

FIRST REGULAR SESSION

HOUSE BILL NO. 1436

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KNIGHT.

2697H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 319.123, 319.129, 319.131, and 319.132, RSMo, and to enact in lieu thereof four new sections relating to petroleum storage tanks.

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

Section A. Sections 319.123, 319.129, 319.131, and 319.132, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 319.123, 319.129, 319.131, and 319.132, to read as follows:

319.123. Application for a certificate of registration shall be accompanied by a fee. The fee shall be fifteen dollars per tank per year assessed on a rotating basis during a five-year period. All fees collected under this ~~subsection shall be placed in the~~ **section, including any general revenue, federal funds, gifts, bequests, transfers, moneys appropriated by the general assembly, or any other moneys so designated, shall be paid into the "Underground Storage Tank Regulation Program Fund"** which is hereby established in the state treasury. All moneys in the fund shall be used solely for expenses related to the administration of sections 319.100 to 319.137 **and section 319.139. The underground storage tank regulation program fund shall be administered by the department of natural resources. All interest earned on moneys in the fund shall accrue to the fund. Except as described in subdivision (2) of subsection 1 of section 319.132, any balance in the fund at the end of the biennium shall remain in the fund, and 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.**

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. Moneys in such special trust fund shall not be deemed

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.

4 to be state funds. Notwithstanding the provisions of section 33.080 to the contrary, moneys in
5 the fund shall not be transferred to general revenue at the end of each biennium.

6 2. The owner or operator of any underground storage tank, including the state of
7 Missouri and its political subdivisions and public transportation systems, in service on August
8 28, 1989, shall submit to the department a fee of one hundred dollars per tank on or before
9 December 31, 1989. The owner or operator of any underground storage tank who seeks to
10 participate in the petroleum storage tank insurance fund, including the state of Missouri and its
11 political subdivisions and public transportation systems, and whose underground storage tank
12 is brought into service after August 28, 1998, shall transmit one hundred dollars per tank to the
13 board with his or her initial application. Such amount shall be a one-time payment, and shall be
14 in addition to the payment required by section 319.133. The owner or operator of any
15 aboveground storage tank regulated by this chapter, including the state of Missouri and its
16 political subdivisions and public transportation systems, who seeks to participate in the
17 petroleum storage tank insurance fund, shall transmit one hundred dollars per tank to the board
18 with his or her initial application. Such amount shall be a one-time payment and shall be in
19 addition to the payment required by section 319.133. Moneys received pursuant to this section
20 shall be transmitted to the director of revenue for deposit in the petroleum storage tank insurance
21 fund.

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

26 4. The general administration of the fund and the responsibility for the proper operation
27 of the fund, including all decisions relating to payments from the fund, are hereby vested in a
28 board of trustees. The board of trustees shall consist of the commissioner of administration or
29 the commissioner's designee, the director of the department of natural resources or the director's
30 designee, the director of the department of agriculture or the director's designee, and eight
31 citizens appointed by the governor with the advice and consent of the senate. Three of the
32 appointed members shall be owners or operators of retail petroleum storage tanks, including one
33 tank owner or operator of greater than one hundred tanks; one tank owner or operator of less than
34 one hundred tanks; and one aboveground storage tank owner or operator. One appointed trustee
35 shall represent a financial lending institution, and one appointed trustee shall represent the
36 insurance underwriting industry. One appointed trustee shall represent industrial or commercial
37 users of petroleum. The two remaining appointed citizens shall have no petroleum-related
38 business interest, and shall represent the nonregulated public at large. The members appointed
39 by the governor shall serve four-year terms except that the governor shall designate two of the

40 original appointees to be appointed for one year, two to be appointed for two years, two to be
41 appointed for three years and two to be appointed for four years. Any vacancies occurring on
42 the board shall be filled in the same manner as provided in this section.

43 5. The board shall meet in Jefferson City, Missouri, within thirty days following August
44 28, 1996. Thereafter, the board shall meet upon the written call of the chairman of the board or
45 by the agreement of any six members of the board. Notice of each meeting shall be delivered
46 to all other trustees in person or by registered mail not less than six days prior to the date fixed
47 for the meeting. The board may meet at any time by unanimous mutual consent. There shall be
48 at least one meeting in each quarter.

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

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

53 8. The board of trustees shall be a type III agency and shall appoint an executive director
54 and other employees as needed, who shall be state employees and be eligible for all
55 corresponding benefits. The executive director shall have charge of the offices, operations,
56 records, and other employees of the board, subject to the direction of the board. Employees of
57 the board shall receive such salaries and necessary expenses as shall be fixed by the board.

58 9. Staff resources for the Missouri petroleum storage tank insurance fund may be
59 provided by the department of natural resources or another state agency as otherwise specifically
60 determined by the board. The fund shall compensate the department of natural resources or other
61 state agency for all costs of providing staff required by this subsection. Such compensation shall
62 be made pursuant to contracts negotiated between the board and the department of natural
63 resources or other state agency.

64 10. In order to carry out the fiduciary management of the fund, the board may select and
65 employ, or may contract with, persons experienced in insurance underwriting, accounting, the
66 servicing of claims and rate making, and legal counsel to defend third-party claims, who shall
67 serve at the board's pleasure. Invoices for such services shall be presented to the board in
68 sufficient detail to allow a thorough review of the costs of such services.

69 11. At the first meeting of the board, the board shall elect one of its members as
70 chairman. The chairman shall preside over meetings of the board and perform such other duties
71 as shall be required by action of the board.

72 12. The board shall elect one of its members as vice chairman, and the vice chairman
73 shall perform the duties of the chairman in the absence of the latter or upon the chairman's
74 inability or refusal to act.

75 13. The board shall determine and prescribe all rules and regulations as they relate to
76 fiduciary management of the fund, pursuant to the purposes of sections 319.100 to 319.137. In
77 no case shall the board have oversight regarding environmental cleanup standards for petroleum
78 storage tanks.

79 14. No trustee or staff member of the fund shall receive any gain or profit from any
80 moneys or transactions of the fund. This shall not preclude any eligible trustee from making a
81 claim or receiving benefits from the petroleum storage tank insurance fund as provided by
82 sections 319.100 to 319.137.

83 15. The board may reinsure all or a portion of the fund's liability. Any insurer who sells
84 environmental liability insurance in this state may, at the option of the board, reinsure some
85 portion of the fund's liability.

86 16. The petroleum storage tank insurance fund shall expire on December 31, [2025]
87 **2030**, unless extended by action of the general assembly. After December 31, [2025] **2030**, the
88 board of trustees may continue to function for the sole purpose of completing payment of claims
89 made prior to December 31, [2025] **2030**.

90 17. The board shall annually commission an independent financial audit of the petroleum
91 storage tank insurance fund. The board shall biennially commission an actuarial analysis of the
92 petroleum storage tank insurance fund. The results of the financial audit and the actuarial
93 analysis shall be made available to the public. The board may contract with third parties to carry
94 out the requirements of this subsection.

 319.131. 1. Any owner or operator of one or more petroleum storage tanks may elect
2 to participate in the petroleum storage tank insurance fund to meet the financial responsibility
3 requirements of sections 319.114 and 414.036. Subject to regulations of the board of trustees,
4 owners or operators may elect to continue their participation in the fund subsequent to the
5 transfer of their property to another party. Current or former refinery sites or petroleum pipeline
6 or marine terminals are not eligible for participation in the fund.

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

16 3. (1) Except as otherwise provided by this section, any person seeking to participate
17 in the insurance fund shall submit an application to the board of trustees and shall certify that the
18 petroleum tanks meet or exceed and are in compliance with all technical standards established
19 by the United States Environmental Protection Agency, except those standards and regulations
20 pertaining to spill prevention control and counter-measure plans, and rules established by the
21 Missouri department of natural resources and the Missouri department of agriculture. The
22 applicant shall submit proof that the applicant has a reasonable assurance of the tank's integrity.
23 Proof of tank integrity may include but not be limited to any one of the following: tank tightness
24 test, electronic leak detection, monitoring wells, daily inventory reconciliation, vapor test or any
25 other test that may be approved by the director of the department of natural resources or the
26 director of the department of agriculture. The applicant shall submit evidence that the applicant
27 can meet all applicable financial responsibility requirements of this section.

28 (2) A creditor, specifically a person who, without participating in and not otherwise
29 primarily engaged in petroleum production, refining, and marketing, holds indicia of ownership
30 primarily for the purpose of, or in connection with, securing payment or performance of a loan
31 or to protect a security interest in or lien on the tank or the property where the tank is located,
32 or serves as trustee or fiduciary upon transfer or receipt of the property, may be a successor in
33 interest to a debtor pursuant to this section, provided that the creditor gives notice of the interest
34 to the insurance fund by certified mail, return receipt requested. Part of such notice shall include
35 a copy of the lien, including but not limited to a security agreement or a deed of trust as
36 appropriate to the property. The term "successor in interest" as provided in this section means
37 a creditor to the debtor who had qualified real property in the insurance fund prior to the transfer
38 of title to the creditor, and the term is limited to access to the insurance fund. The creditor may
39 cure any of the debtor's defaults in payments required by the insurance fund, provided the
40 specific real property originally qualified pursuant to this section. The creditor, or the creditor's
41 subsidiary or affiliate, who forecloses or otherwise obtains legal title to such specific real
42 property held as collateral for loans, guarantees or other credit, and which includes the debtor's
43 aboveground storage tanks or underground storage tanks, or both such tanks shall provide notice
44 to the fund of any transfer of creditor to subsidiary or affiliate. Liability pursuant to sections
45 319.100 to 319.137 shall be confined to such creditor or such creditor's subsidiary or affiliate.
46 A creditor shall apply for a transfer of coverage and shall present evidence indicating a lien,
47 contractual right, or operation of law permitting such transfer, and may utilize the creditor's
48 affiliate or subsidiary to hold legal title to the specific real property taken in satisfaction of debts.
49 Creditors may be listed as insured or additional insured on the insurance fund, and not merely
50 as mortgagees, and may assign or otherwise transfer the debtor's rights in the insurance fund to

51 the creditor's affiliate or subsidiary, notwithstanding any limitations in the insurance fund on
52 assignments or transfer of the debtor's rights.

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

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

72 5. The fund shall provide coverage for third-party claims involving property damage or
73 bodily injury caused by leaking petroleum storage tanks whose owner or operator is participating
74 in the fund at the time the release occurs or is discovered. Coverage for third-party property
75 damage or bodily injury shall be in addition to the coverage described in subsection 4 of this
76 section but the total liability of the petroleum storage tank insurance fund for all cleanup costs,
77 property damage, and bodily injury shall not exceed one million dollars per occurrence or two
78 million dollars aggregate per year. The fund shall not compensate an owner or operator for
79 repair of damages to property beyond that required to contain and clean up a release of a
80 regulated substance or compensate an owner or operator or any third party for loss or damage to
81 other property owned or belonging to the owner or operator, or for any loss or damage of an
82 intangible nature, including, but not limited to, loss or interruption of business, pain and
83 suffering of any person, lost income, mental distress, loss of use of any benefit, or punitive
84 damages.

85 6. ~~[The fund shall, within limits specified in this section, assume costs of third-party~~
86 ~~claims and cleanup of contamination caused by releases from petroleum storage tanks.] In~~

87 **addition to the other coverage limits in this section,** the fund shall provide the defense of
88 eligible third-party claims including the negotiations of any settlement **and may specify a legal**
89 **defense cost coverage limit.**

90 7. Nothing contained in sections 319.100 to 319.137 shall be construed to abrogate or
91 limit any right, remedy, causes of action, or claim by any person sustaining personal injury or
92 property damage as a result of any release from any type of petroleum storage tank, nor shall
93 anything contained in sections 319.100 to 319.137 be construed to abrogate or limit any liability
94 of any person in any way responsible for any release from a petroleum storage tank or any
95 damages for personal injury or property damages caused by such a release.

96 8. (1) The fund shall provide moneys for cleanup of contamination caused by releases
97 from petroleum storage tanks, the owner or operator of which is participating in the fund or the
98 owner or operator of which has made application for participation in the fund by December 31,
99 1997, regardless of when such release occurred, provided that those persons who have made
100 application are ultimately accepted into the fund. Applicants shall not be eligible for fund
101 benefits until they are accepted into the fund. This section shall not preclude the owner or
102 operator of petroleum storage tanks coming into service after December 31, 1997, from making
103 application to and participating in the petroleum storage tank insurance fund.

104 (2) Notwithstanding the provisions of section 319.100 and the provisions of subdivision
105 (1) of this section, the fund shall provide moneys for cleanup of contamination caused by
106 releases from petroleum storage tanks owned by school districts all or part of which are located
107 in a county of the third classification without a township form of government and having a
108 population of more than ten thousand seven hundred but less than eleven thousand inhabitants,
109 and which make application for participation in the fund by August 28, 1999, regardless of when
110 such release occurred. Applicants shall not be eligible for fund benefits until they are accepted
111 into the fund, and costs incurred prior to that date shall not be eligible expenses.

112 9. (1) The fund shall provide moneys for cleanup of contamination caused by releases
113 from underground storage tanks which contained petroleum and which have been taken out of
114 use prior to December 31, 1997, provided such sites have been documented by or reported to the
115 department of natural resources prior to December 31, 1997, and provided further that the fund
116 shall make no reimbursements for expenses incurred prior to August 28, 1995. The fund shall
117 also provide moneys for cleanup of contamination caused by releases from underground storage
118 tanks which contained petroleum and which have been taken out of use prior to December 31,
119 1985, if the current owner of the real property where the tanks are located purchased such
120 property before December 31, 1985, provided such sites are reported to the fund on or before
121 June 30, 2000. The fund shall make no payment for expenses incurred at such sites prior to

122 August 28, 1999. Nothing in sections 319.100 to 319.137 shall affect the validity of any
123 underground storage tank fund insurance policy in effect on August 28, 1996.

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

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

137 10. (1) The fund shall provide moneys for cleanup of contamination caused by releases
138 from aboveground storage tanks utilized for the sale of products regulated by chapter 414 which
139 have been taken out of use prior to December 31, 1997, provided such sites have been
140 documented by or reported to the department of natural resources prior to December 31, 1997,
141 and provided further that the fund shall make no reimbursements for expenses incurred prior to
142 July 1, 1997.

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

319.132. 1. **(1)** The board shall assess a surcharge on all petroleum products within this
2 state which are enumerated by section 414.032. Except as specified by this section, such
3 surcharge shall be administered pursuant to the provisions of subsections 1 to 5 of section
4 414.102 and subsections 1 and 2 of section 414.152. Such surcharge shall be imposed upon such
5 petroleum products within this state and shall be assessed on each transport load, or the
6 equivalent of an average transport load if moved by other means. **Except as outlined in**
7 **subdivision (2) of this subsection,** all revenue generated by the assessment of such surcharges

8 shall be deposited to the credit of the special trust fund known as the petroleum storage tank
9 insurance fund.

10 **(2) Subject to appropriations and beginning in fiscal year 2023 and continuing each**
11 **year until the expiration of the petroleum storage tank insurance fund in accordance with**
12 **subsection 16 of section 319.129, an allocation of an amount not to exceed five dollars per**
13 **transport load shall be deposited into the underground storage tank regulation program**
14 **fund established in section 319.123. Funds deposited into the underground storage tank**
15 **regulation program fund according to this subsection shall be deposited up to the**
16 **appropriated budgetary amount set by the general assembly, adjusted for actual fringe,**
17 **for the department's petroleum-related activities, for the fiscal year in which funds are**
18 **being deposited. If any of the allocation per fiscal year deposited to the fund is not spent**
19 **in that fiscal year, the remaining funds shall be transferred to the petroleum storage tank**
20 **insurance fund no later than August thirty-first of the subsequent fiscal year. No later**
21 **than October first each year, the department shall provide a written accounting of all**
22 **moneys spent from the allocation authorized by this subdivision for the prior fiscal year**
23 **to the petroleum storage tank insurance fund board of trustees.**

24 2. Any person who claims to have paid the surcharge in error may file a claim for a
25 refund with the board within three years of the payment. The claim shall be in writing and
26 signed by the person or the person's legal representative. The board's decision on the claim shall
27 be in writing and may be delivered to the person by first class mail. Any person aggrieved by
28 the board's decision may seek judicial review by bringing an action against the board in the
29 circuit court of Cole County pursuant to section 536.150 no later than sixty days following the
30 date the board's decision was mailed. The department of revenue shall not be a party to such
31 proceeding.

32 3. The board shall assess and annually reassess the financial soundness of the petroleum
33 storage tank insurance fund.

34 4. (1) The board shall set, in a public meeting with an opportunity for public comment,
35 the rate of the surcharge that is to be assessed on each such transport load or equivalent but such
36 rate shall be no more than sixty dollars per transport load or an equivalent thereof. A transport
37 load shall be deemed to be eight thousand gallons.

38 (2) The board may increase or decrease the surcharge, up to a maximum of sixty dollars,
39 only after giving at least sixty days' notice of its intention to alter the surcharge; provided
40 however, the board shall not increase the surcharge by more than fifteen dollars in any year. The
41 board must coordinate its actions with the department of revenue to allow adequate time for
42 implementation of the surcharge change.

43 (3) If the fund's cash balance on the first day of any month exceeds the sum of its
44 liabilities, plus ten percent, the transport load fee shall automatically revert to twenty-five dollars
45 per transport load on the first day of the second month following this event.

46 (4) **Except as authorized in subdivision (2) of subsection 1 of this section,** moneys
47 generated by this surcharge shall not be used for any purposes other than those outlined in
48 sections 319.129 through 319.133 and section 319.138. Nothing in this subdivision shall limit
49 the board's authority to contract with the department of natural resources pursuant to section
50 319.129 to carry out the purposes of the fund as determined by the board.

51 5. The board shall ensure that the fund retain a balance of at least twelve million dollars
52 but not more than one hundred million dollars. If, at the end of any quarter, the fund balance is
53 above one hundred million dollars, the treasurer shall notify the board thereof. The board shall
54 suspend the collection of fees pursuant to this section beginning on the first day of the first
55 quarter following the receipt of notice. **If the board has suspended the collection of the fee**
56 **under this section, the board shall make payments in equal monthly installments, in**
57 **accordance with the provisions of this section, into the underground storage tank**
58 **regulation program fund established in section 319.123, up to the appropriated budgetary**
59 **amount set by the general assembly, adjusted for actual fringe, for the department's**
60 **petroleum-related activities, for the fiscal year in which funds are being deposited until**
61 **such time as the board has reinstated the fee.** If, at the end of any quarter, the fund balance
62 is below twenty million dollars, the treasurer shall notify the board thereof. The board shall
63 reinstate the collection of fees pursuant to this section beginning on the first day of the first
64 quarter following the receipt of notice.

65 6. Railroad corporations as defined in section 388.010 and airline companies as defined
66 in section 155.010 shall not be subject to the load fee described in this chapter nor permitted to
67 participate in or make claims against the petroleum storage tank insurance fund created in section
68 319.129.

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