

AN ACT

To amend sections 1509.38, 3737.91, and 3737.92 and to enact sections 1510.01 to 1510.13 and 1510.99 of the Revised Code to provide for the establishment of an oil and natural gas marketing program and to add requirements for eligibility to receive payment from the Petroleum Underground Storage Tank Financial Assurance Fund.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1509.38, 3737.91, and 3737.92 be amended and sections 1510.01, 1510.02, 1510.03, 1510.04, 1510.05, 1510.06, 1510.07, 1510.08, 1510.09, 1510.10, 1510.11, 1510.12, 1510.13, and 1510.99 of the Revised Code be enacted to read as follows:

Sec. 1509.38. There is hereby created in the division of oil and gas a technical advisory council on oil and gas, which shall consist of eight members to be appointed by the governor with the advice and consent of the senate. Three members shall be independent oil or gas producers, operators, or their representatives, operating and producing primarily in ~~Ohio~~ this state, three members shall be oil or gas producers, operators, or their representatives having substantial oil and gas producing operations in ~~Ohio~~ this state and at least one other state, one member shall represent the public, and one member shall represent persons having landowners' royalty interests in oil and gas production. All members ~~must~~ shall be residents of ~~Ohio~~ this state, and all members, except the members representing the public and persons having landowners' royalty interests, ~~must~~ shall have at least five years of practical or technical experience in oil or gas drilling and production. Not more than one member may represent any one company, producer, or operator.

Terms of office shall be for three years, commencing on the first day of February and ending on the thirty-first day of January, ~~except that upon expiration of the term ending February 1, 1976, the new term which succeeds it shall commence on February 2, 1976 and end on January 31,~~

~~1979; upon expiration of the terms ending on February 2, 1975, the new terms which succeed them shall commence on February 3, 1975 and end on January 31, 1978; and upon expiration of the terms ending on February 4, 1973, the new terms which succeed them shall commence on February 5, 1973 and end on January 31, 1976.~~ Each member shall hold office from the date of ~~his~~ the member appointment until the end of the term for which ~~he~~ the member was appointed. A vacancy in the office of a member shall be filled by the governor, with the advice and consent of the senate. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which ~~his~~ the member's predecessor was appointed shall hold office for the remainder of ~~such that~~ that term. Any member shall continue in office subsequent to the expiration date of ~~his~~ the member's term until ~~his~~ the member's successor takes office, or until a period of sixty days has elapsed, whichever occurs first.

The council shall select from among its members a ~~chairman~~ chairperson, a ~~vice-chairman~~ vice-chairperson, and a secretary. All members are entitled to their actual and necessary expenses incurred in the performance of their duties as ~~such~~ members, payable from the appropriations for the division.

The governor may remove any member for inefficiency, neglect of duty, or malfeasance in office.

The council shall hold at least one regular meeting in each quarter of a calendar year; and shall keep a record of its proceedings. Special meetings may be called by the ~~chairman~~, chairperson and shall be called by ~~him~~ the chairperson upon receipt of a written request ~~therefor~~ signed by two or more members of the council. A written notice of the time and place of each meeting shall be sent to each member of the council. Five members constitute a quorum, and no action of the council is valid unless five members concur.

The council ~~shall~~, when requested by the chief of the division of oil and gas, shall consult with and advise the chief and perform ~~such~~ other duties as that may be lawfully delegated to it by the chief. The council ~~shall have the right to~~ may participate in hearings held by the chief ~~pursuant to Chapter 1509. of the Revised Code, under this chapter and shall have~~ has powers of approval as provided in sections 1509.24 and 1509.25 of the Revised Code. The council shall conduct the activities required, and exercise the authority granted, under Chapter 1510. Of the Revised Code.

Sec. 1510.01. As used in this chapter:

(A) "First purchaser" means:

(1) With regard to crude oil, the person to whom title first is transferred

beyond the gathering tank or tanks, beyond the facility from which the crude oil was first produced, or both;

(2) With regard to natural gas, the person to whom title first is transferred beyond the inlet side of the measurement station from which the natural gas was first produced.

(B) "Independent producer" means a person who complies with both of the following:

(1) produces oil or natural gas and is not engaged in refining either product;

(2) derives a majority of income from ownership in properties producing oil or natural gas.

(C) "Qualified independent producer association" means an association that complies with all of the following:

(1) It is in existence on the effective date of this section;

(2) It is organized and operating within this state;

(3) A majority of the members of its governing body are independent producers.

(D) "Technical advisory council" or "council" means the technical advisory council created in the division of oil and gas under section 1509.38 Of the Revised Code.

Sec. 1510.02. In accordance with this chapter, the technical advisory council shall do all of the following:

(A) Establish procedures by which independent producers in this state may propose, develop, and operate a marketing program to do all of the following:

(1) Demonstrate to the general public the importance and economic significance of the oil and natural gas industry in this state;

(2) Encourage the wise and efficient use of energy;

(3) Promote environmentally sound production methods and technologies in the industry;

(4) Support research and educational activities concerning the industry.

(B) Establish procedures necessary to implement and administer this chapter;

(C) Determine the eligibility of independent producers to participate in referendums and other procedures that may be required to establish a marketing program for oil and natural gas.

Sec. 1510.03. A marketing program that is established under this chapter may include authority to do at least all of the following:

(A) Carry out the purposes of the program identified in section 1510.02 Of the Revised Code;

(B) Enter into contracts with qualified organizations, agencies, or individuals, or any combination thereof, to carry out those purposes;

(C) Contribute to any national or regional marketing program for oil and natural gas if the program is exclusively for the same purposes as the program established under this chapter.

Sec. 1510.04. (A) Independent producers in this state may present the technical advisory council with a petition signed by the lesser of one hundred or ten per cent of all such producers requesting that the council hold a referendum in accordance with section 1510.05 Of the Revised Code to establish a marketing program for oil and natural gas or to amend an existing program.

(B) At the time of presentation of the petition to the council under division (A) of this section, the petitioners also shall present the proposed program or amendment, which shall include all of the following:

(1) The rate of assessment to be made on the production of oil and natural gas in this state, which shall not exceed one cent per each gross barrel of oil and one-tenth of one cent per thousand cubic feet of natural gas;

(2) Terms, conditions, limitations, and other qualifications for assessment;

(3) Procedures to refund the assessment.

(C) Before making a decision under this division to approve or disapprove a proposed program or amendment, the council shall publish in at least two appropriate periodicals designated by the council a notice that the program or amendment has been proposed and informing interested persons of the procedures for submitting comments regarding the proposal. After publishing the notice, the council shall provide interested persons with a copy of the proposed program or amendment and an opportunity to comment on the proposed program or amendment for thirty days after the publication of the notice. The petitioners may make changes to the proposed program or amendment based upon the comments received. The council may make technical changes to the proposal to ensure compliance with this chapter. Subsequent to any changes made by the petitioners or any technical changes made by the council to a proposed program or amendment, the council may approve or disapprove the proposed program or amendment.

(D) If the council approves the proposed program or amendment, with any changes made under division (C) of this section, the council shall hold a referendum in accordance with section 1510.05 Of the Revised Code to establish a marketing program for oil and natural gas or to amend an existing program.

Sec. 1510.05. (A) Not later than ninety days after the technical advisory

council has approved a marketing program proposed under section 1510.04 Of the Revised Code, or an amendment to such a program, the council shall determine by a referendum whether the eligible independent producers, as determined under division (C) of section 1510.02 Of the Revised Code, favor the proposed program or amendment. The council shall cause a ballot request form to be published not less than thirty days before the beginning of the election period established under division (B) of this section in at least two appropriate periodicals designated by the council and shall make the form available for reproduction to any qualified independent producer association.

(B) In a referendum held under this section, each eligible independent producer is entitled to one vote. The council shall establish a three-day period during which eligible independent producers may vote either in person during normal business hours at polling places designated by the council or by mailing a ballot to such a polling place. The council shall send a mail-in ballot by first-class mail to any eligible independent producer who requests one by sending in the ballot request form provided for in division (A) of this section, by calling one of the polling places designated by the council, or by any additional method that the council may provide. A ballot that is returned by mail is not valid if it is postmarked later than the third day of the election period established by the council.

(C) A marketing program or an amendment to a marketing program is favored by independent producers if a majority of the independent producers who vote in the referendum vote in favor of the program or amendment. If the independent producers who vote in the referendum do not favor the proposed program or amendment, the council shall not hold another referendum on the proposed program or amendment during the ten months following the close of the referendum at which the independent producers did not favor the proposed program or amendment.

Sec. 1510.06. (A) When the independent producers who vote in a referendum held under section 1510.05 Of the Revised Code favor a proposed marketing program, the technical advisory council shall order the program established. The council shall appoint an operating committee consisting of seven members. Six of the members shall be independent producers. The council shall select those members from lists of names submitted by qualified independent producer associations. Each member who is an independent producer shall be at least twenty-five years old, be a resident of this state, and have at least five years of active experience in the oil and natural gas industry.

represents farmers. The council shall select that member from a list submitted by such an organization.

Of the initial appointments, the council shall appoint two members for terms of one year, two members for terms of two years, and three members for terms of three years. Thereafter, the council shall appoint each member for a three-year term unless the appointee is to fill a vacancy, in which case the appointee shall be appointed for the unexpired term. Each such subsequent appointment shall be made prior to the expiration date of the preceding or vacant term. The council shall not appoint any member of an operating committee to serve more than three successive full three-year terms.

(B) Each member of an operating committee is entitled to actual and necessary travel and incidental expenses while attending meetings of the committee or while engaged in the performance of official responsibilities delegated to the committee.

(C) No person is liable in a civil action for any actions taken in good faith as a member of an operating committee.

Sec. 1510.07. The technical advisory council shall monitor the actions of an operating committee to ensure all of the following:

(A) A marketing program is self-supporting;

(B) The committee keeps all records that are required for agencies of the state;

(C) All program operations are in accord with both of the following:

(1) The provisions of the marketing program;

(2) This chapter and procedures established under it.

Sec. 1510.08. (A)(1) Except as provided in division (A)(2) of this section, an operating committee may levy assessments on the production of oil and natural gas in this state for the purposes of a marketing program established under this chapter.

(2) An operating committee shall not levy an assessment that was not approved by independent producers or that exceeds the amount authorized under division (B)(1) of section 1510.04 Of the Revised Code. An operating committee shall not levy an assessment against an independent producer who is not eligible to vote in a referendum for the marketing program that the operating committee administers, as determined under division (C) of section 1510.02 Of the Revised Code.

(B) The technical advisory council may require a first purchaser to withhold assessments from any amounts that the first purchaser owes to independent producers and, notwithstanding division (A)(2) of this section, to remit them to the chairperson of the council at the office of the division of

oil and gas. A first purchaser who pays an assessment that is levied pursuant to this section for an independent producer may deduct the amount of the assessment from any moneys that the first purchaser owes the independent producer.

(C) A marketing program shall require a refund of assessments collected under this section after receiving an application for a refund from an independent producer. An application for a refund shall be made on a form furnished by the council. The operating committee shall ensure that refund forms are available where assessments for its program are withheld.

An independent producer who desires a refund shall submit a request for a refund not later than the thirty-first day of March of the year in which the request is submitted. The council shall refund the assessment to the independent producer not later than the thirtieth day of June of the year in which the request for the refund is submitted.

(D) An operating committee shall not use moneys from any assessments that it levies for any political or legislative purpose or for preferential treatment of one person to the detriment of another person who is affected by the marketing program that the operating committee administers.

Sec. 1510.09. (A) There is hereby established a fund for any marketing program that is established by the technical advisory council under this chapter. The fund shall be in the custody of the treasurer of state, but shall not be part of the state treasury. Except as authorized in division (B) of this section, all moneys collected pursuant to section 1510.08 Of the Revised Code for the marketing program shall be paid into the fund for the marketing program and shall be disbursed only pursuant to a voucher signed by the chairperson of the council for use in defraying the costs of administration of the marketing program and for carrying out sections 1510.02, 1510.03, and 1510.11 Of the Revised Code.

(B) In lieu of deposits in the fund established under division (A) of this section, the operating committee of a marketing program established under this chapter may deposit all moneys collected pursuant to section 1510.08 Of the Revised Code with a bank or a savings and loan association as defined in sections 1101.01 and 1151.01 Of the Revised Code. All moneys collected pursuant to section 1510.08 Of the Revised Code for the marketing program and deposited pursuant to this division also shall be used only in defraying the costs of administration of the marketing program and for carrying out sections 1510.02, 1510.03, and 1510.11 Of the Revised Code.

(C) An operating committee shall establish a fiscal year for its marketing program, shall publish an activity and financial report within sixty days of the end of each fiscal year, and shall make the report available

to each independent producer who pays an assessment or otherwise contributes to the marketing program that the committee administers and to other interested persons.

(D) In addition to the report required by division (C) of this section, an operating committee that deposits moneys in accordance with division (B) of this section shall submit to the council both of the following:

(1) Annually, a financial statement prepared by a certified public accountant holding valid certification from the Ohio board of accountancy issued pursuant to Chapter 4701. Of the Revised Code. The operating committee shall file the financial statement with the council not more than sixty days after the end of each fiscal year.

(2) Monthly, an unaudited financial statement.

Sec. 1510.10. (A) The technical advisory council temporarily may suspend the operation of a marketing program, or any part of a program, for any reason upon recommendation by the operating committee of the program for a period of not more than twelve consecutive months.

(B) At least once in each five years of operation, or at any time upon written petition by the lesser of one hundred or ten per cent of the independent producers in this state, the council shall hold a hearing as prescribed in Chapter 119. Of the Revised Code to consider the continuation of the program.

(C) Not later than thirty days after the close of any hearing to consider the continuation of a marketing program, the council shall recommend continuation or termination of the program, shall give public notice, and shall notify each independent producer of record, all parties appearing at the hearing, and other interested parties of the recommendation.

(D) When the council recommends termination of a marketing program, within forty-five days the council shall conduct a referendum to determine whether independent producers favor the proposed termination. Independent producers favor the termination of the program if a majority of the independent producers who vote in the referendum vote in favor of termination of the program.

Sec. 1510.11. When independent producers favor termination of a marketing program established under this chapter, the operating committee of the program and the technical advisory council shall terminate all operations of the program. Upon termination of the program, the council shall return any remaining unobligated moneys to the independent producers who paid the assessments levied under section 1510.08 Of the Revised Code during the immediately preceding twelve months and shall prorate the moneys accordingly.

Sec. 1510.12. The technical advisory council may institute an action at law or in equity that appears necessary to enforce compliance with this chapter, a procedure established under it, or a marketing program established under it.

Sec. 1510.13. (A) No person shall knowingly fail or refuse to withhold or remit any assessment levied under section 1510.08 Of the Revised Code.

(B) Before criminal proceedings are instituted pursuant to this section, the technical advisory council shall give the alleged violator an opportunity to present the alleged violator's views concerning why the proceedings should not be instituted.

Sec. 1510.99. Whoever violates section 1510.13 Of the Revised Code is guilty of a misdemeanor of the fourth degree.

Sec. 3737.91. (A) There is hereby created the petroleum underground storage tank financial assurance fund, which shall be in the custody of the treasurer of state, but is not a part of the state treasury. The fund shall consist of moneys from the following sources:

(1) All fees collected under divisions (B) and (F) of this section and all supplemental fees collected under division (C) of this section;

(2) Interest earned on moneys in the fund;

(3) Appropriations to the fund from the general revenue fund;

(4) The proceeds of revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code, provided that upon resolution of the petroleum underground storage tank release compensation board created in section 3737.90 of the Revised Code, all or part of those proceeds may be deposited into a separate account of the fund. Chapters 131. and 135. of the Revised Code do not apply to the establishment, deposit, investment, application, and safeguard of any such account and moneys in any such account.

(B) For the purposes of paying the costs of implementing and administering this section and sections 3737.90 and 3737.92 of the Revised Code and rules adopted under them; payment or reimbursement of corrective action costs under section 3737.92 of the Revised Code; compensating third parties for bodily injury or property damage under that section; and payment of principal and interest on revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code to raise capital for the fund, there is hereby assessed an annual petroleum underground storage tank financial assurance fee on each tank comprising an underground storage tank or an underground storage tank system that contains or has contained petroleum and for which a responsible person is required to demonstrate financial responsibility by rules adopted by the fire marshal

under division (B) of section 3737.882 of the Revised Code. The fee assessed by this division shall be paid to the board by a responsible person for each tank that is subject to the fee. The fee shall be paid not later than the first day of July of each year, except that in 1989 the fee shall be paid by either the first day of September or ninety days after July 11, 1989, whichever is later. The fee is in addition to any fee established by the fire marshal under section 3737.88 of the Revised Code.

The amount of the annual fee due in 1989 and 1990 is one hundred fifty dollars per tank per year. In 1991 and subsequent years the board shall establish the amount of the annual fee in accordance with this division. Not later than the first day of April of 1991 and each subsequent year, the board, in consultation with the administrative agent of the fund with whom the board has entered into a contract under division (B)(3) of section 3737.90 of the Revised Code, if any, shall determine the amount of the annual fee to be assessed in that year and shall adopt rules in accordance with Chapter 119. of the Revised Code to establish the fee at that amount. The fee shall be established at an amount calculated to maintain the continued financial soundness of the fund, provided that if the unobligated balance of the fund exceeds forty-five million dollars on the date that an annual determination is made, the board may assess a fee in the year to which the determination applies only to the extent required in or by, or necessary to comply with covenants or other requirements in, revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code or in proceedings or other covenants or agreements related to such bonds. Not later than the first day of May of 1991 and each subsequent year, the board shall notify each responsible person by certified mail of the amount of the annual fee per tank due in that year. As used in this paragraph, "proceedings" has the same meaning as in section 133.01 of the Revised Code.

If a responsible person is both the owner and operator of a tank, ~~he~~ the responsible person shall pay any annual fee assessed under this division in compliance with this division and the rules adopted thereunder. If the owner of the tank and the operator of the tank are not the same person, any annual fee assessed under this division in compliance with this division and the rules adopted thereunder shall be paid by one of the responsible persons; however, all such responsible persons are liable for noncompliance with this division.

(C) As necessary to maintain the financial soundness of the fund, the board, by rules adopted in accordance with Chapter 119. of the Revised Code, may at any time assess a supplemental petroleum underground storage tank financial assurance fee on tanks subject to the fee assessed

under division (B) or (F) of this section in any fiscal year in which the board finds that the unobligated balance in the fund is less than fifteen million dollars. The board, in consultation with the fund's administrative agent, if any, shall establish the amount of the supplemental fee at an amount that will ensure an unobligated balance in the fund of at least fifteen million dollars at the end of the fiscal year in which the supplemental fee is assessed. Not less than thirty days before the date on which payment of the supplemental fee is due under the board's rules, the board shall notify each responsible person by certified mail of the amount of the supplemental fee and the date on which payment of the supplemental fee to the board is due.

If a responsible person is both the owner and operator of a tank, ~~he~~ the responsible person shall pay any supplemental fee assessed under this division in compliance with this division and the rules adopted thereunder. If the owner of the tank and the operator of the tank are not the same person, any supplemental fee assessed under this division in compliance with this division and the rules adopted thereunder shall be paid by one of the responsible persons; however, all such responsible persons are liable for noncompliance with this division.

(D)(1) The board shall issue a certificate of coverage to any responsible person who has complied with ~~both~~ all of the following:

(a) Paid the fee assessed under division (B) or (F) of this section;

(b) Demonstrated to the board financial responsibility in compliance with the rules adopted by the fire marshal under division (B) of section 3737.882 of the Revised Code for the deductible amount established under division (E) of this section or, when appropriate, the reduced deductible amount established under division (F) of this section. If the responsible person utilizes self-insurance as a financial responsibility mechanism, ~~he~~ the responsible person shall provide the board with an affidavit in which the responsible party certifies that all documentation submitted to the board is true and accurate;

(c) Certified to the board that for each petroleum underground storage tank system for which a certificate of coverage is sought, the responsible person is in compliance with applicable rules for petroleum underground storage tank systems that have been adopted by the fire marshal under section 3737.88 Of the Revised Code.

The certificate of coverage shall state the amount of coverage to which the responsible ~~party~~ person is entitled from the fund pursuant to division (D)(3) of this section and the time period for which the certificate provides that coverage. An issued certificate of coverage is subject to the condition that the holder timely pay any supplemental fee assessed under division (C)

of this section during the time that the certificate is in effect.

(2) The board shall not issue a certificate of coverage to any responsible person who fails to comply with divisions (D)(1)(a) ~~and~~, (b), and (c) of this section.

(3) The maximum disbursement from the fund for any single release of petroleum is the difference between the deductible amount established under division (E) of this section or, when appropriate, the reduced deductible amount established under division (F) of this section and one million dollars. The maximum disbursement from the fund during any fiscal year on behalf of any responsible person shall not exceed in the aggregate one million dollars less the deductible amount if the responsible person owns or operates not more than one hundred tanks comprising underground petroleum storage tanks or underground petroleum storage tank systems, shall not exceed in the aggregate two million dollars less the deductible amount if the responsible person owns or operates not more than two hundred such tanks, shall not exceed in the aggregate three million dollars less the deductible amount if the responsible person owns or operates not more than three hundred such tanks, and shall not exceed in the aggregate four million dollars less the deductible amount if the responsible person owns or operates more than three hundred such tanks. The maximum disbursement from the fund for any single release or for any fiscal year under this division does not in any manner limit the liability of a responsible person for a release of petroleum.

(E)(1) Except as otherwise provided in division (F) of this section, no responsible person is eligible to receive moneys from the fund under section 3737.92 of the Revised Code until ~~he~~ the responsible person demonstrates to the board financial responsibility for the first fifty thousand dollars of the cost for corrective action for, and compensating third parties for bodily injury and property damage caused by, accidental releases of petroleum from an underground storage tank owned or operated by the responsible party. The fifty thousand dollar amount is the deductible amount for the purposes of this section and section 3737.92 of the Revised Code.

(2) The board, in consultation with the fund's administrative agent, if any, may, by rules adopted in accordance with Chapter 119. of the Revised Code, establish for any fiscal year a deductible amount that differs from fifty thousand dollars. The deductible amount established by the board shall be such an amount as to maintain the financial soundness of the fund. Any action of the board to establish a differing deductible amount or to alter a deductible amount previously established by it shall be taken concurrently with the establishment under division (B) of this section of the annual fee

due on the first day of the fiscal year in which the deductible amount will apply. If the deductible amount established under this division differs from that in effect at the time of the board's action, the board shall notify each responsible person of the change by certified mail not later than the first day of May preceding the effective date of the change.

(F)(1) Any responsible person owning, or owning or operating, a total of six or fewer petroleum underground storage tanks may elect in calendar years 1989 and 1990 to pay twice the amount of the per tank annual fee for each tank assessed under division (B) of this section in order to reduce the amount of the deductible established in division (E) of this section to the total amount of ten thousand dollars. The election shall be available only at the time of the payment of the annual fee and any supplemental fee. The election shall not be retroactively applied.

(2) Any responsible person owning, or owning or operating, a total of six or fewer petroleum underground storage tanks may elect in calendar year 1991 and in each subsequent year to pay an additional fee at an amount established by the board in addition to the per tank annual fee assessed under division (B) of this section in order to reduce the deductible amount established under division (E) of this section. In calendar year 1991 and in each subsequent year, the board shall establish the amount of the additional fee and the reduced deductible amount. In determining the amount of the additional fee and the reduced deductible amount, the board shall take into consideration the effect of the additional claims paid under section 3737.92 of the Revised Code to responsible persons making an election under division (F)(2) of this section and balance that consideration with such factors as the availability of liability insurance, the difficulty of proving financial responsibility pursuant to the rules adopted by the fire marshal under division (B) of section 3737.882 of the Revised Code, and the hardship created on small owners and operators of petroleum underground storage tanks by an increase in either the additional fee or the reduced deductible amount.

(3) Any responsible person owning, or owning or operating, a total of six or fewer petroleum underground storage tanks who elects to pay the additional fee under divisions (F)(1) and (2) of this section shall pay any per tank supplemental fee assessed under division (C) of this section.

(G) If the director of the fund determines that a responsible person has failed to comply with division (B), (C), or (F) of this section, the director of the fund shall notify each responsible person for the petroleum underground storage tank of the noncompliance. If, within thirty days after the notification, the responsible person fails to pay the applicable fee or any fee

previously assessed upon the responsible person under this section, the director of the fund shall issue an order requiring the responsible person to pay all of the fees ~~he~~ the responsible person owes to the fund and an additional late payment fee in the amount of one thousand dollars to the fund.

If a responsible person fails to comply with any order of the director of the fund within thirty days after the issuance of the order, the director shall notify the fire marshal of that noncompliance. Upon the request of the director of the fund, the attorney general may bring a civil action for appropriate relief, including a temporary restraining order or preliminary or permanent injunction, in the court of common pleas of the county in which the petroleum underground storage tank that is the subject of the order is located. The court shall issue an injunction upon a demonstration that a failure to comply with the director's order has occurred or is occurring.

Any orders issued by the director of the fund under this division may be appealed by the responsible person under division (F) of section 3737.92 of the Revised Code. For the purpose of an appeal of any order of the director of the fund, "determination" as used in that division includes any order of the director of the fund. The filing of a notice of appeal under this division does not operate as a stay of any order of the director of the fund.

Sec. 3737.92. (A) The petroleum underground storage tank release compensation board created in section 3737.90 of the Revised Code shall use moneys in the petroleum underground storage tank financial assurance fund established in section 3737.91 of the Revised Code exclusively for the following purposes:

- (1) Payment of the expenses of administering the fund;
- (2) Payment of the administrative expenses of the board;
- (3) Payment to or reimbursement of responsible persons for the necessary cost of corrective action for and compensating third parties for bodily injury and property damage caused by accidental releases of petroleum in accordance with this section, provided that proceeds from the issuance of revenue bonds under sections 3737.90 to 3737.948 of the Revised Code may only be used for the payment to or reimbursement of responsible persons for the necessary costs of corrective action for improving property damaged by accidental releases of petroleum in accordance with this section;
- (4) Deposit into any funds provided for in a resolution or resolutions of the board in connection with any revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code;
- (5) Placement of petroleum underground storage tank linked deposits

der sections 3737.95 to 3737.98 of the Revised Code.

(B) A responsible person seeking to obtain from the fund payment of or reimbursement for corrective action costs for an accidental release of petroleum shall submit a claim to the board in accordance with and containing the information required by rules adopted by the board in accordance with Chapter 119. of the Revised Code. Before authorizing any disbursement from the fund to pay all or any portion of a claim submitted under this division, the director of the fund shall first determine that the claim meets all of the following criteria:

(1) The responsible person is eligible under division (D) of this section to receive payment of or reimbursement for the corrective action costs from the fund;

(2) The corrective action performed or to be performed has been authorized by the fire marshal under section 3737.882 of the Revised Code and rules adopted under that section;

(3) The costs of performing the corrective action are necessary to comply with the rules of the fire marshal adopted under sections 3737.88 and 3737.882 of the Revised Code governing corrective actions.

(C) A responsible person seeking to obtain from the fund payment of or reimbursement for compensation paid or to be paid to third parties for bodily injury or property damage caused by an accidental release of petroleum shall submit a claim to the board in accordance with and containing the information required by rules adopted by the board in accordance with Chapter 119. of the Revised Code. Before authorizing any disbursement from the fund to pay all or any portion of a claim submitted under this division, the director of the fund shall first determine that the claim meets both of the following criteria:

(1) The responsible person who submitted the claim is eligible under division (D) of this section to receive payment of or reimbursement for the third-party compensation from the fund;

(2) There is a legally enforceable judgment against the responsible person for bodily injury or property damage to one or more third parties resulting from the release in the amount stated in the claim, or, if there is a settlement with a third party as a result of the release, the amount of the settlement stated in the claim is reasonable.

(D) A responsible person is not eligible to receive payment or reimbursement from the fund under division (B) or (C) of this section unless all of the following conditions are met:

(1) At the time that the release was first suspected or confirmed, a responsible person possessed a valid certificate of coverage issued by the

board under division (D) of section 3737.91 of the Revised Code for the petroleum underground storage tank system from which the release occurred;

(2) One of the following applies:

(a) The petroleum underground storage tank system from which the release occurred was registered in compliance with rules adopted by the fire marshal under section 3737.88 of the Revised Code when the occurrence of the release was first suspected or confirmed;

(b) The fire marshal has recommended that payment or reimbursement be made because good cause existed for the responsible person's failure to have so registered the petroleum underground storage tank system, and the responsible person has registered the petroleum underground storage tank system with the fire marshal and paid all back registration fees payable under those rules for registration of the system from the time the responsible person should have, but failed to register the system.

(3) The fire marshal has determined that, when the claim was filed, a responsible person was in compliance with all orders issued under sections 3737.88 and 3737.882 of the Revised Code regarding the petroleum underground storage tank system from which the release occurred;

(4) A responsible person demonstrates financial responsibility for the deductible amount applicable under section 3737.91 of the Revised Code for the petroleum underground storage tank system from which the release has occurred;

(5) The responsible person has not falsified any attestation contained on a registration application required by rules adopted under section 3737.88 of the Revised Code;

(6) The petroleum underground storage tank system from which the release occurred was in compliance with rules, other than rules regarding registration, adopted by the fire marshal under section 3737.88 Of the Revised Code when the occurrence of the release was first suspected or confirmed.

(E) The director of the fund may make a determination to approve or disapprove a claim and to authorize a disbursement from the fund for payment of an approved claim administratively without a hearing. If the director of the fund makes a determination regarding a claim that is inconsistent with a recommendation or determination of the fire marshal for purposes of division (B)(2) or (3) or (D)(2), (3), or (5) of this section, the director shall detail those inconsistencies in a written finding of fact before authorizing any disbursement from the fund for payment of the claim. Upon making a determination of a claim under this section, the director of the

fund shall provide written notice of the determination and a copy of any written finding of fact accompanying the determination to the responsible person who submitted the claim and to the fire marshal.

(F) If the responsible person who submitted a claim under this section or the fire marshal objects to the determination of the claim made by the director of the fund and files an objection to the determination with the board within thirty days after the mailing of the notification of the determination and finding of fact, if any, the board shall appoint a referee to conduct an adjudication hearing on the determination. The adjudication hearing shall be conducted in accordance with section 119.09 of the Revised Code. For the purposes of adjudication hearings on determinations of the director of the fund, the term "agency" as used in that section includes the board.

If any party is aggrieved by an order of the board made after the adjudication hearing on the determination, the party may appeal the order in accordance with section 119.12 of the Revised Code. For the purposes of appeals of any such orders, the terms "fire marshal" and "building" as used in that section include the board and petroleum underground storage tank, respectively.

(G) Neither the state, the board, nor the director of the fund is liable to any responsible person to pay the cost of any corrective action or of third party compensation for a release of petroleum when the fund is depleted of moneys because the amount of the claims made on the fund exceeds the unobligated balance in the fund. However, upon assessing and collecting a supplemental fee under division (C) of section 3737.91 of the Revised Code, the board shall again consider the claim of a responsible person whose claim was not initially honored because of the insufficiency of unobligated balances in the fund to pay that person's claim.

The inability of a responsible person to obtain money from the fund does not in any manner limit the liability of a responsible person for a release of petroleum.

(H) Neither the right to apply for payment or reimbursement nor the receipt of payment or reimbursement under this section limits the liability of any responsible person to the state for the payment of any corrective action or enforcement costs under sections 3737.882 and 3737.89 of the Revised Code, or to any third party for bodily injury or property damage, resulting from a release of petroleum from an underground storage tank system owned or operated by the responsible person. Neither the right to apply for payment or reimbursement under this section nor any delay by the board or director of the fund in acting upon any claim for any such payment or

reimbursement limits or postpones the duty of any responsible person to comply with any order of the fire marshal issued under section 3737.88 or 3737.882 of the Revised Code.

(I) The board, upon payment to or reimbursement of a responsible person from the fund for corrective action costs or the cost of compensation to third parties for bodily injury or property damage, is entitled by subrogation to all rights of the responsible person to recover those costs from any other person. The attorney general, upon the request of the board, may bring a civil action to recover those costs in the court of common pleas of the county in which the release of petroleum occurred.

(J) Nothing in this section limits the right of the federal government to recover from the responsible person any federal money expended for any corrective or enforcement action as a result of a release of petroleum.

(K) If the responsible person described in division (D) of this section is a state agency, any payments or reimbursements received by the state agency under this section shall be deposited into the fund from which the expenditures for the corrective action or third party compensation originally were made.

SECTION 2. That existing sections 1509.38, 3737.91, and 3737.92 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____