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SENATE FILE 362
BY COMMITTEE ON ENVIRONMENT
AND ENERGY UTILITIES

(SUCCESSOR TO SSB 233)

Passed Senate, Date 3/27/91 (p. 920) Passed House, Date 5/2/91 (p. 2045)
Vote: Ayes 49 Nays 0 Vote: Ayes 99 Nays 0
Approved June 10, 1991

A BILL FOR

1 An Act relating to petroleum underground storage tanks by raising
2 the maximum use taxes deposited in the Iowa comprehensive
3 underground storage tank fund and adjusting the diminution
4 cost factor, establishing monitoring certificates, requiring
5 certain corrective action rules, defining free product,
6 providing for double-walled tanks as a corrective action cost,
7 providing for payment of corrective action costs for certain
8 not-for-profit organizations, establishing requirements for
9 site cleanup reports, changing copayment schedules for
10 remedial action, extending property liens, limiting cleanup
11 payments, extending loan maturity dates and offering a special
12 interest rate buy-down, extending upgrade dates, offering
13 insurance coverage for certified tank installers and for
14 property transfers, limiting rights of recovery and
15 subrogation under the insurance account, requiring
16 certification and registration of groundwater professionals,
17 imposing an environmental damage offset, and providing an
18 effective date.

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 362

1 Section 1. Section 423.24, subsection 1, paragraph a, Code
2 1991, is amended to read as follows:

3 a. Twenty-five percent of all revenue derived from the use
4 tax on motor vehicles, trailers, and motor vehicle accessories
5 and equipment as collected pursuant to section 423.7, up to a
6 maximum of three million eight hundred twenty-five thousand
7 dollars per quarter, shall be deposited into the Iowa
8 comprehensive petroleum underground storage tank fund created
9 in section 455G.3, and the moneys so deposited are a
10 continuing appropriation for expenditure under chapter 455G,
11 and moneys so appropriated shall not be used for other
12 purposes.

13 Sec. 2. Section 424.3, subsection 5, Code 1991, is amended
14 to read as follows:

15 5. The cost factor is an amount per gallon of diminution
16 determined by the board pursuant to this subsection. The
17 board, after public hearing, may determine, or may adjust, the
18 cost factor to an amount reasonably calculated to generate an
19 annual average revenue, year to year, of twelve fifteen
20 million three hundred thousand dollars from the charge,
21 excluding penalties and interest, if any. The board may
22 determine or adjust the cost factor at any time ~~after-May-5,~~
23 ~~1989,~~ but shall at minimum determine the cost factor at least
24 once each fiscal year.

25 Sec. 3. Section 455B.474, subsection 1, paragraphs d and
26 f, Code 1991, are amended by striking the paragraphs and
27 inserting in lieu thereof the following:

28 d. Establishing criteria for classifying sites
29 contaminated by tank releases.

30 (1) The classification system shall consider the actual or
31 potential threat to public health and safety, and to the
32 environment posed by the contaminated site and shall take into
33 account relevant factors, including all of the following:

34 (a) The actual or potential contamination of groundwater
35 sources used as source waters for private or public drinking

1 water supplies.

2 (b) The actual or potential contamination of surface water
3 bodies to levels that would violate surface water quality
4 standards adopted under section 455B.173.

5 (c) The actual or potential concentration of harmful or
6 explosive petroleum substances or vapors affecting structures
7 or utility installations.

8 (2) A site shall be classified as either high risk, low
9 risk, or no risk.

10 (a) A site shall be considered high risk if contamination
11 is present, and if the contamination is actually affecting or
12 likely to affect groundwater which is used as a source water
13 for private or public water supplies to a level rendering them
14 unsafe for human consumption; if the contamination is actually
15 affecting or likely to affect surface water bodies to a level
16 where surface water quality standards will be exceeded; or if
17 harmful or explosive concentrations of petroleum substances or
18 vapors affecting structures or utility installations exist or
19 are likely to occur.

20 (b) A site shall be considered low risk if the
21 contamination is above action level standards, but high risk
22 conditions do not exist and are not likely to occur.

23 (c) A site shall be considered no risk if contamination is
24 below action level standards and high risk conditions do not
25 exist and are not likely to occur.

26 (d) Sites may be reclassified as changing conditions
27 warrant.

28 f. Establishing corrective action response requirements
29 for sites contaminated by tank releases. The corrective
30 action response requirements shall include all of the
31 following:

32 (1) A requirement that tank owners or operators prepare a
33 site cleanup report which will do all of the following:

34 (a) Identify the nature and level of contamination
35 resulting from the release.

1 (b) Determine the degree of risk posed by the site
2 relative to the site classification system adopted pursuant to
3 paragraph "d".

4 (c) Determine the need for corrective action.

5 (d) Identify the corrective action options which shall
6 address the practical feasibility of implementation, costs,
7 expected length of time to implement, and environmental
8 benefits.

9 (2) To the fullest extent practicable, allow for the use
10 of generally available hydrological, geological,
11 topographical, and geographical information and minimize site
12 specific testing in preparation of the site cleanup report.

13 (3) Require that at a minimum the source of a release be
14 stopped either by repairing, upgrading, or closing the tank
15 and that free product be removed or contained on site.

16 (4) High risk sites shall comply with corrective action
17 standards.

18 (5) Low risk sites shall be monitored, not less than once
19 nor more than four times annually. Active remediation of the
20 contamination shall not be required. The site may be upgraded
21 to a high risk classification based on site monitoring if
22 conditions warrant. If, after five years of monitoring, no
23 significant increase in contamination results, the site shall
24 be reclassified as a no risk site.

3267 25 (6) Notwithstanding other provisions to the contrary and
26 to the extent permitted by federal law, the department shall
27 allow for bioremediation of soils and groundwater.

28 (7) Replacement or upgrade of a tank on a site classified
29 as a high or low risk site shall be equipped with a secondary
30 containment system with monitoring of the space between the
320831 primary and secondary containment structures.

32 (8) The commission and the board shall cooperate to ensure
33 that remedial measures required by the corrective action rules
34 adopted pursuant to this paragraph are reasonably cost-
35 effective and shall, to the fullest extent possible, avoid

1 duplicating and conflicting requirements.

2 Sec. 4. Section 455B.474, subsection 1, Code 1991, is
3 amended by adding the following new paragraph:

4 NEW PARAGRAPH. h. Issuance of a monitoring certificate
5 for sites classified as low risk pursuant to paragraph "f". A
6 monitoring certificate shall be valid for no longer than five
7 years from the date of issuance. A site which has been issued
8 a monitoring certificate shall not be eligible to receive a
9 clean site certificate under section 455B.304, subsection 15,
10 until the site is reclassified as a no risk site.

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11 Sec. 5. Section 455G.2, subsection 4, Code 1991, is
12 amended to read as follows:

13 4. "Corrective action" means an action taken to minimize,
14 eliminate, or clean up a release to protect the public health
15 and welfare or the environment. Corrective action includes,
16 but is not limited to, excavation of an underground storage
17 tank for the purposes of repairing a leak or removal of a
18 tank, removal of contaminated soil, and cleansing of
19 groundwaters or surface waters. Corrective action does not
20 include replacement of an underground storage tank or other
21 capital improvements to the tank. Corrective action
22 specifically excludes third-party liability. Corrective
23 action includes the expenses incurred to prepare ~~an-assessment~~
24 plan a site cleanup report for approval by the department of
25 natural resources detailing the planned response to a release
26 or suspected release, but not necessarily all actions proposed
27 to be taken by ~~an-assessment-plan a site cleanup report~~.

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28 Sec. 6. Section 455G.2, Code 1991, is amended by adding
29 the following new subsection:

30 NEW SUBSECTION. 6A. "Free product" means a regulated
31 substance that is present as a nonaqueous phase liquid.

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32 Sec. 7. Section 455G.4, subsection 3, Code 1991, is
33 amended by adding the following new paragraph:

34 NEW PARAGRAPH. f. Rules to facilitate and encourage the
35 use of community remediation whenever possible shall be

1 adopted.

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2 Sec. 8. Section 455G.9, subsection 1, paragraph a,
3 subparagraph (2), Code 1991, is amended to read as follows:

4 (2) Corrective action, up to one million dollars total,
5 and subject to prioritization rules as established pursuant to
6 section 455G.12A, for a release reported to the department of
7 natural resources after May 5, 1989, and on or before October
8 26, 1990. Third-party liability is specifically excluded from
9 remedial account coverage. Corrective action coverage
10 provided pursuant to this paragraph may be aggregated with
11 other financial assurance mechanisms as permitted by federal
12 law to satisfy required aggregate and per occurrence limits of
13 financial responsibility for both corrective action and third-
14 party liability, if the owner's or operator's effective
15 financial responsibility compliance date is prior to October
16 26, 1990. For purposes of calculating corrective action
17 costs, corrective action shall include the cost of a tank
18 system upgrade required by section 455B.474, subsection 1,
19 paragraph "f", subparagraph (7). Payments shall be limited to
* 20 a maximum of fifteen thousand dollars for any one site.

21 Sec. 9. Section 455G.9, subsection 1, paragraph a, Code
22 1991, is amended by adding the following new subparagraph:

23 NEW SUBPARAGRAPH. (4) One hundred percent of the costs of
24 corrective action for a release reported to the department of
25 natural resources on or before July 1, 1991, if the owner or
26 operator is not a governmental entity and is a not-for-profit
27 organization exempt from federal income taxation under section
28 501(c)(3) of the Internal Revenue Code with a net annual
29 income of twenty-five thousand dollars or less for the year
30 1990, and if the tank which is the subject of the corrective
31 action is a registered tank and is under one thousand one
32 hundred gallons capacity.

33 Sec. 10. Section 455G.9, subsection 1, Code 1991, is
34 amended by adding the following new paragraph:

* 35 NEW PARAGRAPH. g. One hundred percent of the costs

1 incurred by the board under section 455G.12A, subsection 2,
2 unnumbered paragraph 2, for site cleanup reports.

32077 3 Sec. 11. Section 455G.9, subsection 4, Code 1991, is
4 amended by striking the subsection and inserting in lieu
5 thereof the following:

6 4. MINIMUM COPAYMENT SCHEDULE.

32077 a. An owner or operator who reports a release to the
8 department of natural resources after May 5, 1989, and on or
9 before October 26, 1990, shall be required to pay the
10 following copayment amounts:

11 (1) If a site's total anticipated expenses are not
12 reserved for more than, or actual expenses do not exceed one
13 hundred thousand dollars, the owner or operator shall pay five
14 thousand dollars for the costs of corrective action for that
15 release.

16 (2) If a site's total anticipated expenses are reserved
17 for more than, or actual expenses exceed one hundred thousand
18 dollars, the owner or operator shall pay a minimum of five
19 thousand dollars plus the greater of five thousand dollars or
20 thirty-five percent of the total costs of the corrective
21 action for that release which exceed one hundred thousand
22 dollars.

23 b. The remedial account shall pay the remainder, as
24 required by federal regulations, of the total costs of the
25 corrective action for that release, except that a county shall
26 not be required to pay a copayment in connection with a
27 release situated on property acquired in connection with
28 delinquent taxes, as provided in subsection 1, paragraph "d",
29 unless subsequent to acquisition the county actively operates
30 a tank on the property for purposes other than risk
31 assessment, risk management, or tank closure.

32 Sec. 12. Section 455G.9, subsection 6, unnumbered
33 paragraph 1, Code 1991, is amended to read as follows:

34 If an owner or operator ceases to own or operate a tank
35 site for which remedial account benefits were received within

1 ~~five~~ ten years of the receipt of any account benefit and sells
2 or transfers a property interest in the tank site for an
3 amount which exceeds one hundred twenty percent of the
4 precorrective action value, the owner or operator shall refund
5 to the remedial account an amount equal to ninety percent of
6 the amount in excess of one hundred twenty percent of the
7 precorrective action value up to a maximum of the expenses
8 incurred by the remedial account associated with the tank site
9 plus interest, equal to the interest for the most recent
10 twelve-month period for the most recent bond issue for the
11 fund, on the expenses incurred, compounded annually. Expenses
12 incurred by the fund are a lien upon the property recordable
13 and collectible in the same manner as the lien provided for in
14 section 424.11 at the time of sale or transfer, subject to the
15 terms of this section.

16 Sec. 13. Section 455G.9, subsection 7, Code 1991, is
17 amended to read as follows:

18 7. Recurring releases treated as a newly reported release.
19 A release shall be treated as a release reported on or after
20 May 5, 1989, if prior to May 5, 1989, a release was reported
21 to the department, corrective action was taken pursuant to an
22 ~~assessment-plan~~ a site cleanup report approved by the
23 department, and the work performed was accepted by the
24 department. For purposes of this subsection, work performed
25 is accepted by the department if the department did not order
26 further action within ninety days of the date on which the
27 department had notice that the work was completed, unless the
28 department clearly indicated in writing to the owner,
29 operator, contractor, or other agent that additional work
30 would be required beyond that specified in the ~~assessment-plan~~
31 site cleanup report or in addition to the work actually
32 performed.

33 Sec. 14. Section 455G.9, Code 1991, is amended by adding
34 the following new subsection:

35 NEW SUBSECTION. 8. EXPENSES OF CLEANUP NOT REQUIRED.

1 When an owner or operator who is eligible for benefits under
2 this chapter is allowed by the department of natural resources
3 to monitor in place, the expenses incurred for cleanup beyond
4 the level required by the department of natural resources are
5 not covered under any of the accounts established under the
6 fund. The cleanup expenses incurred for work completed beyond
7 what is required is the responsibility of the person
8 contracting for the excess cleanup.

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9 Sec. 15. Section 455G.10, subsections 5 and 6, Code 1991,
10 are amended to read as follows:

11 5. As a condition of eligibility for financial assistance
12 from the loan guarantee account, a small business shall
13 demonstrate satisfactory attempts to obtain financing from
14 private lending sources. When applying for loan guarantee
15 account assistance, the small business shall demonstrate good
16 faith attempts to obtain financing from at least two financial
17 institutions. The board may first refer a tank owner or
18 operator to a financial institution eligible to participate in
19 the fund under section 455G.16; however, if no such financial
20 institution is currently willing or able to make the required
21 loan, the small business shall determine if any of the
22 previously contacted financial institutions would make the
23 loan in participation with the loan guarantee account. The
24 loan guarantee account may offer to guarantee a loan, may
25 offer a five-point interest rate buy-down, or provide other
26 forms of financial assistance to facilitate a private loan.

27 6. The maturity for each financial assistance package made
28 by the board pursuant to this chapter shall be the shortest
29 feasible term commensurate with the repayment ability of the
30 small business borrower. However, the maturity date of a loan
31 shall not exceed ~~ten~~ twenty years and the guarantee is
32 ineffective beyond the agreed term of the guarantee or ~~ten~~
33 twenty years from initiation of the guarantee, whichever term
34 is shorter.

35 Sec. 16. Section 455G.11, subsection 3, paragraph c, Code

1 1991, is amended to read as follows:

2 c. The applicant certifies in writing to the board that
3 the tank to be insured will be brought into compliance with
4 either paragraph "a" or "b", on or before October 26, ~~1992~~
5 1993, provided that prior to the provision of insurance
6 account coverage, the tank site tests release free. For a
7 tank qualifying for insurance coverage pursuant to this
8 paragraph at the time of application or renewal, the owner or
9 operator shall pay a per tank premium equal to two times the
10 normally scheduled premium for a tank satisfying paragraph "a"
11 or "b". An owner or operator who fails to comply as certified
12 to the board on or before October 26, ~~1992~~ 1993, shall not
13 insure that tank through the insurance account unless and
14 until the tank satisfies the requirements of paragraph "a" or
15 "b".

16 Sec. 17. Section 455G.11, subsection 6, Code 1991, is
17 amended by striking the subsection and inserting in lieu
18 thereof the following:

19 6. INSTALLER'S INSURANCE COVERAGE.

20 a. Coverage. The board shall offer insurance coverage
21 under the fund's insurance account to an installer of a
22 certified underground storage tank installation within the
23 state for an environmental hazard arising in connection with a
24 certified installation as provided in this subsection.
25 Coverage shall be limited to environmental hazard coverage for
26 both corrective action and third-party liability for a
27 certified tank installation within the state in connection
28 with a release from that tank.

29 b. Annual premiums. The annual premium shall be:

30 (1) For the year July 1, 1991, through June 30, 1992, two
31 hundred dollars per insured tank.

32 (2) For the year July 1, 1992, through June 30, 1993, two
33 hundred fifty dollars per insured tank.

34 (3) For the year July 1, 1993, through June 30, 1994,
35 three hundred dollars per insured tank.

1 (4) For subsequent years, an installer shall pay an
2 annually adjusted insurance premium to maintain coverage on
3 each tank previously installed or newly insured by the
4 insurance account. The board may only approve fund coverage
5 through the payment of a premium established on an actuarially
6 sound basis. If coverage is purchased for any part of a year
7 the purchaser shall pay the full annual premium.

8 c. Limits of coverage available. An installer may
9 purchase coverage up to one million dollars per occurrence and
10 two million dollars aggregate, subject to the terms and
11 conditions under this section and those adopted by the board.

12 d. Deductible. The insurance account may offer, at the
13 buyer's option, a range of deductibles. A ten thousand dollar
14 deductible policy shall be offered.

15 e. Excess coverage. An installer may purchase excess
16 coverage of up to five million dollars, within such limits and
17 upon such terms and conditions as determined by the board.

18 f. Certification of tank installations. The board shall
19 adopt certification rules requiring certification of a new
20 tank installation as a precondition to offering insurance to
21 an owner or operator or an installer. The board shall set in
22 the rule the effective date for the certification requirement.
23 Certification rules shall at minimum require that an
24 installation be personally inspected by an independent
25 licensed engineer, local fire marshal, state fire marshal's
26 designee, or other person who is unaffiliated with the tank
27 owner, operator, or installer, who is qualified and authorized
28 by the board to perform the required inspection and that the
29 tank and installation of the tank comply with applicable
30 technical standards and manufacturer's instructions and
31 warranty conditions. An inspector shall not be an owner or
32 operator of a tank, or an employee of an owner, operator, or
33 installer.

34 Sec. 18. Section 455G.11, subsection 7, Code 1991, is
35 amended to read as follows:

1 7. COVERAGE ALTERNATIVES. The board shall provide for
2 insurance coverage to be offered to installers for a tank
3 installation certified pursuant to subsection 6, through at
4 ~~least-one~~ both of the following methods:

5 a. Directly through the fund with premiums and deductibles
6 as provided ~~for-owners-and-operators~~ in subsection 4 6.

7 b. In cooperation with a private insurance carrier with
8 excess or stop loss coverage provided by the fund to reduce
9 the cost of insurance to such installers, and including such
10 other terms and conditions as the board deems necessary and
11 convenient to provide adequate coverage for a certified tank
12 installation at a reasonable premium.

13 The insurance coverage offered pursuant to this subsection
14 shall, at a minimum, cover environmental hazards for both
15 corrective action and third-party liability.

16 Sec. 19. Section 455G.11, Code 1991, is amended by adding
17 the following new subsection:

18 NEW SUBSECTION. 10. PROPERTY TRANSFER INSURANCE.

19 a. Additional cleanup requirements. An owner, operator,
20 landowner, or financial institution may purchase insurance
21 coverage under the insurance account to cover environmental
22 damage caused by a tank in the event that governmental action
23 requires additional cleanup beyond action level standards in
24 effect at the time a certificate of clean was issued under
25 section 455B.304, subsection 15, or a monitoring certificate
26 was issued under section 455B.474, subsection 1, paragraph
27 "h".

28 b. Eligibility for coverage. An owner, operator,
29 landowner, or financial institution, subject to underwriting
30 requirements and such terms and conditions deemed necessary
31 and convenient by the board, may purchase insurance coverage
32 from the insurance account to provide proof of financial
33 responsibility if the following conditions are satisfied:

34 (1) A certificate of clean has been issued for the site
35 under section 455B.304, subsection 15, or a monitoring

1 certificate has been issued for the site under section
2 455B.474, subsection 1, paragraph "h". Property transfer
3 coverage shall be effective on a monitored site only for the
4 time period for which monitoring is allowed as specified in
5 the monitoring certificate. A site which has not been issued
6 a certificate of clean or a monitoring certificate shall not
7 be eligible for property transfer coverage.

8 (2) The tank location is not covered by other
9 environmental hazard liability insurance coverage, or is
10 eligible for remedial benefits as provided under section
11 455G.9.

12 (3) The environmental damage is not caused by a new
13 release.

14 (4) The additional cleanup is required to meet new
15 corrective action level standards mandated by governmental
16 action.

17 c. Premiums. The annual premium for insurance coverage
18 shall be two hundred fifty dollars per party, per location,
19 with an overall limit of liability per site of five hundred
20 thousand dollars. The premiums are fully earned. Each party
21 purchasing coverage at that site will have the total limit of
22 liability prorated over the total limit among the policies
23 issued, so as to avoid stacking beyond the total coverage
24 limit of five hundred thousand dollars. If coverage is
25 purchased for any part of a year, the purchaser shall pay the
26 full annual premium.

27 After June 30, 1994, an owner, operator, landowner, or
28 financial institution applying for coverage shall pay an
29 annually adjusted insurance premium for coverage by the
30 insurance account. The board may only approve fund coverage
31 through the payment of a premium established on an actuarially
32 sound basis.

33 d. Coverage exclusions. Property transfer insurance
34 coverage offered under this subsection does not include
35 coverage of the following:

- 1 (1) Third-party liability.
- 2 (2) Cleanup beyond the actual costs associated with the
- 3 site.
- 4 (3) Loss of use of the property and other economic
- 5 damages.
- 6 (4) Costs associated with additional remediation required
- 7 by a voluntary change in usage of the site.
- 8 (5) Cleanup costs for additional corrective action
- 9 required due to the spread of contamination on a site which
- 10 has been issued a monitoring certificate.

11 e. Annual monitoring. Annual monitoring is required, for

12 any site for which coverage is purchased. Failure to comply

13 with monitoring as prescribed by the board will invalidate

14 insurance coverage under this subsection. For a site which

15 has been issued a monitoring certificate, the annual

16 monitoring requirements imposed under this paragraph shall be

17 satisfied by the annual monitoring requirements imposed under

18 the corrective action rules for a site which is allowed to

19 monitor in place.

20 f. Transfer of coverage. Coverage may be transferred upon

21 payment of a transfer fee.

22 g. Rules. The board shall adopt rules pursuant to chapter

23 17A as necessary to implement this subsection.

24 h. Federal approval. Property transfer insurance coverage

25 issued under this subsection is conditioned upon continued

26 approval by the United States environmental protection agency

27 of the state's underground storage tank program.

3201 28 Sec. 20. Section 455G.12A, subsection 2, Code 1991, is

29 amended by adding the following new unnumbered paragraph:

30 NEW UNNUMBERED PARAGRAPH. The board shall have authority

31 to contract for site cleanup reports. The board's

32 responsibility for site cleanup reports is limited to those

33 site cleanup reports subject to approval by the department of

34 natural resources and required in connection with the

35 remediation of a release which is eligible for benefits under

1 section 455G.9. The site cleanup report shall address
2 existing and available remedial technologies and the costs
3 associated with the use of each technology.

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4 Sec. 21. Section 455G.13, Code 1991, is amended by adding
5 the following new subsection:

6 NEW SUBSECTION. 4A. RECOVERY OR SUBROGATION --INSTALLERS.
7 Notwithstanding any other provision contained in this chapter,
8 the board or a person insured under the insurance account has
9 no right of recovery or right of subrogation against an
10 installer insured by the fund for the tank giving rise to the
11 liability other than for recovery of any deductibles paid.

12 Sec. 22. Section 455G.17, Code 1991, is amended by
13 striking the section and inserting in lieu thereof the
14 following:

15 455G.17 INSPECTORS -- GROUNDWATER PROFESSIONALS -- REGIS-
16 TRATION AND CERTIFICATION.

17 1. The board shall adopt rules pursuant to chapter 17A
18 requiring that all underground storage tank inspectors,
19 persons performing certified tank installation, and
20 groundwater professionals register with the board.

21 2. The board shall adopt certification procedures and
22 standards for the following:

23 a. Underground storage tank installation inspectors.

24 Underground storage tank installation inspectors shall consist
25 of the following persons:

26 (1) A registered engineer. If the installation of
27 underground storage tanks is within the scope of practice of a
28 particular class of registered engineer, additional training
29 shall not be required for that class. A registered engineer
30 for whom underground storage tank installation is within the
31 scope of practice shall be considered an "authorized
32 inspector" rather than a "certified inspector".

33 (2) A fire marshal, or other person unaffiliated with the
34 tank owner, operator, or installer.

35 b. Groundwater professionals. A groundwater professional

1 is a person who provides subsurface soil contamination and
2 groundwater consulting services or who contracts to perform
3 remediation, corrective action services, or tank removal and
4 shall consist of the following persons:

5 (1) A registered engineer.

6 (2) A professional geologist certified by a national
7 organization.

32097 8 3. Certification requirements for underground storage tank
9 installation inspectors shall include training from approved
10 curricula adopted by the board. The board shall adopt
11 approved training curricula in such a manner that
12 installations made by underground storage tank installation
13 inspectors are certified under section 455G.11, subsection 6.

14 4. Certification requirements for groundwater
15 professionals shall include, but are not limited to,
16 experience and proficiency in the groundwater field by
17 demonstration of three or more years of direct experience, by
18 review of demonstrated skills by a peer committee, or by an
19 examination.

20 5. Certification requirements for groundwater
21 professionals who are conducting corrective actions shall
22 include training from approved curricula adopted by the board.
23 The board shall adopt curricula which is consistent with the
24 corrective action requirements.

25 6. A person's failure to register with the board shall not
26 affect the person's certification, or the certification of an
27 otherwise eligible installation performed by that person, but
28 the board may provide for a civil penalty of no more than
29 fifty dollars for the failure to register.

30 7. An interested person may obtain a list of registrants
31 from the board.

32 8. The board may impose a fee for registration based upon
33 the costs of administering the registration of persons under
34 this section.

35 Sec. 23. NEW SECTION. 455G.18 ENVIRONMENTAL DAMAGE

1 OFFSET.

2 1. The fund's payment of a remedial claim by an owner or
3 operator reporting a release under section 455G.9, subsection
4 1, paragraph "a", subparagraph (2), shall be subject to an
5 environmental damage offset if the owner or operator closed or
6 removed the tank and did not replace it. An owner or operator
7 who has declared bankruptcy shall not be subject to the
8 offset. A site which is not being used for commercial
9 purposes is not subject to the offset unless offered for sale.
10 If a site is exempt under this subsection from the offset, but
11 is later subject to the lien imposed under section 455G.13,
12 subsection 5, the amount of the lien shall include the amount
13 of the offset which would have been imposed if the site was
14 not exempt during remediation.

15 2. The offset shall be equal to the average annual
16 environmental protection charge on diminution imposed under
17 chapter 424 which would be paid for tanks of similar size.
18 The offset shall be based on the rate of diminution presently
19 in force, regardless of the date on which the tank was closed.
20 The offset shall apply to the release which is still subject
21 to remedial fund payments under section 455G.9.

22 3. Offsets under this section shall be credited to cost
23 recovery enforcement proceeds under section 455G.8, subsection
24 5.

25 4. The board shall adopt rules as necessary and convenient
26 for the implementation and administration of the offset.

32017
27 Sec. 24. This Act, being deemed of immediate importance,
28 takes effect upon enactment.

29

EXPLANATION

30 This bill makes several changes relating to the regulation
31 of and financial assistance provided to the owners and
32 operators of petroleum underground storage tanks. Sections 1
33 and 2 of the bill raise the cap on revenue derived from the
34 use tax on motor vehicles, trailers, and motor vehicle
35 accessories from a maximum of \$3,000,000 per quarter to a

1 maximum of \$3,825,000 per quarter. This change is projected
2 to generate an annual average revenue increase of \$3,300,000
3 from the current annual amount of \$12,000,000 to \$15,300,000.

4 Section 3 of the bill requires the environmental protection
5 commission to establish criteria to classify contaminated
6 sites, based upon the degree of contamination. The
7 classification system must consider the actual or potential
8 threat to public health and safety and to the environment
9 posed by the site.

10 A site is classified as either a high, low, or no risk
11 site. A site is considered a high risk site if contamination
12 is present and is likely to affect groundwater which is used
13 as a source water for private or public water supplies to a
14 level rendering them unsafe for human consumption, if the
15 actual or potential contamination of surface water bodies is
16 at a level that would violate surface water quality standards
17 or if the actual or potential concentration of harmful or
18 explosive petroleum substances or vapors is likely to affect
19 structures or utility installations.

20 A site is classified as a low risk site if the
21 contamination is above action level standards, but high risk
22 conditions do not exist and are not likely to occur. A site
23 is a no risk site if contamination is below action level
24 standards and high risk conditions do not exist and are not
25 likely to occur. Sites can be reclassified.

26 In addition, section 3 requires the environmental
27 protection commission to establish corrective action response
28 requirements for contaminated sites. Corrective action
29 response requirements include requiring an owner or operator
30 to prepare a site cleanup report to identify the nature and
31 level of the contamination, to determine the degree of risk
32 and classify the site accordingly, to determine the need for
33 corrective action, and to identify corrective action options.

34 The rules must allow for use of generally available
35 hydrological, geological, topographical, and geographical

1 information and minimize site specific testing. At a minimum,
2 the source of the release must be stopped either by repairing,
3 upgrading, or closing the tank and free product must be
4 removed or contained on site. Low risk sites can be
5 monitored, not less than once nor more than four times
6 annually, and active remediation of the site is not required.
7 After five years, if the low risk site shows no significant
8 increase in contamination results, it is reclassified as a no
9 risk site. Bioremediation of soils and groundwater is
10 specifically allowed, to the extent permitted by federal law.

11 A tank which is used as a replacement or an upgrade on a
12 low or high risk site must be equipped with a secondary
13 containment system with monitoring of the space between the
14 primary and secondary containment structures. Section 8 of
15 the bill provides that secondary containment systems required
16 for monitoring are a cost of corrective action and up to
17 \$15,000 of the cost is paid for as a remedial benefit. The
18 rules also require that the commission and the board cooperate
19 to ensure that remedial measures are reasonably cost-
20 effective, are not duplicative and do not conflict with each
21 other.

22 Section 4 requires the environmental protection commission
23 to establish rules for the issuance of monitoring
24 certificates.

25 Sections 5 and 13 change the terminology used to describe
26 the initial assessment of action needed to be taken on a site
27 from a site assessment plan to a site cleanup report.

28 Section 6 of the bill adds the definition of "free product"
29 to chapter 455G and defines it as a regulated substance that
30 is present as a nonaqueous phase liquid, e.g., a liquid that
31 is not dissolved in water.

32 Section 7 requires the board to adopt rules to facilitate
33 and encourage the use of community remediation whenever
34 possible.

35 Section 9 provides for payment of 100 percent of the

1 corrective action costs for a release reported on or before
2 July 1, 1991, of a nongovernmental entity which is an I.R.C. §
3 501(c)(3) not-for-profit organization with a net annual income
4 for 1990 of \$25,000 or less, if the entity has a tank that is
5 registered and if the tank is under 1,100 gallons capacity.

6 This bill changes the structure for corrective action
7 payments.

8 At the present time an owner or operator pays the greater
9 of \$5,000 or 25 percent of the corrective action costs,
10 including the costs of preparing a cleanup report. A cleanup
11 report sets out in detail the planned response to a release or
12 suspected release and is required to be approved by the
13 department of natural resources. Sections 10 and 20 give the
14 responsibility for contracting for the site cleanup reports to
15 the Iowa comprehensive petroleum underground storage tank fund
16 board and requires the fund to pay 100 percent of the costs
17 for preparation of the cleanup reports. The cleanup reports
18 must address existing and available remedial technologies and
19 the costs associated with the use of each technology.

20 Section 11 of the bill changes the copayment amounts for
21 corrective action costs by requiring an owner or operator to
22 pay \$5,000 for corrective action costs up to \$100,000. If a
23 site's expenses exceed \$100,000, the owner or operator pays
24 the initial \$5,000 in addition to the greater of \$5,000 or 35
25 percent of the total costs of the corrective action which
26 exceed \$100,000.

27 Section 12 of this bill extends the lien for remedial
28 expenses incurred by the fund, on property which was the
29 subject of corrective action from five years to 10 years.

30 Section 14 states that when monitoring in place is allowed,
31 the fund will not pay for cleanup which goes beyond that which
32 is required by current action level standards.

33 Section 15 makes changes to the loan guarantee account by
34 allowing the board to offer a five-point interest rate buy-
35 down as an option to facilitate private loans and by extending

1 loan maturity dates from 10 to 20 years.

2 Section 16 extends the tank upgrade deadlines from October
3 26, 1992, to October 26, 1993.

4 Sections 17, 18, and 19 make changes to the insurance
5 account by including coverage for installers and for property
6 transfers.

7 Installer's coverage is offered for certified tank
8 installations within the state and covers environmental
9 damages arising from installation of an insured tank.
10 Coverage is limited to corrective action and third-party
11 liability for up to \$1,000,000 per occurrence and \$2,000,000
12 in the aggregate. The installer's premium schedule is based
13 on an annual per tank premium which is the same as that
14 required for owners and operators under the insurance account.
15 Deductibles are the same as offered to owners and operators
16 under the insurance account and excess coverage may be
17 purchased as determined by the board.

18 Property transfer insurance is offered for cleanup of
19 environmental damage required on a site which has been allowed
20 to monitor in place and issued a monitoring certificate or
21 which has been issued a certificate of clean, if governmental
22 action later mandates additional cleanup. In order for an
23 owner, operator, landowner, or financial institution to obtain
24 property transfer coverage a certificate of clean or a
25 monitoring certificate must have been issued. In addition,
26 the site must not be covered by any other environmental hazard
27 liability insurance coverage or be receiving benefits under
28 the remedial account. The environmental damage cannot be
29 caused by a new release and the increased cleanup requirements
30 must be mandated by governmental action.

31 The annual premium for property transfer insurance coverage
32 is \$250 per party, per site, with an overall limit of
33 liability per site of \$500,000. If more than one party has
34 coverage on a site, the coverage will be prorated between the
35 parties so that the total limit of coverage per site is

1 \$500,000. Coverage does not include third-party liability,
2 cleanup costs beyond the actual costs associated with the site
3 in question, loss of use of the property and other economic
4 damages, the costs associated with additional remediation
5 which is necessitated by a voluntary change in usage of the
6 site, or the costs associated with additional remediation of a
7 monitored site when contamination spreads.

8 Annual monitoring is required for any insured site.

9 Failure to monitor will result in invalidation of the
10 insurance coverage. For a site which has been issued a
11 monitoring certificate, the annual monitoring requirement to
12 obtain property transfer insurance is satisfied by the annual
13 monitoring requirement imposed under the corrective action
14 rules for sites which are allowed to monitor in place. A
15 policy may be transferred between parties upon payment of a
16 transfer fee. The board is authorized to adopt rules to
17 implement the addition of property transfer insurance coverage
18 to the insurance account. Property transfer insurance is
19 conditioned upon continued federal approval of Iowa's
20 underground storage tank program.

21 Section 21 states that the board or another person who is
22 insured under the account has no right of subrogation or right
23 of recovery against an installer who had insurance on the tank
24 giving rise to the liability other than for recovery of any
25 deductibles.

26 Section 22 of this bill requires the board to adopt
27 certification and registration procedures for groundwater
28 professionals, in a similar manner as is currently applicable
29 to underground storage tank installers. A groundwater
30 professional is a person who provides subsurface soil
31 contamination and groundwater consulting services, or a person
32 who contracts to perform remediation, corrective action
33 services, or tank removal. At minimum, a groundwater
34 professional must be registered as a professional engineer or
35 certified as a professional geologist. The standards for

1 certification include experience and proficiency in the
2 groundwater field demonstrated by a number of years of direct
3 experience, by review of demonstrated skills, or by an
4 examination. A civil penalty of up to \$50 is applicable for
5 failure to register with the board as a groundwater
6 professional.

7 Section 23 of the bill imposes an environmental damage
8 offset upon owners or operators who reported a release to the
9 department of natural resources between May 5, 1989, and
10 October 26, 1990, and who closed or removed the tank and did
11 not replace it. An owner or operator who has declared
12 bankruptcy is not subject to the offset. If the site is not
13 being used for commercial purposes it is not subject to the
14 offset unless offered for sale. If the site is exempt, but is
15 later sold, a lien on the site shall include the amount of
16 offset which would have been imposed if the site had not been
17 exempted. The offset is based on a rate equal to the average
18 environmental protection charge on diminution paid by an owner
19 or operator with similar sized tanks. The offset applies to
20 any release which is subject to remedial fund payments. An
21 offset is credited against benefits paid by the fund. The
22 board is required to adopt rules to implement and administer
23 the offset.

24 Section 24 provides that the bill becomes effective upon
25 enactment.

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SENATE FILE 362
FISCAL NOTE

A fiscal note for Senate File 362 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 362 changes several aspects of the State's Leaking Underground Storage Tank Program. The bill contains the following Sections with potential fiscal effects.

Sections 1 and 2

Raises the cap on the total amount raised from the petroleum diminution charge from \$12.0 million to \$15.3 Million per year.

Section 3

Establishes categories of contamination for underground storage tank sites.

Sections 8 and 10

Includes the cost of the site cleanup plan (site assessment plan) and the cost of upgraded tanks (up to \$15,000) as costs covered by the underground storage tank program.

Section 9

Fund coverage is extended to 100% of the cost of remediation for certain non-profit entities.

Section 11

Reduces the co-payment required for leaks covered by the Remedial Account. If a cleanup is below \$100,000, the co-payment is \$5,000. If the cleanup is above \$100,000, the co-payment is \$5,000 plus the greater of \$5,000 or 35% of the cost above \$100,000.

Section 15

Provides for a 5% interest buydown on loans for new tanks.

Section 16

Extends the deadline for tank upgrades needed to qualify for the insurance program by 1 year.

Section 17 and 19

Extends eligibility for Insurance Account coverage to installers of underground storage tanks and to transfers of certain property monitored through the program.

Section 20

Allows the Iowa Comprehensive Underground Storage Tank Fund Board to contract for site cleanup reports.

Section 22

-2-

Requires the registration and certification of groundwater professionals.

Section 23

Requires certain entities that benefit from the Remedial Account, but have not been required to pay the diminution charge, to pay an environmental damage offset fee.

Fiscal Effect

TOTAL PROGRAM EXPENSES

Present Program Cost Projection	+ \$324,800,000
System Upgrade Program (Section 8)	+ \$ 27,000,000
Site Cleanup Report Included (Section 10)	+ \$ 18,400,000
5% and 65% Co-payment (Section 11)	+ \$ 52,500,000
Environmental Damage Offset Fee (Section 23)	- \$ 7,000,000
Cost Containment Provisions (Section 3)	- \$ 80,000,000
	=====
Program Cost Projection Based on SF 362	\$335,700,000

ANNUAL PROGRAM INCOME

Present Annual Program Income	+ \$ 12,000,000
Income Increase (Sections 1 & 2)	+ \$ 3,300,000
% Interest Buydown (Section 15)	- \$ 1,900,000
	=====
Program Income Projection Based on SF 362	\$ 13,400,000

The other changes are not projected to have a significant fiscal impact on the program. Raising the cap on the amount of income generated by the Diminution Fee from \$12 million to \$15.3 million will raise the per gallon charge from 0.85 cents to 1.00 cents per gallon. The interest rate buydown provisions will reduce the income by \$1,900,000 per year. Based on present interest rates, the \$13.4 million annual income stream should fund \$130 million to \$140 million in program costs. This would leave the program \$200 million underfunded. However, the program can be funded in the short run through the level of the diminution fee contained in this bill. It is projected that a diminution fee of more than 2.0 cents per gallon will eventually be needed to fully fund the program under current law and as current law is amended by this bill.

Source: Iowa Comprehensive Underground Storage Tank Fund Board

(LSB 1922sv.2, JWR)

FILED MARCH 27, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 362

S-3208

- 1 Amend Senate File 362 as follows:
- 2 1. Page 3, line 31, by inserting after the word
- 3 "structures" the following: "or other board approved
- 4 tank system or methodology".

By RICHARD F. DRAKE
MICHAEL E. BRONSTAL

S-3208 FILED MARCH 27, 1991
ADOPTED (p. 9/9)

SENATE FILE 362

S-3209

- 1 Amend Senate File 362 as follows:
- 2 1. Page 15, by inserting after line 7 the
- 3 following:
- 4 "(3) A graduate from an accredited 4-year college
- 5 or university with a degree in engineering, sciences,
- 6 or other closely related field."

By RALPH ROSENBERG

S-3209 FILED MARCH 27, 1991
ADOPTED (p. 9/20)

SENATE FILE 362

S-3201

Amend Senate File 362 as follows:

1. Page 5, by inserting after line 1 the following:
"Sec. ____ . NEW SECTION. 455G.5A CLEANUP STAFF TO BE EMPLOYED BY BOARD.
The board shall employ cleanup staff who shall be responsible for conducting the remedial action necessary to comply with this chapter. The staff shall consist of engineers and other technical environmental professionals who have experience in soil contamination and groundwater consulting or who have performed remediation and correction action services or tank removals.
Payments from the remedial account under section 455G.9 shall only be made for corrective action services performed by persons employed under this section and for goods used to perform the corrective action if purchased by persons employed under this section.
The board shall adopt rules under chapter 17A to implement this section."
2. By striking page 13, line 28, through page 14, line 3.
3. Page 16, by inserting after line 26, the following:
"Sec. ____ . Section 455G.12A, Code 1991, is repealed."
4. By renumbering as necessary.

By MIKE CONNOLLY

S-3201 FILED MARCH 27, 1991
LOST (p. 420)

SENATE FILE 362

S-3207

1 Amend Senate File 362 as follows:

2 1. Page 3, by inserting after line 24 the
3 following:

4 "(5A) Remediation or monitoring shall not be
5 required on no risk sites."

6 2. Page 4, by inserting after line 10, the
7 following:

8 "Sec. _____. Section 455G.1, subsection 2,
9 unnumbered paragraph 1, Code 1991, is amended to read
10 as follows:

11 This chapter applies to a petroleum underground
12 storage tank tanks for which an owner or operator is
13 required to maintain proof of financial responsibility
14 under federal or state law, from the effective date of
15 the regulation of the federal environmental protection
16 agency governing that tank, and not from the effective
17 compliance date, unless the effective compliance date
18 of the regulation is the effective date of the
19 regulation. An owner or operator of a petroleum
20 underground storage tank required by federal or state
21 law to maintain proof of financial responsibility for
22 that underground storage tank, ~~or who will be required~~
23 ~~on-a-date-definite,~~ is subject to this chapter and
24 chapter 424.

25 Sec. _____. Section 455G.1, subsection 2, paragraph
26 b, subparagraph (1), Code 1991, is amended by striking
27 the subparagraph and inserting in lieu thereof the
28 following:

29 (1) Underground storage tank systems not in
30 operation on or after the applicable compliance date.

31 Sec. _____. Section 455G.2, Code 1991, is amended by
32 adding the following new subsection:

33 NEW SUBSECTION. 3A. "Claimant" means an owner or
34 operator who has received assistance under the
35 remedial account or who has coverage under the
36 insurance account with respect to a release, or an
37 installer who has coverage under the insurance
38 account.

39 3. Page 4, line 29, is amended by striking the
40 word "subsection" and inserting the following:
41 "subsections".

42 4. Page 4, by inserting after line 31 the
43 following:

44 "NEW SUBSECTION. 11A. "Potentially responsible
45 party" means a person who may be responsible or liable
46 for a release for which the fund has made payments for
47 corrective action or third-party liability.

48 NEW SUBSECTION. 12A. "Release" means any
49 spilling, leaking, emitting, discharging, escaping,
50 leaching, or dispersing from an underground storage

S-3207

Page 2

1 tank into groundwater, surface water, or subsurface
2 soils."

3 5. Page 5, line 20, by striking the word
4 "fifteen" and inserting the following: "ten".

5 6. Page 5, line 35, by inserting after the word
6 "costs" the following: "up to twenty thousand
7 dollars".

8 7. Page 6, line 2, by inserting after the word
9 "reports." the following: "Costs of a site cleanup
10 report which exceed twenty thousand dollars shall be
11 considered a cost of corrective action and the amount
12 shall be included in the calculations for corrective
13 action cost copayments under section 455G.9,
14 subsection 4. The board shall have the discretion to
15 authorize a site cleanup report payment in excess of
16 twenty thousand dollars if the site is participating
17 in community remediation."

18 8. Page 6, by striking lines 12 through 15 and
19 inserting the following: "reserved for more than, or
20 actual expenses do not exceed eighty thousand dollars,
21 the owner or operator shall pay the greater of five
22 thousand dollars or twenty percent of the total costs
23 of corrective action for that release."

24 9. Page 6, line 17, by striking the words "one
25 hundred" and inserting the following: "eighty".

26 10. Page 6, by striking lines 18 and 19, and
27 inserting the following: "dollars, the owner or
28 operator shall pay the amount as designated in
29 subparagraph (1) plus".

30 11. Page 6, line 21, by striking the words "one
31 hundred" and inserting the following: "eighty".

32 12. Page 8, by inserting after line 8 the
33 following:

34 "Sec. ____ . Section 455G.9, Code 1991, is amended
35 by adding the following new subsection:

36 "NEW SUBSECTION. 9. OWNER OR OPERATOR DEFINED.
37 For purposes of receiving benefits under this section,
38 "owner or operator" means the then current tank owner
39 or operator or the owner of the land for which a
40 covered release was reported or application for
41 benefits was submitted on or before the relevant
42 application deadlines of this section."

43 13. Page 10, line 16, by striking the following:
44 ", within such limits and".

45 14. Page 11, line 12, by inserting after the word
46 "premium." the following: "An installer obtaining
47 insurance coverage pursuant to this paragraph, may
48 purchase coverage of up to one million dollars per
49 occurrence and two million dollars aggregate and may
50 purchase excess coverage of up to five million

S-3207

Page 3

1 dollars, subject to the terms and conditions as
2 determined by the board."

3 15. Page 14, by inserting after line 3 the
4 following:

5 "Sec. ____ . Section 455G.13, subsections 1 and 6,
6 and subsection 10, unnumbered paragraph 1, Code 1991,
7 are amended to read as follows:

8 1. FULL RECOVERY SOUGHT FROM OWNER. The board
9 shall seek full recovery from the owner, or operator
10 ~~of the tank which, or other party liable for the~~
11 ~~released the petroleum and which is the subject of a~~
12 ~~corrective action, for which the fund expends moneys~~
13 ~~for corrective action or third-party liability, and~~
14 ~~for all other costs or moneys expended by the fund in~~
15 ~~connection with the release. When federal cleanup~~
16 ~~funds are recovered, the funds are to be deposited to~~
17 ~~the remedial account of the fund and used solely for~~
18 ~~the purpose of future cleanup activities.~~

19 6. JOINDER OF PARTIES. The department of natural
20 resources has standing in any case or contested action
21 related to the fund or a tank to assert any claim that
22 the department may have regarding the tank at issue in
23 the case or contested action, and upon motion and
24 sufficient showing by a party to a cost recovery or
25 subrogation action provided for under this section,
26 the court or the administrative law judge shall join
27 to the action any person who may be liable for costs
28 and expenditures of the type recoverable pursuant to
29 this section.

30 Payment of a claim by the fund for corrective
31 action or third-party liability pursuant to this
32 chapter shall be conditioned upon the board's
33 acquiring by subrogation the rights of the claimant to
34 recover these costs and expenditures for corrective
35 action for which the fund has compensated the
36 claimant, from the person responsible or liable for
37 the unauthorized release payment from any potentially
38 responsible party. A claimant is precluded from
39 receiving double compensation for the same injury."

40 16. Page 14, line 5, by striking the word
41 "subsection" and inserting the following:
42 "subsections".

43 17. Page 14, by inserting after line 11 the
44 following:

45 "NEW SUBSECTION. 4B. RECOVERY OR SUBROGATION FOR
46 REMEDIATION -- INSTALLERS. Notwithstanding any other
47 provision in this chapter to the contrary, the board
48 has no right of recovery or right of subrogation
49 against an installer insured pursuant to section
50 455G.11, subsections 6 and 7, for the amounts paid by

S-3207

Page 1

1 the remedial account if the installer is currently
 2 installing underground storage tanks for third
 3 parties. This subsection does not apply to an
 4 installer who is self-insured. This subsection is
 5 only applicable to an installer who assigns to the
 6 board, upon receiving a written request for assignment
 7 from the board, any right, title, and interest that
 8 the installer may have to any insurance policy which
 9 provides coverage for the release. The assignment
 10 shall be limited to the amount of the remedial account
 11 payments and the installer retains any right, title,
 12 or interest in the insurance policy in all respects."

By MICHAEL E. GRONSTAL

EMIL J. HUSAK

RICHARD F. DRAKE

JOHN E. SOORHOLTZ

S-3207 FILED MARCH 27, 1991

ADOPTED (p. 112)

SENATE FILE 362

FISCAL NOTE

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A fiscal note for Amendment S-3207 to Senate File 362 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Amendment S-3207 to Senate File 362 makes several changes to the fiscal impact of the bill. These include:

1. Lowers the amount paid for certain tank upgrades from \$15,000 to \$10,000.
2. Requires the Fund to pay 100% of the first \$20,000 of the cost of a site cleanup report, with the remainder to be considered a part of the cost of cleanup.
3. Alters the co-payment required from the greater of \$5,000 or 5% of the first \$100,000 plus the greater of \$5,000 or 35% of the cost over \$100,000 to the greater of \$5,000 or 20% of the first \$80,000 and 35% of the cost over \$80,000.
4. Prohibits the Fund, under certain circumstances, from recovering damages from installers covered by the fund.

Fiscal Effect:

The Fiscal Note for Senate File 362 states that the program is underfunded by \$200 million. This amendment will trim between \$21.5 million and \$35.5 million from that figure. The changes in the co-payment are projected to save \$24.5 million, the changes in the system upgrade payment are projected to save \$9 million, and the \$20,000 cap on the site cleanup report is expected to save \$2 million. The prohibition against damage recovery from certain installers may cost as much as \$14 million.

Source: Iowa Underground Petroleum Storage Tank Fund Board

SENATE FILE 362

S-3129

1 Amend Senate File 362 as follows:

2 1. Page 13, line 29, by striking the word

3 "paragraph" and inserting the following:

4 "paragraphs".

5 2. Page 14, by inserting after line 3 the follow-

6 ing:

7 "NEW UNNUMBERED PARAGRAPH. The costs for

8 consulting fees for site cleanup reports shall not

9 exceed fifteen percent of the total costs of cleanup

10 on a site. If circumstances warrant, the

11 administrator shall allow for a waiver of the

12 consulting cost limitation. For purposes of this

13 paragraph, "consulting" means any professional service

14 relating to design and evaluation of a tank and the

15 commensurate cleanup."

By JIM KERSTEN

S-3129 FILED MARCH 18, 1991

Lost 3/27

SENATE FILE 362
FISCAL NOTE

A fiscal note for Senate File 362 as passed by the Senate is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 362 as passed by the Senate changes several aspects of the State's Leaking Underground Storage Tank Program. The bill contains the following Sections with potential fiscal effects.

Sections 1 and 2

Raises the cap on the total amount raised from the petroleum diminution charge from \$12.0 million to \$15.3 Million per year.

Section 3

Establishes categories of contamination for underground storage tank sites.

Sections 8, 11 & 13

Includes the cost of the site cleanup plan (up to \$20,000) and the cost of upgraded tanks (up to \$10,000) as costs covered by the underground storage tank program.

Section 12

Fund coverage is extended to 100% of the cost of remediation for certain non-profit entities.

Section 14

Reduces the co-payment required for leaks covered by the Remedial Account.

Section 19

Provides for a 5% interest buydown on loans for new tanks.

Section 21, 22 & 23

Extends eligibility for Insurance Account coverage to installers of underground storage tanks and to transfers of certain property monitored through the program.

Section 24

Allows the Iowa Comprehensive Underground Storage Tank Fund Board to contract for site cleanup reports.

Section 26

Under certain circumstances, relinquishes the right of recovery or subrogation against tank installers.

Section 28

Requires certain entities that benefit from the Remedial Account, but have not been required to pay the diminution charge, to pay an environmental damage

-2-

offset fee.

Fiscal Effect

TOTAL PROGRAM EXPENSES

Present Program Cost Projection	+ \$124,800,000
System Upgrade Program (Section 11)	+ \$ 18,000,000
Site Cleanup Report Included (Section 13)	+ \$ 16,000,000
Co-payment changes (Section 14)	+ \$ 28,000,000
Subrogation prohibition (Section 26)	+ \$ 14,000,000
Environmental Damage Offset Fee (Section 28)	- \$ 7,000,000
Cost Containment Provisions (Section 3)	- \$ 80,000,000
	=====

Program Cost Projection Based on SF 362 (Senate)	\$313,800,000
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ANNUAL PROGRAM INCOME

Present Annual Program Income	+ \$ 12,000,000
Income Increase (Sections 1 & 2)	+ \$ 3,300,000
5% Interest Buydown (Section 15)	- \$ 1,900,000
	=====

Program Income Projection Based on SF 362	\$ 13,400,000
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The other changes are not projected to have a significant fiscal impact on the program. Raising the cap on the amount of income generated by the Diminution Fee from \$12 million to \$15.3 million will raise the per gallon charge from 0.85 cents to 1.00 cents per gallon. The interest rate buydown provisions will reduce the income by \$1,900,000 per year. Based on present interest rates, the \$13.4 million annual income stream should fund \$130 million to \$140 million in program costs. This would leave the program at least \$175 million underfunded. However, the program can be funded in the short run through the level of the diminution fee contained in this bill. It is projected that a diminution fee of more than 2.0 cents per gallon will eventually be needed to fully fund the program under current law and as current law is amended by this bill.

Source: Iowa Comprehensive Underground Storage Tank Fund Board

(LSB 1922ov.5, JWR)

FILED APRIL 18, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR

House Energy Comm. (3623) - B. Pass 4/12/91
House Nixon 4/15/91 B. Pass 4/19/91

(AS AMENDED AND PASSED BY THE SENATE MARCH 27, 1991)

SENATE FILE 362
BY COMMITTEE ON ENVIRONMENT
AND ENERGY UTILITIES

(SUCCESSOR TO SSB 233)

= New Language by the Senate

* = Language Stricken by the Senate

Passed Senate, Date See Below Passed House, Date 5/2/91 (p. 2645)

Vote: Ayes _____ Nays _____ Vote: Ayes 99 Nays 0

Approved June 10, 1991

Passed per Conference Committee Report
Senate 5/12/91 (p. 1840) 47-0 A BILL FOR House 5/12/91 (p. 2457) 92-0

1 An Act relating to petroleum underground storage tanks by raising
2 the maximum use taxes deposited in the Iowa comprehensive
3 underground storage tank fund and adjusting the diminution
4 cost factor, establishing monitoring certificates, requiring
5 certain corrective action rules, defining free product,
6 providing for double-walled tanks as a corrective action cost,
7 providing for payment of corrective action costs for certain
8 not-for-profit organizations, establishing requirements for
9 site cleanup reports, changing copayment schedules for
10 remedial action, extending property liens, limiting cleanup
11 payments, extending loan maturity dates and offering a special
12 interest rate buy-down, extending upgrade dates, offering
13 insurance coverage for certified tank installers and for
14 property transfers, limiting rights of recovery and
15 subrogation under the insurance account, requiring
16 certification and registration of groundwater professionals,
17 imposing an environmental damage offset, and providing an
18 effective date.

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

20 Conference Committee Appointed
21 Repr. Hatch (Chair), Grubbs, Banks, Osterberg, & Hibbard 5/8 (p. 2191)
Senators Gronstal (Chair), Husak, Frazer, Brake, & McLaren 5/9 (p. 1730)

22

1 Section 1. Section 423.24, subsection 1, paragraph a, Code
2 1991, is amended to read as follows:

3 a. Twenty-five percent of all revenue derived from the use
4 tax on motor vehicles, trailers, and motor vehicle accessories
5 and equipment as collected pursuant to section 423.7, up to a
6 maximum of three million eight hundred twenty-five thousand
7 dollars per quarter, shall be deposited into the Iowa
8 comprehensive petroleum underground storage tank fund created
9 in section 455G.3, and the moneys so deposited are a
10 continuing appropriation for expenditure under chapter 455G,
11 and moneys so appropriated shall not be used for other
12 purposes.

13 Sec. 2. Section 424.3, subsection 5, Code 1991, is amended
14 to read as follows:

15 5. The cost factor is an amount per gallon of diminution
16 determined by the board pursuant to this subsection. The
17 board, after public hearing, may determine, or may adjust, the
18 cost factor to an amount reasonably calculated to generate an
19 annual average revenue, year to year, of ~~twelve~~ fifteen
20 million three hundred thousand dollars from the charge,
21 excluding penalties and interest, if any. The board may
22 determine or adjust the cost factor at any time ~~after-May-57~~
23 ~~1989~~, but shall at minimum determine the cost factor at least
24 once each fiscal year.

25 Sec. 3. Section 455B.474, subsection 1, paragraphs d and
26 f, Code 1991, are amended by striking the paragraphs and
27 inserting in lieu thereof the following:

28 d. Establishing criteria for classifying sites
29 contaminated by tank releases.

30 (1) The classification system shall consider the actual or
31 potential threat to public health and safety, and to the
32 environment posed by the contaminated site and shall take into
33 account relevant factors, including all of the following:

34 (a) The actual or potential contamination of groundwater
35 sources used as source waters for private or public drinking

1 water supplies.

2 (b) The actual or potential contamination of surface water
3 bodies to levels that would violate surface water quality
4 standards adopted under section 455B.173.

5 (c) The actual or potential concentration of harmful or
6 explosive petroleum substances or vapors affecting structures
7 or utility installations.

8 (2) A site shall be classified as either high risk, low
9 risk, or no risk.

10 (a) A site shall be considered high risk if contamination
11 is present, and if the contamination is actually affecting or
12 likely to affect groundwater which is used as a source water
13 for private or public water supplies to a level rendering them
14 unsafe for human consumption; if the contamination is actually
15 affecting or likely to affect surface water bodies to a level
16 where surface water quality standards will be exceeded; or if
17 harmful or explosive concentrations of petroleum substances or
18 vapors affecting structures or utility installations exist or
19 are likely to occur.

20 (b) A site shall be considered low risk if the
21 contamination is above action level standards, but high risk
22 conditions do not exist and are not likely to occur.

23 (c) A site shall be considered no risk if contamination is
24 below action level standards and high risk conditions do not
25 exist and are not likely to occur.

26 (d) Sites may be reclassified as changing conditions
27 warrant.

28 f. Establishing corrective action response requirements
29 for sites contaminated by tank releases. The corrective
30 action response requirements shall include all of the
31 following:

32 (1) A requirement that tank owners or operators prepare a
33 site cleanup report which will do all of the following:

34 (a) Identify the nature and level of contamination
35 resulting from the release.

1 (b) Determine the degree of risk posed by the site
2 relative to the site classification system adopted pursuant to
3 paragraph "d".

4 (c) Determine the need for corrective action.

5 (d) Identify the corrective action options which shall
6 address the practical feasibility of implementation, costs,
7 expected length of time to implement, and environmental
8 benefits.

9 (2) To the fullest extent practicable, allow for the use
10 of generally available hydrological, geological,
11 topographical, and geographical information and minimize site
12 specific testing in preparation of the site cleanup report.

13 (3) Require that at a minimum the source of a release be
14 stopped either by repairing, upgrading, or closing the tank
15 and that free product be removed or contained on site.

16 (4) High risk sites shall comply with corrective action
17 standards.

18 (5) Low risk sites shall be monitored, not less than once
19 nor more than four times annually. Active remediation of the
20 contamination shall not be required. The site may be upgraded
21 to a high risk classification based on site monitoring if
22 conditions warrant. If, after five years of monitoring, no
23 significant increase in contamination results, the site shall
24 be reclassified as a no risk site.

25 (5A) Remediation or monitoring shall not be required on no
26 risk sites.

27 (6) Notwithstanding other provisions to the contrary and
28 to the extent permitted by federal law, the department shall
29 allow for bioremediation of soils and groundwater.

30 (7) Replacement or upgrade of a tank on a site classified
31 as a high or low risk site shall be equipped with a secondary
32 containment system with monitoring of the space between the
33 primary and secondary containment structures or other board
34 approved tank system or methodology.

35 (8) The commission and the board shall cooperate to ensure

1 that remedial measures required by the corrective action rules
2 adopted pursuant to this paragraph are reasonably cost-
3 effective and shall, to the fullest extent possible, avoid
4 duplicating and conflicting requirements.

5 Sec. 4. Section 455B.474, subsection 1, Code 1991, is
6 amended by adding the following new paragraph:

7 NEW PARAGRAPH. h. Issuance of a monitoring certificate
8 for sites classified as low risk pursuant to paragraph "f". A
9 monitoring certificate shall be valid for no longer than five
10 years from the date of issuance. A site which has been issued
11 a monitoring certificate shall not be eligible to receive a
12 clean site certificate under section 455B.304, subsection 15,
13 until the site is reclassified as a no risk site.

14 Sec. 5. Section 455G.1, subsection 2, unnumbered paragraph
15 1, Code 1991, is amended to read as follows:

16 This chapter applies to a petroleum underground storage
17 tank tanks for which an owner or operator is required to
18 maintain proof of financial responsibility under federal or
19 state law, from the effective date of the regulation of the
20 federal environmental protection agency governing that tank,
21 and not from the effective compliance date, unless the
22 effective compliance date of the regulation is the effective
23 date of the regulation. An owner or operator of a petroleum
24 underground storage tank required by federal or state law to
25 maintain proof of financial responsibility for that
26 underground storage tank, ~~or who will be required on a date~~
27 definite, is subject to this chapter and chapter 424.

28 Sec. 6. Section 455G.1, subsection 2, paragraph b,
29 subparagraph (1), Code 1991, is amended by striking the
30 subparagraph and inserting in lieu thereof the following:

31 (1) Underground storage tank systems not in operation on
32 or after the applicable compliance date.

33 Sec. 7. Section 455G.2, Code 1991, is amended by adding
34 the following new subsection:

35 NEW SUBSECTION. 3A. "Claimant" means an owner or operator

1 who has received assistance under the remedial account or who
2 has coverage under the insurance account with respect to a
3 release, or an installer who has coverage under the insurance
4 account.

5 Sec. 8. Section 455G.2, subsection 4, Code 1991, is
6 amended to read as follows:

7 4. "Corrective action" means an action taken to minimize,
8 eliminate, or clean up a release to protect the public health
9 and welfare or the environment. Corrective action includes,
10 but is not limited to, excavation of an underground storage
11 tank for the purposes of repairing a leak or removal of a
12 tank, removal of contaminated soil, and cleansing of
13 groundwaters or surface waters. Corrective action does not
14 include replacement of an underground storage tank or other
15 capital improvements to the tank. Corrective action
16 specifically excludes third-party liability. Corrective
17 action includes the expenses incurred to prepare an-assessment
18 plan a site cleanup report for approval by the department of
19 natural resources detailing the planned response to a release
20 or suspected release, but not necessarily all actions proposed
21 to be taken by an-assessment-plan a site cleanup report.

22 Sec. 9. Section 455G.2, Code 1991, is amended by adding
23 the following new subsections:

24 NEW SUBSECTION. 6A. "Free product" means a regulated
25 substance that is present as a nonaqueous phase liquid.

26 NEW SUBSECTION. 11A. "Potentially responsible party"
27 means a person who may be responsible or liable for a release
28 for which the fund has made payments for corrective action or
29 third-party liability.

30 NEW SUBSECTION. 12A. "Release" means any spilling,
31 leaking, emitting, discharging, escaping, leaching, or
32 dispersing from an underground storage tank into groundwater,
33 surface water, or subsurface soils.

34 Sec. 10. Section 455G.4, subsection 3, Code 1991, is
35 amended by adding the following new paragraph:

1 NEW PARAGRAPH. f. Rules to facilitate and encourage the
2 use of community remediation whenever possible shall be
3 adopted.

4 Sec. 11. Section 455G.9, subsection 1, paragraph a,
5 subparagraph (2), Code 1991, is amended to read as follows:

6 (2) Corrective action, up to one million dollars total,
7 and subject to prioritization rules as established pursuant to
8 section 455G.12A, for a release reported to the department of
9 natural resources after May 5, 1989, and on or before October
10 26, 1990. Third-party liability is specifically excluded from
11 remedial account coverage. Corrective action coverage
12 provided pursuant to this paragraph may be aggregated with
13 other financial assurance mechanisms as permitted by federal
14 law to satisfy required aggregate and per occurrence limits of
15 financial responsibility for both corrective action and third-
16 party liability, if the owner's or operator's effective
17 financial responsibility compliance date is prior to October
18 26, 1990. For purposes of calculating corrective action
19 costs, corrective action shall include the cost of a tank
20 system upgrade required by section 455B.474, subsection 1,
21 paragraph "f", subparagraph (7). Payments shall be limited to
22 a maximum of ten thousand dollars for any one site.

23 Sec. 12. Section 455G.9, subsection 1, paragraph a, Code
24 1991, is amended by adding the following new subparagraph:

25 NEW SUBPARAGRAPH. (4) One hundred percent of the costs of
26 corrective action for a release reported to the department of
27 natural resources on or before July 1, 1991, if the owner or
28 operator is not a governmental entity and is a not-for-profit
29 organization exempt from federal income taxation under section
30 501(c)(3) of the Internal Revenue Code with a net annual
31 income of twenty-five thousand dollars or less for the year
32 1990, and if the tank which is the subject of the corrective
33 action is a registered tank and is under one thousand one
34 hundred gallons capacity.

35 Sec. 13. Section 455G.9, subsection 1, Code 1991, is

1 amended by adding the following new paragraph:

2 NEW PARAGRAPH. g. One hundred percent of the costs up to
3 twenty thousand dollars incurred by the board under section
4 455G.12A, subsection 2, unnumbered paragraph 2, for site
5 cleanup reports. Costs of a site cleanup report which exceed
6 twenty thousand dollars shall be considered a cost of
7 corrective action and the amount shall be included in the
8 calculations for corrective action cost copayments under
9 section 455G.9, subsection 4. The board shall have the
10 discretion to authorize a site cleanup report payment in
11 excess of twenty thousand dollars if the site is participating
12 in community remediation.

13 Sec. 14. Section 455G.9, subsection 4, Code 1991, is
14 amended by striking the subsection and inserting in lieu
15 thereof the following:

16 4. MINIMUM COPAYMENT SCHEDULE.

17 a. An owner or operator who reports a release to the
18 department of natural resources after May 5, 1989, and on or
19 before October 26, 1990, shall be required to pay the
20 following copayment amounts:

21 (1) If a site's total anticipated expenses are not
22 reserved for more than, or actual expenses do not exceed
23 eighty thousand dollars, the owner or operator shall pay the
24 greater of five thousand dollars or twenty percent of the
25 total costs of corrective action for that release.

26 (2) If a site's total anticipated expenses are reserved
27 for more than, or actual expenses exceed eighty thousand
28 dollars, the owner or operator shall pay the amount as
29 designated in subparagraph (1) plus thirty-five percent of the
30 total costs of the corrective action for that release which
31 exceed eighty thousand dollars.

32 b. The remedial account shall pay the remainder, as
33 required by federal regulations, of the total costs of the
34 corrective action for that release, except that a county shall
35 not be required to pay a copayment in connection with a

1 release situated on property acquired in connection with
2 delinquent taxes, as provided in subsection 1, paragraph "d",
3 unless subsequent to acquisition the county actively operates
4 a tank on the property for purposes other than risk
5 assessment, risk management, or tank closure.

6 Sec. 15. Section 455G.9, subsection 6, unnumbered
7 paragraph 1, Code 1991, is amended to read as follows:

8 If an owner or operator ceases to own or operate a tank
9 site for which remedial account benefits were received within
10 ~~five~~ ten years of the receipt of any account benefit and sells
11 or transfers a property interest in the tank site for an
12 amount which exceeds one hundred twenty percent of the
13 precorrective action value, the owner or operator shall refund
14 to the remedial account an amount equal to ninety percent of
15 the amount in excess of one hundred twenty percent of the
16 precorrective action value up to a maximum of the expenses
17 incurred by the remedial account associated with the tank site
18 plus interest, equal to the interest for the most recent
19 twelve-month period for the most recent bond issue for the
20 fund, on the expenses incurred, compounded annually. Expenses
21 incurred by the fund are a lien upon the property recordable
22 and collectible in the same manner as the lien provided for in
23 section 424.11 at the time of sale or transfer, subject to the
24 terms of this section.

25 Sec. 16. Section 455G.9, subsection 7, Code 1991, is
26 amended to read as follows:

27 7. Recurring releases treated as a newly reported release.
28 A release shall be treated as a release reported on or after
29 May 5, 1989, if prior to May 5, 1989, a release was reported
30 to the department, corrective action was taken pursuant to an
31 ~~assessment-plan~~ a site cleanup report approved by the
32 department, and the work performed was accepted by the
33 department. For purposes of this subsection, work performed
34 is accepted by the department if the department did not order
35 further action within ninety days of the date on which the

1 department had notice that the work was completed, unless the
2 department clearly indicated in writing to the owner,
3 operator, contractor, or other agent that additional work
4 would be required beyond that specified in the assessment-plan
5 site cleanup report or in addition to the work actually
6 performed.

7 Sec. 17. Section 455G.9, Code 1991, is amended by adding
8 the following new subsection:

9 NEW SUBSECTION. 8. EXPENSES OF CLEANUP NOT REQUIRED.

10 When an owner or operator who is eligible for benefits under
11 this chapter is allowed by the department of natural resources
12 to monitor in place, the expenses incurred for cleanup beyond
13 the level required by the department of natural resources are
14 not covered under any of the accounts established under the
15 fund. The cleanup expenses incurred for work completed beyond
16 what is required is the responsibility of the person
17 contracting for the excess cleanup.

18 Sec. 18. Section 455G.9, Code 1991, is amended by adding
19 the following new subsection:

20 NEW SUBSECTION. 9. OWNER OR OPERATOR DEFINED. For
21 purposes of receiving benefits under this section, "owner or
22 operator" means the then current tank owner or operator or the
23 owner of the land for which a covered release was reported or
24 application for benefits was submitted on or before the
25 relevant application deadlines of this section.

26 Sec. 19. Section 455G.10, subsections 5 and 6, Code 1991,
27 are amended to read as follows:

28 5. As a condition of eligibility for financial assistance
29 from the loan guarantee account, a small business shall
30 demonstrate satisfactory attempts to obtain financing from
31 private lending sources. When applying for loan guarantee
32 account assistance, the small business shall demonstrate good
33 faith attempts to obtain financing from at least two financial
34 institutions. The board may first refer a tank owner or
35 operator to a financial institution eligible to participate in

1 the fund under section 455G.16; however, if no such financial
2 institution is currently willing or able to make the required
3 loan, the small business shall determine if any of the
4 previously contacted financial institutions would make the
5 loan in participation with the loan guarantee account. The
6 loan guarantee account may offer to guarantee a loan, may
7 offer a five-point interest rate buy-down, or provide other
8 forms of financial assistance to facilitate a private loan.

9 6. The maturity for each financial assistance package made
10 by the board pursuant to this chapter shall be the shortest
11 feasible term commensurate with the repayment ability of the
12 small business borrower. However, the maturity date of a loan
13 shall not exceed ~~ten~~ twenty years and the guarantee is
14 ineffective beyond the agreed term of the guarantee or ~~ten~~
15 twenty years from initiation of the guarantee, whichever term
16 is shorter.

17 Sec. 20. Section 455G.11, subsection 3, paragraph c, Code
18 1991, is amended to read as follows:

19 c. The applicant certifies in writing to the board that
20 the tank to be insured will be brought into compliance with
21 either paragraph "a" or "b", on or before October 26, ~~1992~~
22 1993, provided that prior to the provision of insurance
23 account coverage, the tank site tests release free. For a
24 tank qualifying for insurance coverage pursuant to this
25 paragraph at the time of application or renewal, the owner or
26 operator shall pay a per tank premium equal to two times the
27 normally scheduled premium for a tank satisfying paragraph "a"
28 or "b". An owner or operator who fails to comply as certified
29 to the board on or before October 26, ~~1992~~ 1993, shall not
30 insure that tank through the insurance account unless and
31 until the tank satisfies the requirements of paragraph "a" or
32 "b".

33 Sec. 21. Section 455G.11, subsection 6, Code 1991, is
34 amended by striking the subsection and inserting in lieu
35 thereof the following:

1 6. INSTALLER'S INSURANCE COVERAGE.

2 a. Coverage. The board shall offer insurance coverage
3 under the fund's insurance account to an installer of a
4 certified underground storage tank installation within the
5 state for an environmental hazard arising in connection with a
6 certified installation as provided in this subsection.
7 Coverage shall be limited to environmental hazard coverage for
8 both corrective action and third-party liability for a
9 certified tank installation within the state in connection
10 with a release from that tank.

11 b. Annual premiums. The annual premium shall be:

12 (1) For the year July 1, 1991, through June 30, 1992, two
13 hundred dollars per insured tank.

14 (2) For the year July 1, 1992, through June 30, 1993, two
15 hundred fifty dollars per insured tank.

16 (3) For the year July 1, 1993, through June 30, 1994,
17 three hundred dollars per insured tank.

18 (4) For subsequent years, an installer shall pay an
19 annually adjusted insurance premium to maintain coverage on
20 each tank previously installed or newly insured by the
21 insurance account. The board may only approve fund coverage
22 through the payment of a premium established on an actuarially
23 sound basis. If coverage is purchased for any part of a year
24 the purchaser shall pay the full annual premium.

25 c. Limits of coverage available. An installer may
26 purchase coverage up to one million dollars per occurrence and
27 two million dollars aggregate, subject to the terms and
28 conditions under this section and those adopted by the board.

29 d. Deductible. The insurance account may offer, at the
30 buyer's option, a range of deductibles. A ten thousand dollar
31 deductible policy shall be offered.

32 e. Excess coverage. An installer may purchase excess
* 33 coverage of up to five million dollars upon such terms and
34 conditions as determined by the board.

35 f. Certification of tank installations. The board shall

1 adopt certification rules requiring certification of a new
2 tank installation as a precondition to offering insurance to
3 an owner or operator or an installer. The board shall set in
4 the rule the effective date for the certification requirement.
5 Certification rules shall at minimum require that an
6 installation be personally inspected by an independent
7 licensed engineer, local fire marshal, state fire marshal's
8 designee, or other person who is unaffiliated with the tank
9 owner, operator, or installer, who is qualified and authorized
10 by the board to perform the required inspection and that the
11 tank and installation of the tank comply with applicable
12 technical standards and manufacturer's instructions and
13 warranty conditions. An inspector shall not be an owner or
14 operator of a tank, or an employee of an owner, operator, or
15 installer.

16 Sec. 22. Section 455G.11, subsection 7, Code 1991, is
17 amended to read as follows:

18 7. COVERAGE ALTERNATIVES. The board shall provide for
19 insurance coverage to be offered to installers for a tank
20 installation certified pursuant to subsection 6, through at
21 ~~least-one~~ both of the following methods:

22 a. Directly through the fund with premiums and deductibles
23 as provided ~~for-owners-and-operators~~ in subsection 4 6.

24 b. In cooperation with a private insurance carrier with
25 excess or stop loss coverage provided by the fund to reduce
26 the cost of insurance to such installers, and including such
27 other terms and conditions as the board deems necessary and
28 convenient to provide adequate coverage for a certified tank
29 installation at a reasonable premium. An installer obtaining
30 insurance coverage pursuant to this paragraph, may purchase
31 coverage of up to one million dollars per occurrence and two
32 million dollars aggregate and may purchase excess coverage of
33 up to five million dollars, subject to the terms and
34 conditions as determined by the board.

35 The insurance coverage offered pursuant to this subsection

1 shall, at a minimum, cover environmental hazards for both
2 corrective action and third-party liability.

3 Sec. 23. Section 455G.11, Code 1991, is amended by adding
4 the following new subsection:

5 NEW SUBSECTION. 10. PROPERTY TRANSFER INSURANCE.

6 a. Additional cleanup requirements. An owner, operator,
7 landowner, or financial institution may purchase insurance
8 coverage under the insurance account to cover environmental
9 damage caused by a tank in the event that governmental action
10 requires additional cleanup beyond action level standards in
11 effect at the time a certificate of clean was issued under
12 section 455B.304, subsection 15, or a monitoring certificate
13 was issued under section 455B.474, subsection 1, paragraph
14 "h".

15 b. Eligibility for coverage. An owner, operator,
16 landowner, or financial institution, subject to underwriting
17 requirements and such terms and conditions deemed necessary
18 and convenient by the board, may purchase insurance coverage
19 from the insurance account to provide proof of financial
20 responsibility if the following conditions are satisfied:

21 (1) A certificate of clean has been issued for the site
22 under section 455B.304, subsection 15, or a monitoring
23 certificate has been issued for the site under section
24 455B.474, subsection 1, paragraph "h". Property transfer
25 coverage shall be effective on a monitored site only for the
26 time period for which monitoring is allowed as specified in
27 the monitoring certificate. A site which has not been issued
28 a certificate of clean or a monitoring certificate shall not
29 be eligible for property transfer coverage.

30 (2) The tank location is not covered by other
31 environmental hazard liability insurance coverage, or is
32 eligible for remedial benefits as provided under section
33 455G.9.

34 (3) The environmental damage is not caused by a new
35 release.

1 (4) The additional cleanup is required to meet new
2 corrective action level standards mandated by governmental
3 action.

4 c. Premiums. The annual premium for insurance coverage
5 shall be two hundred fifty dollars per party, per location,
6 with an overall limit of liability per site of five hundred
7 thousand dollars. The premiums are fully earned. Each party
8 purchasing coverage at that site will have the total limit of
9 liability prorated over the total limit among the policies
10 issued, so as to avoid stacking beyond the total coverage
11 limit of five hundred thousand dollars. If coverage is
12 purchased for any part of a year, the purchaser shall pay the
13 full annual premium.

14 After June 30, 1994, an owner, operator, landowner, or
15 financial institution applying for coverage shall pay an
16 annually adjusted insurance premium for coverage by the
17 insurance account. The board may only approve fund coverage
18 through the payment of a premium established on an actuarially
19 sound basis.

20 d. Coverage exclusions. Property transfer insurance
21 coverage offered under this subsection does not include
22 coverage of the following:

23 (1) Third-party liability.

24 (2) Cleanup beyond the actual costs associated with the
25 site.

26 (3) Loss of use of the property and other economic
27 damages.

28 (4) Costs associated with additional remediation required
29 by a voluntary change in usage of the site.

30 (5) Cleanup costs for additional corrective action
31 required due to the spread of contamination on a site which
32 has been issued a monitoring certificate.

33 e. Annual monitoring. Annual monitoring is required, for
34 any site for which coverage is purchased. Failure to comply
35 with monitoring as prescribed by the board will invalidate

1 insurance coverage under this subsection. For a site which
2 has been issued a monitoring certificate, the annual
3 monitoring requirements imposed under this paragraph shall be
4 satisfied by the annual monitoring requirements imposed under
5 the corrective action rules for a site which is allowed to
6 monitor in place.

7 f. Transfer of coverage. Coverage may be transferred upon
8 payment of a transfer fee.

9 g. Rules. The board shall adopt rules pursuant to chapter
10 17A as necessary to implement this subsection.

11 h. Federal approval. Property transfer insurance coverage
12 issued under this subsection is conditioned upon continued
13 approval by the United States environmental protection agency
14 of the state's underground storage tank program.

15 Sec. 24. Section 455G.12A, subsection 2, Code 1991, is
16 amended by adding the following new unnumbered paragraph:

17 NEW UNNUMBERED PARAGRAPH. The board shall have authority
18 to contract for site cleanup reports. The board's
19 responsibility for site cleanup reports is limited to those
20 site cleanup reports subject to approval by the department of
21 natural resources and required in connection with the
22 remediation of a release which is eligible for benefits under
23 section 455G.9. The site cleanup report shall address
24 existing and available remedial technologies and the costs
25 associated with the use of each technology.

26 Sec. 25. Section 455G.13, subsections 1 and 6, and
27 subsection 10, unnumbered paragraph 1, Code 1991, are amended
28 to read as follows:

29 1. FULL RECOVERY SOUGHT FROM OWNER. The board shall seek
30 full recovery from the owner, or operator of the tank which,
31 or other party liable for the released the petroleum and which
32 is the subject of a corrective action, for which the fund
33 expends moneys for corrective action or third-party liability,
34 and for all other costs or moneys expended by the fund in
35 connection with the release. When federal cleanup funds are

1 recovered, the funds are to be deposited to the remedial
2 account of the fund and used solely for the purpose of future
3 cleanup activities.

4 6. JOINDER OF PARTIES. The department of natural
5 resources has standing in any case or contested action related
6 to the fund or a tank to assert any claim that the department
7 may have regarding the tank at issue in the case or contested
8 action, and upon motion and sufficient showing by a party to a
9 cost recovery or subrogation action provided for under this
10 section, the court or the administrative law judge shall join
11 to the action any person who may be liable for costs and
12 expenditures of the type recoverable pursuant to this section.

13 Payment of a claim by the fund for corrective action or
14 third-party liability pursuant to this chapter shall be
15 conditioned upon the board's acquiring by subrogation the
16 rights of the claimant to recover those costs and expenditures
17 for corrective action for which the fund has compensated the
18 claimant, from the person responsible or liable for the
19 unauthorized release payment from any potentially responsible
20 party. A claimant is precluded from receiving double
21 compensation for the same injury.

22 Sec. 26. Section 455G.13, Code 1991, is amended by adding
23 the following new subsections:

24 NEW SUBSECTION. 4A. RECOVERY OR SUBROGATION --INSTALLERS.
25 Notwithstanding any other provision contained in this chapter,
26 the board or a person insured under the insurance account has
27 no right of recovery or right of subrogation against an
28 installer insured by the fund for the tank giving rise to the
29 liability other than for recovery of any deductibles paid.

30 NEW SUBSECTION. 4B. RECOVERY OR SUBROGATION FOR
31 REMEDICATION -- INSTALLERS. Notwithstanding any other
32 provision in this chapter to the contrary, the board has no
33 right of recovery or right of subrogation against an installer
34 insured pursuant to section 455G.11, subsections 6 and 7, for
35 the amounts paid by the remedial account if the installer is

1 currently installing underground storage tanks for third
2 parties. This subsection does not apply to an installer who
3 is self-insured. This subsection is only applicable to an
4 installer who assigns to the board, upon receiving a written
5 request for assignment from the board, any right, title, and
6 interest that the installer may have to any insurance policy
7 which provides coverage for the release. The assignment shall
8 be limited to the amount of the remedial account payments and
9 the installer retains any right, title, or interest in the
10 insurance policy in all respects.

11 Sec. 27. Section 455G.17, Code 1991, is amended by
12 striking the section and inserting in lieu thereof the
13 following:

14 455G.17 INSPECTORS -- GROUNDWATER PROFESSIONALS -- REGIS-
15 TRATION AND CERTIFICATION.

16 1. The board shall adopt rules pursuant to chapter 17A
17 requiring that all underground storage tank inspectors,
18 persons performing certified tank installation, and
19 groundwater professionals register with the board.

20 2. The board shall adopt certification procedures and
21 standards for the following:

22 a. Underground storage tank installation inspectors.
23 Underground storage tank installation inspectors shall consist
24 of the following persons:

25 (1) A registered engineer. If the installation of
26 underground storage tanks is within the scope of practice of a
27 particular class of registered engineer, additional training
28 shall not be required for that class. A registered engineer
29 for whom underground storage tank installation is within the
30 scope of practice shall be considered an "authorized
31 inspector" rather than a "certified inspector".

32 (2) A fire marshal, or other person unaffiliated with the
33 tank owner, operator, or installer.

34 b. Groundwater professionals. A groundwater professional
35 is a person who provides subsurface soil contamination and

1 groundwater consulting services or who contracts to perform
2 remediation, corrective action services, or tank removal and
3 shall consist of the following persons:

4 (1) A registered engineer.

5 (2) A professional geologist certified by a national
6 organization.

7 (3) A graduate from an accredited 4-year college or
8 university with a degree in engineering, sciences, or other
9 closely related field.

10 3. Certification requirements for underground storage tank
11 installation inspectors shall include training from approved
12 curricula adopted by the board. The board shall adopt
13 approved training curricula in such a manner that
14 installations made by underground storage tank installation
15 inspectors are certified under section 455G.11, subsection 6.

16 4. Certification requirements for groundwater
17 professionals shall include, but are not limited to,
18 experience and proficiency in the groundwater field by
19 demonstration of three or more years of direct experience, by
20 review of demonstrated skills by a peer committee, or by an
21 examination.

22 5. Certification requirements for groundwater
23 professionals who are conducting corrective actions shall
24 include training from approved curricula adopted by the board.
25 The board shall adopt curricula which is consistent with the
26 corrective action requirements.

27 6. A person's failure to register with the board shall not
28 affect the person's certification, or the certification of an
29 otherwise eligible installation performed by that person, but
30 the board may provide for a civil penalty of no more than
31 fifty dollars for the failure to register.

32 7. An interested person may obtain a list of registrants
33 from the board.

34 8. The board may impose a fee for registration based upon
35 the costs of administering the registration of persons under

1 this section.

2 Sec. 28. NEW SECTION. 455G.18 ENVIRONMENTAL DAMAGE
3 OFFSET.

4 1. The fund's payment of a remedial claim by an owner or
5 operator reporting a release under section 455G.9, subsection
6 1, paragraph "a", subparagraph (2), shall be subject to an
7 environmental damage offset if the owner or operator closed or
8 removed the tank and did not replace it. An owner or operator
9 who has declared bankruptcy shall not be subject to the
10 offset. A site which is not being used for commercial
11 purposes is not subject to the offset unless offered for sale.
12 If a site is exempt under this subsection from the offset, but
13 is later subject to the lien imposed under section 455G.13,
14 subsection 5, the amount of the lien shall include the amount
15 of the offset which would have been imposed if the site was
16 not exempt during remediation.

17 2. The offset shall be equal to the average annual
18 environmental protection charge on diminution imposed under
19 chapter 424 which would be paid for tanks of similar size.
20 The offset shall be based on the rate of diminution presently
21 in force, regardless of the date on which the tank was closed.
22 The offset shall apply to the release which is still subject
23 to remedial fund payments under section 455G.9.

24 3. Offsets under this section shall be credited to cost
25 recovery enforcement proceeds under section 455G.8, subsection
26 5.

27 4. The board shall adopt rules as necessary and convenient
28 for the implementation and administration of the offset.

29 Sec. 29. This Act, being deemed of immediate importance,
30 takes effect upon enactment.

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35

SENATE FILE 362
FISCAL NOTE

A fiscal note for Senate File 362 as amended by H-3623, with amendments H-4026, and H-4028 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 362 makes changes in the State's underground storage tank program. The program changes made in SF 362 and in amendment H-3623 are discussed in previous Fiscal Notes.

Amendment H-4026, alters the categories of contaminated sites, alters the co-payment requirements for remedial benefits, raises the loan guarantee percent for tank installations, removes 100% Fund coverage of the first \$20,000 of Site Cleanup Report expenses, and removes the installation loan buydown.

Amendment H-4028 increases benefits under the retroactive portion of the program.

Fiscal Effect

TOTAL PROGRAM EXPENSES

Program Cost under Present Law	+ \$324,700,000
Change in Program Cost Under SF 362 - Senate	- \$ 32,000,000
Change in Program Cost due to H-3623	+ \$ 50,500,000
Changes Due to Site Categorization (H-4026)	- \$ 40,000,000
Changes in Site Cleanup Report Coverage (H-4026)	- \$ 15,000,000
Changes in Remedial Benefits (H-4026)	- \$ 10,500,000
Changes in Retroactive Coverage (H-4028)	+ \$ 5,000,000
	=====
Total Cost - SF 362 With H-3623, H-4026, & H-4028	\$281,700,000

ANNUAL PROGRAM INCOME

Program Income Under Present Law	+ \$ 12,000,000
Program Income added by SF 362 (Senate Bill)	+ \$ 2,300,000
5% Interest Buydown (Senate Bill)	- \$ 1,900,000
5% Interest Buydown Removed - H-4026	+ \$ 1,900,000
	=====
Annual Income-SF 362 with H-3623, H-4026, & H-4028	\$ 15,300,000

The bill as passed by the Senate has the potential of increasing bonding requirements by \$14 million. This potential cost will be removed if H-3623 is adopted.

The following chart indicates the total program cost associated with the present programs, and as the total program cost changes with the addition of the bill as passed by the Senate and as each of the four amendments are added to the bill. The chart also indicates the bonding capacity and the shortfall represented by the difference in the bonding capacity and the total program

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cost.

	Program Cost	Bonding Capacity	Shortfall
Present Law,	\$ 324.7	\$ 130.0	\$ 194.7
With SF 362,	\$ 306.7	\$ 135.0	\$ 171.7
And With H-3623,	\$ 343.2	\$ 135.5	\$ 207.7
And With H-4026,	\$ 276.7	\$ 150.0	\$ 126.7
And With H-4028	\$ 281.7	\$ 150.0	\$ 131.7

In millions of dollars.

The program cost listed for SF 362 includes the \$14 million installer recovery figure.

Despite the projected shortfall, the program has enough bonding capacity in the short run. However, it is projected that a petroleum diminution charge of at least 2.0 cents will be needed in the future to fully fund the program. The present charge is 0.85 cents per gallon, and SF 362 will raise the charge to 1.0 cents per gallon.

Source: Iowa Comprehensive Petroleum Underground Storage Tank Fund Board

(LSB 1922sv.7, JWR)

FILED MAY 2, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 362
FISCAL NOTE

A fiscal note for Amendment H-3623 to Senate File 362 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Amendment H-3623 to Senate File 362 makes full program benefits available to certain retroactive claims, requires groundwater cleanup to groundwater as opposed to drinking water standards, removes language prohibiting recovery or subrogation against installers, and extends full program benefits to certain individuals who inherited contaminated property.

Fiscal Effect

TOTAL PROGRAM EXPENSES

Program Cost under SF 362 as Passed By the Senate	+ \$313,800,000
Installers Subrogation (Section 45)	- \$ 14,000,000
Retroactive Claims (Section 18)	+ \$ 10,000,000
Inherited Property (Section 22)	+ \$ 500,000
Groundwater Standards (Section 5)	+ \$ 40,000,000
	=====
Total Program Cost Based on SF 362 with H-3623	\$350,300,000

ANNUAL PROGRAM INCOME

Program Income under SF 362 (Senate Bill)	+ \$ 15,300,000
5% Interest Buydown (Senate Bill)	- \$ 1,900,000
	=====
Annual Program Income Based on SF 362 with H-3623	\$ 13,400,000

Amendment H-3623 increases program costs by \$36.5 million over SF 362 as passed by the Senate. Taken together, the bill and the amendment increase program costs by \$25.5 million. Amendment H-3623 does not alter program income from the level in the Senate version. The bill as amended by H-3623 will provide for a bonding capacity of \$130 to \$140 million, which is approximately \$210 million underfunded. However, the revenues and expenses should be sufficient in the short run. It is projected that a diminution fee of more than 2.0 cents per gallon will eventually be needed to fully fund the program under current law, as current law is amended by the bill as passed by the Senate, and as current law is amended by the bill and amendment H-3623.

It is projected by representatives of the Underground Storage Tank Fund Board that the increased program costs in H-3623 may require that the diminution fee contained in the Senate bill be raised to 1.15 cents per gallon to satisfy conditions established by the bonding authorities. The Senate bill raises the current diminution fee from 0.85 cents to 1.00 cents per gallon.

Source: Iowa Comprehensive Underground Storage Tank Fund Board

SENATE FILE 362

H-3812

1 Amend the amendment, H-3623, to Senate File 362, as
2 amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 4, by inserting after line 25 the fol-
5 lowing:

6 "NEW PARAGRAPH. i. (1) Corrective action costs
7 for a release which occurs on property owned by an
8 innocent landowner. Governmental entities and for-
9 profit businesses are not innocent landowners for
10 purposes of receiving benefits under this paragraph.
11 A person is an innocent landowner if all of the
12 following conditions are met:

13 (a) The person did not install the tank giving
14 rise to the release.

15 (b) The person did not use the property upon which
16 the tank is located to store or dispense petroleum.

17 (c) The person did not profit financially from use
18 of the tank.

19 (2) Corrective action costs for cleanup of a
20 release on property owned by a person who is
21 determined to be an innocent landowner under
22 subparagraph (1) shall be paid by the fund in
23 accordance with the following schedule:

24 (a) One hundred percent of the costs of corrective
25 action if the innocent landowner has an annual gross
26 income of thirty thousand dollars or less, as
27 determined by the innocent landowner's federal income
28 tax return from the prior year.

29 (b) Ninety percent of the costs of corrective
30 action if the innocent landowner has an annual gross
31 income which is greater than thirty thousand dollars
32 but not greater than fifty thousand dollars, as
33 determined by the innocent landowner's federal income
34 tax return from the prior year.

35 (c) Eighty percent of the costs of corrective
36 action if the innocent landowner has an annual gross
37 income which is greater than fifty thousand dollars,
38 as determined by the innocent landowner's federal
39 income tax return from the prior year.

40 (3) This paragraph does not apply to property
41 which is transferred on or after the effective date of
42 this Act.

43 (4) If an innocent landowner sells property for
44 which remedial account benefits were received within
45 ten years of the receipt of any account benefit, the
46 innocent landowner shall refund to the remedial
47 account an amount equivalent to ninety percent of the
48 gain realized upon sale or transfer of the property up
49 to a maximum of the expenses incurred by the remedial
50 account for costs associated with the tank site plus

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1 interest, equal to the interest for the most recent
2 twelve-month period for the most recent bond issue for
3 the fund, on the expenses incurred, compounded
4 annually. Expenses incurred by the fund are a lien
5 upon the property recordable and collectible in the
6 same manner as the lien provided for in section 424.11
7 at the time of sale or transfer, subject to the terms
8 of this section."

By GRUBBS of Scott

H-3812 FILED APRIL 25, 1991

w/d 5/2/91

SENATE FILE 362

H-3623

- 1 Amend Senate File 362, as amended, passed, and re-
2 printed by the Senate, as follows:
- 3 1. Page 1, by inserting after line 24 the fol-
4 lowing:
5 "Sec. _____. Section 455B.301, subsection 20, Code
6 1991, is amended to read as follows:
7 20. "Solid waste" means garbage, refuse, rubbish,
8 and other similar discarded solid or semisolid
9 materials, including but not limited to such materials
10 resulting from industrial, commercial, agricultural,
11 and domestic activities. Solid waste may include
12 vehicles, as defined by section 321.1, subsection 1.
13 However, this division does not prohibit the use of
14 dirt, stone, brick, or similar inorganic material for
15 fill, landscaping, excavation or grading at places
16 other than a sanitary disposal project. Solid waste
17 does not include hazardous waste as defined in section
18 455B.411 or source, special nuclear, or by-product
19 material as defined in the Atomic Energy Act of 1954,
20 as amended to January 1, 1979, or petroleum
21 contaminated soil which has been aerated to acceptable
22 state or federal standards."
- 23 2. Page 1, by striking lines 28 and 29 and
24 inserting the following:
25 "d. Establishing criteria for classifying sites
26 according to the release of a regulated substance in
27 connection with an underground storage tank."
28 3. Page 1, line 33, by inserting after the word
29 "including" the following: "but not limited to".
30 4. By striking page 1, line 35, through page 2,
31 line 1, and inserting the following: "sources."
32 5. Page 2, by striking lines 12 through 14 and
33 inserting the following: "likely to affect ground-
34 water; if the contamination is actually".
35 6. Page 2, line 16, by inserting after the word
36 "standards" the following: "adopted under section
37 455B.173".
38 7. Page 2, line 21, by inserting after the word
39 "standards," the following: "as established by rules
40 adopted by the environmental protection commission or
41 by superseding federal regulations,".
42 8. Page 2, line 29, by striking the words "sites
43 contaminated by tank releases" and inserting the
44 following: "the release of a regulated substance in
45 connection with an underground storage tank".
46 9. Page 2, line 30, by inserting after the word
47 "include" the following: "but not be limited to".
48 10. Page 2, by striking lines 32 and 33 and
49 inserting the following:
50 "(1) A requirement that the site cleanup report do

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Page 2

- 1 all of the following:".
- 2 11. Page 3, line 1, by striking the word
- 3 "Determine" and inserting the following: "Provide
- 4 supporting data and a recommendation of".
- 5 12. Page 3, by striking lines 22 through 24 and
- 6 inserting the following: "conditions warrant. If,
- 7 after ten years of monitoring, no significant increase
- 8 in contamination results, monitoring shall be
- 9 discontinued."
- 10 13. Page 3, line 29, by inserting after the word
- 11 "groundwater." the following: "For purposes of this
- 12 subparagraph, "bioremediation" means the use of
- 13 biological organisms, including microorganisms or
- 14 plants, to degrade organic pollutants to common
- 15 natural products."
- 16 14. Page 4, by inserting after line 4 the
- 17 following:
- 18 "(9) The director may order an owner or operator
- 19 to immediately take all corrective actions deemed
- 20 reasonable and necessary by the director if the
- 21 corrective action is consistent with the
- 22 prioritization rules adopted under this paragraph."
- 23 15. Page 4, line 9, by striking the word "five"
- 24 and inserting the following: "ten".
- 25 16. Page 5, by inserting after line 33 the
- 26 following:
- 27 "Sec. _____. Section 455G.2, subsection 15,
- 28 unnumbered paragraph 2, Code 1991, is amended by
- 29 striking the unnumbered paragraph."
- 30 17. Page 6, line 3, by inserting after the word
- 31 "adopted." the following: "As used in this paragraph,
- 32 "community remediation" means a program of coordinated
- 33 testing, planning, or remediation, involving two or
- 34 more tank sites potentially connected with a
- 35 continuous contaminated area, pursuant to rules
- 36 adopted by the board. A community remediation does
- 37 not expand the scope of coverage otherwise available
- 38 or relieve liability otherwise imposed under state or
- 39 federal law."
- 40 18. Page 6, by inserting after line 3, the
- 41 following:
- 42 "Sec. _____. Section 455G.9, subsection 1, paragraph
- 43 a, subparagraph (1), Code 1991, is amended by adding
- 44 the following new unnumbered paragraph:
- 45 NEW UNNUMBERED PARAGRAPH. If an owner or operator
- 46 installed and operated a monitoring system in
- 47 compliance with 1985 monitoring standards, corrective
- 48 action costs shall be paid in accordance with
- 49 subsection 4."
- 50 19. Page 6, by inserting after line 22, the

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Page 3

1 following:

2 "Sec. ____ . Section 455G.9, subsection 1, paragraph
3 a, subparagraph (3), Code 1991, is amended by adding
4 the following new unnumbered paragraph:

5 NEW UNNUMBERED PARAGRAPH. If an owner or operator
6 installed and operated a monitoring system in
7 compliance with 1985 monitoring standards, corrective
8 action costs shall be paid in accordance with
9 subsection 4."

10 20. Page 6, by inserting after line 34 the
11 following:

12 "Sec. ____ . Section 455G.9, subsection 1,
13 paragraphs b and c, Code 1991, are amended to read as
14 follows:

15 b. Corrective action and third-party liability for
16 a release discovered on or after January 24, 1989, for
17 which a responsible owner or operator able to pay
18 cannot be found and for which the federal underground
19 storage tank trust fund or other federal moneys do not
20 provide coverage. For the purposes of this section
21 property shall not be deeded or quitclaimed to the
22 state or board in lieu of cleanup. Additionally, the
23 ability to pay shall be determined after a claim has
24 been filed. The board is not liable for any cost
25 where either the responsible owner or operator, or
26 both, have a net worth greater than fifteen thousand
27 dollars, or where the responsible party can be
28 determined. Third-party liability specifically
29 excludes any claim, cause of action, or suit, for
30 personal injury including, but not limited to, loss of
31 use or of private enjoyment, mental anguish, false
32 imprisonment, wrongful entry or eviction, humiliation,
33 discrimination, or malicious prosecution.

34 c. Corrective action and third-party liability for
35 a tank owned or operated by a financial institution
36 eligible to participate in the remedial account under
37 section 455G.16 if the prior owner or operator is
38 unable to pay, if so authorized by the board as part
39 of a condition or incentive for financial institution
40 participation in the fund pursuant to section 455G.16.
41 Third-party liability specifically excludes any claim,
42 cause of action, or suit, for personal injury
43 including, but not limited to, loss of use or of
44 private enjoyment, mental anguish, false imprisonment,
45 wrongful entry or eviction, humiliation,
46 discrimination, or malicious prosecution."

47 21. Page 7, line 1, by striking the word
48 "paragraph" and inserting the following:
49 "paragraphs".

50 22. Page 7, by inserting after line 12, the

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Page 4

1 following:

2 "NEW PARAGRAPH. h. Corrective action for the
3 costs of a release under all of the following
4 conditions:

5 (1) The property upon which the tank causing the
6 release was situated was transferred by inheritance,
7 devise, or bequest.

8 (2) The property upon which the tank causing the
9 release was situated has not been used to store or
10 dispense petroleum since January 1, 1974.

11 (3) The person who received the property by
12 inheritance, devise, or bequest was not the owner of
13 the property during the period of time when the
14 release which is the subject of the corrective action
15 occurred.

16 Corrective action costs and copayment amounts under
17 this paragraph shall be paid in accordance with
18 subsection 4.

19 A person requesting benefits under this paragraph
20 may establish that the conditions of subparagraphs
21 (1), (2), and (3) are met through the use of
22 supporting documents, including a personal affidavit.
23 The burden shall be on the board to prove that a
24 person is not eligible for benefits under this
25 paragraph."

26 23. Page 8, line 13, by inserting after the word
27 "value," the following: "adjusted for equipment and
28 capital improvements,".

29 24. Page 9, line 8, by striking the word
30 "subsection" and inserting the following:
31 "subsections".

32 25. Page 9, by inserting after line 17 the
33 following:

34 "NEW SUBSECTION. 9. WASTE OIL. An owner or
35 operator who is in the business of storing or
36 dispensing petroleum and who participates in the
37 remedial program under this section shall be required
38 to do all of the following:

39 a. Maintain a tank for the purpose of storing
40 waste oil.

41 b. Accept waste oil from the general public.

42 c. Post a notice at the site in a form and manner
43 approved by the administrator advertising that the
44 person will accept waste oil from the general public."

45 26. Page 10, by inserting after line 16 the
46 following:

47 "Sec. ____ . Section 455G.11, subsection 1, Code
48 1991, is amended by adding the following new
49 unnumbered paragraph:

50 NEW UNNUMBERED PARAGRAPH. To the extent that

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1 coverage under this section includes third-party
2 liability, third-party liability specifically excludes
3 any claim, cause of action, or suit, for personal
4 injury including, but not limited to, loss of use or
5 of private enjoyment, mental anguish, false
6 imprisonment, wrongful entry or eviction, humiliation,
7 discrimination, or malicious prosecution."

8 27. Page 11, line 1, by inserting after the word
9 "INSTALLER'S" the following: "AND INSPECTOR'S".

10 28. Page 11, line 3, by striking the words "an
11 installer of a" and inserting the following:
12 "installers and inspectors of".

13 29. Page 11, line 4, by striking the word
14 "installation" and inserting the following:
15 "installations".

16 30. Page 11, line 18, by striking the words "an
17 installer" and inserting the following: "installers
18 and inspectors".

19 31. Page 11, line 23, by inserting after the word
20 "basis." the following: "The premium paid shall be
21 fully earned and is not subject to refund or
22 cancellation."

23 32. Page 11, by inserting after line 24 the fol-
24 lowing:

25 "(5) The board may offer coverage at rates based
26 on sales or payrolls, if the qualifying installer or
27 inspector cannot be rated on a per tank basis, or if
28 the work the installer or inspector performs involves
29 more than tank installation. The rates to develop
30 premiums shall be based on the premium charged per
31 tank under subparagraphs (1), (2), and (3)."

32 33. Page 11, line 25, by striking the words "An
33 installer" and inserting the following: "Installers
34 and inspectors".

35 34. Page 11, line 32, by striking the words "An
36 installer" and inserting the following: "Installers
37 and inspectors".

38 35. Page 12, by striking lines 13 through 15 and
39 inserting the following: "warranty conditions."

40 36. Page 12, line 19, by inserting after the word
41 "installers" the following: "and inspectors".

42 37. Page 12, line 29, by inserting after the word
43 "installer" the following: "or inspector".

44 38. Page 14, line 33, by striking the word "is"
45 and inserting the following: "may be".

46 39. Page 15, by inserting after line 14 the fol-
47 lowing:

48 "Sec. _____. Section 455G.12, Code 1991, is amended
49 to read as follows:

50 455G.12 BOARD AUTHORITY FOR PRIORITIZATION.

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Page 6

1 1. If the board determines that within the realm
2 of sound business judgment and practice,
3 prioritization of assistance is necessary in light of
4 funds currently available for remedial benefits, the
5 board may develop rules for remedial assistance
6 prioritization for any or all of the remedial benefit
7 criteria contained in section 455G.9. The
8 prioritization criteria shall at minimum favor the
9 following:

10 a. Rural population sites.
11 b. Sites in which environmental, safety, and
12 health hazards are posed by the release.
13 c. Other criteria as the board, in its discretion,
14 finds necessary or convenient for the administration
15 and financing of remedial benefits.

16 2. If the board determines that, within the realm
17 of sound business judgment and practice,
18 prioritization of assistance is necessary in light of
19 funds available for loan guarantees or insurance
20 coverage, the board may develop rules for assistance
21 or coverage prioritization based upon adherence or
22 planned adherence of the owner or operator to higher
23 than minimum environmental protection and safety
24 compliance considerations.

25 Prior to the adoption of prioritization rules, the
26 board shall at minimum review the following issues:

27 1 a. The positive environmental impact of
28 assistance prioritization.

29 2 b. The economic feasibility, including the
30 availability of private financing, for an owner or
31 operator to obtain priority status.

32 3 c. Any negative impact on Iowa's rural petroleum
33 distribution network which could result from
34 prioritization.

35 4 d. Any similar prioritization systems in use by
36 the private financing or insurance markets in this
37 state, including terms, conditions, or exclusions.

38 5 e. The intent of this chapter that the board
39 shall maximize the availability of reasonably priced,
40 financially sound insurance coverage or loan guarantee
41 assistance."

42 40. Page 15, by inserting after line 25 the fol-
43 lowing:

44 "Sec. ____ . Section 455G.12A, Code 1991, is amended
45 by adding the following new subsection:

46 NEW SUBSECTION. 4. PRIOR APPROVAL BY ADMINISTRA-
47 TOR. Unless emergency conditions exist, a contractor
48 performing services pursuant to this section shall
49 have the budget for the work approved by the adminis-
50 trator prior to commencement of the work. No expense

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Page 7

1 incurred which is above the budgeted amount shall be
2 paid unless the administrator approves such expense
3 prior to it being incurred. All invoices or bills
4 shall be submitted with appropriate documentation as
5 deemed necessary by the board, no later than thirty
6 days after the work has been performed. Neither the
7 board nor an owner or operator is responsible for
8 payment for work incurred which has not been
9 previously approved by the board."

10 41. Page 15, line 31, by inserting after the word
11 "other" the following: "potentially responsible".

12 42. Page 15, by striking line 34 and inserting
13 the following: "and for all other costs; or including
14 reasonable attorney fees and costs of litigation for
15 which moneys are expended by the fund in".

16 43. Page 16, line 11, by striking the word
17 "person" and inserting the following: "person
18 potentially responsible party".

19 44. Page 16, line 23, by striking the word
20 "subsections" and inserting the following:
21 "subsection".

22 45. By striking page 16, line 30, through page
23 17, line 10.

24 46. Page 17, by inserting after line 10, the
25 following:

26 "Sec. ____ . Section 455G.13, subsection 10, Code
27 1991, is amended to read as follows:

28 10. SUBROGATION-RIGHTS CLAIMS AGAINST POTENTIALLY
29 RESPONSIBLE PARTIES.

30 Payment Upon payment of a claim by the fund
31 pursuant to this chapter, shall-be-conditioned-upon
32 the-board's-acquiring-by-subrogation the rights of the
33 claimant to recover those costs and expenditures for
34 corrective action for which the fund has compensated
35 the claimant, from the-person-responsible-or-liable
36 for-the-unauthorized-release any potentially
37 responsible party, are assumed by the board to the
38 extent paid by the fund. A claimant is precluded from
39 receiving double compensation for the same injury.

40 In an action brought pursuant to this chapter
41 seeking damages for corrective action or third-party
42 liability, the court shall permit evidence and
43 argument as to the replacement or indemnification of
44 actual economic losses incurred or to be incurred in
45 the future by the claimant by reason of insurance
46 benefits, governmental benefits or programs, or from
47 any other source.

48 Sec. ____ . Section 455G.13, subsection 10, Code
49 1991, is amended by adding the following new
50 unnumbered paragraph:

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1 NEW UNNUMBERED PARAGRAPH. A claimant may elect to
2 permit the board to pursue the claimant's cause of
3 action for any injury not compensated by the fund
4 against any potentially responsible party, provided
5 the attorney general determines such representation
6 would not be a conflict of interest. If a claimant so
7 elects, the board's litigation expenses shall be
8 shared on a pro rata basis with the claimant, but the
9 claimant's share of litigation expenses are payable
10 exclusively from any share of the settlement or
11 judgment payable to the claimant.

12 Sec. _____. Section 455G.16, Code 1991, is amended
13 by adding the following new unnumbered paragraph:

14 "NEW UNNUMBERED PARAGRAPH. Third-party liability
15 expenses under this section specifically exclude any
16 claim, cause of action, or suit, for personal injury
17 including, but not limited to loss of use or of
18 private enjoyment, mental anguish, false imprisonment,
19 wrongful entry or eviction, humiliation,
20 discrimination, or malicious prosecution."

21 47. By striking page 17, line 11, through page
22 19, line 1, and inserting the following:

23 "Sec. _____. Section 455G.17, subsection 3, Code
24 1991, is amended to read as follows:

25 3. The board shall adopt approved curricula for
26 training persons to install underground storage tanks
27 in such a manner that the resulting installation may
28 be certified under section 455G.11, subsection 6, and
29 for training persons to remove tanks.

30 Sec. _____. Section 455G.17, subsection 4, Code
31 1991, is amended by striking the subsection.

32 Sec. _____. NEW SECTION. 455G.17A GROUNDWATER PRO-
33 FESSIONALS -- REGISTRATION.

34 1. The department of natural resources shall adopt
35 rules pursuant to chapter 17A requiring that
36 groundwater professionals register with the department
37 of natural resources.

38 2. A groundwater professional is a person who
39 provides subsurface soil contamination and groundwater
40 consulting services or who contracts to perform
41 remediation or corrective action services and is one
42 or more of the following:

43 a. A person certified by the American institute of
44 hydrology, the national water well association, or the
45 association of groundwater scientists.

46 b. A professional engineer registered in Iowa.

47 c. Any person who has five years of direct and
48 related experience as a groundwater professional as of
49 the effective date of this Act.

50 d. Any other person with a license, certification,

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1 or registration to practice hydrogeology or
2 groundwater hydrology issued by any state in the
3 United States or by any national organization,
4 provided that the license, certification, or
5 registration process requires, at a minimum, all of
6 the following:

7 (1) Possession of a bachelor's degree from an
8 accredited college.

9 (2) Five years of related professional experience.

10 3. The department of natural resources may provide
11 for a civil penalty of no more than fifty dollars for
12 the failure to register. An interested person may
13 obtain a list of registrants from the department of
14 natural resources. The department of natural
15 resources may impose a fee for the registration of
16 persons under this section."

17 48. Page 19, by inserting after line 28 the
18 following:

19 "Sec. ____ . ABOVEGROUND PETROLEUM STORAGE TANK
20 STUDY. The board shall be required to study and make
21 recommendations to the general assembly on the effects
22 of including aboveground petroleum storage tanks, as
23 defined in section 101.21, subsection 1, in the fund.
24 The study shall assume that owners and operators of
25 aboveground tanks will receive the same benefits and
26 payment structures as exist for underground storage
27 tank owners and operators. In addition, it shall be
28 assumed that aboveground tanks will be required to pay
29 the equivalent diminution fee as required for
30 underground tanks. The report shall include cost
31 projections and the identification of any relevant or
32 proposed federal legislation affecting aboveground
33 storage tanks. The report shall be submitted to the
34 general assembly by January 15, 1992."

35 49. Title page, line 4, by inserting after the
36 word "factor," the following: "excluding aerated
37 petroleum contaminated soil from the definition of
38 solid waste,".

39 50. Title page, line 5, by inserting after the
40 word "product," the following: "claimant, potentially
41 responsible party, and release,".

42 51. Title page, line 8, by inserting after the
43 word "organizations" the following: "and certain
44 persons who inherit property".

45 52. Title page, line 10, by inserting after the
46 word "action," the following: "providing retroactive
47 benefits, requiring the collection of waste oil,".

48 53. Title page, line 13, by inserting after the
49 word "installers" the following: "and inspectors,".

50 54. Title page, line 14, by inserting after the

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- 1 word "transfers," the following: "establishing
 2 prioritization criteria for remedial payments,
 3 providing cost containment measures,".
 4 55. Title page, line 15, by striking the word
 5 "account" and inserting the following: "and remedial
 6 accounts".
 7 56. Title page, line 16, by striking the words
 8 "certification and".
 9 57. Title page, line 17, by inserting after the
 10 word "offset," the following: "requiring an
 11 underground storage tank study, making technical
 12 corrections".
 13 58. By renumbering, relettering, or redesignating
 14 and correcting internal references as necessary.

By COMMITTEE ON ENERGY AND
 ENVIRONMENTAL PROTECTION

OSTERBERG of Linn, Chairperson

H-3623 FILED APRIL 12, 1991

Adopted as amended by 3710, 40260, 4027, 4028, 4034 5/2/91 (p 2045)

SENATE FILE 362

H-3710

- 1 Amend amendment, H-3623, to Senate File 362, as
 2 amended, passed, and reprinted by the Senate, as
 3 follows:

- 4 1. Page 4, by striking lines 23 through 25.

By GRUBBS of Scott

H-3710 FILED APRIL 18, 1991

Adopted 5/2/91 (p 2044)

SENATE FILE 362

H-3953

1 Amend the amendment, H-3623, to Senate File 362, as
2 amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 4, by striking lines 2 through 25, and
5 inserting the following:

6 "NEW PARAGRAPH. h. (1) Corrective action costs
7 for a release which occurs on property owned by an
8 innocent landowner. Governmental entities and for-
9 profit businesses are not innocent landowners for
10 purposes of receiving benefits under this paragraph.

11 A person is an innocent landowner if all of the
12 following conditions are met:

13 (a) The person did not install the tank giving
14 rise to the release.

15 (b) The person did not use the property upon which
16 the tank is located to store or dispense petroleum or
17 did not lease the property for such use.

18 (c) The person did not profit financially from use
19 of the tank.

20 (2) Corrective action costs for cleanup of a
21 release on property owned by a person who is
22 determined to be an innocent landowner under
23 subparagraph (1) shall be paid by the fund in
24 accordance with the following schedule:

25 (a) One hundred percent of the costs of corrective
26 action if the innocent landowner has an annual gross
27 income of thirty thousand dollars or less, as
28 determined by the innocent landowner's federal income
29 tax return from the prior year.

30 (b) Ninety percent of the costs of corrective
31 action if the innocent landowner has an annual gross
32 income which is greater than thirty thousand dollars
33 but not greater than fifty thousand dollars, as
34 determined by the innocent landowner's federal income
35 tax return from the prior year.

36 (c) Eighty percent of the costs of corrective
37 action if the innocent landowner has an annual gross
38 income which is greater than fifty thousand dollars,
39 as determined by the innocent landowner's federal
40 income tax return from the prior year.

41 (3) This paragraph does not apply to property
42 which is transferred on or after the effective date of
43 this Act.

44 (4) If an innocent landowner sells property for
45 which remedial account benefits were received within
46 ten years of the receipt of any account benefit, the
47 innocent landowner shall refund to the remedial
48 account an amount equivalent to ninety percent of the
49 gain realized upon sale or transfer of the property up
50 to a maximum of the expenses incurred by the remedial

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1 account for costs associated with the tank site plus
2 interest, equal to the interest for the most recent
3 twelve-month period for the most recent bond issue for
4 the fund, on the expenses incurred, compounded
5 annually. Expenses incurred by the fund are a lien
6 upon the property recordable and collectible in the
7 same manner as the lien provided for in section 424.11
8 at the time of sale or transfer, subject to the terms
9 of this section.

10 (5) Liability for payment of corrective action
11 costs arising from remediation on property sold after
12 the enactment date of this Act shall remain with the
13 seller of the property unless otherwise provided for
14 by contract."

By GRUBBS of Scott

H-3953 FILED APRIL 26, 1991

w/ls 5/2/91

SENATE FILE 362

H-4026

- 1 Amend the amendment, H-3623, to Senate File 362, as
2 amended, passed, and reprinted by the Senate, as
3 follows:
- 4 1. Page 1, by inserting after line 2 the fol-
5 lowing:
6 " . Page 1, by inserting before line 1 the
A 7 following:
8 "Section 1. Section 101.1, Code 1991, is amended
9 by adding the following new subsection:
10 NEW SUBSECTION. 3. For the conversion of existing
11 underground storage tanks to aboveground storage tanks
12 the rules shall not require movement or modification
13 of the existing pumps to complete the installation of
14 the aboveground system if the aboveground system is
15 located at a retail motor vehicle fuel outlet.""
- 16 2. Page 1, by inserting after line 2, the
17 following:
18 " . Page 1, by inserting before line 1, the
19 following:
20 Sec. . Section 101.12, Code 1991, is amended to
B 21 read as follows:
22 101.12 ABOVEGROUND PETROLEUM TANKS AUTHORIZED.
23 Rules of the state fire marshal shall permit
24 installation of aboveground petroleum storage tanks
25 for retail motor vehicle fuel outlets as permitted by
26 the latest edition of the national fire protection
27 association rule 30A, except that tanks are limited to
28 a maximum capacity of two thousand gallons per tank,
29 subject to the approval of the governing body of the
30 local governmental subdivision with jurisdiction over
31 the site of the outlet.""
- 32 3. Page 1, by inserting after line 2, the
33 following:
C 34 " . Page 1, by inserting before line 1, the
35 following:
36 "Sec. . Section 101.12, Code 1991, is amended
37 by adding the following new unnumbered paragraph:
38 NEW UNNUMBERED PARAGRAPH. Installation of tanks
39 shall only be permitted under this subsection at
40 retail motor vehicle fuel outlets with an attendant
41 present at all times the outlet is open for
42 business.""
- 43 4. Page 1, by inserting before line 3 the
44 following:
45 " . Page 1, by inserting after line 12 the
A 46 following:
47 "Sec. . Section 424.2, subsections 5, 9, and
48 12, Code 1991, are amended to read as follows:
49 5. "Depositor" means the person who deposits
50 petroleum into a an underground storage tank subject

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1 to regulation under chapter 455G or an aboveground
2 petroleum storage tank located at a retail motor
3 vehicle fuel outlet.

4 9. "Owner or operator" means "owner or operator"
5 of an underground storage tank as used in chapter 455G
6 or the "owner" or "operator" of an aboveground
7 petroleum storage tank located at a retail motor
8 vehicle fuel outlet.

9 12. "Tank" means an underground storage tank
10 subject to regulation under chapter 455G or an
11 aboveground petroleum storage tank located at a retail
12 motor vehicle fuel outlet."

13 5. Page 1, line 21, by striking the word
14 "aerated" and inserting the following: "remediated".

15 6. Page 1, by striking lines 23 through 41, and
16 inserting the following:

17 " . By striking page 1, line 28 through page 2,
18 line 27 and inserting the following:

19 "d. Establishing criteria for classifying sites
20 according to the release of a regulated substance in
21 connection with an underground storage tank.

22 (1) The classification system shall consider the
23 actual or potential threat to public health and
24 safety, and to the environment posed by the
25 contaminated site and shall take into account relevant
26 factors, including the presence of contamination in
27 soils, groundwaters, and surface waters, and the
28 effect of conduits, barriers, and distances on the
29 contamination found in those areas according to the
30 following factors:

31 (a) Soils shall be evaluated based upon the depth
32 of the existing contamination and its distance from
33 the ground surface to the contamination zone and the
34 contamination zone to the groundwater; the soil type
35 and permeability, including whether the contamination
36 exists in clay, till or sand and gravel; and the
37 variability of the soils, whether the contamination
38 exists in soils of natural variability or in a
39 disturbed area.

40 (b) Groundwaters shall be evaluated based upon the
41 depth of the contamination and its distance from the
42 ground surface to the groundwater and from the
43 contamination zone to the groundwater; the flow
44 pattern of the groundwater, the direction of the flow
45 in relation to the contamination zone and the
46 interconnection of the groundwater with the surface or
47 with surface water and with other groundwater sources;
48 the nature of the groundwater, whether it is located
49 in a high yield aquifer, an isolated, low yield
50 aquifer, or in a transient saturation zone; and use of

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Page 3

1 the groundwater, whether it is used as a drinking
2 water source for public or private drinking water
3 supplies, for livestock watering, or for commercial
4 and industrial processing.

5 (c) Surface water shall be evaluated based upon
6 its location, its distance in relation to the
7 contamination zone, the groundwater system and flow,
8 and its location in relation to surface drainage.

9 (d) The effect of conduits, barriers, and
10 distances on the contamination found in soils,
11 groundwaters, and surface waters. Consideration
12 should be given to the following: the effect of
13 contamination on conduits such as wells, utility
14 lines, tile lines and drainage systems; the effect of
15 conduits on the transport of the contamination;
16 whether a well is active or abandoned; what function
17 the utility line serves, whether it is a sewer line, a
18 water distribution line, telephone line, or other
19 line; the existence of barriers such as buildings and
20 other structures, pavement, and natural barriers,
21 including rock formations and ravines; and the
22 distance which separates the contamination found in
23 the soils, groundwaters, or surface waters from the
24 conduits and barriers.

25 (2) A site shall be classified as a high,
26 moderate, low, or minimum risk site.

27 (a) A site shall be considered high risk if
28 contamination is present, and if the contamination is
29 actually affecting or likely to affect groundwater,
30 which is used as a source water for private or public
31 water supplies, to a level rendering the groundwater
32 unsafe for human consumption; if the contamination is
33 actually affecting or likely to affect surface water
34 bodies; or if harmful or explosive concentrations of
35 petroleum substances or vapors affecting structures or
36 utility installations exist or are likely to occur.

37 (b) A site shall be considered moderate risk if
38 contamination is present and is actually affecting or
39 likely to affect groundwater, but high risk conditions
40 do not exist and are not likely to occur.

41 (c) A site shall be considered low risk if the
42 contamination is above action level standards, but
43 high or moderate risk conditions do not exist and are
44 not likely to occur.

45 (d) A site shall be considered minimum risk if
46 contamination is below action level standards and
47 high, moderate, or low risk conditions do not exist
48 and are not likely to occur.

49 (e) A site with a higher classification shall be
50 reclassified as a site with a lower classification

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Page 4

1 when the site falls within a lower classification as
2 established under this subparagraph."

3 7. Page 2, by striking lines 5 through 9 and
4 inserting the following:

5 "____. Page 3, by striking lines 18 through 26 and
6 inserting the following:

7 "(4A) Moderate risk sites shall be monitored no
8 less than four times annually. A site may be upgraded
9 to a high risk classification based on monitoring if
10 conditions warrant. If, after ten years of
11 monitoring, no significant increase in contamination
12 results, the site shall be monitored no less than two
13 times annually, until such time as the site can be
14 reclassified as a low or minimum risk site.

15 (5) Low risk sites shall be monitored, not less
16 than once nor more than four times annually. Active
17 remediation of the contamination shall not be
18 required. A site may be upgraded to a moderate or
19 high risk classification based upon the monitoring if
20 conditions warrant. After five years of monitoring, a
21 site shall be reclassified as a minimum risk site if
22 the site is tested for two consecutive quarters of the
23 year and the contamination is found to be below action
24 level standards.

25 (5A) Minimum risk sites shall not be required to
26 be remediated or monitored."

27 8. Page 2, by inserting after line 15, the
28 following:

29 "____. Page 3, line 31, by inserting after the
30 word "high" the following: ", moderate,"."

31 9. Page 2, by inserting after line 22, the
32 following:

33 "____. Page 4, line 8, by inserting before the
34 word "low" the following: "moderate or"."

35 10. Page 2, by striking lines 23 and 24 and
36 inserting the following:

37 "____. Page 4, line 13, by striking the word "no"
38 and inserting the following: "minimum"."

39 11. Page 3, by inserting after line 11, the
40 following:

41 "NEW SUBPARAGRAPH. (6) For the purposes of
42 calculating corrective action costs under this
43 paragraph, corrective action shall include the costs
44 associated with monitoring required by the corrective
45 action rules adopted under section 455B.474,
46 subsection 1, paragraph "f"."

47 12. Page 3, by striking lines 47 through 49.

48 13. Page 3, by inserting before line 50, the
49 following:

50 "____. By striking page 6, line 35, through page

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Page 5

1 7, line 12."

2 14. Page 3, line 50, by striking the words and
3 figure "after line 12" and inserting the following:
4 "before line 13".

5 15. Page 4, by inserting before line 26, the
6 following:

7 "____. Page 7, by striking lines 21 through 31,
8 and inserting the following:

9 "(1) If a site's total anticipated expenses are
10 not reserved for more than, or actual expenses do not
11 exceed fifty thousand dollars, an owner or operator
12 shall pay five thousand dollars for the total costs of
13 corrective action which do not exceed fifty thousand
14 dollars.

15 (2) If a site's total anticipated expenses are
16 reserved for more than, or actual expenses exceed
17 fifty thousand dollars, in addition to the amount as
18 designated in subparagraph (1), an owner or operator
19 shall pay twenty percent of the total corrective
20 action costs up to a total anticipated expense
21 reserved for no more than or an actual expense which
22 does not exceed seventy-five thousand dollars.

23 (3) If a site's total anticipated expenses are
24 reserved for more than, or actual expenses exceed
25 seventy-five thousand dollars, in addition to the
26 amounts designated under subparagraphs (1) and (2), an
27 owner or operator shall pay thirty-five percent of the
28 total costs of the corrective action for that release
29 which exceed seventy-five thousand dollars.

30 b. All payments relating to the costs of
31 corrective action made by an owner or operator to meet
32 the five thousand dollar deductible amount required
33 under subparagraph (1) shall include the board as co-
34 payee."

35 16. Page 4, by striking lines 29 through 44.

36 17. Page 4, by inserting before line 45 the
37 following:

38 "____. Page 9, by inserting after line 25 the
39 following:

40 "Sec. ____ . Section 455G.10, subsection 1, Code
41 1991, is amended by adding the following new
42 paragraph:

43 NEW PARAGRAPH. c. All or a portion of the ex-
44 penses associated with the conversion of an existing
45 underground storage tank system to an aboveground
46 storage tank system if the aboveground system is
47 located at a retail motor vehicle fuel outlet."

48 ____ . Page 9, line 26, by striking the words and
49 figure "subsections 5 and" and inserting the
50 following: "subsection 1, unnumbered paragraph 2, and

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Page 6

1 subsection".

2 _____. By striking page 9, line 28 through page 10,
3 line 8, and inserting the following:

4 "Moneys from the revenues derived from the use tax
5 imposed under chapter 423 may be used to fund the loan
6 guarantee account according to the fund budget as
7 approved by the board. Loan guarantees shall be made
8 on terms and conditions determined by the board to be
9 reasonable, except that in no case may a loan
10 guarantee satisfy more than ~~ninety~~ ninety-five percent
11 of the outstanding balance of a loan."

12 18. Page 8, by inserting after line 46 the
13 following:

14 "_____. A professional geologist certified by a
15 national organization."

16 19. Page 8, by striking line 48 and inserting the
17 following: "related experience and training as a
18 groundwater professional or in the field of earth
19 sciences as of".

20 20. Page 9, by striking lines 17 through 34.

21 21. Page 9, by inserting before line 35 the
22 following:

23 "_____. Title page, line 1, by inserting after the
24 word "relating" the following: "to petroleum
25 aboveground storage tanks and".

26 22. Page 9, line 47, by striking the words "re-
27 quiring the collection of waste oil,".

28 23. Page 9, by inserting after line 47 the
29 following:

30 "_____. Title page, by striking lines 11 and 12 and
31 inserting the following: "payments extending loan
32 maturity dates, increasing the loan guarantees,
33 extending upgrade dates, offering".

34 24. Page 10, by striking lines 9 through 12.

35 25. By renumbering, relettering, or redesignating
36 and correcting internal references as necessary.

By HATCH of Polk

OSTERBERG of Linn

GRONINGA of Cerro Gordo

HIBBARD of Madison

SCHRADER of Marion

MUHLBAUER of Crawford

H-4026 FILED MAY 2, 1991

A-ADOPTED, B-LOST, C-LOST (p. 2091)

SENATE FILE 362

H-4028

1 Amend the amendment, H-3623, to Senate File 362, as
2 amended, passed, and reprinted by the Senate as
3 follows:

4 1. By striking page 2, line 40 through page 3,
5 line 9.

6 2. Page 3, by inserting before line 10, the
7 following:

8 " . Page 6, by inserting after line 3, the
9 following:

10 "Sec. . Section 455G.9, subsection 1, paragraph
11 a, subparagraph (1), Code 1991, is amended to read as
12 follows:

13 (1) Corrective action for an eligible release
14 reported to the department of natural resources on or
15 after July 1, 1987, but prior to May 5, 1989. Third-
16 party liability is specifically excluded from remedial
17 account coverage. For a claim for a release under
18 this subparagraph, the remedial program shall pay no
19 ~~more-than-the-lesser-of-twenty-five-thousand-dollars~~
20 ~~or-one-third-of-the-total-costs-of-corrective-action~~
21 ~~for-that-release,~~ in accordance with subsection 4
22 notwithstanding. For a release to be eligible for
23 coverage under this subparagraph the following
24 conditions must be satisfied:

25 (a) The owner or operator applying for coverage
26 shall not be a person who is maintaining, or has
27 maintained, proof of financial responsibility for
28 federal regulations through self-insurance.

29 (b) The owner or operator applying for coverage
30 shall not have claimed bankruptcy any time on or after
31 July 1, 1987.

32 (c) The claim for coverage pursuant to this
33 subparagraph must have been filed with the board prior
34 to January 31, 1990.

35 (d) The owner or operator at the time the release
36 was reported to the department of natural resources
37 must have been in compliance with then current
38 monitoring requirements, if any, or must have been in
39 the process of compliance efforts with anticipated
40 requirements, including installation of monitoring
41 devices, a new tank, tank improvements or retrofit, or
42 any combination.

43 ~~Total-payments-for-claims-pursuant-to-this~~
44 ~~subparagraph-are-limited-to-no-more-than-eight-million~~
45 ~~dollars.--Claims-for-eligible-retroactive-releases~~
46 ~~shall-be-prorated-if-claims-filed-in-a-permitted~~
47 ~~application-period-or-for-a-particular-priority-class~~
48 ~~of-applicants-exceed-eight-million-dollars-or-the-then~~
49 ~~remaining-balance-of-eight-million-dollars.--If-claims~~
50 ~~remain-partially-or-totally-unpaid-after-total~~

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Page 2

1 ~~payments-equal-eight-million-dollars,-all-remaining~~
2 ~~claims-are-void,-and-no-entitlement-exists-for-further~~
3 ~~payment:-"~~

4 _____. Page 6, by striking lines 18 through 22 and
5 inserting the following: "26, 1990.

6 Sec. _____. Section 455G.9, subsection 1, paragraph
7 a, subparagraph (3), unnumbered paragraph 1, Code
8 1991, is amended to read as follows:

9 Corrective action for an eligible release reported
10 to the department of natural resources on or after
11 January 1, 1985, but prior to July 1, 1987. Third-
12 party liability is specifically excluded from remedial
13 account coverage. For a claim for a release under
14 this subparagraph, the remedial program shall pay no
15 ~~more-than-the-lesser-of-twenty-five-thousand-dollars~~
16 ~~or-one-third-of-the-total-costs-of-corrective-action~~
17 ~~for-that-release,~~ in accordance with subsection 4
18 notwithstanding. For a release to be eligible for
19 coverage under this subparagraph the following
20 conditions must be satisfied:".

21 _____. Page 6, line 24, by striking the word
22 "subparagraph" and inserting the following:
23 "subparagraphs".

24 3. Page 3, by inserting after line 11, the
25 following:

26 "NEW SUBPARAGRAPH. (5) For the purposes of
27 calculating corrective action costs under this
28 paragraph, corrective action shall include the cost of
29 a tank system upgrade required by section 455B.474,
30 subsection 1, paragraph "f", subparagraph (7).
31 Payments under this subparagraph shall be limited to a
32 maximum of ten thousand dollars for any one site."

By HATCH of Polk MUHLBAUER of Crawford
SCHRADER of Marion HARBOR of Mills
HIBBARD of Madison ROYER of Page
GRONINGA of Cerro Gordo BARTZ of Worth

H-4028 FILED MAY 2, 1991

ADOPTED (p 2044)

SENATE FILE 362

H-4034

1 Amend the amendment, H-3623, to Senate File 362, as
2 amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 4, by inserting before line 26, the
5 following:

6 "____. Page 7, by inserting before line 13, the
7 following:

8 "Sec. ____ . Section 455G.9, subsection 1, Code
9 1991, is amended by adding the following new
10 paragraph:

11 NEW PARAGRAPH. i. One hundred percent of the
12 costs of corrective action for a governmental
13 subdivision in connection with a tank which was in
14 place on the date the release was discovered or
15 reported if the governmental subdivision did not own
16 or operate the tank which caused the release and if
17 the governmental subdivision did not obtain the
18 property upon which the tank giving rise to the
19 release is located on or after May 3, 1991. Property
20 acquired pursuant to eminent domain in connection with
21 a United States department of housing and urban
22 development approved urban renewal project is eligible
23 for payment of costs under this paragraph whether or
24 not the property was acquired on or after May 3,
25 1991."

By GRONINGA of Cerro Gordo
HATCH of Polk

H-4034 FILED MAY 2, 1991

ADOPTED (p. 20 45)

SENATE FILE 362

H-4027

- 1 Amend the amendment, H-3623, to Senate File 362, as
 2 amended, passed, and reprinted by the Senate, as
 3 follows:
- 4 1. Page 1, line 47, by striking the words "but
 5 not be limited to" and inserting the following: "
 6 but not be limited to,".
- 7 2. Page 2, by inserting before line 25 the
 8 following:
 9 "_____. Page 5, line 3, by inserting after the word
 10 "installer" the following: "or inspector"."
- 11 3. Page 2, by inserting after line 49 the follow-
 12 ing:
 13 "_____. Page 6, line 8, by striking the figure
 14 "455G.12A" and inserting the following: "455G.12A
 15 455G.12"."
- 16 4. Page 5, by inserting after line 37 the follow-
 17 ing:
 18 "_____. Page 12, line 3, by inserting after the
 19 word "installer" the following: "or inspector".
- 20 _____ Page 12, line 9, by striking the words "or
 21 installer" and inserting the following: "installer or
 22 inspector"."
- 23 5. Page 5, line 41, by striking the words "and
 24 inspectors" and inserting the following: "and
 25 inspectors".
- 26 6. Page 5, by inserting before line 42 the
 27 following:
 28 "_____. Page 12, line 26, by inserting after the
 29 word "installers" the following: "or inspectors"."
- 30 7. Page 7, by inserting after line 21 the fol-
 31 lowing:
 32 "_____. Page 16, line 24, by inserting after the
 33 word "INSTALLERS" the following: "AND INSPECTORS".
- 34 _____ Page 16, line 28, by inserting after the
 35 word "installer" the following: "or an inspector"."
- 36 8. Page 7, by striking lines 29 and 30 and
 37 inserting the following: "RESPONSIBLE PARTIES.
 38 Payment Upon payment of a claim by the fund".
- 39 9. Page 10, by striking lines 4 through 6.
- 40 10. Page 10, line 11, by striking the word
 41 "underground" and inserting the following:
 42 "aboveground".
- 43 11. By renumbering as necessary.

By HATCH of Polk

H-4027 FILED MAY 2, 1991

ADOPTED, *Senate 40 thru 42 9/1, 5/2/91 (of 2042)*
June 11 thru 15 9/1 (of 2042)

SENATE FILE 362
FISCAL NOTE

A fiscal note for Senate File 362 as amended by S-3701 and passed by the House is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Amended S-3701 to SF 362 alters the categories of contaminated sites, alters the co-payment requirements for remedial benefits, raises the loan guarantee percent for tank installations, removes 100% Fund coverage of the first \$20,000 of Site Cleanup Report expenses, removes the tank installation loan buydown, increases benefits under the retroactive portion of the program, extends full program benefits to certain individuals who inherited contaminated properties, and removes language prohibiting recovery against certain installers.

Fiscal Effect

TOTAL PROGRAM EXPENSES

Program Cost under Present Law	+ \$324,700,000
Change in Program Cost Under SF 362 - Senate	- \$ 32,000,000
Change in Program Cost due to S-3701	- \$ 11,000,000
	=====
Total Cost - SF 362 With S-3701	\$281,700,000

ANNUAL PROGRAM INCOME

Program Income Under Present Law	+ \$ 12,000,000
Program Income added by SF 362 (Senate Bill)	+ \$ 2,300,000
5% Interest Buydown (Senate Bill)	- \$ 1,900,000
5% Interest Buydown Removed - S-3701	+ \$ 1,900,000
	=====
Annual Income-SF 362 with S-3701	\$ 15,300,000

The bill as passed by the Senate has the potential of increasing bonding requirements by \$14 million. This potential cost is removed by S-3701.

The following chart indicates the total program cost associated with the present program, and as the total program cost changes with the addition of the bill as passed by the Senate, and as the bill is amended by the House in S-3701.

	Program Cost	Bonding Capacity	Shortfall
=====			
Present Law,	\$ 324.7	\$ 130.0	\$ 194.7
With SF 362,	\$ 306.7	\$ 135.0	\$ 171.7
And With S-3701	\$ 281.7	\$ 150.0	\$ 131.7

In millions of dollars.

The program cost listed for SF 362 includes the \$14 million

installer recovery figure.

Despite the projected shortfall, the program has enough bonding capacity in the short run. However, it is projected that a petroleum diminution charge of at least 2.0 cents will be needed in the future to fully fund the program. The present charge is 0.85 cents per gallon, and SF 362 will raise the charge to 1.0 cents per gallon.

Source: Iowa Comprehensive Petroleum Underground Storage Tank Fund Board

(LSB 1922sv.8, JWR)

FILED MAY 8, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE AMENDMENT TO
SENATE FILE 362

S-3701

1 Amend Senate File 362, as amended, passed, and re-
2 printed by the Senate, as follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Section 1. Section 101.1, Code 1991, is amended
6 by adding the following new subsection:

7 NEW SUBSECTION. 3. For the conversion of existing
8 underground storage tanks to aboveground storage tanks
9 the rules shall not require movement or modification
10 of the existing pumps to complete the installation of
11 the aboveground system if the aboveground system is
12 located at a retail motor vehicle fuel outlet."

13 2. Page 1, by inserting after line 12 the
14 following:

15 "Sec. ____ . Section 424.2, subsections 5, 9, and
16 12, Code 1991, are amended to read as follows:

17 5. "Depositor" means the person who deposits
18 petroleum into a an underground storage tank subject
19 to regulation under chapter 455G or an aboveground
20 petroleum storage tank located at a retail motor
21 vehicle fuel outlet.

22 9. "Owner or operator" means "owner or operator"
23 of an underground storage tank as used in chapter 455G
24 or the "owner" or "operator" of an aboveground
25 petroleum storage tank located at a retail motor
26 vehicle fuel outlet.

27 12. "Tank" means an underground storage tank
28 subject to regulation under chapter 455G or an
29 aboveground petroleum storage tank located at a retail
30 motor vehicle fuel outlet."

31 3. Page 1, by inserting after line 24 the fol-
32 lowing:

33 "Sec. ____ . Section 455B.301, subsection 20, Code
34 1991, is amended to read as follows:

35 20. "Solid waste" means garbage, refuse, rubbish,
36 and other similar discarded solid or semisolid
37 materials, including but not limited to such materials
38 resulting from industrial, commercial, agricultural,
39 and domestic activities. Solid waste may include
40 vehicles, as defined by section 321.1, subsection 1.
41 However, this division does not prohibit the use of
42 dirt, stone, brick, or similar inorganic material for
43 fill, landscaping, excavation or grading at places
44 other than a sanitary disposal project. Solid waste
45 does not include hazardous waste as defined in section
46 455B.411 or source, special nuclear, or by-product
47 material as defined in the Atomic Energy Act of 1954,
48 as amended to January 1, 1979, or petroleum
49 contaminated soil which has been remediated to
50 acceptable state or federal standards."

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Page 2

1 4. By striking page 1, line 28 through page 2,
2 line 27 and inserting the following:
3 "d. Establishing criteria for classifying sites
4 according to the release of a regulated substance in
5 connection with an underground storage tank.
6 (1) The classification system shall consider the
7 actual or potential threat to public health and
8 safety, and to the environment posed by the
9 contaminated site and shall take into account relevant
10 factors, including the presence of contamination in
11 soils, groundwaters, and surface waters, and the
12 effect of conduits, barriers, and distances on the
13 contamination found in those areas according to the
14 following factors:
15 (a) Soils shall be evaluated based upon the depth
16 of the existing contamination and its distance from
17 the ground surface to the contamination zone and the
18 contamination zone to the groundwater; the soil type
19 and permeability, including whether the contamination
20 exists in clay, till or sand and gravel; and the
21 variability of the soils, whether the contamination
22 exists in soils of natural variability or in a
23 disturbed area.
24 (b) Groundwaters shall be evaluated based upon the
25 depth of the contamination and its distance from the
26 ground surface to the groundwater and from the
27 contamination zone to the groundwater; the flow
28 pattern of the groundwater, the direction of the flow
29 in relation to the contamination zone and the
30 interconnection of the groundwater with the surface or
31 with surface water and with other groundwater sources;
32 the nature of the groundwater, whether it is located
33 in a high yield aquifer, an isolated, low yield
34 aquifer, or in a transient saturation zone; and use of
35 the groundwater, whether it is used as a drinking
36 water source for public or private drinking water
37 supplies, for livestock watering, or for commercial
38 and industrial processing.
39 (c) Surface water shall be evaluated based upon
40 its location, its distance in relation to the
41 contamination zone, the groundwater system and flow,
42 and its location in relation to surface drainage.
43 (d) The effect of conduits, barriers, and
44 distances on the contamination found in soils,
45 groundwaters, and surface waters. Consideration
46 should be given to the following: the effect of
47 contamination on conduits such as wells, utility
48 lines, tile lines and drainage systems; the effect of
49 conduits on the transport of the contamination;
50 whether a well is active or abandoned; what function

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Page 3

1 the utility line serves, whether it is a sewer line, a
2 water distribution line, telephone line, or other
3 line; the existence of barriers such as buildings and
4 other structures, pavement, and natural barriers,
5 including rock formations and ravines; and the
6 distance which separates the contamination found in
7 the soils, groundwaters, or surface waters from the
8 conduits and barriers.

9 (2) A site shall be classified as a high,
10 moderate, low, or minimum risk site.

11 (a) A site shall be considered high risk if
12 contamination is present, and if the contamination is
13 actually affecting or likely to affect groundwater,
14 which is used as a source water for private or public
15 water supplies, to a level rendering the groundwater
16 unsafe for human consumption; if the contamination is
17 actually affecting or likely to affect surface water
18 bodies; or if harmful or explosive concentrations of
19 petroleum substances or vapors affecting structures or
20 utility installations exist or are likely to occur.

21 (b) A site shall be considered moderate risk if
22 contamination is present and is actually affecting or
23 likely to affect groundwater, but high risk conditions
24 do not exist and are not likely to occur.

25 (c) A site shall be considered low risk if the
26 contamination is above action level standards, but
27 high or moderate risk conditions do not exist and are
28 not likely to occur.

29 (d) A site shall be considered minimum risk if
30 contamination is below action level standards and
31 high, moderate, or low risk conditions do not exist
32 and are not likely to occur.

33 (e) A site with a higher classification shall be
34 reclassified as a site with a lower classification
35 when the site falls within a lower classification as
36 established under this subparagraph."

37 5. Page 2, line 29, by striking the words "sites
38 contaminated by tank releases" and inserting the
39 following: "the release of a regulated substance in
40 connection with an underground storage tank".

41 6. Page 2, line 30, by inserting after the word
42 "include" the following: ", but not be limited to,".

43 7. Page 2, by striking lines 32 and 33 and
44 inserting the following:

45 "(1) A requirement that the site cleanup report do
46 all of the following:".

47 8. Page 3, line 1, by striking the word
48 "Determine" and inserting the following: "Provide
49 supporting data and a recommendation of".

50 9. Page 3, by striking lines 18 through 26 and

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Page 4

- 1 inserting the following:
2 "(4A) Moderate risk sites shall be monitored no
3 less than four times annually. A site may be upgraded
4 to a high risk classification based on monitoring if
5 conditions warrant. If, after ten years of
6 monitoring, no significant increase in contamination
7 results, the site shall be monitored no less than two
8 times annually, until such time as the site can be
9 reclassified as a low or minimum risk site.
- 10 (5) Low risk sites shall be monitored, not less
11 than once nor more than four times annually. Active
12 remediation of the contamination shall not be
13 required. A site may be upgraded to a moderate or
14 high risk classification based upon the monitoring if
15 conditions warrant. After five years of monitoring, a
16 site shall be reclassified as a minimum risk site if
17 the site is tested for two consecutive quarters of the
18 year and the contamination is found to be below action
19 level standards.
- 20 (5A) Minimum risk sites shall not be required to
21 be remediated or monitored."
- 22 10. Page 3, line 29, by inserting after the word
23 "groundwater." the following: "For purposes of this
24 subparagraph, "bioremediation" means the use of
25 biological organisms, including microorganisms or
26 plants, to degrade organic pollutants to common
27 natural products."
- 28 11. Page 3, line 31, by inserting after the word
29 "high" the following: ", moderate,".
- 30 12. Page 4, by inserting after line 4 the
31 following:
32 "(9) The director may order an owner or operator
33 to immediately take all corrective actions deemed
34 reasonable and necessary by the director if the
35 corrective action is consistent with the
36 prioritization rules adopted under this paragraph."
- 37 13. Page 4, line 8, by inserting before the word
38 "low" the following: "moderate or".
- 39 14. Page 4, line 13, by striking the word "no"
40 and inserting the following: "minimum".
- 41 15. Page 5, line 3, by inserting after the word
42 "installer" the following: "or inspector".
- 43 16. Page 5, by inserting after line 33 the
44 following:
45 "Sec. ____ . Section 455G.2, subsection 15,
46 unnumbered paragraph 2, Code 1991, is amended by
47 striking the unnumbered paragraph."
- 48 17. Page 6, line 3, by inserting after the word
49 "adopted." the following: "As used in this paragraph,
50 "community remediation" means a program of coordinated

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1 testing, planning, or remediation, involving two or
2 more tank sites potentially connected with a
3 continuous contaminated area, pursuant to rules
4 adopted by the board. A community remediation does
5 not expand the scope of coverage otherwise available
6 or relieve liability otherwise imposed under state or
7 federal law."

8 18. Page 6, by inserting after line 3, the
9 following:

10 "Sec. ____ . Section 455G.9, subsection 1, paragraph
11 a, subparagraph (1), Code 1991, is amended to read as
12 follows:

13 (1) Corrective action for an eligible release
14 reported to the department of natural resources on or
15 after July 1, 1987, but prior to May 5, 1989. Third-
16 party liability is specifically excluded from remedial
17 account coverage. For a claim for a release under
18 this subparagraph, the remedial program shall pay no
19 ~~more than the lesser of twenty-five thousand dollars~~
20 ~~or one-third of the total costs of corrective action~~
21 ~~for that release, in accordance with subsection 4~~
22 ~~notwithstanding.~~ For a release to be eligible for
23 coverage under this subparagraph the following
24 conditions must be satisfied:

25 (a) The owner or operator applying for coverage
26 shall not be a person who is maintaining, or has
27 maintained, proof of financial responsibility for
28 federal regulations through self-insurance.

29 (b) The owner or operator applying for coverage
30 shall not have claimed bankruptcy any time on or after
31 July 1, 1987.

32 (c) The claim for coverage pursuant to this
33 subparagraph must have been filed with the board prior
34 to January 31, 1990.

35 (d) The owner or operator at the time the release
36 was reported to the department of natural resources
37 must have been in compliance with then current
38 monitoring requirements, if any, or must have been in
39 the process of compliance efforts with anticipated
40 requirements, including installation of monitoring
41 devices, a new tank, tank improvements or retrofit, or
42 any combination.

43 ~~Total payments for claims pursuant to this~~
44 ~~subparagraph are limited to no more than eight million~~
45 ~~dollars. -- Claims for eligible retroactive releases~~
46 ~~shall be prorated if claims filed in a permitted~~
47 ~~application period or for a particular priority class~~
48 ~~of applicants exceed eight million dollars or the then~~
49 ~~remaining balance of eight million dollars. -- If claims~~
50 ~~remain partially or totally unpaid after total~~

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Page 6

~~1 payments-equal-eight-million-dollars,-all-remaining
2 claims-are-void,-and-no-entitlement-exists-for-further
3 payment."~~

4 19. Page 6, by striking lines 18 through 22 and
5 inserting the following: "26, 1990.

6 Sec. _____. Section 455G.9, subsection 1, paragraph
7 a, subparagraph (3), unnumbered paragraph 1, Code
8 1991, is amended to read as follows:

9 Corrective action for an eligible release reported
10 to the department of natural resources on or after
11 January 1, 1985, but prior to July 1, 1987. Third-
12 party liability is specifically excluded from remedial
13 account coverage. For a claim for a release under
14 this subparagraph, the remedial program shall pay no
15 ~~more-than-the-lesser-of-twenty-five-thousand-dollars
16 or-one-third-of-the-total-costs-of-corrective-action
17 for-that-release,~~ in accordance with subsection 4
18 ~~notwithstanding.~~ For a release to be eligible for
19 coverage under this subparagraph the following
20 conditions must be satisfied:".

21 20. Page 6, line 24, by striking the word
22 "subparagraph" and inserting the following:
23 "subparagraphs".

24 21. Page 6, by inserting after line 34 the
25 following:

26 "NEW SUBPARAGRAPH. (5) For the purposes of
27 calculating corrective action costs under this
28 paragraph, corrective action shall include the cost of
29 a tank system upgrade required by section 455B.474,
30 subsection 1, paragraph "f", subparagraph (7).
31 Payments under this subparagraph shall be limited to a
32 maximum of ten thousand dollars for any one site.

33 NEW SUBPARAGRAPH. (6) For the purposes of
34 calculating corrective action costs under this
35 paragraph, corrective action shall include the costs
36 associated with monitoring required by the corrective
37 action rules adopted under section 455B.474,
38 subsection 1, paragraph "f".

39 Sec. _____. Section 455G.9, subsection 1, paragraphs
40 b and c, Code 1991, are amended to read as follows:

41 b. Corrective action and third-party liability for
42 a release discovered on or after January 24, 1989, for
43 which a responsible owner or operator able to pay
44 cannot be found and for which the federal underground
45 storage tank trust fund or other federal moneys do not
46 provide coverage. For the purposes of this section
47 property shall not be deeded or quitclaimed to the
48 state or board in lieu of cleanup. Additionally, the
49 ability to pay shall be determined after a claim has
50 been filed. The board is not liable for any cost

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1 where either the responsible owner or operator, or
2 both, have a net worth greater than fifteen thousand
3 dollars, or where the responsible party can be
4 determined. Third-party liability specifically
5 excludes any claim, cause of action, or suit, for
6 personal injury including, but not limited to, loss of
7 use or of private enjoyment, mental anguish, false
8 imprisonment, wrongful entry or eviction, humiliation,
9 discrimination, or malicious prosecution.

10 c. Corrective action and third-party liability for
11 a tank owned or operated by a financial institution
12 eligible to participate in the remedial account under
13 section 455G.16 if the prior owner or operator is
14 unable to pay, if so authorized by the board as part
15 of a condition or incentive for financial institution
16 participation in the fund pursuant to section 455G.16.
17 Third-party liability specifically excludes any claim,
18 cause of action, or suit, for personal injury
19 including, but not limited to, loss of use or of
20 private enjoyment, mental anguish, false imprisonment,
21 wrongful entry or eviction, humiliation,
22 discrimination, or malicious prosecution."

23 22. By striking page 6, line 35, through page 7,
24 line 12.

25 23. Page 7, by inserting before line 13, the
26 following:

27 "NEW PARAGRAPH. h. Corrective action for the
28 costs of a release under all of the following
29 conditions:

30 (1) The property upon which the tank causing the
31 release was situated was transferred by inheritance,
32 devise, or bequest.

33 (2) The property upon which the tank causing the
34 release was situated has not been used to store or
35 dispense petroleum since January 1, 1974.

36 (3) The person who received the property by
37 inheritance, devise, or bequest was not the owner of
38 the property during the period of time when the
39 release which is the subject of the corrective action
40 occurred.

41 Corrective action costs and copayment amounts under
42 this paragraph shall be paid in accordance with
43 subsection 4.

44 A person requesting benefits under this paragraph
45 may establish that the conditions of subparagraphs
46 (1), (2), and (3) are met through the use of
47 supporting documents, including a personal affidavit."

48 24. Page 7, by inserting before line 13, the
49 following:

50 "Sec. ____ . Section 455G.9, subsection 1, Code

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1 1991, is amended by adding the following new
2 paragraph:
3 NEW PARAGRAPH. i. One hundred percent of the
4 costs of corrective action for a governmental
5 subdivision in connection with a tank which was in
6 place on the date the release was discovered or
7 reported if the governmental subdivision did not own
8 or operate the tank which caused the release and if
9 the governmental subdivision did not obtain the
10 property upon which the tank giving rise to the
11 release is located on or after May 3, 1991. Property
12 acquired pursuant to eminent domain in connection with
13 a United States department of housing and urban
14 development approved urban renewal project is eligible
15 for payment of costs under this paragraph whether or
16 not the property was acquired on or after May 3,
17 1991."

18 25. Page 7, by striking lines 21 through 31, and
19 inserting the following:

20 "(1) If a site's total anticipated expenses are
21 not reserved for more than, or actual expenses do not
22 exceed fifty thousand dollars, an owner or operator
23 shall pay five thousand dollars for the total costs of
24 corrective action which do not exceed fifty thousand
25 dollars.

26 (2) If a site's total anticipated expenses are
27 reserved for more than, or actual expenses exceed
28 fifty thousand dollars, in addition to the amount as
29 designated in subparagraph (1), an owner or operator
30 shall pay twenty percent of the total corrective
31 action costs up to a total anticipated expense
32 reserved for no more than or an actual expense which
33 does not exceed seventy-five thousand dollars.

34 (3) If a site's total anticipated expenses are
35 reserved for more than, or actual expenses exceed
36 seventy-five thousand dollars, in addition to the
37 amounts designated under subparagraphs (1) and (2), an
38 owner or operator shall pay thirty-five percent of the
39 total costs of the corrective action for that release
40 which exceed seventy-five thousand dollars.

41 b. All payments relating to the costs of
42 corrective action made by an owner or operator to meet
43 the five thousand dollar deductible amount required
44 under subparagraph (1) shall include the board as co-
45 payee."

46 26. Page 8, line 13, by inserting after the word
47 "value," the following: "adjusted for equipment and
48 capital improvements,".

49 27. Page 9, by inserting after line 25 the
50 following:

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1 "Sec. _____. Section 455G.10, subsection 1, Code
2 1991, is amended by adding the following new
3 paragraph:

4 NEW PARAGRAPH. c. All or a portion of the ex-
5 penses associated with the conversion of an existing
6 underground storage tank system to an aboveground
7 storage tank system if the aboveground system is
8 located at a retail motor vehicle fuel outlet."

9 28. Page 9, line 26, by striking the words and
10 figure "subsections 5 and" and inserting the
11 following: "subsection 1, unnumbered paragraph 2, and
12 subsection".

13 29. By striking page 9, line 28 through page 10,
14 line 8, and inserting the following:

15 "Moneys from the revenues derived from the use tax
16 imposed under chapter 423 may be used to fund the loan
17 guarantee account according to the fund budget as
18 approved by the board. Loan guarantees shall be made
19 on terms and conditions determined by the board to be
20 reasonable, except that in no case may a loan
21 guarantee satisfy more than ninety ninety-five percent
22 of the outstanding balance of a loan."

23 30. Page 10, by inserting after line 16 the
24 following:

25 "Sec. _____. Section 455G.11, subsection 1, Code
26 1991, is amended by adding the following new
27 unnumbered paragraph:

28 NEW UNNUMBERED PARAGRAPH. To the extent that
29 coverage under this section includes third-party
30 liability, third-party liability specifically excludes
31 any claim, cause of action, or suit, for personal
32 injury including, but not limited to, loss of use or
33 of private enjoyment, mental anguish, false
34 imprisonment, wrongful entry or eviction, humiliation,
35 discrimination, or malicious prosecution."

36 31. Page 11, line 1, by inserting after the word
37 "INSTALLER'S" the following: "AND INSPECTOR'S".

38 32. Page 11, line 3, by striking the words "an
39 installer of a" and inserting the following:
40 "installers and inspectors of".

41 33. Page 11, line 4, by striking the word
42 "installation" and inserting the following:
43 "installations".

44 34. Page 11, line 18, by striking the words "an
45 installer" and inserting the following: "installers
46 and inspectors".

47 35. Page 11, line 23, by inserting after the word
48 "basis." the following: "The premium paid shall be
49 fully earned and is not subject to refund or
50 cancellation."

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1 36. Page 11, by inserting after line 24 the fol-
2 lowing:

3 "(5) The board may offer coverage at rates based
4 on sales or payrolls, if the qualifying installer or
5 inspector cannot be rated on a per tank basis, or if
6 the work the installer or inspector performs involves
7 more than tank installation. The rates to develop
8 premiums shall be based on the premium charged per
9 tank under subparagraphs (1), (2), and (3)."

10 37. Page 11, line 25, by striking the words "An
11 installer" and inserting the following: "Installers
12 and inspectors".

13 38. Page 11, line 32, by striking the words "An
14 installer" and inserting the following: "Installers
15 and inspectors".

16 39. Page 12, line 3, by inserting after the word
17 "installer" the following: "or inspector".

18 40. Page 12, line 9, by striking the words "or
19 installer" and inserting the following: "installer or
20 inspector".

21 41. Page 12, by striking lines 13 through 15 and
22 inserting the following: "warranty conditions."

23 42. Page 12, line 19, by inserting after the word
24 "installers" the following: "and inspectors".

25 43. Page 12, line 26, by inserting after the word
26 "installers" the following: "or inspectors".

27 44. Page 12, line 29, by inserting after the word
28 "installer" the following: "or inspector".

29 45. Page 14, line 33, by striking the word "is"
30 and inserting the following: "may be".

31 46. Page 15, by inserting after line 14 the fol-
32 lowing:

33 "Sec. _____. Section 455G.12, Code 1991, is amended
34 to read as follows:

35 455G.12 BOARD AUTHORITY FOR PRIORITIZATION.

36 1. If the board determines that within the realm
37 of sound business judgment and practice,
38 prioritization of assistance is necessary in light of
39 funds currently available for remedial benefits, the
40 board may develop rules for remedial assistance
41 prioritization for any or all of the remedial benefit
42 criteria contained in section 455G.9. The
43 prioritization criteria shall at minimum favor the
44 following:

45 a. Rural population sites.

46 b. Sites in which environmental, safety, and
47 health hazards are posed by the release.

48 c. Other criteria as the board, in its discretion,
49 finds necessary or convenient for the administration
50 and financing of remedial benefits.

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1 2. If the board determines that, within the realm
2 of sound business judgment and practice,
3 prioritization of assistance is necessary in light of
4 funds available for loan guarantees or insurance
5 coverage, the board may develop rules for assistance
6 or coverage prioritization based upon adherence or
7 planned adherence of the owner or operator to higher
8 than minimum environmental protection and safety
9 compliance considerations.

10 Prior to the adoption of prioritization rules, the
11 board shall at minimum review the following issues:

12 1 a. The positive environmental impact of
13 assistance prioritization.

14 2 b. The economic feasibility, including the
15 availability of private financing, for an owner or
16 operator to obtain priority status.

17 3 c. Any negative impact on Iowa's rural petroleum
18 distribution network which could result from
19 prioritization.

20 4 d. Any similar prioritization systems in use by
21 the private financing or insurance markets in this
22 state, including terms, conditions, or exclusions.

23 5 e. The intent of this chapter that the board
24 shall maximize the availability of reasonably priced,
25 financially sound insurance coverage or loan guarantee
26 assistance."

27 47. Page 15, by inserting after line 25 the fol-
28 lowing:

29 "Sec. ____ . Section 455G.12A, Code 1991, is amended
30 by adding the following new subsection:

31 NEW SUBSECTION. 4. PRIOR APPROVAL BY ADMINISTRA-
32 TOR. Unless emergency conditions exist, a contractor
33 performing services pursuant to this section shall
34 have the budget for the work approved by the adminis-
35 trator prior to commencement of the work. No expense
36 incurred which is above the budgeted amount shall be
37 paid unless the administrator approves such expense
38 prior to it being incurred. All invoices or bills
39 shall be submitted with appropriate documentation as
40 deemed necessary by the board, no later than thirty
41 days after the work has been performed. Neither the
42 board nor an owner or operator is responsible for
43 payment for work incurred which has not been
44 previously approved by the board."

45 48. Page 15, line 31, by inserting after the word
46 "other" the following: "potentially responsible".

47 49. Page 15, by striking line 34 and inserting
48 the following: "and for all other costs; or including
49 reasonable attorney fees and costs of litigation for
50 which moneys are expended by the fund in".

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1 50. Page 16, line 11, by striking the word
2 "person" and inserting the following: "person
3 potentially responsible party".

4 51. Page 16, line 23, by striking the word
5 "subsections" and inserting the following:
6 "subsection".

7 52. Page 16, line 24, by inserting after the word
8 "INSTALLERS" the following: "AND INSPECTORS".

9 53. Page 16, line 28, by inserting after the word
10 "installer" the following: "or an inspector".

11 54. By striking page 16, line 30, through page
12 17, line 10.

13 55. Page 17, by inserting after line 10, the
14 following:
15 "Sec. ____ . Section 455G.13, subsection 10, Code
16 1991, is amended to read as follows:
17 10. SUBROGATION-RIGHTS CLAIMS AGAINST POTENTIALLY
18 RESPONSIBLE PARTIES. Payment Upon payment of a claim
19 by the fund pursuant to this chapter, shall be
20 conditioned-upon-the-board's-acquiring-by-subrogation
21 the rights of the claimant to recover those costs and
22 expenditures for corrective action for which the fund
23 has compensated the claimant, from the-person
24 responsible-or-liable-for-the-unauthorized-release any
25 potentially responsible party, are assumed by the
26 board to the extent paid by the fund. A claimant is
27 precluded from receiving double compensation for the
28 same injury.

29 In an action brought pursuant to this chapter
30 seeking damages for corrective action or third-party
31 liability, the court shall permit evidence and
32 argument as to the replacement or indemnification of
33 actual economic losses incurred or to be incurred in
34 the future by the claimant by reason of insurance
35 benefits, governmental benefits or programs, or from
36 any other source.

37 Sec. ____ . Section 455G.13, subsection 10, Code
38 1991, is amended by adding the following new
39 unnumbered paragraph:
40 NEW UNNUMBERED PARAGRAPH. A claimant may elect to
41 permit the board to pursue the claimant's cause of
42 action for any injury not compensated by the fund
43 against any potentially responsible party, provided
44 the attorney general determines such representation
45 would not be a conflict of interest. If a claimant so
46 elects, the board's litigation expenses shall be
47 shared on a pro rata basis with the claimant, but the
48 claimant's share of litigation expenses are payable
49 exclusively from any share of the settlement or
50 judgment payable to the claimant.

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1 Sec. _____. Section 455G.16, Code 1991, is amended
2 by adding the following new unnumbered paragraph:
3 "NEW UNNUMBERED PARAGRAPH. Third-party liability
4 expenses under this section specifically exclude any
5 claim, cause of action, or suit, for personal injury
6 including, but not limited to loss of use or of
7 private enjoyment, mental anguish, false imprisonment,
8 wrongful entry or eviction, humiliation,
9 discrimination, or malicious prosecution."

10 56. By striking page 17, line 11, through page
11 19, line 1, and inserting the following:

12 "Sec. _____. Section 455G.17, subsection 3, Code
13 1991, is amended to read as follows:

14 3. The board shall adopt approved curricula for
15 training persons to install underground storage tanks
16 in such a manner that the resulting installation may
17 be certified under section 455G.11, subsection 6, and
18 for training persons to remove tanks.

19 Sec. _____. Section 455G.17, subsection 4, Code
20 1991, is amended by striking the subsection.

21 Sec. _____. NEW SECTION. 455G.17A GROUNDWATER PRO-
22 FESSIONALS -- REGISTRATION.

23 1. The department of natural resources shall adopt
24 rules pursuant to chapter 17A requiring that
25 groundwater professionals register with the department
26 of natural resources.

27 2. A groundwater professional is a person who
28 provides subsurface soil contamination and groundwater
29 consulting services or who contracts to perform
30 remediation or corrective action services and is one
31 or more of the following:

32 a. A person certified by the American institute of
33 hydrology, the national water well association, or the
34 association of groundwater scientists.

35 b. A professional engineer registered in Iowa.

36 c. A professional geologist certified by a
37 national organization.

38 d. Any person who has five years of direct and
39 related experience and training as a groundwater
40 professional or in the field of earth sciences as of
41 the effective date of this Act.

42 e. Any other person with a license, certification,
43 or registration to practice hydrogeology or
44 groundwater hydrology issued by any state in the
45 United States or by any national organization,
46 provided that the license, certification, or
47 registration process requires, at a minimum, all of
48 the following:

49 (1) Possession of a bachelor's degree from an
50 accredited college.

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- 1 (2) Five years of related professional experience.
2 3. The department of natural resources may provide
3 for a civil penalty of no more than fifty dollars for
4 the failure to register. An interested person may
5 obtain a list of registrants from the department of
6 natural resources. The department of natural
7 resources may impose a fee for the registration of
8 persons under this section."
9 57. Title page, line 1, by inserting after the
10 word "relating" the following: "to petroleum
11 aboveground storage tanks and".
12 58. Title page, line 4, by inserting after the
13 word "factor," the following: "excluding aerated
14 petroleum contaminated soil from the definition of
15 solid waste,".
16 59. Title page, line 5, by inserting after the
17 word "product," the following: "claimant, potentially
18 responsible party, and release,".
19 60. Title page, line 8, by inserting after the
20 word "organizations" the following: "and certain
21 persons who inherit property".
22 61. Title page, line 10, by inserting after the
23 word "action," the following: "providing retroactive
24 benefits,".
25 62. Title page, by striking lines 11 and 12 and
26 inserting the following: "payments extending loan
27 maturity dates, increasing the loan guarantees,
28 extending upgrade dates, offering".
29 63. Title page, line 13, by inserting after the
30 word "installers" the following: "and inspectors,".
31 64. Title page, line 14, by inserting after the
32 word "transfers," the following: "establishing
33 prioritization criteria for remedial payments,
34 providing cost containment measures,".
35 65. Title page, line 16, by striking the words
36 "certification and".
37 66. By renumbering, relettering, or redesignating
38 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-3701 FILED MAY 3, 1991

Senate refused to concur 5/8/91 (S. 1714)
House insisted 5/8/91 (S. 2191)

REPORT OF THE CONFERENCE COMMITTEE
ON SENATE FILE 362

To the President of the Senate and the Speaker of the House of Representatives:

We, the undersigned members of the conference committee appointed to resolve the differences between the Senate and the House of Representatives on Senate File 362, a bill for an Act relating to petroleum underground storage tanks by raising the maximum use taxes deposited in the Iowa comprehensive underground storage tank fund and adjusting the diminution cost factor, establishing monitoring certificates, requiring certain corrective action rules, defining free product, providing for double-walled tanks as a corrective action cost, providing for payment of corrective action costs for certain not-for-profit organizations, establishing requirements for site cleanup reports, changing copayment schedules for remedial action, extending property liens, limiting cleanup payments, extending loan maturity dates and offering a special interest rate buy-down, extending upgrade dates, offering insurance coverage for certified tank installers and for property transfers, limiting rights of recovery and subrogation under the insurance account, requiring certification and registration of groundwater professionals, imposing an environmental damage offset, and providing an effective date, respectfully make the following report:

1. That the House recedes from its amendment, S-3701.
2. That Senate File 362, as amended, passed, and reprinted by the Senate, is amended as follows:
 1. Page 1, by inserting after line 12 the following:
"Sec. ____ . Section 424.2, subsections 5, 9, and 12, Code 1991, are amended to read as follows:
 3. "Depositor" means the person who deposits petroleum into a an underground storage tank subject to regulation under chapter 455G or an aboveground petroleum storage tank as

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defined in section 101.21, located at a retail motor vehicle fuel outlet.

9. "Owner or operator" means "owner or operator" of an underground storage tank as used in chapter 455G or the "owner" or "operator" of an aboveground petroleum storage tank as defined in section 101.21, located at a retail motor vehicle fuel outlet.

12. "Tank" means an underground storage tank subject to regulation under chapter 455G or an aboveground petroleum storage tank as defined in section 101.21, located at a retail motor vehicle fuel outlet."

2. Page 1, by striking line 17 and inserting the following: "board, after public hearing, may shall determine, or may shall adjust, the".

3. Page 1, line 18, by inserting after the words "factor to" the following: "the greater of either".

4. Page 1, line 21, by striking the words "interest, if any" and inserting the following: "interest, if any or ten dollars".

5. Page 1, by inserting after line 24 the following:

"Sec. _____. Section 455B.301, subsection 20, Code 1991, is amended to read as follows:

20. "Solid waste" means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities. Solid waste may include vehicles, as defined by section 321.1, subsection 1. However, this division does not prohibit the use of dirt, stone, brick, or similar inorganic material for fill, landscaping, excavation or grading at places other than a sanitary disposal project. Solid waste does not include hazardous waste as defined in section 455B.411 or source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979, or petroleum contaminated soil which has been remediated to acceptable state or federal standards."

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6. By striking page 1, line 28 through page 2, line 27 and inserting the following:

"d. Establishing criteria for classifying sites according to the release of a regulated substance in connection with an underground storage tank.

(1) The classification system shall consider the actual or potential threat to public health and safety, and to the environment posed by the contaminated site and shall take into account relevant factors, including the presence of contamination in soils, groundwaters, and surface waters, and the effect of conduits, barriers, and distances on the contamination found in those areas according to the following factors:

(a) Soils shall be evaluated based upon the depth of the existing contamination and its distance from the ground surface to the contamination zone and the contamination zone to the groundwater; the soil type and permeability, including whether the contamination exists in clay, till or sand and gravel; and the variability of the soils, whether the contamination exists in soils of natural variability or in a disturbed area.

(b) Groundwaters shall be evaluated based upon the depth of the contamination and its distance from the ground surface to the groundwater and from the contamination zone to the groundwater; the flow pattern of the groundwater, the direction of the flow in relation to the contamination zone and the interconnection of the groundwater with the surface or with surface water and with other groundwater sources; the nature of the groundwater, whether it is located in a high yield aquifer, an isolated, low yield aquifer, or in a transient saturation zone; and use of the groundwater, whether it is used as a drinking water source for public or private drinking water supplies, for livestock watering, or for commercial and industrial processing.

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(c) Surface water shall be evaluated based upon its location, its distance in relation to the contamination zone, the groundwater system and flow, and its location in relation to surface drainage.

(d) The effect of conduits, barriers, and distances on the contamination found in soils, groundwaters, and surface waters. Consideration should be given to the following: the effect of contamination on conduits such as wells, utility lines, tile lines and drainage systems; the effect of conduits on the transport of the contamination; whether a well is active or abandoned; what function the utility line serves, whether it is a sewer line, a water distribution line, telephone line, or other line; the existence of barriers such as buildings and other structures, pavement, and natural barriers, including rock formations and ravines; and the distance which separates the contamination found in the soils, groundwaters, or surface waters from the conduits and barriers.

(2) A site shall be classified as either high risk, low risk, or no action required.

(a) A site shall be considered high risk under any of the following conditions:

(i) Contamination is affecting or likely to affect groundwater which is used as a source water for public or private water supplies, to a level rendering them unsafe for human consumption.

(ii) Contamination is actually affecting or is likely to affect surface water bodies to a level where surface water quality standards, under section 455B.173, will be exceeded.

(iii) Harmful or explosive concentrations of petroleum substances or vapors affecting structures or utility installations exist or are likely to occur.

(b) A site shall be considered low risk under any of the following conditions:

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(i) Contamination is present and is affecting groundwater, but high risk conditions do not exist and are not likely to occur.

(ii) Contamination is above action level standards, but high risk conditions do not exist and are not likely to occur.

(c) A site shall be considered no action required if contamination is below action level standards and high or low risk conditions do not exist and are not likely to occur.

(d) A site shall be reclassified as a site with a higher or lower classification when the site falls within a higher or lower classification as established under this subparagraph."

7. Page 2, line 29, by striking the words "sites contaminated by tank releases" and inserting the following: "the release of a regulated substance in connection with an underground storage tank".

8. Page 2, line 30, by inserting after the word "include" the following: ", but not be limited to,".

9. Page 2, by striking lines 32 and 33 and inserting the following:

"(1) A requirement that the site cleanup report do all of the following:".

10. Page 3, line 1, by striking the word "Determine" and inserting the following: "Provide supporting data and a recommendation of".

11. Page 3, line 4, by striking the word "Determine" and inserting the following: "Provide supporting data and a recommendation of".

12. Page 3, by striking lines 18 through 26 and inserting the following:

"(5) Low risk sites shall be monitored according to the following schedule:

(a) Up to three times per year from years one through three.

(b) Up to two times per year from years four through six.

(c) One time per year from years seven through nine.

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(d) In the twelfth year the site shall be monitored one time. If there has been no significant increase in contamination or the contamination has not moved, the site shall be reclassified as a no action required site. If at any time the contamination has increased or moved by a significant amount, the site shall be monitored according to the previous higher monitoring schedule as established under this subparagraph.

(e) The department shall have the authority to order monitoring in addition to the requirements as specified in this subparagraph with approval by the board.

(f) If at any time monitoring indicates that contamination has fallen below action level standards, the site shall be reclassified as a no action required site.

(5A) No action required sites shall not be required to be remediated or monitored."

13. Page 3, line 29, by inserting after the word "groundwater." the following: "For purposes of this subparagraph, "bioremediation" means the use of biological organisms, including microorganisms or plants, to degrade organic pollutants to common natural products."

14. Page 4, by inserting after line 4 the following:

"(9) The director may order an owner or operator to immediately take all corrective actions deemed reasonable and necessary by the director if the corrective action is consistent with the prioritization rules adopted under this paragraph. Any order taken by the director pursuant to this subparagraph shall be reviewed at the next meeting of the environmental protection commission."

15. Page 4, by striking lines 9 and 10 and inserting the following: "monitoring certificate shall be valid until the site is reclassified as a no action required site. A site which has been issued".

16. Page 4, line 34, by striking the word "subsection" and inserting the following: "subsections".

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17. Page 5, line 3, by inserting after the word "installer" the following: "or inspector".

18. Page 5, by inserting after line 4 the following:
"NEW SUBSECTION. 3B. "Community remediation" means a program of coordinated testing, planning, or remediation, involving two or more tank sites potentially connected with a continuous contaminated area, pursuant to rules adopted by the board. A community remediation does not expand the scope of coverage otherwise available or relieve liability otherwise imposed under state or federal law."

19. Page 5, by inserting after line 33 the following:
"Sec. ____ . Section 455G.2, subsection 15, unnumbered paragraph 2, Code 1991, is amended by striking the unnumbered paragraph."

20. Page 6, by inserting after line 3, the following:
"Sec. ____ . Section 455G.9, subsection 1, paragraph a, subparagraph (1), Code 1991, is amended to read as follows:

(1) Corrective action for an eligible release reported to the department of natural resources on or after July 1, 1987, but prior to May 5, 1989. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release for a small business under this subparagraph, the remedial program shall pay ~~no more than the lesser of twenty-five thousand dollars or one-third of the total costs of corrective action for that release,~~ in accordance with subsection 4 notwithstanding. For all other claims under this subparagraph, the remedial program shall pay the lesser of fifty thousand dollars of the total costs of corrective action for that release or total corrective action costs for that release as determined under subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage shall not be a person who is maintaining, or has maintained, proof of financial responsibility for federal regulations through self-insurance.

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(b) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after July 1, 1987.

(c) The claim for coverage pursuant to this subparagraph must have been filed with the board prior to January 31, 1990, except that cities and counties must have filed their claim with the board by September 1, 1990.

(d) The owner or operator at the time the release was reported to the department of natural resources must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

~~Total payments for claims pursuant to this subparagraph are limited to no more than eight million dollars. Claims for eligible retroactive releases shall be prorated if claims filed in a permitted application period or for a particular priority class of applicants exceed eight million dollars or the then remaining balance of eight million dollars. If claims remain partially or totally unpaid after total payments equal eight million dollars, all remaining claims are void, and no entitlement exists for further payment.~~

21. Page 6, by striking lines 18 through 22 and inserting the following: "26, 1990. School districts who reported a release to the department of natural resources prior to December 1, 1990, shall have until July 1, 1991, to report a claim to the board for remedial coverage under this subparagraph.

Sec. ____ . Section 455G.9, subsection 1, paragraph a, subparagraph (3), unnumbered paragraph 1, Code 1991, is amended to read as follows:

Corrective action for an eligible release reported to the department of natural resources on or after January 1, 1985, but prior to July 1, 1987. Third-party liability is specifically excluded from remedial account coverage. For a

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claim for a release for a small business under this subparagraph, the remedial program shall pay no more than the lesser of twenty-five thousand dollars or one-third of the total costs of corrective action for that release in accordance with subsection 4 notwithstanding. For all other claims under this subparagraph, the remedial program shall pay the lesser of fifty thousand dollars of the total costs of corrective action for that release or total corrective action costs for that release as determined under subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

22. Page 6, line 24, by striking the word "subparagraph" and inserting the following: "subparagraphs".

23. Page 6, by inserting after line 34 the following: "NEW SUBPARAGRAPH. (5) For the purposes of calculating corrective action costs under this paragraph, corrective action shall include the cost of a tank system upgrade required by section 455B.474, subsection 1, paragraph "f", subparagraph (7). Payments under this subparagraph shall be limited to a maximum of ten thousand dollars for any one site.

NEW SUBPARAGRAPH. (6) For the purposes of calculating corrective action costs under this paragraph, corrective action shall include the costs associated with monitoring required by the rules adopted under section 455B.474, subsection 1, paragraph "f", but corrective action shall exclude monitoring used for leak detection required by rules adopted under section 455B.474, subsection 1, paragraph "a".

Sec. _____. Section 455G.9, subsection 1, paragraphs b, c, and d, Code 1991 are amended to read as follows:

b. Corrective action and third-party liability for a release discovered on or after January 24, 1989, for which a responsible owner or operator able to pay cannot be found and for which the federal underground storage tank trust fund or other federal moneys do not provide coverage. For the purposes of this section property shall not be deemed or

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quitclaimed to the state or board in lieu of cleanup. Additionally, the ability to pay shall be determined after a claim has been filed. The board is not liable for any cost where either the responsible owner or operator, or both, have a net worth greater than fifteen thousand dollars, or where the responsible party can be determined. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

c. Corrective action and third-party liability for a tank owned or operated by a financial institution eligible to participate in the remedial account under section 455G.16 if the prior owner or operator is unable to pay, if so authorized by the board as part of a condition or incentive for financial institution participation in the fund pursuant to section 455G.16. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

d. One hundred percent of the costs of corrective action and third party liability for a release situated on property acquired by a county for delinquent taxes pursuant to chapters 445 through 448, for which a responsible owner or operator able to pay, other than the county, cannot be found. A county is not a "responsible party" for a release in connection with property which it acquires in connection with delinquent taxes, and does not become a responsible party by sale or transfer of property so acquired. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment,

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wrongful entry or eviction, humiliation, discrimination, or malicious prosecution."

24. Page 7, line 1, by striking the word "paragraph" and inserting the following: "paragraphs".

25. Page 7, by inserting before line 13, the following: "NEW PARAGRAPH. h. Corrective action for the costs of a release under all of the following conditions:

(1) The property upon which the tank causing the release was situated was transferred by inheritance, devise, or bequest.

(2) The property upon which the tank causing the release was situated has not been used to store or dispense petroleum since January 1, 1974.

(3) The person who received the property by inheritance, devise, or bequest was not the owner of the property during the period of time when the release which is the subject of the corrective action occurred.

(4) The release was reported to the board by July 1, 1991. Corrective action costs and copayment amounts under this paragraph shall be paid in accordance with subsection 4.

A person requesting benefits under this paragraph may establish that the conditions of subparagraphs (1), (2), and (3) are met through the use of supporting documents, including a personal affidavit.

NEW PARAGRAPH. i. One hundred percent of the costs of corrective action for a governmental subdivision in connection with a tank which was in place on the date the release was discovered or reported if the governmental subdivision did not own or operate the tank which caused the release and if the governmental subdivision did not obtain the property upon which the tank giving rise to the release is located on or after May 3, 1991. Property acquired pursuant to eminent domain in connection with a United States department of housing and urban development approved urban renewal project is eligible for payment of costs under this paragraph whether or not the property was acquired on or after May 3, 1991."

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26. Page 7, line 24, by striking the word "twenty" and inserting the following: "eighteen".

27. Page 8, line 13, by inserting after the word "value," the following: "adjusted for equipment and capital improvements,".

28. Page 8, line 20, by inserting after the word "annually." the following: "An owner or operator under this subsection shall notify the board of the sale or transfer of the property interest in the tank site."

29. Page 9, line 19, by striking the word "subsection" and inserting the following: "subsections".

30. Page 9, by inserting after line 25 the following:
"NEW SUBSECTION. 10. For a self-insured as determined under IAC 567-136.6, to qualify for remedial benefits under this section, tanks shall be upgraded by January 1, 1995, as specified by the United States environmental protection agency in 40 C.F.R. § 280.21, as amended through January 1, 1989. A self-insured who qualifies for benefits under this section shall repay any benefits received if the upgrade date is not met."

31. Page 9, lines 26 and 27, by striking the words and figure "subsections 5 and 6, Code 1991, are" and inserting the following: "subsection 6, Code 1991, is".

32. By striking page 9, line 28 through page 10, line 8.

33. Page 10, by inserting after line 16 the following:
"Sec. ____ . Section 455G.11, subsection 1, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. To the extent that coverage under this section includes third-party liability, third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution."

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34. Page 11, line 1, by inserting after the word "INSTALLER'S" the following: "AND INSPECTOR'S".
35. Page 11, line 3, by striking the words "an installer of a" and inserting the following: "installers and inspectors of".
36. Page 11, line 4, by striking the word "installation" and inserting the following: "installations".
37. Page 11, line 18, by striking the words "an installer" and inserting the following: "installers and inspectors".
38. Page 11, line 23, by inserting after the word "basis." the following: "The premium paid shall be fully earned and is not subject to refund or cancellation."
39. Page 11, by inserting after line 24 the following:
"(5) The board may offer coverage at rates based on sales if the qualifying installer or inspector cannot be rated on a per tank basis, or if the work the installer or inspector performs involves more than tank installation. The rates to develop premiums shall be based on the premium charged per tank under subparagraphs (1), (2), and (3)."
40. Page 11, line 25, by striking the words "An installer" and inserting the following: "Installers and inspectors".
41. Page 11, line 32, by striking the words "An installer" and inserting the following: "Installers and inspectors".
42. Page 12, line 3, by inserting after the word "installer" the following: "or inspector".
43. Page 12, line 9, by striking the words "or installer" and inserting the following: "installer or inspector".
44. Page 12, line 13, by striking the words "shall not" and inserting the following: "may".
45. Page 12, line 19, by inserting after the word "installers" the following: "and inspectors".

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46. Page 12, line 26, by inserting after the word "installers" the following: "or inspectors".

47. Page 12, line 29, by inserting after the word "installer" the following: "or inspector".

48. Page 12, by striking lines 31 and 32 and inserting the following: "excess coverage of".

49. Page 15, line 25, by inserting after the word "technology." the following: "The board shall not have the authority to affect a contract which has been given written approval under section 455G.12A."

50. Page 15, by inserting after line 25 the following:

"Sec. ____ . Section 455G.12A, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 4. PRIOR APPROVAL BY ADMINISTRATOR.

Unless emergency conditions exist, a contractor performing services pursuant to this section shall have the budget for the work approved by the administrator prior to commencement of the work. No expense incurred which is above the budgeted amount shall be paid unless the administrator approves such expense prior to it being incurred. All invoices or bills shall be submitted with appropriate documentation as deemed necessary by the board, no later than thirty days after the work has been performed. Neither the board nor an owner or operator is responsible for payment for work incurred which has not been previously approved by the board."

51. Page 15, line 26, by striking the word and figure "and 6," and inserting the following: ", 6, 8, and 9".

52. Page 15, line 31, by inserting after the word "other" the following: "potentially responsible".

53. Page 15, by striking line 34 and inserting the following: "and for all other costs; or including reasonable attorney fees and costs of litigation for which moneys are expended by the fund in".

54. Page 16, line 11, by striking the word "person" and inserting the following: "person potentially responsible party".

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55. Page 16, by inserting after line 12, the following:

"8. Third-party contracts not binding on board, proceedings against responsible party. An insurance, indemnification, hold harmless, conveyance, or similar risk-sharing or risk-shifting agreement shall not be effective to transfer any liability for costs recoverable under this section. The fund, board, or department of natural resources 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, except to the extent the agreement shifts liability to an owner or operator eligible for assistance under the remedial account for any damages or other expenses in connection with a corrective action for which another potentially responsible party is or may be liable. Any such provision is null and void and of no force or effect.

9. 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 or the department of natural resources against another person who is later alleged to be or discovered to be liable for costs and expenditures paid by the fund. Notwithstanding section 668.5 no other potentially responsible party may seek contribution or any other recovery from an owner or operator eligible for assistance under the remedial account for damages or other expenses in connection with corrective action for a release for which the potentially responsible party is or may be liable. Subsequent successful proceedings against another party shall not modify or reduce the liability of a party against whom judgment has been previously entered."

56. Page 16, line 23, by striking the word "subsections" and inserting the following: "subsection".

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57. Page 16, line 24, by inserting after the word "INSTALLERS" the following: "AND INSPECTORS".

58. Page 16, line 28, by inserting after the word "installer" the following: "or an inspector".

59. By striking page 16, line 30 through page 17, line 10.

60. Page 17, by inserting after line 10, the following:

"Sec. ____ . Section 455G.13, subsection 10, Code 1991, is amended to read as follows:

10. SUBROGATION-RIGHTS CLAIMS AGAINST POTENTIALLY RESPONSIBLE PARTIES. Payment Upon payment of a claim by the fund pursuant to this chapter, ~~shall be conditioned upon the board's 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~~ any potentially responsible party, are assumed by the board to the extent paid by the fund. A claimant is precluded from receiving double compensation for the same injury.

In an action brought pursuant to this chapter seeking damages for corrective action or third-party liability, the court shall permit evidence and argument as to the replacement or indemnification of actual economic losses incurred or to be incurred in the future by the claimant by reason of insurance benefits, governmental benefits or programs, or from any other source.

Sec. ____ . Section 455G.13, subsection 10, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A claimant may elect to permit the board to pursue the claimant's cause of action for any injury not compensated by the fund against any potentially responsible party, provided the attorney general determines such representation would not be a conflict of interest. If a claimant so elects, the board's litigation expenses shall be shared on a pro rata basis with the claimant, but the

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claimant's share of litigation expenses are payable exclusively from any share of the settlement or judgment payable to the claimant.

Sec. ____ . Section 455G.16, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Third-party liability expenses under this section specifically exclude any claim, cause of action, or suit, for personal injury including, but not limited to loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution."

61. By striking page 17, line 11, through page 19, line 1, and inserting the following:

"Sec. ____ . Section 455G.17, subsection 3, Code 1991, is amended to read as follows:

3. The board shall adopt approved curricula for training persons to install underground storage tanks in such a manner that the resulting installation may be certified under section 455G.11, subsection 6, and provide fire safety and environmental protection guidelines for persons removing tanks.

Sec. ____ . Section 455G.17, subsection 4, Code 1991, is amended by striking the subsection.

Sec. ____ . NEW SECTION. 455G.17A GROUNDWATER PROFESSIONALS -- REGISTRATION.

1. The department of natural resources shall adopt rules pursuant to chapter 17A requiring that groundwater professionals register with the department of natural resources.

2. A groundwater professional is a person who provides subsurface soil contamination and groundwater consulting services or who contracts to perform remediation or corrective action services and is one or more of the following:

a. A person certified by the American institute of hydrology, the national water well association, the American

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board of industrial hygiene, or the association of groundwater scientists and engineers.

b. A professional engineer registered in Iowa.

c. A professional geologist certified by a national organization.

d. Any person who has five years of direct and related experience and training as a groundwater professional or in the field of earth sciences as of the effective date of this Act.

e. Any other person with a license, certification, or registration to practice hydrogeology or groundwater hydrology issued by any state in the United States or by any national organization, provided that the license, certification, or registration process requires, at a minimum, all of the following:

(1) Possession of a bachelor's degree from an accredited college.

(2) Five years of related professional experience.

3. The department of natural resources may provide for a civil penalty of no more than fifty dollars for the failure to register. An interested person may obtain a list of registrants from the department of natural resources. The department of natural resources may impose a fee for the registration of persons under this section.

4. The registration of groundwater professionals shall not impose liability on the board, the department, or the fund for any claim or cause of action of any nature, based on the action or inaction of groundwater professionals registered pursuant to this section."

62. Page 19, by inserting after line 28, the following:

"Sec. ____ . Notwithstanding any limitations on division or department full-time equivalent positions in any enacted legislation, the department of natural resources may utilize funding, other than general fund moneys, to employ up to 4.00 additional full-time equivalent positions to work on the

CCS-362

Page 19

underground storage tank program for the fiscal year beginning July 1, 1991, and ending June 30, 1992."

63. Title page, line 1, by inserting after the word "underground" the following: "and aboveground".

64. Title page, line 17, by inserting after the word "offset," the following: "making technical changes,".

65. By renumbering, relettering, or redesignating and correction internal references as necessary.

ON THE PART OF THE SENATE:

MICHAEL GRONSTAL, Chairperson
RICHARD DRAKE
EUGENE FRAISE
EMIL HUSAK
DERRYL McLAREN

ON THE PART OF THE HOUSE:

JACK HATCH, Chairperson
BRADLEY BANKS
STEVEN GRUBBS
DAVID HIBBARD

CCS-362 FILED MAY 12, 1991
ADOPTED (p. 1840)

House Adopted 5/12/91 (p. 2457)

SENATE FILE 362
FISCAL NOTE

A fiscal note for Senate File 362 as amended by the Conference Committee Report is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 362 as amended by the Conference Committee Report makes changes to the State's Underground Storage Tank Program.

Fiscal Effect

TOTAL PROGRAM EXPENSES

Program Cost under Present Law	+ \$324,700,000
Site Cleanup report covered to \$20,000	+ \$ 16,000,000
Tank Upgrades Covered to \$10,000	+ \$ 18,000,000
Increased Retroactive Benefits	+ \$ 6,000,000
Increased Remedial Benefits	+ \$ 24,000,000
Innocent Landowner Addition	+ \$ 500,000
Political Subdivision Additions	+ \$ 1,600,000
Monitoring Cost Coverage	+ \$ 1,500,000
Environmental Offset	- \$ 7,000,000
Environmental Cost Containment	- \$ 80,000,000
	=====
Total Cost - SF 362 With Conference Committee Amend	\$305,300,000

ANNUAL PROGRAM INCOME

Program Income Under Present Law	+ \$ 12,000,000
Program Income added by SF 362 (Senate Bill)	+ \$ 3,300,000
	=====
Annual Income-SF 362 with Conference Committee	\$ 15,300,000

Bonding capacity under present law is \$130 million, the increased revenue will increase the bonding capacity to \$150 million. The program has a funding shortfall under present law of \$195 million. Senate File 362 as amended by the Conference Committee Report will decrease this shortfall to \$155 million. Despite the projected shortfall, the program has enough bonding capacity in the short run. However, it is projected that a petroleum diminution charge of at least 2.0 cents will be needed in the future to fully fund the program. The present charge is 0.85 cents per gallon, and SF 362 will raise the charge to 1.0 cents per gallon.

Source: Iowa Comprehensive Petroleum Underground Storage Tank Fund Board

(LSB 1922ev.10, JWR)

FILED MAY 12, 1991

BY DENNIS FROUTY, FISCAL DIRECTOR

SSB 233

ENVIRONMENT & ENERGY
UTILITIES

SENATE FILE 362

BY (PROPOSED COMMITTEE ON
ENVIRONMENT AND ENERGY
UTILITIES BILL BY
CHAIRPERSON ROSENBERG)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to petroleum underground storage tanks by raising
2 the maximum use taxes deposited in the Iowa comprehensive
3 underground storage tank fund and adjusting the diminution
4 cost factor, establishing monitoring certificates, requiring
5 certain corrective action rules, defining free product,
6 providing for double-walled tanks as a corrective action cost,
7 providing for payment of corrective action costs for certain
8 not-for-profit organizations, establishing requirements for
9 assessment plans, changing copayment schedules for remedial
10 action, extending property liens, limiting cleanup payments,
11 extending loan maturity dates and offering a special interest
12 rate buy-down, extending upgrade dates, offering insurance
13 coverage for certified tank installers and for property
14 transfers, limiting rights of recovery and subrogation under
15 the insurance account, requiring certification and
16 registration of groundwater professionals, and imposing an
17 environmental damage offset.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

19
20
21
22

1 Section 1. Section 423.24, subsection 1, paragraph a, Code
2 1991, is amended to read as follows:

3 a. Twenty-five percent of all revenue derived from the use
4 tax on motor vehicles, trailers, and motor vehicle accessories
5 and equipment as collected pursuant to section 423.7, up to a
6 maximum of three million eight hundred twenty-five thousand
7 dollars per quarter, shall be deposited into the Iowa
8 comprehensive petroleum underground storage tank fund created
9 in section 455G.3, and the moneys so deposited are a
10 continuing appropriation for expenditure under chapter 455G,
11 and moneys so appropriated shall not be used for other
12 purposes.

13 Sec. 2. Section 424.3, subsection 5, Code 1991, is amended
14 to read as follows:

15 5. The cost factor is an amount per gallon of diminution
16 determined by the board pursuant to this subsection. The
17 board, after public hearing, may determine, or may adjust, the
18 cost factor to an amount reasonably calculated to generate an
19 annual average revenue, year to year, of twelve fifteen
20 million three hundred thousand dollars from the charge,
21 excluding penalties and interest, if any. The board may
22 determine or adjust the cost factor at any time after-May-5,
23 1989, but shall at minimum determine the cost factor at least
24 once each fiscal year.

25 Sec. 3. Section 455B.304, Code 1991, is amended by adding
26 the following new subsection:

27 NEW SUBSECTION. 16. The commission shall adopt rules
28 providing for the issuance of a monitoring certificate to the
29 owner of an underground petroleum storage tank which evidences
30 that the site is in compliance with the then current
31 corrective action monitoring standards. The certificate shall
32 be issued upon the request of the owner by the department and
33 shall state the length of time during which the property will
34 be allowed to be monitored and remain in an unremediated
35 state. A monitoring certificate shall only be valid for the

1 time period specified on the certificate and an owner shall be
2 required to renew a certificate at the end of that time
3 period. A site which is being monitored shall not be eligible
4 for issuance of a certificate of clean under subsection 15. A
5 monitoring certificate shall be invalid if at any time the
6 spread of contamination requires that remedial action be
7 taken.

8 Sec. 4. Section 455B.474, subsection 1, paragraph d, Code
9 1991, is amended by striking the paragraph and inserting in
10 lieu thereof the following:

11 d. Taking corrective action in response to a release or
12 threatened release from an underground storage tank. For
13 purposes of this paragraph, "drinking water" means water which
14 is currently used for human consumption. To the extent
15 permitted by federal law, the corrective action rules shall
16 reflect the following:

17 (1) Public health, safety, and environmental risks. An
18 assessment plan shall include a determination of the extent of
19 the public health, safety, and environmental risks posed from
20 an actual or imminent threat of drinking water contamination.
21 To determine the public health, safety, and environmental
22 risks posed by a contaminated site, the assessment plan shall
23 include but is not limited to consideration of the type of
24 contamination present, the lateral and vertical extent of the
25 contamination, and the resources impacted. Remedial measures
26 required by the rules adopted under this paragraph shall be
27 based upon the degree of risk posed by the contaminated site.

28 (2) Minimum action. At minimum, corrective action shall
29 require that the source of the release be stopped either by
30 repairing or closing the tank, or by upgrading the tank
31 system.

32 (3) Severe risk site. If the contaminated site directly
33 affects a drinking water source, the site shall be categorized
34 as a severe risk site and remediation of the site shall comply
35 with current corrective action standards.

1 (4) Moderate risk site. If the contaminated site has the
2 potential to impact a drinking water source, the site shall be
3 categorized as a moderate risk site. The assessment plan
4 shall address the likelihood of such an impact. Cleanup shall
5 not be required unless there is an actual public health,
6 safety, or environmental risk posed by the release. Cleanup
7 of existing free product, as defined in section 455G.2, shall
8 be required. Cleanup of groundwater shall be required until
9 the actual threat of drinking water contamination no longer
10 exists. The release shall be monitored to assure its
11 continued stability and containment.

12 (5) Low risk site. If the contaminated site has no impact
13 on a drinking water source, the site shall be categorized as a
14 low risk site and shall be monitored to assure the continued
15 stability and containment of the release.

16 (6) Monitoring. Monitoring of a release site shall be in
17 compliance with the following:

18 (a) Testing. If a site is monitored, the site shall be
19 tested in one year to determine whether the release has
20 remained stable. If the release continues to be contained or
21 has progressed by an insignificant amount, cleanup shall not
22 be required at that time. The site shall be tested annually
23 to ensure containment of the release. Rules adopted under
24 this subparagraph may allow for more frequent testing if
25 mandated by public health, safety, or environmental concerns.

26 (b) Seasonal testing. The department shall not require
27 testing of water or vapor monitoring wells on a site under
28 remediation, more frequently than once during the time frame
29 of November 1 to March 31, except for emergency situations.
30 During the time period from April 1 to October 31, no more
31 than three tests are required. The required tests shall
32 address only those areas where the downgradient side of the
33 plume of contamination is determined to exist. Additional
34 testing of existing wells may be required if a test shows an
35 increase in contamination levels.

1 (c) Bioremediation. Notwithstanding other provisions to
2 the contrary and to the extent permitted by federal law, the
3 department shall allow for bioremediation of soils and potable
4 or nonpotable groundwaters.

5 (d) Double wall tanks. Replacement or upgrade of a tank
6 system on a site which is being monitored shall be a double
7 wall tank and liner or a double wall barrier system.

8 (7) If an actual or imminent threat of drinking water
9 contamination exists, the director may upgrade the risk
10 categorization of a site and order an owner or operator to
11 immediately take all corrective action deemed reasonable and
12 necessary to protect the public health and safety and the
13 environment.

14 (8) The commission shall cooperate with the administrator
15 to ensure that the remedial measures required by the
16 corrective action rules adopted pursuant to this lettered
17 paragraph are reasonably cost-effective.

18 Sec. 5. Section 455G.2, Code 1991, is amended by adding
19 the following new subsection:

20 NEW SUBSECTION. 6A. "Free product" means a regulated
21 substance that is present as a nonaqueous phase liquid.

22 Sec. 6. Section 455G.9, subsection 1, paragraph a,
23 subparagraph (2), Code 1991, is amended to read as follows:

24 (2) Corrective action, up to one million dollars total,
25 and subject to prioritization rules as established pursuant to
26 section 455G.12A, for a release reported to the department of
27 natural resources after May 5, 1989, and on or before October
28 26, 1990. Third-party liability is specifically excluded from
29 remedial account coverage. Corrective action coverage
30 provided pursuant to this paragraph may be aggregated with
31 other financial assurance mechanisms as permitted by federal
32 law to satisfy required aggregate and per occurrence limits of
33 financial responsibility for both corrective action and third-
34 party liability, if the owner's or operator's effective
35 financial responsibility compliance date is prior to October

1 26, 1990. For purposes of calculating corrective action
2 costs, corrective action shall include the cost of a tank
3 system upgrade required by section 455B.474, subsection 1,
4 paragraph "d", subparagraph (6), subparagraph subdivision (d).
5 Payments shall be limited to a maximum of fifteen thousand
6 dollars for any one site.

7 Sec. 7. Section 455G.9, subsection 1, paragraph a, Code
8 1991, is amended by adding the following new subparagraph:

9 NEW SUBPARAGRAPH. (4) One hundred percent of the costs of
10 corrective action for a release reported to the department of
11 natural resources on or before July 1, 1991, if the owner or
12 operator is a not-for-profit organization exempt from federal
13 income taxation under section 501(c)(3) of the Internal
14 Revenue Code and if the tank which is the subject of the
15 corrective action is a registered tank and is under one
16 thousand one hundred gallons capacity.

17 Sec. 8. Section 455G.9, subsection 1, Code 1991, is
18 amended by adding the following new paragraph:

19 NEW PARAGRAPH. g. One hundred percent of the costs
20 incurred by the board under section 455G.12A, subsection 2,
21 unnumbered paragraph 2, for site assessment plans.

22 Sec. 9. Section 455G.9, subsection 4, Code 1991, is
23 amended by striking the subsection and inserting in lieu
24 thereof the following:

25 4. MINIMUM COPAYMENT SCHEDULE.

26 a. An owner or operator who reports a release to the
27 department of natural resources on or before October 26, 1990,
28 shall be required to pay the following copayment amounts:

29 (1) If a site's total anticipated expenses are not
30 reserved for more than, or actual expenses do not exceed one
31 hundred thousand dollars, the owner or operator shall pay five
32 thousand dollars for the costs of corrective action for that
33 release.

34 (2) If a site's total anticipated expenses are reserved
35 for more than, or actual expenses exceed one hundred thousand

1 dollars, the owner or operator shall pay a minimum of five
2 thousand dollars plus the greater of five thousand dollars or
3 thirty-five percent of the total costs of the corrective
4 action for that release which exceed one hundred thousand
5 dollars.

6 b. The remedial account shall pay the remainder, as
7 required by federal regulations, of the total costs of the
8 corrective action for that release, except that a county shall
9 not be required to pay a copayment in connection with a
10 release situated on property acquired in connection with
11 delinquent taxes, as provided in subsection 1, paragraph "d",
12 unless subsequent to acquisition the county actively operates
13 a tank on the property for purposes other than risk
14 assessment, risk management, or tank closure.

15 Sec. 10. Section 455G.9, subsection 6, unnumbered
16 paragraph 1, Code 1991, is amended to read as follows:

17 If an owner or operator ceases to own or operate a tank
18 site for which remedial account benefits were received within
19 five ten years of the receipt of any account benefit and sells
20 or transfers a property interest in the tank site for an
21 amount which exceeds one hundred twenty percent of the
22 precorrective action value, the owner or operator shall refund
23 to the remedial account an amount equal to ninety percent of
24 the amount in excess of one hundred twenty percent of the
25 precorrective action value up to a maximum of the expenses
26 incurred by the remedial account associated with the tank site
27 plus interest, equal to the interest for the most recent
28 twelve-month period for the most recent bond issue for the
29 fund, on the expenses incurred, compounded annually. Expenses
30 incurred by the fund are a lien upon the property recordable
31 and collectible in the same manner as the lien provided for in
32 section 424.11 at the time of sale or transfer, subject to the
33 terms of this section.

34 Sec. 11. Section 455G.9, Code 1991, is amended by adding
35 the following new subsection:

1 NEW SUBSECTION. 8. EXPENSES OF CLEANUP NOT REQUIRED.

2 When an owner or operator who is eligible for benefits under
3 this chapter is allowed by the department of natural resources
4 to monitor in place, the expenses incurred for cleanup beyond
5 the level required by the department of natural resources are
6 not covered under any of the accounts established under the
7 fund. The cleanup expenses incurred for work completed beyond
8 what is required is the responsibility of the person
9 contracting for the excess cleanup.

10 Sec. 12. Section 455G.10, subsections 5 and 6, Code 1991,
11 are amended to read as follows:

12 5. As a condition of eligibility for financial assistance
13 from the loan guarantee account, a small business shall
14 demonstrate satisfactory attempts to obtain financing from
15 private lending sources. When applying for loan guarantee
16 account assistance, the small business shall demonstrate good
17 faith attempts to obtain financing from at least two financial
18 institutions. The board may first refer a tank owner or
19 operator to a financial institution eligible to participate in
20 the fund under section 455G.16; however, if no such financial
21 institution is currently willing or able to make the required
22 loan, the small business shall determine if any of the
23 previously contacted financial institutions would make the
24 loan in participation with the loan guarantee account. The
25 loan guarantee account may offer to guarantee a loan, may
26 offer a five-point interest rate buy-down, or provide other
27 forms of financial assistance to facilitate a private loan.

28 6. The maturity for each financial assistance package made
29 by the board pursuant to this chapter shall be the shortest
30 feasible term commensurate with the repayment ability of the
31 small business borrower. However, the maturity date of a loan
32 shall not exceed ten twenty years and the guarantee is
33 ineffective beyond the agreed term of the guarantee or ten
34 twenty years from initiation of the guarantee, whichever term
35 is shorter.

1 Sec. 13. Section 455G.11, subsection 3, paragraph c, Code
2 1991, is amended to read as follows:

3 c. The applicant certifies in writing to the board that
4 the tank to be insured will be brought into compliance with
5 either paragraph "a" or "b", on or before October 26, ~~1992~~
6 1993, provided that prior to the provision of insurance
7 account coverage, the tank site tests release free. For a
8 tank qualifying for insurance coverage pursuant to this
9 paragraph at the time of application or renewal, the owner or
10 operator shall pay a per tank premium equal to two times the
11 normally scheduled premium for a tank satisfying paragraph "a"
12 or "b". An owner or operator who fails to comply as certified
13 to the board on or before October 26, ~~1992~~ 1993, shall not
14 insure that tank through the insurance account unless and
15 until the tank satisfies the requirements of paragraph "a" or
16 "b".

17 Sec. 14. Section 455G.11, subsection 6, Code 1991, is
18 amended by striking the subsection and inserting in lieu
19 thereof the following:

20 6. INSTALLER'S INSURANCE COVERAGE.

21 a. Coverage. The board shall offer insurance coverage
22 under the fund's insurance account to an installer of a
23 certified underground storage tank installation within the
24 state for an environmental hazard arising in connection with a
25 certified installation as provided in this subsection.

26 Coverage shall be limited to environmental hazard coverage for
27 both corrective action and third-party liability for a
28 certified tank installation within the state in connection
29 with a release from that tank.

30 b. Annual premiums. The annual premium shall be:

31 (1) For the year July 1, 1991, through June 30, 1992, two
32 hundred dollars per insured tank.

33 (2) For the year July 1, 1992, through June 30, 1993, two
34 hundred fifty dollars per insured tank.

35 (3) For the year July 1, 1993, through June 30, 1994,

1 three hundred dollars per insured tank.

2 (4) For subsequent years, an installer shall pay an
3 annually adjusted insurance premium to maintain coverage on
4 each tank previously installed or newly insured by the
5 insurance account. The board may only approve fund coverage
6 through the payment of a premium established on an actuarially
7 sound basis. If coverage is purchased for any part of a year
8 the purchaser shall pay the full annual premium.

9 c. Limits of coverage available. An installer may
10 purchase coverage up to one million dollars per occurrence and
11 two million dollars aggregate, subject to the terms and
12 conditions under this section and those adopted by the board.

13 d. Deductible. The insurance account may offer, at the
14 buyer's option, a range of deductibles. A ten thousand dollar
15 deductible policy shall be offered.

16 e. Excess coverage. An installer may purchase excess
17 coverage at a premium, within such limits and upon such terms
18 and conditions as determined by the board.

19 f. Certification of tank installations. The board shall
20 adopt certification rules requiring certification of a new
21 tank installation as a precondition to offering insurance to
22 an owner or operator or an installer. The board shall set in
23 the rule the effective date for the certification requirement.
24 Certification rules shall at minimum require that an
25 installation be personally inspected by an independent
26 licensed engineer, local fire marshal, state fire marshal's
27 designee, or other person who is unaffiliated with the tank
28 owner, operator, or installer, who is qualified and authorized
29 by the board to perform the required inspection and that the
30 tank and installation of the tank comply with applicable
31 technical standards and manufacturer's instructions and
32 warranty conditions. An inspector shall not be an owner or
33 operator of a tank, or an employee of an owner, operator, or
34 installer.

35 Sec. 15. Section 455G.11, subsection 7, Code 1991, is

1 amended to read as follows:

2 7. COVERAGE ALTERNATIVES. The board shall provide for
3 insurance coverage to be offered to installers for a tank
4 installation certified pursuant to subsection 6, through at
5 ~~least-one~~ both of the following methods:

6 a. Directly through the fund with premiums and deductibles
7 as provided ~~for-owners-and-operators~~ in subsection 4 6.

8 b. In cooperation with a private insurance carrier with
9 excess or stop loss coverage provided by the fund to reduce
10 the cost of insurance to such installers, and including such
11 other terms and conditions as the board deems necessary and
12 convenient to provide adequate coverage for a certified tank
13 installation at a reasonable premium.

14 Sec. 16. Section 455G.11, Code 1991, is amended by adding
15 the following new subsection:

16 NEW SUBSECTION. 10. PROPERTY TRANSFER INSURANCE.

17 a. Additional cleanup requirements. An owner, operator,
18 landowner, or financial institution may purchase insurance
19 coverage under the insurance account to cover environmental
20 damage caused by a tank in the event that governmental action
21 requires additional cleanup beyond action level standards in
22 effect at the time a certificate of clean was issued under
23 section 455B.304, subsection 15, or a monitoring certificate
24 was issued under section 455B.304, subsection 16.

25 b. Eligibility for coverage. An owner, operator,
26 landowner, or financial institution, subject to underwriting
27 requirements and such terms and conditions deemed necessary
28 and convenient by the board, may purchase insurance coverage
29 from the insurance account to provide proof of financial
30 responsibility if the following conditions are satisfied:

31 (1) A certificate of clean has been issued for the site
32 under section 455B.304, subsection 15, or a monitoring
33 certificate has been issued for the site under section
34 455B.304, subsection 16. Property transfer coverage shall be
35 effective on a monitored site only for the time period for

1 which monitoring is allowed as specified in the monitoring
2 certificate. A site which has not been issued a certificate
3 of clean or a monitoring certificate shall not be eligible for
4 property transfer coverage.

5 (2) The tank location is not covered by other
6 environmental hazard liability insurance coverage, or is
7 eligible for remedial benefits as provided under section
8 455G.9.

9 (3) The environmental damage is not caused by a new
10 release.

11 (4) The additional cleanup is required to meet new
12 corrective action level standards mandated by governmental
13 action.

14 c. Premiums. The annual premium for insurance coverage
15 shall be two hundred fifty dollars per party, per location,
16 with an overall limit of liability per site of five hundred
17 thousand dollars. The premiums are fully earned. Each party
18 purchasing coverage at that site will have the total limit of
19 liability prorated over the total limit among the policies
20 issued, so as to avoid stacking beyond the total coverage
21 limit of five hundred thousand dollars. If coverage is
22 purchased for any part of a year, the purchaser shall pay the
23 full annual premium.

24 After June 30, 1994, an owner, operator, landowner, or
25 financial institution applying for coverage shall pay an
26 annually adjusted insurance premium for coverage by the
27 insurance account. The board may only approve fund coverage
28 through the payment of a premium established on an actuarially
29 sound basis.

30 d. Coverage exclusions. Property transfer insurance
31 coverage offered under this subsection does not include
32 coverage of the following:

33 (1) Third-party liability.

34 (2) Cleanup beyond the actual costs associated with the
35 site.

1 (3) Loss of use of the property and other economic
2 damages.

3 (4) Costs associated with additional remediation required
4 by a voluntary change in usage of the site.

5 (5) Cleanup costs for additional corrective action
6 required due to the spread of contamination on a site which
7 has been issued a monitoring certificate.

8 e. Annual monitoring. Annual monitoring is required, for
9 any site for which coverage is purchased. Failure to comply
10 with monitoring as proscribed by the board will invalidate
11 insurance coverage under this subsection. For a site which
12 has been issued a monitoring certificate, the annual
13 monitoring requirements imposed under this paragraph shall be
14 satisfied by the annual monitoring requirements imposed under
15 the corrective action rules for a site which is allowed to
16 monitor in place.

17 f. Transfer of coverage. Coverage may be transferred upon
18 payment of a transfer fee.

19 g. Rules. The board shall adopt rules pursuant to chapter
20 17A as necessary to implement this subsection.

21 h. Federal approval. Property transfer insurance coverage
22 issued under this subsection is conditioned upon continued
23 approval by the United States environmental protection agency
24 of the state's underground storage tank program.

25 Sec. 17. Section 455G.12A, subsection 2, Code 1991, is
26 amended by adding the following new unnumbered paragraph:

27 NEW UNNUMBERED PARAGRAPH. The board shall have sole
28 authority to contract for site assessment plans. The board's
29 responsibility for site assessment plans is limited to those
30 site assessment plans subject to approval by the department of
31 natural resources and required in connection with the
32 remediation of a release which is eligible for benefits under
33 section 455G.9. The assessment plans shall address existing
34 and available remedial technologies and the costs associated
35 with the use of each technology.

1 Sec. 18. Section 455G.13, Code 1991, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 4A. RECOVERY OR SUBROGATION --
4 INSTALLERS. Notwithstanding any other provision contained in
5 this chapter, the board or a person insured under the
6 insurance account has no right of recovery or right of
7 subrogation against an installer insured by the fund for the
8 tank giving rise to the liability other than for recovery of
9 any deductibles paid.

10 Sec. 19. Section 455G.17, Code 1991, is amended by
11 striking the section and inserting in lieu thereof the
12 following:

13 455G.17 INSPECTORS -- GROUNDWATER PROFESSIONALS -- REGIS-
14 TRATION AND CERTIFICATION.

15 1. The board shall adopt rules pursuant to chapter 17A
16 requiring that all underground storage tank inspectors,
17 persons performing certified tank installation, and
18 groundwater professionals register with the board.

19 2. The board shall adopt certification procedures and
20 standards for the following:

21 a. Underground storage tank installation inspectors.
22 Underground storage tank installation inspectors shall consist
23 of the following persons:

24 (1) A registered engineer. If the installation of
25 underground storage tanks is within the scope of practice of a
26 particular class of registered engineer, additional training
27 shall not be required for that class. A registered engineer
28 for whom underground storage tank installation is within the
29 scope of practice shall be considered an "authorized
30 inspector" rather than a "certified inspector".

31 (2) A fire marshal, or other person unaffiliated with the
32 tank owner, operator, or installer.

33 b. Groundwater professionals. A groundwater professional
34 is a person who provides subsurface soil contamination and
35 groundwater consulting services or who contracts to perform

1 remediation, corrective action services, or tank removal and
2 shall consist of the following persons:

3 (1) A registered engineer.

4 (2) A professional geologist certified by a national
5 organization.

6 3. Certification requirements for underground storage tank
7 installation inspectors shall include training from approved
8 curricula adopted by the board. The board shall adopt
9 approved training curricula in such a manner that
10 installations made by underground storage tank installation
11 inspectors are certified under section 455G.11, subsection 6.

12 4. Certification requirements for groundwater
13 professionals shall include, but are not limited to,
14 experience and proficiency in the groundwater field by
15 demonstration of three or more years of direct experience, by
16 review of demonstrated skills by a peer committee, or by an
17 examination.

18 5. Certification requirements for groundwater
19 professionals who are conducting corrective actions shall
20 include training from approved curricula adopted by the board.
21 The board shall adopt curricula which is consistent with the
22 corrective action requirements.

23 6. A person's failure to register with the board shall not
24 affect the person's certification, or the certification of an
25 otherwise eligible installation performed by that person, but
26 the board may provide for a civil penalty of no more than
27 fifty dollars for the failure to register.

28 7. An interested person may obtain a list of registrants
29 from the board.

30 8. The board may impose a fee for registration based upon
31 the costs of administering the registration of persons under
32 this section.

33 Sec. 20. NEW SECTION. 455G.18 ENVIRONMENTAL DAMAGE
34 OFFSET.

35 1. The fund's payment of a remedial claim by an owner or

1 operator reporting a release under section 455G.9, subsection
2 1, paragraph "a", subparagraph (2), shall be subject to an
3 environmental damage offset if the owner or operator closed or
4 removed the tank and did not replace it. An owner or operator
5 who has declared bankruptcy shall not be subject to the
6 offset. A site which is not being used for commercial
7 purposes is not subject to the offset unless offered for sale.
8 If a site is exempt under this subsection from the offset, but
9 is later subject to the lien imposed under section 455G.13,
10 subsection 5, the amount of the lien shall include the amount
11 of the offset which would have been imposed if the site was
12 not exempt during remediation.

13 2. The offset shall be equal to the average annual
14 environmental protection charge on diminution imposed under
15 chapter 424 which would be paid for tanks of similar size.
16 The offset shall be based on the rate of diminution presently
17 in force, regardless of the date on which the tank was closed.
18 The offset shall apply to the release which is still subject
19 to remedial fund payments under section 455G.9.

20 3. Offsets under this section shall be credited to cost
21 recovery enforcement proceeds under section 455G.8, subsection
22 5.

23 4. The board shall adopt rules as necessary and convenient
24 for the implementation and administration of the offset.

25 EXPLANATION

26 This bill makes several changes relating to the regulation
27 of and financial assistance provided to the owners and
28 operators of petroleum underground storage tanks. Sections 1
29 and 2 of the bill raise the cap on revenue derived from the
30 use tax on motor vehicles, trailers, and motor vehicle
31 accessories from a maximum of \$3,000,000 per quarter to a
32 maximum of \$3,825,000 per quarter. This change is projected
33 to generate an annual average revenue increase of \$3,300,000
34 from the current annual amount of \$12,000,000 to \$15,300,000.

35 Section 3 of the bill requires the environmental protection

1 commission to adopt rules for issuing monitoring certificates
2 when a site is being monitored rather than remediated and is
3 in compliance with then current corrective action standards.

4 Section 4 of the bill requires that to the extent permitted
5 by federal law, the environmental protection commission in
6 adopting corrective action rules must consider a
7 prioritization scheme for site cleanup requirements. For
8 purposes of adopting corrective action rules, drinking water
9 is defined as water which is currently used for human
10 consumption. The commission is required to consider the
11 following factors in adopting their corrective action rules:

12 1. As part of the assessment plan, a public health,
13 safety, and environmental risk analysis must be done to
14 determine the type of contamination present, the lateral and
15 vertical extent of the contamination, and the resources
16 impacted by the contamination. Remedial measures must be
17 based upon the degree of risk posed by the contaminated site.

18 2. Corrective action rules must require that the source of
19 the release be stopped, either by repairing or closing the
20 tank, or by upgrading the tank system.

21 3. If the contaminated site directly affects a drinking
22 water source, the site is categorized as a severe risk site
23 and must comply with existing action level standards.

24 4. If the contaminated site has the potential to impact a
25 drinking water source, it is categorized as a moderate risk
26 site and cleanup is not required unless there is an actual
27 public health, safety, or environmental risk posed by the
28 release. Cleanup of existing free product and cleanup of the
29 groundwater to the point where the threat of drinking water
30 contamination no longer exists is required. The site must be
31 monitored to assure the continued stability and containment of
32 the release.

33 5. If the contaminated site has no impact on a drinking
34 water source, the site is categorized as a low risk site and
35 requires monitoring to ensure the continued stability and

1 containment of the release.

2 6. Monitoring of a release requires testing after one year
3 to ensure that the release has remained stable. If the
4 release is stabilized, testing must be done annually
5 thereafter. Cleanup is not required unless testing shows that
6 the release is no longer contained or is migrating at a rate
7 likely to impact a drinking water source. More frequent
8 testing can be required if mandated by public health, safety,
9 and environmental concerns. The bill provides for seasonal
10 testing of monitoring wells by requiring testing no more than
11 one time between November 1 to March 31. From April 1 to
12 October 31 no more than three tests can be required. The
13 tests must address only those areas where the downgradient
14 side of the plume of contamination is determined to exist.

15 7. Bioremediation using interactive technologies is an
16 approved remediation method.

17 8. A tank used for tank replacement or tank upgrade on a
18 site that is being monitored must be a double wall tank and
19 liner or a double wall barrier system. In addition, section 6
20 of the bill states that when a double barrier tank is
21 installed pursuant to monitoring requirements, it is
22 classified as corrective action rather than as a capital
23 improvement and up to \$15,000 is included as a cost of
24 corrective action and payable from the remedial account.

25 9. If at any time an actual or imminent threat of drinking
26 water contamination exists, the director may upgrade a site
27 categorization and order an owner or operator to take all
28 corrective action reasonable and necessary to protect the
29 public health and safety and the environment.

30 10. The environmental protection commission must cooperate
31 with the administrator of the Iowa comprehensive petroleum
32 underground storage tank fund to ensure that the remedial
33 measures are cost-effective.

34 Section 5 of the bill adds the definition of "free product"
35 to chapter 455G and defines it as a regulated substance that

1 is present as a nonaqueous phase liquid, e.g., a liquid that
2 is not dissolved in water.

3 Section 7 provides for payment of 100 percent of the
4 corrective action costs for a release reported on or before
5 July 1, 1991, of an I.R.C. § 501(c)(3) not-for-profit
6 organization if the tank is registered and if it is under
7 1,100 gallons capacity.

8 This bill changes the structure for corrective action
9 payments.

10 At the present time an owner or operator pays the greater
11 of \$5,000 or 25 percent of the corrective action costs,
12 including the costs of preparing an assessment plan. An
13 assessment plan sets out in detail the planned response to a
14 release or suspected release and is required to be approved by
15 the department of natural resources. Sections 8 and 17 give
16 the responsibility for contracting for the assessment plans to
17 the Iowa comprehensive petroleum underground storage tank fund
18 board and requires the fund to pay 100 percent of the costs
19 for preparation of the assessment plans. The assessment plans
20 must address existing and available remedial technologies and
21 the costs associated with the use of each technology.

22 Section 9 of the bill changes the copayment amounts for
23 corrective action costs by requiring an owner or operator to
24 pay \$5,000 for corrective action costs up to \$100,000. If a
25 site's expenses exceed \$100,000, the owner or operator pays
26 the initial \$5,000 in addition to the greater of \$5,000 or 35
27 percent of the total costs of the corrective action which
28 exceed \$100,000.

29 Section 10 of this bill extends the lien for remedial
30 expenses incurred by the fund, on property which was the
31 subject of corrective action from five years to 10 years.

32 Section 11 states that when monitoring in place is allowed,
33 the fund will not pay for cleanup which goes beyond that which
34 is required by current action level standards.

35 Section 12 makes changes to the loan guarantee account by

1 allowing the board to offer a five-point interest rate buy-
2 down as an option to facilitate private loans and by extending
3 loan maturity dates from 10 to 20 years.

4 Section 13 extends the tank upgrade deadlines from October
5 26, 1992, to October 26, 1993.

6 Sections 14, 15, and 16 make changes to the insurance
7 account by including coverage for installers and for property
8 transfers.

9 Installer's coverage is offered for certified tank
10 installations within the state and covers environmental
11 damages arising from installation of an insured tank.
12 Coverage is limited to corrective action and third-party
13 liability for up to \$1,000,000 per occurrence and \$2,000,000
14 in the aggregate. The installer's premium schedule is based
15 on an annual per tank premium which is the same as that
16 required for owners and operators under the insurance account.
17 Deductibles are the same as offered to owners and operators
18 under the insurance account and excess coverage may be
19 purchased as determined by the board.

20 Property transfer insurance is offered for cleanup of
21 environmental damage required on a site which has been allowed
22 to monitor in place and issued a monitoring certificate or
23 which has been issued a certificate of clean, if governmental
24 action later mandates additional cleanup. In order for an
25 owner, operator, landowner, or financial institution to obtain
26 property transfer coverage a certificate of clean or a
27 monitoring certificate must have been issued. In addition,
28 the site must not be covered by any other environmental hazard
29 liability insurance coverage or be receiving benefits under
30 the remedial account. The environmental damage cannot be
31 caused by a new release and the increased cleanup requirements
32 must be mandated by governmental action.

33 The annual premium for property transfer insurance coverage
34 is \$250 per party, per site, with an overall limit of
35 liability per site of \$500,000. If more than one party has

1 coverage on a site, the coverage will be prorated between the
2 parties so that the total limit of coverage per site is
3 \$500,000. Coverage does not include third-party liability,
4 cleanup costs beyond the actual costs associated with the site
5 in question, loss of use of the property and other economic
6 damages, the costs associated with additional remediation
7 which is necessitated by a voluntary change in usage of the
8 site, or the costs associated with additional remediation of a
9 monitored site when contamination spreads.

10 Annual monitoring is required for any insured site.
11 Failure to monitor will result in invalidation of the
12 insurance coverage. For a site which has been issued a
13 monitoring certificate, the annual monitoring requirement to
14 obtain property transfer insurance is satisfied by the annual
15 monitoring requirement imposed under the corrective action
16 rules for sites which are allowed to monitor in place. A
17 policy may be transferred between parties upon payment of a
18 transfer fee. The board is authorized to adopt rules to
19 implement the addition of property transfer insurance coverage
20 to the insurance account. Property transfer insurance is
21 conditioned upon continued federal approval of Iowa's
22 underground storage tank program.

23 Section 18 states that the board or another person who is
24 insured under the account has no right of subrogation or right
25 of recovery against an installer who had insurance on the tank
26 giving rise to the liability other than for recovery of any
27 deductibles.

28 Section 19 of this bill requires the board to adopt
29 certification and registration procedures for groundwater
30 professionals, in a similar manner as is currently applicable
31 to underground storage tank installers. A groundwater
32 professional is a person who provides subsurface soil
33 contamination and groundwater consulting services, or a person
34 who contracts to perform remediation, corrective action
35 services, or tank removal. At minimum, a groundwater

1 professional must be registered as a professional engineer or
2 certified as a professional geologist. The standards for
3 certification include experience and proficiency in the
4 groundwater field demonstrated by a number of years of direct
5 experience, by review of demonstrated skills, or by an
6 examination. A civil penalty of up to \$50 is applicable for
7 failure to register with the board as a groundwater
8 professional.

9 Section 20 of the bill imposes an environmental damage
10 offset upon owners or operators who reported a release to the
11 department of natural resources between May 5, 1989, and
12 October 26, 1990, and who closed or removed the tank and did
13 not replace it. An owner or operator who has declared
14 bankruptcy is not subject to the offset. If the site is not
15 being used for commercial purposes it is not subject to the
16 offset unless offered for sale. If the site is exempt, but is
17 later sold, a lien on the site shall include the amount of
18 offset which would have been imposed if the site had not been
19 exempted. The offset is based on a rate equal to the average
20 environmental protection charge on diminution paid by an owner
21 or operator with similar sized tanks. The offset applies to
22 any release which is subject to remedial fund payments. An
23 offset is credited against benefits paid by the fund. The
24 board is required to adopt rules to implement and administer
25 the offset.

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SENATE FILE 362

AN ACT

RELATING TO PETROLEUM UNDERGROUND AND ABOVEGROUND STORAGE TANKS BY RAISING THE MAXIMUM USE TAXES DEPOSITED IN THE IOWA COMPREHENSIVE UNDERGROUND STORAGE TANK FUND AND ADJUSTING THE DIMINUTION COST FACTOR, ESTABLISHING MONITORING CERTIFICATES, REQUIRING CERTAIN CORRECTIVE ACTION RULES, DEFINING FREE PRODUCT, PROVIDING FOR DOUBLE-WALLED TANKS AS A CORRECTIVE ACTION COST, PROVIDING FOR PAYMENT OF CORRECTIVE ACTION COSTS FOR CERTAIN NOT-FOR-PROFIT ORGANIZATIONS, ESTABLISHING REQUIREMENTS FOR SITE CLEANUP REPORTS, CHANGING COPAYMENT SCHEDULES FOR REMEDIAL ACTION, EXTENDING PROPERTY LIENS, LIMITING CLEANUP PAYMENTS, EXTENDING LOAN MATURITY DATES AND OFFERING A SPECIAL INTEREST RATE BUY-DOWN, EXTENDING UPGRADE DATES, OFFERING INSURANCE COVERAGE FOR CERTIFIED TANK INSTALLERS AND FOR PROPERTY TRANSFERS, LIMITING RIGHTS OF RECOVERY AND SUBROGATION UNDER THE INSURANCE ACCOUNT, REQUIRING CERTIFICATION AND REGISTRATION OF GROUNDWATER PROFESSIONALS, IMPOSING AN ENVIRONMENTAL DAMAGE OFFSET, MAKING TECHNICAL CHANGES, AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 423.24, subsection 1, paragraph a, Code 1991, is amended to read as follows:

a. Twenty-five percent of all revenue derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to section 423.7, up to a maximum of three million eight hundred twenty-five thousand dollars per quarter, shall be deposited into the Iowa comprehensive petroleum underground storage tank fund created in section 455G.3, and the moneys so deposited are a continuing appropriation for expenditure under chapter 455G, and moneys so appropriated shall not be used for other purposes.

Sec. 2. Section 424.2, subsections 5, 9, and 12, Code 1991, are amended to read as follows:

5. "Depositor" means the person who deposits petroleum into a an underground storage tank subject to regulation under chapter 455G or an aboveground petroleum storage tank as defined in section 101.21, located at a retail motor vehicle fuel outlet.

9. "Owner or operator" means "owner or operator" of an underground storage tank as used in chapter 455G or the "owner" or "operator" of an aboveground petroleum storage tank as defined in section 101.21, located at a retail motor vehicle fuel outlet.

12. "Tank" means an underground storage tank subject to regulation under chapter 455G or an aboveground petroleum storage tank as defined in section 101.21, located at a retail motor vehicle fuel outlet.

Sec. 3. Section 424.3, subsection 5, Code 1991, is amended to read as follows:

5. The cost factor is an amount per gallon of diminution determined by the board pursuant to this subsection. The board, after public hearing, may shall determine, or may shall adjust, the cost factor to the greater of either an amount reasonably calculated to generate an annual average revenue, year to year, of twelve fifteen million three hundred thousand dollars from the charge, excluding penalties and interest, if

any or ten dollars. The board may determine or adjust the cost factor at any time after May-5, 1989, but shall at minimum determine the cost factor at least once each fiscal year.

Sec. 4. Section 455B.301, subsection 20, Code 1991, is amended to read as follows:

20. "Solid waste" means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities. Solid waste may include vehicles, as defined by section 321.1, subsection 1. However, this division does not prohibit the use of dirt, stone, brick, or similar inorganic material for fill, landscaping, excavation or grading at places other than a sanitary disposal project. Solid waste does not include hazardous waste as defined in section 455B.411 or source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979, or petroleum contaminated soil which has been remediated to acceptable state or federal standards.

Sec. 5. Section 455B.474, subsection 1, paragraphs d and f, Code 1991, are amended by striking the paragraphs and inserting in lieu thereof the following:

d. Establishing criteria for classifying sites according to the release of a regulated substance in connection with an underground storage tank.

(1) The classification system shall consider the actual or potential threat to public health and safety, and to the environment posed by the contaminated site and shall take into account relevant factors, including the presence of contamination in soils, groundwaters, and surface waters, and the effect of conduits, barriers, and distances on the contamination found in those areas according to the following factors:

(a) Soils shall be evaluated based upon the depth of the existing contamination and its distance from the ground surface to the contamination zone and the contamination zone

to the groundwater; the soil type and permeability, including whether the contamination exists in clay, till or sand and gravel; and the variability of the soils, whether the contamination exists in soils of natural variability or in a disturbed area.

(b) Groundwaters shall be evaluated based upon the depth of the contamination and its distance from the ground surface to the groundwater and from the contamination zone to the groundwater; the flow pattern of the groundwater, the direction of the flow in relation to the contamination zone and the interconnection of the groundwater with the surface or with surface water and with other groundwater sources; the nature of the groundwater, whether it is located in a high yield aquifer, an isolated, low yield aquifer, or in a transient saturation zone; and use of the groundwater, whether it is used as a drinking water source for public or private drinking water supplies, for livestock watering, or for commercial and industrial processing.

(c) Surface water shall be evaluated based upon its location, its distance in relation to the contamination zone, the groundwater system and flow, and its location in relation to surface drainage.

(d) The effect of conduits, barriers, and distances on the contamination found in soils, groundwaters, and surface waters. Consideration should be given to the following: the effect of contamination on conduits such as wells, utility lines, tile lines and drainage systems; the effect of conduits on the transport of the contamination; whether a well is active or abandoned; what function the utility line serves, whether it is a sewer line, a water distribution line, telephone line, or other line; the existence of barriers such as buildings and other structures, pavement, and natural barriers, including rock formations and ravines; and the distance which separates the contamination found in the soils, groundwaters, or surface waters from the conduits and barriers.

(2) A site shall be classified as either high risk, low risk, or no action required.

(a) A site shall be considered high risk under any of the following conditions:

(i) Contamination is affecting or likely to affect groundwater which is used as a source water for public or private water supplies, to a level rendering them unsafe for human consumption.

(ii) Contamination is actually affecting or is likely to affect surface water bodies to a level where surface water quality standards, under section 455B.173, will be exceeded.

(iii) Harmful or explosive concentrations of petroleum substances or vapors affecting structures or utility installations exist or are likely to occur.

(b) A site shall be considered low risk under any of the following conditions:

(i) Contamination is present and is affecting groundwater, but high risk conditions do not exist and are not likely to occur.

(ii) Contamination is above action level standards, but high risk conditions do not exist and are not likely to occur.

(c) A site shall be considered no action required if contamination is below action level standards and high or low risk conditions do not exist and are not likely to occur.

(d) A site shall be reclassified as a site with a higher or lower classification when the site falls within a higher or lower classification as established under this subparagraph.

f. Establishing corrective action response requirements for the release of a regulated substance in connection with an underground storage tank. The corrective action response requirements shall include, but not be limited to, all of the following:

(1) A requirement that the site cleanup report do all of the following:

(a) Identify the nature and level of contamination resulting from the release.

(b) Provide supporting data and a recommendation of the degree of risk posed by the site relative to the site classification system adopted pursuant to paragraph "d".

(c) Provide supporting data and a recommendation of the need for corrective action.

(d) Identify the corrective action options which shall address the practical feasibility of implementation, costs, expected length of time to implement, and environmental benefits.

(2) To the fullest extent practicable, allow for the use of generally available hydrological, geological, topographical, and geographical information and minimize site specific testing in preparation of the site cleanup report.

(3) Require that at a minimum the source of a release be stopped either by repairing, upgrading, or closing the tank and that free product be removed or contained on site.

(4) High risk sites shall comply with corrective action standards.

(5) Low risk sites shall be monitored according to the following schedule:

(a) Up to three times per year from years one through three.

(b) Up to two times per year from years four through six.

(c) One time per year from years seven through nine.

(d) In the twelfth year the site shall be monitored one time. If there has been no significant increase in contamination or the contamination has not moved, the site shall be reclassified as a no action required site. If at any time the contamination has increased or moved by a significant amount, the site shall be monitored according to the previous higher monitoring schedule as established under this subparagraph.

(e) The department shall have the authority to order monitoring in addition to the requirements as specified in this subparagraph with approval by the board.

(f) If at any time monitoring indicates that contamination has fallen below action level standards, the site shall be reclassified as a no action required site.

(5A) No action required sites shall not be required to be remediated or monitored.

(6) Notwithstanding other provisions to the contrary and to the extent permitted by federal law, the department shall allow for bioremediation of soils and groundwater. For purposes of this subparagraph, "bioremediation" means the use of biological organisms, including microorganisms or plants, to degrade organic pollutants to common natural products.

(7) Replacement or upgrade of a tank on a site classified as a high or low risk site shall be equipped with a secondary containment system with monitoring of the space between the primary and secondary containment structures or other board approved tank system or methodology.

(8) The commission and the board shall cooperate to ensure that remedial measures required by the corrective action rules adopted pursuant to this paragraph are reasonably cost-effective and shall, to the fullest extent possible, avoid duplicating and conflicting requirements.

(9) The director may order an owner or operator to immediately take all corrective actions deemed reasonable and necessary by the director if the corrective action is consistent with the prioritization rules adopted under this paragraph. Any order taken by the director pursuant to this subparagraph shall be reviewed at the next meeting of the environmental protection commission.

Sec. 6. Section 4553.474, subsection 1, Code 1991, is amended by adding the following new paragraph:

NEW PARAGRAPH. h. Issuance of a monitoring certificate for sites classified as low risk pursuant to paragraph "f". A monitoring certificate shall be valid until the site is reclassified as a no action required site. A site which has been issued a monitoring certificate shall not be eligible to receive a clean site certificate under section 4553.304, subsection 13, until the site is reclassified as a no risk site.

Sec. 7. Section 4553.1, subsection 2, unnumbered paragraph 1, Code 1991, is amended to read as follows:

This chapter applies to a petroleum underground storage tank tanks for which an owner or operator is required to maintain proof of financial responsibility under federal or state law, from the effective date of the regulation of the federal environmental protection agency governing that tank, and not from the effective compliance date, unless the effective compliance date of the regulation is the effective date of the regulation. An owner or operator of a petroleum underground storage tank required by federal or state law to maintain proof of financial responsibility for that underground storage tank ~~or who will be required on a date definite~~, is subject to this chapter and chapter 424.

Sec. 8. Section 455G.1, subsection 2, paragraph b, subparagraph (1), Code 1991, is amended by striking the subparagraph and inserting in lieu thereof the following:

(1) Underground storage tank systems not in operation on or after the applicable compliance date.

Sec. 9. Section 455G.2, Code 1991, is amended by adding the following new subsections:

NEW SUBSECTION. 3A. "Claimant" means an owner or operator who has received assistance under the remedial account or who has coverage under the insurance account with respect to a release, or an installer or inspector who has coverage under the insurance account.

NEW SUBSECTION. 3B. "Community remediation" means a program of coordinated testing, planning, or remediation, involving two or more tank sites potentially connected with a continuous contaminated area, pursuant to rules adopted by the board. A community remediation does not expand the scope of coverage otherwise available or relieve liability otherwise imposed under state or federal law.

Sec. 10. Section 455G.2, subsection 4, Code 1991, is amended to read as follows:

4. "Corrective action" means an action taken to minimize, eliminate, or clean up 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 purposes of repairing a leak or removal of a tank, removal of contaminated soil, and cleansing of groundwaters or surface waters. Corrective action does not include replacement of an underground storage tank or other capital improvements to the tank. Corrective action specifically excludes third-party liability. Corrective action includes the expenses incurred to prepare an assessment plan a site cleanup report for approval by the department of natural resources detailing the planned response to a release or suspected release, but not necessarily all actions proposed to be taken by an assessment-plan a site cleanup report.

Sec. 11. Section 455G.2, Code 1991, is amended by adding the following new subsections:

NEW SUBSECTION. 6A. "Free product" means a regulated substance that is present as a nonaqueous phase liquid.

NEW SUBSECTION. 11A. "Potentially responsible party" means a person who may be responsible or liable for a release for which the fund has made payments for corrective action or third-party liability.

NEW SUBSECTION. 12A. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or dispersing from an underground storage tank into groundwater, surface water, or subsurface soils.

Sec. 12. Section 455G.2, subsection 15, unnumbered paragraph 2, Code 1991, is amended by striking the unnumbered paragraph.

Sec. 13. Section 455G.4, subsection 3, Code 1991, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. Rules to facilitate and encourage the use of community remediation whenever possible shall be adopted.

Sec. 14. Section 455G.9, subsection 1, paragraph a, subparagraph (1), Code 1991, is amended to read as follows:

(1) Corrective action for an eligible release reported to the department of natural resources on or after July 1, 1987, but prior to May 5, 1989. Third-party liability is specifically excluded from remedial account coverage. For a

claim for a release for a small business under this subparagraph, the remedial program shall pay no more than the lesser of twenty-five thousand dollars or one-third of the total costs of corrective action for that release, in accordance with subsection 4 notwithstanding. For all other claims under this subparagraph, the remedial program shall pay the lesser of fifty thousand dollars of the total costs of corrective action for that release or total corrective action costs for that release as determined under subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage shall not be a person who is maintaining, or has maintained, proof of financial responsibility for federal regulations through self-insurance.

(b) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after July 1, 1987.

(c) The claim for coverage pursuant to this subparagraph must have been filed with the board prior to January 31, 1990, except that cities and counties must have filed their claim with the board by September 1, 1990.

(d) The owner or operator at the time the release was reported to the department of natural resources must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

Total payments for claims pursuant to this subparagraph are limited to no more than eight million dollars. Claims for eligible retroactive releases shall be prorated if claims filed in a permitted application period or for a particular priority class of applicants exceed eight million dollars or the then remaining balance of eight million dollars. If claims remain partially or totally unpaid after total payments equal eight million dollars, all remaining claims are void, and no entitlement exists for further payment.

Sec. 15. Section 455G.9, subsection 1, paragraph a, subparagraph (2), Code 1991, is amended to read as follows:

(2) Corrective action, up to one million dollars total, and subject to prioritization rules as established pursuant to section 455G.12A, for a release reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990. Third-party liability is specifically excluded from remedial account coverage. Corrective action coverage provided pursuant to this paragraph may be aggregated with other financial assurance mechanisms as permitted by federal law to satisfy required aggregate and per occurrence limits of financial responsibility for both corrective action and third-party liability, if the owner's or operator's effective financial responsibility compliance date is prior to October 26, 1990. School districts who reported a release to the department of natural resources prior to December 1, 1990, shall have until July 1, 1991, to report a claim to the board for remedial coverage under this subparagraph.

Sec. 16. Section 455G.9, subsection 1, paragraph a, subparagraph (3), unnumbered paragraph 1, Code 1991, is amended to read as follows:

Corrective action for an eligible release reported to the department of natural resources on or after January 1, 1985, but prior to July 1, 1987. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release for a small business under this subparagraph, the remedial program shall pay no more than the tesser-of-twenty-five-thousand-dollars-or-one-third-of-the total-costs-of-corrective-action-for-that-release in accordance with subsection 4 notwithstanding. For all other claims under this subparagraph, the remedial program shall pay the lesser of fifty thousand dollars of the total costs of corrective action for that release or total corrective action costs for that release as determined under subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

Sec. 17. Section 455G.9, subsection 1, paragraph a, Code 1991, is amended by adding the following new subparagraphs:

NEW SUBPARAGRAPH. (4) One hundred percent of the costs of corrective action for a release reported to the department of natural resources on or before July 1, 1991, if the owner or operator is not a governmental entity and is a not-for-profit organization exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code with a net annual income of twenty-five thousand dollars or less for the year 1990, and if the tank which is the subject of the corrective action is a registered tank and is under one thousand one hundred gallons capacity.

NEW SUBPARAGRAPH. (5) For the purposes of calculating corrective action costs under this paragraph, corrective action shall include the cost of a tank system upgrade required by section 455B.474, subsection 1, paragraph "f", subparagraph (7). Payments under this subparagraph shall be limited to a maximum of ten thousand dollars for any one site.

NEW SUBPARAGRAPH. (6) For the purposes of calculating corrective action costs under this paragraph, corrective action shall include the costs associated with monitoring required by the rules adopted under section 455B.474, subsection 1, paragraph "f", but corrective action shall exclude monitoring used for leak detection required by rules adopted under section 455B.474, subsection 1, paragraph "a".

Sec. 18. Section 455G.9, subsection 1, paragraphs b, c, and d, Code 1991, are amended to read as follows:

b. Corrective action and third-party liability for a release discovered on or after January 24, 1989, for which a responsible owner or operator able to pay cannot be found and for which the federal underground storage tank trust fund or other federal moneys do not provide coverage. For the purposes of this section property shall not be deeded or quitclaimed to the state or board in lieu of cleanup. Additionally, the ability to pay shall be determined after a claim has been filed. The board is not liable for any cost where either the responsible owner or operator, or both, have

a net worth greater than fifteen thousand dollars, or where the responsible party can be determined. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

c. Corrective action and third-party liability for a tank owned or operated by a financial institution eligible to participate in the remedial account under section 455G.16 if the prior owner or operator is unable to pay, if so authorized by the board as part of a condition or incentive for financial institution participation in the fund pursuant to section 455G.16. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

d. One hundred percent of the costs of corrective action and third party liability for a release situated on property acquired by a county for delinquent taxes pursuant to chapters 445 through 448, for which a responsible owner or operator able to pay, other than the county, cannot be found. A county is not a "responsible party" for a release in connection with property which it acquires in connection with delinquent taxes, and does not become a responsible party by sale or transfer of property so acquired. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

Sec. 19. Section 455G.9, subsection 1, Code 1991, is amended by adding the following new paragraphs:

NEW PARAGRAPH. g. One hundred percent of the costs up to twenty thousand dollars incurred by the board under section

455G.12A, subsection 2, unnumbered paragraph 2, for site cleanup reports. Costs of a site cleanup report which exceed twenty thousand dollars shall be considered a cost of corrective action and the amount shall be included in the calculations for corrective action cost copayments under section 455G.9, subsection 4. The board shall have the discretion to authorize a site cleanup report payment in excess of twenty thousand dollars if the site is participating in community remediation.

NEW PARAGRAPH. h. Corrective action for the costs of a release under all of the following conditions:

(1) The property upon which the tank causing the release was situated was transferred by inheritance, devise, or bequest.

(2) The property upon which the tank causing the release was situated has not been used to store or dispense petroleum since January 1, 1974.

(3) The person who received the property by inheritance, devise, or bequest was not the owner of the property during the period of time when the release which is the subject of the corrective action occurred.

(4) The release was reported to the board by July 1, 1991.

Corrective action costs and copayment amounts under this paragraph shall be paid in accordance with subsection 4.

A person requesting benefits under this paragraph may establish that the conditions of subparagraphs (1), (2), and (3) are met through the use of supporting documents, including a personal affidavit.

NEW PARAGRAPH. i. One hundred percent of the costs of corrective action for a governmental subdivision in connection with a tank which was in place on the date the release was discovered or reported if the governmental subdivision did not own or operate the tank which caused the release and if the governmental subdivision did not obtain the property upon which the tank giving rise to the release is located on or after May 3, 1991. Property acquired pursuant to eminent domain in connection with a United States department of

housing and urban development approved urban renewal project is eligible for payment of costs under this paragraph whether or not the property was acquired on or after May 3, 1991.

Sec. 20. Section 455G.9, subsection 4, Code 1991, is amended by striking the subsection and inserting in lieu thereof the following:

4. MINIMUM COPAYMENT SCHEDULE.

a. An owner or operator who reports a release to the department of natural resources after May 5, 1989, and on or before October 26, 1990, shall be required to pay the following copayment amounts:

(1) If a site's total anticipated expenses are not reserved for more than, or actual expenses do not exceed eighty thousand dollars, the owner or operator shall pay the greater of five thousand dollars or eighteen percent of the total costs of corrective action for that release.

(2) If a site's total anticipated expenses are reserved for more than, or actual expenses exceed eighty thousand dollars, the owner or operator shall pay the amount as designated in subparagraph (1) plus thirty-five percent of the total costs of the corrective action for that release which exceed eighty thousand dollars.

b. The remedial account shall pay the remainder, as required by federal regulations, of the total costs of the corrective action for that release, except that a county shall not be required to pay a copayment in connection with a release situated on property acquired in connection with delinquent taxes, as provided in subsection 1, paragraph "d", unless subsequent to acquisition the county actively operates a tank on the property for purposes other than risk assessment, risk management, or tank closure.

Sec. 21. Section 455G.9, subsection 6, unnumbered paragraph 1, Code 1991, is amended to read as follows:

If an owner or operator ceases to own or operate a tank site for which remedial account benefits were received within five ~~ten~~ years of the receipt of any account benefit and sells or transfers a property interest in the tank site for an

amount which exceeds one hundred twenty percent of the precorrective action value, adjusted for equipment and capital improvements, the owner or operator shall refund to the remedial account an amount equal to ninety percent of the amount in excess of one hundred twenty percent of the precorrective action value up to a maximum of the expenses incurred by the remedial account associated with the tank site plus interest, equal to the interest for the most recent twelve-month period for the most recent bond issue for the fund, on the expenses incurred, compounded annually. An owner or operator under this subsection shall notify the board of the sale or transfer of the property interest in the tank site. Expenses incurred by the fund are a lien upon the property recordable and collectible in the same manner as the lien provided for in section 424.11 at the time of sale or transfer, subject to the terms of this section.

Sec. 22. Section 455G.9, subsection 7, Code 1991, is amended to read as follows:

7. RECURRING RELEASES TREATED AS A NEWLY REPORTED RELEASE. A release shall be treated as a release reported on or after May 5, 1989, if prior to May 5, 1989, a release was reported to the department, corrective action was taken pursuant to an assessment-plan a site cleanup report approved by the department, and the work performed was accepted by the department. For purposes of this subsection, work performed is accepted by the department if the department did not order further action within ninety days of the date on which the department had notice that the work was completed, unless the department clearly indicated in writing to the owner, operator, contractor, or other agent that additional work would be required beyond that specified in the assessment-plan site cleanup report or in addition to the work actually performed.

Sec. 23. Section 455G.9, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 8. EXPENSES OF CLEANUP NOT REQUIRED. When an owner or operator who is eligible for benefits under

this chapter is allowed by the department of natural resources to monitor in place, the expenses incurred for cleanup beyond the level required by the department of natural resources are not covered under any of the accounts established under the fund. The cleanup expenses incurred for work completed beyond what is required is the responsibility of the person contracting for the excess cleanup.

Sec. 24. Section 455G.9, Code 1991, is amended by adding the following new subsections:

NEW SUBSECTION. 9. OWNER OR OPERATOR DEFINED. For purposes of receiving benefits under this section, "owner or operator" means the then current tank owner or operator or the owner of the land for which a covered release was reported or application for benefits was submitted on or before the relevant application deadlines of this section.

NEW SUBSECTION. 10. For a self-insured as determined under IAC 567-136.6, to qualify for remedial benefits under this section, tanks shall be upgraded by January 1, 1995, as specified by the United States environmental protection agency in 40 C.F.R. § 280.21, as amended through January 1, 1989. A self-insured who qualifies for benefits under this section shall repay any benefits received if the upgrade date is not met.

Sec. 25. Section 455G.10, subsection 6, Code 1991, is amended to read as follows:

6. The maturity for each financial assistance package made by the board pursuant to this chapter shall be the shortest feasible term commensurate with the repayment ability of the small business borrower. However, the maturity date of a loan shall not exceed ten twenty years and the guarantee is ineffective beyond the agreed term of the guarantee or ten twenty years from initiation of the guarantee, whichever term is shorter.

Sec. 26. Section 455G.11, subsection 1, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. To the extent that coverage under this section includes third-party liability, third-party

liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

Sec. 27. Section 455G.11, subsection 3, paragraph c, Code 1991, is amended to read as follows:

c. The applicant certifies in writing to the board that the tank to be insured will be brought into compliance with either paragraph "a" or "b", on or before October 26, ~~1992~~ 1993, provided that prior to the provision of insurance account coverage, the tank site tests release free. For a tank qualifying for insurance coverage pursuant to this paragraph at the time of application or renewal, the owner or operator shall pay a per tank premium equal to two times the normally scheduled premium for a tank satisfying paragraph "a" or "b". An owner or operator who fails to comply as certified to the board on or before October 26, ~~1992~~ 1993, shall not insure that tank through the insurance account unless and until the tank satisfies the requirements of paragraph "a" or "b".

Sec. 28. Section 455G.11, subsection 6, Code 1991, is amended by striking the subsection and inserting in lieu thereof the following:

G. INSTALLER'S AND INSPECTOR'S INSURANCE COVERAGE.

a. Coverage. The board shall offer insurance coverage under the fund's insurance account to installers and inspectors of certified underground storage tank installations within the state for an environmental hazard arising in connection with a certified installation as provided in this subsection. Coverage shall be limited to environmental hazard coverage for both corrective action and third-party liability for a certified tank installation within the state in connection with a release from that tank.

b. Annual premiums. The annual premium shall be:

(1) For the year July 1, 1991, through June 30, 1992, two hundred dollars per insured tank.

(2) For the year July 1, 1992, through June 30, 1993, two hundred fifty dollars per insured tank.

(3) For the year July 1, 1993, through June 30, 1994, three hundred dollars per insured tank.

(4) For subsequent years, installers and inspectors shall pay an annually adjusted insurance premium to maintain coverage on each tank previously installed or newly insured by the insurance account. The board may only approve fund coverage through the payment of a premium established on an actuarially sound basis. The premium paid shall be fully earned and is not subject to refund or cancellation. If coverage is purchased for any part of a year the purchaser shall pay the full annual premium.

(5) The board may offer coverage at rates based on sales if the qualifying installer or inspector cannot be rated on a per tank basis, or if the work the installer or inspector performs involves more than tank installation. The rates to develop premiums shall be based on the premium charged per tank under subparagraphs (1), (2), and (3).

c. Limits of coverage available. Installers and inspectors may purchase coverage up to one million dollars per occurrence and two million dollars aggregate, subject to the terms and conditions under this section and those adopted by the board.

d. Deductible. The insurance account may offer, at the buyer's option, a range of deductibles. A ten thousand dollar deductible policy shall be offered.

e. Excess coverage. Installers and inspectors may purchase excess coverage of up to five million dollars upon such terms and conditions as determined by the board.

f. Certification of tank installations. The board shall adopt certification rules requiring certification of a new tank installation as a precondition to offering insurance to an owner or operator or an installer or inspector. The board shall set in the rule the effective date for the certification requirement. Certification rules shall at minimum require that an installation be personally inspected by an independent

licensed engineer, local fire marshal, state fire marshal's designee, or other person who is unaffiliated with the tank owner, operator, installer or inspector, who is qualified and authorized by the board to perform the required inspection and that the tank and installation of the tank comply with applicable technical standards and manufacturer's instructions and warranty conditions. An inspector may be an owner or operator of a tank, or an employee of an owner, operator, or installer.

Sec. 29. Section 455G.11, subsection 7, Code 1991, is amended to read as follows:

7. COVERAGE ALTERNATIVES. The board shall provide for insurance coverage to be offered to installers and inspectors for a tank installation certified pursuant to subsection 6, through at-least-one both of the following methods:

a. Directly through the fund with premiums and deductibles as provided for-owners-and-operators in subsection 4 6.

b. In cooperation with a private insurance carrier with excess or stop loss coverage provided by the fund to reduce the cost of insurance to such installers or inspectors, and including such other terms and conditions as the board deems necessary and convenient to provide adequate coverage for a certified tank installation at a reasonable premium. An installer or inspector obtaining insurance coverage pursuant to this paragraph, may purchase excess coverage of up to five million dollars, subject to the terms and conditions as determined by the board.

The insurance coverage offered pursuant to this subsection shall, at a minimum, cover environmental hazards for both corrective action and third-party liability.

Sec. 30. Section 455G.11, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 10. PROPERTY TRANSFER INSURANCE.

a. Additional cleanup requirements. An owner, operator, landowner, or financial institution may purchase insurance coverage under the insurance account to cover environmental damage caused by a tank in the event that governmental action

requires additional cleanup beyond action level standards in effect at the time a certificate of clean was issued under section 455B.304, subsection 15, or a monitoring certificate was issued under section 455B.474, subsection 1, paragraph "h".

b. Eligibility for coverage. An owner, operator, landowner, or financial institution, subject to underwriting requirements and such terms and conditions deemed necessary and convenient by the board, may purchase insurance coverage from the insurance account to provide proof of financial responsibility if the following conditions are satisfied:

(1) A certificate of clean has been issued for the site under section 455B.304, subsection 15, or a monitoring certificate has been issued for the site under section 455B.474, subsection 1, paragraph "h". Property transfer coverage shall be effective on a monitored site only for the time period for which monitoring is allowed as specified in the monitoring certificate. A site which has not been issued a certificate of clean or a monitoring certificate shall not be eligible for property transfer coverage.

(2) The tank location is not covered by other environmental hazard liability insurance coverage, or is eligible for remedial benefits as provided under section 455G.9.

(3) The environmental damage is not caused by a new release.

(4) The additional cleanup is required to meet new corrective action level standards mandated by governmental action.

c. Premiums. The annual premium for insurance coverage shall be two hundred fifty dollars per party, per location, with an overall limit of liability per site of five hundred thousand dollars. The premiums are fully earned. Each party purchasing coverage at that site will have the total limit of liability prorated over the total limit among the policies issued, so as to avoid stacking beyond the total coverage limit of five hundred thousand dollars. If coverage is

purchased for any part of a year, the purchaser shall pay the full annual premium.

After June 30, 1994, an owner, operator, landowner, or financial institution applying for coverage shall pay an annually adjusted insurance premium for coverage by the insurance account. The board may only approve fund coverage through the payment of a premium established on an actuarially sound basis.

d. Coverage exclusions. Property transfer insurance coverage offered under this subsection does not include coverage of the following:

(1) Third-party liability.

(2) Cleanup beyond the actual costs associated with the site.

(3) Loss of use of the property and other economic damages.

(4) Costs associated with additional remediation required by a voluntary change in usage of the site.

(5) Cleanup costs for additional corrective action required due to the spread of contamination on a site which has been issued a monitoring certificate.

e. Annual monitoring. Annual monitoring is required, for any site for which coverage is purchased. Failure to comply with monitoring as prescribed by the board will invalidate insurance coverage under this subsection. For a site which has been issued a monitoring certificate, the annual monitoring requirements imposed under this paragraph shall be satisfied by the annual monitoring requirements imposed under the corrective action rules for a site which is allowed to monitor in place.

f. Transfer of coverage. Coverage may be transferred upon payment of a transfer fee.

g. Rules. The board shall adopt rules pursuant to chapter 17A as necessary to implement this subsection.

h. Federal approval. Property transfer insurance coverage issued under this subsection is conditioned upon continued approval by the United States environmental protection agency of the state's underground storage tank program.

Sec. 31. Section 455G.12A, subsection 2, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The board shall have authority to contract for site cleanup reports. The board's responsibility for site cleanup reports is limited to those site cleanup reports subject to approval by the department of natural resources and required in connection with the remediation of a release which is eligible for benefits under section 455G.9. The site cleanup report shall address existing and available remedial technologies and the costs associated with the use of each technology. The board shall not have the authority to affect a contract which has been given written approval under section 455G.12A.

Sec. 32. Section 455G.12A, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 4. PRIOR APPROVAL BY ADMINISTRATOR. Unless emergency conditions exist, a contractor performing services pursuant to this section shall have the budget for the work approved by the administrator prior to commencement of the work. No expense incurred which is above the budgeted amount shall be paid unless the administrator approves such expense prior to it being incurred. All invoices or bills shall be submitted with appropriate documentation as deemed necessary by the board, no later than thirty days after the work has been performed. Neither the board nor an owner or operator is responsible for payment for work incurred which has not been previously approved by the board.

Sec. 33. Section 455G.13, subsections 1, 6, 8, and 9 and subsection 10, unnumbered paragraph 1, Code 1991, are amended to read as follows:

1. FULL RECOVERY SOUGHT FROM OWNER. The board shall seek full recovery from the owner, or operator of the tank when, or other potentially responsible party liable for the released the petroleum and which is the subject of a corrective action, for which the fund expends moneys for corrective action or third-party liability, and for all other costs, or including reasonable attorney fees and costs of litigation for which

moneys are expended by the fund in connection with the release. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

6. JOINER OF PARTIES. The department of natural resources has standing in any case or contested action related to the fund or a tank to assert any claim that the department may have regarding the tank at issue in the case or contested action, and upon motion and sufficient showing by a party to a cost recovery or subrogation action provided for under this section, the court or the administrative law judge shall join to the action any person potentially responsible party who may be liable for costs and expenditures of the type recoverable pursuant to this section.

8. THIRD-PARTY CONTRACTS NOT BINDING ON BOARD, PROCEEDINGS AGAINST RESPONSIBLE PARTY. An insurance, indemnification, hold harmless, conveyance, or similar risk-sharing or risk-shifting agreement shall not be effective to transfer any liability for costs recoverable under this section. The fund, board, or department of natural resources 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, except to the extent the agreement shifts liability to an owner or operator eligible for assistance under the remedial account for any damages or other expenses in connection with a corrective action for which another potentially responsible party is or may be liable. Any such provision is null and void and of no force or effect.

9. 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 or the department of natural resources against another person who is later alleged to be or discovered to be liable for costs and expenditures paid by the fund. Notwithstanding section 608.5 no other potentially

responsible party may seek contribution or any other recovery from an owner or operator eligible for assistance under the remedial account for damages or other expenses in connection with corrective action for a release for which the potentially responsible party is or may be liable. Subsequent successful proceedings against another party shall not modify or reduce the liability of a party against whom judgment has been previously entered.

Payment of a claim by the fund for corrective action or third-party liability pursuant to this chapter shall be conditioned upon the board's 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 payment from any potentially responsible party. A claimant is precluded from receiving double compensation for the same injury.

Sec. 34. Section 455G.13, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 4A. RECOVERY OR SUBROGATION -- INSTALLERS AND INSPECTORS. Notwithstanding any other provision contained in this chapter, the board or a person insured under the insurance account has no right of recovery or right of subrogation against an installer or an inspector insured by the fund for the tank giving rise to the liability other than for recovery of any deductibles paid.

Sec. 35. Section 455G.13, subsection 10, Code 1991, is amended to read as follows:

10. SUBROGATION-RIGHTS CLAIMS AGAINST POTENTIALLY RESPONSIBLE PARTIES. Payment upon payment of a claim by the fund pursuant to this chapter, shall be conditioned upon the board's 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 any potentially responsible party, are assumed by the board to the extent paid by the fund. A claimant is precluded from receiving double compensation for the same injury.

In an action brought pursuant to this chapter seeking damages for corrective action or third-party liability, the court shall permit evidence and argument as to the replacement or indemnification of actual economic losses incurred or to be incurred in the future by the claimant by reason of insurance benefits, governmental benefits or programs, or from any other source.

Sec. 36. Section 455G.13, subsection 10, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A claimant may elect to permit the board to pursue the claimant's cause of action for any injury not compensated by the fund against any potentially responsible party, provided the attorney general determines such representation would not be a conflict of interest. If a claimant so elects, the board's litigation expenses shall be shared on a pro rata basis with the claimant, but the claimant's share of litigation expenses are payable exclusively from any share of the settlement or judgment payable to the claimant.

Sec. 37. Section 455G.16, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Third-party liability expenses under this section specifically exclude any claim, cause of action, or suit, for personal injury including, but not limited to loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

Sec. 38. Section 455G.17, subsection 3, Code 1991, is amended to read as follows:

3. The board shall adopt approved curricula for training persons to install underground storage tanks in such a manner that the resulting installation may be certified under section 455G.11, subsection 6, and provide fire safety and environmental protection guidelines for persons removing tanks.

Sec. 39. Section 455G.17, subsection 4, Code 1991, is amended by striking the subsection.

Sec. 40. NEW SECTION. 455G.17A GROUNDWATER PROFESSIONALS
-- REGISTRATION.

1. The department of natural resources shall adopt rules pursuant to chapter 17A requiring that groundwater professionals register with the department of natural resources.

2. A groundwater professional is a person who provides subsurface soil contamination and groundwater consulting services or who contracts to perform remediation or corrective action services and is one or more of the following:

a. A person certified by the American institute of hydrology, the national water well association, the American board of industrial hygiene, or the association of groundwater scientists and engineers.

b. A professional engineer registered in Iowa.

c. A professional geologist certified by a national organization.

d. Any person who has five years of direct and related experience and training as a groundwater professional or in the field of earth sciences as of the effective date of this Act.

e. Any other person with a license, certification, or registration to practice hydrogeology or groundwater hydrology issued by any state in the United States or by any national organization, provided that the license, certification, or registration process requires, at a minimum, all of the following:

(1) Possession of a bachelor's degree from an accredited college.

(2) Five years of related professional experience.

3. The department of natural resources may provide for a civil penalty of no more than fifty dollars for the failure to register. An interested person may obtain a list of registrants from the department of natural resources. The department of natural resources may impose a fee for the registration of persons under this section.

4. The registration of groundwater professionals shall not impose liability on the board, the department, or the fund for any claim or cause of action of any nature, based on the action or inaction of groundwater professionals registered pursuant to this section.

Sec. 41. NEW SECTION. 455G.18 ENVIRONMENTAL DAMAGE
OFFSET.

1. The fund's payment of a remedial claim by an owner or operator reporting a release under section 455G.9, subsection 1, paragraph "a", subparagraph (2), shall be subject to an environmental damage offset if the owner or operator closed or removed the tank and did not replace it. An owner or operator who has declared bankruptcy shall not be subject to the offset. A site which is not being used for commercial purposes is not subject to the offset unless offered for sale. If a site is exempt under this subsection from the offset, but is later subject to the lien imposed under section 455G.13, subsection 5, the amount of the lien shall include the amount of the offset which would have been imposed if the site was not exempt during remediation.

2. The offset shall be equal to the average annual environmental protection charge on diminution imposed under chapter 424 which would be paid for tanks of similar size. The offset shall be based on the rate of diminution presently in force, regardless of the date on which the tank was closed. The offset shall apply to the release which is still subject to remedial fund payments under section 455G.9.

3. Offsets under this section shall be credited to cost recovery enforcement proceeds under section 455G.8, subsection 5.

4. The board shall adopt rules as necessary and convenient for the implementation and administration of the offset.

Sec. 42. Notwithstanding any limitations on division or department full-time equivalent positions in any enacted legislation, the department of natural resources may utilize funding, other than general fund moneys, to employ up to 4.00 additional full-time equivalent positions to work on the

underground storage tank program for the fiscal year beginning July 1, 1991, and ending June 30, 1992.

Sec. 43. This Act, being deemed of immediate importance, takes effect upon enactment.

JOE J. WELSH
President of the Senate

ROBERT C. ARNOULD
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 362, Seventy-fourth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved June 10, 1991

TERRY E. BRANSTAD
Governor

SF 362