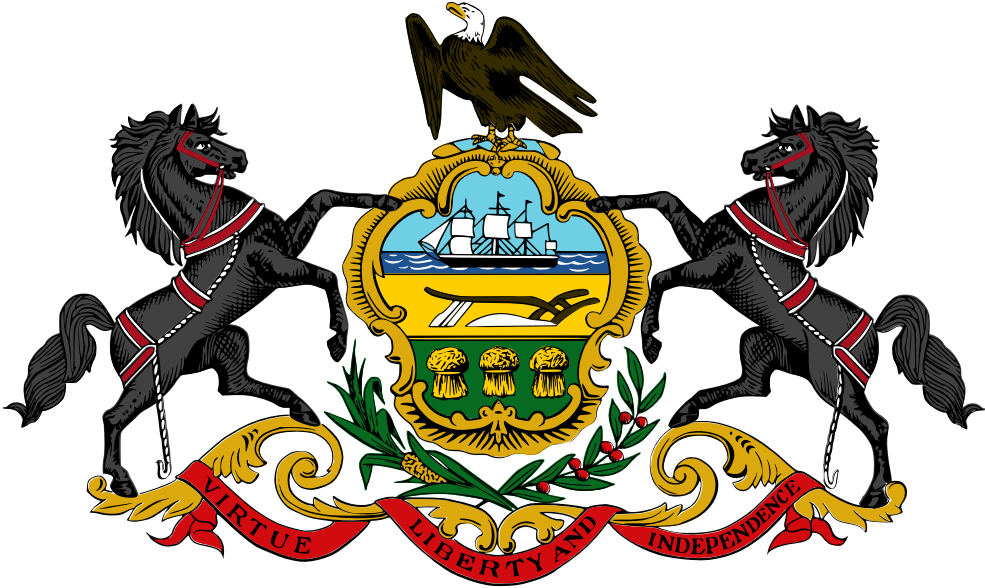


**Commonwealth of Pennsylvania**  
**Underground Storage Tank Indemnification Board**



**Member Handbook**

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## Version History

Version	Date	Description of Changes
1.0	December 3, 2025	Initial version
1.1	April 10, 2026	Updated to reflect amendments to eligibility regulations

## **Section 1: Introduction to the Underground Storage Tank Indemnification Fund**

### *Mission*

The mission of the Underground Storage Tank Indemnification Fund (USTIF) is to administer a fiscally responsible reimbursement program for eligible Tank Owners, Tank Operators, and Certified Companies/Installers to ensure the safety of the environment, people, and our Commonwealth in the event of a release.

### *Overview*

The release of regulated substances stored in underground storage tanks and certain heating oil tanks (collectively, USTs for the purposes of this manual) poses a threat to public health and the safety of both the environment and the Commonwealth's citizens. A release is generally considered to be any leak, spill, or discharge from a UST system into soil or groundwater.

The Storage Tank and Spill Prevention Act, Act 32 of 1989, 35 P.S. §§ 6021.101, *et seq.*, as amended, (Tank Act) created the Underground Storage Tank Indemnification Fund (USTIF) to help owners and operators meet the financial responsibility requirement promulgated by the U.S. Environmental Protection Agency (EPA) and the Pennsylvania Department of Environmental Protection (DEP). The Tank Act makes participation in USTIF mandatory for all owners of registered underground storage tanks. Additionally, owners of tanks with a capacity of 3,000 gallons or more storing heating oil for use on the premises may opt into the program.

The USTIF makes claim payments to eligible UST owners and operators for corrective action in response to releases from their USTs. To be eligible, a release must have occurred on or after February 1, 1994, the USTIF's inception date, and meet certain other criteria (*see* Section 4). A UST owner may also be eligible for coverage where third-party liability occurs due to a UST release that injures another person or that person's property.

Claim payments to eligible owners and operators shall be limited to reasonable and necessary corrective action and third-party liability. Claims are subject to a deductible of \$5,000 per tank per occurrence, with separate deductibles for corrective action and third-party liability. Claims are also subject to a \$1.5 million limit per tank per occurrence. A \$1.5 million annual aggregate limit applies to owners and operators of 100 USTs or less, and a \$3 million annual aggregate limit applies to owners and operators of 101 USTs or more.

The Tank Installers' Indemnification Program (TIIP) provides liability coverage for tank-handling activities subject to a \$5,000 deductible per tank per occurrence and a \$1.5 million limit per occurrence. An annual aggregate limit of \$1.5 million applies to installers who perform 100 or fewer installations or major modifications, and an aggregate limit of \$3 million applies to installers who perform more than 100 installations or major modifications.

## Introduction to the Underground Storage Tank Indemnification Fund

### *Operations*

The USTIF program is within the Pennsylvania Insurance Department's Bureau of Special Funds, which includes USTIF, the Catastrophic Loss Benefits Continuation Fund, and the Workers' Compensation Security Fund. The USTIF is overseen internally by an Executive Director, who also serves as the Director of the Bureau of Special Funds, and conducts its business like that of a small insurance company. The USTIF team consists of a small, experienced staff of claims personnel as well as several individuals who oversee the fee invoicing and revenue collection processes. Internal support is also provided by a Bureau accountant, in-house legal counsel, and IT staff.

The internal claims staff and Claims Manager oversee hundreds of active claim sites and handle the intake of all newly reported claims. They work in conjunction with the third-party administrator (TPA) to coordinate eligibility investigations as well as program policy and procedural matters. The claims staff also supervise and assist counsel with matters that involve first-party and third-party litigation.

The Financial Operations Manager and Administrative Operations Manager handle fee billing and collections. They also audit entities for compliance and perform administrative tasks for the Board. The accountant monitors the financial health of the USTIF and manages contracts with vendors. The in-house counsel reviews legal issues and assists with regulatory amendments. The IT staff monitor the operations of the Fee Billing System (FBS) and assist other staff with their technology needs.

### *Website and Fee Billing System*

The USTIF website (<https://ustif.pa.gov>) gives a comprehensive overview of the program. There are sections for reports and statistics, claim procedures, and Board information. The website is also the home of the Fee Billing System (FBS). Users can log in to view statements, report deliveries, and pay balances.

## The Underground Storage Tank Indemnification Board

### Section 2: The Underground Storage Tank Indemnification Board

#### *Overview*

The Underground Storage Tank Indemnification Board (USTIB) was established by the Tank Act to oversee all aspects of the USTIF program. The Board's responsibilities include:

- Developing policy
- Establishing and evaluating fee structures
- Setting the deductibles
- Approving monetary allocations and reimbursements to DEP
- Adjudicating appeals of the Executive Director's administrative determinations

The Board is governed by its by-laws (*see* Appendix E), which cover membership, powers, meetings, and business affairs. Through the by-laws, day to day USTIF operational decisions are delegated to the Executive Director.

#### *Membership*

The Board consists of 14 highly knowledgeable members, who represent government, industry, and the public.

Eight members are appointed by the Governor for terms ranging from two years to four years. Of those, six members with expertise in USTs are nominated by the following organizations:

- The American Petroleum Institute Pennsylvania
- The Pennsylvania Petroleum Association
- The Service Station Dealers and Automotive Repair Association of Pennsylvania and Delaware (Alliance of Automotive Service Providers of Pennsylvania) and the Petroleum Retailers and Auto Repair Association, Inc.
- A Statewide organization representing fuel retailers and food merchants (Pennsylvania Food Merchants Association)
- The Pennsylvania Farm Bureau, Pennsylvania State Grange and Pennsylvania Farmers Union
- The Tank Installers of Pennsylvania

Also appointed by the Governor are a local government member with expertise in USTs and a public member who is not affiliated with storage tanks in any way. The Insurance Commissioner and Secretary of Environmental Protection are *ex officio* members who, in accordance with the by-laws, are permitted to vote but cannot serve as an officer of USTIB.

Four members are appointed by officers and leaders in the General Assembly. The President *pro tempore* and the Minority Leader of the Senate and the Speaker and the Minority Leader of the House of Representatives each appoint one member.

Each member may appoint an alternate via a signed designation letter. Members with expired terms serve on the Board until they resign or their successors have been appointed and qualified.

## The Underground Storage Tank Indemnification Board

### *Pennsylvania State Ethics Commission Annual Financial Disclosure Forms*

Each year, USTIB members and alternates must complete Statements of Financial Interests and file them with the State Ethics Commission. As each disclosure form reports financial interests for the prior year, after completing their USTIB service, USTIB members are required to submit a final financial disclosure the year following the completion of their service. Statements of Financial Interests must be filed by May 1<sup>st</sup> each year.

Statement of Financial Interest forms are available on the State Ethics Commission website and may also be completed online: <https://www.pa.gov/agencies/ethics>

### *Meetings*

The Board meets quarterly, usually on the second Thursday of the last month of the calendar quarter. Additional meetings may be scheduled at the Chair's discretion or upon written request of three members.

Agenda items for quarterly meetings typically include:

- Adoption of meeting minutes for previous meeting
- Member updates and term renewals
- Claims summary
- Administrative operations
- Financial statements
- DEP Pollution Prevention Grant Program and Environmental Cleanup Program statistics

Items concerning specific claims, litigation, and regulatory amendments are added to the agenda as appropriate.

Additional agenda items for the first quarterly meeting of the year include:

- Elections for Chair and Vice Chair
- Annual report

Additional agenda items for the fourth quarterly meeting of the year include:

- Actuarial report
- Independent financial audit
- Action on fees
- DEP special funding request
- Reports for General Assembly

A packet of materials related to the agenda items is shared with the Board members prior to each meeting.

The meetings are conducted in accordance with Robert's Rules of Order (*see* Section 3) and are also subject to the Sunshine Act (*see* Appendix B). A quorum of eight members, including at least one *ex officio* member, is required to transact business. Members may attend in person or virtually.

## Parliamentary Procedure

### Section 3: Parliamentary Procedure

#### *Overview*

This section provides a simplified overview of commonly used motions and procedures based on Robert's Rules of Order Newly Revised (RONR) to help facilitate efficient and productive Board meetings. It is not exhaustive but covers the essential elements for most Board discussions and decisions. For more detailed information, please refer to the full edition of RONR.

#### *Key Principles*

- One item at a time: Focus discussion and voting on a single motion.
- Majority rule: Most decisions are made by a simple majority vote of members present and voting.
- Rights of the minority: All members have the right to express their views and have their motions considered.
- Order and decorum: Maintain a respectful and orderly environment for discussion.
- Equality: All members have equal rights and privileges.

#### *Commonly Used Motions*

(in descending order of precedence)

Adjourn (unqualified): Ends the meeting immediately.

- Requires: Second.
- Debatable: No.
- Amendable: No.
- Vote required: Majority.
- How to make: "I move to adjourn."

Recess: Takes a short break.

- Requires: Second.
- Debatable: No.
- Amendable: Yes (length of recess).
- Vote required: Majority.
- How to make: "I move to recess for [number] minutes."

Lay on the table: Temporarily sets aside the pending business for later in the meeting or a future meeting.

- Requires: Second.
- Debatable: No.
- Amendable: No.
- Vote required: Majority.

## Parliamentary Procedure

- How to make: "I move to lay the motion on the table."

Previous question: Immediately closes debate and brings the pending question to a vote.

- Requires: Second.
- Debatable: No.
- Amendable: No.
- Vote required: Two-thirds.
- How to make: "I move the previous question." or "Call for the previous question."

Limit or extend limits of debate: Changes the rules for how long or how many times members can speak.

- Requires: Second.
- Debatable: No.
- Amendable: Yes (time limits, number of speakers).
- Vote required: Two-thirds.
- How to make: "I move to limit debate to [number] minutes per speaker." or "I move to extend the limits of debate by [number] minutes."

Postpone to a certain time (or definitely): Delays action on a motion to a specific future time or meeting.

- Requires: Second.
- Debatable: Yes (reason for postponement).
- Amendable: Yes (time, date).
- Vote required: Majority.
- How to make: "I move to postpone the motion to [date and time] meeting."

Commit or refer (to a committee): Sends the motion to a committee for further study and recommendation.

- Requires: Second.
- Debatable: Yes (reasons for referral, committee instructions).
- Amendable: Yes (committee size, instructions, reporting date).
- Vote required: Majority.
- How to make: "I move to refer this matter to the [name of committee]."

Amend: Modifies the main motion.

- Requires: Second.
- Debatable: Yes, if the main motion is debatable.
- Amendable: Yes (amendments to the amendment are allowed, but only one at a time).
- Vote required: Majority.
- How to make: "I move to amend the motion by [inserting/striking out/inserting and striking out] the following words: [specific wording]."

## Parliamentary Procedure

Main motion: Introduces a new item of business for consideration.

- Requires: Second.
- Debatable: Yes (the merits of the proposal).
- Amendable: Yes.
- Vote required: Majority.
- How to make: "I move that [state your proposal clearly and concisely]."

### *Steps in Handling a Main Motion*

- Floor is yielded.
- Member addresses the Chair: "Mr. / Madam Chair. "
- Member is recognized by the Chair.
- Member makes a motion: "I move that..."
- Another member seconds the motion: "Second."
- Chair states the motion: "It has been moved and seconded that [restates the motion]." (The motion is now before the assembly.)
- Debate/discussion: Members discuss the motion.
  - Members address the Chair.
  - The maker of the motion has the right to speak first.
  - Debate should be relevant to the motion.
  - The Chair ensures fair and orderly discussion.
- Chair puts the question to a vote: "All those in favor of the motion, please say aye." "All those opposed, please say nay."
- Chair announces the result: "The ayes have it, and the motion carries." or "The nays have it, and the motion fails."

### *Incidental Motions*

(arise out of other proceedings and are decided before the main question)

Point of order: Calls attention to a breach of the rules.

- Requires: No second.
- Debatable: No.
- Amendable: No.
- Vote required: Chair's ruling.
- How to make: "Point of order." (State the rule that is being violated).

Parliamentary inquiry: Asks the Chair for information on parliamentary procedure.

- Requires: No second.
- Debatable: No.
- Amendable: No.

## Parliamentary Procedure

- Vote required: Chair's response.
- How to make: "Parliamentary inquiry." (State your question).

Withdraw a motion: The maker of a motion can withdraw it before voting begins.

- Requires: Permission of the assembly (if the motion has been stated by the Chair).
- Debatable: No.
- Amendable: No.
- Vote required: Majority (if objection is raised).
- How to make: "I request permission to withdraw my motion."

Object to the consideration of a question: Used to avoid discussing a main motion that is considered undesirable or inappropriate. Must be raised immediately after the motion is stated.

- Requires: No second.
- Debatable: No.
- Amendable: No.
- Vote required: Two-thirds negative vote sustains the objection.
- How to make: "I object to the consideration of the question."

### *Unanimous Consent*

In some cases, the Chair may seek approval of a motion via unanimous consent. It is typically used for routine, noncontroversial motions such as adjourning the meeting after the agenda items have been covered. In these cases, the Chair simply asks if there are any objections to the motion. If no members object, then the motion carries. If there is an objection, then a vote must be taken.

### *Elections*

The Chair and Vice Chair are elected by a majority vote of the members present and voting at the first quarterly Board meeting each year. Every member other than the *ex officio* Insurance Commissioner and Secretary of Environmental Protection is eligible for election. The process is as follows:

- The Executive Director opens the floor for nominations for Chair.
- Members make nominations: "I nominate ... for Chair."
- Executive Director asks if there are any more nominations: "Are there any other nominations for Chair of the Board?"
- Executive Director takes vote on each nominee, in the order they were nominated: "All those in favor of electing Nominee #1 as Chair of the Board, please signify by saying aye." "All opposed, signify by saying nay." "All those in favor of electing Nominee #2 as Chair of the Board, please signify by saying aye." "All opposed, signify by saying nay."

## Parliamentary Procedure

- Executive Director acknowledges elected chair and informs them that their term will run from March of the current year to March of next year.
- Process repeats for Vice Chair.

### *Approvals*

Some items are subject to Board approval (via a main motion), while others currently are not. Please refer to the table below.

<b>Subject to Board Approval</b>	<b>Not Subject to Board Approval</b>
Meeting minutes	Claims reports
Annual reports	Financial statements
Actuarial reports	Quarterly DEP allocation reports
Five-year performance reviews	Annual publication of deductibles
DEP funding requests	Administrative operations reports
Fee structures	
Deductibles	
Independent financial audits	
Regulations	
Fee evaluation memos for General Assembly	
Allocations and upgrade loan reports for General Assembly	

### *Conclusion*

This section is intended to be a helpful tool for navigating our quarterly Board meetings. By understanding and utilizing these basic principles and motions, we can ensure our meetings are efficient, fair, and productive. Please do not hesitate to ask for clarification on any procedural questions during the meetings.

**NOTE: Microsoft Copilot was used in the creation of this handbook section. Outputs were reviewed for accuracy and revised by USTIF staff.**

## The Claims Process

### Section 4: The Claims Process

#### *Submitting a Claim*

A new claim can be reported to the USTIF via the following methods:

- Logging in to the USTIF website (<https://ustif.pa.gov>) and reporting the claim through the portal
- Calling (717) 787-0763 and reporting the claim over the phone
- Completing the claim intake form (*see* Appendix C) and emailing it to [RA-In-FBSClaims@pa.gov](mailto:RA-In-FBSClaims@pa.gov) with the subject line "Claim Notification Submittal Form"

Information requested includes the facility name and ID number, owner name, contact information, when the release was discovered, and whether there is an offsite impact.

#### *Initial Review*

After a new claim is submitted, it is assigned to a claim evaluator at the USTIF and a claim representative at the USTIF's third-party administrator (TPA). The claim representative attempts to make initial contact with the claimant within one business day. Additional attempts are made in the following days, if necessary.

The claimant is sent several letters:

- Request for additional information concerning facility, tanks, and release
- Notice that competitive bids may be required
- Request for work plan
- Authorization for payment form to allow USTIF to pay consultants directly

The claim representative researches the facility using online map services, DEP databases, and other public data sources. They assess the potential for subrogation and for third-party complaints. They also obtain a recorded statement from the claimant or consultant. Within 30 days of claim receipt, the claim representative prepares the first status report for review by the USTIF claim evaluator.

#### *Eligibility Review*

Section 977.31 of the USTIF's regulations states that claims are subject to the following eligibility requirements:

- (1) The claimant is the owner, operator or certified tank installer of the UST or HOT which is the subject of the claim.
- (2) Fees required under Subchapter B (relating to fees and collection procedures) for every UST or HOT located at the site where the release occurred are paid prior to the time that the release giving rise to the claim is discovered.
- (3) Registration and annual registration fees required under § § 245.41 and 245.42 (relating to tank registration requirements; and tank registration fees) for USTs located at the site

## The Claims Process

where the release occurred are current and paid on or before 60 days of when the release giving rise to the claim is discovered.

- (4) The participant received the appropriate permit or certification, if required under sections 108, 501 and 504 of the act (35 P.S. § § 6021.108, 6021.501 and 6021.504), pertaining to interim certification of installers and inspectors, UST requirements and permits and plans, prior to the time that the release giving rise to the claim is discovered.
- (5) The release that is the subject of the claim occurred after the date established by the Board for payment of the fee required by section 705(d) of the act (35 P.S. § 6021.705(d)), regarding fees.
- (6) The participant cooperates, as defined in § 977.32 (relating to participant cooperation), with the Fund in its eligibility determination process, claims investigation, the defense of any suit, the pursuit of a subrogation action and other matters as requested.
- (7) The participant met the notification requirements of § 977.34 (relating to claims reporting).
- (8) If the claimant is a certified company, the company conducted a tank-handling activity on a UST or a HOT from which the release occurred.

The TPA conducts an investigation and recommends whether to deem the claim eligible. This process can take several months.

As part of the investigation, the claim representative may take the following steps:

- Review information provided by claimant
- Review DEP file
- Visit the site
- Conduct interviews
- Consult a third-party reviewer (TPR)

The TPA then prepares a status report recommending one of the following eligibility determinations:

- Denial
- Fully eligible
- Eligible with proration

The final determination is made by the USTIF staff.

### *After the Eligibility Determination*

**If a claim is determined to be eligible**, an eligibility confirmation letter is sent to the claimant. The letter explains how to submit invoices for reimbursement. The letter also explains how the deductible applies.

Invoices are reviewed by the TPA to verify that expenses are reasonable, necessary, fully documented, and covered by the USTIF. In most cases, the claimant authorizes the USTIF to make payments directly to the consultant that rendered the services. However, in some cases, the claimant pays the consultant and is reimbursed by the USTIF.

## The Claims Process

The TPA closes the claim file once it appears that no further expenses will be covered or, in some cases, where only post-remedial care is required. A closure memo is prepared for the USTIF claim evaluator's review.

**If a claim is determined to not be eligible**, a denial letter is sent to the claimant. The letter explains why the claim was denied and gives instructions for filing an appeal.

Any appeal must be received in writing by the Executive Director within 35 days of the mailing date of the denial letter. The Executive Director will then review the claim and issue a decision.

The Executive Director's decision may be appealed to the Board. Such an appeal must be received by the Administrative Hearings Office (AHO) within 35 days of the mailing date of the Executive Director's decision. The AHO serves as the hearing officer for the Board and provides a report and recommendation for the Board's review and approval. The Board deliberates the matter in executive session before issuing its decision. The Board's decision can be appealed to the Commonwealth Court within 30 days of the date it is issued.

**Section 5: Insurance Department Office of Chief Counsel**

The Office of Chief Counsel provides legal advice and assistance to the Insurance Commissioner and Department staff on a broad range of insurance regulatory, solvency, consumer protection and receivership matters. This Office also initiates actions to enforce state insurance laws as necessary, represents the Department before state and federal courts in litigation matters and reviews and drafts proposed legislation and regulations.

The Office of Chief Counsel provides legal support to the Liquidations and Special Funds Office through a Liquidations Counsel and a Special Funds Counsel. These attorneys provide counsel to USTIF and USTIB. Special Funds Counsel and outside counsel contracted through the legal procurement process of the Governor’s Office of General Counsel handle cases on behalf of USTIF at the AHO, courts of common pleas, the Commonwealth Court and state Supreme Court.

The Administrative Hearings Office (AHO) is also part of the Office of Chief Counsel. The AHO handles filings, conducts hearings, and prepares adjudications related to insurance laws and regulations. For the Liquidations and Special Funds Office, the AHO handles appeals for AutoCAT Fund benefit denials, USTIF Executive Director decision appeals and other cases under the jurisdiction of the Insurance Commissioner.

## Section 6: The Regulation Process

Regulations concerning the USTIF are found in 25 Pa. Code Ch. 977 (*see* Appendix F). They are organized into the following subchapters:

- A. General Provisions
- B. Fees and Collection Procedures
- C. Coverage and Claims Procedures
- D. Heating Oil Tank Optional Program
- E. Dispute Procedures

With guidance from its counsel, the Board may amend these regulations. Rulemaking is a lengthy process subject to the Commonwealth Documents Law, the Regulatory Review Act, the Commonwealth Attorneys Act, the Administrative Code of 1929, and Executive Order 1996-1.

The Commonwealth Documents Law sets the basic steps of rulemaking. It establishes the *Pennsylvania Bulletin* as the gazette of proposed and final rulemakings and establishes the *Pennsylvania Code* as the publication of final rules and regulations. It also mandates a request for public comment in notices of proposed rulemakings.

The Regulatory Review Act establishes a review process for proposed and final-form regulations. Reviews are performed by the Independent Regulatory Review Commission (IRRC) and committees of the General Assembly. Comments from these bodies and the public must be considered in the preparation of final-form regulations.

The Commonwealth Attorneys Act requires regulations to be reviewed by the Office of General Counsel (OGC) and Office of Attorney General (OAG) prior to publication. These reviews consider the statutory authority, form, and clarity, among other aspects.

The Administrative Code of 1929 requires the Office of the Budget to prepare fiscal notes for publication with proposed rulemakings. These notes indicate whether regulations will subject the Commonwealth or its political subdivisions to revenue losses or increased costs.

Executive Order 1996-1 (*see* Appendix D) lists principles and directives for minimizing the burden of regulations on impacted stakeholders. For example, regulations should be drafted in simple language, with input from stakeholders. The costs of regulations must not outweigh their benefits.

More information about the regulatory process can be found on the Independent Regulatory Review Commission website: <https://irrc.state.pa.us/>.

## Section 7: The Actuarial Review and Fee and Deductible Setting Process

### *Actuarial Report*

Following each fiscal year, an actuarial report is prepared for the USTIF by a consulting firm. The report has several objectives:

- Estimate unpaid losses and allocated loss adjustment expenses
- Evaluate the USTIF's financial position, including the estimated surplus or deficit
- Project cash flow for the next 20 years
- Project TIIP underwriting income for the next 10 years
- Make recommendations for participant deductibles based on the actuarial projections
- Make recommendations for participant fees based on the actuarial projections
  - Recommendations are made in accordance with the Board's objectives. In 2003, the Board set an objective of having positive cash and invested assets for a projection period of at least five years.

The analysis incorporates data from many sources, including:

- Claims reports
- Fee revenue reports
- DEP allocation reports
- Certified tank-handling company reports
- Tank databases
- Contracts
- Financial statements
- Investment performance reviews

Various actuarial methods are selected for their unique advantages. Projections are made for a range of potential interest rates, and new data is used to refine past projections. Assumptions, conditions, and limitations are explained as well. The final report is presented at the December Board meeting, where fees and deductibles are decided for the following year. The report is also provided to the General Assembly, Office of Comptroller Operations, U.S. EPA, and USTIF's independent financial auditors.

### *Fees*

The USTIF is funded by several types of fees, in addition to its investments.

Participants storing diesel, heating oil, used motor oil, kerosene, and unknown substances are subject to an annual **capacity fee**. This fee has been set at \$0.0825 per gallon of tank capacity since 2004.

Participants storing gasoline, new motor oil, hazardous substances, gasohol, aviation fuel, mixtures, farm diesel, and other regulated substances are subject to a **gallon fee**, also known as the throughput fee. This fee is collected by distributors of these substances and remitted to the USTIF on a monthly basis. The fee has been set at \$0.011 per gallon delivered since 2004. Participants

## The Actuarial Review and Fee and Deductible Setting Process

storing these substances are also subject to an annual **tank fee**. The current tank fee is \$0 per tank but was set at \$100 per tank from 1994 to 2001. Total gallon and tank fees paid by an owner or operator of a nonretail bulk storage or wholesale distribution UST storing gasoline are capped at \$5,000 per UST per year.

Certified tank-handling companies are subject to an annual **certified company fee** of \$1,000. They are also subject to annual **certification fees** based on the certifications held by the installers. However, the certification fees have remained \$0. Lastly, the companies are subject to **activity fees** for work performed. The activity fees are \$50 per installation, \$50 per major modification, and \$15 per removal.

After the actuarial report is presented at the December meeting, the Board votes on the fees for the following year. The actuarial report and fee schedule are provided to the General Assembly, as required by the Tank Act.

### *Deductibles*

USTIF claims are subject to several deductibles, each of which is applied to certain a certain type of claim.

The deductible for **corrective action claims** is currently set at \$5,000 per tank per occurrence, the lowest amount permitted by the Tank Act. This deductible is based on an estimate of the average cost of taking corrective action due to a release.

The deductible for **third-party liability claims** is currently set at \$5,000 per tank per occurrence, the lowest amount permitted by the Tank Act. For each release, a separate deductible for each third-party liability claim applies in addition to the deductible for corrective action.

The deductible for **TIIP claims** is currently set at \$5,000 per tank per occurrence. The lowest amount permitted by the Tank Act is \$5,000 per occurrence.

After the actuarial report is presented at the December meeting, the Board votes on the deductibles for the following year. The deductibles are then published in the *Pennsylvania Bulletin*, at least 30 days in advance of any change.

## The Upgrade Loan Program

### Section 8: The Upgrade Loan Program

The Upgrade Loan Program assisted owners of regulated underground storage tanks to upgrade or remove their underground storage tank systems to meet EPA upgrade requirements. The program was implemented through Act 13 of 1998. This low interest loan is funded by the USTIF and administered by the Department of Community and Economic Development (DCED).

Owners of regulated USTs could qualify for the Upgrade Loan Program, with owners of six or fewer regulated USTs having priority for the first 120 days of each fiscal year. However, loan applications have not been accepted since 2010.

The loan could be used to finance all or a portion of the following costs:

- Cathodic protection systems.
- Spill and overflow prevention.
- Tank removal or closures.
- Upgrade of existing tanks.
- Leak detection devices.
- Engineering, design and permitting associated with upgrading.
- Construction and installation directly associated with upgrading.
- Cost of new tanks.
- Piping.
- Dispensers.
- Stage II vapor recovery systems.
- Removal of regulated USTs.

The following costs are ineligible for financing:

- Refinancing.
- Building and landscaping improvement.
- New facilities.
- Other costs unrelated to upgrading or removal.

The loan terms and conditions are set by statute and USTIB policy.

- Maximum loan amount: \$500,000 per UST owner or 75 percent of the total eligible project cost, whichever is less.
- Repayment period: Up to 10 years.
- Interest Rate: Equal to the 5-year U.S. Treasury Note rate fixed at the time the application is presented.
- Fees: Two percent loan commitment fee, due at loan commitment.
- Collateral: Collateral will be requested as necessary.
- Private financing: 25 percent private sector match required, of which at least 10 percent must be cash equity. The remainder may be bank or vendor financing.

## The Voluntary Heating Oil Tank Program

### **Section 9: The Voluntary Heating Oil Tank Program**

The USTIF offers a Voluntary Heating Oil Tank Program. This program offers coverage to owners or operators of underground heating oil tanks with a capacity of 3,000 gallons or greater used for storing heating oil products for use on the premises.

Heating oil tanks entered into the program are subject to the capacity fee as annually set by the Board. This program indemnifies eligible owners or operators for releases from their tanks. To obtain coverage from the USTIF, owners or operators must comply with the following requirements:

- Complete and submit an application.
- Provide the USTIF with a copy of a successful tank tightness test, completed within the past 30 days.
- Submit a \$50 fee deposit.

The fee deposit will be credited to the owner's or operator's account if the application is approved. Participants in the Voluntary Heating Oil Tank Opt-In Program can cancel by providing the USTIF with advance written notice.

## **Section 10: The Annual Report, Five-Year Performance Review, and Other Required Reporting**

### *Annual Report*

The USTIF prepares an annual report following the end of each calendar year. The report covers many topics, including:

- Background and mission
- Accomplishments
- Claims statistics
- Fees and revenue
- DEP allocations

The report is prepared by the Executive Director and Claims Manager, with assistance from the USTIF's TPA. The report is then presented at the first quarter Board meeting, where the Board votes on whether to accept the report.

USTIF's annual reports are made available on its website: <https://ustif.pa.gov/annual-reports>.

### *Five-Year Performance Review*

A performance review of the USTIF is conducted every five years. The Board uses the review to recommend either continuing or terminating the program to the General Assembly. The review investigates the following:

- Adequacy of funding
- Possible duplication of services
- Demonstrated need for the program
- Impact of terminating the program
- Whether program is providing intended benefits

The review draws from past reports and incorporates surveys of Board members, participants, and the Executive Director. Key financial figures are reviewed, and survey results are analyzed and presented in detail. Initiatives and accomplishments, such as regulatory changes and website enhancements, are also reviewed.

USTIF's five-year performance review is made available on its website: <https://ustif.pa.gov/five-year-performance-reviews>.

### *DEP Allocation and Upgrade Loan Report*

USTIB is required to annually report to the General Assembly regarding corrective actions taken and expenditures made under the Environmental Cleanup Program ("ECP") for the preceding fiscal year; corrective actions taken and expenditures made under the Underground Storage Tank Pollution Prevention Program ("PPP") for the preceding fiscal year; and activities and expenditures made pursuant to the Upgrade Loan Program for the preceding calendar year. *See* 35 P.S. § 6021.710-712.

## The Annual Report, Five-Year Performance Review, and Other Required Reporting

### *Publishing Deductibles in the Pennsylvania Bulletin*

USTIF is required to publish the deductibles in the *Pennsylvania Bulletin* annually, at least 30 days in advance of any change. Because USTIF is required to publish the current deductibles, USTIB is not required to approve the publication. However, USTIB reviews and sets deductibles each year.

### *Annual Fee Evaluation Report*

Following USTIB's annual approval of fees, USTIB is required to provide a copy of its evaluation, which is contained in the annual actuarial report, to the Senate Environmental Resources & Energy Committee, the House Environmental & Natural Resource Protection Committee, and the House Energy Committee.

## **Section 11: Department of Environmental Protection Allocations**

### *Overview*

The Tank Act authorizes the Board to make certain allocations from the USTIF to programs run by the DEP. Funding requests are presented by the DEP for consideration at the fourth quarterly Board meeting each year.

### *Pollution Prevention Program*

The Underground Storage Tank Pollution Prevention Program, also known as Pump and Plug, assists underground storage tank owners with tanks that have not been upgraded to comply with DEP and EPA regulations. Costs may be reimbursed for pumping out and disposing of regulated substances, cleaning the inside of tanks, and grouting the fill pipes. The Board may allocate up to \$350,000 per year for use by the DEP in reimbursing owners under this program.

The program encourages small tank owners to remove the environmental threat that unused and unsafe tanks pose to the Commonwealth. The program provides reimbursement up to \$2,500 per tank for owners of six or fewer tanks. The DEP may withhold reimbursement until outstanding violations are resolved or until USTIF fees, DEP registration fees, fines, or penalties are paid.

It remains the responsibility of the owner to permanently close the tank(s) in accordance with DEP closure requirements. Grant money is not available under the Pollution Prevention Program for removing tanks, closing tanks in place, performing site assessments, or conducting remediation activities.

Information on applying for reimbursement can be found on the DEP website: <https://www.pa.gov/services/dep/apply-for-the-department-of-environmental-protection-pollution-prevention-grant.html>

### *Environmental Cleanup Program*

The Underground Storage Tank Environmental Cleanup Program consists of several allocations. Each year, the Board may approve a base allocation of up to \$5.5 million for use by the DEP in ensuring that corrective action is taken at facilities.

Up to \$2 million of the base allocation may be used for special cleanup projects to assist owners who do not otherwise qualify for financial assistance.

Up to \$750,000 of the base allocation may be used for grants to assist owners of tanks with a capacity of 3,000 gallons or less storing heating oil for use on the premises. Grants are limited to the actual costs of corrective action or \$5,000, whichever is less, and are subject to a \$1,000 deductible. Information on applying for reimbursement can be found on the DEP website: <https://www.pa.gov/services/dep/apply-for-oil-tank-cleanup-reimbursement-from-the-department-of-environmental-protection.html>

Additionally, the Board may approve a separate annual allocation of up to \$5.5 million for use by the DEP in taking corrective action in response to catastrophic releases. A release is deemed

## Department of Environmental Protection Allocations

catastrophic when it threatens public health and safety and the environment and has total corrective action costs greater than twice the USTIF limits.

### *Investigation, Closure, Compliance, and Enforcement Costs*

The Board may allocate up to \$7 million per year to reimburse the DEP for costs of investigations, responsibility determinations, oversight of remediation and third-party response, and case closure for spills and leaks related to storage tanks. This allocation also reimburses costs of inspections, compliance determinations, and enforcement actions against owners of storage tanks.

The Tank Act requires several components in DEP's funding request for this allocation.

- (1) A workload analysis
- (2) Past and projected administrative costs based on the population of aboveground and underground tanks
- (3) Past and projected revenues from all sources of funds, Federal and State
- (4) Reasons for changes in projected costs
- (5) Steps taken by the DEP to reduce costs

DEP presents its funding request each year at the Board's December meeting.

## Additional Support Offices

### Section 12: Additional Support Offices

#### *The Communications Office*

The Pennsylvania Insurance Department Communications Office manages public relations, including print and digital publications, for the Department. The Communications Office is involved with the website and annual report for the USTIF.

#### *The Office of Legislative Affairs*

The Pennsylvania Insurance Department Office of Legislative Affairs acts as the liaison between the Department and the General Assembly and Governor's Office. The Office of Legislative Affairs assists the USTIF with many functions:

- Requesting Board member appointments and reappointments from the Governor's Office and General Assembly
- Monitoring legislation under consideration by the General Assembly
- Submitting statutorily required reports to the General Assembly, including annual fee evaluations, annual reports on DEP allocations and upgrade loans, and five-year performance reviews

#### *The Employment, Banking and Revenue Human Resource and Information Technology Delivery Centers*

The Employment, Banking and Revenue (EBR) Human Resource and Information Technology Delivery Centers provide HR and IT support to several Commonwealth agencies, including the Insurance Department. The HR Delivery Center ensures that the Bureau of Special Funds has adequate staff to run the USTIF program. The IT Delivery Center provides technology solutions for USTIF staff to best serve stakeholders.

#### *The Office of Comptroller Operations*

The Pennsylvania Office of the Budget's Office of Comptroller Operations manages accounting and financial reporting for the Commonwealth. The financial reports for the USTIF include financial statements, notes, and supplemental schedules with additional details. A new report is prepared following each fiscal quarter. The Office is also involved in processing fee, subrogation, and deductible payments received by the USTIF.

#### *The Bureau of Imaging and Document Management*

The Pennsylvania Department of Revenue Bureau of Imaging and Document Management assists in processing fee payments made by check.

#### *The Treasury*

The Pennsylvania Treasury Department is the custodian of Commonwealth funds, including those of the USTIF. The Treasury invests USTIF assets under the direction of the USTIF Investment Committee. The Committee consists of three Treasury members and three Insurance Department members designated by the State Treasurer and Insurance Commissioner, respectively.



**Underground Storage Tank Indemnification Board**

**Third Quarter Board Meeting**

Thursday, September 18, 2025

10:00 AM

In Person Attendance	Virtual Participation
Forster Room, First Floor Conference Center Capital Associates Building 901 North 7 <sup>th</sup> Street Harrisburg, PA 17102	<a href="#">Click here to join the meeting.</a> Meeting ID: 297 943 638 259 Passcode: dE6qq7UX Or call in (audio only) <a href="#">+1 267-332-8737,,895378838#</a> Phone conference ID: 895 378 838#

**AGENDA**

- I. Call to Order** Stephanie Catarino Wissman
  
- II. New Business**
  - A. Right-to-Know Law Training Erin Burlew
  - B. Adoption of Second Quarter 2025 Meeting Minutes Ben Lorah
  - C. Board Member Updates and Term Renewals Ben Lorah
  - D. Board Member Handbook Ben Lorah
  
- III. Administrative Items**
  - A. USTIF Claims Summary Amy Forbes-Witt
  - B. USTIF Administrative Operations Ben Lorah
  - C. USTIF Financial Statements Ben Lorah
  - D. DEP Pollution Prevention Grant Program Statistics Troy Conrad
  - E. DEP Environmental Cleanup Program Statistics Troy Conrad
  
- IV. Unfinished Business**
  - A. Chapter 977 Regulation Revision Update Preston Buckman
  - B. Chapter 977 Regulation Revision Approval Vote Stephanie Catarino Wissman
  - C. Remaining Meeting Dates for 2025 Ben Lorah  
 December 11, 2025
  
- V. Adjournment** Stephanie Catarino Wissman

## Appendix B: Sunshine Act

### TITLE 65 PUBLIC OFFICERS

#### Part

##### II. Accountability

**Enactment.** Unless otherwise noted, the provisions of Title 65 were added October 15, 1998, P.L.729, No.93, effective in 60 days.

### PART II ACCOUNTABILITY

#### Chapter

- 7. Open Meetings
- 11. Ethics Standards and Financial Disclosure
- 13. Lobby Regulation and Disclosure (Deleted by amendment)
- 13A. Lobbying Disclosure

**Enactment.** Part II was added October 15, 1998, P.L.729, No.93, effective in 60 days.

**Special Provisions in Appendix.** See sections 2 and 7 of Act 93 of 1998 in the appendix to this title for special provisions relating to transition provisions and legislative intent.

### CHAPTER 7 OPEN MEETINGS

#### Sec.

- 701. Short title of chapter.
- 702. Legislative findings and declaration.
- 703. Definitions.
- 704. Open meetings.
- 705. Recording of votes.
- 706. Minutes of meetings, public records and recording of meetings.
- 707. Exceptions to open meetings.
- 708. Executive sessions.
- 709. Public notice.
- 710. Rules and regulations for conduct of meetings.
- 710.1. Public participation.
- 711. Use of equipment during meetings.
- 712. General Assembly meetings covered.
- 712.1. Notification of agency business required and exceptions.
- 713. Business transacted at unauthorized meeting void.
- 714. Penalty.
- 714.1. Attorney fees.
- 715. Jurisdiction and venue of judicial proceedings.
- 716. Confidentiality.

**Enactment.** Chapter 7 was added October 15, 1998, P.L.729, No.93, effective in 60 days.

## Appendix B: Sunshine Act

**Special Provisions in Appendix.** See sections 4(a) and (b) and 5 of Act 93 of 1998 in the appendix to this title for special provisions relating to applicability and codification of existing law.

**Cross References.** Chapter 7 is referred to in section 13A10 of this title; sections 1511, 9311, 9319 of Title 3 (Agriculture); sections 1201.1, 1202.1 of Title 4 (Amusements); sections 1006, 1111, 1183, 1191, 24A04 of Title 8 (Boroughs and Incorporated Towns); sections 11005, 12416, 13706 of Title 11 (Cities); sections 503, 1506 of Title 12 (Commerce and Trade); section 3115 of Title 27 (Environmental Resources); sections 3303, 5303, 5741, 7212, 7386, 8108 of Title 35 (Health and Safety); sections 9302, 9304 of Title 40 (Insurance); section 2152 of Title 42 (Judiciary and Judicial Procedure); section 704 of Title 51 (Military Affairs); section 3305 of Title 58 (Oil and Gas); sections 5007, 6163 of Title 61 (Prisons and Parole); section 3753 of Title 62 (Procurement); sections 1511, 6017, 6111 of Title 64 (Public Authorities and Quasi-Public Corporations); section 2113 of Title 68 (Real and Personal Property); sections 3101, 5958 of Title 71 (State Government); sections 1741, 8205, 9103 of Title 74 (Transportation); section 3345.1 of Title 75 (Vehicles).

### **§ 701. Short title of chapter.**

This chapter shall be known and may be cited as the Sunshine Act.

### **§ 702. Legislative findings and declaration.**

(a) **Findings.**--The General Assembly finds that the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decisionmaking of agencies is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society.

(b) **Declarations.**--The General Assembly hereby declares it to be the public policy of this Commonwealth to insure the right of its citizens to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon as provided in this chapter.

### **§ 703. Definitions.**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"Administrative action."** The execution of policies relating to persons or things as previously authorized or required by official action of the agency adopted at an open meeting of the agency. The term does not, however, include the deliberation of agency business.

**"Agency."** The body, and all committees thereof authorized by the body to take official action or render advice on matters of agency business, of all the following: the General Assembly, the executive branch of the government of this Commonwealth, including the Governor's Cabinet when meeting on official policymaking business, any board, council, authority or commission of the Commonwealth or of any political subdivision of the Commonwealth or any State, municipal, township or school authority, school board, school governing body, commission, the boards of trustees of all State-aided colleges and universities, the councils of trustees of all State-owned colleges and universities, the boards

## Appendix B: Sunshine Act

of trustees of all State-related universities and all community colleges or similar organizations created by or pursuant to a statute which declares in substance that the organization performs or has for its purpose the performance of an essential governmental function and through the joint action of its members exercises governmental authority and takes official action. The term shall include the governing board of any nonprofit corporation which by a mutually binding legal written agreement with a community college or State-aided, State-owned or State-related institution of higher education is granted legally enforceable supervisory and advisory powers regarding the degree programs of the institution of higher education. The term does not include a caucus or a meeting of an ethics committee created under rules of the Senate or House of Representatives.

**"Agency business."** The framing, preparation, making or enactment of laws, policy or regulations, the creation of liability by contract or otherwise or the adjudication of rights, duties and responsibilities, but not including administrative action.

**"Caucus."** A gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action in the General Assembly.

**"Conference."** Any training program or seminar, or any session arranged by State or Federal agencies for local agencies, organized and conducted for the sole purpose of providing information to agency members on matters directly related to their official responsibilities.

**"Deliberation."** The discussion of agency business held for the purpose of making a decision.

**"Emergency meeting."** A meeting called for the purpose of dealing with a real or potential emergency involving a clear and present danger to life or property.

**"Executive session."** A meeting from which the public is excluded, although the agency may admit those persons necessary to carry out the purpose of the meeting.

**"Litigation."** Any pending, proposed or current action or matter subject to appeal before a court of law or administrative adjudicative body, the decision of which may be appealed to a court of law.

**"Meeting."** Any prearranged gathering of an agency which is attended or participated in by a quorum of the members of an agency held for the purpose of deliberating agency business or taking official action.

**"Official action."**

(1) Recommendations made by an agency pursuant to statute, ordinance or executive order.

(2) The establishment of policy by an agency.

(3) The decisions on agency business made by an agency.

(4) The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.

**"Political subdivision."** Any county, city, borough, incorporated town, township, school district, intermediate unit, vocational school district or county institution district.

**"Public notice."**

(1) For a meeting:

## Appendix B: Sunshine Act

(i) Publication of notice of the place, date and time of a meeting in a newspaper of general circulation, as defined by 45 Pa.C.S. § 101 (relating to definitions), which is published and circulated in the political subdivision where the meeting will be held, or in a newspaper of general circulation which has a bona fide paid circulation in the political subdivision equal to or greater than any newspaper published in the political subdivision.

(ii) Posting a notice of the place, date and time of a meeting prominently at the principal office of the agency holding the meeting or at the public building in which the meeting is to be held.

(iii) Giving notice to parties under section 709(c) (relating to public notice).

(2) For a recessed or reconvened meeting:

(i) Posting a notice of the place, date and time of the meeting prominently at the principal office of the agency holding the meeting or at the public building in which the meeting is to be held.

(ii) Giving notice to parties under section 709(c).

**"Special meeting."** A meeting scheduled by an agency after the agency's regular schedule of meetings has been established. (July 15, 2004, P.L.743, No.88, eff. imd.)

**2004 Amendment.** Act 88 amended the def. of "agency."

### **§ 704. Open meetings.**

Official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public unless closed under section 707 (relating to exceptions to open meetings), 708 (relating to executive sessions) or 712 (relating to General Assembly meetings covered).

**Cross References.** Section 704 is referred to in section 708 of this title.

### **§ 705. Recording of votes.**

In all meetings of agencies, the vote of each member who actually votes on any resolution, rule, order, regulation, ordinance or the setting of official policy must be publicly cast and, in the case of roll call votes, recorded.

### **§ 706. Minutes of meetings, public records and recording of meetings.**

Written minutes shall be kept of all open meetings of agencies. The minutes shall include:

(1) The date, time and place of the meeting.

(2) The names of members present.

(3) The substance of all official actions and a record by individual member of the roll call votes taken.

(4) The names of all citizens who appeared officially and the subject of their testimony.

### **§ 707. Exceptions to open meetings.**

**(a) Executive session.**--An agency may hold an executive session under section 708 (relating to executive sessions).

**(b) Conference.**--An agency is authorized to participate in a conference which need not be open to the public. Deliberation of agency business may not occur at a conference.

## Appendix B: Sunshine Act

**(c) Certain working sessions.**--Boards of auditors may conduct working sessions not open to the public for the purpose of examining, analyzing, discussing and deliberating the various accounts and records with respect to which such boards are responsible, so long as official action of a board with respect to such records and accounts is taken at a meeting open to the public and subject to the provisions of this chapter.

**Cross References.** Section 707 is referred to in sections 704, 708, 709, 712.1 of this title.

### **§ 708. Executive sessions.**

**(a) Purpose.**--An agency may hold an executive session for one or more of the following reasons:

(1) To discuss any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of performance, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the agency, or former public officer or employee, provided, however, that the individual employees or appointees whose rights could be adversely affected may request, in writing, that the matter or matters be discussed at an open meeting. The agency's decision to discuss such matters in executive session shall not serve to adversely affect the due process rights granted by law, including those granted by Title 2 (relating to administrative law and procedure). The provisions of this paragraph shall not apply to any meeting involving the appointment or selection of any person to fill a vacancy in any elected office.

(2) To hold information, strategy and negotiation sessions related to the negotiation or arbitration of a collective bargaining agreement or, in the absence of a collective bargaining unit, related to labor relations and arbitration.

(3) To consider the purchase or lease of real property up to the time an option to purchase or lease the real property is obtained or up to the time an agreement to purchase or lease such property is obtained if the agreement is obtained directly without an option.

(4) To consult with its attorney or other professional advisor regarding information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed.

(5) To review and discuss agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of the law and quasi-judicial deliberations.

(6) For duly constituted committees of a board or council of trustees of a State-owned, State-aided or State-related college or university or community college or of the Board of Governors of the State System of Higher Education to discuss matters of academic admission or standings.

(7) To discuss, plan or review matters and records that are deemed necessary for emergency preparedness, protection of public safety and security of all property in a manner that if

## Appendix B: Sunshine Act

disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection.

**(b) Procedure.**--The executive session may be held during an open meeting or at the conclusion of an open meeting or may be announced for a future time. The reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session. If the executive session is not announced for a future specific time, members of the agency shall be notified 24 hours in advance of the time of the convening of the meeting specifying the date, time, location and purpose of the executive session.

**(c) Limitation.**--Official action on discussions held pursuant to subsection (a) shall be taken at an open meeting. Nothing in this section or section 707 (relating to exceptions to open meetings) shall be construed to require that any meeting be closed to the public, nor shall any executive session be used as a subterfuge to defeat the purposes of section 704 (relating to open meetings).

(Oct. 24, 2018, P.L.1144, No.156, eff. 60 days)

**2018 Amendment.** Act 156 added subsec. (a)(7).

**Cross References.** Section 708 is referred to in sections 704, 707, 709, 712.1 of this title.

### **§ 709. Public notice.**

**(a) Meetings.**--An agency shall give public notice of its first regular meeting of each calendar or fiscal year not less than three days in advance of the meeting and shall give public notice of the schedule of its remaining regular meetings. An agency shall give public notice of each special meeting or each rescheduled regular or special meeting at least 24 hours in advance of the time of the convening of the meeting specified in the notice. Public notice is not required in the case of an emergency meeting or a conference. Professional licensing boards within the Bureau of Professional and Occupational Affairs of the Department of State of the Commonwealth shall include in the public notice each matter involving a proposal to revoke, suspend or restrict a license.

**(b) Notice.**--With respect to any provision of this chapter that requires public notice to be given by a certain date, the agency, to satisfy its legal obligation, must give the notice in time to allow it to be published or circulated within the political subdivision where the principal office of the agency is located or the meeting will occur before the date of the specified meeting.

**(c) Copies.**--In addition to the public notice required by this section, the agency holding a meeting shall supply, upon request, copies of the public notice thereof to any newspaper of general circulation in the political subdivision in which the meeting will be held, to any radio or television station which regularly broadcasts into the political subdivision and to any interested parties if the newspaper, station or party provides the agency with a stamped, self-addressed envelope prior to the meeting.

#### **(c.1) Notification of agency business to be considered.--**

(1) In addition to any public notice required under this section, an agency shall provide the following notification of agency business to be considered at a meeting as follows:

## Appendix B: Sunshine Act

(i) If the agency has a publicly accessible Internet website, the agency shall post the agenda, which includes a listing of each matter of agency business that will be or may be the subject of deliberation or official action at the meeting, on the website no later than 24 hours in advance of the time of the convening of the meeting.

(ii) The agency shall post the agenda, which includes a listing of each matter of agency business that will be or may be the subject of deliberation or official action at the meeting, at the location of the meeting and at the principal office of the agency.

(iii) The agency shall make available to individuals in attendance at the meeting copies of the agenda, which include a listing of each matter of agency business that will be or may be the subject of deliberation or official action at the meeting.

(2) This subsection shall not apply to a conference or a working session under section 707 (relating to exceptions to open meetings) or an executive session under section 708 (relating to executive sessions).

**(d) Meetings of General Assembly in Capitol Complex.--**

Notwithstanding any provision of this section to the contrary, in case of sessions of the General Assembly, all meetings of legislative committees held within the Capitol Complex where bills are considered, including conference committees, all legislative hearings held within the Capitol Complex where testimony is taken and all meetings of legislative commissions held within the Capitol Complex, the requirement for public notice thereof shall be complied with if, not later than the preceding day:

(1) The supervisor of the newsroom of the State Capitol Building in Harrisburg is supplied for distribution to the members of the Pennsylvania Legislative Correspondents Association with a minimum of 30 copies of the notice of the date, time and place of each session, meeting or hearing or the notice is provided via electronic means to an email address designated by the Pennsylvania Legislative Correspondents Association.

(2) There is a posting of the copy of the notice at public places within the Main Capitol Building designated by the Secretary of the Senate and the Chief Clerk of the House of Representatives or the notice is posted on the publicly accessible Internet website of the General Assembly.

**(e) Announcement.--**Notwithstanding any provision of this chapter to the contrary, committees may be called into session in accordance with the provisions of the Rules of the Senate or the House of Representatives and an announcement by the presiding officer of the Senate or the House of Representatives. The announcement shall be made in open session of the Senate or the House of Representatives.

(June 30, 2021, P.L.350, No.65, eff. 60 days)

**2021 Amendment.** Act 65 amended subsec. (d) and added subsec. (c.1).

**Cross References.** Section 709 is referred to in sections 703, 712.1 of this title; section 1511 of Title 3 (Agriculture).

**§ 710. Rules and regulations for conduct of meetings.**

## Appendix B: Sunshine Act

Nothing in this chapter shall prohibit the agency from adopting by official action the rules and regulations necessary for the conduct of its meetings and the maintenance of order. The rules and regulations shall not be made to violate the intent of this chapter.

**Cross References.** Section 710 is referred to in section 711 of this title.

### **§ 710.1. Public participation.**

(a) **General rule.**--Except as provided in subsection (d), the board or council of a political subdivision or of an authority created by a political subdivision shall provide a reasonable opportunity at each advertised regular meeting and advertised special meeting for residents of the political subdivision or of the authority created by a political subdivision or for taxpayers of the political subdivision or of the authority created by a political subdivision or for both to comment on matters of concern, official action or deliberation which are or may be before the board or council prior to taking official action. The board or council has the option to accept all public comment at the beginning of the meeting. If the board or council determines that there is not sufficient time at a meeting for residents of the political subdivision or of the authority created by a political subdivision or for taxpayers of the political subdivision or of the authority created by a political subdivision or for both to comment, the board or council may defer the comment period to the next regular meeting or to a special meeting occurring in advance of the next regular meeting.

(b) **Limitation on judicial relief.**--If a board or council of a political subdivision or an authority created by a political subdivision has complied with the provisions of subsection (a), the judicial relief under section 713 (relating to business transacted at unauthorized meeting void) shall not be available on a specific action solely on the basis of lack of comment on that action.

(c) **Objection.**--Any person has the right to raise an objection at any time to a perceived violation of this chapter at any meeting of a board or council of a political subdivision or an authority created by a political subdivision.

(d) **Exception.**--The board or council of a political subdivision or of an authority created by a political subdivision which had, before January 1, 1993, established a practice or policy of holding special meetings solely for the purpose of public comment in advance of advertised regular meetings shall be exempt from the provisions of subsection (a).

### **§ 711. Use of equipment during meetings.**

(a) **Recording devices.**--Except as provided in subsection (b), a person attending a meeting of an agency shall have the right to use recording devices to record all the proceedings. Nothing in this section shall prohibit the agency from adopting and enforcing reasonable rules for their use under section 710 (relating to rules and regulations for conduct of meetings).

(b) **Rules of the Senate and House of Representatives.**--The Senate and House of Representatives may adopt rules governing the recording or broadcast of their sessions and meetings and hearings of committees.

### **§ 712. General Assembly meetings covered.**

## Appendix B: Sunshine Act

Notwithstanding any other provision, for the purpose of this chapter, meetings of the General Assembly which are covered are as follows: all meetings of committees where bills are considered, all hearings where testimony is taken and all sessions of the Senate and the House of Representatives. Not included in the intent of this chapter are caucuses or meetings of any ethics committee created pursuant to the Rules of the Senate or the House of Representatives.

**Cross References.** Section 712 is referred to in section 704 of this title.

### **§ 712.1. Notification of agency business required and exceptions.**

**(a) Official action.**--Except as provided in subsection (b), (c), (d) or (e), an agency may not take official action on a matter of agency business at a meeting if the matter was not included in the notification required under section 709(c.1) (relating to public notice).

**(b) Emergency business.**--An agency may take official action at a regularly scheduled meeting or an emergency meeting on a matter of agency business relating to a real or potential emergency involving a clear and present danger to life or property regardless of whether public notice was given for the meeting.

**(c) Business arising within 24 hours before meeting.**--An agency may take official action on a matter of agency business that is not listed on a meeting agenda if:

(1) the matter arises or is brought to the attention of the agency within the 24-hour period prior to the meeting; and

(2) the matter is de minimis in nature and does not involve the expenditure of funds or entering into a contract or agreement by the agency.

**(d) Business arising during meeting.**--If, during the conduct of a meeting, a resident or taxpayer brings a matter of agency business that is not listed on the meeting agenda to the attention of the agency, the agency may take official action to refer the matter to staff, if applicable, for the purpose of researching the matter for inclusion on the agenda of a future meeting, or, if the matter is de minimis in nature and does not involve the expenditure of funds or entering into a contract or agreement, the agency may take official action on the matter.

**(e) Changes to agenda.**--

(1) Upon majority vote of the individuals present and voting during the conduct of a meeting, an agency may add a matter of agency business to the agenda. The reasons for the changes to the agenda shall be announced at the meeting before any vote is conducted to make the changes to the agenda. The agency may subsequently take official action on the matter added to the agenda. The agency shall post the amended agenda on the agency's publicly accessible Internet website, if available, and at the agency's principal office location no later than the first business day following the meeting at which the agenda was changed.

(2) This subsection shall not apply to a conference or a working session under section 707 (relating to exceptions to open meetings) or an executive session under section 708 (relating to executive sessions).

**(f) Minutes.**--If action is taken upon a matter of agency business added to the agenda under this section, the minutes of

the meeting shall reflect the substance of the matter added, the vote on the addition and the announced reasons for the addition. (June 30, 2021, P.L.350, No.65, eff. 60 days)

**2021 Amendment.** Act 65 added section 712.1.

**§ 713. Business transacted at unauthorized meeting void.**

A legal challenge under this chapter shall be filed within 30 days from the date of a meeting which is open, or within 30 days from the discovery of any action that occurred at a meeting which was not open at which this chapter was violated, provided that, in the case of a meeting which was not open, no legal challenge may be commenced more than one year from the date of said meeting. The court may enjoin any challenged action until a judicial determination of the legality of the meeting at which the action was adopted is reached. Should the court determine that the meeting did not meet the requirements of this chapter, it may in its discretion find that any or all official action taken at the meeting shall be invalid. Should the court determine that the meeting met the requirements of this chapter, all official action taken at the meeting shall be fully effective.

**Cross References.** Section 713 is referred to in section 710.1 of this title.

**§ 714. Penalty.**

**(a) Fines and costs.--**Any member of any agency who participates in a meeting with the intent and purpose by that member of violating this chapter commits a summary offense and shall, upon conviction, be sentenced to pay:

(1) For a first offense, the costs of prosecution plus a fine of at least \$100 and, in the discretion of the sentencing authority, of not more than \$1,000.

(2) For a second or subsequent offense, the costs of prosecution plus a fine of at least \$500 and, in the discretion of the sentencing authority, of not more than \$2,000.

**(b) Payment.--**An agency shall not make a payment on behalf of or reimburse a member of an agency for a fine or cost resulting from the member's violation of this section.

(July 7, 2011, P.L.270, No.56, eff. 60 days)

**§ 714.1. Attorney fees.**

If the court determines that an agency willfully or with wanton disregard violated a provision of this chapter, in whole or in part, the court shall award the prevailing party reasonable attorney fees and costs of litigation or an appropriate portion of the fees and costs. If the court finds that the legal challenge was of a frivolous nature or was brought with no substantial justification, the court shall award the prevailing party reasonable attorney fees and costs of litigation or an appropriate portion of the fees and costs.

**§ 715. Jurisdiction and venue of judicial proceedings.**

The Commonwealth Court shall have original jurisdiction of actions involving State agencies and the courts of common pleas shall have original jurisdiction of actions involving other agencies to render declaratory judgments or to enforce this chapter by injunction or other remedy deemed appropriate by the court. The action may be brought by any person where the agency whose act is complained of is located or where the act complained of occurred.

## Appendix B: Sunshine Act

### **§ 716. Confidentiality.**

All acts and parts of acts are repealed insofar as they are inconsistent with this chapter, excepting those statutes which specifically provide for the confidentiality of information. Those deliberations or official actions which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matter related to the investigation of possible or certain violations of the law and quasi-judicial deliberations, shall not fall within the scope of this chapter.



Appendix C: Claim Intake Form  
**PAUSTIF CLAIM INTAKE FORM**  
**UNDERGROUND STORAGE TANK CLAIMS**

DEP FACILITY #

FACILITY NAME

OWNER NAME

DATE OF RELEASE DISCOVERY

DATE CLAIM REPORTED

LOCATION OF RELEASE

IF OTHER PLEASE SPECIFY:

DESCRIPTION/CAUSE OF RELEASE:

CLEANUP ACTIVITIES:

DO YOU KNOW WHAT TANKS WERE INVOLVED? YES NO

ANY OTHER APPLICABLE INSURANCE POLICIES IN EFFECT? YES NO UNKNOWN

ANY OFFSITE IMPACT? YES NO UNKNOWN

DO YOU KNOW WHO DISTRIBUTORS ARE? YES NO

**OWNER CONTACT INFORMATION**

OWNER NAME

COMPANY NAME

ADDRESS

CITY

STATE

ZIP

PHONE NUMBER

EMAIL

**ENVIRONMENTAL CONSULTANT CONTACT INFORMATION**

CONSULTANT NAME

COMPANY NAME

ADDRESS

CITY

STATE

ZIP

PHONE NUMBER

EMAIL

I CERTIFY THAT THE INFORMATION IS CORRECT TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE PERMISSION TO SUBMIT THIS CLAIM ON BEHALF OF THE TANK OWNER.

REPORTED BY:

CONTACT PHONE NUMBER


EMAIL

PLEASE EMAIL THIS FORM TO: [RA-IN-FBSCLAIMS@PA.GOV](mailto:RA-IN-FBSCLAIMS@PA.GOV) WITH THE SUBJECT LINE: **CLAIM NOTIFICATION SUBMITTAL FORM**

NOTE: PLEASE SAVE A COPY FOR YOUR RECORDS

**Commonwealth of Pennsylvania**  
**GOVERNOR'S OFFICE**

**EXECUTIVE ORDER**

Subject: <b>Regulatory Review and Promulgation</b>		Number: <b>1996-1</b>
Date: <b>February 6, 1996</b>	Distribution: <b>B</b>	By Direction Of:  <b>THOMAS J. RIDGE, GOVERNOR</b>

WHEREAS, the volume and scope of regulations promulgated by Commonwealth agencies has grown at an alarming rate in recent years; and

WHEREAS, a regulation should be promulgated only after a determination that it is necessary to address a compelling public interest; and

WHEREAS, political subdivisions and the private sector have often been asked to comply with regulations that were drafted and promulgated without meaningful input from these members of the regulated community; and

WHEREAS, burdensome regulations have placed undue restrictions on the regulated community and have hampered Pennsylvania's ability to compete effectively with other states; and

WHEREAS, despite the increasing volume and burden of regulations, they remain an appropriate and necessary means of protecting the public health and safety.

NOW, THEREFORE, I, Thomas J. Ridge, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania, the Regulatory Review Act, and other laws, do hereby establish the following procedures regarding the review and promulgation of regulations:

**1. General Requirements.** In the drafting and promulgating of new regulations and the application and review of existing regulations, all agencies shall adhere to the following principles:

- a. Regulations shall address a compelling public interest.
- b. Costs of regulations shall not outweigh their benefits.
- c. Regulations shall be written in clear, concise and, when possible, nontechnical language.

**d.** Regulations shall address definable public health, safety, or environmental risks.

**e.** Where federal regulations exist, Pennsylvania's regulations shall not exceed federal standards unless justified by a compelling and articulable Pennsylvania interest or required by state law.

**f.** Compliance shall be the goal of all regulations.

**g.** Where viable nonregulatory alternatives exist, they shall be preferred over regulations.

**h.** Regulations shall be drafted and promulgated with early and meaningful input from the regulated community.

**i.** Regulations shall not hamper Pennsylvania's ability to compete effectively with other states.

**j.** All agency heads shall be held directly accountable for regulations promulgated by their respective agencies.

## **2. Evaluation of Existing Regulations.**

**a.** Existing regulations shall be reviewed by agencies for consistency with the aforementioned principles. Any regulations that are inconsistent with these principles shall be considered for amendment or repeal.

**b.** Agency heads shall have the flexibility to construct a program that reviews their existing regulations to assure consistency with these principles. A plan and schedule for review of existing regulations is to be submitted to the Governor's Policy Office within six months of the effective date of this order. All review programs shall commence within one year of the effective date of this order.

**c.** Regulations proposed for repeal should be submitted to the General Counsel, Secretary of the Budget, and Governor's Policy Director along with a Repeal Analysis Form. The analysis shall state:

- The name of the agency.
- The name of a contact person at that agency.
- A short title of the regulation.
- An explanation of the regulation.
- A justification for the proposed repeal.
- A proposed schedule for repeal – noting any public comment periods.
- Any costs and/or savings associated with the repeal.

**d.** If a statute prohibits the repeal of a regulation that the agency deems to be inconsistent with the aforementioned principles, the agency head shall submit to the General Counsel, Governor's Policy Director, and Secretary for Legislative Affairs the specific citation for the statute that prohibits the repeal and the citation for any regulation that is determined to be inconsistent with the aforementioned principles, the nature of and reason for the inconsistency, and a recommendation for legislative action, if appropriate.

### **3. Pre-Drafting and Drafting Guidelines.**

**a.** Before drafting a regulation, agencies, where practical, shall undertake extensive public outreach to those who are likely to be affected by the regulation. Creating advisory committees, using regulatory negotiation, and developing other creative procedures are encouraged as means to solicit the public's input during the regulatory development process.

**b.** Those to be affected by the regulation should continue to be consulted during the drafting process. When appropriate, members of the regulated community should be involved with the formulation of language, the development of standards, and any other areas in which the regulated community has an interest and/or can provide insight. During the regulation development and drafting process, agencies should advise and consult with the Governor's Policy Office, Office of General Counsel, and the Budget Office whenever the agency determines that any such involvement would hasten the review process.

**c.** Each agency shall develop its own policies regarding public involvement tailored best to meet the needs of the agency and the regulated community.

**d.** Within six months of the effective day of this order, agencies shall submit to the Governor's Policy Office their internal guidelines for pre-drafting and drafting public outreach.

### **4. Review by Governor's Office.**

**a.** Prior to submitting a proposed rulemaking, the agency head shall evaluate each regulation and attest to the fact that the regulation addresses a compelling public need that can be best remedied by the promulgation of the regulation.

**b.** The agency head shall submit to the General Counsel, Secretary of the Budget, and Governor's Policy Director a written Regulatory Analysis. The analysis shall state:

- The name of the agency.
- The name of a contact person at that agency.
- A short title for the regulation and a citation from the Pennsylvania Code.
- Whether the regulation is a proposed, final-form or final-omitted rulemaking.
- A brief, clear and, if possible, nontechnical explanation of the regulation.
- The statutory authority or mandate for the regulation.
- The compelling public need that justifies the regulation.
- The public health, safety, or environmental risks associated with nonregulation.
- Individuals or groups that are likely to benefit from the regulation.

- Individuals, groups, or entities that will be required to comply with the regulation.
- The outreach conducted by the agency with the regulated community prior to submission of the regulation.
- An estimate of the costs and/or savings associated with compliance and implementation.
- A cost/benefit analysis of the regulation.
- Nonregulatory alternatives considered and the reasons for their dismissal.
- Alternative regulatory schemes considered and the reasons for their dismissal.
- A statement of the compelling Pennsylvania interest if the regulation exceeds federal standards.
- Any requirements that would place Pennsylvania at a competitive disadvantage compared to other states.
- An intra-agency review schedule for the regulation.

**c.** Each regulation submitted for review shall contain a brief preamble, written in clear and concise language, which shall describe in nontechnical terms the compelling public need the regulation is designed to address, what the regulation requires in legal and practical terms, and who the regulation is likely to affect.

**d.** The regulatory analysis, along with the preamble and draft regulation, will be reviewed by the Office of General Counsel for form, language, and legal authority. The Governor's Policy Office will review the request to determine that public interest is compelling, that no viable alternative to the regulation exists, and that the costs of the regulation reasonably relate to the benefits. The Office of General Counsel will also consider whether the proposed regulation exceeds federal standards. If the regulation does exceed federal standards, the Policy Office will then evaluate whether the regulation is justified by a compelling and unique Pennsylvania interest. The Budget Office will evaluate the cost analysis prepared by the agency and prepare a fiscal note for the regulation.

**e.** No agency shall proceed with a proposed, final-form or final-omitted regulation until the General Counsel, Secretary of the Budget, and Policy Director have informed the agency that the regulation is consistent with the regulatory principles and overall policies of the Administration. Review by these three offices will be conducted in a fair and timely manner.

## **5. Nonregulatory Documents.**

**a.** Nonregulatory public documents such as internal guidelines, policy statements, guidance manuals, decisions, rules and other written materials that provide directives, guidance, or other relevant compliance related information to the public shall be cataloged by every agency.

**b.** The cataloged titles of these documents, along with an agency contact and phone number, shall be published in the Pennsylvania Bulletin on August 3, 1996. Each year thereafter every agency shall publish and update its list in the Pennsylvania Bulletin on the first Saturday in August.

**6. Petitions.** To further the goal of greater public participation in the regulatory process; individuals, groups, and businesses are encouraged to use the regulatory petition process outlined in *1 PA Code Section 35.18*. Agencies that have not already done so shall develop internal procedures to receive and review petitions in a fair and timely manner.

**7. Continual Review of Regulations.** All regulations shall be reviewed in accordance with the review schedule published annually by each agency. As part of its review, the agency shall determine whether the regulation continues to effectively fulfill the goals for which it was intended and remains consistent with the previously-mentioned principles.

**8. Regulatory Agendas.** Semiannually, on February 1 and July 1, each agency head shall submit to the General Counsel, the Secretary of the Budget, and the Governor's Policy Office Director, for publishing in the *Pennsylvania Bulletin*, an agenda of regulations under development or consideration. The agenda shall describe the regulations being considered, the proposed date for promulgation, the need and legal basis for the action being taken, and the status of regulations previously listed on the agenda. Each item on the agenda shall also include a contact person within the agency from whom additional information may be obtained.

**9. Exemptions.** The procedure prescribed by this Order shall not apply to:

**a.** Emergency regulations as defined in the Regulatory Review Act.

**b.** Any regulation for which consideration or reconsideration under the terms of this order would conflict with deadlines imposed by statute, consent decree or by judicial order, provided that any such regulation shall be reported to the Director of the Governor's Policy Office together with a brief explanation of the conflict. The agency shall publish in the *Pennsylvania Bulletin* a statement of the reasons why it is impracticable for the agency to follow the procedures of this order with respect to such a rule. The agency, in consultation with the Governor's Policy Office, shall adhere to the requirements of this order to the extent permitted by statutory or judicial deadlines.

**10. Applicability.**

**a.** This order shall apply to all agencies under the jurisdiction of the Governor's Office.

**b.** This order is intended only to improve the internal management of executive agencies and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the Commonwealth, its agencies, its officers or any person.

**11. Effective Date.** This order is effective immediately

**12. Rescission.** Executive Order 1982-2 is rescinded.

**BY-LAWS OF THE  
UNDERGROUND STORAGE TANK INDEMNIFICATION BOARD**

**(Revised & Approved by the Board on June 14, 2018)**

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**By-Laws Of The  
Underground Storage Tank Indemnification Board**

**ARTICLE I  
OFFICE**

The principal office of the Board shall be in the city of Harrisburg, County of Dauphin, Commonwealth of Pennsylvania. Other offices or places of business may be established whenever and wherever in the Commonwealth of Pennsylvania in the judgment of the Board it may be deemed to be advisable.

**ARTICLE II  
THE BOARD**

**Section 1. Members**

The Board shall consist of fourteen members, eight appointed by the Governor, one appointed by the President Pro Tempore of the Senate, one by the Minority Leader of the Senate, one by the Speaker of the House of Representatives, one by the Minority Leader of the House of Representatives, and two ex officio. The ex officio members shall be voting members.

**Section 2. General Powers**

The Board's business, affairs and property shall be managed, and its' powers exercised by, a governing body consisting of the members acting as a Board under the direction of the Chairperson. Subject to the provisions of the Storage Tank and Spill Prevention Act of 1989, as amended, and these by-laws, the Board may exercise all such powers and do all such things as may be exercised or done by the Board by a majority vote at a meeting at which a quorum of the members of the Board are present.

**Section 3. Election of Chairperson and Vice Chairperson**

The Chairperson and Vice Chairperson of the Board shall be elected annually by the members of the Board. The Chairperson and Vice Chairperson of the Board shall be elected by a majority vote of the members present and voting. The ex officio members of the Board shall not be eligible for election as Chairperson or Vice Chairperson. The Vice Chairperson shall serve as the Chairperson in the absence of the Chairperson.

**Section 4. Powers**

The Chairperson shall preside at all meetings of the Board and shall establish the Agenda for all meetings of the Board. The Chairperson

## Appendix E: USTIB By-laws

shall appoint all committees of the Board and shall, with the approval of the Board, authorize members of the Board to conduct hearings and to administer oaths. Ex officio members of the Board shall not be authorized to conduct hearings or administer oaths. The Chairperson or designee shall sign all orders, rules and regulations of the Board. The Chairperson or designee shall sign all contracts or other instruments which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board to some other officer or agent of the Board or be required by law to be otherwise signed or executed.

### **Section 5. Conflict of Interest**

Any member of the Board who shall have a potential conflict of interest with any action of the Board, by reason of such action involving any payment from which he or she or his or her employer or any member of his or her immediate family may benefit, shall declare to the Chairperson the potential conflict and abstain from voting on such action. No member of the Board or officer, or employee thereof or their immediate families shall directly receive any personal financial benefit resulting from any contract or agreement with the Board for any matter, cause or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against the Board.

### **Section 6. Quorum**

Eight members of the Board shall constitute a quorum for the transaction of business at any meeting of the Board, but in order to so constitute a quorum, the members must be physically present at the meeting or attending by teleconference and include at least one ex officio member. If less than eight members are present at a meeting, a unanimous consent of the members present may adjourn the meeting from time to time without further notice.

### **Section 7. Alternate(s)**

Each member of the Board may appoint an alternate to serve on the Board and perform the duties of a member in his or her absence. The designation of an alternate must be in writing and signed by the Board Member. The alternate's designation must be on file with the Executive Director and maintained as an official part of the Board's records.

## **ARTICLE III MEETINGS**

### **Section 1. Meetings Generally**

All meetings of the Board shall be conducted in accordance with and subject to the most recent revision of Robert's Rules of Order. The Board shall not have the power to suspend application of such Rules of Order to its meetings. All meetings of the Board, and those provisions in these by-laws that address the Board's meetings, shall be subject to, and in compliance with, the provisions of the Act of October 15, 1998, P.L. 729, No. 93, known as, "The Sunshine Act."

## Appendix E: USTIB By-laws

### **Section 2. Regular Meetings**

The Board shall hold regular meetings at least quarterly. Regular meetings of the Board may be held with notice to the members and at such time and place as shall from time to time be determined by resolution of the Board.

### **Section 3. Special Meetings**

The Chairperson may call a special meeting of the Board at any time. The Chairperson shall call a special meeting of the Board whenever presented by a written request of three members of the Board to call a special meeting. Special meetings may be held at any time or place.

### **Section 4. Notice**

The Chairperson, or his/her designee, shall give notice to each member of the Board of each special meeting by mailing or by electronic facsimile transmission or by emailing a notice at least seven to ten (7 to 10) days before the special meeting or by hand delivering or telephoning the same on the day before the meeting, but such notice may be waived by any member of the Board. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting.

### **Section 5. Transaction of Business**

At any meeting at which at least a quorum of the Board shall be present, even though without notice to the members, any business may be transacted. One or more members of the Board may participate in any meeting of the Board by means of conference telephone or similar communications equipment by means of which all persons present at the meeting can hear each other.

### **Section 6. Manner of Acting**

The act of the majority of the voting members present at a meeting at which a quorum is present shall be the act of the Board.

### **Section 7. Presumption of Assent**

A member of the Board who is present at a meeting of the Board at which action on any Board matter is taken shall be presumed to have assented to the action taken, unless the member votes against such action or abstains from voting in respect thereto because of an asserted conflict of interest.

**ARTICLE IV**  
**BUSINESS AFFAIRS**

**Section 1. Custodian of Funds**

The State Treasurer shall be the custodian of all funds and monies of the Board.

**Section 2. Fiscal Matters**

The Comptroller of Central Services shall keep full and accurate records and accounts of all receipts, disbursements, credits, assets, liabilities and general financial transactions of the Board. The Comptroller shall endorse for collection or deposit to the credit of the Board bills, notes, checks and other negotiable instruments of the Board coming into his or her hands for deposit in the Underground Storage Tank Indemnification Fund.

The Comptroller shall report all receipts and expenditures to the Board quarterly and at such times as the Board may require. The comptroller shall annually prepare and submit to the Board at the close of each fiscal year a full and complete report or statement of all monies received and expended and of the existing condition of the funds and assets of the Board for such year. The Comptroller' books and records shall be subject to the inspection of the members of the Board at any time.

**Section 3. Audits**

The books and records of the Board shall be subject to examination and audit by the Auditor General, State Treasurer or any other properly authorized agency of the Commonwealth of Pennsylvania from time to time. The Board shall contract for and cause to be performed an annual independent audit of the Underground Storage Tank Indemnification Fund.

**Section 4. Contracts**

The Board may authorize the Insurance Commissioner to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Board, and such authority may be general or confined to specific instances.

**Section 5. Expenditures**

All orders for the payment of monies or in incurring of expenses issued in the name of the Board shall be signed by such officer or officers, agent or agents, employee or employees of the Board and in such manner as authorized by the Board.

**Section 6. Fiscal Year**

## Appendix E: USTIB By-laws

The fiscal year of the Board shall begin on the first day of July and end on the thirtieth day of June in each year.

### **Section 7. Executive Director**

The Board shall appoint an Executive Director and such other officers, agents and employees at such compensation as the Board may from time to time determine. All officers, agents and employees shall perform such duties as are prescribed by the Board. The Executive Director is hereby given authority to administer the Fund and act on behalf of the Board in day-to-day conduct of Fund business affairs.

### **Section 8. Duties of the Executive Director**

The Executive Director shall, subject to the orders of the Board, have general supervision and direction of the business affairs of the Board, which may include selection of staff and other administrative duties subject to the provisions of the Storage Tank and Spill Prevention Act of 1989, as amended, and these by-laws. The Executive Director shall see that all orders, resolutions, rules and regulations of the Board are carried into effect, subject however to the right of the Board to delegate any powers or duties to any other officer, agent or employee of the Board. The Executive Director shall keep the minutes of all meetings of the Board. The Executive Director shall have charge of the books and records of the Board and shall perform such other duties as may be conferred upon him or her from time to time by the Board.

### **Section 9. Employment of Experts, Etc.**

The Board may name and appoint from time to time such special technical experts, legal counsel, actuaries and consultants as may be required, to serve at the will of the Board.

### **Section 10. Fixing of Duties**

The Board may fix the respective duties of any special or technical experts, legal counsel, actuaries, consultants, agents or employees, and under whose supervision or direction they or any of them shall serve.

### **Section 11. Waiver of Notice**

Any notice required to be given under these by-laws may be waived in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein.

## **ARTICLE V** **AMENDMENTS**

The Board shall have the power to make, alter, amend, suspend and repeal the by-laws by a vote of not less than a majority of the voting members at any regular or special meeting of the Board without

## Appendix E: USTIB By-laws

previous notice of such purpose.

Approved by the Board on the 14<sup>th</sup> day of June 2018.

Ch. 977 UNDERGROUND STORAGE 25 § 977.1

**CHAPTER 977. UNDERGROUND STORAGE TANK  
INDEMNIFICATION FUND**

Subchap.	Sec.
<b>A. GENERAL PROVISIONS</b> .....	<b>977.1</b>
<b>B. FEES AND COLLECTION PROCEDURES</b> .....	<b>977.11</b>
<b>C. COVERAGE AND CLAIMS PROCEDURES</b> .....	<b>977.31</b>
<b>D. HEATING OIL TANK OPTIONAL PROGRAM</b> .....	<b>977.51</b>
<b>E. DISPUTE PROCEDURES</b> .....	<b>977.61</b>

**Authority**

The provisions of this Chapter 977 issued under sections 106, 301(a)(5) and 501(a)(5) of the Storage Tank and Spill Prevention Act (35 P.S. §§ 6021.106, 6021.301(a)(5) and 6021.501(a)(5)); section 5(b)(1) of The Clean Streams Law (35 P.S. § 691.5(b)(1)); section 105(a) of the Solid Waste Management Act (35 P.S. § 6018.105(a)); and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), unless otherwise noted.

**Source**

The provisions of this Chapter 977 adopted November 30, 2001, effective January 1, 2002, 31 Pa.B. 6615, unless otherwise noted.

*(Editor's Note: Underground Storage Tank Indemnification Fund coverage for tank installers did not become available until January 1, 2002, upon adoption of Chapter 977 regulations.)*

**Subchapter A. GENERAL PROVISIONS**

Sec.	
977.1.	Purpose.
977.2.	Scope.
977.3.	Applicability.
977.4.	Definitions.

**§ 977.1. Purpose.**

This chapter sets forth the requirements that participants in the Fund shall satisfy to be eligible for Fund coverage of corrective action costs, bodily injury and property damage.

**§ 977.2. Scope.**

This chapter addresses the establishment and collection of fees, the claims procedures, the optional heating oil tank program and the dispute procedures of the Fund.

**§ 977.3. Applicability.**

This chapter applies to owners and operators of USTs, owners and operators of HOTs that elect to participate in the Heating Oil Tank Optional Program, certified companies and distributors.

977-1

(426601) No. 617 Apr. 26

**§ 977.4. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Storage Tank and Spill Prevention Act (35 P.S. §§ 6021.101—6021.2104).

*Activity*—Installing, making major modifications to or removing all or part of a storage tank system or storage tank facility.

*Activity fee*—The fee assessed upon a certified company for all activities on a UST or a HOT as established in accordance with section 705(d)(1) of the act (35 P.S. § 6021.705(d)(1)) and § 977.19(d) (relating to certified company fees).

*Board*—The Underground Storage Tank Indemnification Board.

*Bodily injury*—Physical injury, sickness, disease or death sustained by a third party, resulting from a release from a UST or a HOT, or a certified company activity.

*Capacity fee*—The fee assessed upon an owner or operator, as established in accordance with section 705(d)(2) of the act and § 977.18 (relating to capacity fee payment procedure).

*Certification fee*—The annual fee assessed upon a certified company which performs tank-handling activities on a UST, as established in accordance with section 705(d)(1) of the act and § 977.19(c).

*Certified company*—An entity, including, but not limited to, a sole proprietorship, a partnership or a corporation, which is authorized by the DEP to conduct tank-handling activities, tightness testing activities or inspection activities using certified installers, certified inspectors or both. See § 245.1 (relating to definitions).

*Certified company fee*—The fee assessed upon a certified company as established in accordance with section 705(d)(1) of the act and § 977.19(b).

*Certified tank installer*—A person certified by the DEP to perform tank-handling activities on a UST and who may also perform activities on a HOT. See § 245.1.

*Claim*—A request for coverage and reimbursement from the Fund which is made by the participant that has incurred, or will incur, corrective action costs or liability for bodily injury or property damage caused by a release.

*Claim investigation*—The obtaining and reviewing of information concerning a reported claim including:

- (i) Verbal or written statements.
- (ii) Conducting onsite visits and any information obtained from these visits.
- (iii) Other relevant information.

*Corrective action costs*—Reasonable and necessary expenses for corrective action, as defined in section 103 of the act (35 P.S. § 6021.103), incurred by

an owner or operator in response to a confirmed underground storage tank release as specified in regulations promulgated by the DEP. The term does not include the cost of upgrading, routine inspections, investigations or permit activities not associated with a release. See § 245.1.

*DEP*—The Department of Environmental Protection of the Commonwealth.

*Defense costs*—Expenses incurred by the Fund in the investigation, settlement or defense of a specific claim, including fees of attorneys that the Fund retains and other litigation expenses.

*Discount*—The amount retained by distributors who collect the gallon fee in accordance with § 977.15 (relating to gallon fee discount for distributors).

*Distributor*—An intermediary that retains title to a regulated substance prior to delivery, and which delivers that substance into a UST.

*Distributor delivery invoice*—The document supplied by the distributor to a UST owner or operator which identifies the number of gallons of regulated substance delivered into a UST and the total gallon fee to be paid.

*EPA*—The United States Environmental Protection Agency.

*Fund*—The Underground Storage Tank Indemnification Fund.

*Gallon fee*—The fee assessed upon a UST owner or operator on regulated substances placed into a UST. The gallon fee is calculated by multiplying the number of gallons of regulated substance entering a UST by the unit charge in § 977.12 (relating to owner and operator fees).

*Gallon fee statement*—A form supplied by the Fund to a distributor or to a UST owner or operator upon which the assessed gallon fee is noted, and which is returned to the Fund with the remittance.

*HOT—Heating oil tank*—An underground heating oil tank not regulated under regulations promulgated by DEP, with a capacity of 3,000 gallons or greater used for storing heating oil products for use on the premises, whose owner has elected to participate in the Fund under Subchapter D (relating to Heating Oil Tank Optional Program).

*Nonretail bulk storage UST*—A UST which is not used for dispensing gasoline to end-users.

*Operator*—Includes any of the following:

- (i) A person who manages, supervises, alters, controls or has responsibility for the operation of a UST.
- (ii) A person who manages, supervises, alters, controls or has responsibility for the operation of a HOT, and elects to participate in the Heating Oil Tank Optional Program.

*Owner*—Includes any of the following:

- (i) A person who owns a UST storing regulated substances on or after November 8, 1984.
- (ii) A person who owns a UST at the time all regulated substances were removed when removal occurred prior to November 8, 1984.

(iii) A person who owns a HOT and elects to participate in the Heating Oil Tank Optional Program.

*Participant*—Includes any of the following:

- (i) An owner or operator of a UST.
- (ii) An owner or operator of a HOT.
- (iii) A certified company.

*Property damage*—Damage to the property of third parties that includes:

(i) Destruction of, contamination of, or other physical harm to real property or tangible personal property, including the resulting loss of use of that property which occurred from a release from a UST on or after February 1, 1994, or a release from a HOT on or after the date of election of coverage.

(ii) Loss of use of real property or tangible personal property that is not physically injured, destroyed or contaminated, but has been evacuated, withdrawn from use, or rendered inaccessible because of a release from a UST which occurred on or after February 1, 1994, or a release from a HOT on or after the date of election of coverage.

*Regulated substance*—

(i) An element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health, welfare or the environment, and which is:

(A) Any substance defined as a hazardous substance in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. § 9601), but not including substances regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6921—6931).

(B) Petroleum, including crude oil or a fraction thereof and hydrocarbons which are liquid at standard conditions of temperature and pressure (60° and 14.7 pounds per square inch absolute), including oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other nonhazardous wastes and crude oils, gasoline and kerosene.

(C) Other substances determined by the DEP whose containment, storage, use or dispensing may present a hazard to the public health and safety or the environment, but not including gaseous substances used exclusively for the administration of medical care.

(ii) The term does not include the storage or use of animal waste in normal agricultural practices. See section 103 of the act and § 245.1.

*Release*—

(i) Spilling, leaking, emitting, discharging, escaping, leaching or disposing from a UST or a HOT into surface waters and groundwaters of this Commonwealth or soils or subsurface soils in an amount equal to or greater than the reportable release quantity determined under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act

of 1980 (42 U.S.C.A. § 9602), and regulations promulgated thereunder (See 40 CFR 302.1—302.8 (relating to designation, reportable quantities, and notification)), or an amount equal to or greater than a discharge as defined in section 311 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1321) and regulations promulgated thereunder (See 40 CFR 110.1—110.6 (relating to discharge of oil)).

(ii) The term also includes any spilling, leaking, emitting, discharging, escaping, leaching or disposing from a UST or a HOT into a containment structure or facility that poses an immediate threat of contamination of the soils, subsurface soils, surface water or groundwater.

*Security*—A bond of the Commonwealth or the United States, a surety bond or an irrevocable letter of credit.

*Statement*—A document supplied by the Fund to the participant which documents the appropriate fees.

*Subrogation*—The right of the Fund to pursue a claim against a third party when the participant has been indemnified by the Fund.

*Suit*—A civil action instituted against the participant for bodily injury or property damage resulting from a release.

*Tank fee*—The fee assessed upon a UST owner or operator whose tanks store regulated substances, which is calculated by multiplying the number of the USTs owned or operated by the per tank charge in § 977.12.

*UST—Underground storage tank*—

(i) Any one or a combination of tanks (including underground pipes connected thereto) which are used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground.

(ii) The term does not include:

(A) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(B) Tanks used for storing heating oil for consumptive use on the premises where stored unless they are specifically required to be regulated by Federal law.

(C) A septic or other subsurface sewage treatment tank.

(D) A pipeline facility (including gathering lines) regulated under:

(I) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C.A. App. §§ 1671—1687).

(II) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C.A. §§ 2001—2015).

(E) An interstate or intrastate pipeline facility regulated under state laws comparable to the provisions of law in subparagraph (iv).

(F) Surface impoundments, pits, ponds or lagoons.

(G) Stormwater or wastewater collection systems.

(H) Flow-through process tanks.

(I) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.

(J) Storage tanks situated in an underground area (such as a basement, cellar, mine working, drift, shaft or tunnel) if the tank is situated upon or above the surface of the floor.

(K) Except for tanks subject to the requirements of 40 CFR Part 280 (relating to technical standards and corrective action requirements for owners and operators of UST), tanks regulated under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003), including piping, tanks, collection and treatment systems used for leachate, methane gas and methane gas condensate management.

(L) A UST whose capacity is 110 gallons or less.

(M) Tanks containing radioactive materials or coolants that are regulated under The Atomic Energy Act of 1954 (42 U.S.C.A §§ 2011—2297).

(N) A wastewater treatment tank system.

(O) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(P) A UST that contains a de minimis concentration of regulated substances.

(Q) An emergency spill or overflow containment UST system that is expeditiously emptied after use.

(R) A UST that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50, Appendix A (relating to general design criteria for nuclear power plants).

*Waste oils*—An accumulation of oils from one or more sources, including the following:

- (i) Water emulsified in oil.
- (ii) Incompatible oils that have been mixed.
- (iii) Foul or wet oil and sludge received from receipt operations.
- (iv) Sludges or bottom sediment accumulating in the bottoms of storage tanks after a significant period of time.
- (v) Oil which has been spilled and then recovered from sumps, basins or other spaces.
- (vi) Oil contaminated by gasoline or other petroleum products.

*Wholesale distribution UST*—A UST used for intermediate storage of gasoline prior to delivery into a UST that directly serves end users.

#### Authority

The provisions of this § 977.4 amended under section 705(d) and (f)(2) of the Storage Tank and Spill Prevention Act (35 P.S. § 6021.705(d) and (f)(2)).

#### Source

The provisions of this § 977.4 amended January 16, 2026, effective January 17, 2026, 56 Pa.B. 363. Immediately preceding text appears at serial pages (303216) and (285925) to (285928).

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**Subchapter B. FEES AND COLLECTION PROCEDURES**

Sec.

- 977.11. Fund fees.
- 977.12. Owner and operator fees.
- 977.13. Tank fee payment procedure.
- 977.14. Gallon fee payment procedure.
- 977.15. Gallon fee discount for distributors.
- 977.16. Posting and collecting security.
- 977.17. Security for payment of gallon fee.
- 977.18. Capacity fee payment procedure.
- 977.19. Certified company fees.
- 977.20. Certified company fee, certification fee and activity fee payment procedures.
- 977.21. Penalty for late payment of fees.
- 977.22. Fee dispute procedure.
- 977.23. Recordkeeping responsibilities.
- 977.24. Audit of records.

**Cross References**

This subchapter cited in 25 Pa. Code § 977.31 (relating to eligibility requirements).

**§ 977.11. Fund fees.**

The fees in this subchapter are established and assessed by the Board to finance the Fund.

**Cross References**

This section cited in 25 Pa. Code § 977.51 (relating to election requirements).

**§ 977.12. Owner and operator fees.**

(a) *Annual fees.* The Board may charge fees established in this section, based on an annual actuarial review.

(b) *Tank and gallon fees.* A UST owner or operator storing gasoline, new motor oil, hazardous substances, gasohol, aviation fuel, mixture, farm diesel and other types of substances based on the tank registration information maintained by the DEP may be assessed the following fees:

(1) *Tank fee.* A tank fee of \$0 per UST per year.

(2) *Gallon fee.* A gallon fee on all regulated substances entering a UST of \$.011 per gallon. (For example, 10,000 gallons at \$.011 per gallon equals \$110).

(c) *Nonretail bulk storage.* Total fees paid by an owner or operator of a non-retail bulk storage or wholesale distribution UST storing gasoline are established using the method described in subsection (b) and are capped at \$5,000 per UST per year in accordance with section 705(d)(3) of the act (35 P.S. § 6021.705(d)(3)).

(d) *Capacity fee.* An owner or operator which stores regulated substances including diesel, heating oil, used motor oil, kerosene and unknown substances based on the tank registration information maintained by the DEP may be assessed a capacity fee of \$.0825 per gallon of capacity, which amount is established in accordance with section 705(d)(2) of the act (35 P.S. § 6021.705(d)(2)). (For example, 10,000 gallons at \$.0825 per gallon equals \$825).

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**Authority**

The provisions of this § 977.12 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); and section 705 of the Storage Tank and Spill Prevention Act (35 P.S. § 6021.705).

**Source**

The provisions of this § 977.12 amended March 22, 2002, effective April 1, 2002, 32 Pa.B. 1515; amended December 20, 2002, effective December 21, 2002, 32 Pa.B. 6258; amended December 26, 2003, effective January 1, 2004, 33 Pa.B. 6420. Immediately preceding text appears at serial pages (294813) to (294814).

**Cross References**

This section cited in 25 Pa. Code § 977.4 (relating to definitions); 25 Pa. Code § 977.13 (relating to tank fee payment procedure); 25 Pa. Code § 977.14 (relating to gallon fee payment procedure; 25 Pa. Code § 977.17 (relating to security for payment of gallon fee); 25 Pa. Code § 977.18 (relating to capacity fee payment procedure).

**§ 977.13. Tank fee payment procedure.**

- (a) The Board may charge a per tank fee to a UST owner or operator.
- (b) The tank fee shall be established as set forth in § 977.12 (relating to owner and operator fees).
- (c) The UST owner or operator shall pay the tank fee on or before the fee payment due date on the statement.

**§ 977.14. Gallon fee payment procedure.**

- (a) A distributor shall collect any gallon fee directly from a UST owner or operator. If a UST owner or operator pays the fee, but a distributor fails to remit the fee, a UST owner or operator, upon proof of payment, will be eligible for Fund coverage. A distributor who fails or refuses to remit fees shall be subject to sanctions as provided in § 977.16 (relating to posting and collecting security).
- (b) On or before the last day of each month, a distributor shall remit to the Fund any collected gallon fees, less the discount described in § 977.15 (relating to gallon fee discount for distributors). A distributor shall submit a completed gallon fee statement to the Fund on a monthly basis to document the amount of product distributed. The gallon fee will be based on the amount of regulated substance delivered into a UST by a distributor in the preceding month.
- (c) A distributor shall record the number of gallons delivered on the delivery invoice, the receipt or another form which documents the date and amount of regulated substance delivered. A distributor shall provide a copy of this document to a UST owner or operator at the time of delivery. The number of gallons recorded on each delivery invoice shall be used to calculate the total number of gallons on the gallon fee report form for the preceding month. A distributor shall use the total of gallons recorded to calculate the gallon fee.
- (d) A distributor located outside the territorial boundaries of this Common-

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wealth may collect and remit gallon fees upon proof that a performance bond by a licensed company has been secured and maintained in the amount of \$1 million. If a UST owner or operator is using an out-of-State distributor that chooses not to collect the fees, the UST owner or operator shall notify the Fund and shall remit fees to the Fund.

(e) If a UST owner or operator fails or refuses to pay the gallon fee, by the due date, a distributor shall provide the Board in writing with the following information: the name and address of the owner or operator, the street address of the UST location, the point of contact for the distributor, product delivery dates and the amount of gallon fee not paid.

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(f) If the Board determines that a distributor is ineligible, in accordance with § 977.16 to collect and remit the gallon fee in accordance with § 977.12 (relating to owner and operator fees), a UST owner or operator shall, after notification of the distributor's status by the Board, pay the fee directly to the Fund following the procedures in subsections (a)—(e).

(g) A UST owner or operator who pays the gallon fee to the Fund shall pay the fees directly to the Fund and record deliveries in accordance with subsections (a)—(d). A UST owner or operator who does not receive regulated substances from a distributor shall notify the Fund and pay the fee directly to the Fund.

(h) A UST owner or operator with tanks used for nonretail bulk storage or wholesale distribution of gasoline is not required to pay more than \$5,000 per tank per year. See section 705(d)(3) of the act (35 P.S. § 6021.705(d)(3)).

#### **§ 977.15. Gallon fee discount for distributors.**

(a) The net monthly gallon fee remitted to the Fund by a distributor under § 977.14 (relating to gallon fee payment procedure) shall be the gallon fee less a discount computed as follows: 1% multiplied by the gallon fee collected.

(b) The gallon fee discount will not be allowed when the gallon fee payment is received by the Fund after the due date.

#### **Cross References**

This section cited in 25 Pa. Code § 977.4 (relating to definitions); 25 Pa. Code § 977.14 (relating to gallon fee payment procedure).

#### **§ 977.16. Posting and collecting security.**

(a) *Requirement to post security.*

(1) A distributor shall remit fees on or before the last day of each month. Fees shall be calculated based on the quantity of the regulated substance distributed by the distributor in the preceding month. A distributor shall be considered delinquent if fees are not received by the Fund within 45 days after the end of the calendar month in which the product was delivered.

(2) A distributor shall post security for a minimum of 12 months following a delinquency.

(3) Following the posting of security, the Fund will have recourse against the security if the distributor fails to timely remit to the Fund, all or part of the gallon fee due to the Fund.

(4) The form of security and the calculation of the amount of security shall be as set forth in § 977.17 (relating to security for payment of gallon fee).

(b) *Collecting posted security.*

(1) For any delinquent payment, the Fund may make demand for payment upon the distributor's surety or guarantor for payment of the full amount due the Fund.

(2) The distributor shall post replacement security within 5 days after collection of the posted security. A distributor who fails or refuses to post replacement security is ineligible to collect the fees of the Fund.

**Cross References**

This section cited in 25 Pa. Code § 977.14 (relating to gallon fee payment procedure); and 25 Pa. Code §977.17 (relating to security for payment of gallon fee).

**§ 977.17. Security for payment of gallon fee.**

(a) The value of the security posted by a distributor shall be calculated by multiplying the gallon fee as established under § 977.12(a) and (b)(2) (relating to owner and operator fees) by the number of gallons of regulated substance (except heating oil and diesel fuel products) distributed over the 3-month period in the past calendar year in which the distributor distributed the greatest volume of regulated substance.

(b) The Fund will accept only payment bonds issued by surety companies licensed to do business in this Commonwealth.

(c) Negotiable securities of the United States or the Commonwealth may be used in lieu of a surety bond if the face value of the security is not less than the amount of the security required. The securities shall be held by the State Treasurer.

(d) Bank letters of credit submitted as collateral shall be subject to the following conditions:

(1) The letter of credit shall be a standby or guarantee letter of credit issued by a Federally insured or equivalently protected bank or banking institution authorized to do business in this Commonwealth.

(2) The letter of credit shall be irrevocable and shall be so designated. The letter of credit shall name the Fund as the beneficiary and shall be payable to the Fund. The Fund may accept a letter of credit for which a limited time period is stated if the following conditions are met and are stated in the letter:

(i) The letter of credit is automatically renewable for additional time periods unless the bank gives at least 90 days prior written notice to both the Fund and the owner or operator, of its intent to terminate the letter of credit at the end of the current time period.

(ii) The Fund may draw upon the letter of credit before the end of its time period, if the distributor is required to post security under § 977.16 (relating to posting and collecting security) and has failed to replace the letter of credit with other acceptable means of compliance in accordance with section 215 of the Oil and Gas Act (58 P. S. § 601.215) within 30 days of the bank's notice to terminate the letter of credit.

(iii) A distributor will notify the Fund within 30 days of the bank's notice to terminate the letter of credit.

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(3) The letter of credit shall be governed by the *Uniform Custom and Priorities for Accounting Credits*, International Chamber of Commerce, Publication Number 400 (1983 edition), and the laws of the Commonwealth, including 13 Pa.C.S. § 5101 (relating to letters of credit).

(4) The Fund will not accept a letter of credit from a bank, which has failed or refused to pay, in full, on a letter of credit previously submitted as collateral to the Fund.

(5) The Fund will not accept a letter of credit that contains rights of set-off, or liens in favor of the issuing bank.

(e) If the Fund collects an amount under the letter of credit in excess of the fees due, following failure of the distributor to replace the letter of credit after demand by the Fund, the Fund will hold the excess proceeds as cash collateral. The distributor may obtain the excess after the distributor has submitted, and the Fund has approved, a bond or other form of security posted in compliance with this section.

#### Cross References

This section cited in 25 Pa. Code § 977.16 (relating to posting and collecting security).

### § 977.18. Capacity fee payment procedure.

(a) The Fund shall charge the capacity fee to an owner or operator.

(b) The capacity fee shall be established as set forth in § 977.12(d) (relating to owner and operator fees).

(c) An owner or operator shall pay, on or before the due date indicated on the statement, the full amount of the capacity fee or a monthly payment of 1/12 of the total capacity fee due.

#### Cross References

This section cited in 25 Pa. Code § 977.4 (relating to definitions).

### § 977.19. Certified company fees.

(a) *Annual fees.* The Board will charge fees established in this section, based on an annual actuarial review.

(b) *Certified company fee.* Certified companies shall be required to pay to the Fund a certified company fee of \$1,000 per year.

(c) *Certification fee.* Certified companies which perform tank-handling activities on a UST as described in this subsection, shall be required to pay to the Fund an annual certification fee for each of the certifications held for each of the certified installers, based on the certification information maintained by the DEP (See § 245.110 (relating to certification of installers)):

(1) Installation and modification certification (UMX) fee of \$0.

(2) Removal certification (UMR) fee of \$0.

(3) Tightness Tester certification (UTT) fee of \$0.

(4) Storage tank liner certification (TL) fee of \$0.

(d) *Activity fee.* An activity fee shall be assessed on all activities on a UST or a HOT. The tank installer shall complete an activity fee form, supplied by the DEP for each activity. Except in an emergency these forms shall be submitted to the DEP 30 days prior to the commencement of the activity. The fees are as follows:

- (1) Installation Activity Fee of \$50.
- (2) Major Modification Activity Fee of \$50.
- (3) Removal Activity Fee of \$15.

#### Cross References

This section cited in 25 Pa. Code § 245.132 (relating to standards of performance); 25 Pa. Code § 977.4 (relating to definitions); and 25 Pa. Code § 977.20 (relating to certified company fee, certification fee and activity fee payment procedure).

### § 977.20. Certified company fee, certification fee and activity fee payment procedures.

(a) *Certified company fee and certification fee payment procedures.*

(1) This section applies to a certified company that performs installations, major modifications or removals of a UST or a HOT.

(2) A certified company shall pay the certified company fee and the certification fee to the Fund on or before the due date on the statement.

(3) The assessed fees shall be established in § 977.19 (relating to certified company fees).

(4) A certified company shall pay, by the due date indicated on the statement, the full amount of the fee or a monthly payment of 1/12 of the total certified company fee and certification fee.

(b) *Activity fee payment procedures.*

(1) This section applies to a certified company that performs installations, major modifications and removals of a UST or a HOT.

(2) The certified company shall submit required installation, modification and removal fees to the Fund upon receipt of the monthly invoice from the Fund.

(3) The activity fee shall be established in § 977.19(d).

### § 977.21. Penalty for late payment of fees.

Failure or refusal of a participant to pay the fee or a part of the fee by the date established by the Board for the payment of fees may result in a penalty of 5% of the amount due which shall accrue on the first day of delinquency. Thereafter, on the last day of each month during which a part of a fee or a prior accrued penalty remains unpaid, an additional 5% of the then unpaid balance shall accrue in accordance with section 705(e) of the act (35 P. S. § 6021.705(e)).

**Cross References**

This section cited in 25 Pa. Code § 977.61 (relating to dispute procedure).

**§ 977.22. Fee dispute procedure.**

(a) *General disputes.* The participant or a distributor that disputes the amount of an assessed fee may obtain review by filing a complaint with the Fund's Executive Director following the procedure established in § 977.61 (relating to dispute procedures).

(b) *Change in tank ownership.* If a change in the ownership of a UST occurs and the prior owner failed to pay assessed fees, the current owner may file an affidavit supplied by the Fund to establish date of ownership. The Fund may waive unpaid assessed fees up to and including the date of purchase of a UST. Coverage for releases occurring on or after the date of ownership may be considered for Fund coverage, based on the eligibility requirements as found in § 977.31 (relating to eligibility requirements).

**§ 977.23. Recordkeeping responsibilities.**

(a) An owner or operator shall maintain for 3 years documents necessary to verify the payment of the gallon, capacity and tank fees. At a minimum, these records shall include:

- (1) Distributor delivery invoices.
- (2) Financial records documenting payment of fees.
- (3) Regulated substance inventory documents.
- (4) Copies of the statement for a gallon, capacity or tank fee.

(b) A distributor shall maintain for a minimum of 3 years documents necessary to verify the number of gallons of regulated substances delivered into a UST. Records shall be maintained by customer account and shall include at a minimum:

- (1) Distributor delivery invoices.
- (2) Financial records, by customer account, documenting payment of the gallon fee.
- (3) Financial records pertaining to remittance of the gallon fee by distributor.
- (4) Regulated substance inventory records.
- (5) Copies of the Fund's gallon fee statement.

(c) A certified company shall maintain for 3 years documents necessary to verify the company certification and the number of installer certifications held by the employees of the company for the installation, major modification and removal of a UST or a HOT. This documentation shall include, at a minimum:

- (1) Copies of the DEP company certification and tank installer certificates.
- (2) Financial records documenting payment of fees to the Fund.

(d) A certified company shall maintain documents necessary to verify the number of installations, modifications and removal activities performed on a UST or a HOT. This documentation shall include, at a minimum:

- (1) Copies of the tank activity report form originally submitted to the DEP.
- (2) Financial records documenting payment of fees to the Fund.

(e) Documents identified in this section shall be made available to the Fund upon request.

#### § 977.24. Audit of records.

The Fund may require audits of the participant or a distributor to protect the rights and responsibilities of the Fund.

### Subchapter C. COVERAGE AND CLAIMS PROCEDURES

Sec.

- 977.31. Eligibility requirements.
- 977.32. Participant cooperation.
- 977.33. Fund coverage and exclusions.
- 977.34. Claims reporting.
- 977.35. Third-party suit.
- 977.36. Corrective action payments.
- 977.37. Priority of claims.
- 977.38. Primary coverage.
- 977.39. Claim dispute procedures.
- 977.40. Subrogation for corrective action cost.

#### § 977.31. Eligibility requirements.

(a) *Eligibility of claimants.* To be eligible for Fund coverage, the participant shall, under section 706 of the act (35 P.S. § 6021.706), regarding eligibility of claimants, meet the following requirements:

(1) The claimant is the owner, operator or certified tank installer of the UST or HOT which is the subject of the claim.

(2) Fees required under Subchapter B (relating to fees and collection procedures) for every UST or HOT located at the site where the release occurred are paid prior to the time that the release giving rise to the claim is discovered.

(3) Registration and annual registration fees required under §§ 245.41 and 245.42 (relating to tank registration requirements; and tank registration fees) for USTs located at the site where the release occurred are current and paid on or before 60 days of when the release giving rise to the claim is discovered.

(4) The participant received the appropriate permit or certification, if required under sections 108, 501 and 504 of the act (35 P.S. §§ 6021.108, 6021.501 and 6021.504), pertaining to interim certification of installers and inspectors, UST requirements and permits and plans, prior to the time that the release giving rise to the claim is discovered.

(5) The release that is the subject of the claim occurred after the date established by the Board for payment of the fee required by section 705(d) of the act (35 P.S. § 6021.705(d)), regarding fees.

(6) The participant cooperates, as defined in § 977.32 (relating to participant cooperation), with the Fund in its eligibility determination process, claims investigation, the defense of any suit, the pursuit of a subrogation action and other matters as requested.

(7) The participant met the notification requirements of § 977.34 (relating to claims reporting).

(8) If the claimant is a certified company, the company conducted a tank-handling activity on a UST or a HOT from which the release occurred.

(b) *Definition.* For purposes of this section, the term “site” means a storage tank facility as defined in § 245.1 (relating to definitions) that includes one or more USTs or HOTs.

#### Authority

The provisions of this § 977.31 amended under section 705(d) and (f)(2) of the Storage Tank and Spill Prevention Act (35 P.S. § 6021.705(d) and (f)(2)).

#### Source

The provisions of this § 977.31 amended January 16, 2026, effective January 17, 2026, 56 Pa.B. 363. Immediately preceding text appears at serial pages (285936) and (294815).

#### Cross References

This section cited in 25 Pa. Code § 977.22 (relating to fee dispute procedures); and 25 Pa. Code § 977.52 (relating to coverage period).

### § 977.32. Participant cooperation.

(a) At a minimum, the participant shall cooperate by:

(1) Providing all information requested by the Fund including tank system design documents, inventory records, tank tightness test results, contracts and other information pertinent to a claim within 30 days of the request of the Fund, or additional time as set by the Fund.

(2) Permitting the Fund or its agent to inspect, sample and monitor on a continuing basis the property or operation of the participant.

(3) Providing access to interview employees, agents, representatives or independent contractors of the participant; and to review any documents within the possession, custody or control of the participant concerning the claim.

(4) Submitting, and requiring employees, consultants and other interested parties subject to its control to submit, to an examination under oath upon the request of the Fund.

(5) Obtaining competitive proposals for work to be performed when requested by the Fund.

(b) The participant shall cooperate in all respects with the Fund, its investigators, attorneys and agents during the investigation and resolution of a claim, including the defense of a suit, as provided in § 977.35 (relating to third-party suit) and any subrogation action as provided in § 977.40 (relating to subrogation for corrective action cost).

(c) Lack of cooperation by the participant with the Fund or its investigators, attorneys, or agents may result in denial of the claim or cessation of further payments on a claim.

**Cross References**

This section cited in 25 Pa. Code § 977.31 (relating to eligibility requirements); 25 Pa. Code § 977.35 (relating to third-party suit); and 25 Pa. Code § 977.40 (relating to subrogation for corrective action cost).

**§ 977.33. Fund coverage and exclusions.**(a) *Fund coverage.*

(1) *Corrective action.* The Fund shall indemnify an eligible owner or operator for up to the available coverage limit, for reasonable and necessary corrective action costs. See paragraph (4).

(2) *Bodily injury or property damage.* The Fund shall indemnify the eligible participant, up to the available coverage limit, for bodily injury and property damage. See paragraph (4).

(i) The Fund may defend any suit against the eligible participant. The cost of this defense does not reduce Fund coverage limits.

(ii) Punitive or exemplary damages awarded against the participant as a result of a suit are excluded from Fund coverage.

(3) *Deductible.* Payment of a claim for corrective action costs shall be subject to a deductible in an amount not less than \$5,000 per tank per occurrence for each UST or HOT that contributed to the release. If an eligible claim for bodily injury or property damage results from the release, an additional deductible per tank per occurrence in an amount not less than \$5,000 applies to all claims in addition to the deductible for corrective action. A certified company is subject to one deductible per tank per occurrence. The Fund in its discretion may pay the entire claim and seek reimbursement of the applicable deductible from the participant. The Fund shall publish the deductibles in the *Pennsylvania Bulletin* annually.

(4) *Limits of liability.* Payment of corrective action costs and bodily injury and property damage claims (See section 704 of the act (35 P.S. § 6021.704)) are subject to the following limits of liability:

(i) Payments for reasonable and necessary corrective action costs, and bodily injury or property damage may not exceed a total of \$1.5 million per tank per occurrence and may not exceed the annual aggregate limit.

(ii) Payments may not exceed:

(A) An annual aggregate of \$1.5 million for each owner and operator of 100 or less USTs or an owner or operator of 100 or less HOTs.

(B) An annual aggregate of \$3 million for each owner or operator of 101 or more USTs or an owner or operator of 101 or more HOTs.

(iii) For the purpose of determining coverage limits, any release, whether sudden, accidental, intermittent or continuous, will be considered one occurrence.

(iv) The Fund will only reimburse an owner or operator for reasonable and necessary corrective action costs.

(v) Damages paid to a third party for bodily injury or property damage may not exceed the amount of damages awarded by a court of competent jurisdiction or the amount agreed to by the Fund in settlement of the claim

or suit resulting from a release. Under no circumstances will the Fund pay any amount in excess of the Fund's limit of liability as found in this paragraph.

(b) *Exclusions.* Fund coverage does not apply to the following:

(1) A release caused in whole or in part by the intentional act of the participant.

(2) Damages which the participant is legally obligated to pay solely by reason of the assumption of liability in a contract or agreement unless the participant has paid all current and past-due fees to the Fund as required by section 705(e) of the act (35 P. S. § 6021.705(e)), and the release was not discovered or known by the participant or by any previous participant, prior to the payment of any past due fees.

(3) Any portion of a release which occurred before February 1, 1994.

(4) A claim made against a certified company before the date of coverage.

(5) A claim made against the participant for a release discovered before any required fees are paid.

(6) Default judgments.

#### Authority

The provisions of this § 977.33 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412).

#### Source

The provisions of this 977.33 amended December 20, 2002, effective December 21, 2002, 32 Pa.B. 6258. Immediately preceding text appears at serial pages (285938) to (285939).

### § 977.34. Claims reporting.

The participant shall notify the Fund within 60 days after the confirmation of a release under §§ 245.304 and 245.305 (relating to investigation of suspected releases; and reporting releases).

#### Cross References

This section cited in 25 Pa. Code § 977.31 (relating to eligibility requirements).

### § 977.35. Third-party suit.

(a) *Suit.* In addition to the requirements of § 977.32 (relating to participant cooperation), the participant shall assist the Fund in its defense of a suit. The participant shall forward to the Fund all materials including:

(1) Technical reports, laboratory data, field notes or any other documents gathered by or on behalf of the participant to abate a release or to implement corrective action.

(2) Documentation of release detection methods, such as tank and line tightness tests or inventory records to verify that a release has taken place.

(3) Correspondence between the participant and any other persons relating to the release or claim that is the subject of the suit.

(4) Demands, summons, notices or other processes or papers filed with, in or by a court of law, administrative agency or an investigative body relating to the release or claim.

(5) The expert reports, investigations and data collected by experts retained by the participant relating to the release or claim.

(6) Other information developed or discovered by the participant concerning the release or claim.

(b) *Legal defense undertaken by the Fund.* The Fund may settle or defend any claim for bodily injury or property damage. The Fund may assign legal counsel to defend any suit brought against the participant by a third party. The Fund will not reimburse legal fees for any firm not assigned by the Fund.

(c) *Defense and exhaustion of limits.* The Fund is not required to pay defense costs after the limit of liability is exhausted.

#### Cross References

This section cited in 25 Pa. Code § 977.32 (relating to participant cooperation).

### § 977.36. Corrective action payments.

(a) The Fund shall make payments for reasonable and necessary corrective action costs to an owner or operator, unless a signed Authorization to Pay Form provided by the Fund has been submitted designating another person to receive Fund payments.

(b) Time and expense charges for remediation invoices shall be submitted to the Fund for all work performed. For invoices to be paid by the Fund, the invoices shall be fully documented to include:

(1) Time sheets for personnel and equipment.

(2) Statements of work performed.

(3) Receipts or other documentation for expendable supplies and subcontractor supplies.

(4) A list of tests performed with costs and results for any laboratory analyses.

(5) The owner, operator or remediation contractor shall supply rate schedules, fees for service schedules and contracts with consultants.

(6) All subcontractor invoices.

(c) An owner or operator may request that the Fund employ an alternative remediation payment option to include pay for performance type contracts.

### § 977.37. Priority of claims.

The Fund may prioritize claims for payment. The prioritization may take into account corrective action costs and the impact of the release on human health.

### § 977.38. Primary coverage.

(a) *Primary coverage.* The Fund provides primary coverage for corrective action costs and eligible claims for personal injury and property damage due to a release from a UST or a HOT.

(b) *Combined limits.* When the Fund determines a certified company is responsible for the release that is the subject of the claim, the coverage of a certified company will be exhausted before the coverage of an owner or operator of a UST or a HOT is applied.

**§ 977.39. Claim dispute procedures.**

The participant, or a distributor, that disputes a determination of the Fund may obtain a review of the determination by filing an appeal with the Executive Director of the Fund by following the procedures established in § 977.61 (relating to dispute procedures).

**§ 977.40. Subrogation for corrective action cost.**

(a) The Fund, after any payment, shall be subrogated to all of the rights of recovery of an owner or operator against any person for the costs of remediation.

(b) If an owner or operator does not comply with § 977.32 (relating to participant cooperation), the Fund may deny further payments on a claim.

**Cross References**

This section cited in 25 Pa. Code § 977.32 (relating to participant cooperation).

**Subchapter D. HEATING OIL TANK OPTIONAL PROGRAM**

Sec.

- 977.51. Election requirements.
- 977.52. Coverage period.
- 977.53. Cancellation of coverage.
- 977.54. Dispute procedures.

**Cross References**

This subchapter cited in 25 Pa. Code § 977.4 (relating to definitions).

**§ 977.51. Election requirements.**

To elect coverage from the Fund, a HOT owner or operator shall:

- (1) Complete and submit an application form available from the Fund.
- (2) Provide the Fund with a copy of a tank tightness test utilizing an EPA approved testing system, indicating a satisfactory result. The test shall be completed within the 30-day period preceding the application date.
- (3) Submit a \$50 fee. The fee will be credited to the applicant's account if the application is approved or returned if the application is rejected.
- (4) Pay any fee established in § 977.11 (relating to Fund fees).

**§ 977.52. Coverage period.**

If the Fund determines that the requirements in § 977.31 (relating to eligibility requirements) have been satisfied, coverage by the Fund will be effective from the date the application is received. A HOT owner or operator will have continu-

ous coverage provided all fees are paid within 30 days of the due date indicated on the statement provided by the Fund.

**§ 977.53. Cancellation of coverage.**

(a) A HOT owner or operator may cancel coverage by providing advance written notice to the Fund. Coverage will be terminated on the date notice is received by the Fund or on a later date as requested by the HOT owner or operator. Fee refunds shall be made on a pro-rata basis.

(b) The failure of a HOT owner or operator to remit fees within 30 days of the due date indicated on the statement will cause coverage to be canceled as of the due date. A fee is deemed paid on the date the payment is received by the Fund. Coverage may be reinstated as provided in section 705(e) of the act (35 P.S. § 6021.705(e)).

**§ 977.54. Dispute procedures.**

A HOT owner or operator who disputes a decision of the Fund may obtain review by filing a complaint with the Fund's Executive Director following the procedures in § 977.61 (relating to dispute procedures).

**Subchapter E. DISPUTE PROCEDURES**

Sec.  
977.61. Dispute procedures.

**§ 977.61. Dispute procedures.**

(a) An appeal of a decision of the Fund shall be made in writing to the Executive Director of the Fund. The appeal must be received within 35 days of the mailing date of the Fund's decision. An appeal shall contain:

- (1) The name and address of the appellant.
- (2) A statement of the facts forming the basis of the complaint.
- (3) Supporting material.

(b) An appeal of the Executive Director's decision shall be made in writing to the Board. The appeal must be received by the Board within 35 days of the mailing date of the decision. The appeal process shall be conducted in accordance with 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

(c) An adjudication of the Board may be appealed in accordance with 2 Pa.C.S. § 702 (relating to appeals).

(d) To remain eligible for Fund coverage, disputed fees shall be paid in full during the pendency of an appeal.

- (1) If a participant or a distributor prevails in the appeal, fees paid in excess of the amount determined to be due plus interest shall be refunded.

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UNDERGROUND STORAGE

**25 § 977.61**

Interest shall be computed at the rate determined by the Secretary of Revenue for interest payments for overdue taxes under section 806 of the Fiscal Code (72 P. S. § 806).

(2) Penalties authorized by the act or by § 977.21 (relating to penalty for late payment of fees) will be retroactive to the first day of delinquency.

**Cross References**

This section cited in 25 Pa. Code § 977.22 (relating to fee dispute procedure); 25 Pa. Code § 977.39 (relating to claim dispute procedures); and 25 Pa. Code § 977.54 (relating to dispute procedures).

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*Pennsylvania's Right-to-Know Law was introduced as Senate Bill 1 of the 2007-08 legislative session by Senator Dominic Pileggi. The final version of SB1 was approved by the Senate, 50-0, and the House of Representatives, 199-0. It was signed into law on February 14, 2008.*

*Chapter 15 of the Right-to-Know Law was amended by Act 2023-29, effective July 1, 2024. Those amendments are reflected in this copy of the Law.*

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**Act of Feb. 14, 2008, P.L. 6, No. 3**

AN ACT

Providing for access to public information, for a designated open-records officer in each Commonwealth agency, local agency, judicial agency and legislative agency, for procedure, for appeal of agency determination, for judicial review and for the Office of Open Records; imposing penalties; providing for reporting by State-related institutions; requiring the posting of certain State contract information on the Internet; and making related repeals.

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Section 3103. References.

Section 3104. Effective date.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

**CHAPTER 1**  
**PRELIMINARY PROVISIONS**

**Section 101. Short title.**

This act shall be known and may be cited as the Right-to-Know Law.

**Section 102. Definitions.**

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Administrative proceeding.” A proceeding by an agency the outcome of which is required to be based on a record or documentation prescribed by law or in which a statute or regulation is particularized in application to individuals. The term includes an appeal.

“Agency.” A Commonwealth agency, a local agency, a judicial agency or a legislative agency.

“Aggregated data.” A tabulation of data which relate to broad classes, groups or categories so that it is not possible to distinguish the properties of individuals within those classes, groups or categories.

“Appeals officer.” As follows:

- (1) For a Commonwealth agency or a local agency, the appeals officer designated under section 503(a).
- (2) For a judicial agency, the individual designated under section 503(b).
- (3) For a legislative agency, the individual designated under section 503(c).
- (4) For the Attorney General, State Treasurer, Auditor General and local agencies in possession of criminal investigative records, the individual designated under section 503(d).

“Commonwealth agency.” Any of the following:

- (1) Any office, department, authority, board, multistate agency or commission of the executive branch, an independent agency and a State-affiliated entity. The term includes:
  - (i) The Governor's Office.
  - (ii) The Office of Attorney General, the Department of the Auditor General and the Treasury Department.
  - (iii) An organization established by the Constitution of Pennsylvania, a statute or an executive order which performs or is intended to perform an essential governmental function.
- (2) The term does not include a judicial or legislative agency.

“Confidential proprietary information.” Commercial or financial information received by an agency:

- (1) which is privileged or confidential; and
- (2) the disclosure of which would cause substantial harm to the competitive position of the person that submitted the information.

“Financial record.” Any of the following:

- (1) Any account, voucher or contract dealing with:
  - (i) the receipt or disbursement of funds by an agency; or
  - (ii) an agency's acquisition, use or disposal of services, supplies, materials, equipment or property.
- (2) The salary or other payments or expenses paid to an officer or employee of an agency, including the name and title of the officer or employee.
- (3) A financial audit report. The term does not include work papers underlying an audit.

“Homeland security.” Governmental actions designed to prevent, detect, respond to and recover from acts of terrorism, major disasters and other emergencies, whether natural or manmade. The term includes activities relating to the following:

- (1) emergency preparedness and response, including preparedness and response activities by volunteer medical, police, emergency management, hazardous materials and fire personnel;
- (2) intelligence activities;
- (3) critical infrastructure protection;
- (4) border security;
- (5) ground, aviation and maritime transportation security;
- (6) biodefense;
- (7) detection of nuclear and radiological materials; and
- (8) research on next-generation securities technologies.

“Independent agency.” Any board, commission or other agency or officer of the Commonwealth, that is not subject to the policy supervision and control of the Governor. The term does not include a legislative or judicial agency.

“Judicial agency.” A court of the Commonwealth or any other entity or office of the unified judicial system.

“Legislative agency.” Any of the following:

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- (1) The Senate.
- (2) The House of Representatives.
- (3) The Capitol Preservation Committee.
- (4) The Center for Rural Pennsylvania.
- (5) The Joint Legislative Air and Water Pollution Control and Conservation Committee.
- (6) The Joint State Government Commission.
- (7) The Legislative Budget and Finance Committee.
- (8) The Legislative Data Processing Committee.
- (9) The Independent Regulatory Review Commission.
- (10) The Legislative Reference Bureau.
- (11) The Local Government Commission.
- (12) The Pennsylvania Commission on Sentencing.
- (13) The Legislative Reapportionment Commission.
- (14) The Legislative Office for Research Liaison.
- (15) The Legislative Audit Advisory Commission.

“Legislative record.” Any of the following relating to a legislative agency or a standing committee, subcommittee or conference committee of a legislative agency:

- (1) A financial record.
- (2) A bill or resolution that has been introduced and amendments offered thereto in committee or in legislative session, including resolutions to adopt or amend the rules of a chamber.
- (3) Fiscal notes.
- (4) A cosponsorship memorandum.
- (5) The journal of a chamber.
- (6) The minutes of, record of attendance of members at a public hearing or a public committee meeting and all recorded votes taken in a public committee meeting.
- (7) The transcript of a public hearing when available.
- (8) Executive nomination calendars.
- (9) The rules of a chamber.

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- (10) A record of all recorded votes taken in a legislative session.
- (11) Any administrative staff manuals or written policies.
- (12) An audit report prepared pursuant to the act of June 30, 1970 (P.L.442, No.151) entitled, "An act implementing the provisions of Article VIII, section 10 of the Constitution of Pennsylvania, by designating the Commonwealth officers who shall be charged with the function of auditing the financial transactions after the occurrence thereof of the Legislative and Judicial branches of the government of the Commonwealth, establishing a Legislative Audit Advisory Commission, and imposing certain powers and duties on such commission."
- (13) Final or annual reports required by law to be submitted to the General Assembly.
- (14) Legislative Budget and Finance Committee reports.
- (15) Daily legislative session calendars and marked calendars.
- (16) A record communicating to an agency the official appointment of a legislative appointee.
- (17) A record communicating to the appointing authority the resignation of a legislative appointee.
- (18) Proposed regulations, final-form regulations and final-omitted regulations submitted to a legislative agency.
- (19) The results of public opinion surveys, polls, focus groups, marketing research or similar efforts designed to measure public opinion funded by a legislative agency.

"Local agency." Any of the following:

- (1) Any political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school.
- (2) Any local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity.

"Office of Open Records." The Office of Open Records established in section 1310.

"Personal financial information." An individual's personal credit, charge or debit card information; bank account information; bank, credit or financial statements; account or PIN numbers and other information relating to an individual's personal finances.

"Privilege." The attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court interpreting the laws of this Commonwealth.

"Public record." A record, including a financial record, of a Commonwealth or local agency that:

- (1) is not exempt under section 708;

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(2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or

(3) is not protected by a privilege.

“Record.” Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.

“Requester.” A person that is a legal resident of the United States and requests a record pursuant to this act. The term includes an agency.

“Response.” Access to a record or an agency's written notice to a requester granting, denying or partially granting and partially denying access to a record.

“Social services.” Cash assistance and other welfare benefits, medical, mental and other health care services, drug and alcohol treatment, adoption services, vocational services and training, occupational training, education services, counseling services, workers' compensation services and unemployment compensation services, foster care services, services for the elderly, services for individuals with disabilities and services for victims of crimes and domestic violence.

“State-affiliated entity.” A Commonwealth authority or Commonwealth entity. The term includes the Pennsylvania Higher Education Assistance Agency and any entity established thereby, the Pennsylvania Gaming Control Board, the Pennsylvania Game Commission, the Pennsylvania Fish and Boat Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement Board, the State System of Higher Education, a community college, the Pennsylvania Turnpike Commission, the Pennsylvania Public Utility Commission, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Interscholastic Athletic Association and the Pennsylvania Higher Educational Facilities Authority. The term does not include a State-related institution.

“State-related institution.” Includes:

- (1) Temple University.
- (2) The University of Pittsburgh.
- (3) The Pennsylvania State University.
- (4) Lincoln University.

“Terrorist act.” A violent or life-threatening act that violates the criminal laws of the United States or any state and appears to be intended to:

- (1) intimidate or coerce a civilian population;
- (2) influence the policy of a government; or
- (3) affect the conduct of a government by mass destruction, assassination or kidnapping.

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“Trade secret.” Information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that:

- (1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
- (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The term includes data processing software obtained by an agency under a licensing agreement prohibiting disclosure.

**CHAPTER 3  
REQUIREMENTS AND PROHIBITIONS**

**Section 301. Commonwealth agencies.**

- (a) Requirement.--A Commonwealth agency shall provide public records in accordance with this act.
- (b) Prohibition.--A Commonwealth agency may not deny a requester access to a public record due to the intended use of the public record by the requester unless otherwise provided by law.

**Section 302. Local agencies.**

- (a) Requirement.--A local agency shall provide public records in accordance with this act.
- (b) Prohibition.--A local agency may not deny a requester access to a public record due to the intended use of the public record by the requester unless otherwise provided by law.

**Section 303. Legislative agencies.**

- (a) Requirement.--A legislative agency shall provide legislative records in accordance with this act.
- (b) Prohibition.--A legislative agency may not deny a requester access to a legislative record due to the intended use of the legislative record by the requester.

**Section 304. Judicial agencies.**

- (a) Requirement.--A judicial agency shall provide financial records in accordance with this act or any rule or order of court providing equal or greater access to the records.
- (b) Prohibition.--A judicial agency may not deny a requester access to a financial record due to the intended use of the financial record by the requester.

**Section 305. Presumption.**

- (a) General rule.--A record in the possession of a Commonwealth agency or local agency shall be presumed to be a public record. The presumption shall not apply if:
  - (1) the record is exempt under section 708;
  - (2) the record is protected by a privilege; or
  - (3) the record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree.
- (b) Legislative records and financial records.--A legislative record in the possession of a legislative agency and a financial record in the possession of a judicial agency shall be presumed to be available in accordance with this act. The presumption shall not apply if:
  - (1) the record is exempt under section 708;

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- (2) the record is protected by a privilege; or
- (3) the record is exempt from disclosure under any other Federal or State law, regulation or judicial order or decree.

### **Section 306. Nature of document.**

Nothing in this act shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree.

**CHAPTER 5  
ACCESS**

**Section 501. Scope of chapter.**

This chapter applies to all agencies.

**Section 502. Open-records officer.**

(a) Establishment.--

- (1) An agency shall designate an official or employee to act as the open-records officer.
- (2) For a legislative agency other than the Senate or the House of Representatives, the open-records officer designated by the Legislative Reference Bureau shall serve as the open-records officer. Notwithstanding paragraph (1), a political party caucus of a legislative agency may appoint an open-records officer under this section.

(b) Functions.--

- (1) The open-records officer shall receive requests submitted to the agency under this act, direct requests to other appropriate persons within the agency or to appropriate persons in another agency, track the agency's progress in responding to requests and issue interim and final responses under this act.
- (2) Upon receiving a request for a public record, legislative record or financial record, the open-records officer shall do all of the following:
  - (i) Note the date of receipt on the written request.
  - (ii) Compute the day on which the five-day period under section 901 will expire and make a notation of that date on the written request.
  - (iii) Maintain an electronic or paper copy of a written request, including all documents submitted with the request until the request has been fulfilled. If the request is denied, the written request shall be maintained for 30 days or, if an appeal is filed, until a final determination is issued under section 1101(b) or the appeal is deemed denied.
  - (iv) Create a file for the retention of the original request, a copy of the response, a record of written communications with the requester and a copy of other communications. This subparagraph shall only apply to Commonwealth agencies.

**Section 503. Appeals officer.**

(a) Commonwealth agencies and local agencies.--Except as provided in subsection (d), the Office of Open Records established under section 1310 shall designate an appeals officer under section 1101(a)(2) for all:

- (1) Commonwealth agencies; and

- (2) local agencies.
- (b) Judicial agencies.--A judicial agency shall designate an appeals officer to hear appeals under Chapter 11.
- (c) Legislative agencies.--
  - (1) Except as set forth in paragraph (2), the Legislative Reference Bureau shall designate an appeals officer to hear appeals under Chapter 11 for all legislative agencies.
  - (2) Each of the following shall designate an appeals officer to hear appeals under Chapter 11:
    - (i) The Senate.
    - (ii) The House of Representatives.
- (d) Law enforcement records and Statewide officials.--
  - (1) The Attorney General, State Treasurer and Auditor General shall each designate an appeals officer to hear appeals under Chapter 11.
  - (2) The district attorney of a county shall designate one or more appeals officers to hear appeals under Chapter 11 relating to access to criminal investigative records in possession of a local agency of that county. The appeals officer designated by the district attorney shall determine if the record requested is a criminal investigative record.

**Section 504. Regulations and policies.**

- (a) Authority.--An agency may promulgate regulations and policies necessary for the agency to implement this act. The Office of Open Records may promulgate regulations relating to appeals involving a Commonwealth agency or local agency.
- (b) Posting.--The following information shall be posted at each agency and, if the agency maintains an Internet website, on the agency's Internet website:
  - (1) Contact information for the open-records officer.
  - (2) Contact information for the Office of Open Records or other applicable appeals officer.
  - (3) A form which may be used to file a request.
  - (4) Regulations, policies and procedures of the agency relating to this act.

**Section 505. Uniform form.**

- (a) Commonwealth and local agencies.--The Office of Open Records shall develop a uniform form which shall be accepted by all Commonwealth and local agencies in addition to any form

used by the agency to file a request under this act. The uniform form shall be published in the Pennsylvania Bulletin and on the Office of Open Record's Internet website.

(b) Judicial agencies.--A judicial agency or the Administrative Office of Pennsylvania Courts may develop a form to request financial records or may accept a form developed by the Office of Open Records.

(c) Legislative agencies.--A legislative agency may develop a form to request legislative records or may accept the form developed by the Office of Open Records.

### **Section 506. Requests.**

(a) Disruptive requests.--

(1) An agency may deny a requester access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the agency.

(2) A denial under this subsection shall not restrict the ability to request a different record.

(b) Disaster or potential damage.--

(1) An agency may deny a requester access:

(i) when timely access is not possible due to fire, flood or other disaster; or

(ii) to historical, ancient or rare documents, records, archives and manuscripts when access may, in the professional judgment of the curator or custodian of records, cause physical damage or irreparable harm to the record.

(2) To the extent possible, the contents of a record under this subsection shall be made accessible to a requester even when the record is physically unavailable.

(c) Agency discretion.--An agency may exercise its discretion to make any otherwise exempt record accessible for inspection and copying under this chapter, if all of the following apply:

(1) Disclosure of the record is not prohibited under any of the following:

(i) Federal or State law or regulation.

(ii) Judicial order or decree.

(2) The record is not protected by a privilege.

(3) The agency head determines that the public interest favoring access outweighs any individual, agency or public interest that may favor restriction of access.

(d) Agency possession.--

(1) A public record that is not in the possession of an agency but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the agency, and which directly relates to the governmental function and is not exempt under this act, shall be considered a public record of the agency for purposes of this act.

(2) Nothing in this act shall be construed to require access to any other record of the party in possession of the public record.

(3) A request for a public record in possession of a party other than the agency shall be submitted to the open records officer of the agency. Upon a determination that the record is subject to access under this act, the open records officer shall assess the duplication fee established under section 1307(b) and upon collection shall remit the fee to the party in possession of the record if the party duplicated the record.

**Section 507. Retention of records.**

Nothing in this act shall be construed to modify, rescind or supersede any record retention policy or disposition schedule of an agency established pursuant to law, regulation, policy or other directive.

**CHAPTER 7  
PROCEDURE**

**Section 701. Access.**

(a) General rule.--Unless otherwise provided by law, a public record, legislative record or financial record shall be accessible for inspection and duplication in accordance with this act. A record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists. Public records, legislative records or financial records shall be available for access during the regular business hours of an agency.

(b) Construction.--Nothing in this act shall be construed to require access to any computer either of an agency or individual employee of an agency.

**Section 702. Requests.**

Agencies may fulfill verbal, written or anonymous verbal or written requests for access to records under this act. If the requester wishes to pursue the relief and remedies provided for in this act, the request for access to records must be a written request.

**Section 703. Written requests.**

A written request for access to records may be submitted in person, by mail, by e-mail, by facsimile or, to the extent provided by agency rules, by any other electronic means. A written request must be addressed to the open-records officer designated pursuant to section 502. Employees of an agency shall be directed to forward requests for records to the open-records officer. A written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested and shall include the name and address to which the agency should address its response. A written request need not include any explanation of the requester's reason for requesting or intended use of the records unless otherwise required by law.

**Section 704. Electronic access.**

(a) General rule.--In addition to the requirements of section 701, an agency may make its records available through any publicly accessible electronic means.

(b) Response.--

(1) In addition to the requirements of section 701, an agency may respond to a request by notifying the requester that the record is available through publicly accessible electronic means or that the agency will provide access to inspect the record electronically.

(2) If the requester is unwilling or unable to access the record electronically, the requester may, within 30 days following receipt of the agency notification, submit a written request to the agency to have the record converted to paper. The agency shall provide access to the record in printed form within five days of the receipt of the written request for conversion to paper.

**Section 705. Creation of record.**

When responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.

**Section 706. Redaction.**

If an agency determines that a public record, legislative record or financial record contains information which is subject to access as well as information which is not subject to access, the agency's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record, legislative record or financial record and cannot be separated, the agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The agency may not deny access to the record if the information which is not subject to access is able to be redacted. Information which an agency redacts in accordance with this subsection shall be deemed a denial under Chapter 9.

**Section 707. Production of certain records.**

- (a) General rule.--If, in response to a request, an agency produces a record that is not a public record, legislative record or financial record, the agency shall notify any third party that provided the record to the agency, the person that is the subject of the record and the requester.
- (b) Requests for trade secrets.--An agency shall notify a third party of a request for a record if the third party provided the record and included a written statement signed by a representative of the third party that the record contains a trade secret or confidential proprietary information. Notification shall be provided within five business days of receipt of the request for the record. The third party shall have five business days from receipt of notification from the agency to provide input on the release of the record. The agency shall deny the request for the record or release the record within ten business days of the provision of notice to the third party and shall notify the third party of the decision.
- (c) Transcripts.--
  - (1) Prior to an adjudication becoming final, binding and nonappealable, a transcript of an administrative proceeding shall be provided to a requester by the agency stenographer or a court reporter, in accordance with agency procedure or an applicable contract.
  - (2) Following an adjudication becoming final, binding and nonappealable, a transcript of an administrative proceeding shall be provided to a requester in accordance with the duplication rates established in section 1307(b).

**Section 708. Exceptions for public records.**

- (a) Burden of proof.--

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(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.

(2) The burden of proving that a legislative record is exempt from public access shall be on the legislative agency receiving a request by a preponderance of the evidence.

(3) The burden of proving that a financial record of a judicial agency is exempt from public access shall be on the judicial agency receiving a request by a preponderance of the evidence.

(b) Exceptions.--Except as provided in subsections (c) and (d), the following are exempt from access by a requester under this act:

(1) A record, the disclosure of which:

(i) would result in the loss of Federal or State funds by an agency or the Commonwealth; or

(ii) would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.

(2) A record maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that, if disclosed, would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity or a record that is designated classified by an appropriate Federal or State military authority.

(3) A record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system, which may include:

(i) documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act;

(ii) lists of infrastructure, resources and significant special events, including those defined by the Federal Government in the National Infrastructure Protections, which are deemed critical due to their nature and which result from risk analysis; threat assessments; consequences assessments; antiterrorism protective measures and plans; counterterrorism measures and plans; and security and response needs assessments; and

(iii) building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility systems, structural elements, technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage and gas systems.

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- (4) A record regarding computer hardware, software and networks, including administrative or technical records, which, if disclosed, would be reasonably likely to jeopardize computer security.
- (5) A record of an individual's medical, psychiatric or psychological history or disability status, including an evaluation, consultation, prescription, diagnosis or treatment; results of tests, including drug tests; enrollment in a health care program or program designed for participation by persons with disabilities, including vocation rehabilitation, workers' compensation and unemployment compensation; or related information that would disclose individually identifiable health information.
- (6) (i) The following personal identification information:
- (A) A record containing all or part of a person's Social Security number, driver's license number, personal financial information, home, cellular or personal telephone numbers, personal e-mail addresses, employee number or other confidential personal identification number.
  - (B) A spouse's name, marital status or beneficiary or dependent information.
  - (C) The home address of a law enforcement officer or judge.
- (ii) Nothing in this paragraph shall preclude the release of the name, position, salary, actual compensation or other payments or expenses, employment contract, employment-related contract or agreement and length of service of a public official or an agency employee.
- (iii) An agency may redact the name or other identifying information relating to an individual performing an undercover or covert law enforcement activity from a record.
- (7) The following records relating to an agency employee:
- (i) A letter of reference or recommendation pertaining to the character or qualifications of an identifiable individual, unless it was prepared in relation to the appointment of an individual to fill a vacancy in an elected office or an appointed office requiring Senate confirmation.
  - (ii) A performance rating or review.
  - (iii) The result of a civil service or similar test administered by a Commonwealth agency, legislative agency or judicial agency. The result of a civil service or similar test administered by a local agency shall not be disclosed if restricted by a collective bargaining agreement. Only test scores of individuals who obtained a passing score on a test administered by a local agency may be disclosed.
  - (iv) The employment application of an individual who is not hired by the agency.
  - (v) Workplace support services program information.

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- (vi) Written criticisms of an employee.
  - (vii) Grievance material, including documents related to discrimination or sexual harassment.
  - (viii) Information regarding discipline, demotion or discharge contained in a personnel file. This subparagraph shall not apply to the final action of an agency that results in demotion or discharge.
  - (ix) An academic transcript.
- (8) (i) A record pertaining to strategy or negotiations relating to labor relations or collective bargaining and related arbitration proceedings. This subparagraph shall not apply to a final or executed contract or agreement between the parties in a collective bargaining procedure.
- (ii) In the case of the arbitration of a dispute or grievance under a collective bargaining agreement, an exhibit entered into evidence at an arbitration proceeding, a transcript of the arbitration or the opinion. This subparagraph shall not apply to the final award or order of the arbitrator in a dispute or grievance procedure.
- (9) The draft of a bill, resolution, regulation, statement of policy, management directive, ordinance or amendment thereto prepared by or for an agency.
- (10) (i) A record that reflects:
- (A) The internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.
  - (B) The strategy to be used to develop or achieve the successful adoption of a budget, legislative proposal or regulation.
- (ii) Subparagraph (i)(A) shall apply to agencies subject to 65 Pa.C.S. Ch. 7 (relating to open meetings) in a manner consistent with 65 Pa.C.S. Ch. 7. A record which is not otherwise exempt from access under this act and which is presented to a quorum for deliberation in accordance with 65 Pa.C.S. Ch. 7 shall be a public record.
  - (iii) This paragraph shall not apply to a written or Internet application or other document that has been submitted to request Commonwealth funds.
  - (iv) This paragraph shall not apply to the results of public opinion surveys, polls, focus groups, marketing research or similar effort designed to measure public opinion.

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- (11) A record that constitutes or reveals a trade secret or confidential proprietary information.
- (12) Notes and working papers prepared by or for a public official or agency employee used solely for that official's or employee's own personal use, including telephone message slips, routing slips and other materials that do not have an official purpose.
- (13) Records that would disclose the identity of an individual who lawfully makes a donation to an agency unless the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public official or employee of the agency, including lists of potential donors compiled by an agency to pursue donations, donor profile information or personal identifying information relating to a donor.
- (14) Unpublished lecture notes, unpublished manuscripts, unpublished articles, creative works in progress, research-related material and scholarly correspondence of a community college or an institution of the State System of Higher Education or a faculty member, staff employee, guest speaker or student thereof.
- (15) (i) Academic transcripts.
- (ii) Examinations, examination questions, scoring keys or answers to examinations. This subparagraph shall include licensing and other examinations relating to the qualifications of an individual and to examinations given in primary and secondary schools and institutions of higher education.
- (16) A record of an agency relating to or resulting in a criminal investigation, including:
- (i) Complaints of potential criminal conduct other than a private criminal complaint.
- (ii) Investigative materials, notes, correspondence, videos and reports.
- (iii) A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.
- (iv) A record that includes information made confidential by law or court order.
- (v) Victim information, including any information that would jeopardize the safety of the victim.
- (vi) A record that, if disclosed, would do any of the following:
- (A) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.
- (B) Deprive a person of the right to a fair trial or an impartial adjudication.
- (C) Impair the ability to locate a defendant or codefendant.

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(D) Hinder an agency's ability to secure an arrest, prosecution or conviction.

(E) Endanger the life or physical safety of an individual.

This paragraph shall not apply to information contained in a police blotter as defined in 18 Pa.C.S. § 9102 (relating to definitions) and utilized or maintained by the Pennsylvania State Police, local, campus, transit or port authority police department or other law enforcement agency or in a traffic report except as provided under 75 Pa.C.S. § 3754(b) (relating to accident prevention investigations).

(17) A record of an agency relating to a noncriminal investigation, including:

(i) Complaints submitted to an agency.

(ii) Investigative materials, notes, correspondence and reports.

(iii) A record that includes the identity of a confidential source, including individuals subject to the act of December 12, 1986 (P.L.1559, No.169), known as the Whistleblower Law.

(iv) A record that includes information made confidential by law.

(v) Work papers underlying an audit.

(vi) A record that, if disclosed, would do any of the following:

(A) Reveal the institution, progress or result of an agency investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court.

(B) Deprive a person of the right to an impartial adjudication.

(C) Constitute an unwarranted invasion of privacy.

(D) Hinder an agency's ability to secure an administrative or civil sanction.

(E) Endanger the life or physical safety of an individual.

(18) (i) Records or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings.

(ii) This paragraph shall not apply to a 911 recording, or a transcript of a 911 recording, if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure.

(19) DNA and RNA records.

(20) An autopsy record of a coroner or medical examiner and any audiotape of a postmortem examination or autopsy, or a copy, reproduction or facsimile of an autopsy report, a photograph, negative or print, including a photograph or videotape of the body or any portion of the body of a deceased person at the scene of death or in the course of a postmortem examination or autopsy taken or made by or caused to be taken or made by the coroner or medical examiner. This exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death.

(21) (i) Draft minutes of any meeting of an agency until the next regularly scheduled meeting of the agency.

(ii) Minutes of an executive session and any record of discussions held in executive session.

(22) (i) The contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by an agency relative to the following:

(A) The leasing, acquiring or disposing of real property or an interest in real property.

(B) The purchase of public supplies or equipment included in the real estate transaction.

(C) Construction projects.

(ii) This paragraph shall not apply once the decision is made to proceed with the lease, acquisition or disposal of real property or an interest in real property or the purchase of public supply or construction project.

(23) Library and archive circulation and order records of an identifiable individual or groups of individuals.

(24) Library archived and museum materials, or valuable or rare book collections or documents contributed by gift, grant, bequest or devise, to the extent of any limitations imposed by the donor as a condition of the contribution.

(25) A record identifying the location of an archeological site or an endangered or threatened plant or animal species if not already known to the general public.

(26) A proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of the contract or prior to the opening and rejection of all bids; financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability; or the identity of members, notes and other records of agency proposal evaluation committees established under 62 Pa.C.S. § 513 (relating to competitive sealed proposals).

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(27) A record or information relating to a communication between an agency and its insurance carrier, administrative service organization or risk management office. This paragraph shall not apply to a contract with an insurance carrier, administrative service organization or risk management office or to financial records relating to the provision of insurance.

(28) A record or information:

(i) identifying an individual who applies for or receives social services; or

(ii) relating to the following:

(A) the type of social services received by an individual;

(B) an individual's application to receive social services, including a record or information related to an agency decision to grant, deny, reduce or restrict benefits, including a quasi-judicial decision of the agency and the identity of a caregiver or others who provide services to the individual; or

(C) eligibility to receive social services, including the individual's income, assets, physical or mental health, age, disability, family circumstances or record of abuse.

(29) Correspondence between a person and a member of the General Assembly and records accompanying the correspondence which would identify a person that requests assistance or constituent services. This paragraph shall not apply to correspondence between a member of the General Assembly and a principal or lobbyist under 65 Pa.C.S. Ch. 13A (relating to lobbying disclosure).

(30) A record identifying the name, home address or date of birth of a child 17 years of age or younger.

(c) Financial records.--The exceptions set forth in subsection (b) shall not apply to financial records, except that an agency may redact that portion of a financial record protected under subsection (b)(1), (2), (3), (4), (5), (6), (16) or (17). An agency shall not disclose the identity of an individual performing an undercover or covert law enforcement activity.

(d) Aggregated data.--The exceptions set forth in subsection (b) shall not apply to aggregated data maintained or received by an agency, except for data protected under subsection (b)(1), (2), (3), (4) or (5).

(e) Construction.--In determining whether a record is exempt from access under this section, an agency shall consider and apply each exemption separately.

**CHAPTER 9  
AGENCY RESPONSE**

**Section 901. General rule.**

Upon receipt of a written request for access to a record, an agency shall make a good faith effort to determine if the record requested is a public record, legislative record or financial record and whether the agency has possession, custody or control of the identified record, and to respond as promptly as possible under the circumstances existing at the time of the request. All applicable fees shall be paid in order to receive access to the record requested. The time for response shall not exceed five business days from the date the written request is received by the open-records officer for an agency. If the agency fails to send the response within five business days of receipt of the written request for access, the written request for access shall be deemed denied.

**Section 902. Extension of time.**

(a) Determination.--Upon receipt of a written request for access, the open-records officer for an agency shall determine if one of the following applies:

- (1) the request for access requires redaction of a record in accordance with section 706;
- (2) the request for access requires the retrieval of a record stored in a remote location;
- (3) a timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations;
- (4) a legal review is necessary to determine whether the record is a record subject to access under this act;
- (5) the requester has not complied with the agency's policies regarding access to records;
- (6) the requester refuses to pay applicable fees authorized by this act; or
- (7) the extent or nature of the request precludes a response within the required time period.

(b) Notice.--

- (1) Upon a determination that one of the factors listed in subsection (a) applies, the open-records officer shall send written notice to the requester within five business days of receipt of the request for access under subsection (a).
- (2) The notice shall include a statement notifying the requester that the request for access is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided and an estimate of applicable fees owed when the record becomes available. If the date that a response is expected to be provided is in excess of 30 days, following the five business days allowed for in section 901, the request for access shall be deemed denied unless the requester has agreed in writing to an extension to the date specified in the notice.

- (3) If the requester agrees to the extension, the request shall be deemed denied on the day following the date specified in the notice if the agency has not provided a response by that date.

**Section 903. Denial.**

If an agency's response is a denial of a written request for access, whether in whole or in part, the denial shall be issued in writing and shall include:

- (1) A description of the record requested.
- (2) The specific reasons for the denial, including a citation of supporting legal authority.
- (3) The typed or printed name, title, business address, business telephone number and signature of the open-records officer on whose authority the denial is issued.
- (4) Date of the response.
- (5) The procedure to appeal the denial of access under this act.

**Section 904. Certified copies.**

If an agency's response grants a request for access, the agency shall, upon request, provide the requester with a certified copy of the record if the requester pays the applicable fees under section 1307.

**Section 905. Record discard.**

If an agency response to a requester states that copies of the requested records are available for delivery at the office of an agency and the requester fails to retrieve the records within 60 days of the agency's response, the agency may dispose of any copies which have not been retrieved and retain any fees paid to date.

**CHAPTER 11  
APPEAL OF AGENCY DETERMINATION**

**Section 1101. Filing of appeal.**

(a) Authorization.--

(1) If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the Office of Open Records or judicial, legislative or other appeals officer designated under section 503(d) within 15 business days of the mailing date of the agency's response or within 15 business days of a deemed denial. The appeal shall state the grounds upon which the requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request.

(2) Except as provided in section 503(d), in the case of an appeal of a decision by a Commonwealth agency or local agency, the Office of Open Records shall assign an appeals officer to review the denial.

(b) Determination.--

(1) Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).

(2) If the appeals officer fails to issue a final determination within 30 days, the appeal is deemed denied.

(3) Prior to issuing a final determination, a hearing may be conducted. The determination by the appeals officer shall be a final order. The appeals officer shall provide a written explanation of the reason for the decision to the requester and the agency.

(c) Direct interest.--

(1) A person other than the agency or requester with a direct interest in the record subject to an appeal under this section may, within 15 days following receipt of actual knowledge of the appeal but no later than the date the appeals officer issues an order, file a written request to provide information or to appear before the appeals officer or to file information in support of the requester's or agency's position.

(2) The appeals officer may grant a request under paragraph (1) if:

- (i) no hearing has been held;
- (ii) the appeals officer has not yet issued its order; and
- (iii) the appeals officer believes the information will be probative.

(3) Copies of the written request shall be sent to the agency and the requester.

**Section 1102. Appeals officers.**

(a) Duties.--An appeals officer designated under section 503 shall do all of the following:

- (1) Set a schedule for the requester and the open-records officer to submit documents in support of their positions.
- (2) Review all information filed relating to the request. The appeals officer may hold a hearing. A decision to hold or not to hold a hearing is not appealable. The appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. The appeals officer may limit the nature and extent of evidence found to be cumulative.
- (3) Consult with agency counsel as appropriate.
- (4) Issue a final determination on behalf of the Office of Open Records or other agency.

(b) Procedures.--The Office of Open Records, a judicial agency, a legislative agency, the Attorney General, Auditor General, State Treasurer or district attorney may adopt procedures relating to appeals under this chapter.

- (1) If an appeal is resolved without a hearing, 1 Pa. Code Pt. II (relating to general rules of administrative practice and procedure) does not apply except to the extent that the agency has adopted these chapters in its regulations or rules under this subsection.
- (2) If a hearing is held, 1 Pa. Code Pt. II shall apply unless the agency has adopted regulations, policies or procedures to the contrary under this subsection.
- (3) In the absence of a regulation, policy or procedure governing appeals under this chapter, the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute.

**CHAPTER 13  
JUDICIAL REVIEW**

**Section 1301. Commonwealth agencies, legislative agencies and judicial agencies.**

(a) General rule.--Within 30 days of the mailing date of the final determination of the appeals officer relating to a decision of a Commonwealth agency, a legislative agency or a judicial agency issued under section 1101(b) or the date a request for access is deemed denied, a requester or the agency may file a petition for review or other document as might be required by rule of court with the Commonwealth Court. The decision of the court shall contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision.

(b) Stay.--A petition for review under this section shall stay the release of documents until a decision under subsection (a) is issued.

**Section 1302. Local agencies.**

(a) General rule.--Within 30 days of the mailing date of the final determination of the appeals officer relating to a decision of a local agency issued under section 1101(b) or of the date a request for access is deemed denied, a requester or local agency may file a petition for review or other document as required by rule of court with the court of common pleas for the county where the local agency is located. The decision of the court shall contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision.

(b) Stay.--A petition for review under this section shall stay the release of documents until a decision under subsection (a) is issued.

**Section 1303. Notice and records.**

(a) Notice.--An agency, the requester and the Office of Open Records or designated appeals officer shall be served notice of actions commenced in accordance with section 1301 or 1302 and shall have an opportunity to respond in accordance with applicable court rules.

(b) Record on appeal.--The record before a court shall consist of the request, the agency's response, the appeal filed under section 1101, the hearing transcript, if any, and the final written determination of the appeals officer.

**Section 1304. Court costs and attorney fees.**

(a) Reversal of agency determination.--If a court reverses the final determination of the appeals officer or grants access to a record after a request for access was deemed denied, the court may award reasonable attorney fees and costs of litigation or an appropriate portion thereof to a requester if the court finds either of the following:

- (1) the agency receiving the original request willfully or with wanton disregard deprived the requester of access to a public record subject to access or otherwise acted in bad faith under the provisions of this act; or

(2) the exemptions, exclusions or defenses asserted by the agency in its final determination were not based on a reasonable interpretation of law.

(b) Sanctions for frivolous requests or appeals.--The court may award reasonable attorney fees and costs of litigation or an appropriate portion thereof to an agency or the requester if the court finds that the legal challenge under this chapter was frivolous.

(c) Other sanctions.--Nothing in this act shall prohibit a court from imposing penalties and costs in accordance with applicable rules of court.

**Section 1305. Civil penalty.**

(a) Denial of access.--A court may impose a civil penalty of not more than \$1,500 if an agency denied access to a public record in bad faith.

(b) Failure to comply with court order.--An agency or public official who does not promptly comply with a court order under this act is subject to a civil penalty of not more than \$500 per day until the public records are provided.

**Section 1306. Immunity.**

(a) General rule.--Except as provided in sections 1304 and 1305 and other statutes governing the release of records, no agency, public official or public employee shall be liable for civil penalties resulting from compliance or failure to comply with this act.

(b) Schedules.--No agency, public official or public employee shall be liable for civil or criminal damages or penalties under this act for complying with any written public record retention and disposition schedule.

**Section 1307. Fee limitations.**

(a) Postage.--Fees for postage may not exceed the actual cost of mailing.

(b) Duplication.--

(1) Fees for duplication by photocopying, printing from electronic media or microfilm, copying onto electronic media, transmission by facsimile or other electronic means and other means of duplication shall be established:

(i) by the Office of Open Records, for Commonwealth agencies and local agencies;

(ii) by each judicial agency; and

(iii) by each legislative agency.

(2) The fees must be reasonable and based on prevailing fees for comparable duplication services provided by local business entities.

(3) Fees for local agencies may reflect regional price differences.

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(4) The following apply to complex and extensive data sets, including geographic information systems or integrated property assessment lists.

(i) Fees for copying may be based on the reasonable market value of the same or closely related data sets.

(ii) Subparagraph (i) shall not apply to:

(A) a request by an individual employed by or connected with a newspaper or magazine of general circulation, weekly publication, press association or radio or television station, for the purpose of obtaining information for publication or broadcast; or

(B) a request by a nonprofit organization for the conduct of educational research.

(iii) Information obtained under subparagraph (ii) shall be subject to paragraphs (1), (2) and (3).

(c) Certification.--An agency may impose reasonable fees for official certification of copies if the certification is at the behest of the requester and for the purpose of legally verifying the public record.

(d) Conversion to paper.--If a record is only maintained electronically or in other nonpaper media, duplication fees shall be limited to the lesser of the fee for duplication on paper or the fee for duplication in the original media as provided by subsection (b) unless the requester specifically requests for the record to be duplicated in the more expensive medium.

(e) Enhanced electronic access.--If an agency offers enhanced electronic access to records in addition to making the records accessible for inspection and duplication by a requester as required by this act, the agency may establish user fees specifically for the provision of the enhanced electronic access, but only to the extent that the enhanced electronic access is in addition to making the records accessible for inspection and duplication by a requester as required by this act. The user fees for enhanced electronic access may be a flat rate, a subscription fee for a period of time, a per-transaction fee, a fee based on the cumulative time of system access or any other reasonable method and any combination thereof. The user fees for enhanced electronic access must be reasonable, must be approved by the Office of Open Records and may not be established with the intent or effect of excluding persons from access to records or duplicates thereof or of creating profit for the agency.

(f) Waiver of fees.--An agency may waive the fees for duplication of a record, including, but not limited to, when:

(1) the requester duplicates the record; or

(2) the agency deems it is in the public interest to do so.

(g) Limitations.--Except as otherwise provided by statute, no other fees may be imposed unless the agency necessarily incurs costs for complying with the request, and such fees must be reasonable. No fee may be imposed for an agency's review of a record to determine whether the

record is a public record, legislative record or financial record subject to access in accordance with this act.

(h) Prepayment.--Prior to granting a request for access in accordance with this act, an agency may require a requester to prepay an estimate of the fees authorized under this section if the fees required to fulfill the request are expected to exceed \$100.

**Section 1308. Prohibition.**

A policy or regulation adopted under this act may not include any of the following:

- (1) A limitation on the number of records which may be requested or made available for inspection or duplication.
- (2) A requirement to disclose the purpose or motive in requesting access to records.

**Section 1309. Practice and procedure.**

The provisions of 2 Pa.C.S. (relating to administrative law and procedure) shall not apply to this act unless specifically adopted by regulation or policy.

**Section 1310. Office of Open Records.**

(a) Establishment.--There is established in the Department of Community and Economic Development an Office of Open Records. The office shall do all of the following:

- (1) Provide information relating to the implementation and enforcement of this act.
- (2) Issue advisory opinions to agencies and requesters.
- (3) Provide annual training courses to agencies, public officials and public employees on this act and 65 Pa.C.S. Ch. 7 (relating to open meetings).
- (4) Provide annual, regional training courses to local agencies, public officials and public employees.
- (5) Assign appeals officers to review appeals of decisions by Commonwealth agencies or local agencies, except as provided in section 503(d), filed under section 1101 and issue orders and opinions. The office shall employ or contract with attorneys to serve as appeals officers to review appeals and, if necessary, to hold hearings on a regional basis under this act. Each appeals officer must comply with all of the following:
  - (i) Complete a training course provided by the Office of Open Records prior to acting as an appeals officer.
  - (ii) If a hearing is necessary, hold hearings regionally as necessary to ensure access to the remedies provided by this act.
  - (iii) Comply with the procedures under section 1102(b).
- (6) Establish an informal mediation program to resolve disputes under this act.

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- (7) Establish an Internet website with information relating to this act, including information on fees, advisory opinions and decisions and the name and address of all open records officers in this Commonwealth.
- (8) Conduct a biannual review of fees charged under this act.
- (9) Annually report on its activities and findings to the Governor and the General Assembly. The report shall be posted and maintained on the Internet website established under paragraph (7).
- (b) Executive director.--Within 90 days of the effective date of this section, the Governor shall appoint an executive director of the office who shall serve for a term of six years. Compensation shall be set by the Executive Board established under section 204 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929. The executive director may serve no more than two terms.
- (c) Limitation.--The executive director shall not seek election nor accept appointment to any political office during his tenure as executive director and for one year thereafter.
- (d) Staffing.--The executive director shall appoint attorneys to act as appeals officers and additional clerical, technical and professional staff as may be appropriate and may contract for additional services as necessary for the performance of the executive director's duties. The compensation of attorneys and other staff shall be set by the Executive Board. The appointment of attorneys shall not be subject to the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act.
- (e) Duties.--The executive director shall ensure that the duties of the Office of Open Records are carried out and shall monitor cases appealed to the Office of Open Records.
- (f) Appropriation.--The appropriation for the office shall be in a separate line item and shall be under the jurisdiction of the executive director.

**CHAPTER 15**  
**STATE-RELATED INSTITUTIONS**

**Section 1501. Definition.**

As used in this chapter, “State-related institution” means any of the following:

- (1) Temple University.
- (2) The University of Pittsburgh.
- (3) The Pennsylvania State University.
- (4) Lincoln University.

**Section 1502. Filing.**

No later than May 30 of each year, unless otherwise provided under this chapter, a State-related institution shall file the information set forth in section 1503 as required under section 1504.

**Section 1503. Contents of filing.**

(a) Information included. The filing required under section 1502 shall include the following:

- (1) Except as provided in paragraph (4), all information required by Form 990 or an equivalent form of the United States Department of the Treasury, Internal Revenue Service, entitled the Return of Organization Exempt From Income Tax, regardless of whether the State-related institution is required to file the form by the Federal Government.
- (2) The salaries of all officers and directors of the State-related institution.
- (3) The highest 25 salaries paid to employees of the institution that are not included under paragraph (2) and, for a State-related institution with 2,500 employees or more, the next highest 175 salaries paid to employees of the institution that are not included under paragraph (2). Faculty members’ salaries shall be presented in salary ranges.
- (4) The filing shall not include information relating to individual donors.
- (5) Revenue and expenditure budgets of the State-related institution’s academic and administrative support units for the current fiscal year.
- (6) The actual revenue and expenditures for the prior year.
- (7) For any defined project or program which is the subject of a specific line item appropriation from the General Fund, the State-related institution shall disclose the following:
  - (i) Revenue and expenditure budgets of the defined program or project for the current fiscal year.

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- (ii) The actual revenue and expenditures of the defined program or project for the prior year.
- (8) The revenue and expenditures of any auxiliary enterprise which is directly funded in whole or in part by tuition or a State appropriation for the current fiscal year.
- (9) The most recent audited financial statement for the State-related institution.
- (10) The following information for the prior fiscal year for each academic or administrative support unit, for each defined project or program and for an auxiliary enterprise:
  - (i) The number of employees by academic rank.
  - (ii) The number of administrators, staff, clerical and technical service employees, by classification.
  - (iii) Median and mean salary by academic rank.
  - (iv) Median and mean salaries of administrators, staff, clerical and technical service employees, by classification.
  - (v) Nonsalary compensation as a percentage of salary. Nonsalary compensation shall include:
    - (A) Medical benefits.
    - (B) Life insurance benefits.
    - (C) Pension benefits.
    - (D) Leave benefits.
    - (E) Employer Social Security payments.
    - (F) Workers' compensation benefits.
  - (vi) A statement of the State-related institution's retirement policies.
  - (vii) A policy statement relating to a reduction of tuition for employees' family members.
  - (viii) A list by academic or administrative support unit in the aggregate of the expenses of travel, subsistence and lodging, whether provided or reimbursed.
- (b) Providing information. Each State-related institution shall provide full, complete and accurate information as may be required by the Department of Education or the chairperson or minority chairperson of the Appropriations Committee of the Senate or the chairperson or minority chairperson of the Appropriations Committee of the House of Representatives.

(c) Financial statements. Each State-related institution shall present and report its financial statements required under the provisions of this act in accordance with:

(1) The generally accepted accounting principles as prescribed by the National Association of College and University Business Officers, the American Institute of Certified Public Accountants or by another recognized authoritative body.

(2) The Commonwealth of Pennsylvania Budget Instructions for the State System of Higher Education, State-Related Universities and Non-State-Related Colleges and Universities.

(3) The financial reporting policies and standards promulgated by the Commonwealth of Pennsylvania and by the Federal Government that apply to the State-related institutions.

(d) Appropriations.

(1) In a year a State-related institution receives an appropriation, a report shall be submitted prior to September 1 and shall cover the 12-month period beginning with the summer term of the preceding year. The report shall include:

(i) The following counts and distributions for each term during the period:

(A) The definition and number of:

(I) Faculty members employed full time.

(II) Faculty members employed part time.

(III) Full-time students enrolled in a graduate course.

(IV) Full-time students enrolled in an undergraduate course.

(V) Part-time students enrolled in a graduate course.

(VI) Part-time students enrolled in an undergraduate course.

(B) The total number of:

(I) Undergraduate student credit hours, divided into lower division and upper division course levels.

(II) Graduate student credit hours, divided into three course levels: master's, first professional and doctoral.

(C) The number of different courses scheduled by level of instruction and the number of sections of individual instruction scheduled by level of instruction, each further subdivided by two-digit Classification of Instructional Program (CIP) categories of instructional programs of

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higher education as defined by the National Center for Education Statistics, United States Department of Education.

(D) The number of terms scheduled and the dates of the terms.

(ii) For the summer term and the following academic year in total and for each two-digit CIP program category:

(A) A classification of faculty members or other professional employees by title, including:

(I) Professor.

(II) Associate professor.

(III) Assistant professor.

(IV) Instructor.

(V) Lecturer.

(VI) Research associate.

(VII) Librarian and academic administrator.

(B) Faculty members or other professional employees under each title to be subdivided into teaching and nonteaching.

(C) Each set of faculty members or other professional employees to be further subdivided by full-time or part-time employment.

(D) The following aggregates for each subdivided classification:

(I) The number of faculty and other professional employees and the full-time equivalence in instructional and noninstructional functions.

(II) The sum of credits assigned to undergraduate classroom courses and the sum of credits assigned to graduate classroom courses taught divided into lower division, upper division, master's, first professional and doctoral course levels.

(III) The sum of credits assigned to undergraduate individual instruction courses and the sum of credits assigned to graduate individual instruction courses taught divided into lower division, upper division, master's, first professional and doctoral course levels.

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(IV) The sum of undergraduate classroom student credit hours and the sum of graduate classroom student credit hours generated, divided into lower division, upper division, master's, first professional and doctoral course levels.

(V) The sum of undergraduate individual instruction student credit hours and the sum of graduate individual instruction student credit hours generated, divided into lower division, upper division, master's, first professional and doctoral course levels.

(VI) The total salary paid for instructional functions and for noninstructional functions and the amount of salary paid for each of these functions from State-related institution funds, Federal funds and other funds.

(iii) For each term of the period covered for each faculty member employed full-time identified by two-digit CIP program category and title, the report shall contain an analysis of the average hours per week spent:

(A) In State-related-institution-related activities, stating specifically hours spent in undergraduate classroom contact and graduate classroom contact hours spent in preparation.

(B) In research.

(C) In public service.

(2) The report covering the 12-month period shall include for each program of the State-related institution:

(i) Minimum number of credits required for a baccalaureate and a master's degree.

(ii) Number of bachelor's, master's, first professional and doctoral degrees awarded for the previous five years and those estimates for that year.

(e) Minutes. Each State-related institution shall make a copy of the minutes of each public meeting of the institution's board of trustees available for public inspection in the institution's library in print format and online on the institution's publicly accessible Internet website. The minutes shall be maintained in print and online for no fewer than 20 years.

(f) Data systems report. Each State-related institution shall make a copy of the institution's integrated postsecondary education data systems report available for public inspection in the institution's library in print format and online on the institution's publicly accessible Internet website.

**Section 1504. Requirements for information in filings.**

A State-related institution shall make the information required under section 1502 accessible to the public in accordance with the following:

- (1) The information shall be posted online on the institution's publicly accessible Internet website in a searchable, sortable and downloadable database format that is freely accessible by the public. To the extent possible, a State-related institution shall post the information online in a similar manner in order to facilitate easy public review. The information of prior years shall be maintained for no fewer than 10 years.
- (2) The information shall be maintained in print format in the institution's library for no fewer than 10 years.
- (3) The information shall be provided in electronic format to the Department of Education and the Joint State Government Commission.
- (4) The information shall be provided in print format to the General Assembly and to each of the State regional library resource centers.

**Section 1505. Contracts.**

- (a) Scope. By May 30 of each year, a State-related institution shall file with the Governor's Office, the Secretary of the Senate, the Chief Clerk of the House of Representatives and the State Library an annual list of contracts in excess of \$5,000 for the purchase of all goods and third-party services.
- (b) Contents. The list shall include all of the following:
  - (1) Date of execution.
  - (2) Amount of the contract.
  - (3) Beginning date of the contract.
  - (4) End date of the contract, if applicable.
  - (5) The name and addresses of the vendor.
  - (6) Subject matter of the contract.
- (c) Privilege. This section shall not apply to a contract for services protected by a privilege.
- (d) Evidence. This section:
  - (1) Shall apply to a purchase order evidencing new obligations.
  - (2) Shall not apply to a purchase order evidencing fulfillment of an existing contract.

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(e) Posting. Information under this section shall be posted and maintained on the institution's publicly accessible Internet website.

**CHAPTER 17**  
**STATE CONTRACT INFORMATION**

**Section 1701. Submission and retention of contracts.**

(a) General rule.--Whenever any Commonwealth agency, legislative agency or judicial agency shall enter into any contract involving any property, real, personal or mixed of any kind or description or any contract for personal services where the consideration involved in the contract is \$5,000 or more, a copy of the contract shall be filed with the Treasury Department within ten days after the contract is fully executed on behalf of the Commonwealth agency, legislative agency or judicial agency or otherwise becomes an obligation of the Commonwealth agency, legislative agency or judicial agency. The provisions of this chapter shall not apply to contracts for services protected by a privilege. The provisions of this chapter shall not apply to a purchase order evidencing fulfillment of an existing contract but shall apply to a purchase order evidencing new obligations. The following shall apply:

- (1) Each Commonwealth agency, legislative agency and judicial agency shall submit contracts in a form and structure mutually agreed upon by the Commonwealth agency, legislative agency or judicial agency and the State Treasurer.
- (2) The Treasury Department may require each Commonwealth agency, legislative agency or judicial agency to provide a summary with each contract, which shall include the following:
  - (i) Date of execution.
  - (ii) Amount of the contract.
  - (iii) Beginning date of the contract.
  - (iv) End date of the contract, if applicable.
  - (v) Name of the agency entering into the contract.
  - (vi) The name of all parties executing the contract.
  - (vii) Subject matter of the contract.

Each agency shall create and maintain the data under this paragraph in an ASCII-delimited text file, spreadsheet file or other file provided by Treasury Department regulation.

(b) Retention.--Every contract filed pursuant to subsection (a) shall remain on file with the Treasury Department for a period of not less than four years after the end date of the contract.

(c) Accuracy.--Each Commonwealth agency, legislative agency and judicial agency is responsible for verifying the accuracy and completeness of the information that it submits to the State Treasurer. The contract provided to the Treasury Department pursuant to this chapter shall be redacted in accordance with applicable provisions of this act by the agency filing the contract to the Treasury Department.

(d) Applicability.--The provisions of this act shall not apply to copies of contracts submitted to the Treasury Department, the Office of Auditor General or other agency for purposes of audits and warrants for disbursements under section 307, 401, 402 or 403 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

**Section 1702. Public availability of contracts.**

(a) General rule.--The Treasury Department shall make each contract filed pursuant to section 1701 available for public inspection either by posting a copy of the contract on the Treasury Department's publicly accessible Internet website or by posting a contract summary on the department's publicly accessible Internet website.

(b) Posting.--The Treasury Department shall post the information received pursuant to this chapter in a manner that allows the public to search contracts or contract summaries by the categories enumerated in section 1701(a)(2).

(c) Request to review or receive copy of contract.--The Treasury Department shall maintain a page on its publicly accessible Internet website that includes instructions on how to review a contract on the Internet website.

(d) Paper copy.--A paper copy of a contract may be requested from the agency that executed the contract in accordance with this act.

**CHAPTER 31  
MISCELLANEOUS PROVISIONS**

**Section 3101. Applicability.**

This act shall apply to requests for information made after December 31, 2008.

**Section 3101.1. Relation to other laws.**

If the provisions of this act regarding access to records conflict with any other Federal or State law, the provisions of this act shall not apply.

**Section 3101.2. Severability.**

All provisions of this act are severable.

**Section 3102. Repeals.**

Repeals are as follows:

(1) The General Assembly declares as follows:

- (i) The repeal under paragraph (2)(i) is necessary to effectuate Chapter 17.
- (ii) The repeals under paragraph (2)(ii) and (iii) are necessary to effectuate this act.

(2) The following acts and parts of acts are repealed:

- (i) Section 1104 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.
- (ii) The act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law.
- (iii) 62 Pa.C.S. § 106.

**Section 3103. References.**

Notwithstanding 1 Pa.C.S. § 1937(b) (relating to references to statutes and regulations), a reference in a statute or regulation to the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law, shall be deemed a reference to this act.

**Section 3104. Effective date.**

This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

- (i) Sections 101, 102 and 1310.

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(ii) This section.

(2) Chapters 15 and 17 and sections 3102(1)(i) and 3102(2)(i) shall take effect July 1, 2008.

(3) The remainder of this act shall take effect January 1, 2009.

The Storage Tank and Spill Prevention Act (Tank Act) was signed into law on July 6, 1989 as Act 32 of 1989. This document contains only the Financial Provisions included in Chapter 7 of the Tank Act.

Following enactment, the Tank Act was subsequently amended by Act 182 of 1992, Act 16 of 1995, Act 34 of 1996, Act 13 of 1998, Act 100 of 2000, Act 99 of 2001, Act 36 of 2005, Act 20 of 2007, Act 74 of 2012, Act 61 of 2017, Act 34 of 2022. Those amendments are reflected in this copy of the Law.

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**STORAGE TANK AND SPILL PREVENTION ACT**

**Act of Jul. 6, 1989, P.L. 169, No. 32**

**CHAPTER 7**

**FINANCIAL PROVISIONS**

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- § 710. Underground Storage Tank Environmental Cleanup Program
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- § 713. Investigation, Closure, Compliance and Enforcement Costs

**Section 701. Financial responsibility.**

(a) Regulations of the Environmental Quality Board.--The Environmental Quality Board is authorized to establish, by regulation, requirements for maintaining evidence of financial responsibility as deemed necessary and desirable, for taking corrective action and for compensating third parties for bodily injury and property damage caused by sudden and nonsudden releases arising from operation of a storage tank. Every owner or operator shall meet the financial responsibility requirements established by the department.

(b) Methods of obtaining financial responsibility.--Financial responsibility required by this section may be established in accordance with regulations promulgated by the Environmental Quality Board by any one or any combination of the following: insurance, guarantee, surety, bond, letter of credit, qualification as a self-insurer, indemnity contract, risk retention coverage or any other method deemed satisfactory by the department. Owners of underground storage tanks must meet these requirements by complying with sections 703, 704, 705 and 706. In regulations under this section, the department is authorized to specify policy or other contractual terms, conditions or defenses which are necessary or acceptable in establishing such evidence of financial responsibility.

(c) Bankruptcy of owner or operator.--In any case where the owner or operator is in bankruptcy, reorganization or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any State court or the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(d) Guarantor liability.--The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator, including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or other applicable statutes.

(e) Definition.--As used in this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

**Compiler's Note:** Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 701.

**Section 702. Storage Tank Fund.**

(a) Establishment of fund.--There is hereby created a special nonlapsing fund in the State Treasury to be known as the Storage Tank Fund. All fees, fines, judgments, bond forfeitures, interest and recovered costs collected by the department under this act shall be paid into the Storage Tank Fund. All moneys placed in the Storage Tank Fund and the interest it accrues are hereby appropriated, upon authorization by the Governor, to the department for the costs of operating the aboveground and underground storage tank programs, including activities necessary for the elimination of releases from storage tanks and any other activities necessary to meet the requirements of this act.

(b) Supplements to fund.--The Storage Tank Fund may be supplemented by appropriations from the General Assembly, the Federal, State or local government or from any private source.

(c) Liability for costs.--Whenever costs have been incurred by the Commonwealth for taking corrective action in response to a release from a storage tank regulated by this act, the owner or operator, as may be appropriate, of such tank shall be liable to the Commonwealth for such costs.

(d) Effect of liability on property.--Any costs incurred by the Commonwealth for taking corrective action in response to a release from a storage tank under this act shall constitute in each instance a debt of the owner or operator, as may be appropriate, to the Storage Tank Fund. The debt shall constitute a lien on all property owned by said owner or operator when a notice of lien incorporating a description of the property of the owner or operator subject to the action and an identification of the amount of expenditure from the fund is duly filed with the prothonotary of the court of common pleas where the property is located. The prothonotary shall promptly enter upon the civil judgment or order docket the name and address of the owner or operator, as may be appropriate, and the amount of the lien as set forth in the notice of lien. Upon entry by the prothonotary, the lien shall attach to the revenues and all real and personal property of the owner or operator, whether or not the owner or operator is solvent. The notice of lien, filed pursuant to this subsection, which affects the property of the owner or operator shall create a lien with priority over all subsequent claims or liens which are filed against the owner or operator.

(e) Status of fund.--The Storage Tank Fund shall not be subject to 42 Pa.C.S. Ch. 37 Subch. C (relating to judicial computer system).

**Section 703. Underground Storage Tank Indemnification Board.**

(a) Establishment of board, appointment and terms.--There is hereby created the Underground Storage Tank Indemnification Board which shall consist of 14 members. The Insurance

Commissioner and the Secretary of Environmental Protection shall be ex officio members. Two members shall be appointed from the Senate, one member by the President pro tempore of the Senate and one member by the Minority Leader of the Senate. Two members shall be appointed from the House of Representatives, one member by the Speaker of the House of Representatives and one member by the Minority Leader of the House of Representatives. Eight members shall be appointed by the Governor, as follows:

(1) Six members who shall be persons with particular expertise in the management of underground storage tanks. Three of these members shall be appointed for terms of four years and three shall be appointed for a term of three years. The Governor shall appoint the members, one each from a list of nominees provided by each of the following:

(i) The American Petroleum Institute Pennsylvania. ((i) amended July 7, 2022, P.L.433, No.34)

(ii) The Pennsylvania Petroleum Association.

(iii) The Service Station Dealers and Automotive Repair Association of Pennsylvania and Delaware and the Petroleum Retailers and Auto Repair Association, Inc.

(iv) A Statewide organization representing fuel retailers and food merchants.

(v) The Pennsylvania Farm Bureau, Pennsylvania State Grange and Pennsylvania Farmers Union.

(vi) The Tank Installers of Pennsylvania.

(2) One local government member who shall have knowledge and expertise in underground storage tanks. The local government member shall be appointed for a term of two years.

(3) One public member who shall not be an owner or operator of storage tanks nor affiliated in any way with any person regulated under this act. The public member shall be appointed for a term of three years.

((a) amended Dec. 21, 2017, P.L.1197, No.61)

(b) Chairman.--The board shall select a chairman from its members annually.

(c) Vacancies.--Vacancies in appointed positions shall be filled by the Governor in the same manner as the original appointment. Members shall serve until their successors are appointed and qualified.

(d) Compensation.--Members shall receive no compensation for their service other than reimbursement for necessary expenses in accordance with Commonwealth regulations.

(e) Conflicts.--No member shall participate in making any decision in a matter involving any payment from which he or his employer may benefit or which may benefit a member of his immediate family.

(f) Meetings; quorum.--The board shall meet at least quarterly. Additional meetings may be held upon reasonable notice at times and locations selected by the board. The board shall meet at the call of the chairman or upon written request of three members of the board. Eight members shall constitute a quorum and a quorum may act for the board in all matters. ((f) amended Dec. 21, 2017, P.L.1197, No.61)  
(703 amended Jan. 30, 1998, P.L.46, No.13)

**Section 704. Underground Storage Tank Indemnification Fund.**

(a) Establishment of fund.--

(1) There is hereby created a special fund in the State Treasury to be known as the Underground Storage Tank Indemnification Fund. This fund shall consist of the fees assessed by the board under section 705(d), amounts recovered by the board due to fraudulent or improper claims or as penalties for failure to pay fees when due, and funds earned by the investment and reinvestment of the moneys collected. Moneys in the fund are hereby appropriated to the board for the purpose of making payments to owners, operators and certified tank installers of underground storage tanks who incur liability for taking corrective action or for bodily injury or property damage caused by a sudden or nonsudden release from underground storage tanks and for making loans to owners as authorized by this act. The fund shall be the sole source of payments under this act, and the Commonwealth shall have no liability beyond the amount of the fund. Every owner and certified tank installer of an underground storage tank shall demonstrate financial responsibility by participating in the Underground Storage Tank Indemnification Fund. The owner, operator or certified tank installer may obtain coverage for liability not insured by the fund through any of the methods approved in accordance with section 701(b).

(2) This fund is declared a restricted fund. The moneys in the fund shall be used only for the purposes set forth in this act and shall not be transferred or diverted to any other purpose by the use of any administrative procedure.

(3) Notwithstanding any general or specific powers granted to the board by this act, whether express or implied, the board shall have no power at any time or in any manner to pledge the credit or taxing power of the Commonwealth or any political subdivision. No obligations or liabilities of the board shall be deemed obligations or liabilities of the Commonwealth or of any of its political subdivisions. Nothing herein shall be deemed a waiver of sovereign immunity.

(b) Limit of payments to owners or operators.--

(1) Payments to eligible owners or operators shall be limited to the actual costs of corrective action and the amount of an award of damages by a court of competent

jurisdiction for bodily injury, property damage or both, not to exceed a total of \$1,500,000 per tank per occurrence.

(2) Payments of claims against the fund shall be subject to a deductible as provided in section 705. Payments shall be made only for releases resulting from storage tanks that are located within this Commonwealth.

(3) Payments shall not exceed:

(i) an annual aggregate of \$1,500,000 for each owner and operator of 100 or less underground storage tanks; or

(ii) an annual aggregate of \$3,000,000 for each owner and operator of 101 or more underground storage tanks, up to the total of \$1,500,000 per tank per occurrence or the total eligible costs or damages.

(4) Any pending claim where eligibility has not been determined as of the effective date of this paragraph shall be eligible for the increased payment under this subsection.

((b) amended Dec. 13, 2001, P.L.900, No.99)

(b.1) Limit of payments to certified tank installers.--

(1) Payments to certified tank installers shall be limited to the actual costs of corrective action and the amount of an award of damages by a court of competent jurisdiction for bodily injury, property damage or both, not to exceed a total of \$1,500,000 per occurrence. Corrective action under this subsection shall mean releases caused by improper or faulty installations, modifications and removal of underground storage tanks.

(2) Payments of claims against the program shall be subject to a deductible as provided in section 705(c)(4). Payments shall be made only for releases resulting from underground storage tanks located in this Commonwealth.

(3) Payments shall not exceed:

(i) an annual aggregate of \$1,500,000 for certified tank installers who perform 100 or fewer installations or major modifications; or

(ii) an annual aggregate of \$3,000,000 for certified tank installers who perform more than 100 installations or major modifications.

(4) Any pending claim where eligibility has not been determined as of the effective date of this paragraph shall be eligible for the increased payment under this subsection.

((b.1) amended Dec. 13, 2001, P.L.900, No.99)

(c) Prohibited uses.--Moneys in the fund shall not be used for the repair, replacement or maintenance of underground storage tanks or improvement of property on which the tanks are located unless the moneys are loaned by the board as an investment of fund moneys pursuant to section 712.

(d) Expenses.--All costs and expenses of the board shall be paid from the fund, including, but not limited to, compensation of employees and any independent contractors or consultants hired by the board.

(e) Options.--

(1) Any owner of an underground storage tank of 3,000 gallons or more used for storing heating oil for consumptive use on the premises where stored may elect to participate in the fund.

(2) The owner or operator of an underground storage tank used to store heating oil who elects to participate in the fund shall comply with applicable provisions of this act and of regulations promulgated under this act.

(3) The owner or operator of an underground storage tank used to store heating oil who elects to participate in the fund shall pay the fee established under section 705(d)(2).

(4) The board shall by regulation establish procedures and criteria for allowing owners or operators of underground storage tanks to opt into the coverage provided by this section.

(704 amended Jan. 30, 1998, P.L.46, No.13)

#### **Section 705. Powers and duties of Underground Storage Tank Indemnification Board.**

(a) Support.--The board may employ or contract for the personnel necessary to process fee payments, to administer claims made against the Underground Storage Tank Indemnification Fund, to administer the Upgrade Loan Program and other programs authorized by this act and to carry out the purposes of the board. The board may also employ or contract for the services of attorneys, consultants and actuaries necessary to advise the board in establishing fees under subsection (d) and deductible amounts under subsection (c).

(b) Claims.--The board shall establish procedures by which owners, operators and certified tank installers may make claims for costs estimated or incurred in taking corrective action and for liability due to bodily injury and property damage caused by a sudden or nonsudden release from underground storage tanks. Claims determined to be eligible shall be paid upon receipt of information clearly showing that reimbursable claim costs are reasonable, necessary and directly related to the release from the storage tank that is the subject of the claim. The board, by regulation, may establish a system for prioritizing claims.

(c) Deductible.--

(1) Claims shall be subject to a deductible amount which the board shall set annually. The board shall give at least 30 days' notice of a proposed change in deductible amounts by publication in the Pennsylvania Bulletin, and the change shall take effect on the date specified in the notice. Each owner or operator shall be responsible for the amount of the deductible as provided in this section.

(2) The board shall set the initial deductible for corrective action claims at \$10,000 per tank per occurrence. Thereafter, the deductible shall be actuarially sound and shall be based on an estimate of the average cost of taking corrective action due to a sudden or nonsudden release from underground storage tanks in this Commonwealth. The board shall not set a deductible in an amount lower than \$5,000 per tank per occurrence.

(3) The board shall set a deductible for claims due to bodily injury, property damage or both caused by a sudden or nonsudden release from underground storage tanks in this Commonwealth. The board shall not set a deductible in an amount lower than \$5,000 per tank per occurrence.

(4) The board shall set a deductible for claims for bodily injury, property damage or both caused by a release from an underground storage tank in this Commonwealth resulting from an installation, modification or removal of regulated underground storage tanks. The board shall not set a deductible in an amount lower than \$5,000 per occurrence.

(d) Fees.--

(1) The board, by regulation, shall establish fees to be paid by the owner, operator or certified tank installer, as appropriate, of underground storage tanks. Fees shall be set on an actuarial basis in order to provide an amount sufficient to pay outstanding and anticipated claims against the Underground Storage Tank Indemnification Fund in a timely manner. Fees shall also include an amount sufficient to meet all other financial requirements of the board. Fees shall be adjusted as deemed necessary by the board, but no more than once a year. The board shall annually evaluate the fee amount to determine if it is sufficient to meet the anticipated expenses of the fund and provide a copy of its evaluation to the Environmental Resources and Energy Committee of the Senate and the Environmental Resources and Energy Committee of the House of Representatives. The board shall analyze the claims experience of storage tanks to determine which types of underground tanks or tank configurations result in less frequent leaks. ((1) amended July 7, 2022, P.L.433, No.34)

(2) The owner or operator of an underground storage tank used to store heating oil, diesel fuel or other regulated substance as determined by the board shall pay a per gallon of tank capacity fee. The capacity fee shall be set on the same actuarial basis as is provided in subsection (d)(1).

(3) In no case shall the owner or operator of an underground storage tank used for nonretail bulk storage or wholesale distribution of gasoline pay fees totaling more than \$5,000 per tank in any annual coverage period for which fees are charged.

(4) The owner or operator of an underground tank used to store diesel fuel on a farm for noncommercial purposes shall be required to pay the same fee as the owner or operator of an underground tank containing gasoline.

(e) Payment of fees.--Fees established for the owner of the tank under subsection (d)(1) through (4) shall be paid by the owner of the tank unless a written agreement between the owner and the operator provides otherwise. Fees established for certified tank installers under subsection (d)(1) shall be paid to the Underground Storage Tank Indemnification Fund or to the intermediaries so designated by the board. Intermediaries located outside the territorial boundaries of this Commonwealth may collect and remit fees upon proof that a performance bond has been secured and maintained in an amount of \$1,000,000. A person who fails or refuses to pay the fee or a part of the fee by the date established by the board may be assessed a penalty of 5% of the amount due which shall accrue on the first day of delinquency and be added thereto. Thereafter, on the last day of each month during which any part of any fee or any prior accrued penalty remains unpaid, an additional 5% of the then unpaid balance shall accrue and be added thereto. A financial institution holding a mortgage or security interest on property containing an underground storage tank may with the owner or operator request the board to notify the financial institution in the event the owner or operator does not pay the fees required by this section by the date specified by the board. Notice of nonpayment to the financial institution or payment of an owner or operator's fee shall not constitute the assumption of any corrective action liability on the part of a financial institution.

(e.1) Upgrade Loan Program.--The board shall establish policies, procedures and forms as may be necessary and appropriate in order to administer the Upgrade Loan Program established in section 712.

(f) Additional powers.--The board shall have additional powers as may be necessary to carry out its duties under this act, including, but not limited to, the following:

- (1) To make contracts and execute all instruments necessary or convenient for carrying on of its business.
- (2) To make bylaws for the management and regulation of its affairs and to adopt, amend and repeal rules, regulations and guidelines governing the administrative procedures and business of the board and operation and administration of the fund. Regulations of the board shall be subject to review under the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.
- (3) To sue or be sued concerning claims arising as the result of a release from an underground storage tank and to implead and be impleaded, complain and defend in all courts.
- (4) To conduct examinations and investigations and take testimony under oath or affirmation on any matter necessary to the determination of approval or disapproval of any claim.

(705 amended Jan. 30, 1998, P.L.46, No.13)

**Section 706. Eligibility of claimants.**

In order to receive a payment from the Underground Storage Tank Indemnification Fund, a claimant shall meet the following eligibility requirements:

- (1) The claimant is the owner, operator or certified tank installer of the tank which is the subject of the claim.
- (2) The current fee required under section 705 has been paid.
- (3) The tank has been registered in accordance with the requirements of section 503.
- (4) The owner, operator or certified tank installer has obtained the appropriate permit or certification as required under sections 108, 501 and 504.
- (5) The claimant demonstrates to the satisfaction of the board that the release that is the subject of the claim occurred after the date established by the board for payment of the fee required by section 705(d).
- (6) Additional eligibility requirements which the board may adopt by regulation.  
(706 amended Jan. 30, 1998, P.L.46, No.13)

**Section 707. Audit.**

The board shall contract for an annual independent financial audit of the Underground Storage Tank Indemnification Fund.

(707 amended Jan. 30, 1998, P.L.46, No.13)

**Section 708. Performance review.**

The board shall periodically review and evaluate the performance of the Underground Storage Tank Indemnification Fund, including all programs funded from it, and make recommendations to the General Assembly for its continuation or termination every five years commencing with the initial review date of December 31, 2000.

(708 amended Jan. 30, 1998, P.L.46, No.13)

**Section 709. Loan fund (709 repealed June 28, 1996, P.L.434, No.67).**

**Section 710. Underground Storage Tank Environmental Cleanup Program.**

(a) Establishment.--The board is authorized to establish the Underground Storage Tank Environmental Cleanup Program for the purpose of ensuring the taking of corrective actions at underground storage tank facilities under sections 107(g) and 1302(c).

(b) Allocation.--The board may allocate up to \$5,500,000 annually from the Underground Storage Tank Indemnification Fund for the Underground Storage Tank Environmental Cleanup Program

as long as the allocation does not impede the fund's ability to pay claims. Any amounts recovered by the board and/or the Department of Environmental Protection from the costs of corrective action incurred under the Underground Storage Tank Environmental Cleanup Program shall be added to this allocation for the purposes stated in this subsection and shall annually lapse with this allocation. ((b) amended Dec. 13, 2001, P.L.900, No.99)

(b.1) Special allocation.--No more than \$2,000,000 of the annual allocation for the Underground Storage Tank Environmental Cleanup Program may be used for special environmental cleanup projects to assist owners of underground storage tanks who do not qualify for financial assistance under the provisions of this act, the act of May 19, 1995 (P.L.4, No.2), known as the Land Recycling and Environmental Remediation Standards Act, or any other applicable environmental Federal or State assistance program. Funds for special environmental cleanup projects may not be used to reimburse owners of underground storage tanks for remediation costs already incurred. Special environmental cleanup projects are limited to eligible owners of underground storage tanks whose site has not been remediated for contamination, for remediation not completed due to financial hardship and for those owners whose retail gasoline facility or commercial distribution center is no longer in business. The department shall assign priorities to such special projects based upon their environmental impact.

(b.2) Additional allocation.--No more than \$750,000 of the annual allocation for the Underground Storage Tank Environmental Cleanup Program may be used for costs of corrective action to assist owners of underground storage tanks with a capacity of 3,000 gallons or less used for storing heating oil for consumption on the premises where stored. Payments made for eligible releases shall be limited in amount to the actual costs of corrective action or to \$5,000, whichever is less. The amount allowed shall be subject to a \$1,000 deductible which shall be paid first by the claimant. The board may promulgate regulations to carry out the provisions of this subsection. ((b.2) amended Dec. 21, 2017, P.L.1197, No.61)

(b.3) Catastrophic release allocations.--

(1) The board may allocate up to \$5,500,000 annually from the Underground Storage Tank Indemnification Fund for the Underground Storage Tank Environmental Cleanup Program to be used by the Department of Environmental Protection for corrective action caused by a catastrophic release providing the allocation does not impede the fund's actuarial soundness and ability to pay claims.

(2) For the purposes of this subsection, a catastrophic release is one that imposes a threat to public health and safety and the environment where the department determines that the costs of the corrective action may exceed two times the limits established under section 704.

((b.3) added Dec. 13, 2001, P.L.900, No.99)

(c) Implementation.--The Department of Environmental Protection shall assist the board with the implementation of this program and shall be reimbursed by the board from the fund for actual costs incurred for the corrective actions taken. The department shall also be reimbursed from the fund for any administrative costs. ((c) amended July 5, 2005, P.L.97, No.36)

(d) Eligibility determinations.--Where funds are expended under this section for corrective action and the owner, operator or certified tank installer of the underground storage tank is later determined to be eligible for Underground Storage Tank Indemnification Fund coverage under section 706, the moneys expended by the board shall be considered payments to the owner, operator or certified tank installer under section 704.

(e) Annual report.--The board shall annually transmit to the General Assembly a report outlining corrective actions taken and expenditures made under this section for the preceding Commonwealth fiscal year.

(f) Sunset.--The Underground Storage Tank Environmental Cleanup Program shall cease to exist on December 31, 2027, unless it is reestablished by action of the General Assembly. ((f) amended July 7, 2022, P.L.433, No.34)

(710 added January 30, 1998, P.L.46, No.13)

**Compiler's Note:** Section 1 of Act 74 of 2012, which amended subsec. (f), provided that the Underground Storage Tank Environmental Cleanup Program expired on June 30, 2017.

Section 2(1) of Act 61 of 2017, which amended subsecs. (b.2) and (f), provided that if section 2 of Act 61 takes effect after June 30, 2017, the amendment of subsection (f) shall apply retroactively to June 30, 2017.

### **Section 711. Underground Storage Tank Pollution Prevention Program.**

(a) Establishment.--The board is hereby authorized to establish an Underground Storage Tank Pollution Prevention Program for the purpose of reimbursing eligible owners, as defined in subsection (d), for the costs of removing regulated substances from and sealing the fill pipes of underground storage tanks which have not been upgraded to comply with the technical requirements of Federal and State regulations. The board shall establish guidelines for eligible expenses and procedures for reimbursement from the Underground Storage Tank Indemnification Fund.

(b) Allocation.--The board may allocate up to \$350,000 annually from the Underground Storage Tank Indemnification Fund for the Underground Storage Tank Pollution Prevention Program as long as the allocation does not impede the actuarial soundness of the fund's ability to pay claims. ((b) amended Dec. 21, 2017, P.L.1197, No.61)

(c) Implementation.--The Department of Environmental Protection shall assist the board with the implementation of this program and shall be reimbursed by the board from the fund for actual reimbursements made to eligible owners, but in no event shall the department be reimbursed from the fund for any administrative costs.

(d) Eligibility.--Owners of six or fewer underground storage tanks shall be eligible to participate in this program.

(e) Annual report.--The board shall annually transmit to the General Assembly a report outlining actions taken and expenditures made under this section for the preceding Commonwealth fiscal year.

(f) Sunset.--The Underground Storage Tank Pollution Prevention Program shall cease to exist on December 31, 2027, unless it is reestablished by action of the General Assembly. ((f) amended July 7, 2022, P.L.433, No.34)  
(711 amended June 30, 2007, P.L.66, No.20)

**Compiler's Note:** Section 1 of Act 74 of 2012, which amended subsec. (f), provided that the Underground Storage Tank Pollution Prevention Program expired on June 30, 2017. Section 2(2) of Act 61 of 2017, which amended subsecs. (b) and (f), provided that if section 2 of Act 61 takes effect after June 30, 2017, the amendment of subsection (f) shall apply retroactively to June 30, 2017.

### **Section 712. Upgrade Loan Program.**

(a) Establishment.--The board is hereby authorized to establish a loan program for owners of regulated underground storage tanks as a method of investing fund moneys, provided that such a program does not interfere with the actuarial soundness of the fund required by section 705(d)(1). Aggregate outstanding loan balances shall not exceed 20% of the fund balance, hereby defined as the ending cash balance in any given fiscal year less any liability for claims incurred but not yet paid. Loans shall not be made when the fund balance falls below \$50,000,000. Loans shall not be made if such loans impede the board's ability to pay claims.

(b) Eligibility.--Such loans shall be made available to owners of six or fewer regulated underground storage tanks for the purpose of upgrading or removing their storage tanks. Any portion of the annual availability of funds not committed to such owners within 90 days of the effective date of this section and thereafter within 120 days of July 1 in any fiscal year may be awarded to any owner of any number of regulated underground storage tanks that meet the

remaining requirements of this section. ((b) reenacted and amended Dec. 20, 2000, P.L.726, No.100)

- (c) Loan terms.--Loans made under this section shall be governed by the following terms:
- (1) The maximum loan amount for an individual project is \$500,000 or 75% of the total eligible project costs, whichever is less. The maximum total amount that a single owner or operator may have outstanding is \$500,000.
  - (2) Loans shall have a repayment period of up to ten years.
  - (3) Interest rates shall be fixed at the time the loan is made and shall be equal to the Five-Year United States Treasury Note on the date application is made.
  - (4) All loans must be adequately secured. The board shall determine the methods for securing loans.
  - (5) The board shall charge a loan origination fee not to exceed 5% of the approved loan amount.
  - (6) The board, by regulation, may create additional eligibility requirements for participation in the Upgrade Loan Program.

(d) Annual report.--The board shall prepare an annual report for submission to the General Assembly concerning activities and expenditures made pursuant to this section for the preceding year. Included in this report shall be information concerning all loans made to eligible applicants and applications denied.

(e) Assistance.--The Department of Community and Economic Development, in consultation with the Department of Environmental Protection, shall assist the board with the implementation of this program. The fund shall reimburse the Department of Community and Economic Development for actual costs incurred to administer this program. However, administrative costs shall not exceed 5% of the loan amounts approved annually. Final loan approval shall be made by the board.  
(712 added Jan. 30, 1998, P.L.46, No.13)

**Section 713. Investigation, closure, compliance and enforcement costs.** (Hdg. amended Dec. 21, 2017, P.L.1197, No.61)

(a) General rule.--The department may request the board to reimburse the department up to \$7,000,000 annually for its costs related to investigating, determining responsibility, overseeing remediation and third party response and closing out cases of spills and leaks related to storage tanks and for inspecting, determining compliance and taking enforcement actions against owners of storage tanks beginning in fiscal year 2017-2018. ((a) amended Dec. 21, 2017, P.L.1197, No.61)

(b) Elements of reimbursement request.--The department request for reimbursement shall include the following:

- (1) A workload analysis.
  - (2) Past and projected administrative costs based on the population of aboveground and underground tanks.
  - (3) Past and projected revenues from all sources of funds, Federal and State.
  - (4) Reasons for changes in projected costs.
  - (5) Steps taken by the department to reduce costs.
- (713 added July 5, 2005, P.L.97, No.36)