

SECOND REGULAR SESSION

HOUSE BILL NO. 2311

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KNIGHT.

4670H.02I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

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

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

Section A. Sections 319.123, 319.129, and 319.132, RSMo, are repealed and three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

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

319.129. 1. There is hereby created a special trust fund to be known as the
2 "Petroleum Storage Tank Insurance Fund" within the state treasury which shall be the

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.

3 successor to the underground storage tank insurance fund. Moneys in such special trust fund
4 shall not be deemed to be state funds. Notwithstanding the provisions of section 33.080 to the
5 contrary, moneys in the fund shall not be transferred to general revenue at the end of each
6 biennium.

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

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

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

40 represent the nonregulated public at large. The members appointed by the governor shall
41 serve four-year terms except that the governor shall designate two of the original appointees
42 to be appointed for one year, two to be appointed for two years, two to be appointed for three
43 years and two to be appointed for four years. Any vacancies occurring on the board shall be
44 filled in the same manner as provided in this section.

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

51 6. Six trustees shall constitute a quorum for the transaction of business, and any
52 official 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
56 director 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
59 of 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
62 specifically determined by the board. The fund shall compensate the department of natural
63 resources or other state agency for all costs of providing staff required by this subsection.
64 Such compensation shall be made pursuant to contracts negotiated between the board and the
65 department of natural resources or other state agency.

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

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

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

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

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

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

89 16. The petroleum storage tank insurance fund shall expire on December 31, ~~2025~~
90 **2030**, unless extended by action of the general assembly. After December 31, ~~2025~~ **2030**,
91 the board of trustees may continue to function for the sole purpose of completing payment of
92 claims made prior to December 31, ~~2025~~ **2030**.

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

319.132. 1. **(1)** The board shall assess a surcharge on all petroleum products within
2 this 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
5 such 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
8 surcharges shall be deposited to the credit of the special trust fund known as the petroleum
9 storage tank insurance fund.

10 **(2) Subject to appropriations and beginning in fiscal year 2024 and continuing**
11 **each year until the expiration of the petroleum storage tank insurance fund in**
12 **accordance with subsection 16 of section 319.129, an allocation of four dollars and sixty**
13 **cents per transport load shall be deposited into the underground storage tank regulation**
14 **program fund established in section 319.123. Funds deposited into the underground**

15 storage tank regulation program fund according to this subsection shall be deposited up
16 to the appropriated budgetary amount set by the general assembly, adjusted for actual
17 fringe, for the department's petroleum-related activities, for the fiscal year in which
18 funds are being deposited. If any of the allocation per fiscal year deposited to the fund is
19 not spent in that fiscal year, the remaining funds shall be transferred to the petroleum
20 storage tank insurance fund no later than August thirty-first of the subsequent fiscal
21 year. No later than October first each year, the department shall provide a written
22 accounting of all moneys spent from the allocation authorized by this subdivision for the
23 prior fiscal year to the petroleum storage tank insurance fund board of trustees.

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

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

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

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

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

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

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

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

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