

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3580-06
Bill No.: Truly Agreed To and Finally Passed HCS for SCS for SB 907
Subject: Agriculture Dept.; Environmental Protection; Insurance - Property; Liability;
 Motor Fuel; Natural Resources Dept.; Waste - Hazardous
Type: Original
Date: June 2, 2008

Bill Summary: Modifies provisions pertaining to petroleum fuel storage tanks

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Petroleum Storage Tank Insurance Fund (PSTIF) *	\$0 to \$1,398,200	\$0 to \$1,398,200	\$5,771,510 to \$6,969,710
Total Estimated Net Effect on Other State Funds	\$0 to \$1,398,200	\$0 to \$1,398,200	\$5,571,510 to \$6,969,710

***Does not reflect any revenue from the \$500 surcharge authorized in Section 319.133.6 as it is unknown if this tool would be utilized and the number of new applicants that could be subject to the surcharge is unknown.**

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on FTE	0	0	0

- Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).
- Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Health** and **Department of Revenue** assume no fiscal impact to their agency.

Officials from the **State Treasurer's Office (STO)** assume due to the fact that STO is the administrator and not the custodian of the fun. There is no impact to the STO.

Officials from the **Department of Agriculture (AGR)** assume the AGR inspects retail fuel dispensers every six months for accuracy. During the inspection process, it is necessary for field staff to return product back into an underground storage tank system. It is unclear under section 319.136, if a system is red-tagged and the Department of Agriculture has to remove the tag for testing purposes, who has the responsibility of reapplying the tag and/or contacting the Department of Natural Resources. It is important that both agencies work cooperatively to develop a universal tag that can be utilized by either agency.

The Department of Agriculture has regulatory authority pertaining to aboveground storage tank facilities. Many of the releases originate from aboveground storage tank systems and associated piping. Though these systems have been eligible for coverage in the PSTIF since 1997, participation in the fund has been very low. This is due largely in part to deficiencies making them ineligible. In order to participate in the PSTIF, locations must be in compliance with all regulations pursuant to Chapter 414, RSMo. This will reduce the need for alternative enforcement methods and ensure all businesses meet the same standards; therefore, making for a more equitable marketplace. In addition, it is unclear in section four (4), what department will be responsible for promulgating rules, the Department of Agriculture or the Department of Natural Resources.

Department of Natural Resources (DNR)

Section 260.1003(5)(c) of this proposal would amend the definition of environmental response project contained in the Missouri Environmental Covenants Act to exclude plans or work performed for environmental releases from aboveground or underground storage tanks.

ASSUMPTION (continued)

This proposal would require the Hazardous Waste Management Commission to propose a rule to implement section 319.109 by March 13, 2009.

Under Section 319.129.8 the Board of Trustees of the Petroleum Storage Tank Insurance Fund would be a type III agency and would appoint an executive director and other employees as needed. The executive director would have change of the offices, operations, records, and other employees of the board, subject to the director of the board.

319.129.16 of the proposal extends the sunset of the PSTIF 10 years to December 31, 2020.

Under current law, an owner or operator of petroleum storage tanks may participate in the PSTIF to partially meet financial responsibility requirements. Section 319.131 removes “partially” and references a new section of the proposal (414.036) which would require financial responsibility for aboveground storage tanks.

This proposal allows other interested parties to serve on the PSTIF Advisory Committee. The requirement that the advisory committee report to the General Assembly on the status and availability of private insurance for fuel storage tanks is changed from annually to every four years. This legislation removes the requirement that the advisory committee consult with the Department of Insurance in preparing the report.

This proposal provides that after December 31, 2017, the current legal owner of a site where an aboveground or underground storage tank was taken out of service prior to December 31, 1997 shall be considered the responsible party for the cleanup.

This proposal raises the maximum amount that participants pay to the PSTIF from \$300 per tank per year to \$500 per tank per year.

Section 319.133.6 would give authority to PSTIF to establish rules requiring new applicants, who have not previously held private insurance or other form of financial security for the petroleum storage tank to conduct a site assessment prior to participating in the fund and to have the authority to require new applicants to pay a surcharge per year, per tank from the date the tank was eligible for participation in the fund, provided that each year's surcharge would not exceed the surcharge that was in effect for that particular year.

The proposed legislation would require the department to prohibit delivery of fuel to an underground storage tank (UST) that does not have required spill prevention, overfill protection, leak detection or corrosion protection installed. The department would notify the owner or

ASSUMPTION (continued)

operator in writing of the non-compliance and affix a red violation tag to the fill pipe of the UST system stating that the tank is in violation and ineligible to receive petroleum.

Upon receipt of documentation from the tank owner or operator that satisfactorily indicates resolution of the violation, the department shall authorize removal of the red tag, unless an inspection is required. If an inspection is required, such inspection shall take place within twenty-four hours after receiving notification from the owner or operator.

Failure by the state to comply with the Environmental Protection Agency (EPA) requirements may cause the EPA to withhold Subtitle I funding through the Leaking Underground Storage Tanks Cooperative Agreement. The state currently receives approximately \$1.2 million annually under the Leaking Underground Storage Tank Cooperative Agreement. (It should be noted that this only applies to tag out provisions and not the rest of the bill).

An owner or operator of an underground storage that is not found to be the source of a release for which the department has ordered non routine testing shall be reimbursed for all reasonable direct costs related to the testing and monitoring from the PSTIF.

Section 319.133 increases the range in which PSTIF participants pay to the fund on an annual basis. The current range is from \$100 to \$300. This proposal would increase the current maximum to \$500. As of 12-31-07 according to HWP records, approximately 2621 facilities participate in the PSTIF representing 78% of all UST facilities. There are an estimated 9,018 USTs that require financial responsibility. 78% of 9,018 USTs equal 6,991 estimated number of tanks participating in the fund.

The current maximum of \$300 paid annually to the fund times 6991 tanks = \$2,097,300
The proposed maximum of \$500 paid annually to the fund times 6991 tanks = \$3,495,500. The difference equals \$1,398,200.

The total potential net increase to owners/operators participating in the fund \$1,398,200.

Section 319.129.15 of the proposal extends the sunset of the STIF 10 years to December 31, 2020. It is unclear from records the department has access to what the projected revenue would be in any given fiscal year. However, the Form 9 for the Petroleum Storage Tank Insurance fund in FY07 lists the total receipt source amount at \$28,323,790. For purposes of this fiscal note, the department assumes the extension of the sunset date would result in 6 months of additional revenue in FY11, or \$14,161,895. Also, from the Form 9, the total obligations in FY07 was \$17,180,769. For purposes of this fiscal note, the department assumes the extension of the sunset date would result in 6 months of additional obligations in FY11, or \$8,590,385.

ASSUMPTION (continued)

Section 319.133.6 would give authority to PSTIF to establish rules requiring new applicants, who have not previously held private insurance or other form of financial security for the petroleum storage tank to conduct a site assessment prior to participating in the fund and to have the authority to require new applicants to pay a surcharge per year, per tank from the date the tank was eligible for participation in the fund, provided that each year's surcharge would not exceed the surcharge that was in effect for that particular year.

Section 319.136 - the delivery prohibition portion of this proposal would meet the minimum requirements of the federal Energy Policy Act of 2005 signed by President Bush on August 8, 2005. The Energy Policy Act of 2005 included preventative measures, such as delivery prohibition of product, and operator training for three levels of personnel (both addressed in this proposal). Secondary containment or installer/manufacturer liability insurance, and increased inspection frequency, that are contained in the underground storage tank requirements of the federal law, will need to be addressed in the future.

The installation of spill prevention, overfill protection, leak detection, and corrosion protection equipment on all regulated underground storage tanks were part of the federally mandated 1998 upgrade requirements.

The delivery prohibition portion of this proposal would provide an additional tool the department can use to address severe tank deficiencies. The department would not anticipate a direct fiscal impact from the delivery prohibition portion of this proposal.

Officials from the **Missouri Petroleum Storage Tank Insurance Fund (PSTIF)** assume current state law provides for the continued operation of the PSTIF beyond 2010 to pay "runout claims;" no new claims would be accepted after that date so, over time, our current claims operations would shrink until all cleanups were completed and all claims paid. Under current law, the PSTIF would no longer provide insurance coverage to tank owners after 2010.

The primary effect of this bill on the PSTIF would be to (a) extend the current operations that involve reviewing insurance applications and issuing coverage documents, and (b) extend the current claims operation at its current level, rather than at a reduced level.

As indicated above, the 2007 actuarial study prepared for the PSTIF Board of Trustees was used to prepare this fiscal note.

ASSUMPTION (continued)

The following specific assumptions were used:

- a. That if this bill is enacted, the PSTIF Board of Trustees would reduce the transport load fee from its current level to \$25 per load, effective January 1, 2009. While this would decrease revenues to the PSTIF in the short term, the extension of the sunset date would provide significant additional future revenues, which would more than offset the short-term reduction in revenues and would be sufficient to meet the PSTIF's long-term liabilities.
- b. That the PSTIF Board would continue to use a third party administrator to issue coverage documents and provide claims adjusting services.
- c. That additional underwriting expenses of \$170,000 would be incurred for the period January-June 2011, (i.e., in the latter half of FY11).
- d. That participation in the Fund by AST owners would double by 12/31/10.
- e. That if the Fund's sunset date is not extended, there will be a significant increase in new claims filed during calendar year 2010. The cost of responding to these claims is also shown as an avoided cost in Part III of the worksheet. This figure includes ten hours of work on 250 additional claims at current contract rates, (\$225,250), and initial claim payments of \$10,000 on half of those claims, (\$1,250,000).

<u>FISCAL IMPACT - State Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
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**PETROLEUM STORAGE TANK
 INSURANCE FUND (PSTIF)**

<u>Revenue - Receipt Sources **</u>	\$0	\$0	\$14,161,895
<u>Revenue - Increased Annual Payment to STIF</u>	\$0 to <u>\$1,398,200</u>	\$0 to <u>\$1,398,200</u>	\$0 to <u>\$1,398,200</u>
Total Fund Revenue	\$0 to <u>\$1,398,200</u>	\$0 to <u>\$1,398,200</u>	\$14,161,895 to <u>\$15,560,095</u>
<u>Cost - STIF's ongoing obligations based on Form 9 **</u>	<u>\$0</u>	<u>\$0</u>	<u>(\$8,590,385)</u>

ESTIMATED NET EFFECT ON PETROLEUM STORAGE TANK INSURANCE FUND	<u>\$0 to \$1,398,200</u>	<u>\$0 to \$1,398,200</u>	<u>\$5,771,510 to \$6,969,710</u>
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****It is unclear from records the DNR has access to what the projected revenue would be in any given fiscal year. However, the Form 9 for the STIF in FY07 lists the total receipt source amount at \$28,323,790. For purposes of this fiscal note the DNR assumes the extension of the sunset date would result in 6 months of additional revenue in FY11, or \$14,161,895. Also from the Form 9, the total obligations in FY07 was \$17,180,769. For purposes of this fiscal note the DNR assumes the extension of the sunset date would result in 6 months of additional obligations in FY11, or \$8,590,385.**

<u>FISCAL IMPACT - Local Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Department of Agriculture

Currently there are 5,449 aboveground storage tanks in Missouri. It is unknown how many of these would be located at small businesses. The annual premium offered by the PSTIF, Section 319.129, RSMo is \$100.00 per tank.

Department of Natural Resources (DNR)

This proposal would require that owners and operators of aboveground storage tanks containing petroleum maintain evidence of financial responsibility in an amount sufficient to cover at least \$1 million per occurrence and \$2 million annually in aggregate.

After December 31, 2017, the current legal owner of a site where an aboveground or underground storage tank was taken out of use prior to December 31, 1997 would be considered the responsibility party for cleanup of any petroleum contamination.

Participants in the Petroleum Storage Tank Insurance Fund (PSTIF) pay annually an amount of \$100 to \$300 per year to the fund. This proposal would increase the maximum amount that participants may pay to the fund to \$500.

Section 319.133.6 would give authority to PSTIF to establish rules requiring new applicants, who have not previously held private insurance or other form of financial security for the petroleum storage tank to conduct a site assessment prior to participating in the fund and to have the authority to require new applicants to pay a surcharge per year, per tank from the date the tank was eligible for participation in the fund, provided that each year's surcharge would not exceed the surcharge that was in effect for that particular year.

Petroleum Storage Tank Insurance Fund (PSTIF)

Yes, both positive and negative, though we believe the overall impact would be far more positive than negative.

Many convenience stores and other small businesses store fuel in aboveground or underground tanks, (ASTs or USTs). All UST owners are required by federal and state law to have pollution liability insurance; by extending the operation of the PSTIF, these businesses will continue to have access to insurance that is less expensive and provides better coverage than that available in the commercial market.

FISCAL IMPACT - Small Business (continued)

About 25-30% of AST owners already participate in the PSTIF; as with UST owners, this bill would have a positive effect on them by extending their access to inexpensive and broad pollution liability insurance coverage. However, the bill would require those AST owners that do not have any pollution liability insurance to obtain it by 12/31/10. To get coverage from the PSTIF, AST facilities are required to comply with fire and safety regulations administered by the Petroleum Program of the Department of Agriculture. Some AST owners may have to purchase or upgrade their equipment in order to comply with those requirements. We are unable to estimate these costs; data may be available from the Department of Agriculture.

Finally, the bill would significantly impact small businesses who buy and/or sell properties that are or were gas stations, (or other types of property where tanks were operated). Many of these types of properties are bought and sold each year in Missouri, and lenders indicate the existence of the PSTIF is critical to providing financing. No study of this impact has been done, so we are unable to quantify it, but if the PSTIF's sunset date is not extended beyond 2010, we believe there will be a significant and negative impact on small businesses who need financing to purchase these types of properties.

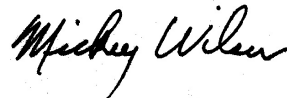
FISCAL DESCRIPTION

The proposed legislation modifies provisions pertaining to petroleum fuel storage tanks.

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 Agriculture
Department of Natural Resources
State Treasurer's Office
Department of Insurance, Financial Management
and Professional Registration
Department of Health
Department of Revenue
Petroleum Storage Tank Insurance Fund Board of Trustees



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Mickey Wilson, CPA
Director
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