

SECOND REGULAR SESSION

# SENATE BILL NO. 661

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CASKEY.

Read 1st time January 7, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

L2707.011

## AN ACT

To repeal sections 319.129, 319.131 and 319.133, RSMo Supp. 1997, relating to the petroleum storage tank insurance fund, and to enact in lieu thereof three new sections relating to the same subject.

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

Section A. Sections 319.129, 319.131 and 319.133, RSMo Supp. 1997, are repealed and three new sections enacted in lieu thereof, to be known as sections 319.129, 319.131 and 319.133, to read as follows:

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

2. The owner or operator of any underground storage tank, including the state of Missouri and its political subdivisions and public transportation systems, in service on August 28, 1989, shall submit to the department a fee of one hundred dollars per tank on or before December 31, 1989. The owner or operator of any underground storage tank **who seeks to participate in the petroleum storage tank insurance fund**, including the state of Missouri and its political subdivisions and public transportation systems, **and whose underground storage tank is brought into service after [August 28, 1989] August 28, 1998**, shall transmit one hundred dollars per tank to the [department of natural resources within thirty days of the tank's initial use.] **board with his or her initial application. Such amount shall be a one-time payment,**

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

**and shall be in addition to the payment required by section 319.133.** The owner or operator of any aboveground storage tank regulated by this chapter, including the state of Missouri and its political subdivisions and public transportation systems, [in service on August 28, 1996, or brought into service after August 28, 1996] **who seeks to participate in the petroleum storage tank insurance fund**, shall transmit one hundred dollars per tank to the [department of natural resources within thirty days of August 28, 1996, or of the tank's initial use, as appropriate] **board with his or her initial application. Such amount shall be a one-time payment and shall be in addition to the payment required by section 319.133.** Moneys received [under] **pursuant to** this section shall be transmitted to the director of revenue for deposit in the petroleum storage tank insurance fund.

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

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

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

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

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

8. All staff resources for the Missouri petroleum storage tank insurance fund shall be provided by the department of natural resources or another state agency as otherwise specifically determined by the board. The fund shall compensate the department of natural resources or other state agency for all costs of providing staff required by **this** subsection [8 of this section]. Such compensation shall be made pursuant to contracts negotiated between the board and the department of natural resources or other state agency.

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

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

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

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

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

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

15. The petroleum storage tank insurance fund shall expire on December 31, [1998] **2003**, or upon revocation of federal regulation 40 CFR Parts 280 and 285, whichever occurs first, unless extended by action of the general assembly.

319.131. 1. Any owner or operator of one or more petroleum storage tanks may elect to participate in the petroleum storage tank insurance fund to partially meet the financial responsibility requirements of sections 319.100 to 319.137. Current or former refinery sites or

petroleum pipeline **or marine** terminals are not eligible for participation in the fund.

2. The board shall establish an advisory committee which shall be composed of insurers and owners and operators of petroleum storage tanks. The advisory committee established pursuant to this subsection shall report to the board. The committee shall monitor the fund and recommend statutory and administrative changes as may be necessary to assure efficient operation of the fund. The committee, in consultation with the board and the department of insurance, shall annually report to the general assembly on the availability and affordability of the private insurance market as a viable method of meeting the financial responsibilities required by state and federal law in lieu of the petroleum storage tank insurance fund.

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

(2) A creditor, specifically a person who, without participating in and not otherwise primarily engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily for the purpose of, or in connection with, securing payment or performance of a loan or to protect a security interest in or lien on the tank or the property where the tank is located, or serves as trustee or fiduciary upon transfer or receipt of the property, may be a successor in interest to a debtor **[under] pursuant to** this section, provided that the creditor gives notice of the interest to the insurance fund by certified mail, return receipt requested. Part of **[said] such** notice shall include a copy of the lien, including but not limited to a security agreement or a deed of trust as appropriate to the property. The term "successor in interest" **[under] as provided in** this section means a creditor to the debtor who had qualified real property in the insurance fund prior to the transfer of title to the creditor, and the term is limited to access to the insurance fund. The creditor may cure any of the debtor's defaults in payments required by the insurance fund, provided the specific real property originally qualified **[under] pursuant to** this section. The creditor, or the creditor's subsidiary or affiliate, who forecloses or otherwise obtains legal title to such specific real property held as collateral for loans, guarantees or other credit, and which includes the debtor's underground storage tanks, **[must] shall** provide notice to the fund of any transfer of creditor to subsidiary or affiliate. Liability **[under] pursuant to** sections

319.100 to 319.137 shall be confined to such creditor or such creditor's subsidiary or affiliate. A creditor [must] **shall** apply for a transfer of coverage and [must] **shall** present evidence indicating, a lien, contractual right, or operation of law permitting such transfer, and may utilize the creditor's affiliate or subsidiary to hold legal title to the specific real property taken in satisfaction of debts. Creditors may be listed as insured or additional insured on the insurance fund, and not merely as mortgagees, and may assign or otherwise transfer the debtor's rights in the insurance fund to the creditor's affiliate or subsidiary, notwithstanding any limitations in the insurance fund on assignments or transfer of the debtor's rights.

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

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

5. The fund shall provide coverage for third-party claims involving property damage or bodily injury caused by leaking petroleum storage tanks whose owner or operator is participating in the fund **at the time the release occurs or is discovered**. Coverage for third-party bodily injury shall not exceed one million dollars per occurrence. Coverage for third-party property damage shall not exceed one million dollars per occurrence. 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. [The attorney general shall, upon request, bring an action against such owner or operator to recover any costs or expenses owed to the fund plus reasonable attorney's fees.] **The fund shall provide the defense of eligible third-party claims, including the negotiation of any settlement.**

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. 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. In no case shall owners or operators of aboveground storage tanks make application for participation in the fund prior to July 1, 1997. 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.

9. (1) The fund shall provide moneys for cleanup of contamination caused by releases from underground storage tanks 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. 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 [department] **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 clean-up work as provided by rules of the [department]. The department may, by rule, establish minimum qualifications for bidders of remediation and clean-up work. The environmental engineer retained by the owner or operator shall provide to the department, prior to the acceptance of bids for remediation or clean up, estimates of reasonable anticipated costs of remediation or clean-up work. Bids for any remediation or clean-up work must

be submitted to the department prior to commencement of remediation work and unless disapproved by the department, the contract for remediation or clean-up work shall be awarded to the lowest responsive responsible bidder. The department shall have the right to reject any or all bids for failure to meet minimum qualifications or for submitting a bid in excess of reasonable cost estimates for the project. If hidden or changed conditions are encountered during remediation or clean-up work, which were not stated in the environmental engineer's estimate of costs submitted to the department, the owner or operator shall submit a statement of such additional cost to the department for approval, if reimbursement is requested from the fund] **board**.

10. 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, RSMo, 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.

319.133. 1. The board shall, in consultation with the advisory committee established pursuant to subsection 2 of section 319.131, establish, by rule, the amount which each owner or operator who participates in the fund shall pay annually into the fund, but such amount shall not exceed the limits established in this section.

2. Each participant shall annually pay an amount [based upon the age of the tank and the material or materials from which the tank was made,] which shall be at least one hundred dollars per year but not more than three hundred dollars per year for any tank, as established by the board by rule.

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

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

5. All rules applicable to the former underground storage tank insurance fund not inconsistent with the provisions of sections 319.100 to 319.137 shall apply to the petroleum storage tank insurance fund as of the effective date of this section.

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