

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2257
99TH GENERAL ASSEMBLY

6105H.03C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 319.123, 319.129, 319.131, 319.132, and 319.133, RSMo, and to enact in lieu thereof five 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 319.123, 319.129, 319.131, 319.132, and 319.133, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections 319.123, 319.129,
3 319.131, 319.132, and 319.133, to read as follows:

319.123. Application for a certificate of registration shall be accompanied by a fee. The
2 fee shall be fifteen dollars per tank per year assessed on a rotating basis during a five-year period.
3 All fees collected under this subsection [~~shall be placed in the~~], **including any general revenue,**
4 **federal funds, gifts, bequests, transfers, moneys appropriated by the general assembly, or**
5 **any other moneys so designated, shall be deposited in the** "Underground Storage Tank
6 Regulation Program Fund" which is hereby established in the state treasury. All moneys in the
7 fund shall be used solely for expenses related to the administration of sections 319.100 to
8 319.137. **The fund shall be administered by the department of natural resources. All**
9 **interest earned by moneys in the fund shall accrue to the fund. Except as described in**
10 **subdivision (2) of subsection 1 of section 319.132, any balance in the fund at the end of the**
11 **biennium shall remain in the fund and, notwithstanding the provisions of section 33.080**
12 **to the contrary, moneys in the fund shall not be transferred to general revenue at the end**
13 **of each biennium.**

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

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]~~ **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 engage contractors to**
66 **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 [Ø], petroleum
6 pipeline [Ø] **terminals**, marine terminals, **and airport hydrant systems** are not eligible for
7 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~~ **board** shall not compensate an owner or
80 operator for repair of damages to property beyond that required to contain and clean up a release
81 of a regulated substance or compensate an owner or operator or any third party for loss or
82 damage to other property owned or belonging to the owner or operator, or for any loss or damage
83 of an 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]~~ **board** shall make no reimbursements for expenses incurred prior to August 28, 1995.
119 The ~~[fund]~~ **board** shall also provide moneys for cleanup of contamination caused by releases
120 from underground storage tanks which contained petroleum and which have been taken out of
121 use prior to December 31, 1985, if the current owner of the real property where the tanks are

122 located purchased such property before December 31, 1985, provided such sites are reported to
123 the fund on or before June 30, 2000. The ~~[fund]~~ **board** shall make no payment for expenses
124 incurred at such sites prior to August 28, 1999. ~~[Nothing in sections 319.100 to 319.137 shall~~
125 ~~affect the validity of any underground storage tank fund insurance policy in effect on August 28,~~
126 ~~1996.]~~

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

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

141 10. (1) The ~~[fund]~~ **board** shall provide moneys for cleanup of contamination caused by
142 releases from aboveground storage tanks utilized for the sale of products regulated by chapter
143 414 which have been taken out of use prior to December 31, 1997, provided such sites have been
144 documented by or reported to the department of natural resources prior to December 31, 1997,
145 and provided further that the ~~[fund]~~ **board** shall make no reimbursements for expenses incurred
146 prior to July 1, 1997.

147 (2) After December 31, 2017, the current legal owner of the site shall be the responsible
148 party for corrective action of any releases from aboveground storage tanks described in this
149 subsection, provided the creditor, who is a successor in interest as provided in subdivision (2)
150 of subsection 3 of this section, is subject to no greater or lesser responsibility for corrective
151 action than such successor in interest would have on or before December 31, 2017. Nothing in
152 this subdivision shall in any way be construed to alter, alleviate, or modify in any manner any
153 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 2020 and continuing**
11 **through fiscal year 2029, a total of one million six hundred thousand dollars of the**
12 **surcharge shall be deposited per fiscal year in equal monthly installments into the**
13 **underground storage tank regulation program fund established in section 319.123. If any**
14 **of the one million six hundred thousand dollars per fiscal year is not spent in that fiscal**
15 **year, the remaining funds shall be returned to the petroleum storage tank insurance fund.**

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

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

26 4. (1) The board shall set, in a public meeting with an opportunity for public comment,
27 the rate of the surcharge that is to be assessed on each such transport load or equivalent but such
28 rate shall be no more than sixty dollars per transport load or an equivalent thereof. A transport
29 load shall be deemed to be eight thousand gallons.

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

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

38 (4) **Except as authorized in subdivision (2) of subsection 1 of this section**, moneys
39 generated by this surcharge shall not be used for any purposes other than those outlined in
40 sections 319.129 through 319.133 and section 319.138. **If some or all of the moneys generated**

41 **by this surcharge and deposited into the petroleum storage tank insurance fund are**
42 **diverted by law or rule and used for any purpose other than those outlined in sections**
43 **319.129 to 319.133 and section 319.138, all the moneys diverted shall be fully repaid to the**
44 **fund within one year plus interest at the bank prime loan rate as determined by the**
45 **Federal Reserve Bank of St. Louis.** Nothing in this subdivision shall limit the board's authority
46 to contract with the department of natural resources **and other state agencies or persons**
47 pursuant to section 319.129 to carry out the purposes of the fund as determined by the board.

48 5. The board shall ensure that the fund retain a balance of at least twelve million dollars
49 but not more than one hundred million dollars. If, at the end of any quarter, the fund balance is
50 above one hundred million dollars, the treasurer shall notify the board thereof. The board shall
51 suspend the collection of fees pursuant to this section beginning on the first day of the first
52 quarter following the receipt of notice. **In the event the board suspends the collection of fees**
53 **under this section, the board shall make payments in equal monthly installments, subject**
54 **to appropriations and in accordance with subdivision (2) of subsection 1 of this section,**
55 **into the underground storage tank regulation program fund established in section 319.123**
56 **until such time as the board reinstates the fee.** If, at the end of any quarter, the fund balance
57 is below twenty million dollars, the treasurer shall notify the board thereof. The board shall
58 reinstate the collection of fees pursuant to this section beginning on the first day of the first
59 quarter following the receipt of notice.

60 6. Railroad corporations as defined in section 388.010 and airline companies as defined
61 in section 155.010 shall not be subject to the load fee described in this chapter nor permitted to
62 participate in or make claims against the petroleum storage tank insurance fund created in section
63 319.129.

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.

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