

CHAPTER 1244**UNDERGROUND STORAGE TANK REGULATION***H.F. 2441*

AN ACT relating to underground storage tanks, establishing certain fees, providing penalties, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

**Section 1. Section 455B.471, subsection 5, Code 1987, is amended to read as follows:*

5. "Release" means spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance, including petroleum, from an underground storage tank into groundwater, surface water, or subsurface soils.*

**Sec. 2. Section 455B.471, Code 1987, is amended by adding the following new subsections:*

NEW SUBSECTION. 8. "Corrective action" means an action taken to minimize, eliminate, or cleanup a release to protect the public health and welfare or the environment. Corrective action includes, but is not limited to, excavation of an underground storage tank for the purpose of repairing a leak or removal of the tank, removal of contaminated soil, disposal or processing of contaminated soil, and cleansing of groundwaters or surface waters. Corrective action does not include replacement of an underground storage tank. Corrective action specifically excludes third-party liability.

NEW SUBSECTION. 9. "Fund" means the Iowa comprehensive petroleum underground storage tank fund established in section 455B.479B.

NEW SUBSECTION. 10. "Board" means the Iowa comprehensive petroleum underground storage tank fund board established in section 455B.479C.

NEW SUBSECTION. 11. "Distributor" means a person who first receives petroleum within this state or a person who dispenses petroleum into an underground storage tank subject to the fee charged in section 455B.479 not owned or operated by the distributor.

NEW SUBSECTION. 12. "Third-party liability" means liability owed by an owner or operator to a person other than the fund for death, bodily injury, or property damage, but excludes corrective action, even if corrective action compensates a third party, in whole or in part, for injury or damage. Third-party liability is specifically excluded from fund coverage, and a third-party liability claim against an owner or operator covered by the fund is reduced to the extent that corrective action has already compensated the third party.*

Sec. 3. NEW SECTION. 455B.473A PETROLEUM UNDERGROUND STORAGE TANK REGISTRATION AMNESTY PROGRAM.

A petroleum underground storage tank required to be registered under section 455B.473, which has not been registered prior to July 1, 1988, may be registered under the following conditions:

1. The tank registration fee under section 455B.473, subsection 5, shall accompany the registration.

2. The storage tank management fee of fifteen dollars per tank under section 455B.479 shall be paid for past years in which the tank should have been registered.

3. *The owner or operator shall demonstrate financial responsibility as required by section 455B.479A.*

If a tank is registered under this section on or prior to October 1, 1989, penalties under section 455B.477 shall be waived.

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Sec. 4. Section 455B.474, subsection 1, paragraph d, Code Supplement 1987, is amended to read as follows:

d. Taking corrective action in response to a release or threatened release from an underground storage tank including appropriate testing of drinking water which may be contaminated by the release. The corrective action rules shall enable the director to order an owner or operator to immediately take all corrective actions deemed reasonable and necessary by the director.

Sec. 5. Section 455B.474, subsection 1, paragraph e, Code Supplement 1987, is amended to read as follows:

e. The closure of tanks to prevent any future release of a regulated substance into the environment. If consistent with federal environmental protection agency technical standard regulations, state tank closure rules shall include, at the tank owner's election, an option to fill the tank with an inert material. Removal of a tank shall not be required if the tank is filled with an inert material pursuant to department of natural resources rules. A tank closed, or to be closed and which is actually closed, within one year of the effective date of this Act, shall be required to complete monitoring or testing as required by the department to ensure that the tank did not leak prior to closure, but shall not be required to have a monitoring system installed.

Sec. 6. Section 455B.474, subsection 1, paragraph f, unnumbered paragraph 1, Code Supplement 1987, is amended to read as follows:

Specifying an adequate monitoring system to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources for regulated tanks installed prior to May 1, 1986 January 14, 1987. The commission shall adopt these rules not later than April 1, 1986; however, the effective date of the rules adopted shall be May 1, 1988 January 14, 1989. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted. Unless the federal environmental protection agency adopts final rules to the contrary, rules adopted pursuant to this section shall not apply to hydraulic lift reservoirs, such as for automobile hoists and elevators, containing hydraulic oil.

Sec. 7. Section 455B.474, subsection 1, paragraph f, Code Supplement 1987, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The department may issue a variance, which includes an enforceable compliance schedule, from the mandatory monitoring requirement for an owner or operator who demonstrates plans for tank removal, replacement, or filling with an inert material pursuant to a department approved variance. A variance may be renewed for just cause.

**Sec. 8. Section 455B.474, subsection 2, unnumbered paragraph 1, Code Supplement 1987, is amended to read as follows:*

*The maintenance of evidence of financial responsibility as the director determines to be feasible and necessary for taking corrective action and for compensating third parties for bodily injury and property damage caused by release of a regulated substance from an underground storage tank, except an underground storage tank containing petroleum.**

Sec. 9. Section 455B.474, subsection 3, paragraph d, Code Supplement 1987, is amended to read as follows:

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d. Rules adopted by the commission shall specify adequate monitoring systems to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources from regulated tanks installed after ~~May 1, 1986~~ January 14, 1987. ~~The commission shall adopt these rules not later than January 1, 1986, however, the effective date of the rules adopted shall be May 1, 1986.~~ In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted. Tanks installed on or after January 14, 1987, shall continue to be considered new tanks for purposes of this chapter and are subject to state monitoring requirements unless federal requirements are more restrictive.

Sec. 10. Section 455B.477, Code 1987, is amended by adding the following new subsections:

***NEW SUBSECTION. 6.** *The civil penalties recovered by the state or the fund in connection with a petroleum underground storage tank under this part of this division shall be credited to the fund.**

NEW SUBSECTION. 7. The penalty for intentional failure of an owner or operator to register a petroleum underground storage tank under section 455B.473 shall be a minimum of seven thousand five hundred dollars up to a maximum of ten thousand dollars after October 1, 1989.

***Sec. 11. NEW SECTION. 455B.479A PETROLEUM UNDERGROUND STORAGE TANK FUND.**

1. MINIMUM FINANCIAL RESPONSIBILITY, THE "DEDUCTIBLE". *The owner or operator shall demonstrate to the board evidence of financial responsibility in the amount of not less than twenty thousand dollars to cover corrective action costs through the use of one or more of the following financial assurance mechanisms:*

- a. *Self-insurance.*
- b. *Guarantee.*
- c. *Indemnity contract.*
- d. *Insurance.*
- e. *Risk retention group coverage.*
- f. *Letter of credit.*
- g. *The Iowa comprehensive petroleum underground storage tank fund.*
- h. *Governmental risk pool.*

i. Status as a city, county, or school district, or other political subdivision empowered to enter into insurance agreements obligating the entity to make payments beyond its current budget year to procure or provide for a policy of insurance, a self-insurance program, or a local government risk pool. For the purposes of sections 296.7, 331.301, subsection 11, 364.4, 384.12, subsection 18, and 613A.7, coverage under the fund is an "insurance agreement", the fund deductible is a "self-insurance program", and alternative proof of aggregate financial responsibility pursuant to section 455B.479A, subsection 8, is a "self-insurance program".

The state of Iowa, its agencies, departments, and other administrative subdivisions, are not exempt from this division. The state may purchase coverage from the fund, or the state may prove both minimum financial responsibility and aggregate financial responsibility by its status as a governmental entity capable of self-insuring by reliance upon its taxing powers to satisfy future incurred obligations.

The board shall provide by rule that the deductible or minimum financial responsibility requirement of this subsection shall be on the same basis as provided for under subsection 1.

2. APPLICATION TO BOARD FOR FUND COVERAGE. *An owner or operator may apply to the board for fund coverage of a tank on the form provided by the board.*

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3. **APPLICATION TO BOARD FOR FUND COVERAGE OF THE DEDUCTIBLE.** *The owner or operator may apply to the board to have the fund provide coverage of the deductible only if all of the following requirements are met:*

a. *The owner or operator demonstrates that it has been unable to establish the minimum financial responsibility required by subsection 1 and has made every reasonable attempt to secure coverage from at least two of the financial assurance mechanisms in subsection 1.*

b. *The owner or operator meets the guidelines for health, safety, and the public welfare required by law.*

c. *The owner or operator cooperates fully with the board during the application and investigation process and provide all documentation and records requested by the board.*

d. *The owner or operator consents to on-site inspection of the underground storage tank sought to be covered. The owner or operator shall pay the reasonable expenses of an on-site inspection under this paragraph.*

e. *The owner or operator is not insolvent and would not become insolvent by being required to pay the minimum amount of financial responsibility required by subsection 1.*

f. *Any other reasonable requirements set by the board.*

4. **THE BOARD MAY REFUSE FUND COVERAGE.** *The board reserves the right to refuse fund coverage, whether in combination with any other financial assurance mechanism or as the sole financial assurance mechanism to those owners or operators who fail to meet statutory standards and rules adopted by the board.*

a. *The board shall only extend fund coverage to an owner or operator for a petroleum underground storage tank which has an adequate monitoring system. However, the board may extend fund coverage for a petroleum underground storage tank without an adequate monitoring system, if the applicable one of the following conditions is satisfied:*

(1) **TANKS INSTALLED PRIOR TO JANUARY 14, 1967.** *The owner or operator of an underground storage tank has been granted a variance by the department which includes an enforceable compliance schedule pursuant to section 455B.474, subsection 1, paragraph "f". However, if an adequate monitoring system is not installed before the later of January 1, 1989, or the expiration of a variance issued by the department, the fund shall not provide further coverage to the owner or operator of the tank unless the monitoring system has been installed.*

(2) **TANKS INSTALLED BETWEEN JANUARY 14, 1967, AND JANUARY 13, 1987.** *The owner or operator of an underground storage tank installed between January 14, 1967, and January 13, 1987, has been granted a waiver by the board. Waivers shall include an enforceable schedule for installation of a monitoring system satisfactory to the board. A waiver may allow for a delay in the installation of a monitoring system until either November 1, 1989, or until six months from the date on which insurance is provided, whichever is later. A waiver shall be granted to an owner who demonstrates plans for tank removal, replacement, or filling with an inert material pursuant to a department approved variance, or significant tank upgrades or improvements. Waivers may be renewed or extended for just cause within the times set out above, but after the deadline or expiration of a waiver, the fund shall not provide further coverage to the owner or operator of the tank unless the monitoring system is installed.*

b. *For purposes of this section, "an adequate monitoring system" means a system complying with mandatory monitoring rules issued by the department of natural resources or monitoring wells satisfactory to the board, except the board shall not accept the manual inventory method as a satisfactory monitoring system and the board shall not accept a monitoring system less stringent than department rules require, or published rules will require when effective, for the tank.*

5. **LIMITS OF FUND COVERAGE.** *The board may approve coverage up to a maximum of five hundred thousand dollars for corrective action per occurrence.*

6. **FUND PREMIUMS AND DEDUCTIBLES.** *Fund coverage shall be offered based upon the following deductible and premium combinations, at the insured's option:*

- a. *Ten thousand dollar deductible for a four hundred dollar premium.*
- b. *Twenty thousand dollar deductible for a three hundred twenty-five dollar premium.*
- c. *Thirty thousand dollar deductible for a two hundred fifty dollar premium.*

Premiums for fund coverage are per tank, per year, or the prorated portion of the premium for a portion of a year before the effective date of the federal environmental protection agency petroleum underground storage tank financial responsibility regulations. Any excess premium payment shall be credited to future premiums or refunded to the owner or operator.

*The board in its discretion may require all new installations applying for fund coverage to be state-of-the-art installations.**

***Sec. 12. NEW SECTION. 455B.479B IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND.**

The Iowa comprehensive petroleum underground storage tank fund is established as a financial assurance mechanism to assist in corrective action resulting from the accidental release of petroleum from underground storage tanks. The fund is established as a separate fund in the state treasury, and any funds remaining in the fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Iowa comprehensive petroleum underground storage tank fund.

*The state is not liable for claims presented against the comprehensive petroleum underground storage tank fund. All expenses incurred in carrying out section 455B.479A, this section, and sections 455B.479C through 455B.479H shall be payable solely from the comprehensive petroleum underground storage tank fund and no liability or obligation shall be imposed upon the state beyond this amount.**

***Sec. 13. NEW SECTION. 455B.479C GOVERNING BOARD.**

1. **MEMBERS OF THE BOARD.** *The Iowa comprehensive petroleum underground storage tank fund board is established consisting of the following members:*

- a. *The director of the department of natural resources, or the director's designee.*
- b. *The treasurer of state, or the treasurer's designee.*
- c. *The commissioner of insurance, or the commissioner's designee.*
- d. *Two public members with financial or insurance industry expertise appointed by the governor and confirmed by the senate to staggered four-year terms.*

The filling of positions reserved for public representatives, vacancies, membership terms, payment of compensation and expenses, and removal of members are governed by chapter 69. The members shall elect a chairperson of the board.

2. **DEPARTMENT OF NATURAL RESOURCES COOPERATION WITH BOARD.** *The director of the department of natural resources shall cooperate with the board in the implementation of this part so as to minimize unnecessary duplication of effort or paperwork and maximize environmental protection.*

3. **REQUIRED RULES AND EMERGENCY RULES.**

a. *The board shall adopt rules regarding its practice and procedures, the form and procedure for application for financial responsibility certification, administration and collection of the comprehensive petroleum underground storage tank fee, procedures for investigating and settling claims, and establishment of guidelines outlining coverage available from the fund. The board in cooperation with the department shall require the reporting of the following information from owners and operators of tanks subject to the fee charged in section 455B.479:*

- (1) *Actual cost of corrective action performed, whether or not paid for by the fund.*

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(2) *The number of tanks owned by each owner, and their location, size, age, and amount of petroleum flowing through each site annually, to the extent each item is known or knowable.*

(3) *The number of tanks operated by each operator, and their location, size, age, and amount of petroleum flowing through each site annually, to the extent each item is known or knowable.*

(4) *Any other information, including prior loss experience, which the board or department requests relevant to an actuarial description of the tank population.*

This information shall be organized and submitted to the general assembly prior to February 14, 1989. Information submitted by an individual owner or operator shall be confidential and not subject to disclosure under chapter 21 or 22, except as the information is submitted to the general assembly in the aggregate. The board and the division of insurance shall prepare a report on the fund, its project loss experience, the then current federal rules, and other matters relating to the solvency and future operations of the fund and submit the report to the general assembly on or before February 14, 1989.

b. *The board may adopt administrative rules under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b", to implement this subsection for one year after the effective date of this section.*

c. *Rules necessary for the implementation and collection of the comprehensive petroleum underground storage tank fee, under section 455B.479E, shall be adopted on or before June 1, 1988.*

d. *Rules for the implementation of sections 455B.479A through 455B.479I, shall be adopted prior to October 1, 1988.*

4. **PROFESSIONAL ADMINISTRATOR OF FUND.** *The board shall employ a professional administrator to manage the fund as an independent contractor. The professional administrator must have had insurance or actuarial experience and must demonstrate management abilities consistent with the responsibility of managing the fund.**

***Sec. 14. NEW SECTION. 455B.479D FUND'S REVENUE SOURCES.**

Revenue from the following sources shall be deposited in the state treasury and credited to the fund:

1. *Premiums collected for coverage provided by the fund.*
2. *The proceeds from the fee imposed in section 455B.479E.*
3. *Money recovered under sections 455B.477 and 455B.479G, including administrative expenses, civil penalties, and money paid under an agreement, stipulation, or settlement.*
4. *Interest attributable to investment of money in the fund.*
5. *Money received by the board and department in the form of a gift, bequest, donation, federal grant, grant other than a federal grant, reimbursement, or appropriation from any source intended to be used for the purposes of the fund.**

***Sec. 15. NEW SECTION. 455B.479E PETROLEUM TANK FEE.**

The legislature hereby declares that the storage fees imposed by this section do not constitute a tax and are not collected for purposes of increasing state revenues pursuant to section 30 of Article III or section 8 of Article VII of the Iowa Constitution.

1. **GUARANTEE OF FUND'S SOLVENCY.**

a. *The board shall do the following when the unexpended balance in the fund falls below two million dollars:*

Increase the premium established pursuant to section 455B.479A, subsection 6, by an amount reasonably calculated to restore the fund balance to greater than two million dollars except a premium shall not be surcharged more than twenty-five percent in any one year of continuous coverage. The surcharge shall be applied as an immediate surcharge due within thirty days after mailed notice. Failure to pay the surcharge terminates fund coverage for the owner

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or operator as of thirty days after mailed notice. An owner or operator failing to make payment within the allotted time must reapply for fund coverage to be effective upon the date of application and conditioned upon payment of the annual premium plus any applicable surcharge then in effect.

2. **IMPOSITION OF COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FEE.** A comprehensive petroleum underground storage tank fee is imposed on the use of underground storage tanks containing petroleum subject to the fee charged in section 455B.479. The petroleum tank fee shall be collected at the distributor level. A distributor shall pay the fee on petroleum which is dispensed by the distributor into an underground storage tank subject to the fee charged in section 455B.479 not owned or operated by the distributor. Every distributor shall, as required by law, pay to the director of revenue and finance, or to a depository designated by the director, an amount equal to the rate provided under this section. A distributor which initially receives petroleum from out-of-state shall pay the fee on any petroleum deposited into an underground storage tank subject to the fee charged in section 455B.479 owned or operated by the distributor. The fee shall be paid only the first time that petroleum is deposited or dispensed into an underground storage tank subject to the fee charged in section 455B.479. A distributor shall receive a credit for the fee paid on petroleum transported and dispensed out-of-state by the distributor. The board shall adopt rules and forms to be used for the collection of the fee. The fee shall be imposed, as required under section 455B.479I, at a rate of twenty dollars per one thousand gallons of petroleum, which is a regulated substance as defined in section 455B.471, subsection 4, rounded to the nearest one thousand gallons. A distributor who fails to pay the fee imposed under this section is subject to the penalties provided in section 455B.477.

3. **UNEXPENDED BALANCE RETAINED IN THE FUND.** Any unexpended balance in the fund at the end of the fiscal year shall be retained in the fund.

4. **FEE COLLECTION.** For the purpose of determining the amount of liability for the comprehensive petroleum underground storage tank fee for each distributor, a distributor shall file with the department of revenue and finance, not later than the last day of the month following the month in which the fee is imposed, a monthly fee statement certified under penalties for false certificate. The statement shall show, with reference to each location at which petroleum is subject to the fee, the amount of petroleum deposited into an underground storage tank, the amount of the fee collected in the preceding calendar month, and such information as the department may reasonably require for the proper administration and enforcement of the fee.

5. **PAYMENTS.** The statement shall be accompanied by remittance in the amount of the fee due for the month in which the comprehensive petroleum underground storage tank fee was imposed.

6. **DEDUCTIONS AND CREDITS.** The statement shall show the amount of deductions or credits claimed by the distributor as authorized in this division in such detail and with such supporting evidence as is prescribed by the department of revenue and finance and as may be required for administration of this division.

7. **OTHER INFORMATION.** Such other information as the department of natural resources, the board, or the department of revenue and finance may require for the enforcement and administration of this chapter.

8. **ENFORCEMENT.** Enforcement of fee collection is the responsibility of the department of revenue and finance.*

***Sec. 16. NEW SECTION. 455B.479F DISBURSEMENTS.**

Money in the fund may only be expended for the following purposes:

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1. To administer the comprehensive petroleum underground storage tank program established in this part of this division, including but not limited to, payment of the professional administrator on an independent contract basis. The department of revenue and finance shall be compensated for the actual costs incurred for acting as the depository of the comprehensive petroleum underground storage tank fee.

2. To take corrective action for a release of petroleum into the environment from an underground storage tank for which coverage has been extended by the fund, up to the amount of coverage extended, but in no case to exceed five hundred thousand dollars for corrective action, per occurrence.

3. For the cost of corrective action up to five hundred thousand dollars per occurrence for a release of petroleum into the environment from an underground storage tank if one of the following requirements is met:

a. The owner or operator cannot be identified by the board within ninety days of report of the release to the department.

b. The owner or operator is incapable, in the judgment of the board, of carrying out the reasonable and required corrective action.

4. To fund the petroleum underground storage tank financing account established pursuant to chapter 455D.*

***Sec. 17. NEW SECTION. 455B.479G COST RECOVERY ENFORCEMENT.**

1. **GENERAL RULE, RECOVERY SOUGHT FROM OWNER OR OPERATOR.** The board shall seek recovery from the owner or operator of the underground storage tank which released the petroleum and which is the subject of the corrective action for all costs or moneys expended from the fund under section 455B.479F.

2. **OWNER'S EXCESS LIABILITY.** A person asserting a claim against an owner or operator shall proceed directly against the owner or operator. An owner or operator purchasing fund coverage is liable for the deductible, third-party liability, and any corrective action liability above fund coverage limits.

3. **OWNER OR OPERATOR NOT IN COMPLIANCE WITH MINIMUM FINANCIAL RESPONSIBILITY REQUIREMENTS SUBJECT TO FULL AND TOTAL COST UNDER GENERAL RULE.** Notwithstanding subsection 2, the liability of an owner or operator shall be the full and total costs of corrective action and for bodily injury or property damage to third parties specified in subsection 1 if the owner or operator has not complied with the requirements of section 455B.479A.

4. **TREBLE PUNITIVE DAMAGES FOR CERTAIN VIOLATIONS.** Notwithstanding subsection 2, the owner or operator, or both, of an underground storage tank may be liable to the fund for punitive damages in an amount equal to three times the amount of any cost incurred or moneys expended by the fund as a result of a release of petroleum from the underground storage tank if the owner or operator did one of the following:

a. Failed, without sufficient cause, to respond to a release of petroleum from the underground storage tank upon, or in accordance with, a notice issued by the director.

b. After the effective date of this section failed to perform any of the following:

(1) Failed to register the underground storage tank, which was known to exist or reasonably should have been known to exist.

(2) Intentionally failed to report a known release.

The punitive damages imposed under this subsection shall be in addition to any costs or expenditures recovered from the owner or operator pursuant to this section and in addition to any other penalty or relief provided by this part or any other law.

However, the state, a city, county, or other political subdivision shall not be liable for punitive damages.

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5. **JOINDER OF PARTIES.** Upon motion and sufficient showing by a party, the court or the department shall join to the action any person who may be liable for costs and expenditures of the type recoverable pursuant to this section.

6. **EXCEPTION TO RULE OF JOINT AND SEVERAL LIABILITY.** A party found liable for any costs or expenditures recoverable under this section, who establishes by a preponderance of the evidence that only a portion of those costs or expenditures is attributable to that party's actions, shall pay only for that portion.

7. **APPLICATION OF EQUITABLE PRINCIPLES IF INSUFFICIENT PROOF TO APPORTION COSTS OR EXPENDITURES.** If the trier of fact finds the evidence insufficient to establish each party's portion of costs or expenditures pursuant to subsection 6, the court shall apportion those costs or expenditures among the defendants, to the extent practicable, according to equitable principles.

8. **PAYMENT OF COSTS OR EXPENDITURES ABOVE AMOUNT APPORTIONED.** The fund shall pay any portion of the judgment in excess of the aggregate amount of costs or expenditures apportioned under subsection 6 or subsection 7.

9. **STRICT LIABILITY.** The standard of liability for any costs recoverable pursuant to this part of this division is strict liability.

10. **THIRD-PARTY CONTRACTS NOT BINDING ON BOARD, PROCEEDINGS AGAINST RESPONSIBLE PARTY.** No insurance, indemnification, hold harmless, conveyance, or similar risk-sharing or risk-shifting agreement shall be effective to transfer any liability for costs recoverable under this section. The fund may proceed directly against the owner or operator or other allegedly responsible party. This section does not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs or expenditures under this chapter, and does not modify rights between the parties to an agreement.

11. **LATER PROCEEDINGS PERMITTED AGAINST OTHER PARTIES.** The entry of judgment against a party to the action does not bar a future action by the board against another person who is later alleged to be or discovered to be liable for costs and expenditures paid from the fund. Subsequent successful proceedings against another party shall not modify or reduce the liability of a party against whom judgment has been previously entered.

12. **UPON PAYMENT OF CLAIM, BOARD ACQUIRES SUBROGATION RIGHTS.** Payment of a claim by the fund pursuant to this part of this chapter shall be conditioned upon the board acquiring by subrogation the rights of the claimant to recover those costs and expenditures for corrective action for which the fund has compensated the claimant, from the person responsible or liable for the unauthorized release. A claimant is precluded from receiving double compensation for the same injury.

13. **EXCLUSION OF PUNITIVE DAMAGES.** The fund shall not be liable in any case for punitive damages.*

***Sec. 18. NEW SECTION. 455B.479H FUND NOT PART OF THE IOWA INSURANCE GUARANTY ASSOCIATION.**

Notwithstanding any other provisions of law to the contrary, the Iowa comprehensive underground storage tank fund shall not be considered an insurance company or insurer under the laws of this state and shall not be a member of nor be entitled to claim against the Iowa insurance guaranty association created under chapter 515B.*

***Sec. 19. NEW SECTION. 455B.479I INITIAL FUNDING FOR COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND.**

To provide the initial funding for the comprehensive petroleum underground storage tank fund, the director of revenue and finance shall impose the fee established in section 455B.479E, subsection 2, in the month of August 1988. The fee shall be paid to the department of revenue and finance no later than September 30, 1988.

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*Fund coverage shall be provided to eligible applicants no later than January 14, 1989. The board may, in its discretion, extend coverage earlier. Provided, however, that fund coverage may be provided upon approval of an application, retroactive to the effective date of this Act, if the applicant has a monitoring system installed on the insured tank in compliance with department of natural resources published rules, then effective, or to become effective, for that tank.**

***Sec. 20. NEW SECTION. 455D.1 LOANS FOR REPAIR OR REPLACEMENT OF PETROLEUM UNDERGROUND STORAGE TANKS.**

*This chapter shall be titled, "Loans for Repair or Replacement of Petroleum Underground Storage Tanks."**

***Sec. 21. NEW SECTION. 455D.2 LEGISLATIVE FINDINGS — NECESSITY FOR LOAN FUND TO ACCOMPLISH ENVIRONMENTAL GOALS WHILE PROTECTING SMALL BUSINESSES.**

The legislature finds the following:

1. *It is necessary and essential that the state use all practical means to control or eliminate pollution hazards posed by leaking petroleum underground storage tanks.*

2. *Small businesses in this state do not always have the financial means necessary to repair and upgrade existing underground storage tanks to reduce the probability that unauthorized releases of petroleum may occur.*

3. *The public health and safety of the state will benefit from providing new methods to finance the capital outlays required to repair and upgrade petroleum underground storage tanks by small business owners of such tanks.**

***Sec. 22. NEW SECTION. 455D.3 DEFINITIONS.**

1. *"Account" means the petroleum underground storage tank financing account established under section 455D.4, subsection 2.*

2. *"Authority" means the Iowa petroleum underground storage tank financing authority.*

3. *"Small business" means a business that meets all the following requirements:*

a. *Is independently owned and operated.*

b. *Owens one, but no more than ten petroleum underground storage tanks at no more than two different sites.*

4. *"Participating party" means a small business within this state which requires financing pursuant to the terms of this section to aid and assist in the repair, upgrading, or replacement of an existing petroleum underground storage tank.**

***Sec. 23. NEW SECTION. 455D.4 IOWA PETROLEUM UNDERGROUND STORAGE TANK FINANCING ACCOUNT.**

1. *The governing board of the Iowa comprehensive petroleum underground storage tank fund established pursuant to section 455B.479C shall constitute the Iowa petroleum underground storage tank financing authority. The authority shall adopt rules to provide loans, guarantees, or interest buy-downs to financially qualified small businesses for the purposes of repairing, upgrading, or replacing petroleum underground storage tanks to meet applicable state or federal standards. Financial assistance from the account, whether in the form of a loan, guarantee, or interest buy-down, is conditioned upon the repair, upgrade, or installation for which assistance is provided and must result in state-of-the-art tank and monitoring systems. The board shall take appropriate steps to publicize the existence of the loan program. Maintenance of the financing account and loan program are the responsibility of the treasurer of state. All expenses incurred in carrying out this section shall be payable solely from the petroleum underground storage tank financing account and no liability or obligation shall be imposed upon the state beyond this amount.*

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2. *The Iowa petroleum underground storage tank financing account is established as a separate fund in the state treasury, and any funds remaining in the account at the end of each fiscal year shall not revert to the general fund but shall remain in the Iowa petroleum underground storage tank financing account.**

***Sec. 24. NEW SECTION. 455D.5 PROOF OF FINANCIAL NEED.**

*As a condition of eligibility for financial assistance under this chapter, a participating party shall attempt to obtain financing from private lending sources. If two financial institutions are unwilling to make the loan, the participating party shall determine if the institution would make the loan in participation with the authority as a guarantor.**

***Sec. 25. NEW SECTION. 455D.6 LENGTH OF LOAN.**

*The maturity for each loan made by the authority pursuant to this chapter shall be the shortest feasible term commensurate with the repayment ability of the borrower. However, the maturity date of a loan shall not exceed ten years.**

***Sec. 26. NEW SECTION. 455D.7 MAXIMUM LOAN AND LOW COST INTEREST.**

*A loan made pursuant to this chapter shall not exceed fifty thousand dollars. The interest charged on a tank loan shall equal the cost of borrowing money by the state on the first day of the calendar quarter during which the loan is approved.**

***Sec. 27. NEW SECTION. 455D.8 SOURCE OF REVENUES.**

The source of funds for the Iowa petroleum underground storage tank financing account shall be from the following:

1. *The Iowa comprehensive petroleum underground storage tank fund in the amount of two percent of fees collected pursuant to section 455B.479E.*
2. *Interest payments received by the authority from outstanding loans.*
3. *Any money appropriated by the federal government or general assembly and made available to the account.**

***Sec. 28. NEW SECTION. 455D.9 FUTURE REPEAL.**

*This chapter is repealed effective July 1, 1998. Any moneys remaining in or due the account shall revert to the Iowa comprehensive petroleum underground storage tank fund.**

***Sec. 29. NEW SECTION. 455B.490 AUTOMATIC REPEAL OF IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND.**

1. *Sections 455B.477 through 455B.479I are repealed effective July 1, 2003.*
2. *The repeal of the sections listed in subsection 1 shall not terminate the following obligations or authorities necessary to administer the obligations until these obligations are satisfied:*
 - a. *The payment of claims filed prior to July 1, 2003, against the Iowa comprehensive petroleum underground storage tank fund pursuant to section 455B.479F, until moneys in the fund are exhausted. Upon exhaustion of the fund, any remaining claims shall be invalid. If following satisfaction of the obligations pursuant to this section, moneys remain in the fund, all remaining moneys and moneys due the fund shall be prorated to premium payers on an equitable basis determined by the board.*
 - b. *The resolution of a cost recovery action filed prior to July 1, 2003.**

***Sec. 30. INSTALLER'S FUND STUDY.** *The board shall perform a study of the feasibility of creating a separate fund to provide coverage to installers of petroleum underground storage tanks. An installer's fund would provide coverage to premium paying insureds on an actuarially sound basis and be managed by the board in conjunction with the comprehensive*

*Item veto; see message at end of the Act

petroleum underground storage tank fund. Installer's coverage would be limited to environmental hazard coverage for both corrective action and third-party liability for petroleum underground storage tanks installed in Iowa after the creation of the fund. The study shall include, but is not limited to, the following topics:

1. Actuarial estimate of the per-tank premium necessary to provide actuarially sound coverage to tank installers.

2. Need for licensing or other precondition to providing coverage to a specific petroleum underground storage tank installer.

3. The cost and availability of private insurance for installers.

4. The number of installers doing business in the state.

5. Loss data from past or existing claims against installers for both corrective action and third-party liability.

6. Suggested limits of coverage, amount of the deductible, and other fund features.

7. The board's recommendation to the general assembly concerning provision of coverage to installers.

*The results of the study shall be submitted to the general assembly on or before December 1, 1988.**

Sec. 31. 1987 Iowa Acts, chapter 225, section 602, is repealed.

Sec. 32. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 13, 1988, except the items which I hereby disapprove and which are designated as sections 1 and 2; section 3, the first paragraph of subsection 3; section 8; section 10, new subsection 6; and sections 11 through 30. My reasons for vetoing these items are delineated in the item veto message pertaining to this Act to the Secretary of State on this same date, a copy of which is attached hereto.

TERRY E. BRANSTAD, Governor

*Item veto; see message at end of the Act

Dear Madam Secretary:

I hereby transmit House File 2441, an Act relating to underground storage tanks, establishing certain fees, providing penalties, and providing an effective date.

House File 2441 is approved with the following exceptions which I hereby disapprove.

I am unable to approve the items designated as: Sections 1 and 2 in their entirety; the first paragraph of Section 3, subsection 3; Section 8 in its entirety; Section 10, new subsection 6, in its entirety, and Sections 11 through 30 in their entirety.

House File 2441 establishes a state operated underground storage tank insurance fund. The fund would provide coverage up to \$500,000 per occurrence for leaks from underground storage tanks. This state insurance system is funded by tank fees assessed to owners of underground storage tanks which will raise approximately \$6 million per year. In addition, the legislation requires the imposition of a two cent per gallon tax on all petroleum products stored in the state in August of 1988. This tax increase is expected to raise approximately \$3 million this year.

In addition, House File 2441 includes provisions which delay the state rules requiring monitoring wells around existing tanks from May 1 of this year to January 14 of 1989 and provides additional enforcement tools to the Department of Natural Resources in this area.

I believe that a delay in the implementation of the state rules requiring costly monitoring of wells is in order, given the fact the federal government has yet to issue its rules governing these tanks. In addition, I approve of the additional enforcement tools which are provided to the Department of Natural Resources to deal with leaky underground storage tanks.

However, I cannot approve the items in this bill which:

- put the state in the insurance business by creating the state underground storage tank insurance fund;
- raise taxes; and
- appropriate tax revenues to the fund.

I believe this complicated tax increase and public insurance system sets the state on a fiscally hazardous course. Moreover, it excessively increases the gas and petroleum taxes for Iowans and prematurely leapfrogs federal regulations which have not yet been issued in this area.

First, some background is probably in order. The Congress has passed a law requiring the Environmental Protection Agency (EPA) to establish standards to deal with underground storage tanks. The EPA has been struggling with those standards for over two years. Proposed rules were issued once and then withdrawn after considerable public comment and protest. The key elements of the rules are likely to be monitoring cleanup and financial responsibility standards. In the interim, the Iowa Legislature mandated that the state require expensive monitoring wells to be constructed around each existing underground storage tank by May 1 of this year. Most owners of underground storage tanks were simply unable to comply with this mandate. Moreover, many owners of underground storage tanks were unable to obtain insurance necessary to provide funds to clean up underground storage tank leaks if they are found.

This bill is an attempt by the General Assembly to provide state insurance to pay for clean-up without knowing what the federal rules which will govern the financial liability of tank owners will require.

My concerns about that action by the state of Iowa are threefold:

- The underfunded insurance effectively exposes the state to considerable liability;
- The taxes on petroleum products should not be raised again and used for this purpose;
- State action of this import should not be taken until the federal rules are issued.

I have deep philosophical concerns about involving the state in the insurance business. I generally believe that insurance is best left to the private sector. I do understand that most underground storage tank owners find it difficult, if not impossible, to locate private insurers, however. Nevertheless, House File 2441 establishes an insurance fund, that according to actuarial estimates, will be insolvent by \$10-\$20 million. This \$10-\$20 million unfunded liability would have to be picked up by either tank owners or, in all probability, by the state. Since tank owners do not have the financial ability to pick up those additional costs, it is quite likely that this \$10-\$20 million of unfunded liability will eventually fall on the state's taxpayers. I am reluctant to commit the state to fund such a substantial liability.

In addition, I am deeply concerned about the method that is used in this legislation to provide public funds for this insurance system. Public funds are provided by a two cent increase in all petroleum products stored in August of this year. We have already adjusted the motor fuel user fee to pay for the Transportation 2000 commercial highway network and to replace lost federal funds needed to repair and maintain our highways. I believe that adjustment is enough. We should not shove another two cent per gallon tax increase in August on to the state's petroleum users.

Moreover, I am concerned about the precedent this legislation sets in using a petroleum tax for purposes other than maintaining our transportation system. Our Constitution appropriately requires that motor fuel user fees be dedicated towards the maintenance of our roadways. This legislation attempts to evade that constitutional provision by taxing petroleum fuels while they are still in the distributor storage tanks and then using them for an insurance fund. Thus, the bill raises serious constitutional questions and, in any event, sets a bad precedent for road funding decisions in the future.

Finally, I believe that House File 2441 attempts to solve a problem that has not yet been defined. The financial responsibility requirements to be placed on owners of underground storage tanks will be established by the rules reportedly due out anywhere from October of this year to the spring of next year. In addition, the preliminary reports indicate that there may be changes in the financial responsibility requirements for tank owners in those rules. And, there are some reports that the effective date of the financial responsibility requirements in the rules could be delayed until 1990 or 1991.

Frankly, until the rules are finally issued, we do not know what type of financial responsibility system should be established to deal with leaky underground storage tanks. The likely size of the problem will probably necessitate some sort of state role in the cleanup process and I am certainly willing to consider options to do that, given the important environmental need to maintain clean groundwater. However, I believe it would be premature and ill advised to put in place a two cent per gallon petroleum tax, and a state operated insurance fund with a \$10-\$20 million unfunded liability until we receive clear indications of just what the federal government will require. We should have a much better idea of what those requirements will be at the time of the commencement of the next General Assembly. Once the final federal rules are issued, I will work closely with the affected parties to develop an appropriate state response to this important environmental issue.

In short, I cannot approve those items in House File 2441 which potentially obligate the state to considerable financial liability, raise the petroleum tax by two cents per gallon on Iowans, and appropriate to and establish the state underground storage insurance fund. I believe it would be premature and fiscally unwise for the state to take this step at this time.

For the above reasons, I hereby respectfully disapprove these items in accordance with Amendment 4 of the Amendments of 1968 to the Constitution of the State of Iowa. All other items in House File 2441 are hereby approved as of this date.

Sincerely,

TERRY E. BRANSTAD, *Governor*