

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 40, Page
2 11, Section 260.520, Line 17, by inserting after all of said section and line the following:

3
4 "319.123. Application for a certificate of registration shall be accompanied by a fee. The
5 fee shall be fifteen dollars per tank per year assessed on a rotating basis during a five-year period.
6 All fees collected under this ~~[subsection shall be placed in the]~~ section, including any general
7 revenue, federal funds, gifts, bequests, transfers, moneys appropriated by the general assembly, or
8 any other moneys so designated, shall be paid into the "Underground Storage Tank Regulation
9 Program Fund" which is hereby established in the state treasury. All moneys in the fund shall be
10 used solely for expenses related to the administration of sections 319.100 to 319.137 and section
11 319.139. The underground storage tank regulation program fund shall be administered by the
12 department of natural resources. All interest earned on moneys in the fund shall accrue to the fund.
13 Except as described in subdivision (2) of subsection 1 of section 319.132, any balance in the fund at
14 the end of the biennium shall remain in the fund, and notwithstanding the provisions of section
15 33.080 to the contrary, moneys in the fund shall not be transferred to general revenue at the end of
16 each biennium.

17 319.129. 1. There is hereby created a special trust fund to be known as the "Petroleum
18 Storage Tank Insurance Fund" within the state treasury which shall be the successor to the
19 underground storage tank insurance fund. Moneys in such special trust fund shall not be deemed to
20 be state funds. Notwithstanding the provisions of section 33.080 to the contrary, moneys in the fund
21 shall not be transferred to general revenue at the end of each biennium.

22 2. The owner or operator of any underground storage tank, including the state of Missouri
23 and its political subdivisions and public transportation systems, in service on August 28, 1989, shall
24 submit to the department a fee of one hundred dollars per tank on or before December 31, 1989.
25 The owner or operator of any underground storage tank who seeks to participate in the petroleum
26 storage tank insurance fund, including the state of Missouri and its political subdivisions and public
27 transportation systems, and whose underground storage tank is brought into service after August 28,
28 1998, shall transmit one hundred dollars per tank to the board with his or her initial application.
29 Such amount shall be a one-time payment, and shall be in addition to the payment required by
30 section 319.133. The owner or operator of any aboveground storage tank regulated by this chapter,
31 including the state of Missouri and its political subdivisions and public transportation systems, who
32 seeks to participate in the petroleum storage tank insurance fund, shall transmit one hundred dollars
33 per tank to the board with his or her initial application. Such amount shall be a one-time payment
34 and shall be in addition to the payment required by section 319.133. Moneys received pursuant to
35 this section shall be transmitted to the director of revenue for deposit in the petroleum storage tank
36 insurance fund.

Action Taken _____ Date _____

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

5 4. The general administration of the fund and the responsibility for the proper operation of
6 the fund, including all decisions relating to payments from the fund, are hereby vested in a board of
7 trustees. The board of trustees shall consist of the commissioner of administration or the
8 commissioner's designee, the director of the department of natural resources or the director's
9 designee, the director of the department of agriculture or the director's designee, and eight citizens
10 appointed by the governor with the advice and consent of the senate. Three of the appointed
11 members shall be owners or operators of retail petroleum storage tanks, including one tank owner or
12 operator of greater than one hundred tanks; one tank owner or operator of less than one hundred
13 tanks; and one aboveground storage tank owner or operator. One appointed trustee shall represent a
14 financial lending institution, and one appointed trustee shall represent the insurance underwriting
15 industry. One appointed trustee shall represent industrial or commercial users of petroleum. The
16 two remaining appointed citizens shall have no petroleum-related business interest, and shall
17 represent the nonregulated public at large. The members appointed by the governor shall serve four-
18 year terms except that the governor shall designate two of the original appointees to be appointed
19 for one year, two to be appointed for two years, two to be appointed for three years and two to be
20 appointed for four years. Any vacancies occurring on the board shall be filled in the same manner
21 as provided in this section.

22 5. The board shall meet in Jefferson City, Missouri, within thirty days following August 28,
23 1996. Thereafter, the board shall meet upon the written call of the chairman of the board or by the
24 agreement of any six members of the board. Notice of each meeting shall be delivered to all other
25 trustees in person or by registered mail not less than six days prior to the date fixed for the meeting.
26 The board may meet at any time by unanimous mutual consent. There shall be at least one meeting
27 in each quarter.

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

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

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

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

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

48 11. At the first meeting of the board, the board shall elect one of its members as chairman.
49 The chairman shall preside over meetings of the board and perform such other duties as shall be

1 required by action of the board.

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

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

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

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

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

20 17. The board shall annually commission an independent financial audit of the petroleum
21 storage tank insurance fund. The board shall biennially commission an actuarial analysis of the
22 petroleum storage tank insurance fund. The results of the financial audit and the actuarial analysis
23 shall be made available to the public. The board may contract with third parties to carry out the
24 requirements of this subsection.

25 319.131. 1. Any owner or operator of one or more petroleum storage tanks may elect to
26 participate in the petroleum storage tank insurance fund to meet the financial responsibility
27 requirements of sections 319.114 and 414.036. Subject to regulations of the board of trustees,
28 owners or operators may elect to continue their participation in the fund subsequent to the transfer
29 of their property to another party. Current or former refinery sites or petroleum pipeline or marine
30 terminals are not eligible for participation in the fund.

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

40 3. (1) Except as otherwise provided by this section, any person seeking to participate in the
41 insurance fund shall submit an application to the board of trustees and shall certify that the
42 petroleum tanks meet or exceed and are in compliance with all technical standards established by
43 the United States Environmental Protection Agency, except those standards and regulations
44 pertaining to spill prevention control and counter-measure plans, and rules established by the
45 Missouri department of natural resources and the Missouri department of agriculture. The applicant
46 shall submit proof that the applicant has a reasonable assurance of the tank's integrity. Proof of tank
47 integrity may include but not be limited to any one of the following: tank tightness test, electronic
48 leak detection, monitoring wells, daily inventory reconciliation, vapor test or any other test that may
49 be approved by the director of the department of natural resources or the director of the department

1 of agriculture. The applicant shall submit evidence that the applicant can meet all applicable
2 financial responsibility requirements of this section.

3 (2) A creditor, specifically a person who, without participating in and not otherwise
4 primarily engaged in petroleum production, refining, and marketing, holds indicia of ownership
5 primarily for the purpose of, or in connection with, securing payment or performance of a loan or to
6 protect a security interest in or lien on the tank or the property where the tank is located, or serves as
7 trustee or fiduciary upon transfer or receipt of the property, may be a successor in interest to a debtor
8 pursuant to this section, provided that the creditor gives notice of the interest to the insurance fund
9 by certified mail, return receipt requested. Part of such notice shall include a copy of the lien,
10 including but not limited to a security agreement or a deed of trust as appropriate to the property.
11 The term "successor in interest" as provided in this section means a creditor to the debtor who had
12 qualified real property in the insurance fund prior to the transfer of title to the creditor, and the term
13 is limited to access to the insurance fund. The creditor may cure any of the debtor's defaults in
14 payments required by the insurance fund, provided the specific real property originally qualified
15 pursuant to this section. The creditor, or the creditor's subsidiary or affiliate, who forecloses or
16 otherwise obtains legal title to such specific real property held as collateral for loans, guarantees or
17 other credit, and which includes the debtor's aboveground storage tanks or underground storage
18 tanks, or both such tanks shall provide notice to the fund of any transfer of creditor to subsidiary or
19 affiliate. Liability pursuant to sections 319.100 to 319.137 shall be confined to such creditor or such
20 creditor's subsidiary or affiliate. A creditor shall apply for a transfer of coverage and shall present
21 evidence indicating a lien, contractual right, or operation of law permitting such transfer, and may
22 utilize the creditor's affiliate or subsidiary to hold legal title to the specific real property taken in
23 satisfaction of debts. Creditors may be listed as insured or additional insured on the insurance fund,
24 and not merely as mortgagees, and may assign or otherwise transfer the debtor's rights in the
25 insurance fund to the creditor's affiliate or subsidiary, notwithstanding any limitations in the
26 insurance fund on assignments or transfer of the debtor's rights.

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

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

46 5. The fund shall provide coverage for third-party claims involving property damage or
47 bodily injury caused by leaking petroleum storage tanks whose owner or operator is participating in
48 the fund at the time the release occurs or is discovered. Coverage for third-party property damage
49 or bodily injury shall be in addition to the coverage described in subsection 4 of this section but the

total liability of the petroleum storage tank insurance fund for all cleanup costs, property damage, and bodily injury shall not exceed one million dollars per occurrence or two million dollars aggregate per year. The fund shall not compensate an owner or operator for repair of damages to property beyond that required to contain and clean up a release of a regulated substance or compensate an owner or operator or any third party for loss or damage to other property owned or belonging to the owner or operator, or for any loss or damage of an intangible nature, including, but not limited to, loss or interruption of business, pain and suffering of any person, lost income, mental distress, loss of use of any benefit, or punitive damages.

6. ~~[The fund shall, within limits specified in this section, assume costs of third-party claims and cleanup of contamination caused by releases from petroleum storage tanks.]~~ In addition to the other coverage limits in this section, the fund shall provide the defense of eligible third-party claims including the negotiations of any settlement and may specify a legal defense cost coverage limit.

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

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

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

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

(2) An owner or operator who submits a request as provided in this subsection is not required to bid the costs and expenses associated with professional environmental engineering services. The board may disapprove all or part of the costs and expenses associated with the

environmental engineering services if the costs are excessive based upon comparable service costs or current market value of similar services. The owner or operator shall solicit bids for actual remediation and cleanup work as provided by rules of the board.

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

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

(2) After December 31, 2017, the current legal owner of the site shall be the responsible party for corrective action of any releases from aboveground storage tanks described in this subsection, provided the creditor, who is a successor in interest as provided in subdivision (2) of subsection 3 of this section, is subject to no greater or lesser responsibility for corrective action than such successor in interest would have on or before December 31, 2017. Nothing in this subdivision shall in any way be construed to alter, alleviate, or modify in any manner any 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 state which are enumerated by section 414.032. Except as specified by this section, such surcharge shall be administered pursuant to the provisions of subsections 1 to 5 of section 414.102 and subsections 1 and 2 of section 414.152. Such surcharge shall be imposed upon such petroleum products within this state and shall be assessed on each transport load, or the equivalent of an average transport load if moved by other means. Except as outlined in subdivision (2) of this subsection, all revenue generated by the assessment of such surcharges shall be deposited to the credit of the special trust fund known as the petroleum storage tank insurance fund.

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

2. Any person who claims to have paid the surcharge in error may file a claim for a refund with the board within three years of the payment. The claim shall be in writing and signed by the person or the person's legal representative. The board's decision on the claim shall be in writing and may be delivered to the person by first class mail. Any person aggrieved by the board's decision may seek judicial review by bringing an action against the board in the circuit court of Cole County pursuant to section 536.150 no later than sixty days following the date the board's decision was

1 mailed. The department of revenue shall not be a party to such proceeding.

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

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

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

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

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

21 5. The board shall ensure that the fund retain a balance of at least twelve million dollars but
22 not more than one hundred million dollars. If, at the end of any quarter, the fund balance is above
23 one hundred million dollars, the treasurer shall notify the board thereof. The board shall suspend the
24 collection of fees pursuant to this section beginning on the first day of the first quarter following the
25 receipt of notice. If the board has suspended the collection of the fee under this section, the board
26 shall make payments in equal monthly installments, in accordance with the provisions of this
27 section, into the underground storage tank regulation program fund established in section 319.123,
28 up to the appropriated budgetary amount set by the general assembly, adjusted for actual fringe, for
29 the department's petroleum-related activities, for the fiscal year in which funds are being deposited
30 until such time as the board has reinstated the fee. If, at the end of any quarter, the fund balance is
31 below twenty million dollars, the treasurer shall notify the board thereof. The board shall reinstate
32 the collection of fees pursuant to this section beginning on the first day of the first quarter following
33 the receipt of notice.

34 6. Railroad corporations as defined in section 388.010 and airline companies as defined in
35 section 155.010 shall not be subject to the load fee described in this chapter nor permitted to
36 participate in or make claims against the petroleum storage tank insurance fund created in section
37 319.129."; and

38
39 Further amend said bill by amending the title, enacting clause, and intersectional references
40 accordingly.
41