

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 6105-01  
Bill No.: HB 2257  
Subject: Environmental Protection; Department of Natural Resources; Mining and Oil and Gas Production  
Type: Original  
Date: February 20, 2018

Bill Summary: This proposal modifies provisions relating to the Petroleum Storage Tank Insurance Fund.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>				
FUND AFFECTED	FY 2019	FY 2020	FY 2021	Fully Implemented (FY 2022)
<b>Total Estimated Net Effect on General Revenue</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>				
FUND AFFECTED	FY 2019	FY 2020	FY 2021	Fully Implemented (FY 2022)
Petroleum Storage Tank Insurance Fund	\$0	\$0	\$5,750,000	\$11,500,000
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$5,750,000</b>	<b>\$11,500,000</b>

Numbers within parentheses: ( ) indicate costs or losses. This fiscal note contains 12 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>				
<b>FUND AFFECTED</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>Fully Implemented (FY 2022)</b>
Federal Funds	\$0	\$0	\$0 or (\$684,000)	\$0 or (\$1,368,000)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0 or (\$684,000)</b>	<b>\$0 or (\$1,368,000)</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>				
<b>FUND AFFECTED</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>Fully Implemented (FY 2022)</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>				
<b>FUND AFFECTED</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>Fully Implemented (FY 2022)</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Department of Natural Resources** assume the following regarding this proposal:

#### §319.015

No impact

#### §319.100(16)

Changing this definition would eliminate the Department's authority over aboveground piping connected to underground storage tanks, such as piping connected to pumps and dispensers. Approximately sixty percent of releases occur from piping in these areas, so the program would have no regulatory authority over a large number of releases, and releases from these locations would not be eligible for Petroleum Storage Tank Insurance Fund (PSTIF) funding to pay for remediation of the release. Without authority over these releases and without access to funding to remediate these releases, Missouri would likely lose federal approval of its Tanks program, along with annual federal funding of \$1,368,000. The Department would have to make changes to the underground storage tank rules to reinstate authority over aboveground piping in these areas before reapplying for State Program Approval, which could delay the process for several years and potentially result in a loss of funding.

#### §319.129.4

No impact

#### §319.129.9

This section would allow PSTIF to acquire impacted third party properties. The ability to acquire these properties would allow PSTIF to impose use restrictions to reduce the amount of remediation required, but would not be compelled to take that approach. At the same time, however, costs of acquiring these properties would reduce the amount of coverage that would otherwise be directed towards remediating a site.

It is assumed there would be transaction costs associated with these acquisitions. As a property owner of impacted properties, PSTIF will most likely acquire the liabilities that are attendant to owning a contaminated property. PSTIF's acquisition of contaminated property may waive the state's sovereign immunity for injuries associated with that contaminated property, exposing the state to potential tort claims.

ASSUMPTION (continued)

§319.129.10

No impact foreseen

§319.129.13

No impact

§319.129.16

Authority for PSTIF extended from 2020 to 2030, providing fund benefits for eligible underground storage tanks for another ten years.

§319.131.1

No impact

§319.131.3

No impact

§319.131.5

No impact

§319.131.6

The proposed revision to 319.131.6 would leave it to PSTIF's discretion whether to defend insurers from third party claims.

§319.131.8

No impact

§319.131.9(4)

This change would affect approximately 300 tank sites that are older than 10 years and cut them off from access to future cleanup funding. With no PSTIF funding available, cleanups would be delayed. No impact for the other subsections in 319.131.9.

§319.131.10

This change would affect approximately 300 tank sites that are older than 10 years and cut them off from access to future funding. With no PSTIF funding available, cleanups would be delayed.

§319.132.4(4)

A requirement to repay fund sweeps would improve the solvency of the fund for cleanups.

ASSUMPTION (continued)

§319.133

No impact

**Oversight** will range the fiscal impact of this proposal from \$0 (does not put Missouri out of compliance) to a loss of \$1,368,000 in federal funds (if it is found by the federal government that Missouri is out of compliance with the federal requirements for the Tanks program).

Officials from the **Petroleum Storage Tank Insurance Fund Board of Trustees** assume the following regarding this proposal:

§319.100

No impact. Corrects typo so definition matches EPA regulation.

§319.129

Would enlarge the pool of tank owners eligible to serve on PSTIF Board of Trustees. Would authorize PSTIF Board of Trustees to buy nearby properties impacted by releases from its insureds' tank systems and to directly engage contractors to remediate or mitigate impacts on such properties. Would authorize PSTIF Board of Trustees to place liens on properties; would explicitly authorize PSTIF Board to assign an insured's benefits to a successor. Would extend all of PSTIF Board's current operations for an additional ten years. (Under current law, the Board's operations will be reduced on January 1, 2021, thereafter no longer insuring tank owners or accepting new claims, and only paying "runout" for claims previously filed.)

§319.131

Would clarify that airport hydrant systems are not eligible to obtain insurance from the PSTIF. (There is only one in the state, at Lambert Airport. Airlines have never paid the PSTIF transport load fee and have never been eligible for insurance per 319.132.6, RSMo.) Would eliminate requirement for PSTIF Board to enforce EPA rules as a condition of providing insurance coverage. Would correct obsolete or inaccurate references. Would authorize the PSTIF Board to offer increased coverage so benefits for legal defense costs are excess to \$1 million coverage for cleanup and third party damages. Would limit amount of time benefits are available to clean up historical pollution from tanks taken out of use by or before December 31, 1997.

§319.132

Would require "sweeps" of money from the PSTIF for unrelated purposes to be repaid, presumably bolstering the likelihood the Board can meet its future obligations.

ASSUMPTION (continued)

§319.133

Would remove obsolete provision unrelated to PSTIF operations. Would eliminate option for tank owners to pay participation fees in semi-annual installments; (none do so now). Would broaden PSTIF Board's current authority to require first-time applicants for coverage to demonstrate their site is not already polluted.

This proposal would require the Department of Revenue (DOR) to continue collecting the transport load fee for another ten years. The PSTIF Board of Trustees funds 1 FTE at DOR to collect this fee at an annual cost of approximately \$44,000. No impact to general revenue.

This proposal would likely delay reporting of pollution at some sites where old gasoline/diesel is in the ground. Oversight of cleanups by the Department of Natural Resources (DNR) would likely occur over a longer period of time, perhaps reducing near-term demands on DNR staff and resources.

Impacts on PSTIF Solvency and Liabilities from Extension of "Sunset Date"

There will be both positive and negative impacts.

The majority of funding for the PSTIF's liabilities comes from the transport load fee, currently assessed at \$20 per 8,000 gallons on all fuel used in Missouri. Actuarial estimates indicate the current cash balance in the trust fund, plus anticipated revenues through the "sunset date" of 12/31/20, will be insufficient to meet long-term liabilities for all claims already filed plus those expected to be filed prior to the "sunset date." The estimated shortfall is approximately \$35 million. The PSTIF Board is currently considering an increase in the transport load fee, but is prohibited from increasing the fee more than \$15 per year. Even if a \$15 increase is implemented in 2018 and again in 2019, and a \$10 increase in 2020, (to the maximum allowed by law), it is likely the Trust Fund would have unfunded liabilities and would run out of cash in future years while "claims runout" is being paid. The bill would mitigate this long-term solvency issue by authorizing continued revenue into the PSTIF for an additional ten years.

If the PSTIF "sunset" on 12/31/20, it is anticipated most or all insured tank owners who have never had a leak or filed a claim will have their property tested for "old pollution;" all of these claims would be filed in the next 36 months. If this bill is enacted, most or all of these claims would still likely be filed, but would be presented over a longer period of time; this would stretch payout of liabilities over more future years, which would affect the PSTIF's solvency in a positive way.

ASSUMPTION (continued)

The identified negative fiscal impacts from extending the "sunset date" are as follows: Because the PSTIF Board would continue to insure tank owners for ten more years, additional future liabilities would be incurred for leaks at insured sites occurring after 12/31/2020, and additional administrative costs will be incurred for insuring tank sites and processing new claims.

Positive impact on PSTIF Solvency from Limiting Time to Request Reimbursement for Cleanup of Old Tank Sites

The PSTIF Board has 245 open claim files involving pollution from tanks that were removed or taken out of use by or before December 31, 1997.

At many of these sites, cleanup is complete and there is no longer any risk to human health or the environment, but data collection continues to verify conclusions. At some sites, however, little or no investigation of pollution impacts has been done and/or cleanup is incomplete. Sections 319.131.9(4) and 319.131.10(3) would set deadlines, after which the PSTIF would no longer be liable for additional costs associated with these sites.

Of these 245 sites, 224 are ones for which pollution was reported prior to December 31, 1997; these would be subject to a deadline of December 31, 2020 for receiving reimbursements from the PSTIF. A review of these files indicates found 55 sites at risk of incurring costs after the deadline.

Twenty-one of the 245 are sites where tanks were out of use by or before December 31, 1997, but the pollution was reported after that date; these property owners would be subject to a deadline of ten years after the claim was made to the PSTIF. A review of these files found 11 sites where additional costs might be incurred after the 10-year deadline.

Mixture of Impacts on Long-term Liabilities from Other Changes in Bill

Several other provisions of the bill would have a positive impact on the PSTIF's long-term liabilities. As an example, under current law and rules, a tank owner can operate many years without PSTIF coverage, then obtain PSTIF insurance right before removing his tanks/piping and make a claim with PSTIF for cleanup of leaks that may have occurred while he was not insured; this bill would allow the Board to promulgate rules to prevent this.

One provision could have a negative impact on the PSTIF's liabilities and future solvency: If the Board chooses to increase its coverage, as would be authorized by language in 319.131.6, RSMo, its costs for some future claims will likely be higher.

## ASSUMPTION (continued)

### Revenues

It is assumed revenues from the transport load fee and from participation fees would continue for ten more years.

### Cost Impact from Extension of "Sunset Date"

There could be cost savings for FY 2019 through FY 2021 due to anticipated costs being delayed and/or spread over a larger number of future year.

Other near-term savings could accrue from the delayed filing of "remedial claims," (i.e., claims for sites where no tanks have been in use since 12/31/97 but the historical pollution has not yet been discovered/reported), but it is also true that extending the sunset date by ten years will likely result in more remedial claims being filed in total. In addition, "remedial claims" are a shrinking portion of the PSTIF's total liabilities, compared to liabilities for sites where tanks are in operation and insured. Therefore, no effort was made to estimate cost savings in the near term or increased costs in the long-term from this possibility.

In addition, there would likely be near-term savings from reduced administrative costs associated with the delayed filing of claims, but this is minor compared to claims costs.

Additional costs for future leaks from insured sites are estimated as follows, using data from the last five years: It is assumed 16 leaks per year occur at PSTIF-insured tank sites, and the average cost per leak will be \$100,000. This equates to an additional \$16 million in liabilities that will accrue between 1/1/21 and 12/31/30.

### Cost Savings from Imposing Deadlines for "Remedial Claims"

It is assumed additional costs would be incurred after the deadlines for 50-75 sites, and that savings to the PSTIF would average \$25,000 for each; this would produce a cost savings between \$1.25 million and \$1.875 million. The median of \$1,562,500 was used, divided equally between FY 2019, FY 2020, and FY 2021. Administrative costs for processing reimbursement requests would also be reduced, but this savings would be minimal and was not estimated.

### Cost Impact from Other Provisions

Certain other provisions of the bill would likely reduce costs, while at least one provision could increase costs. Projecting the combined effect of these other provisions requires actuarial expertise beyond PSTIF staff capabilities; therefore no estimate is presented herein.

**Oversight** notes the Petroleum Storage Tank Insurance Fund balance as of June 30, 2017 was \$49,752,551.

ASSUMPTION (continued)

**Oversight** notes according to DNR reports, over the past three calendar years (2015 - 2017), an average of \$11.5 million has been collected for transport load fees and deposited into the Petroleum Storage Tank Insurance Fund (0585). Oversight will reflect this average as a revenue extension for FY 2021 (6 months) through FY 2022.

Officials from the **Department of Agriculture, Office of Administration - Facilities Management, Design and Construction, Department of Revenue, Department of Health and Senior Services, Department of Insurance, Financial Institutions and Professional Registration and Office of the Governor** each assume the proposal will have no fiscal impact on their respective organizations.

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2019	FY 2020	FY 2021 (6 Mo.)	Fully Implemented (FY 2022)
<b>PETROLEUM STORAGE TANK INSURANCE FUND</b>				
<u>Revenue - PSTIF</u> Board of Trustees - <b>Extension</b> of transport load fee from 12/31/2020 to 12/31/2023 (§319.129.16)	<u>\$0</u>	<u>\$0</u>	<u>\$5,750,000</u>	<u>\$11,500,000</u>
<b>ESTIMATED NET EFFECT ON THE PETROLEUM STORAGE TANK INSURANCE FUND</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$5,750,000</u></b>	<b><u>\$11,500,000</u></b>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2019	FY 2020	FY 2021 (6 Mo.)	Fully Implemented (FY 2022)
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**FEDERAL FUNDS**

<u>Loss - DNR - Missouri possibly out of compliance with federal requirements for its Tanks program §319.100(16)</u>	\$0	\$0	<u>\$0 or (\$684,000)</u>	\$0 or <u>(\$1,368,000)</u>
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<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0 or (\$684,000)</u></b>	<b><u>\$0 or (\$1,368,000)</u></b>
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<u>FISCAL IMPACT - Local Government</u>	FY 2019	FY 2020	FY 2021 (6 Mo.)	Fully Implemented (FY 2022)
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

FISCAL IMPACT - Small Business

Small businesses would pay more for cleanups directly. Current law requires PSTIF to provide defense against third party claims. The proposed revision to 319.131.6 would leave it to PSTIF's discretion whether to defend insureds from third party claims. Small businesses would have to pay more to resolve third party claims, including additional defense costs.

This proposal could also have a positive impact, in that it would allow small businesses to continue obtaining reasonably-priced pollution liability insurance, (required by state statute), for another ten years. It also would allow PSTIF-insured small businesses (and other tank and property owners) a longer period of time to identify "old pollution" and file claims with the PSTIF for such sites.

## FISCAL DESCRIPTION

This bill makes changes to the administration of the Petroleum Storage Tank Insurance Fund and the requirements for certain members of the Board of Trustees.

To mitigate claims against the fund, the board may purchase third-party properties or engage contractors to repair or remediate properties. The board may also place liens on properties and assign fund benefits.

Currently, the fund expires on December 31, 2020. The bill extends the expiration date to December 31, 2030.

Currently, refinery sites, petroleum pipeline terminals and marine terminals are not eligible to participate in the fund. Owners and operators of airport hydrant systems are added to the list of sites not eligible to participate.

The board may provide defense in claims of third-party damage caused by leaking storage tanks covered by the fund beyond the limits currently specified in law and must specify the limits of the legal defense in its coverage documents and rules.

For claims of contamination released from either underground or aboveground storage tanks before December 31, 2007, the board will only provide money for costs incurred by December 31, 2020. For claims made after December 31, 2007, the board will only provide money for costs incurred on or before the tenth year from when the release was reported to the board.

The bill requires that if some or all of the money generated by the surcharge on each transport load of petroleum is used for purposes other than those allowed by law, all the moneys shall be fully repaid to the fund within one year plus interest at a specified rate.

Currently, the board does not charge a new registration fee for a tank covered by the fund when a change of ownership occurs. The bill would allow the board to charge a new registration fee after a change of ownership and would also require all new applicants to conduct a site assessment before participating in the fund, regardless of if the owner of the tank previously held insurance or other financial responsibility for the tank.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Natural Resources  
Petroleum Storage Tank Insurance Fund Board of Trustees  
Department of Agriculture  
Department of Revenue  
Office of Administration - Facilities Management, Design and Construction  
Department of Health and Senior Services  
Office of the Governor

Ross Strope



Acting Director  
February 20, 2018