of natural resources and the Missouri  
30 department of agriculture. The applicant shall submit proof that the applicant has a reasonable  
31 assurance of the tank's integrity. ~~[Proof of tank integrity may include but not be limited to any~~  
32 ~~one of the following: tank tightness test, electronic leak detection, monitoring wells, daily~~  
33 ~~inventory reconciliation, vapor test or any other test that may be approved by the director of the~~  
34 ~~department of natural resources or the director of the department of agriculture.]~~ The applicant  
35 shall **also** submit evidence that the applicant can ~~[meet all applicable financial responsibility~~  
36 ~~requirements]~~ **pay the first ten thousand dollars of cleanup costs referenced in subsection**  
37 **4** of this section.

38         (2) A creditor, specifically a person who, without participating in and not otherwise  
39 primarily engaged in petroleum production, refining, and marketing, holds indicia of ownership  
40 primarily for the purpose of, or in connection with, securing payment or performance of a loan  
41 or to protect a security interest in or lien on the tank or the property where the tank is located,  
42 or serves as trustee or fiduciary upon transfer or receipt of the property, may be a successor in  
43 interest to a debtor pursuant to this section, provided that the creditor gives notice of the interest  
44 to the ~~[insurance fund]~~ **board** by certified mail, return receipt requested. Part of such notice shall  
45 include a copy of the lien, including but not limited to a security agreement or a deed of trust as  
46 appropriate to the property. The term "successor in interest" as provided in this section means  
47 a creditor to the debtor who had qualified real property in the insurance fund prior to the transfer  
48 of title to the creditor, and the term is limited to access to the insurance fund. The creditor may

49 cure any of the debtor's defaults in payments required by the ~~[insurance fund]~~ **board**, provided  
50 the specific real property originally qualified pursuant to this section. The creditor, or the  
51 creditor's subsidiary or affiliate, who forecloses or otherwise obtains legal title to such specific  
52 real property held as collateral for loans, guarantees or other credit, and which includes the  
53 debtor's aboveground storage tanks or underground storage tanks, or both such tanks shall  
54 provide notice to the ~~[fund]~~ **board** of any transfer of creditor to subsidiary or affiliate. Liability  
55 pursuant to sections 319.100 to 319.137 shall be confined to such creditor or such creditor's  
56 subsidiary or affiliate. A creditor shall apply for a transfer of coverage and shall present evidence  
57 indicating a lien, contractual right, or operation of law permitting such transfer, and may utilize  
58 the creditor's affiliate or subsidiary to hold legal title to the specific real property taken in  
59 satisfaction of debts. Creditors may be listed as insured or additional insured on the ~~[insurance~~  
60 ~~fund]~~ **participation agreement**, and not merely as mortgagees, and may assign or otherwise  
61 transfer the debtor's rights in the insurance fund to the creditor's affiliate or subsidiary,  
62 notwithstanding any limitations in the ~~[insurance fund]~~ **participation agreement** on assignments  
63 or transfer of the debtor's rights.

64 (3) Any person participating in the fund shall annually submit an amount established  
65 pursuant to subsection 1 of section 319.133 which shall be deposited to the credit of the  
66 petroleum storage tank insurance fund.

67 4. ~~[Any person making a claim pursuant to this section and sections 319.129 and 319.133~~  
68 ~~shall be liable for the first ten thousand dollars of the cost of cleanup associated with a release~~  
69 ~~from a petroleum storage tank without reimbursement from the fund. The petroleum storage~~  
70 ~~fund shall assume all costs, except as provided in subsection 5 of this section,~~  
71 ~~which are greater than ten thousand dollars but less than one million dollars per occurrence or~~  
72 ~~two million dollars aggregate per year. The liability of the petroleum storage tank insurance fund~~  
73 ~~is not the liability of the state of Missouri. The provisions of sections 319.100 to 319.137 shall~~  
74 ~~not be construed to broaden the liability of the state of Missouri beyond the provisions of~~  
75 ~~sections 537.600 to 537.610 nor to abolish or waive any defense which might otherwise be~~  
76 ~~available to the state or to any person. The presence of existing contamination at a site where~~  
77 ~~a person is seeking insurance in accordance with this section shall not affect that person's ability~~  
78 ~~to participate in this program, provided the person meets all other requirements of this section.~~  
79 ~~Any person who qualifies pursuant to sections 319.100 to 319.137 and who has requested~~  
80 ~~approval of a project for remediation from the fund, which request has not yet been decided upon~~  
81 ~~shall annually be sent a status report including an estimate of when the project may expect to be~~  
82 ~~funded and other pertinent information regarding the request.~~

83 ~~5. The fund shall provide coverage for third-party claims involving property damage or~~  
84 ~~bodily injury caused by leaking petroleum storage tanks whose owner or operator is participating~~

85 ~~in the fund at the time the release occurs or is discovered. Coverage for third-party property~~  
86 ~~damage or bodily injury shall be in addition to the coverage described in subsection 4 of this~~  
87 ~~section but the total liability of the petroleum storage tank insurance fund for all cleanup costs,~~  
88 ~~property damage, and bodily injury shall not exceed one million dollars per occurrence or two~~  
89 ~~million dollars aggregate per year. The fund shall not compensate an owner or operator for~~  
90 ~~repair of damages to property beyond that required to contain and clean up a release of a~~  
91 ~~regulated substance or compensate an owner or operator or any third party for loss or damage to~~  
92 ~~other property owned or belonging to the owner or operator, or for any loss or damage of an~~  
93 ~~intangible nature, including, but not limited to, loss or interruption of business, pain and~~  
94 ~~suffering of any person, lost income, mental distress, loss of use of any benefit, or punitive~~  
95 ~~damages.~~

96 ~~6. The fund shall, within limits specified in this section, assume costs of third-party~~  
97 ~~claims and cleanup of contamination caused by releases from petroleum storage tanks. The fund~~  
98 ~~shall provide the defense of eligible third-party claims including the negotiations of any~~  
99 ~~settlement.~~

100 ~~7.]~~ **(1) The board shall provide coverage to fund participants for the costs of**  
101 **cleanup associated with a release from a petroleum storage tank and third-party claims**  
102 **involving property damage or bodily injury arising from such release. The total liability**  
103 **of the petroleum storage tank insurance fund for all cleanup costs, third-party property**  
104 **damage, and third-party bodily injury shall not exceed one million dollars per occurrence**  
105 **or two million dollars in the aggregate per year. In addition to these limits, the board may**  
106 **provide legal defense of eligible third-party claims and may specify a limit to legal defense**  
107 **coverage costs in the participation agreement.**

108 **(2) The participant shall be liable for the first ten thousand dollars of cleanup costs.**

109 **(3) In no case shall coverage be provided for repair of damages to the participant's**  
110 **property beyond that required to contain and clean up a petroleum release, or for loss or**  
111 **damage to other property owned or belonging to the participant.**

112 **(4) In no case shall coverage be provided to a participant or third party for loss or**  
113 **damage of an intangible nature, including but not limited to loss or interruption of**  
114 **business, pain and suffering of any person, lost income, mental distress, loss of use of any**  
115 **benefit, or punitive damages.**

116 **(5) The board shall have authority to investigate and settle any third-party claim**  
117 **and, if legal defense coverage is provided as authorized in subdivision (1) of this subsection,**  
118 **may choose and employ counsel to represent a participant and defend such claims.**

119 **5. Nothing contained in sections 319.100 to 319.137 shall be construed to abrogate or**  
120 **limit any right, remedy, causes of action, or claim by any person sustaining personal injury or**

121 property damage as a result of any release from any type of petroleum storage tank, nor shall  
122 anything contained in sections 319.100 to 319.137 be construed to abrogate or limit any liability  
123 of any person in any way responsible for any release from a petroleum storage tank or any  
124 damages for personal injury or property damages caused by such a release. **Nothing contained**  
125 **in sections 319.100 to 319.137 shall be construed to create a cause of action against the fund**  
126 **or the board. The provisions of sections 319.100 to 319.137 shall not be construed to**  
127 **broaden the liability of the state of Missouri beyond the provisions of sections 537.600 to**  
128 **537.610 nor to abolish or waive any defense that might otherwise be available to the state**  
129 **or to any person.**

130 ~~[8. (1) The fund shall provide moneys for cleanup of contamination caused by releases~~  
131 ~~from petroleum storage tanks, the owner or operator of which is participating in the fund or the~~  
132 ~~owner or operator of which has made application for participation in the fund by December 31,~~  
133 ~~1997, regardless of when such release occurred, provided that those persons who have made~~  
134 ~~application are ultimately accepted into the fund. Applicants shall not be eligible for fund~~  
135 ~~benefits until they are accepted into the fund. This section shall not preclude the owner or~~  
136 ~~operator of petroleum storage tanks coming into service after December 31, 1997, from making~~  
137 ~~application to and participating in the petroleum storage tank insurance fund.~~

138 ~~——(2)]~~ **6.** Notwithstanding the provisions of section 319.100 ~~[and the provisions of~~  
139 ~~subdivision (1) of this section],~~ the ~~[fund]~~ **board** shall provide moneys for cleanup of  
140 contamination caused by releases from petroleum storage tanks owned by school districts all or  
141 part of which are located in a county of the third classification without a township form of  
142 government and having a population of more than ten thousand seven hundred but less than  
143 eleven thousand inhabitants, and which make application for participation in the fund by August  
144 28, 1999, regardless of when such release occurred. Applicants shall not be eligible for fund  
145 benefits until they are accepted into the fund, and costs incurred prior to that date shall not be  
146 eligible expenses.

147 ~~[9.]~~ **7. (1) [The fund]** **Notwithstanding the provisions of this section to the contrary,**  
148 **the board** shall provide moneys **from the fund** for cleanup of contamination caused by releases  
149 from underground storage tanks which contained petroleum and which ~~[have been]~~ **were** taken  
150 out of use prior to December 31, 1997, provided such sites ~~[have been]~~ **were** documented by or  
151 reported to the department of natural resources prior to December 31, 1997, and provided further  
152 that the ~~[fund]~~ **board** shall make no reimbursements for expenses incurred prior to August 28,  
153 1995. The ~~[fund]~~ **board** shall also provide moneys for cleanup of contamination caused by  
154 releases from underground storage tanks which contained petroleum and which have been taken  
155 out of use prior to December 31, 1985, if the current owner of the real property where the tanks  
156 are located purchased such property before December 31, 1985, provided such sites ~~[are]~~ **were**

157 reported to the fund on or before June 30, 2000. The ~~[fund]~~ **board** shall make no payment for  
158 expenses incurred at such sites prior to August 28, 1999. Nothing in sections 319.100 to 319.137  
159 shall affect the validity of any underground storage tank fund insurance policy in effect on  
160 August 28, 1996.

161 (2) An owner or operator who submits a request as provided in this subsection is not  
162 required to bid the costs and expenses associated with professional environmental engineering  
163 services. The board may disapprove all or part of the costs and expenses associated with the  
164 environmental engineering services if the costs are excessive based upon comparable service  
165 costs or current market value of similar services. The owner or operator shall solicit bids for  
166 actual remediation and cleanup work as provided by rules of the board.

167 (3) After December 31, 2017, the current legal owner of the site shall be the responsible  
168 party for corrective action, pursuant to section 319.109, of any releases from underground storage  
169 tanks described in this subsection, provided the creditor, who is a successor in interest as  
170 provided in subdivision (2) of subsection 3 of this section, is subject to no greater or lesser  
171 responsibility for corrective action than such successor in interest would have on or before  
172 December 31, 2017. Nothing in this subdivision shall in any way be construed to alter, alleviate,  
173 or modify in any manner any liabilities that the fund has to pay for in cleaning up the site.

174 (4) **For such cleanups, the liability of the fund is limited to nine hundred ninety**  
175 **thousand dollars and the person initiating the cleanup shall pay the first ten thousand**  
176 **dollars of cleanup costs.**

177 ~~[40.]~~ 8. (1) ~~[The fund]~~ **Notwithstanding the provisions of this section to the**  
178 **contrary, the board** shall provide moneys **from the fund** for cleanup of contamination caused  
179 by releases from aboveground storage tanks utilized for the sale of products regulated by chapter  
180 414 which ~~[have been]~~ **were** taken out of use prior to December 31, 1997, provided such sites  
181 ~~[have been]~~ **were** documented by or reported to the department of natural resources prior to  
182 December 31, 1997, and provided further that the ~~[fund]~~ **board** shall make no reimbursements  
183 for expenses incurred prior to July 1, 1997.

184 (2) After December 31, 2017, the current legal owner of the site shall be the responsible  
185 party for corrective action of any releases from aboveground storage tanks described in this  
186 subsection, provided the creditor, who is a successor in interest as provided in subdivision (2)  
187 of subsection 3 of this section, is subject to no greater or lesser responsibility for corrective  
188 action than such successor in interest would have on or before December 31, 2017. Nothing in  
189 this subdivision shall in any way be construed to alter, alleviate, or modify in any manner any  
190 liabilities that the fund has to pay for in cleaning up the site.

191           **(3) For such cleanups, the liability of the fund is limited to nine hundred ninety**  
192 **thousand dollars and the person initiating the cleanup shall pay the first ten thousand**  
193 **dollars of cleanup costs.**

194           **9. The board shall provide by regulation for the appeal of decisions denying, in**  
195 **whole or in part, requests by fund participants for payment from the fund. Any**  
196 **deliberations conducted and votes taken on such an appeal shall be closed to the applicant**  
197 **and the public. Once a final decision is rendered, that decision shall be made available to**  
198 **the participant and the public.**

199           **10. (1) The following records are not public records, as such term is defined in**  
200 **section 610.010, and are not available for public examination except to the extent that the**  
201 **board determines that disclosure is in the best interest of the fund or of the public:**

202           **(a) Applications for participation;**

203           **(b) Individual claim reserve estimates;**

204           **(c) An applicant's or participant's financial information;**

205           **(d) Claims adjusters' reports; and**

206           **(e) Communications regarding fund participants' liabilities or claim settlement**  
207 **negotiations.**

208           **(2) Should the board determine that records containing proprietary or confidential**  
209 **information regarding an applicant or participant should be disclosed, the board shall so**  
210 **notify the applicant or participant no less than ten days before making any such disclosure.**

211           **(3) The provisions of this subsection shall not limit the board's authority to disclose**  
212 **records to other state agencies to assist those agencies in performing their regulatory**  
213 **functions.**

319.133. 1. The board shall, in consultation with the advisory committee established  
2 pursuant to subsection 2 of section 319.131, establish, by rule, the amount which each owner or  
3 operator who participates in the fund shall pay annually into the fund, but such amount shall not  
4 exceed the limits established in this section.

5           2. Each participant shall annually pay an amount which shall be at least one hundred  
6 dollars per year but not more than five hundred dollars per year for any tank, as established by  
7 the board by rule.

8           3. No new registration fee is required for a change of ownership of a petroleum storage  
9 tank.

10           4. The board ~~[shall]~~ **may** establish procedures where persons ~~[owning fifty or more~~  
11 ~~petroleum storage tanks]~~ may pay any fee established pursuant to subsection 1 of this section in  
12 installments.

13           5. All rules applicable to the former underground storage tank insurance fund not  
14 inconsistent with the provisions of sections 319.100 to 319.137 shall apply to the petroleum  
15 storage tank insurance fund as of August 28, 1996.

16           6. The board may require any new applicant, who has not previously held private  
17 insurance or other form of financial responsibility for the petroleum storage tank for which  
18 application to the fund is made, to conduct a site assessment before participating in the fund.  
19 The board also may require such new applicants to pay a surcharge per year per tank from the  
20 date the tank was eligible for coverage under the fund, provided that each year's surcharge shall  
21 not exceed the surcharge that was actually in effect for that particular year.

22           7. Any rule or portion of a rule, as that term is defined in section 536.010, that is created  
23 under the authority delegated in this section shall become effective only if it complies with and  
24 is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section  
25 and chapter 536 are nonseverable, and if any of the powers vested with the general assembly  
26 pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule  
27 are subsequently held unconstitutional, then the grant of rulemaking authority and any rule  
28 proposed or adopted after August 28, 2008, shall be invalid and void.

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