

**2016 -- S 2399 SUBSTITUTE A AS AMENDED**

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LC003227/SUB A  
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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2016**

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A N A C T

RELATING TO WATERS AND NAVIGATION - RI UNDERGROUND STORAGE TANK  
FINANCIAL RESPONSIBILITY ACT

Introduced By: Senators Sosnowski, Conley, Felag, Kettle, and Coyne

Date Introduced: February 11, 2016

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 46-12.9-3, 46-12.9-5, 46-12.9-7, 46-12.9-8, 46-12.9-9 and 46-  
2   12.9-11 of the General Laws in Chapter 46-12.9 entitled "Rhode Island Underground Storage  
3   Tank Financial Responsibility Act" are hereby amended to read as follows:

4           **46-12.9-3. Definitions.** -- When used in this chapter:

5           ~~(10)~~(1) "~~Review board~~" "Advisory board" means the Rhode Island underground storage  
6   tank financial responsibility ~~review~~ advisory board established pursuant to the provisions of § 46-  
7   12.9-8.

8           ~~(1)~~(2) "Department" means the Rhode Island department of environmental management.

9           ~~(2)~~(3) "Director" means the director of the department of environmental management or  
10   his or her designee.

11          ~~(3)~~(4) "Eligible costs" means costs, expenses and other obligations as incurred by a  
12   responsible party for site investigation, site remediation or other corrective action activities  
13   ordered or directed, and approved by the department or ~~voluntarily~~ performed by the responsible  
14   party and not specifically identified by the ~~review board~~ department as ineligible.

15          ~~(4)~~(5) "Fund" means the Rhode Island underground storage tank financial responsibility  
16   fund established herein.

17          ~~(5)~~(6) "Operator" means any person in control of, or having the responsibility for, the  
18   daily operation of an underground storage tank system.

1           ~~(6)~~(7) "Owner" means any agency or political subdivision of the state, any municipality,  
2 public or private corporation or authority, individual, trust, firm, joint stock company,  
3 partnership, association or other entity, and any officer, employee or agent thereof.

4           ~~(7)~~(8) "Petroleum" means crude oil, crude oil fractions, and refined petroleum fractions,  
5 including gasoline, kerosene, heating oils, used/waste oil and diesel fuels.

6           ~~(8)~~(9) "Release" means any leaking, emitting, discharging, escaping or leaching of  
7 petroleum from any underground storage tank or underground storage tank system into the  
8 environment.

9           ~~(9)~~(10) "Responsible party" means the person or persons liable for release of petroleum  
10 or the remediation of a release.

11           (11)(i) "Site" means any location at which or from which there has been a release of  
12 petroleum associated with an underground storage tank or an underground storage tanks system  
13 or any location to which such petroleum has migrated.

14           (ii) For the purposes of this chapter, "government site" means any location owned or  
15 occupied, or previously owned or occupied, by any city or town, the state or any agency of the  
16 state of which or from which there has been a release of petroleum associated with an  
17 underground storage tanker and underground storage tank system.

18           (12) "Underground storage tank" means any one or combination of tanks, including  
19 underground pipes connected thereto, used to contain an accumulation of petroleum and the  
20 volume of which, including the volume of underground pipes connected thereto, is ten percent  
21 (10%) or more beneath the surface of the ground.

22           (13) "Underground storage tank system" means an underground storage tank and its  
23 associated ancillary equipment and containment system, if any.

24           **46-12.9-5. Purpose of fund.** -- (a) The purpose of the fund shall be to facilitate the clean-  
25 up of releases from leaking underground storage tanks, underground storage tank systems,  
26 including those located on sites or government sites in order to protect the environment including  
27 drinking water supplies and public health and to take necessary action to proactively prevent such  
28 releases.

29           (b) The fund shall provide reimbursement to responsible parties for the eligible costs  
30 incurred by them as a result of releases of certain petroleum from underground storage tanks or  
31 underground storage tank systems as provided herein. Monies in the fund shall be dispensed only  
32 upon the order of the ~~review board or its designee~~ [department](#) for the following purposes.

33           (1) The fund shall pay not more than one million dollars (\$1,000,000) per incident and  
34 up to two million dollars (\$2,000,000) in the aggregate for damages of eligible costs, as defined

1 in regulations promulgated hereunder and, as further defined in § 46-12.9-3 excluding legal costs  
2 and expenses, incurred by a responsible party as a result of a release of petroleum from an  
3 underground storage tank or underground storage tank system; provided, however, that a  
4 responsible party shall be responsible for the first twenty thousand dollars (\$20,000) of said  
5 eligible costs;

6 (2) Reimbursement for any third party claim including, but not limited to, claims for  
7 bodily injury, property damage and damage to natural resources which are asserted against a  
8 responsible party and which have arisen as a result of a release of petroleum from an underground  
9 storage tank or underground storage tank system in an amount not to exceed one million dollars  
10 (\$1,000,000) for each release as set forth in subsection (b)(1) of this section; provided, that such  
11 claims are found by the ~~review board~~ department to be justified, reasonable, related to the release  
12 of petroleum and not excessive or spurious in nature; and

13 (3) Eligible costs incurred by the department in carrying out the investigative, remedial  
14 and corrective action activities at sites of a petroleum release associated with an underground  
15 storage tank or underground storage tank system where the responsible party fails to comply with  
16 an order of the department to take such corrective action. In the event of such failure, the  
17 department may access the fund to perform the ordered work and shall proceed to recover from  
18 the responsible party on behalf of the fund any amount expended from the fund by the  
19 department.

20 (4) Nothing contained in this chapter shall be construed to prevent subrogation by the  
21 state of Rhode Island against any responsible party other than the owner and/or operator for all  
22 sums of money which the fund shall be obligated to pay hereunder plus reasonable attorneys' fees  
23 and costs of litigation and such right of subrogation is hereby created.

24 (5) Eligible costs incurred by the department to support the fund, including, but not  
25 limited to, all personnel support to process and review of claims in order to formulate  
26 recommendations for reimbursement for consideration ~~by the review board~~, and providing  
27 meeting space for board meetings; provided, however, that no more than five hundred and fifty  
28 thousand dollars (\$550,000) shall be dispensed from the fund for administrative purposes during  
29 any fiscal year. The department shall directly access the fund, pursuant to the limits set forth in  
30 subdivision 46-12.9-5(b)(1), to pay for such expenses.

31 ~~(6) Grants to any third party for purposes of removal of underground storage tanks~~  
32 ~~and/or replacement of underground storage tanks with other fuel storage and distribution systems,~~  
33 ~~including aboveground storage tanks, when such removal and/or replacement will minimize the~~  
34 ~~potential future exposure of the fund to major expenses related to reimbursement of costs incurred~~

1 ~~in response or remediation should a future release occur. Grants under this section shall be limited~~  
2 ~~to fifty thousand dollars (\$50,000) per site and shall be in addition to any eligible reimbursement~~  
3 ~~for clean up expenses at that site.~~

4 **46-12.9-7. Rules and regulations.** -- The department is hereby authorized to promulgate,  
5 implement and amend regulations, in accordance with the provisions of chapter 35 of title 42,  
6 providing for the submission of claims to the fund and the timely disbursement of monies from  
7 the fund. Such regulations shall include, but not be limited to, the following:

8 (1) A means of notifying all eligible parties of the existence and functioning of the fund;

9 (2) The record keeping required of eligible parties for submission to and reimbursement  
10 from the fund;

11 (3) A set criteria which establishes the eligibility for reimbursement of specific costs,  
12 expenses and other obligations;

13 (4) A method of providing periodic reimbursement for eligible costs incurred by an  
14 eligible party after July 8, 1994. Such reimbursement shall be processed in the order that the  
15 claims were filed, subject to funds availability, except in the case where the director finds that  
16 funds must be expended out of order in order to abate an environmental emergency;

17 (5) A requirement that the ~~review board~~ department render its decisions to an eligible  
18 party upon the receipt of a complete claim for reimbursement within ninety (90) days following  
19 its receipt of completed claim;

20 (6) Establishing procedures for verifying claims presented under this chapter;

21 (7) Establishing procedures for approving, modifying or denying claims;

22 (8) The eligibility of claims shall be determined by the ~~review board~~ department;  
23 provided however, that no claims shall be considered for costs incurred prior to January 1, 1994  
24 by responsible parties who are owners or operators of no more than one location containing  
25 underground storage tanks and July 8, 1994 by all other responsible parties.

26 (9) Empowering the department to recognize and arrange for performance-based and  
27 other contracts with the responsible party and contractor for the remediation of a release.

28 (10) Empowering the department to arrange for the establishment of alternate means of  
29 financial responsibility.

30 **46-12.9-8. Review board Advisory board.** -- (a) There is hereby authorized, created and  
31 established the "underground storage tank ~~review~~ advisory board," to ~~approve, modify, or deny~~  
32 ~~disbursements to eligible parties and to~~ have such ~~other~~ powers as are provided herein.

33 (b) The ~~review~~ advisory board shall consist of ~~nine (9)~~ seven (7) members, as follows:  
34 the director of the department of environmental management or his or her designee who shall be a

1 subordinate within the department of environmental management. The governor, with the advice  
2 and consent of the senate, shall appoint ~~eight (8)~~ six (6) public members one of whom shall have  
3 expertise and experience in financial matters. In making these appointments the governor shall  
4 give due consideration to recommendations from the American Petroleum Institute, the  
5 Independent Oil Marketers Association, the Oil Heat Institute, the Environment Council, the  
6 Independent Oil Dealers Association and the Rhode Island Marine Trade Association. The newly  
7 appointed members will serve for a term of three (3) years commencing on the day they are  
8 qualified. Any vacancy which may occur on the board shall be filled by the governor, with the  
9 advice and consent of the senate, for the remainder of the unexpired term in the same manner as  
10 the member's predecessor as prescribed in this section. The members of the board shall be eligible  
11 to succeed themselves. Members shall serve until their successors are appointed and qualified. No  
12 one shall be eligible for appointment unless he or she is a resident of this state. The members of  
13 the board shall serve without compensation. Those members of the board as of the effective date  
14 of this act [July 15, 2005]who were appointed to the board by members of the general assembly  
15 shall cease to be members of the board on the effective date of this act, and the governor shall  
16 thereupon nominate three (3) members, each of whom shall serve the balance of the unexpired  
17 term of his or her predecessor. Those members of the board as of the effective date of this act  
18 [July 15, 2005]who were appointed to the board by the governor shall continue to serve the  
19 balance of their current terms. Thereafter, the appointments shall be made by the governor as  
20 prescribed in this section.

21 (c) ~~When claims are pending, the review~~ The advisory board shall meet at the call of the  
22 chair. All meetings shall be held consistent with chapter 46 of title 42.

23 (d) The ~~review~~ advisory board and its corporate existence shall continue until terminated  
24 by law. Upon termination of the existence of the ~~review~~ advisory board, all its rights and  
25 properties shall pass to and be vested in the state.

26 (e) The ~~review~~ advisory board shall have the following powers and duties, together with  
27 all powers incidental thereto or necessary for the performance of those stated in this chapter:

28 (1) To elect or appoint officers and agents of the ~~review~~ advisory board, and to define  
29 their duties:

30 (2) To make and alter bylaws, not inconsistent with this chapter, for the administration of  
31 the affairs of the ~~review~~ advisory board. Such bylaws may contain provisions indemnifying any  
32 person who is or was a director or a member of the ~~review~~ advisory board, in the manner and to  
33 the extent provided in § 7-6-6 of the Rhode Island nonprofit corporation act;

34 (3) To oversee, review, and evaluate the condition and performance of the underground

1 [storage tank fund and](#) approve and submit an annual report ~~within ninety (90) days~~ after the end  
2 of each fiscal year to the governor, the speaker of the house of representatives, the president of  
3 the senate, and the secretary of state, of its activities during that fiscal year. The report shall  
4 provide [information provided by the department, including](#): an operating statement summarizing  
5 meetings ~~or hearings~~ held, including meeting minutes, subjects addressed, and decisions  
6 rendered; a summary of the ~~review~~ [advisory](#) board's actions, fees levied, collected or received as  
7 prescribed in §§ 46-12.9-7 and 46-12.9-11, claims submitted, verified, approved, modified, and  
8 denied as prescribed in § 46-12.9-7, and reconsideration hearings held ~~as prescribed in § 46-12.9-~~  
9 ~~9~~; a synopsis of any law suits or other legal matters related to the ~~authority of the review board~~  
10 [fund](#); and a summary of performance during the previous fiscal year including accomplishments,  
11 shortcomings and remedies; a briefing on anticipated activities in the upcoming fiscal year; and  
12 findings and recommendations for improvements; and a summary of any training courses held  
13 pursuant to subdivision (f)(15) of this section. The report shall be posted electronically as  
14 prescribed in § 42-20-8.2. [The advisory board may make recommendations or suggestions on the](#)  
15 [claims process and/or the condition and management of the fund, and the department shall](#)  
16 [respond, in writing, to any of these suggestions or recommendations.](#)

17 (4) To conduct a training course for newly appointed and qualified members and new  
18 designees of ex-officio members within six (6) months of their qualification or designation. The  
19 course shall be developed by the executive director, approved by the board, and conducted by the  
20 executive director. The board may approve the use of any board or staff members or other  
21 individuals to assist with training. The training course shall include instruction in the following  
22 areas: the provisions of chapters 46-12.9, 42-46, 36-14, and 38-2; and the boards rules and  
23 regulations. The director of the department of administration shall, within ninety (90) days of the  
24 effective date of this act [July 15, 2005] prepare and disseminate training materials relating to the  
25 provisions of chapters 36-14, 38-2, and 42-46.

26 (f) Upon the passage of this act and the appointment and qualification of the three (3)  
27 new members prescribed in subsection (b) of this section, the board shall elect from among its  
28 members a chair. Thereafter, the board shall elect annually in February a chair from among the  
29 members. The board may elect from among its members such other officers as it deems  
30 necessary.

31 (g) ~~Six (6)~~ [Four \(4\)](#) members of the board shall constitute a quorum and the vote of the  
32 majority of the members present shall be necessary and shall suffice for any action taken by the  
33 board. No vacancy in the membership of the board shall impair the right of a quorum to exercise  
34 all of the rights and perform all of the duties of the board.

1 (h) Members of the board shall be removable by the governor pursuant to section 36-17  
2 and removal solely for partisan or personal reasons unrelated to capacity or fitness for the office  
3 shall be unlawful.

4 **46-12.9-9. Reconsideration hearing.** -- Any person aggrieved by a decision ~~of the~~  
5 ~~review board~~ on a claim submitted to the department may request a reconsideration hearing  
6 before the ~~review board~~ department of environmental management administrative adjudication  
7 division under the provisions of the regulations of ~~the board~~ that office and such regulations shall  
8 be consistent with the Rhode Island Administrative Procedures Act, chapter 35 of title 42. Any  
9 such decision shall contain a notice of the right to request a hearing and may specify a reasonable  
10 time limit, not to exceed twenty-one (21) days within which said person shall request a hearing. If  
11 no such request is made in a timely manner, the said person shall be deemed to have assented to  
12 the decision. If a timely request is received, the review board within a reasonable period of time  
13 shall act upon such request in accordance with the provisions of the Rhode Island Administrative  
14 Procedures Act.

15 **46-12.9-11. Fundings.** -- (a) There is hereby imposed an environmental protection  
16 regulatory fee of one cent (\$0.01) per gallon payable of motor fuel, to be collected by distributors  
17 of motor fuel when the product is sold to owners and/or operators of underground storage tanks.  
18 Each distributor shall be responsible to the tax administrator for the collection of the regulatory  
19 fee, and if the distributor is unable to recover the fee from the person who ordered the product,  
20 the distribution shall nonetheless remit to the tax administrator the regulatory fee associated with  
21 the delivery. In accordance with the regulations to be promulgated hereunder, the fee shall be  
22 collected, reported, and paid to the Rhode Island division of taxation as a separate line item entry,  
23 on a quarterly tax report by those persons charged with the collection, reporting, and payment of  
24 motor fuels taxes. This fee shall be administered and collected by the division of taxation.  
25 Notwithstanding the provisions of this section, the fee shall not be applicable to purchases by the  
26 United States government.

27 (b) Of the one cent (\$0.01) per gallon environmental protection regulatory fee collected  
28 by distributors of motor fuel and paid to the Rhode Island division of taxation, one-half cent  
29 (\$0.005) shall be deposited in the Intermodal Surface Transportation Fund to be distributed  
30 pursuant to § 31-36-20 and one-half cent (\$0.005) shall be paid to the underground storage tank  
31 review board. All environmental protection regulatory fees paid to the ~~review board~~ department,  
32 including tank registration fees assessed pursuant to § 46-12.9-7(9), shall be received by the  
33 ~~review board~~ department, which shall keep such money in a distinct interest bearing restricted  
34 receipt account to the credit of and for the exclusive use of the fund provided that for the period

1 January 1, 2008 through June 30, 2008, all revenues generated by the environmental protection  
2 regulatory fee up to a maximum of two million dollars (\$2,000,000) shall be deposited into the  
3 general fund. In fiscal year 2009, all revenues generated by the environmental protection  
4 regulatory fee up to a maximum equivalent to two million two hundred thirty-seven thousand five  
5 hundred dollars (\$2,237,500) shall be deposited into the Intermodal Surface Transportation Fund.  
6 All fees collected may be invested as provided by law and all interest received on such  
7 investment shall be credited to the fund.

8 (c) When the fund reaches the sum of eight million dollars (\$8,000,000), the imposition  
9 of the fee set forth in this chapter shall be suspended, and the division of taxation shall notify all  
10 persons responsible for the collection, reporting and payments of the fee of the suspension. In the  
11 event that the account balance of the fund subsequently is reduced to a sum less than five million  
12 dollars (\$5,000,000) as a result of fund activity, the fee shall be reinstated by the division of  
13 taxation, following proper notice thereof, and once reinstated, the collection, reporting, and  
14 payment of the fee shall continue until the account balance again reaches the sum of eight million  
15 dollars (\$8,000,000).

16 (d) Upon the determination by the ~~review~~ [advisory](#) board and the department that the  
17 fund has reached a balance sufficient to satisfy all pending or future claims, the ~~review~~ [advisory](#)  
18 board shall recommend to the general assembly the discontinuation of the imposition of the fee  
19 created in this section.

20 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO WATERS AND NAVIGATION - RI UNDERGROUND STORAGE TANK  
FINANCIAL RESPONSIBILITY ACT

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1           This act would rename the Rhode Island storage tank financial responsibility review  
2 board to the Rhode Island storage tank financial responsibility advisory board and would claim  
3 process and oversight of the underground storage tank fund.

4           This act would take effect upon passage.

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