

SECOND REGULAR SESSION

# SENATE BILL NO. 856

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIELAND.

Read 1st time January 9, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3927S.02I

## AN ACT

To repeal sections 319.129, 319.131, and 319.133, RSMo, and to enact in lieu thereof three 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Section A. Sections 319.129, 319.131, and 319.133, RSMo, are repealed  
2 and three new sections enacted in lieu thereof, to be known as sections 319.129,  
3 319.131, and 319.133, to read as follows:

319.129. 1. There is hereby created a special trust fund to be known as  
2 the "Petroleum Storage Tank Insurance Fund" within the state treasury which  
3 shall be the successor to the underground storage tank insurance fund, **and**  
4 **which shall be administered as required by this chapter and not in the**  
5 **manner of an express trust.** Moneys in such special trust fund shall not be  
6 deemed to be state funds **and shall not be deemed insurance for the**  
7 **purposes of chapter 375.** Notwithstanding the provisions of section 33.080 to  
8 the contrary, moneys in the fund shall not be transferred to general revenue at  
9 the end of each biennium.

10 2. [The owner or operator of any underground storage tank, including the  
11 state of Missouri and its political subdivisions and public transportation systems,  
12 in service on August 28, 1989, shall submit to the department a fee of one  
13 hundred dollars per tank on or before December 31, 1989.] The owner or operator  
14 of any underground storage tank who seeks to participate in the petroleum  
15 storage tank insurance fund, including the state of Missouri and its political  
16 subdivisions and public transportation systems, and whose underground storage  
17 tank is brought into service after August 28, 1998, shall transmit one hundred  
18 dollars per tank to the board with his or her initial application. Such amount

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

19 shall be a one-time payment, and shall be in addition to the payment required by  
20 section 319.133. The owner or operator of any aboveground storage tank  
21 regulated by this chapter, including the state of Missouri and its political  
22 subdivisions and public transportation systems, who seeks to participate in the  
23 petroleum storage tank insurance fund, shall transmit one hundred dollars per  
24 tank to the board with his or her initial application. Such amount shall be a  
25 one-time payment and shall be in addition to the payment required by section  
26 319.133. Moneys received pursuant to this section shall be transmitted to the  
27 director of revenue for deposit in the petroleum storage tank insurance fund.

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

32         4. The general administration of the fund and the responsibility for the  
33 proper operation of the fund, including all decisions relating to payments from the  
34 fund, are hereby vested in a board of trustees. The board of trustees shall consist  
35 of the commissioner of administration or the commissioner's designee, the director  
36 of the department of natural resources or the director's designee, the director of  
37 the department of agriculture or the director's designee, and eight citizens  
38 appointed by the governor with the advice and consent of the senate. Three of  
39 the appointed members shall be owners or operators of retail petroleum storage  
40 tanks, including one tank owner or operator of greater than [one hundred] **fifty**  
41 **tanks located within the state of Missouri**; one tank owner or operator of less  
42 than [one hundred] **fifty tanks located within the state of Missouri**; and one  
43 [aboveground storage tank] owner or operator **of at least one aboveground**  
44 **storage tank located in the state of Missouri**. One appointed trustee shall  
45 represent a financial lending institution, and one appointed trustee shall  
46 represent the insurance underwriting industry. One appointed trustee shall  
47 represent industrial or commercial users of petroleum. The two remaining  
48 appointed citizens shall have no petroleum-related business interest, and shall  
49 represent the nonregulated public at large. The members appointed by the  
50 governor shall serve four-year terms [except that the governor shall designate two  
51 of the original appointees to be appointed for one year, two to be appointed for  
52 two years, two to be appointed for three years and two to be appointed for four  
53 years]. Any vacancies occurring on the board shall be filled in the same manner  
54 as provided in this section.

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

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

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

68           8. The board of trustees shall be a type III agency and **a state agency**  
69 **for all pertinent purposes, including but not limited to sections 105.711**  
70 **and 537.600. The board** shall appoint an executive director and other  
71 employees as needed, who shall be state employees and be eligible for all  
72 corresponding benefits. The executive director shall have charge of the offices,  
73 operations, records, and other employees of the board, subject to the direction of  
74 the board. Employees of the board shall receive such salaries and necessary  
75 expenses as shall be fixed by the board.

76           9. [Staff resources for the Missouri petroleum storage tank insurance fund  
77 may be provided by the department of natural resources or another state agency  
78 as otherwise specifically determined by the board. The fund shall compensate the  
79 department of natural resources or other state agency for all costs of providing  
80 staff required by this subsection. Such compensation shall be made pursuant to  
81 contracts negotiated between the board and the department of natural resources  
82 or other state agency.

83           10.] In order to carry out the fiduciary management of the fund, the board  
84 may select and employ, or may contract with, persons experienced in insurance  
85 underwriting, accounting, the servicing of claims and rate making, and legal  
86 counsel to defend third-party claims, who shall serve at the board's  
87 pleasure. Invoices for such services shall be presented to the board in sufficient  
88 detail to allow a thorough review of the costs of such services. **The board may**  
89 **also enter into contingency contracts to subrogate on behalf of fund**  
90 **participants; such contracts shall not be subject to section 34.378.**

91 [11. At the first meeting of the board,]

92 10. The board shall elect one of its members as chairman. The chairman  
93 shall preside over meetings of the board and perform such other duties as shall  
94 be required by action of the board.

95 [12.] 11. The board shall elect one of its members as vice chairman, and  
96 the vice chairman shall perform the duties of the chairman in the absence of the  
97 latter or upon the chairman's inability or refusal to act.

98 [13.] 12. The board shall determine and prescribe all rules and  
99 regulations as they relate to fiduciary management of the fund, pursuant to the  
100 purposes of sections 319.100 to 319.137. In no case shall the board have  
101 oversight regarding environmental cleanup standards for petroleum storage  
102 tanks.

103 [14.] 13. No [trustee or staff] member of the [fund] **board or its staff**  
104 shall receive any gain or profit from any moneys or transactions of the fund. This  
105 shall not preclude any eligible trustee from making a claim or receiving benefits  
106 from the petroleum storage tank insurance fund as provided by sections 319.100  
107 to 319.137, **provided that such a trustee shall not participate in**  
108 **deliberations or decisions of the board regarding that claim.**

109 [15.] 14. The board may reinsure all or a portion of the fund's  
110 liability. Any insurer who sells environmental liability insurance in this state  
111 may, at the option of the board, reinsure some portion of the fund's liability.

112 [16.] 15. The petroleum storage tank insurance fund shall expire on  
113 December 31, 2025, unless extended by action of the general assembly. After  
114 December 31, 2025, the board of trustees may continue to function for the sole  
115 purpose of completing payment of claims made prior to December 31, 2025. **On**  
116 **December 31, 2025, and each year thereafter so long as moneys remain**  
117 **in the fund, the board shall report to the state treasurer an estimate of**  
118 **its remaining obligations, and by January thirtieth of the succeeding**  
119 **year the treasurer shall report to the general assembly the amount**  
120 **remaining in the fund and the board's estimate of remaining**  
121 **obligations. When all claims have been paid, the board shall so report**  
122 **to the treasurer, and the treasurer shall in turn report to the general**  
123 **assembly the amount, if any, remaining in the fund.**

124 [17.] 16. The board shall annually commission an independent financial  
125 audit of the petroleum storage tank insurance fund. The board shall biennially  
126 commission an actuarial analysis of the petroleum storage tank insurance

127 fund. The results of the financial audit and the actuarial analysis shall be made  
128 available to the public. The board may contract with third parties to carry out  
129 the requirements of this subsection.

319.131. 1. Any owner or operator of one or more petroleum storage tanks  
2 may [elect] **apply** to participate in the petroleum storage tank insurance fund [to  
3 meet the financial responsibility requirements of sections 319.114 and  
4 414.036]. **Participation shall be subject to the terms of a participation  
5 agreement issued by the board of trustees. The board may offer more  
6 than one such form. Among the terms the board may include in such  
7 forms are provisions authorizing the board to assign claim benefits to  
8 a successor owner. The board also may issue special endorsements on  
9 individual participation agreements for good cause.** Subject to regulations  
10 of the board of trustees, owners or operators may elect to continue their  
11 participation in the fund subsequent to the transfer of their property to another  
12 party. Current or former refinery sites or petroleum pipeline or marine terminals  
13 are not eligible for participation in the fund. **Notwithstanding any other  
14 provision of sections 319.100 to 319.133, owners and operators of airport  
15 hydrant systems and other underground or aboveground storage tanks  
16 used to store and distribute fuel for railroad corporations and airline  
17 companies shall not be eligible to participate in the fund.**

18 2. The board shall establish an advisory committee which shall be  
19 composed of insurers, owners and operators of petroleum storage tanks, and other  
20 interested parties. The advisory committee established pursuant to this  
21 subsection shall report to the board. The committee shall monitor the fund **and  
22 its operation by the board** and recommend statutory and administrative  
23 changes as may be necessary to assure efficient operation of the fund. The  
24 committee, in consultation with the board and the department of commerce and  
25 insurance, shall report every two years to the general assembly on the availability  
26 and affordability of the private insurance market as a viable method of meeting  
27 the financial responsibilities required by state and federal law in lieu of the  
28 petroleum storage tank insurance fund.

29 3. (1) Except as otherwise provided by this section, any person seeking  
30 to participate in the insurance fund shall submit an application to the board of  
31 trustees and shall certify that the petroleum tanks meet or exceed and are in  
32 compliance with all [technical standards established by the United States  
33 Environmental Protection Agency, except those standards and regulations

34 pertaining to spill prevention control and counter-measure plans, and rules]  
35 **petroleum storage tank regulations** established by the Missouri department  
36 of natural resources and the Missouri department of agriculture. The applicant  
37 shall submit proof that the applicant has a reasonable assurance of the tank's  
38 integrity. [Proof of tank integrity may include but not be limited to any one of  
39 the following: tank tightness test, electronic leak detection, monitoring wells,  
40 daily inventory reconciliation, vapor test or any other test that may be approved  
41 by the director of the department of natural resources or the director of the  
42 department of agriculture.] The applicant shall **also** submit evidence that the  
43 applicant can [meet all applicable financial responsibility requirements] **pay the**  
44 **first ten thousand dollars of cleanup costs referenced in subsection 4**  
45 of this section.

46 (2) A creditor, specifically a person who, without participating in and not  
47 otherwise primarily engaged in petroleum production, refining, and marketing,  
48 holds indicia of ownership primarily for the purpose of, or in connection with,  
49 securing payment or performance of a loan or to protect a security interest in or  
50 lien on the tank or the property where the tank is located, or serves as trustee or  
51 fiduciary upon transfer or receipt of the property, may be a successor in interest  
52 to a debtor pursuant to this section, provided that the creditor gives notice of the  
53 interest to the [insurance fund] **board** by certified mail, return receipt  
54 requested. Part of such notice shall include a copy of the lien, including but not  
55 limited to a security agreement or a deed of trust as appropriate to the  
56 property. The term "successor in interest" as provided in this section means a  
57 creditor to the debtor who had qualified real property in the insurance fund prior  
58 to the transfer of title to the creditor, and the term is limited to access to the  
59 insurance fund. The creditor may cure any of the debtor's defaults in payments  
60 required by the [insurance fund] **board**, provided the specific real property  
61 originally qualified pursuant to this section. The creditor, or the creditor's  
62 subsidiary or affiliate, who forecloses or otherwise obtains legal title to such  
63 specific real property held as collateral for loans, guarantees or other credit, and  
64 which includes the debtor's aboveground storage tanks or underground storage  
65 tanks, or both such tanks shall provide notice to the [fund] **board** of any transfer  
66 of creditor to subsidiary or affiliate. Liability pursuant to sections 319.100 to  
67 319.137 shall be confined to such creditor or such creditor's subsidiary or affiliate.  
68 A creditor shall apply for a transfer of coverage and shall present evidence  
69 indicating a lien, contractual right, or operation of law permitting such transfer,

70 and may utilize the creditor's affiliate or subsidiary to hold legal title to the  
71 specific real property taken in satisfaction of debts. Creditors may be listed as  
72 insured or additional insured on the [insurance fund] **participation**  
73 **agreement**, and not merely as mortgagees, and may assign or otherwise transfer  
74 the debtor's rights in the insurance fund to the creditor's affiliate or subsidiary,  
75 notwithstanding any limitations in the [insurance fund] **participation**  
76 **agreement** on assignments or transfer of the debtor's rights.

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

80 4. [Any person making a claim pursuant to this section and sections  
81 319.129 and 319.133 shall be liable for the first ten thousand dollars of the cost  
82 of cleanup associated with a release from a petroleum storage tank without  
83 reimbursement from the fund. The petroleum storage tank insurance fund shall  
84 assume all costs, except as provided in subsection 5 of this section, which are  
85 greater than ten thousand dollars but less than one million dollars per occurrence  
86 or two million dollars aggregate per year. The liability of the petroleum storage  
87 tank insurance fund is not the liability of the state of Missouri. The provisions  
88 of sections 319.100 to 319.137 shall not be construed to broaden the liability of  
89 the state of Missouri beyond the provisions of sections 537.600 to 537.610 nor to  
90 abolish or waive any defense which might otherwise be available to the state or  
91 to any person. The presence of existing contamination at a site where a person  
92 is seeking insurance in accordance with this section shall not affect that person's  
93 ability to participate in this program, provided the person meets all other  
94 requirements of this section. Any person who qualifies pursuant to sections  
95 319.100 to 319.137 and who has requested approval of a project for remediation  
96 from the fund, which request has not yet been decided upon shall annually be  
97 sent a status report including an estimate of when the project may expect to be  
98 funded and other pertinent information regarding the request.

99 5. The fund shall provide coverage for third-party claims involving  
100 property damage or bodily injury caused by leaking petroleum storage tanks  
101 whose owner or operator is participating in the fund at the time the release  
102 occurs or is discovered. Coverage for third-party property damage or bodily injury  
103 shall be in addition to the coverage described in subsection 4 of this section but  
104 the total liability of the petroleum storage tank insurance fund for all cleanup  
105 costs, property damage, and bodily injury shall not exceed one million dollars per

106 occurrence or two million dollars aggregate per year. The fund shall not  
107 compensate an owner or operator for repair of damages to property beyond that  
108 required to contain and clean up a release of a regulated substance or compensate  
109 an owner or operator or any third party for loss or damage to other property  
110 owned or belonging to the owner or operator, or for any loss or damage of an  
111 intangible nature, including, but not limited to, loss or interruption of business,  
112 pain and suffering of any person, lost income, mental distress, loss of use of any  
113 benefit, or punitive damages.

114           6. The fund shall, within limits specified in this section, assume costs of  
115 third-party claims and cleanup of contamination caused by releases from  
116 petroleum storage tanks. The fund shall provide the defense of eligible  
117 third-party claims including the negotiations of any settlement.

118           **7.] (1) The board shall provide coverage to fund participants for**  
119 **the cost of cleanup associated with a release from a petroleum storage**  
120 **tank and third party claims involving property damage or bodily injury**  
121 **arising from such release. The total liability of the petroleum storage**  
122 **tank insurance fund for all cleanup costs, third party property damage,**  
123 **and third party bodily injury shall not exceed one million dollars per**  
124 **occurrence or two million dollars in the aggregate per year. In**  
125 **addition to these limits, the board may provide legal defense of eligible**  
126 **third party claims and may specify a limit to legal defense coverage**  
127 **costs in the participation agreement.**

128           **(2) The participant shall be liable for the first ten thousand**  
129 **dollars of cleanup costs.**

130           **(3) In no case shall coverage be provided for repair of damages**  
131 **to the participant's property beyond that required to contain and clean**  
132 **up a petroleum release, or for loss or damage to other property owned**  
133 **or belonging to the participant.**

134           **(4) In no case shall coverage be provided to a participant or**  
135 **third party for loss or damage of an intangible nature, including but**  
136 **not limited to loss or interruption of business, pain and suffering of any**  
137 **person, lost income, mental distress, loss of use of any benefit, or**  
138 **punitive damages.**

139           **(5) The board shall have authority to investigate and settle any**  
140 **third party claim and, if legal defense coverage is provided as**  
141 **authorized in subdivision (1) of this subsection, may choose and employ**



142 **counsel to represent a participant and defend such claims.**

143           **5.** Nothing contained in sections 319.100 to 319.137 shall be construed to  
144 abrogate or limit any right, remedy, causes of action, or claim by any person  
145 sustaining personal injury or property damage as a result of any release from any  
146 type of petroleum storage tank, nor shall anything contained in sections 319.100  
147 to 319.137 be construed to abrogate or limit any liability of any person in any way  
148 responsible for any release from a petroleum storage tank or any damages for  
149 personal injury or property damages caused by such a release. **Nothing**  
150 **contained in sections 319.100 to 319.137 shall be construed to create a**  
151 **cause of action against the fund or the board. The provisions of**  
152 **sections 319.100 to 319.137 shall not be construed to broaden the**  
153 **liability of the state of Missouri beyond the provisions of sections**  
154 **537.600 to 537.610 nor to abolish or waive any defense which might**  
155 **otherwise be available to the state or to any person.**

156           [8. (1) The fund shall provide moneys for cleanup of contamination  
157 caused by releases from petroleum storage tanks, the owner or operator of which  
158 is participating in the fund or the owner or operator of which has made  
159 application for participation in the fund by December 31, 1997, regardless of  
160 when such release occurred, provided that those persons who have made  
161 application are ultimately accepted into the fund. Applicants shall not be eligible  
162 for fund benefits until they are accepted into the fund. This section shall not  
163 preclude the owner or operator of petroleum storage tanks coming into service  
164 after December 31, 1997, from making application to and participating in the  
165 petroleum storage tank insurance fund.

166           (2)] **6.** Notwithstanding the provisions of section 319.100 [and the  
167 provisions of subdivision (1) of this section], the [fund] **board** shall provide  
168 moneys for cleanup of contamination caused by releases from petroleum storage  
169 tanks owned by school districts all or part of which are located in a county of the  
170 third classification without a township form of government and having a  
171 population of more than ten thousand seven hundred but less than eleven  
172 thousand inhabitants, and which make application for participation in the fund  
173 by August 28, 1999, regardless of when such release occurred. Applicants shall  
174 not be eligible for fund benefits until they are accepted into the fund, and costs  
175 incurred prior to that date shall not be eligible expenses.

176           [9.] **7.** (1) [The fund] **Notwithstanding the provisions of this**  
177 **section to the contrary, the board shall provide moneys from the fund for**

178 cleanup of contamination caused by releases from underground storage tanks  
179 which contained petroleum and which [have been] **were** taken out of use prior  
180 to December 31, 1997, provided such sites [have been] **were** documented by or  
181 reported to the department of natural resources prior to December 31, 1997, and  
182 provided further that the [fund] **board** shall make no reimbursements for  
183 expenses incurred prior to August 28, 1995. The [fund] **board** shall also provide  
184 moneys for cleanup of contamination caused by releases from underground  
185 storage tanks which contained petroleum and which have been taken out of use  
186 prior to December 31, 1985, if the current owner of the real property where the  
187 tanks are located purchased such property before December 31, 1985, provided  
188 such sites [are] **were** reported to the fund on or before June 30, 2000. The [fund]  
189 **board** shall make no payment for expenses incurred at such sites prior to August  
190 28, 1999. Nothing in sections 319.100 to 319.137 shall affect the validity of any  
191 underground storage tank fund insurance policy in effect on August 28, 1996.

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

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

208 (4) **For such cleanups, the liability of the fund is limited to nine**  
209 **hundred ninety thousand dollars and the person initiating the cleanup**  
210 **shall pay the first ten thousand dollars of cleanup costs.**

211 [10.] 8. (1) [The fund] **Notwithstanding the provisions of this**  
212 **section to the contrary, the board** shall provide moneys **from the fund** for  
213 cleanup of contamination caused by releases from aboveground storage tanks

214 utilized for the sale of products regulated by chapter 414 which [have been] were  
215 taken out of use prior to December 31, 1997, provided such sites [have been]  
216 were documented by or reported to the department of natural resources prior to  
217 December 31, 1997, and provided further that the [fund] board shall make no  
218 reimbursements for expenses incurred prior to July 1, 1997.

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

227 (3) For such cleanups, the liability of the fund is limited to nine  
228 hundred ninety thousand dollars and the person initiating the cleanup  
229 shall pay the first ten thousand dollars of cleanup costs.

230 9. The board shall provide by regulation for the appeal of  
231 decisions denying, in whole or in part, requests by fund participants for  
232 payment from the fund. Any deliberations conducted and votes taken  
233 on such an appeal shall be closed to the applicant and the public. Once  
234 a final decision is rendered, that decision shall be made available to the  
235 participant and the public.

236 10. (1) The following records are not public records, as such  
237 term is defined in section 610.010, and are not available for public  
238 examination except to the extent that the board determines that  
239 disclosure is in the best interest of the fund or of the public:

240 (a) Applications for participation;

241 (b) Individual claim reserve estimates;

242 (c) An applicant's or participant's financial information;

243 (d) Claims adjusters' reports; and

244 (e) Communications regarding fund participants' liabilities or  
245 claim settlement negotiations.

246 (2) Should the board determine that records containing  
247 proprietary or confidential information regarding an applicant or  
248 participant should be disclosed, the board shall so notify the applicant  
249 or participant no less than ten days before making any such disclosure.

250           **(3) The provisions of this subsection shall not limit the board's**  
251 **authority to disclose records to other state agencies to assist those**  
252 **agencies in performing their regulatory functions.**

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

6           2. Each participant shall annually pay an amount which shall be at least  
7 one hundred dollars per year but not more than five hundred dollars per year for  
8 any tank, as established by the board by rule.

9           3. No new registration fee is required for a change of ownership of a  
10 petroleum storage tank.

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

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

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

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