

SECOND REGULAR SESSION

HOUSE BILL NO. 2257

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE REDMON.

6105H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 319.015, 319.100, 319.129, 319.131, 319.132, and 319.133, RSMo, and to enact in lieu thereof six new sections relating to the petroleum storage tank insurance fund.

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

Section A. Sections 319.015, 319.100, 319.129, 319.131, 319.132, and 319.133, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 319.015, 319.100, 319.129, 319.131, 319.132, and 319.133, to read as follows:

319.015. For the purposes of sections 319.010 to 319.050, the following terms mean:

- (1) "Approximate location", a strip of land not wider than the width of the underground facility plus two feet on either side thereof. In situations where reinforced concrete, multiplicity of adjacent facilities or other unusual specified conditions interfere with location attempts, the owner or operator shall designate to the best of his or her ability an approximate location of greater width;
- (2) "Design request", a request from any person for facility location information for design purposes only;
- (3) "Emergency", a sudden, unexpected occurrence, presenting a clear and imminent danger demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services. "Unexpected occurrence" includes, but is not limited to, thunderstorms, high winds, ice or snow storms, fires, floods, earthquakes, or other soil or geologic movements, riots, accidents, water or wastewater pipe breaks, vandalism, or sabotage;
- (4) "Excavation", any operation in which earth, rock or other material in or on the ground is moved, removed or otherwise displaced by means of any tools, equipment or explosives and

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.

16 includes, without limitation, backfilling, grading, trenching, digging, ditching, pulling material
17 from a ditch but not including routine road maintenance, drilling, well-drilling, augering, boring,
18 tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving, and
19 demolition of structures, except that, the use of mechanized tools and equipment to break and
20 remove pavement and masonry down only to the depth of such pavement or masonry on roads
21 dedicated to the public use for vehicular traffic, the tilling of soil for agricultural purposes when
22 such excavation does not exceed sixteen inches in depth, the installation of marking flags and
23 stakes and the use of pressurized air to disintegrate and suction to remove earth, rock, or other
24 materials for the location of underground facilities shall not be deemed excavation. Backfilling
25 or moving earth on the ground in connection with other excavation operations at the same site
26 shall not be deemed separate instances of excavation. For railroads regulated by the Federal
27 Railroad Administration, "excavation" shall not include any excavating done by a railroad when
28 such excavating is done entirely on land that the railroad owns or on which the railroad operates,
29 or in the event of an emergency, excavating done by a railroad on adjacent land;

30 (5) "Excavator", any person making one or more excavations who is required to make
31 notices of excavation under the requirements of sections 319.010 to 319.050;

32 (6) "Locate status", the underground facility owner's designation of the status of the
33 locate request to the notification center which then makes that information available to the
34 person making the locate request through electronic or other means;

35 (7) "Marking", the use of paint, flags, stakes, or other clearly identifiable materials to
36 show the field location of underground facilities, or the area of proposed excavation, in
37 accordance with the marking standards for underground facilities as designated by the Common
38 Ground Alliance Best Practices Version 10.0 except that "approximate location" shall comply
39 with the requirements as set forth in subdivision (1) of this section;

40 (8) "Notification center", a statewide organization operating twenty-four hours a day,
41 three hundred sixty-five days a year on a not-for-profit basis, supported by a majority of the
42 underground facility owners in the state of Missouri;

43 (9) "Notification center participant", an underground facility owner who is a member and
44 participant in the notification center;

45 (10) "Permitted project", a project for which a permit for the work to be performed is
46 required to be issued by a local, state or federal agency and, as a prerequisite to receiving such
47 permit, the applicant is required to notify all underground facility owners in the area of the work
48 for purposes of identifying the location of existing underground facilities;

49 (11) "Person", any individual, firm, joint venture, partnership, corporation, association,
50 cooperative, municipality, political subdivision, governmental unit, department or agency and

51 shall include a notification center and any trustee, receiver, assignee or personal representative
52 thereof;

53 (12) "Pipeline facility" includes all parts of a facility through which a hazardous liquid
54 or gas moves in transportation including, but not limited to, pipe, valves and other appurtenances
55 connected to pipe, pumping units, fabricated assemblies associated with pumping units, metering
56 and delivery stations and fabricated assemblies therein, and breakout tanks;

57 (13) "State plane coordinates", a system of locating a point on a flat plane developed by
58 the National Oceanic and Atmospheric Administration and utilized by state agencies, local
59 governments, and other persons to designate the site of a construction project;

60 (14) "Trenchless excavation", horizontal excavation parallel to the surface of the earth
61 which does not use trenching or vertical digging as the primary means of excavation, including
62 but not limited to directional boring, tunneling, or augering;

63 (15) "Underground facility", any item of personal property which shall be buried or
64 placed below ground for use in connection with the storage or conveyance of water, storm
65 drainage, sewage, telecommunications service, cable television service, electricity, oil, gas,
66 hazardous liquids or other substances, and shall include but not be limited to pipes, sewers,
67 conduits, cables, valves, vaults, lines, wires, manholes, attachments, or appurtenances, and those
68 portions of pylons or other supports below ground that are within any public or private street,
69 road or alley, right-of-way dedicated to the public use or utility easement of record, or
70 prescriptive easement. If gas distribution lines or electric lines, telecommunications facilities,
71 cable television facilities, water service lines, water system, storm drainage or sewer system
72 lines, other than those used for vehicular traffic control, lighting of streets and highways and
73 communications for emergency response, are located on private property and are owned solely
74 by the owner or owners of such private property, such lines or facilities receiving service shall
75 not be considered underground facilities for purposes of this chapter, except at locations where
76 they cross or lie within an easement or right-of-way dedicated to public use or owned by a person
77 other than the owner of the private property. Water and sanitary sewer lines providing service
78 to private property that are owned solely by the owner of such property shall not be considered
79 underground facilities at any location, **nor shall underground storage tanks, as defined in**
80 **section 319.100.** A structure that transports only storm water drainage under roadways,
81 driveways, or railways shall not be considered an underground facility;

82 (16) "Underground facility owner", any person who owns or operates underground
83 facilities;

84 (17) "Working day", every day, except Saturday, Sunday or a legally declared state or
85 federal holiday.

319.100. As used in sections 319.100 to 319.137, the following terms mean:

- 2 (1) "Aboveground storage tank", any one or a combination of tanks, including pipes
3 connected thereto, used to contain an accumulation of petroleum and the volume of which,
4 including the volume of the aboveground pipes connected thereto, is ninety percent or more
5 above the surface of the ground, and is utilized for the sale of products regulated by chapter 414.
6 The term does not include those tanks described in paragraphs (a) to (k) of subdivision (16) of
7 this section or aboveground storage tanks at petroleum pipeline terminals;
- 8 (2) "Board", the board of trustees of the petroleum storage tank insurance fund;
- 9 (3) "Conference, conciliation and persuasion", a process of verbal or written
10 communications consisting of meetings, reports, correspondence or telephone conferences
11 between authorized representatives of the department and the alleged violator. The process shall,
12 at a minimum, consist of one offer to meet with the alleged violator tendered by the department.
13 During any such meeting, the department and the alleged violator shall negotiate in good faith
14 to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;
- 15 (4) "Department", the department of natural resources;
- 16 (5) "Fund", the petroleum storage tank insurance fund established pursuant to section
17 319.129;
- 18 (6) "Guarantor", any person, other than the owner or the operator, who provides evidence
19 of financial responsibility;
- 20 (7) "Minor violation", a violation which possesses a small potential to harm the
21 environment or human health or cause pollution, was not knowingly committed, and is not
22 defined by the United States Environmental Protection Agency as other than minor;
- 23 (8) "Operator", any person in control of, or having responsibility for, the daily operation
24 of the tank;
- 25 (9) "Owner", shall include any person who owned an underground storage tank
26 immediately before the discontinuation of its use if not in use on August 28, 1989, or any person
27 who owns an underground storage tank in use on or after August 28, 1989, and any person who
28 owned an aboveground storage tank that was utilized for the sale of products regulated by
29 chapter 414 immediately before the discontinuation of its use if not in use on August 28, 1996,
30 and any person who owns an aboveground storage tank utilized for the sale of products regulated
31 by chapter 414 in use on or after August 28, 1996. The term does not include any person who,
32 without participating in the management of an aboveground storage tank or underground storage
33 tank or both types of tanks, and otherwise not primarily engaged in petroleum production,
34 refining, and marketing, holds indicia of ownership primarily to protect a security interest in or
35 lien on the tank or the property where the tank is located;

36 (10) "Participating in management" does not include monitoring the operator's business,
37 acquiring title in lieu of a foreclosure or other agreement in settlement of the operator's or
38 property owner's debt;

39 (11) "Person", any individual, trust, firm, joint stock company, corporation, including
40 a government corporation, partnership, association, the state and its political subdivisions, or any
41 interstate body. "Person" also includes any consortium, joint venture, commercial entity, and the
42 government of the United States;

43 (12) "Petroleum" shall mean gasoline, kerosene, diesel, lubricants and fuel oil;

44 (13) "Petroleum storage tank", an aboveground storage tank or an underground storage
45 tank used to contain an accumulation of petroleum. The term does not include those tanks
46 described in paragraphs (a) to (k) of subdivision (16) of this section;

47 (14) "Regulated substance" includes:

48 (a) Any substance defined in Section 101(14) of the federal Comprehensive
49 Environmental Response, Compensation, and Liability Act (P.L. 96-510), as amended, but not
50 including any substance regulated as a hazardous waste under Subtitle C of the federal Resource
51 Conservation and Recovery Act of 1976 (P.L. 94-580), as amended; and

52 (b) Petroleum, including crude oil or any fraction thereof, which is liquid at standard
53 conditions of temperature and pressure, sixty degrees Fahrenheit and fourteen and seven-tenths
54 pounds per square inch absolute, respectively; and

55 (c) Any substance adopted by rule in accordance with federal laws referenced by Section
56 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability
57 Act (P.L. 96-510);

58 (15) "Release" includes, but is not limited to, any spilling, leaking, emitting, discharging,
59 escaping, leaching, or disposing from a petroleum storage tank into groundwater, surface water,
60 or subsurface soils;

61 (16) "Underground storage tank", any one or combination of tanks, including
62 **underground** pipes connected thereto, used to contain an accumulation of regulated substances,
63 and the volume of which, including the volume of the underground pipes connected thereto, is
64 ten percent or more beneath the surface of the ground. The department shall adopt, delete or
65 modify exemptions established in this subdivision to any modifications, additions or deletions
66 made by the Environmental Protection Agency. Exemptions from this definition and regulations
67 promulgated under the provisions of sections 319.100 to 319.137 include:

68 (a) Farm or residential tank of eleven hundred gallons or less used for storing motor fuel
69 for noncommercial purposes;

70 (b) Tanks used for storing heating oil for consumptive use on the premises where stored;

71 (c) Septic tanks;

- 72 (d) Pipeline facilities, including gathering lines, regulated under:
73 a. The federal Natural Gas Pipeline Safety Act of 1968 (P.L. 90-481), as amended; or
74 b. The federal Hazardous Liquid Pipeline Act of 1979 (P.L. 96-129), as amended;
75 (e) Pipeline facilities regulated under state laws comparable to the provisions of law
76 referred to in paragraph (d) of this subdivision;
77 (f) Surface impoundments, pits, ponds, or lagoons;
78 (g) Storm water or wastewater collection systems;
79 (h) Flow-through process tanks;
80 (i) Liquid traps or associated gathering lines directly related to oil or gas production and
81 gathering operations; and
82 (j) Storage tanks situated in an underground area, such as a basement, cellar,
83 mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of
84 the floor; and
85 (k) Transformers, circuit breakers or other electrical equipment.

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 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]~~ **fifty underground storage tanks in**
34 **Missouri**; one tank owner or operator of less than ~~[one hundred]~~ **fifty underground storage**
35 **tanks in Missouri**; and one ~~[aboveground storage tank owner or operator]~~ **tank owner or**
36 **operator of one or more aboveground storage tanks in Missouri**. One appointed trustee shall
37 represent a financial lending institution, and one appointed trustee shall represent the insurance
38 underwriting industry. One appointed trustee shall represent industrial or commercial users of
39 petroleum. The two remaining appointed citizens shall have no petroleum-related business
40 interest, and shall represent the nonregulated public at large. The members appointed by the
41 governor shall serve four-year terms except that the governor shall designate two of the original
42 appointees to be appointed for one year, two to be appointed for two years, two to be appointed
43 for three years and two to be appointed for four years. Any vacancies occurring on the board
44 shall be filled in the same manner as provided in this section.

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

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

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

55 8. The board of trustees shall be a type III agency and shall appoint an executive director
56 and other employees as needed, who shall be state employees and be eligible for all
57 corresponding benefits. The executive director shall have charge of the offices, operations,

58 records, and other employees of the board, subject to the direction of the board. Employees of
59 the board shall receive such salaries and necessary expenses as shall be fixed by the board.

60 9. Staff resources for the Missouri petroleum storage tank insurance fund may be
61 provided by the department of natural resources or another state agency as otherwise specifically
62 determined by the board. The fund shall compensate the department of natural resources or other
63 state agency for all costs of providing staff required by this subsection. Such compensation shall
64 be made pursuant to contracts negotiated between the board and the department of natural
65 resources or other state agency. **To mitigate claims, the board may purchase third-party**
66 **properties or may engage contractors to repair or remediate properties.**

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

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

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

79 13. The board shall determine and prescribe all rules and regulations as they relate to
80 fiduciary management of the fund, pursuant to the purposes of sections 319.100 to 319.137. **The**
81 **board may place liens on properties and may assign fund benefits.** In no case shall the board
82 have oversight regarding environmental cleanup standards for petroleum storage tanks.

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

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

90 16. The petroleum storage tank insurance fund shall expire on December 31, [2020]
91 **2030**, unless extended by action of the general assembly. After December 31, [2020] **2030**, the
92 board of trustees may continue to function for the sole purpose of completing payment of claims
93 made prior to December 31, [2020] **2030**.

94 17. The board shall annually commission an independent financial audit of the petroleum
95 storage tank insurance fund. The board shall biennially commission an actuarial analysis of the
96 petroleum storage tank insurance fund. The results of the financial audit and the actuarial
97 analysis shall be made available to the public. The board may contract with third parties to carry
98 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
6 pipeline ~~[or]~~ **terminals**, marine terminals, **and owners or operators of airport hydrant**
7 **systems** are not eligible for participation in the fund.

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

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

29 (2) A creditor, specifically a person who, without participating in and not otherwise
30 primarily engaged in petroleum production, refining, and marketing, holds indicia of ownership
31 primarily for the purpose of, or in connection with, securing payment or performance of a loan

32 or to protect a security interest in or lien on the tank or the property where the tank is located,
33 or serves as trustee or fiduciary upon transfer or receipt of the property, may be a successor in
34 interest to a debtor pursuant to this section, provided that the creditor gives notice of the interest
35 to the insurance fund by certified mail, return receipt requested. Part of such notice shall include
36 a copy of the lien, including but not limited to a security agreement or a deed of trust as
37 appropriate to the property. The term "successor in interest" as provided in this section means
38 a creditor to the debtor who had qualified real property in the insurance fund prior to the transfer
39 of title to the creditor, and the term is limited to access to the insurance fund. The creditor may
40 cure any of the debtor's defaults in payments required by the insurance fund, provided the
41 specific real property originally qualified pursuant to this section. The creditor, or the creditor's
42 subsidiary or affiliate, who forecloses or otherwise obtains legal title to such specific real
43 property held as collateral for loans, guarantees or other credit, and which includes the debtor's
44 aboveground storage tanks or underground storage tanks, or both such tanks shall provide notice
45 to the fund of any transfer of creditor to subsidiary or affiliate. Liability pursuant to sections
46 319.100 to 319.137 shall be confined to such creditor or such creditor's subsidiary or affiliate.
47 A creditor shall apply for a transfer of coverage and shall present evidence indicating a lien,
48 contractual right, or operation of law permitting such transfer, and may utilize the creditor's
49 affiliate or subsidiary to hold legal title to the specific real property taken in satisfaction of debts.
50 Creditors may be listed as insured or additional insured on the insurance fund, and not merely
51 as mortgagees, and may assign or otherwise transfer the debtor's rights in the insurance fund to
52 the creditor's affiliate or subsidiary, notwithstanding any limitations in the insurance fund on
53 assignments or transfer of the debtor's rights.

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

57 4. Any person making a claim pursuant to this section and sections 319.129 and 319.133
58 shall be liable for the first ten thousand dollars of the cost of cleanup associated with a release
59 from a petroleum storage tank without reimbursement from the fund. The petroleum storage
60 tank insurance fund shall assume all costs, except as provided in subsection 5 of this section,
61 which are greater than ten thousand dollars but less than one million dollars per occurrence or
62 two million dollars aggregate per year. The liability of the petroleum storage tank insurance fund
63 is not the liability of the state of Missouri. The provisions of sections 319.100 to 319.137 shall
64 not be construed to broaden the liability of the state of Missouri beyond the provisions of
65 sections 537.600 to 537.610 nor to abolish or waive any defense which might otherwise be
66 available to the state or to any person. The presence of existing contamination at a site where
67 a person is seeking insurance in accordance with this section shall not affect that person's ability

68 to participate in this program, provided the person meets all other requirements of this section.
69 Any person who qualifies pursuant to sections 319.100 to 319.137 and who has requested
70 approval of a project for remediation from the fund, which request has not yet been decided upon
71 shall annually be sent a status report including an estimate of when the project may expect to be
72 funded and other pertinent information regarding the request.

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

86 6. The ~~[fund]~~ **board** shall, within limits specified in this section, assume costs of
87 third-party claims and cleanup of contamination caused by releases from petroleum storage
88 tanks. The ~~[fund shall]~~ **board may** provide the defense of eligible third-party claims including
89 the negotiations of any settlement, **may provide such defense in addition to the limits**
90 **specified in this section, and shall specify the limits of such legal defense in its coverage**
91 **document and rules.**

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

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

104 operator of petroleum storage tanks coming into service after December 31, 1997, from making
105 application to and participating in the petroleum storage tank insurance fund.

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

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

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

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

139 **(4) Subject to the rules of the board, for claims made under this subsection prior**
140 **to December 31, 2007, the board shall only provide moneys for costs incurred on or before**
141 **December 31, 2020. Subject to the rules of the board, for claims made under this**
142 **subsection after December 31, 2007, the board shall only provide moneys for costs incurred**
143 **on or before the tenth year from the date the petroleum release was reported to the board.**

144 10. (1) The fund shall provide moneys for cleanup of contamination caused by releases
145 from aboveground storage tanks utilized for the sale of products regulated by chapter 414 which
146 have been taken out of use prior to December 31, 1997, provided such sites have been
147 documented by or reported to the department of natural resources prior to December 31, 1997,
148 and provided further that the fund shall make no reimbursements for expenses incurred prior to
149 July 1, 1997.

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

157 **(3) Subject to the rules of the board, for claims made under this subsection prior**
158 **to December 31, 2007, the board shall only provide moneys for costs incurred on or before**
159 **December 31, 2020. Subject to the rules of the board, for claims made under this**
160 **subsection after December 31, 2007, the board shall only provide moneys for costs incurred**
161 **on or before the tenth year from the date the petroleum release was reported to the board.**

 319.132. 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. All revenue generated by the
7 assessment of such surcharges shall be deposited to the credit of the special trust fund known as
8 the petroleum storage tank insurance fund.

9 2. Any person who claims to have paid the surcharge in error may file a claim for a
10 refund with the board within three years of the payment. The claim shall be in writing and
11 signed by the person or the person's legal representative. The board's decision on the claim shall
12 be in writing and may be delivered to the person by first class mail. Any person aggrieved by
13 the board's decision may seek judicial review by bringing an action against the board in the

14 circuit court of Cole County pursuant to section 536.150 no later than sixty days following the
15 date the board's decision was mailed. The department of revenue shall not be a party to such
16 proceeding.

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

19 4. (1) The board shall set, in a public meeting with an opportunity for public comment,
20 the rate of the surcharge that is to be assessed on each such transport load or equivalent but such
21 rate shall be no more than sixty dollars per transport load or an equivalent thereof. A transport
22 load shall be deemed to be eight thousand gallons.

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

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

31 (4) Moneys generated by this surcharge shall not be used for any purposes other than
32 those outlined in sections 319.129 through 319.133 and section 319.138. **If some or all of the**
33 **moneys generated by this surcharge are diverted by law or rule and used for any purpose**
34 **other than those outlined in sections 319.129 to 319.133 and section 319.138, all the moneys**
35 **diverted shall be fully repaid to the fund within one year plus interest at the bank prime**
36 **loan rate as determined by the Federal Reserve Bank of St. Louis.** Nothing in this
37 subdivision shall limit the board's authority to contract with the department of natural resources
38 **and other state agencies or persons** pursuant to section 319.129 to carry out the purposes of
39 the fund as determined by the board.

40 5. The board shall ensure that the fund retain a balance of at least twelve million dollars
41 but not more than one hundred million dollars. If, at the end of any quarter, the fund balance is
42 above one hundred million dollars, the treasurer shall notify the board thereof. The board shall
43 suspend the collection of fees pursuant to this section beginning on the first day of the first
44 quarter following the receipt of notice. If, at the end of any quarter, the fund balance is below
45 twenty million dollars, the treasurer shall notify the board thereof. The board shall reinstate the
46 collection of fees pursuant to this section beginning on the first day of the first quarter following
47 the receipt of notice.

48 6. Railroad corporations as defined in section 388.010 and airline companies as defined
49 in section 155.010 shall not be subject to the load fee described in this chapter nor permitted to

50 participate in or make claims against the petroleum storage tank insurance fund created in section
51 319.129.

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 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 establish procedures where persons owning fifty or more petroleum~~
11 ~~storage tanks may pay any fee established pursuant to subsection 1 of this section in installments.~~

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

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

21 ~~[7.]~~ 4. Any rule or portion of a rule, as that term is defined in section 536.010, that is
22 created under the authority delegated in this section shall become effective only if it complies
23 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.
24 This section and chapter 536 are nonseverable and if any of the powers vested with the general
25 assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and
26 annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and
27 any rule proposed or adopted after August 28, 2008, shall be invalid and void.

✓