

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 327
91ST GENERAL ASSEMBLY

Reported from the Committee on Commerce and Economic Development, March 1, 2001, with recommendation that the House Committee Substitute for House Bill No. 327 Do Pass.

TED WEDEL, Chief Clerk

1098L.02C

AN ACT

To repeal sections 319.129, 319.131, 319.132 and 319.133, RSMo 2000, relating to the petroleum storage tank insurance fund, and to enact in lieu thereof four new sections relating to the same subject.

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

Section A. Sections 319.129, 319.131, 319.132 and 319.133, RSMo 2000, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 319.129, 319.131, 319.132
3 and 319.133, to read as follows:

319.129. 1. There is hereby created a special trust fund to be known as the "Petroleum
2 Storage Tank Insurance Fund" within the state treasury which shall be the successor to the
3 underground storage tank insurance fund. Moneys in such special trust fund shall not be deemed
4 to be state funds. Notwithstanding the provisions of section 33.080, RSMo, to the contrary,
5 moneys in 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

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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. All staff resources for the Missouri petroleum storage tank insurance fund shall be
54 provided by the department of natural resources or another state agency as otherwise specifically
55 determined by the board. The fund shall compensate the department of natural resources or other
56 state agency for all costs of providing staff required by this subsection. Such compensation shall
57 be made pursuant to contracts negotiated between the board and the department of natural
58 resources or other state agency.

59 9. In order to carry out the fiduciary management of the fund, the board may select and
60 employ, or may contract with, persons experienced in insurance underwriting, accounting, the
61 servicing of claims and rate making, and legal counsel to defend third-party claims, who shall
62 serve at the board's pleasure.

63 10. At the first meeting of the board, the board shall elect one of its members as
64 chairman. The chairman shall preside over meetings of the board and perform such other duties
65 as shall be required by action of the board.

66 11. The board shall elect one of its members as vice chairman, and the vice chairman
67 shall perform the duties of the chairman in the absence of the latter or upon the chairman's
68 inability or refusal to act.

69 12. The board shall determine and prescribe all rules and regulations as they relate to
70 fiduciary management of the fund, pursuant to the purposes of sections 319.100 to 319.137. In
71 no case shall the board have oversight regarding environmental cleanup standards for petroleum
72 storage tanks.

73 13. No trustee or staff member of the fund shall receive any gain or profit from any
74 moneys or transactions of the fund. This shall not preclude any eligible trustee from making a
75 claim or receiving benefits from the petroleum storage tank insurance fund as provided by
76 sections 319.100 to 319.137.

77 14. The board may reinsure all or a portion of the fund's liability. Any insurer who sells
78 environmental liability insurance in this state may, at the option of the board, reinsure some
79 portion of the fund's liability.

80 15. The petroleum storage tank insurance fund shall expire on December 31, [2003]
81 **2010**, or upon revocation of federal regulation 40 CFR Parts 280 and 285, whichever occurs first,
82 unless extended by action of the general assembly. **After December 31, 2010, the board of**
83 **trustees may continue to function for the sole purpose of completing payment of claims**
84 **made prior to December 31, 2010.**

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 partially meet the financial
3 responsibility requirements of sections 319.100 to 319.137. **Subject to regulations of the**
4 **board of trustees, owners or operators may elect to continue their participation in the fund**
5 **subsequent to the transfer of their property to another party.** Current or former refinery sites
6 or petroleum pipeline 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 and owners and operators of petroleum storage tanks. The advisory committee established
9 pursuant to this subsection shall report to the board. The committee shall monitor the fund and
10 recommend statutory and administrative changes as may be necessary to assure efficient
11 operation of the fund. The committee, in consultation with the board and the department of
12 insurance, shall annually report to the general assembly on the availability and affordability of
13 the private insurance market as a viable method of meeting the financial responsibilities required
14 by state and federal law in lieu of the petroleum storage tank insurance fund.

15 3. (1) Except as otherwise provided by this section, any person seeking to participate
16 in the insurance fund shall submit an application to the board of trustees and shall certify that the
17 petroleum tanks meet or exceed and are in compliance with [all technical standards established
18 by the United States Environmental Protection Agency,] rules established by the Missouri
19 department of natural resources and the Missouri department of agriculture. The applicant shall
20 submit proof that the applicant has a reasonable assurance of the tank's integrity. Proof of tank
21 integrity may include but not be limited to any one of the following: tank tightness test,
22 electronic leak detection, monitoring wells, daily inventory reconciliation, vapor test or any other
23 test that may be approved by the director of the department of natural resources or the director
24 of the department of agriculture. The applicant shall submit evidence that the applicant can meet
25 all applicable financial responsibility requirements of this section.

26 (2) A creditor, specifically a person who, without participating in and not otherwise
27 primarily engaged in petroleum production, refining, and marketing, holds indicia of ownership
28 primarily for the purpose of, or in connection with, securing payment or performance of a loan
29 or to protect a security interest in or lien on the tank or the property where the tank is located,
30 or serves as trustee or fiduciary upon transfer or receipt of the property, may be a successor in
31 interest to a debtor pursuant to this section, provided that the creditor gives notice of the interest
32 to the insurance fund by certified mail, return receipt requested. Part of such notice shall include
33 a copy of the lien, including but not limited to a security agreement or a deed of trust as
34 appropriate to the property. The term "successor in interest" as provided in this section means
35 a creditor to the debtor who had qualified real property in the insurance fund prior to the transfer
36 of title to the creditor, and the term is limited to access to the insurance fund. The creditor may

37 cure any of the debtor's defaults in payments required by the insurance fund, provided the
38 specific real property originally qualified pursuant to this section. The creditor, or the creditor's
39 subsidiary or affiliate, who forecloses or otherwise obtains legal title to such specific real
40 property held as collateral for loans, guarantees or other credit, and which includes the debtor's
41 aboveground storage tanks or underground storage tanks, or both such tanks shall provide notice
42 to the fund of any transfer of creditor to subsidiary or affiliate. Liability pursuant to sections
43 319.100 to 319.137 shall be confined to such creditor or such creditor's subsidiary or affiliate.
44 A creditor shall apply for a transfer of coverage and shall present evidence indicating, a lien,
45 contractual right, or operation of law permitting such transfer, and may utilize the creditor's
46 affiliate or subsidiary to hold legal title to the specific real property taken in satisfaction of debts.
47 Creditors may be listed as insured or additional insured on the insurance fund, and not merely
48 as mortgagees, and may assign or otherwise transfer the debtor's rights in the insurance fund to
49 the creditor's affiliate or subsidiary, notwithstanding any limitations in the insurance fund on
50 assignments or transfer of the debtor's rights.

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

54 4. [The owner or operator] **Any person** making a claim pursuant to this section and
55 sections 319.129 and 319.133 shall be liable for the first ten thousand dollars of the cost of
56 cleanup associated with a release from a petroleum storage tank without reimbursement from the
57 fund. The petroleum storage tank insurance fund shall assume all costs, except as provided in
58 subsection 5 of this section, which are greater than ten thousand dollars but less than one million
59 dollars per occurrence or two million dollars aggregate per year. The liability of the petroleum
60 storage tank insurance fund is not the liability of the state of Missouri. The provisions of
61 sections 319.100 to 319.137 shall not be construed to broaden the liability of the state of
62 Missouri beyond the provisions of sections 537.600 to 537.610, RSMo, nor to abolish or waive
63 any defense which might otherwise be available to the state or to any person. The presence of
64 existing contamination at a site where a person is seeking insurance in accordance with this
65 section shall not affect that person's ability to participate in this program, provided the person
66 meets all other requirements of this section. **The board is hereby given authority to prioritize**
67 **claims and expenditures for claims, in consultation with the department of natural**
68 **resources.** Any person who qualifies pursuant to sections 319.100 to 319.137 and who has
69 requested approval of a project for remediation from the fund, which request has not yet been
70 decided upon shall annually be sent a status report including an estimate of when the project may
71 expect to be 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 bodily injury
75 shall not exceed one million dollars per occurrence. Coverage for third-party property damage
76 shall not exceed one million dollars per occurrence. The fund shall not compensate an owner
77 or operator for repair of damages to property beyond that required to contain and clean up a
78 release of a regulated substance or compensate an owner or operator or any third party for loss
79 or damage to other property owned or belonging to the owner or operator, or for any loss or
80 damage of an intangible nature, including, but not limited to, loss or interruption of business,
81 pain and suffering of any person, lost income, mental distress, loss of use of any benefit, or
82 punitive damages.

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

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

93 8. (1) The fund shall provide moneys for cleanup of contamination caused by releases
94 from petroleum storage tanks, the owner or operator of which is participating in the fund or the
95 owner or operator of which has made application for participation in the fund by [December 31,
96 1997] **August 28, 2000**, regardless of when such release occurred, provided that those persons
97 who have made application are ultimately accepted into the fund. Applicants shall not be eligible
98 for fund benefits until they are accepted into the fund. This section shall not preclude the owner
99 or operator of petroleum storage tanks coming into service after [December 31, 1997] **August**
100 **28, 2000**, from making application to and participating in the petroleum storage tank insurance
101 fund.

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

109 into the fund, and costs incurred prior to that date shall not be eligible expenses.

110 9. (1) The fund shall provide moneys for cleanup of contamination caused by releases
111 from underground storage tanks which contained petroleum and which have been taken out of
112 use prior to December 31, 1997, provided such sites have been documented by or reported to the
113 department of natural resources prior to December 31, 1997, and provided further that the fund
114 shall make no reimbursements for expenses incurred prior to August 28, 1995. The fund shall
115 also provide moneys for cleanup of contamination caused by releases from underground storage
116 tanks which contained petroleum and which have been taken out of use prior to December 31,
117 1985, if the current owner of the real property where the tanks are located purchased such
118 property before December 31, 1985, provided such sites are reported to the fund on or before
119 June 30, 2000. The fund shall make no payment for expenses incurred at such sites prior to
120 August 28, 1999. Nothing in sections 319.100 to 319.137 shall affect the validity of any
121 underground storage tank fund insurance policy in effect on August 28, 1996.

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

128 10. The fund shall provide moneys for cleanup of contamination caused by releases from
129 aboveground storage tanks utilized for the sale of products regulated by chapter 414, RSMo,
130 which have been taken out of use prior to December 31, 1997, provided such sites have been
131 documented by or reported to the department of natural resources prior to December 31, 1997,
132 and provided further that the fund shall make no reimbursements for expenses incurred prior to
133 July 1, 1997.

319.132. 1. The board shall assess a surcharge on all petroleum products within this
2 state which are enumerated by section 414.032, RSMo. Except as specified by this section, such
3 surcharge shall be administered pursuant to the provisions of sections 414.102 and 414.152,
4 RSMo. Such surcharge shall be imposed upon such petroleum products within this state and
5 shall be assessed on each transport load, or the equivalent of an average transport load if moved
6 by other means. All revenue generated by the assessment of such surcharges shall be deposited
7 to the credit of the special trust fund known as the petroleum storage tank insurance fund.

8 2. The board shall assess and annually reassess the financial soundness of the petroleum
9 storage tank insurance fund.

10 3. (1) The board shall set, [by rule,] **in a public meeting with an opportunity for**
11 **public comment**, the rate of the surcharge that is to be assessed on each such transport load or

12 equivalent but such rate shall be no more than [twenty-five] **sixty** dollars per transport load or
13 an equivalent thereof. A transport load shall be deemed to be eight thousand gallons.

14 **(2) The board may increase or decrease the surcharge, up to a maximum of sixty**
15 **dollars, only after giving at least sixty days notice of its intention to alter the surcharge.**
16 **The board must coordinate its actions with the department of revenue to allow adequate**
17 **time for implementation of the surcharge change.**

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

21 **(4) Moneys generated by this surcharge shall not be used for any purposes other**
22 **than those outlined in sections 319.129 through 319.133 and section 319.138.**

23 4. The board shall ensure that the fund retain a balance of at least twelve million dollars
24 but not more than one hundred million dollars. If, at the end of any quarter, the fund balance is
25 above one hundred million dollars, the treasurer shall notify the board thereof. The board shall
26 suspend the collection of fees under this section beginning on the first day of the first quarter
27 following the receipt of notice. If, at the end of any quarter, the fund balance is below twenty
28 million dollars, the treasurer shall notify the board thereof. The board shall reinstate the
29 collection of fees under this section beginning on the first day of the first quarter following the
30 receipt of notice.

31 5. Railroad corporations as defined in section 388.010, RSMo, and airline companies as
32 defined in section 155.010, RSMo, shall not be subject to the load fee described in this chapter
33 nor permitted to participate in or make claims against the petroleum storage tank insurance fund
34 created in section 319.129.

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 three hundred dollars per year for any tank, as established by
7 the board by rule.

8 3. No new registration [or participation] fee is required for a change of ownership of a
9 petroleum storage tank. [The new owner shall pay the registration or participation fee at the next
10 due date to continue eligibility.]

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