

CHAPTER 361**(SB 193)**

AN ACT relating to the assessment and expenditure of revenue.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 224.60-115 is amended to read as follows:

As used in KRS 224.60-120 to 224.60-150, unless the context otherwise requires:

- (1) "Bodily injury and property damage" means only those actual economic losses to an individual or the individual's property resulting from bodily injuries and damages to property caused by a release into the environment from a petroleum storage tank. In this context, property damage includes damage to natural resources;
- (2) "Cabinet" means the Natural Resources and Environmental Protection Cabinet;
- (3) "Claim" means any demand in writing for a certain sum;
- (4) "Corrective action" means those actions necessary to protect human health and the environment in the event of a release from a petroleum storage tank. Corrective action includes initial responses taken pursuant to KRS 224.60-135, remedial actions to clean up contaminated groundwater, surface waters, or soil, actions to address residual effects after initial corrective action is taken, and actions taken to restore or replace potable water supplies. Corrective action also includes actions necessary to monitor, assess, and evaluate a release, as well as actions necessary to monitor, assess, and evaluate the effectiveness of remedial action after a release has occurred;
- (5) "Dealer" means a person required to be licensed as a gasoline or special fuels dealer as defined in KRS 138.210(2);
- (6) "Facility" means, with respect to any owner or operator, all petroleum storage tanks which are owned or operated by an owner or operator and are located on a single parcel of property or on any contiguous or adjacent property;
- (7) "Federal regulations" means regulations for underground petroleum storage tanks promulgated by the United States Environmental Protection Agency pursuant to Subtitle I of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act;
- (8) "Free product" means a regulated substance that is present as a non-aqueous phase liquid;
- (9) "Fund" means the petroleum storage tank environmental assurance fund *and its subaccounts, the financial responsibility account and the petroleum storage tank account* established pursuant to KRS 224.60-140;
- (10) "Gasoline" means gasoline as defined in KRS 138.210(4);
- (11) "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, that is typically used in the operation of a motor engine, jet fuel, and any petroleum or petroleum-based substance typically used in the operation of a motor vehicle, including used motor vehicle lubricants and oils;
- (12) "Occurrence" means a release, or releases, of an accidental nature, requiring corrective action, from a petroleum storage tank or tanks located at the same facility, due to continuous or repeated exposure to conditions. An additional release or releases at the same facility in

which the area requiring remedial action is separate from a previous remediation area or areas shall be considered a separate occurrence;

- (13) "Office" means the Office of Petroleum Storage Tank Environmental Assurance Fund;
- (14) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, the state, a municipality, commission, or political subdivision of the state. The term includes a consortium, a joint venture, the United States government, or a commercial entity;
- (15) "Petroleum" and "petroleum products" means crude oil, or any fraction thereof, which is liquid at standard conditions of temperature and pressure, which means at sixty (60) degrees Fahrenheit and 14.7 pounds per square inch absolute. The term includes motor gasoline, gasohol, other alcohol-blended fuels, diesel fuel, heating oil, special fuels, lubricants, and used oil;
- (16) "Petroleum storage tank" means an underground storage tank, as defined by KRS 224.60-100, which contains petroleum or petroleum products but, for the purpose of participation or eligibility for the fund, shall only include tanks containing motor fuels and shall not include petroleum storage tanks used exclusively for storage of fuel used in the operation of a commercial ship or vessel or tanks used exclusively for storage of fuel used for the purposes of powering locomotives or tanks owned by a federal agency or the United States government;
- (17) "Petroleum storage tank operator" means any person in control of, or having responsibility for, the daily operation of a petroleum storage tank;
- (18) "Petroleum storage tank owner" means the person who owns a petroleum storage tank, except that petroleum storage tank owner does not include any person who, without participation in the management of a petroleum storage tank, holds indicia of ownership primarily to protect a security interest in the tank;
- (19) "Received" means the same as defined in KRS 138.210(5);
- (20) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a petroleum storage tank into groundwater, surface water, or surface or subsurface soils. The term shall not include releases that are permitted or authorized by the state or federal law;
- (21) "Special fuels" means special fuels as defined in KRS 138.210(4); and
- (22) "Third party" means a person other than the owner or operator of a facility, or the agents or employees of the owner or operator, who sustains bodily injury or property damage as a result of a release from that facility.

Section 2. KRS 224.60-130 is amended to read as follows:

- (1) There is created within the Public Protection and Regulation Cabinet, Office of the Secretary, the Office of Petroleum Storage Tank Environmental Assurance Fund.
- (2) The Office of Petroleum Storage Tank Environmental Assurance Fund shall:
 - (a) Establish by administrative regulation the policy, guidelines, and procedures to administer the *financial responsibility and petroleum storage tank accounts of the* petroleum storage tank environmental assurance fund. In adopting administrative regulations to carry out this section, the office may distinguish between types, classes, and ages of petroleum storage tanks. The office may establish a range of amounts to be

paid from the fund, or may base payments on methods such as pay for performance, task order, or firm fixed pricing, which are designed to provide incentives for contractors to more tightly control corrective action costs, and shall establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. The criteria may include the certification of individuals, partnerships, and companies. Criteria shall be established to certify laboratories that contract to perform analytical testing related to the underground storage tank program. ~~The criteria for certification of laboratories shall be established no later than January 1, 1999. After April 1, 1999,~~ Owners and operators shall have all required analytical testing performed by a certified laboratory to be eligible for fund participation. Persons who contract with petroleum storage tank owners or operators shall not be paid more than the amount authorized by the office for reimbursement from the fund for the performance of corrective action. At a minimum, the office shall promulgate administrative regulations that will insure an unobligated balance in the fund adequate to meet financial assurance requirements and corrective action requirements of KRS 224.60-135(2) and (4). If the unobligated balance in the fund is not adequate to meet the requirements of this paragraph, the office shall obligate funds necessary to meet these requirements;

- (b) Establish by administrative regulation the criteria to be met to be eligible to participate in the *financial responsibility and petroleum storage tank accounts* ~~fund~~ and to receive reimbursement from *these accounts* ~~the fund~~. The office may establish eligibility criteria *for the petroleum storage tank account* based upon the financial ability of the petroleum storage tank owner or operator. *Owners or operators seeking coverage under the petroleum storage tank account shall file for eligibility and for financial assistance with the office on or before January 15, 2004.* To insure cost effectiveness, the office shall promulgate administrative regulations specifying the circumstances under which prior approval of corrective action costs shall be required for those costs to be eligible for reimbursement from the fund. In promulgating administrative regulations to carry out this section, the office may distinguish between types, classes, and ages of petroleum storage tanks and the degree of compliance of the facility with any administrative regulations of the cabinet promulgated pursuant to KRS 224.60-105 or applicable federal regulations;
- (c) Establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by administrative regulations of the cabinet or the federal *regulations applicable to* ~~government for~~ petroleum storage tanks, consistent with the intent of the General Assembly as set forth in KRS 224.60-120(5). *The account shall receive four-tenths of one cent (\$0.004) from the one and four-tenths cent (\$0.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145* ~~The amount to be maintained in this account shall be established by the office~~. To be eligible to use this account to demonstrate compliance with financial responsibility requirements of the cabinet or federal regulations, or to receive reimbursement from this account for taking corrective action and for compensating third parties for bodily injury and property damage, the petroleum storage tank owner or operator shall meet the eligibility requirements established by administrative regulation promulgated by the office;

- (d) Establish a small operator assistance account within the fund which may be used by the office to make or participate in the making of loans, to purchase or participate in the purchase of the loans, which purchase may be from eligible lenders, or to insure loans made by eligible lenders;
- (e) Establish a petroleum storage tank account within the fund to be used to pay the costs of corrective action due to a release from a petroleum storage tank not eligible for reimbursement from the financial responsibility account. ***Reimbursements of corrective action projects performed under the petroleum storage tank account shall be carried out on or before July 15, 2009. Any corrective action costs incurred after this date shall not be eligible for reimbursement under the petroleum storage tank account. The account shall receive one cent (\$0.01) from the one and four-tenths cent (\$0.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145.*** This account shall not be used to compensate third parties for bodily injury and property damage. ***Within three (3) months after the effective date of this Act, the office shall develop a plan to address the payment of claims and completion of corrective action at facilities eligible for reimbursement from this account.*** The office shall establish a ranking system to be used for the distribution of amounts from this account for the purpose of corrective action. In promulgating administrative regulations to carry out this section, the office shall consider the financial ability of the petroleum storage tank owner or operator to perform corrective action and the extent of damage caused by a release into the environment from a petroleum storage tank;
- (f) Hear complaints brought before the office regarding the payment of claims from the fund in accordance with KRS Chapter 13B;
- (g) Establish and maintain necessary offices within this state, appoint employees and agents as necessary, and prescribe their duties and compensation;
- (h) Employ, in accordance with the procedures found in KRS 45A.690 to 45A.725 for awarding personal service contracts, a qualified actuary to perform~~[-an]~~ actuarial ~~studies~~~~[study]~~, ***as directed by the office, for determining an appropriate reserve in the financial responsibility account and the petroleum storage tank account sufficient to satisfy the obligations in each account for all eligible facilities and to satisfy future liabilities and expenses necessary to operate each account***~~[no less than every two (2) years, that recommends to the office an actuarially sound entry level to the fund prior to two (2) years from April 9, 1990]~~. The office shall, by administrative regulation, set the entry level for participation in the fund;
- (i) Authorize expenditures from the fund to carry out the purpose of KRS 224.60-105 to 224.60-160, including reasonable costs of administering the fund, the procurement of legal services, and the procurement of analytical testing services when necessary to confirm the accuracy of analytical testing results obtained by a petroleum storage tank owner or operator. ***The expenditures shall be paid from the appropriate account;***
- (j) Establish a small operators' tank removal account within the fund to reimburse the reasonable cost of tank system removal for small owners and operators. The account shall not be used when an owner or operator is removing the tank with the intention of replacing or upgrading the tank. In promulgating administrative regulations to carry out this paragraph, the office may distinguish among owners and operators based on income, number of tanks, number of facilities, and types and classes of tanks;

- (k) Establish by administrative regulation the policy, guidelines, and procedures to perform financial audits of any petroleum storage tank owner or operator receiving reimbursement from the fund or any entity contracting or subcontracting to provide corrective action services for facilities eligible for fund reimbursement. Financial audits shall be limited to those files, records, computer records, receipts, and other documents related to corrective action performed at a facility where the costs of corrective action have been reimbursed by the fund. Files, records, computer records, receipts, and other documents related to corrective action reimbursed by the fund shall be subject to a financial audit for a period of three (3) years after the date of final reimbursement from the fund. Results of the audits shall be protected from disclosure as allowed by KRS 61.878(1)(c). Financial auditing services may be contracted for or personnel may be employed as needed to implement the requirements of this paragraph;
- (l) Be authorized to enter and inspect any facility intending to seek reimbursement for the cost of corrective action to determine the reasonableness and necessity of the cost of corrective action. The office may collect soil or water samples or require storage tank owners or operators to split samples with the office for analytical testing. Refusal to allow entry and inspection of a facility or refusal to allow the office to collect or split samples shall make the facility ineligible for fund participation;~~and~~
- (m) Have ~~after April 1, 1999,~~ assurance fund auditors on site at all tank system removals. Failure to comply with this provision shall make the facility ineligible for fund participation. A petroleum storage tank owner or operator may request through certified mail that the office schedule an assurance fund auditor to be present at an upcoming tank removal. If the request is made at least two (2) weeks before the time for the removal and an auditor fails to be present at the time scheduled, the tank removal may proceed without making the facility ineligible for fund participation unless the owner is notified by the assurance fund no later than ten (10) days prior to the proposed date that an auditor is not available on the proposed date, in which event a representative of the assurance fund shall contact the operator and schedule a new date. If no auditor is present at the rescheduled date, the removal may then proceed without penalty; *and*
- (n) *Establish that the deadline for submission of final reimbursement requests under the petroleum storage tank account is two (2) years after receipt of a no further action letter or by July 15, 2010, whichever is earlier. Claims received after July 15, 2010, are not eligible for reimbursement.*

The funding and operations of the small operator assistance account and the small operator's tank removal account shall end on July 15, 2004.

- (3) The office may advise the cabinet on the promulgation of administrative regulations concerning petroleum storage tanks.
- (4) The office may sue and be sued in its own name.
- (5) *The office may transfer funds from the petroleum storage tank account to the small operator tank removal account as needed to satisfy the obligations, future liabilities, and expenses necessary to operate that account. The office may transfer funds to the financial responsibility account as needed to maintain within that account sufficient funds to*

demonstrate financial responsibility and to ensure payment of claims as provided in subsection (2)(c) of this section.

Section 3. KRS 224.60-137 is amended to read as follows:

- (1) *It is the intent of the General Assembly, when funds are available, that the University of Kentucky update the study completed in July, 1995, and recommend amendments to standards for levels of petroleum contamination, including lead and other additives, requiring corrective action to adequately protect human health, safety, and the environment established in administrative regulations promulgated by the cabinet, based on new information or changes in federal law*~~[The office shall have a study performed to identify appropriate standards for corrective action for a release into the environment from a petroleum storage tank. The study shall address, but not be limited to, standards for levels of petroleum contamination, including lead, requiring corrective action to adequately protect human health, safety, and the environment consistent with accepted scientific and technical principles and federal law. The standards shall take into account distances to environmentally sensitive features, including surface waters, wetlands, nature preserves, protected ecological areas, springs and wells used for domestic water supply, and well head protection areas. The office shall contract with a person or persons to perform the study qualified in the areas of engineering, hydrogeology, geology, toxicology, epidemiology, biology, public health, chemistry, and risk assessment. The office shall provide for the October 18, 1993 study performed by the University of Kentucky to be completed within one hundred twenty (120) days of April 11, 1994, to comply with the requirements of this subsection].~~
- (2) The office shall contract with the University of Kentucky *when funds are available*~~[, or another person or persons having the qualifications established in subsection (1) of this section, to recommend revisions or amendments to the study based upon new information or changes in federal law, and to review and comment to the office upon the consistency with the completed study of administrative regulations proposed by the cabinet pursuant to subsection (3) of this section. The person contracted with to recommend revisions or amendments to the study shall identify in writing any inconsistencies of the draft administrative regulations required by subsection (4) of this section with the completed study. The cabinet shall comment to the office on the completed study report and any proposed revisions or amendments to the study. The office shall approve the completed study report and any revisions or amendments to the study].~~
- (3) The cabinet shall, by administrative regulation, *adopt*~~[establish]~~ standards for corrective action for a release into the environment from a petroleum storage tank. The administrative regulations shall adequately protect human health, safety, and the environment, and *may consider*~~[shall incorporate]~~ the study *and any revisions or amendments to it* performed for the office, except as necessary to comply with federal law~~[or as provided in subsection (4) of this section].~~
- (4)~~[Within ninety (90) days of the receipt of the completed study report, the cabinet shall prepare draft administrative regulations for submission to and review by the person performing the study. The comments required pursuant to subsection (2) of this section shall be filed with the office and the cabinet within sixty (60) days of receipt of the draft administrative regulations by the office. If any inconsistencies are identified, the person conducting the review and the cabinet shall confer to resolve the inconsistencies, and report to the office within sixty (60) days. If the person conducting the review and the cabinet are~~

unable to resolve the inconsistencies, the cabinet and the office shall appoint an independent peer review group to resolve the inconsistencies and recommend amendments to the draft administrative regulations within sixty (60) days of appointment. The peer review group shall be appointed by agreement of the cabinet and the office. The cabinet shall amend the draft administrative regulations to incorporate the amendments recommended by the peer review group and file the administrative regulations with the Legislative Research Commission within sixty (60) days of receipt. The administrative regulations shall be promulgated pursuant to the provisions of KRS Chapter 13A.

- ~~(5)~~ ***Within ninety (90) days of the effective date of this Act, the cabinet shall develop an inventory of facilities eligible for reimbursement from the financial responsibility account and the petroleum storage tank account and information on the current status of each facility within the corrective action process. The cabinet shall update the inventory and the status of the facilities and submit the information quarterly to the Legislative Research Commission.*** ~~[Notwithstanding any provisions of law or KRS Chapter 13A to the contrary, the emergency administrative regulations filed by the cabinet in February 1994 shall remain in effect until the administrative regulations required by subsection (3) of this section are adopted and effective pursuant to the provisions of KRS 13A.330].~~

Section 4. KRS 224.60-140 is amended to read as follows:

- (1) There is hereby created the petroleum storage tank environmental assurance fund. The fund ***shall consist of a financial responsibility account and a petroleum storage tank account. Each account*** shall be maintained as a separate and distinct interest-bearing account. ***Interest credited to an account shall be retained in that account.*** All of the following amounts shall be deposited in the fund:
- (a) ***Four-tenths of one cent (\$0.004) from the one and four-tenths cent (\$0.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145 to the financial responsibility account*** ~~[Any interest earned upon money deposited in the fund];~~
 - (b) ***One cent (\$0.01) from the one and four-tenths cent (\$0.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145 to the petroleum storage tank account;***
 - (c) Money appropriated by the General Assembly for deposit in ***each account*** ~~[the fund];~~
 - ~~(d)~~ ~~(e)~~ Any money recovered by the fund pursuant to this section ***shall be deposited in the appropriate account;*** and
 - ~~(e)~~ ~~(d)~~ Any money collected in the form of penalties levied pursuant to KRS 224.60-155 ***shall be deposited to the appropriate account.***
- (2) Money in the ***fund, financial responsibility account and the petroleum storage tank account*** ~~shall fund may~~ be used by the office for the following purposes:
- (a) To reimburse petroleum storage tank owners or operators for the costs, expenses, and other obligations incurred for corrective action ***required by the cabinet to be undertaken*** as the result of a release into the environment from a petroleum storage tank. Reimbursement shall be limited to only those costs, expenses, and other obligations incurred to comply with corrective action requirements established ***in law or administrative regulation*** by the cabinet. Additional costs related to compliance with a local program operating under KRS 224.60-105(4) shall be neither

reimbursable by the fund nor imposed on the owner or operator. Reimbursement shall not include the costs related to the removal, or actions incidental to the removal, of a tank system except as authorized under KRS 224.60-130(2)(j);

- (b) For payment of or reimbursement for third-party claims for bodily injury and property damage, *related to a facility eligible for participation in the financial responsibility account*, which are asserted against a petroleum storage tank owner or operator as a result of a release into the environment from a petroleum storage tank;
 - (c) To pay the reasonable, *prorated* costs incurred by the office in administering *each account*~~[the fund]~~; *and*
 - ~~(d) [Payment to the cabinet of the costs of implementing the tank registration required by KRS 224.60-142; and~~
 - ~~(e)]~~ *The cost* to operate the small operators' assistance account pursuant to KRS 224.60-130(2)(d), the small operators' tank removal account pursuant to KRS 224.60-130(2)(j), to perform or contract for the performance of financial audits conducted under KRS 224.60-130(2)(k), and to employ sufficient assurance fund auditors to carry out the provisions of KRS 224.60-130 and to set forth their duties. *These costs shall be prorated to each account.*
- (3) The use of the fund shall not exceed one million dollars (\$1,000,000) per occurrence for corrective action and one million dollars (\$1,000,000) per occurrence for compensating third parties for bodily injury and property damage.
 - (4) Money in the fund may be used by the cabinet for costs incurred by the cabinet for corrective action taken pursuant to KRS 224.60-135(2) and (4).
 - (5) The fund shall be used to guarantee payment of reasonable costs and expenses to a contractor performing corrective action under contract with a petroleum storage tank owner or operator subject to entry level amounts payable by the petroleum storage tank owner or operator. Money in the fund shall be obligated to secure the guarantee.
 - (6) A petroleum storage tank owner or operator may apply to the office for reimbursement from the fund of costs to perform corrective action, except that the petroleum storage tank owner or operator shall be responsible for and shall not be reimbursed for an amount equal to the entry level into the fund as set pursuant to administrative regulation of the office.
 - (7) The office or its designated agent shall issue all decisions made on claims filed pursuant to this section in writing, with notification to all appropriate parties, within ninety (90) days after submission of the claim, unless all parties to the claim agree in writing to an extension of time. *The office shall by phone or facsimile transmission immediately notify the claim applicant and its consultant, if applicable, when the claim is determined to be deficient. The notification shall provide sufficient information to allow the applicant and its consultant, if applicable, to begin to correct the deficiency. The office shall then notify the applicant and its consultant, if applicable, by certified mail of the deficiency. The notice shall indicate how many days remain in the ninety (90) day review period from the time of mailing. The review period shall be tolled pending submittal of information responding to the deficiency, but not to exceed thirty (30) days. When the office receives information that corrects the deficiency, or at the end of the thirty (30) day period, the office shall complete the review of the claim within the time remaining in the ninety (90) day review*

period. Nothing in this section shall be construed as preventing the fund from making partial reimbursement as appropriate.

- (8) Except as provided in subsection (9), any costs incurred and payable from the fund for corrective action taken pursuant to KRS 224.60-135(2) shall be recovered by the office from the petroleum storage tank owner or operator which released the petroleum or petroleum products into the environment.
- (9) The liability of a petroleum storage tank owner or operator subject to a cost recovery under this section shall not exceed an amount equal to the entry level into the fund, the office's cost incurred in the cost recovery, and any penalties applied in accordance with KRS 224.60-155. This amount shall include any expenditures made by the petroleum storage tank owner or operator for the release into the environment from the petroleum storage tank that is the subject of the cost of recovery.
- (10) The amount of costs determined pursuant to subsections (8) and (19) of this section shall be recoverable in a civil action. This subsection does not deprive a party of any defense the party may have.
- (11) Money recovered by the office pursuant to this section shall be deposited in the *appropriate account*~~{fund}~~.
- (12) Upon motion and sufficient showing by any party, the court shall join to the action any person who may be liable for costs or expenditures recoverable pursuant to this section.
- (13)
 - (a) Any party found liable for any costs or expenditures recoverable under this section who establishes that only a portion of those costs or expenditures are attributable to their actions, shall pay only for that portion.
 - (b) If the trier of fact finds the evidence insufficient to establish each party's portion of costs or expenditures pursuant to subsection (12) of this section, the court shall apportion those costs or expenditures, to the extent practicable according to equitable principles among the defendants.
 - (c) The *appropriate account*~~{fund}~~ shall pay any portion of the judgment in excess of the aggregate amount of costs or expenditures apportioned under paragraphs (a) and (b) of this subsection.
- (14)
 - (a) No indemnification, hold harmless, conveyance, or similar agreement shall be effective to transfer any liability for costs recoverable under this section. This subsection shall not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs under KRS 224.60-105 to 224.60-160.
 - (b) The entry of judgment against any party to the action shall not bar any future action by the fund against any other person who is later discovered to be potentially liable for costs paid from the fund.
 - (c) Payment of any claim by the fund pursuant to KRS 224.60-105 to 224.60-160 shall be subject to the state acquiring by subrogation the rights of the claimant to recover those costs of corrective action for which it has compensated the claimant from the person responsible or liable for the release.
- (15) This section shall not be construed as authorizing recovery for costs of corrective action resulting from any release authorized or permitted pursuant to state or federal law.

- (16) The cabinet shall attempt, to the maximum extent practicable, to secure or obtain funds that may be available for corrective actions under federal laws. However, nothing in this subsection shall prevent the cabinet from expending any funds available under KRS 224.60-105 to 224.60-160 if such federal funds are determined to be unavailable.
- (17) The fund shall not be used for corrective action, reimbursement, or third-party liability resulting from releases from petroleum storage tanks used exclusively for storage of fuel used in the operation of a commercial ship or vessel oil tanks used exclusively for storage of fuel used for the purposes of powering locomotives.
- (18) (a) Any person filing a claim for reimbursement from the office shall, prior to filing the claim for reimbursement, ensure full payment of the claims of all vendors and subcontractors who have performed work or supplied materials related to corrective action at an underground storage tank facility, where labor or materials supplied by a vendor or subcontractor form a basis for at least part of the claim for reimbursement.
- (b) A vendor or subcontractor may waive, in writing, his right to receive full payment before the person files the claim for reimbursement. Any vendor or subcontractor who waives, in writing, his right to full payment shall also waive, in writing, his right to take legal recourse against the office and the underground storage tank facility owner or operator for nonpayment from a prime contractor for work performed or materials supplied to the prime contractor during corrective action at an underground storage tank facility. Any vendor or subcontractor who waives, in writing, his right to full payment prior to the filing of the claim for reimbursement shall acknowledge in the written waiver that his, his heirs', successors', and assigns' sole recourse for the nonpayment of work performed or materials supplied to a prime contractor during corrective action at an underground storage tank facility is to proceed against the prime contractor for whom he performed the work or supplied materials. Any vendor or subcontractor who waives, in writing, his right to full payment prior to the filing of the claim for reimbursement shall release and discharge any liens filed as a result of work performed or materials provided at the underground storage tank facility. Subcontractor and vendor waivers must be made on standard forms furnished by the office. Their signatures must be notarized.
- (c) Unless the provisions of paragraph (b) of this subsection apply, any person filing a claim for reimbursement from the office shall certify, by affidavit, on standard forms furnished by the office, that all vendors and subcontractors who have performed work or supplied materials related to corrective action at an underground storage tank facility, where labor and materials supplied by a vendor or subcontractor form a basis for at least part of the claim for reimbursement, have been paid in full as of the date of submission of the claim for reimbursement. A single affidavit may be made for each claim for reimbursement, provided, however, that the representations made in the affidavit shall be applied to each vendor or subcontractor individually, and, where false, shall be treated, as to each vendor or subcontractor, as a separate violation for the purpose of applying any criminal statute.
- (d) Any person with responsibility for administering the office who believes, or has information, that an affidavit submitted pursuant to this subsection contains false or misleading information, or any person with responsibility for administering the office who believes or has information that an application for financial assistance or a claim for reimbursement contains false or misleading information, shall provide that

information to the Commonwealth's attorney whose jurisdiction includes the county where the majority of the subject underground storage tank facility is located. That person may additionally provide the information to any other interested prosecutor with jurisdiction to prosecute crimes pertaining to an application for financial assistance or the claim for reimbursement.

- (19) Any person who knowingly makes a false statement, representation, or certification in an application for reimbursement from the fund, or in any supporting documentation attached thereto, shall be responsible for and shall not be reimbursed for any amounts incurred based upon the false statement, representation, or certification. Any costs incurred and paid from the fund which are based on a false statement, representation, or certification in an application for reimbursement from the fund, or in any supporting documentation attached thereto, shall be recovered by the fund administrators from the person who asserted the false statement, representation, or certification.

Section 5. KRS 224.60-142 is amended to read as follows:

- (1) To be eligible to participate in the fund, ***the owner of any petroleum storage tank containing motor fuels installed and placed in operation after July 15, 2002, shall register the petroleum storage tank with the cabinet as required by KRS 224.60-105 prior to applying for participation in the financial responsibility account.***
- (2) The owner of any petroleum storage tank containing motor fuels currently existing, or removed from the ground after January 1, 1974, shall register the petroleum storage tank containing motor fuels with the cabinet prior to applying to the fund, and shall register the petroleum storage tank containing motor fuels by July 15, ~~2004~~~~[2002]~~. ***Owners or operators may submit affidavits and applications, relevant to current petroleum storage tank accounts through July 15, 2004.***

Section 6. KRS 224.60-145 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, there is established a petroleum environmental assurance fee to be paid by dealers on each gallon of gasoline and special fuels received in this state.
- (2) All deductions detailed in KRS 138.240(2), gasoline and special fuels sold for agricultural purposes, and special fuels sold exclusively to heat a personal residence are exempt from the fee. If a dealer has on file, pursuant to KRS Chapter 138, a statement supporting a claimed exemption, an additional statement shall not be required for claiming exemption from the fee.
- (3) The fee shall be reported and paid to the Revenue Cabinet at the same time and in the same manner as is required for the reporting and payment of the gasoline and special fuels taxes as provided by law.
- (4) The petroleum environmental assurance fee shall be set at ~~a rate up to but not to exceed~~ one and four-tenths cent (\$0.014) for each gallon. ***Four-tenths of a cent (\$0.004) per gallon shall be deposited in the financial responsibility account and one cent (\$0.01) shall be deposited in the petroleum storage tank account.***
- (5) ***Within thirty (30) days of the close of fiscal year 2001-2002 and each fiscal year thereafter, the state budget director shall review the balance of each account to determine if a surplus exists. "Surplus" means funds in excess of the amounts necessary to satisfy the obligations in each account for all eligible facilities, to satisfy future liabilities and***

expenses necessary to operate each account, and to maintain an appropriate reserve in the financial responsibility account to demonstrate financial responsibility and compensate for third-party claims. The state budget director shall report the determination to the Interim Joint Committee on Appropriations and Revenue. After a determination that a surplus exists, the surplus shall be transferred to a restricted account and retained until appropriated by the General Assembly. ~~The office shall review the unobligated fund balance at least quarterly and report to the Revenue Cabinet the rate of the fee to be applied for the next quarter.~~

- (6) All provisions of law related to the Revenue Cabinet's administration and enforcement of the gasoline and special fuels tax and all other powers generally conveyed to the Revenue Cabinet by the Kentucky Revised Statutes for the assessment and collection of taxes shall apply with regard to the fee levied by KRS 224.60-105 to 224.60-160.
- (7) The Revenue Cabinet shall refund the fee imposed by KRS 224.60-145(1) to any person who paid the fee provided they are entitled to a refund of motor fuel tax under KRS 138.344 to KRS 138.355 and to any person who paid the fee on transactions exempted under KRS 224.60-145(2).
- (8) *Notwithstanding any other provisions of this Act to the contrary, the small operator assistance account and small operator tank removal account established under Section 2 of this Act shall continue in effect until July 15, 2004 and thereafter until all eligible claims related to tanks registered by that date are resolved, and sufficient money shall be allocated to and maintained in that account to assure prompt payment of all eligible claims, and to provide for removal of tanks for eligible owners and operators as directed by this chapter.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 68 IS CREATED TO READ AS FOLLOWS:

As used in Sections 7 to 10 of this Act, unless context otherwise requires:

- (1) *"Board" means the board of trustees of an industrial taxing district;*
- (2) *"District" means an industrial taxing district; and*
- (3) *"Governmental services" means services to include fire protection, solid waste management, water, electric, sewer, telecommunications, and other services as may be specified by the fiscal court of the county in which the district is located.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 68 IS CREATED TO READ AS FOLLOWS:

A portion of territory in a county that includes property that will be used in an economic development project that will result in the creation of at least five hundred (500) new jobs may be organized into a district for the purpose of levying taxes to pay for the establishment, operation, and maintenance of the level of governmental services provided to the district that exceeds the level of services provided to the other territory of the county.

SECTION 9. A NEW SECTION OF KRS CHAPTER 68 IS CREATED TO READ AS FOLLOWS:

- (1) *Districts shall be organized under the procedures of Section 8 of this Act.*
- (2) *A district created under Section 8 of this Act shall constitute a taxing district within the meaning of Section 157 of the Constitution of Kentucky.*

- (3) *A special ad valorem tax and an occupational license tax may be imposed for the establishment, maintenance, and operation of the governmental services provided to the district.*
- (a) *The ad valorem tax levied shall not exceed ten cents (\$0.10) per one hundred dollars (\$100) of the assessed valuation of all property in the district.*
- (b) *The occupational license tax may be assessed after the approval of the fiscal court of the county in which the district is located under the provisions of KRS 68.178, 68.180, 68.185, 68.190, 68.195, 68.197, 68.198, 68.200 and KRS 68.202, as may be amended from time to time.*
- (4) *All special ad valorem taxes and occupational license taxes authorized by Sections 7 to 10, 11, and 12 of this Act shall be collected in the same manner as are other county ad valorem taxes and occupational license taxes in each county affected and shall be turned over to the board, or to the fiscal court if there is no board. The special ad valorem tax shall be in addition to all other ad valorem taxes.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 68 IS CREATED TO READ AS FOLLOWS:

- (1) *A district shall be administered by the fiscal court of the county creating it, which shall control and manage the affairs of the district. The fiscal court may, by a majority vote of its members, establish a board of trustees to control and manage the affairs of the district.*
- (2) *The board of trustees created under subsection (1) of this section shall operate in accordance with the following:*
- (a) *The term of office of each trustee shall be four (4) years except as specified. The board shall consist of four (4) members who shall be appointed by the county judge/executive, with the approval of the fiscal court. Initial appointments shall be for terms of one (1), two (2), three (3), and four (4) years, as designated by the county judge/executive. Thereafter, each successor shall be appointed for a term of four (4) years. No more than three (3) members of the board shall be members of the same political party.*
- (b) *The board shall elect its chairman from among its members. The board may appoint a secretary, an executive director, and other officials and employees who need not be members of the board. Members of the board shall not receive compensation for their services, but shall be reimbursed for their actual expenses incurred in the performance of their duties. A quorum for the transacting of the business of the board shall consist of three (3) members.*
- (c) *A member of the board may be removed from office as provided by KRS 65.007.*

Section 11. KRS 65.180 is amended to read as follows:

As used in KRS 65.182 to 65.190, unless the context otherwise requires, the word "taxing district" shall mean, and the provisions of KRS 65.182 to 65.190 shall apply to, any special district authorized by statute to levy ad valorem taxes within the meaning of Section 157 of the Constitution of Kentucky *or to levy ad valorem taxes under the provisions of Section 8 of this Act* and governed by the following statutes: *Section 12 of this Act*, KRS 75.010 to 75.260, 107.310 to 107.500, 108.080 to 108.180, 109.115 to 109.190, 173.450 to 173.650, 173.710 to 173.800, 179.700 to 179.990, 212.720 to 212.760, 216.310 to 216.360, 266.010 to 266.990, and 268.010 to 268.990.

Section 12. KRS 65.182 is amended to read as follows:

Except as otherwise provided by state law, the sole methods of creating a taxing district shall be in accordance with the following:

- (1) (a) Persons desiring to form a taxing district shall present a petition to the fiscal court clerk and to each member of the fiscal court, meeting the criteria of KRS 65.184, and signed by a number of registered voters equal to or greater than twenty-five percent (25%) of an average of the voters living in the proposed taxing district and voting in the last four (4) general elections. At time of its submission to fiscal court, each petition shall be accompanied by a plan of service, showing such of the following as may be germane to the purposes for which the taxing district is being formed:
 1. ~~{(a)}~~ The statutory authority under which the district is created and under which the taxing district will operate;
 2. ~~{(b)}~~ Demographic characteristics of the area including but not limited to population, density, projected growth, and assessed valuation;
 3. ~~{(c)}~~ A description of the service area including but not limited to the population to be served, a metes and bounds description of the area of the proposed taxing district, the anticipated date of beginning service, the nature and extent of the proposed service, the projected effect of providing service on the social and economic growth of the area, and projected growth in service demand or need;
 4. ~~{(d)}~~ A three (3) year projection of cost versus revenue;
 5. ~~{(e)}~~ Justification for formation of the taxing district including but not limited to the location of nearby governmental and nongovernmental providers of like services; and
 6. ~~{(f)}~~ Any additional information, such as land use plans, existing land uses, drainage patterns, health problems, and other similar analyses which bear on the necessity and means of providing the proposed service.
- (b) *A majority of the members of a fiscal court may vote to form a taxing district set forth in a plan of service that shall contain those items set forth in paragraph (a)1. to 6. of this subsection as may be germane to the purposes for which the taxing district is being formed.*
- (2) The fiscal court clerk shall notify all planning commissions, cities, and area development districts within whose jurisdiction the proposed service area is located and any state agencies required by law to be notified of the proposal for the creation of the taxing district.
- (3) The fiscal court clerk shall schedule a hearing on the proposal for no earlier than thirty (30) nor later than ninety (90) days following receipt of the petition, charter, and plan of service, and shall, in accordance with the provisions of KRS Chapter 424, publish notice of the time and place of the public hearing and an accurate map of the area or a description in layman's terms reasonably identifying the area.
- (4) At the public hearing, the fiscal court shall take testimony of interested parties and solicit the recommendations of any planning commission, city, area development district, or state agency meeting the criteria of subsection (2) of this section.

- (5) The fiscal court may extend the hearing, from time-to-time, for ninety (90) days from the date of the initial hearing and shall render a decision within thirty (30) days of the final adjournment of the hearing.
- (6) Following the hearing, the fiscal court shall set forth its written findings of fact and shall approve or disapprove the formation of the taxing district to provide service as described in the plan of service and to exercise the powers granted by the specific statutes that apply to the taxing district being formed.
- (7) The creation of a taxing district shall be of legal effect only upon the adoption of an ordinance, in accordance with the provisions of KRS 67.075 and 67.077, creating the taxing district, and compliance with the requirements of KRS 65.005.
- (8) A certified copy of the ordinance creating the taxing district shall be filed with the county clerk who shall add the levy to the tax bills of the county. For taxing purposes, the effective date of the tax levy shall be January 1 of the year following the certification of the creation of the taxing district.
- (9) Nothing in this section shall be construed to enlarge upon or to restrict the powers granted a taxing district under the taxing district's specific authorizing statutes.
- (10) In a county which does not contain a city of the first class, the fiscal court may adopt the procedures of KRS 65.192 to create a fire protection district or a volunteer fire department district, but only those qualified voters who live within the boundaries of the proposed district shall vote on the question of whether it shall be established.

SECTION 13. A NEW SECTION OF KRS CHAPTER 183 IS CREATED TO READ AS FOLLOWS:

- (1) *All statutes to the contrary notwithstanding, any property owner who resides in a county with a population of thirty-five thousand (35,000) or greater, and who owns at least one thousand (1,000) contiguous acres, may construct a landing strip for their personal use that is capable of handling two (2) private aircraft. The landing strip shall not be used for public or commercial purposes.*
- (2) *The landing strip authorized under this section shall meet all regulations or standards promulgated by the Federal Aviation Administration concerning areas regulated for the safe maneuvering approach and landing of aircraft.*
- (3) *All local governments shall be prohibited from regulating landing strips authorized under this section and shall be prohibited from enacting planning and zoning ordinances contrary to the provisions of this section.*
- (4) *For the purposes of this section, roadways or railroad rights-of-way shall not be considered a separation of contiguous acres.*
- (5) *The property owner may be required to pay a fee of one hundred dollars (\$100) per year to the county in which the airport is located.*

Section 14. KRS 139.470 is amended to read as follows:

There are excluded from the computation of the amount of taxes imposed by this chapter:

- (1) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property the gross receipts from the sale of which, or the storage, use, or

other consumption of which, this state is prohibited from taxing under the Constitution or laws of the United States, or under the Constitution of this state;

- (2) Gross receipts from sales of, and the storage, use, or other consumption in this state of:
 - (a) Nonreturnable and returnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; and
 - (b) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling;

As used in this section the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers";

- (3) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property used for the performance of a lump-sum, fixed-fee contract of public works executed prior to February 5, 1960;
- (4) Gross receipts from occasional sales of tangible personal property and the storage, use, or other consumption in this state of tangible personal property, the transfer of which to the purchaser is an occasional sale;
- (5) Gross receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier;
- (6) Gross receipts from sales of tangible personal property sold through coin-operated bulk vending machines, if the sale amounts to fifty cents (\$0.50) or less, if the retailer is primarily engaged in making the sales and maintains records satisfactory to the cabinet. As used in this subsection, "bulk vending machine" means a vending machine containing unsorted merchandise which, upon insertion of a coin, dispenses the same in approximately equal portions, at random and without selection by the customer;
- (7) Gross receipts from sales to any cabinet, department, bureau, commission, board, or other statutory or constitutional agency of the state and gross receipts from sales to counties, cities, or special districts as defined in KRS 65.005. This exemption shall apply only to purchases of property or services for use solely in the government function. A purchaser not qualifying as a governmental agency or unit shall not be entitled to the exemption even though the purchaser may be the recipient of public funds or grants;
- (8)
 - (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky residents for use in heating, water heating, cooking, lighting, and other residential uses. As used in this subsection, "fuel" shall include, but not be limited to, natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood. Determinations of eligibility for the exemption shall be made by the Revenue Cabinet;
 - (b) In making the determinations of eligibility, the cabinet shall exempt from taxation all gross receipts derived from sales:
 1. Classified as "residential" by a utility company as defined by applicable tariffs filed with and accepted by the Public Service Commission;

2. Classified as "residential" by a municipally-owned electric distributor which purchases its power at wholesale from the Tennessee Valley Authority;
3. Classified as "residential" by the governing body of a municipally-owned electric distributor which does not purchase its power from the Tennessee Valley Authority, if the "residential" classification is reasonably consistent with the definitions of "residential" contained in tariff filings accepted and approved by the Public Service Commission with respect to utilities which are subject to Public Service Commission regulation.

If the service is classified as residential, use other than for "residential" purposes by the customer shall not negate the exemption;

- (c) The exemption shall not apply if charges for sewer service, water, and fuel are billed to an owner or operator of a multi-unit residential rental facility or mobile home and recreational vehicle park other than residential classification; and
 - (d) The exemption shall apply also to residential property which may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight (98) years;
- (9) Any rate increase for school taxes and any other charges or surcharges added to the total amount of a residential telephone bill;
 - (10) Gross receipts from sales to an out-of-state agency, organization, or institution exempt from sales and use tax in its state of residence when that agency, organization, or institution gives proof of its tax-exempt status to the seller and the seller maintains a file of the proof;
 - (11) Gross receipts derived from the sale of, and the storage, use, or other consumption in this state of, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property at a plant facility and which will be for sale are not subject to the sales or use tax. The property shall be regarded as having been purchased for resale. "Plant facility" shall have the same meaning as defined in KRS 139.170(3). For purposes of this subsection, a manufacturer or industrial processor includes an individual or business entity that performs only part of the manufacturing or industrial processing activity and the person or business entity need not take title to tangible personal property that is incorporated into, or becomes the product of, the activity.
 - (a) Industrial processing includes refining, extraction of petroleum and natural gas, mining, quarrying, fabricating, and industrial assembling. As defined herein, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property which will be for sale shall mean:
 1. Materials which enter into and become an ingredient or component part of the manufactured product.
 2. Other tangible personal property which is directly used in manufacturing or industrial processing, if the property has a useful life of less than one (1) year. Specifically these items are categorized as follows:

- a. Materials. This refers to the raw materials which become an ingredient or component part of supplies or industrial tools exempt under subdivisions b. and c. below.
 - b. Supplies. This category includes supplies such as lubricating and compounding oils, grease, machine waste, abrasives, chemicals, solvents, fluxes, anodes, filtering materials, fire brick, catalysts, dyes, refrigerants, explosives, etc. The supplies indicated above need not come in direct contact with a manufactured product to be exempt. "Supplies" does not include repair, replacement, or spare parts of any kind.
 - c. Industrial tools. This group is limited to hand tools such as jigs, dies, drills, cutters, rolls, reamers, chucks, saws, spray guns, etc., and to tools attached to a machine such as molds, grinding balls, grinding wheels, dies, bits, cutting blades, etc. Normally, for industrial tools to be considered directly used in manufacturing, they shall come into direct contact with the product being manufactured.
3. Materials and supplies that are not reusable in the same manufacturing process at the completion of a single manufacturing cycle, excluding repair, replacement, or spare parts of any kind. A single manufacturing cycle shall be considered to be the period elapsing from the time the raw materials enter into the manufacturing process until the finished product emerges at the end of the manufacturing process.
 - (b) It shall be noted that in none of the three (3) categories is any exemption provided for repair, replacement, or spare parts. Repair, replacement, or spare parts shall not be considered to be materials, supplies, or industrial tools directly used in manufacturing or industrial processing. "Repair, replacement, or spare parts" shall have the same meaning as set forth in KRS 139.170;
- (12) Any water use fee paid or passed through to the Kentucky River Authority by facilities using water from the Kentucky River basin to the Kentucky River Authority in accordance with KRS 151.700 to 151.730 and administrative regulations promulgated by the authority;
 - (13) Gross receipts from the sale of newspaper inserts or catalogs purchased for storage, use, or other consumption outside this state and delivered by the seller's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the buyer or seller or an agent or representative of the buyer or seller, or whether the F.O.B. is seller's shipping point or buyer's destination.
 - (a) As used in this subsection:
 1. "Catalogs" means tangible personal property that is printed to the special order of the purchaser and composed substantially of information regarding goods and services offered for sale; and
 2. "Newspaper inserts" means printed materials that are placed in or distributed with a newspaper of general circulation.
 - (b) The seller shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the cabinet;

- (14) Gross receipts from the sale of water used in the raising of equine as a business; and
- (15) Gross receipts from the sale of metal retail fixtures manufactured in this state and purchased for storage, use, or other consumption outside this state and delivered by the seller's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the buyer or seller or an agent or representative of the buyer or seller, or whether the F.O.B. is seller's shipping point or buyer's destination.
- (a) As used in this subsection, "metal retail fixtures" means check stands and belted and nonbelted checkout counters, whether made in bulk or pursuant to specific customer specifications, that are to be used directly by the purchaser or to be distributed by the purchaser.
- (b) The seller shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the cabinet; *and*
- (16) Gross receipts from the sale of unenriched or enriched uranium purchased for ultimate storage, use, or other consumption outside this state and delivered to a common carrier in this state for delivery outside this state, regardless of whether the carrier is selected by the buyer or seller, or is an agent or representative of the buyer or seller, or whether the F.O.B. is seller's shipping point or buyer's destination.***

Section 15. Section 14 of this Act takes effect August 1, 2002.

Approved April 23, 2002