(P. 288) 2/14/94 Environment & Energy

FILED FEB 14 1994

SENATE FILE 2123

BY HUSAK

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

An Act relating to underground storage tanks.

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

SF 2123

TLSB 3966XS 75

js/jw/5

S.F. 2123 H.F. _____

1 Section 1. Section 101.28, Code 1993, is amended by
2 striking the section and inserting in lieu thereof the
3 following:
4 101.28 UNDERGROUND STORAGE TANKS LICENSING -- INSPECTORS.
5 1. All underground storage tanks shall be installed,
6 lined, tested, inspected, and removed by a person licensed
7 under this section.
8 2. The following persons may be licensed as underground
9 storage tank installation inspectors or removers:
10 a. A licensed engineer, except that if underground storage
11 tank installation is within the scope of practice of a
12 particular class of licensed engineer, additional training
13 shall not be required for that class.
14 b. A fire marshal, or other person unaffiliated with the
15 tank owner, operator, or installer.
16 3. The state fire marshal shall do all of the following:
17 a. Adopt rules for licensing underground storage tank
18 installation inspectors, installers, liners, testers, and
19 removers.
20 b. Adopt approved curriculum for training persons as a
21 precondition to their licensing as underground storage tank
22 installation inspectors.
23 c. Adopt curricula for training persons to install
24 underground storage tanks so that the resulting installation
25 may be certified under section 455G.11, subsection 6.
26 d. Adopt curricula for training persons to line, test, and
27 remove underground storage tanks, including training regarding
28 fire safety and environmental protection guidelines for
29 persons removing tanks.
30 4. The state fire marshal may provide a list of licensees
31 to any interested person. The state fire marshal may impose a
32 fee for licensing to recover the costs of administering this
33 section.
34 5. The state fire marshal, the state fire marshal's
35 designee, or a local fire marshal shall charge a fee for a

1 certification inspection in an amount sufficient to recover
2 the costs of authorized training and inspection. The fees
3 shall be retained by the state fire marshal to defray the
4 costs of administration of this section.
5 Sec. 2. Section 423.24, subsection 1, paragraph a, Code
6 Supplement 1993, is amended to read as follows:
7 a. Twenty-five percent of all such revenue, up to a
8 maximum of ~~three~~ four million ~~eight-hundred-twenty-five~~
9 seventy-five thousand dollars per quarter, shall be deposited
10 into and credited to the Iowa comprehensive petroleum
11 underground storage tank fund created in section 455G.3, and
12 the moneys so deposited are a continuing appropriation for
13 expenditure under chapter 455G, and moneys so appropriated
14 shall not be used for other purposes.
15 Sec. 3. Section 441.21, Code 1993, is amended by adding
16 the following new subsection:
17 NEW SUBSECTION. 12. Valuations for environmentally
18 contaminated property established as of January 1, 1995, shall
19 be in accordance with the standards on valuation of property
20 affected by environmental contamination published by the
21 international association of assessing officers, as approved
22 August 1992, and any subsequent amendments, as those standards
23 relate to the assessment and valuation of petroleum
24 contaminated property.
25 As used in this subsection, "environmentally contaminated
26 property" means property which is contaminated with a
27 regulated substance, as defined in section 455B.471,
28 subsection 8, and the contamination has been reported to the
29 department of natural resources.
30 Sec. 4. Section 455B.304, subsection 15, Code 1993, is
31 amended to read as follows:
32 15. The commission shall ~~adopt-rules-providing-for-the~~
33 ~~issuance-of~~ issue a certificate to the owner of an underground
34 petroleum storage tank evidencing completion of a remediation
35 action by cleaning the site to the then current action

1 standards. The certificate shall ~~be issued upon request of~~
2 ~~the owner if the department does not order further remediation~~
3 ~~work to be performed within ninety days of~~ accompany the
4 department's letter acknowledging compliance with current
5 action standards. The certificate ~~may~~ shall be recorded with
6 the county recorder to evidence completion of a remediation in
7 the chain of title. A person issued a certificate or a
8 subsequent purchaser of the property shall not be required to
9 perform further remediation solely because action standards
10 are changed at a later date. The certificate shall not
11 prevent the department from ordering remediation of a new
12 release.
13 Sec. 5. Section 455B.474, subsection 1, paragraphs d, f,
14 and h, Code 1993, are amended to read as follows:
15 d. Establishing criteria for classifying sites according
16 to the release of a regulated substance in connection with an
17 underground storage tank.
18 (1) The classification system shall consider the actual ~~or~~
19 ~~potential~~ threat to public health and safety and to the
20 environment posed by the contaminated site and shall take into
21 account relevant factors, including the presence of
22 contamination in soils, groundwaters, and surface waters, and
23 the effect of conduits, barriers, and distances on the
24 contamination found in those areas according to the following
25 factors:
26 (a) Soils shall be evaluated based upon the depth of the
27 existing contamination and its distance from the ground
28 surface to the contamination zone and the contamination zone
29 to the groundwater; the soil type and permeability, including
30 whether the contamination exists in clay, till or sand and
31 gravel; and the variability of the soils, whether the
32 contamination exists in soils of natural variability or in a
33 disturbed area.
34 (b) Groundwaters shall be evaluated based upon the depth
35 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 <u>actively</u> used as a ~~source~~ water <u>source</u>

for public or private water supplies, to a level rendering them unsafe for human consumption.

(ii) Contamination is affecting groundwater which is not being actively used as a water source for a public or private water supply.

~~(ii)~~ (iii) 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)~~ (iv) 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 or as warranted by the department.

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.

(1A) Notwithstanding subparagraph (1), the department shall approve less detailed site cleanup reports when warranted in the interests of accelerating cleanups.

(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 classified under paragraph "d", subparagraph (2), subparagraph subdivision (a), subparagraph subdivision part (i), shall ~~comply with~~ be remediated to the extent reasonably practicable not to exceed corrective action level standards. In determining what actions constitute reasonably practical remediation, the department shall take into account site specific conditions, including, but not limited to, the effectiveness of available remedial technologies, the duration of remediation, the operation and effect of natural remedial processes, and the benefits afforded the public health and safety. High risk sites classified under paragraph "d", subparagraph (2), subparagraph subdivision (a), subparagraph subdivision part (ii), shall monitor the site in accordance with subparagraph (5). The department may require additional corrective action if the department determines it is necessary to protect public health

or safety.

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

(a) ~~Up-to-three~~ Four times per year ~~from~~ for years one ~~through-three~~ and two.

(b) ~~Up-to-two~~ Two times per year ~~from~~ for years ~~four through-six~~ three through five.

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

~~(d)~~ (c) ~~In-the-twelfth-year-the-site-shall-be-monitored one-time.--If~~ After the fifth year, 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~~ department may order additional monitoring.

~~(e)~~ (d) The department shall have the authority to order additional or less frequent monitoring ~~in-addition-to-the requirements-as-specified-in-this-subparagraph-with-approval by-the-board~~ as warranted.

~~(f)~~ (e) 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.

(f) The department, in cooperation with the board, may order corrective action on a site where it would be more cost-effective to clean the site than to monitor the site.

(6) No action required sites shall not be required to be remediated or monitored.

(7) 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.

1 (8) Replacement or upgrade of a tank on a site classified
2 as a high or low risk site shall be equipped with a secondary
3 containment system with monitoring of the space between the
4 primary and secondary containment structures or other board
5 approved tank system or methodology.
6 (9) The commission and the board shall cooperate to ensure
7 that remedial measures required by the corrective action rules
8 adopted pursuant to this paragraph are reasonably cost-
9 effective and shall, to the fullest extent possible, avoid
10 duplicating and conflicting requirements.
11 (10) The director may order an owner or operator to
12 immediately take all corrective actions deemed reasonable and
13 necessary by the director if the corrective action is
14 consistent with the prioritization rules adopted under this
15 paragraph. Any order taken by the director pursuant to this
16 subparagraph shall be reviewed at the next meeting of the
17 environmental protection commission.
18 h. Issuance of a monitoring certificate for sites
19 classified as low risk pursuant to paragraph "f". A
20 monitoring certificate is valid until the site is reclassified
21 as a no action required site. The monitoring certificate
22 shall be issued for the site and may be relied upon by
23 subsequent purchasers of the site. A site which has been
24 issued a monitoring certificate is not eligible to receive a
25 clean site certificate under section 455B.304, subsection 15,
26 until the site is reclassified as a no action required site.
27 Sec. 6. Section 455G.2, subsection 15, Code 1993, is
28 amended by striking the subsection and inserting in lieu
29 thereof the following:
30 15. "Responsible person" means any of the following:
31 a. The owner or operator of the property, site, or
32 facility at which, or an underground storage tank from which,
33 a petroleum release occurred.
34 b. A person who at the time of a petroleum release owned
35 or operated the property, site, or facility at which, or an

1 underground storage tank from which, the release occurred.
2 c. A person who owned the property, site, or facility or
3 owned or operated an underground storage tank at tne property,
4 site, or facility at any time when released petroleum was
5 present unless the underground storage tank was not operated
6 on the property, site, or facility during the period of that
7 ownership and the owner had no actual knowledge that the
8 underground storage tank had been operated on the property,
9 site, or facility.
10 d. A person who by contract, agreement, or otherwise
11 arranged for disposal or caused any release of petroleum.
12 e. A person who caused or contributed to a petroleum
13 release on the property, site, or facility.
14 f. Successors or assigns of a responsible person.
15 Sec. 7. Section 455G.2, Code 1993, is amended by adding
16 the following new subsection:
17 NEW SUBSECTION. 21. "Underground storage tank" means as
18 defined in section 455B.471, subsection 11.
19 Sec. 8. Section 455G.4, subsection 1, Code Supplement
20 1993, is amended to read as follows:
21 1. MEMBERS OF THE BOARD. The Iowa comprehensive petroleum
22 underground storage tank fund board is established consisting
23 of the following members:
24 a. The executive director who shall be the chairperson of
25 the board.
26 b. The director of the department of natural resources, or
27 the director's designee.
28 ~~b~~ c. The treasurer of state, or the treasurer's designee.
29 ~~c.--The-commissioner-of-insurance,-or-the-commissioner's~~
30 ~~designee.~~
31 d. Two public members appointed by the governor and
32 confirmed by the senate to staggered four-year terms~~,-except~~
33 ~~that-of-the-first-members-appointed,-one-public-member-shall~~
34 ~~be-appointed-for-a-term-of-two-years-and-one-for-a-term-of~~
35 ~~four-years.~~ ~~A~~ The public ~~member~~ members shall have

1 experience, knowledge, and expertise ~~of~~ in the subject matter
2 embraced within this chapter~~.--Two-public-members~~, and shall
3 ~~be-appointed-with~~ have experience in either, or both,
4 financial markets or insurance.
5 e. The director of the legislative fiscal bureau, or the
6 director's designee. The director under this paragraph shall
7 not participate as a voting member of the board.
8 A public member shall not have a conflict of interest. For
9 purposes of this section a "conflict of interest" means an
10 affiliation, within the twelve months before the member's
11 appointment, with the regulated tank community, or with a
12 person or property and casualty insurer offering competitive
13 insurance or other means of financial assurance or which
14 previously offered environmental hazard insurance for a member
15 of the regulated tank community.
16 The filling of positions reserved for public
17 representatives, vacancies, membership terms, payment of
18 compensation and expenses, and removal of members are governed
19 by chapter 69. Members of the board are entitled to receive
20 reimbursement of actual expenses incurred in the discharge of
21 their duties within the limits of funds appropriated to the
22 board or made available to the fund. Each member of the board
23 may also be eligible to receive compensation as provided in
24 section 7E.6. ~~The-members-shall-elect-a-voting-chairperson-of~~
25 ~~the-board-from-among-the-members-of-the-board.~~
26 The executive director of the board shall be hired by the
27 board, and shall be a full-time employee of the insurance
28 division of the department of commerce. The executive
29 director shall be a voting member. The executive director
30 shall be knowledgeable about the functions of chapter 455B,
31 division IV, part 8, and chapter 455G.
32 Sec. 9. Section 455G.5, unnumbered paragraph 1, Code
33 1993, is amended to read as follows:
34 The executive director of the board shall administer the
35 fund. ~~A-contract-entered-into-on-or-after-July-1,-1992,-to~~

1 ~~retain-a-person-to-act-as-the-administrator-of-the-fund-shall~~
2 ~~be-subject-to-public-bid.~~ All other contracts to retain a
3 person under this section shall be in compliance with the
4 public bidding requirements of section 455G.4, subsection 4.
5 Sec. 10. Section 455G.6, subsection 7, Code 1993, is
6 amended to read as follows:
7 7. The board may contract with the authority for the
8 authority to issue bonds and do all things necessary with
9 respect to the purposes of the fund, as set out in the
10 contract between the board and the authority. The board shall
11 not issue bonds with a redemption date later than December 31,
12 2014. The board may delegate to the authority and the
13 authority shall then have all of the powers of the board which
14 are necessary to issue and secure bonds and carry out the
15 purposes of the fund, to the extent provided in the contract
16 between the board and the authority. The authority may issue
17 the authority's bonds in principal amounts which, in the
18 opinion of the board, are necessary to provide sufficient
19 funds for the fund, the payment of interest on the bonds, the
20 establishment of reserves to secure the bonds, the costs of
21 issuance of the bonds, other expenditures of the authority
22 incident to and necessary or convenient to carry out the bond
23 issue for the fund, and all other expenditures of the board
24 necessary or convenient to administer the fund. The bonds are
25 investment securities and negotiable instruments within the
26 meaning of and for purposes of the uniform commercial code.
27 Sec. 11. Section 455G.9, subsection 4, Code Supplement
28 1993, is amended to read as follows:
29 4. MINIMUM COPAYMENT SCHEDULE.
30 a. An owner or operator who reports a release to the board
31 or the department of natural resources after May 5, 1989, and
32 on or before October 26, 1990, shall be required to pay in
33 accordance with the following ~~copayment-amounts~~:
34 (1) If the owner or operator has a net worth of four
35 hundred thousand dollars or less, the owner or operator shall

pay the following copayment amounts:

~~(1)~~ (a) 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)~~ (b) 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)~~ subdivision (a) plus thirty-five percent of the total costs of the corrective action for that release which exceed eighty thousand dollars.

(2) If the owner or operator has a net worth greater than four hundred thousand dollars but less than ten million dollars, the owner or operator shall pay the following copayment amounts:

(a) 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 thirty percent of the total costs of corrective action for that release.

(b) 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 (2), subparagraph subdivision (a), plus fifty percent of the total costs of the corrective action for that release which exceed eighty thousand dollars.

(3) If the owner or operator has a net worth of ten million dollars or greater, the owner or operator shall pay fifty percent of the total costs of corrective action for that release.

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

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. 12. Section 455G.9, subsection 5, Code Supplement
7 1993, is amended to read as follows:
8 5. PRIORITY OF CLAIMS. The board shall ~~adopt-rules-to~~
9 prioritize claims and allocate available money ~~if-funds-are~~
10 ~~not-available-to-immediately-settle-all-current-claims.~~ in the
11 following order of priority:
12 a. All expenses, including bond service costs, bond
13 reserving requirements, administrative costs, and 28E
14 agreement costs as approved by the board.
15 b. Costs for site cleanup reports as defined in section
16 455B.474, subject to all other eligibility requirements.
17 c. Overexcavation costs.
18 d. Sites individually approved for benefits by the board
19 through contract, negotiated settlement, or judicial or
20 administrative order.
21 e. Benefits payable under subsection 1, paragraph "d",
22 provided that the county notifies the board and files a claim
23 on or before January 1, 1995, that a site exists in the county
24 which might be subject to this subsection and that the county
25 complies with department of natural resources requirements.
26 f. All high risk sites that are not being monitored. If
27 the board determines that sufficient funds are not available
28 for all high risk sites, the board shall establish additional
29 prioritization.
30 Sec. 13. Section 455G.9, subsection 9, Code Supplement
31 1993, is amended by adding the following new unnumbered
32 paragraph:
33 NEW UNNUMBERED PARAGRAPH. "Owner or operator" shall
34 include a subsequent purchaser of the property which is the
35 subject of the remedial claim under this section. The

subsequent purchaser shall assume the status of the previous owner or operator for purposes of calculating deductible amounts or benefits to be received.

Sec. 14. Section 455G.13, Code 1993, is amended to read as follows:

455G.13 COST RECOVERY ENFORCEMENT.

1. ~~FULL~~ COST RECOVERY ~~SOUGHT-FROM-OWNER~~ ACTIONS.

a. The board ~~shall-seek-full-recovery~~, a claimant, or both, may recover from ~~the-owner,-operator,-or-other potentially~~ a responsible ~~party-liable-for-the-released petroleum-which-is-the-subject-of-a-corrective-action,-for which-the-fund-expends-moneys~~ person moneys that have been expended or will be expended in the future for corrective action ~~or~~ and third-party liability, and for all other costs, including reasonable attorney fees and costs of litigation ~~for which-moneys-are-expended-by-the-fund-in-connection-with-the release~~.

b. ~~When~~ The department of natural resources is authorized to recover federal cleanup funds ~~are-recovered,-the-funds~~ which are to be deposited ~~to~~ in the remedial account of the fund and used solely for the purpose of future cleanup activities.

2. LIMITATION OF LIABILITY OF OWNER OR OPERATOR. Except as provided in subsection 3:

a. The board ~~or-the-department-of-natural-resources~~ shall not seek recovery ~~for-expenses-in-connection-with-corrective action-for-a-release~~ under subsection 1 on any site, from an owner or operator ~~eligible-for~~ regarding any site where the owner or operator receives assistance under the remedial account for that site or for an owner or operator who is insured under the insurance account for a release for which coverage is admitted, except for any unpaid portion of the insurance deductible under section 455G.11 or remedial copayment amounts under section 455G.9, subsection 4. ~~This section-does-not-affect-any-authorization-of-the-department-of~~

1 natural-resources-to-impose-or-collect-civil-or-administrative
2 fines-or-penalties-or-fees. The remedial account shall not be
3 held liable for any third-party liability.
4 b. An-owner-or-operator's-liability-for-a-release-for
5 which-coverage-is-admitted-under-the-insurance-account-shall
6 not-exceed-the-amount-of-the-deductible. The department of
7 natural resources shall not seek recovery from an owner or
8 operator regarding any site where the owner or operator
9 receives assistance under the remedial account for that site.
10 This section does not affect the department of natural
11 resource's authority to impose or collect civil or
12 administrative fines or penalties of fees.
13 3. OWNER OR OPERATOR NOT-IN-COMPLIANCE, SUBJECT TO FULL
14 AND TOTAL COST RECOVERY. Notwithstanding subsection 2, the
15 liability of an owner or operator shall be the-full-and-total
16 costs-of-corrective-action-and-bodily-injury-or-property
17 damage-to-third-parties, as specified in subsection 1, if the
18 owner or operator has not complied with the financial
19 responsibility or other underground storage tank rules of the
20 department of natural resources or with this chapter and rules
21 adopted under this chapter.
22 4. TREBLE DAMAGES FOR CERTAIN VIOLATIONS. Notwithstanding
23 subsections 2 and 3, the owner or operator, or both, of-a-tank
24 who receive benefits under section 455G.9 are liable to the
25 fund for punitive damages in an amount equal to three times
26 the amount of any cost-incurred-or moneys expended-by-the-fund
27 as-a-result-of-a-release-of-petroleum-from-the-tank
28 recoverable under subsection 1, if the owner or operator did
29 any of the following:
30 a. Failed, without sufficient cause, to respond to a
31 release of petroleum from the tank upon, or in accordance
32 with, a notice issued by the director of the department of
33 natural resources.
34 b. After May 5, 1989, failed to perform any of the
35 following:

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

(2) Intentionally failed to report a known release.

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

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

The provisions of chapter 668A do not apply to this subsection.

5. LIEN ON UNDERGROUND STORAGE TANK SITE. Any amount for which ~~an owner or operator~~ a claimant is liable to the fund, if not paid when due, by statute, rule, or contract, or determination of liability by the board or department of natural resources after hearing, shall constitute a lien upon the real property where the underground storage tank, which was the subject of corrective action, is situated, and the liability shall be collected in the same manner as the environmental protection charge pursuant to section 424.11.

6. JOINDER ~~OF PARTIES~~. The department of natural resources has standing in any case or contested action related to the fund or ~~a~~ an underground storage tank to assert any claim that the department may have regarding the underground storage tank at issue in the case or contested action~~, 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 potentially responsible party who may be liable for costs and expenditures of the type recoverable pursuant to this section.~~ No other action may be joined with an action brought under subsection 1.

7. ~~STRICT~~ LIABILITY, DEFENSES, AND DAMAGES. ~~The standard~~

~~of-liability-for-a-release-of-petroleum-or-other-regulated substance-as-defined-in-section-455B.471-is-strict-liability.~~ Responsible persons are strictly liable for damages and costs recoverable under this section. The rule of joint and several liability applies in any action brought pursuant to this section.

In order to establish the liability of a responsible person who owned, operated, or leased the site or an underground storage tank prior to the claimant, the board or the claimant need only show petroleum contamination was present during the time of ownership, operation, or leasehold of the person.

The amount of money expended by the board for corrective action and third-party liability is presumed to be reasonable.

8. ~~THIRD-PARTY-CONTRACTS-NOT-BINDING-ON-BOARD,-PROCEEDINGS AGAINST-RESPONSIBLE-PARTY~~ NO TRANSFER OF LIABILITY. An insurance, indemnification, hold harmless, conveyance, or similar risk-sharing or risk-shifting agreement shall not be effective to transfer any liability for ~~costs~~ expenditures recoverable under this section. The ~~fund,~~ board, or department of natural resources may proceed directly against ~~the-owner-or-operator-or-other-allegedly~~ a responsible ~~party~~ person. 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~~ the 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~~ a claimant. 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~~ a cost recovery action does not bar a future action by the board, a claimant, or the department of natural resources against another person

1 who is later alleged to be or discovered to be liable for
2 ~~costs and~~ expenditures ~~paid by the fund~~ recoverable under this
3 section. ~~Notwithstanding section 668.5 no other potentially~~
4 ~~responsible party may seek contribution or any other recovery~~
5 ~~from an owner or operator eligible for assistance under the~~
6 ~~remedial account for damages or other expenses in connection~~
7 ~~with corrective action for a release for which the potentially~~
8 ~~responsible party is or may be liable.~~ Subsequent successful
9 proceedings against another party shall not modify or reduce
10 the liability of a party against whom judgment has been
11 previously entered.
12 ~~10.--CLAIMS AGAINST POTENTIALLY RESPONSIBLE PARTIES.--Upon~~
13 ~~payment by the fund for corrective action or third party~~
14 ~~liability pursuant to this chapter, the rights of the claimant~~
15 ~~to recover payment from any potentially responsible party, are~~
16 ~~assumed by the board to the extent paid by the fund.--A~~
17 ~~claimant is precluded from receiving double compensation for~~
18 ~~the same injury.~~
19 10. CLAIMANT'S ACTION. In an action brought by a claimant
20 pursuant to this ~~chapter seeking damages for corrective action~~
21 ~~or third party liability~~ section, the court shall permit
22 evidence and argument as to the replacement or indemnification
23 of actual economic losses incurred or to be incurred in the
24 future by the claimant by reason of insurance benefits,
25 governmental benefits or programs, or from any other source.
26 If evidence and argument regarding previous payments or
27 future rights of payment is permitted pursuant to this
28 subsection, the court shall also permit evidence and argument
29 as to the costs to the claimant of procuring the previous
30 payments or future rights of payment and as to any existing
31 rights of indemnification or subrogation relating to the
32 previous payments or future rights of payment.
33 If evidence or argument is permitted pursuant to this
34 subsection, the court shall, unless otherwise agreed to by all
35 parties, except the board, instruct the jury to answer special

1 interrogatories or, if there is no jury, shall make findings
2 indicating the effect of such evidence or argument on the
3 verdict.
4 A claimant may elect to permit the board to pursue the
5 claimant's cause of action for ~~any injury not compensated by~~
6 ~~the fund against any potentially responsible party~~ moneys
7 expended by the claimant recoverable under this section,
8 provided the attorney general determines such representation
9 would not be a conflict of interest. If a claimant so elects,
10 the board's litigation expenses shall be shared on a ~~pro-rata~~
11 proportionate basis with the claimant, but the claimant's
12 share of litigation expenses are payable exclusively from any
13 share of the settlement or judgment payable to the claimant.
14 11. EXCLUSION OF PUNITIVE DAMAGES. The fund shall not be
15 liable in any case for punitive damages.
16 12. RECOVERY OR SUBROGATION -- INSTALLERS AND INSPECTORS.
17 Notwithstanding any other provision contained in this chapter,
18 the board or a person insured under the insurance account has
19 no right of recovery or right of subrogation against an
20 installer or an inspector insured by the fund ~~for~~ at the time
21 of the installation or inspection of the underground storage
22 tank giving rise to the liability other than for recovery of
23 any deductibles paid.
24 13. CONTRIBUTION AND SETTLEMENT.
25 a. A person may seek contribution from an owner or
26 operator who is liable or potentially liable for payment of
27 corrective action costs. Notwithstanding section 668.5, a
28 person shall not seek contribution from an owner or operator
29 who is eligible for benefits under section 455G.9 for damages
30 or other expenses in connection with corrective action for a
31 release for which the person seeking the contribution is or
32 may be liable. In resolving contribution claims, the court
33 may allocate response costs among liable parties using
34 equitable factors as the court determines to be appropriate.
35 b. A person who has resolved all of the person's liability

1 to the state in an administrative or judicially approved
2 settlement shall not be liable for claims for contribution
3 regarding matters addressed in the settlement. The settlement
4 does not discharge any of the other potentially liable persons
5 unless its terms so provide.
6 c. The rights of any person who has resolved the person's
7 liability to the state shall be subordinate to the rights of
8 the state.
9 14. LIMITATIONS OF ACTIONS. A suit brought under this
10 section for the recovery of moneys expended under the remedial
11 account must be commenced no later than five years after the
12 last payment for corrective action. All other actions brought
13 under this section must be commenced within five years from
14 the date the action accrues or becomes known, whichever is
15 later.
16 15. RIGHT TO JURY TRIAL. Any party to an action brought
17 pursuant to this section is entitled to a jury trial upon
18 demand.
19 16. DEFINITIONS. For purposes of this section:
20 a. "Operator" means a person who has or had control of or
21 the responsibility for the operation of an underground storage
22 tank or the property, site, or facility where the underground
23 storage tank is or was situated.
24 b. "Owner" means the person who owns or owned the
25 underground storage tank or the property, site, or facility
26 where the underground storage tank is or was situated.
27 c. "Underground storage tank" means as defined in section
28 455B.471, subsection 11, notwithstanding a requirement to
29 maintain proof of financial responsibility under federal or
30 state law.
31 17. RETROACTIVE APPLICATION. This section applies to any
32 release whether existing before or after the effective date of
33 this section.
34 Sec. 15. NEW SECTION. 455G.21 INNOCENT BUYER DEFENSE.
35 1. DEFINITIONS. For purposes of this section:

1 a. "Buyer" means:
2 (1) A bona fide purchaser for value of property or a
3 person who acquired the property by an inheritance or bequest
4 and who did not own or participate in the management of a
5 business causing the contamination on the property, did not
6 own the property at the time the contamination occurred, is
7 not a potentially responsible party, but for the purchase,
8 inheritance, or bequest of the property, and did not have
9 actual knowledge of the contamination, as of the date of
10 acquisition of the property, except as provided in subsection
11 2.
12 For purposes of this paragraph:
13 (a) "Affiliate" means as defined in section 502.102,
14 subsection 2.
15 (b) "Own" means controlling, directly or indirectly,
16 including, without limitation, by affiliates, either a
17 majority of the voting shares or other interests, or more than
18 fifty percent of the number of shares voted for the election
19 of directors or other individuals exercising similar control
20 functions of the business or entity.
21 (c) "Participate in the management of a business" means
22 having the ability to influence materially the day-to-day
23 management or operational affairs of the business.
24 (2) A government entity which acquired the property by
25 escheat, an involuntary transfer or acquisition, the exercise
26 of eminent domain authority by purchase or condemnation, or
27 because of unpaid property taxes.
28 b. "Complete" means when a corrective action plan has been
29 carried out to its conclusion so that no further corrective
30 action is required by a regulatory authority which may be
31 reflected by the issuance of a clean certificate pursuant to
32 section 455B.304, subsection 15, or a monitoring certificate
33 issued pursuant to section 455B.474, subsection 1, paragraph
34 "h".
35 c. "Contamination" means the presence of a regulated

1 substance, as defined in section 455B.471, subsection 8, on
2 property which would constitute a violation of or require
3 corrective action pursuant to chapter 455B. Any leaching,
4 leaking, or movement of a regulated substance through soil or
5 water of the state from the location of the original
6 contamination does not constitute a new or separate act of
7 contamination.
8 d. "Department" means the department of natural resources.
9 e. "Environmental audit" means an investigation of
10 property, conducted by an environmental professional, to
11 discover the presence or likely presence of contamination on
12 the property, which consists of two phases.
13 (1) The first phase shall include a review of at least
14 each of the following sources of information concerning use of
15 the property:
16 (a) Recorded chain of title documents, including, without
17 limitation, all deeds, easements, leases, restrictions, and
18 covenants for a period of seventy-five years.
19 (b) Aerial photographs that may reflect prior uses of the
20 property and that are reasonably obtainable through state,
21 federal, or local government agencies or bodies.
22 (c) Fire insurance maps that may reflect prior uses of the
23 property and that are reasonably obtainable.
24 (d) Recorded environmental cleanup or cost recovery liens,
25 if any, against the property that have arisen pursuant to
26 state or federal laws.
27 (e) Reasonably obtainable state, federal, and local
28 government records of the property and sites or facilities
29 near the property to identify the presence or likely presence
30 of contamination, and whether any contamination has occurred
31 or is likely to occur on the property. These government
32 records shall include, but not be limited to: state, federal,
33 and local government investigation reports for the property;
34 state, federal, and local government records of activities
35 likely to cause or contribute to contamination on the

1 property, including landfill or other treatment, storage, and
2 disposal location records; underground storage tank records;
3 hazardous waste transporter and generator records; spill
4 reporting records; and other state, federal, and local
5 government environmental records that report incidents or
6 activities that are likely to cause or contribute to
7 contamination on the property.
8 (f) A visual site inspection of the property including,
9 without limitation, all facilities and improvements on the
10 property and visual inspections of adjacent property,
11 including an investigation of any use, storage, treatment, or
12 spill from use or disposal of contaminants. If the person
13 conducting the investigation is denied access to adjacent
14 property, the person shall conduct a visual inspection of the
15 adjacent property from the property to which the person does
16 have access and from public rights of way.
17 (g) A review of business records which may reflect the
18 presence of a contaminant on the property for a period of
19 seventy-five years.
20 (2) If any of the steps listed under the first phase of
21 the environmental audit discloses the presence or likely
22 presence of any contaminant on the real property, the second
23 phase shall include the following:
24 (a) In soil, the buyer shall perform a series of soil
25 borings sufficient to determine whether there is a presence or
26 likely presence of any contaminant on the property.
27 (b) In groundwater, the buyer shall: review information
28 regarding local geology, water well locations, locations of
29 waters of the state as may be obtained from state, federal,
30 and local government records, including, but not limited to,
31 the United States geologic service and the department and
32 perform groundwater monitoring sufficient to determine whether
33 there is a presence or likely presence of any contamination on
34 the real property.
35 (c) On media other than soil or groundwater, the buyer

1 shall perform an investigation sufficient to determine whether
2 there is a presence or likely presence of any contamination on
3 the property.
4 (3) An environmental audit shall be issued upon oath or
5 affirmation of the environmental professional as to the truth
6 of its contents.
7 f. "Environmental professional" means an individual who,
8 through academic training or occupational experience, can
9 objectively conduct an environmental audit, and who maintains
10 at least five hundred thousand dollars of environmental
11 consultants' professional liability insurance coverage issued
12 by an insurance company authorized to do business in Iowa, and
13 is not an employee, directly or indirectly, of the buyer. An
14 environmental professional may employ persons who are not
15 environmental professionals to assist in the preparation of an
16 environmental audit if the persons are under the direct
17 supervision and control of the environmental professional.
18 g. "Property" means any of the following:
19 (1) A parcel of land, including buildings, fixtures, and
20 improvements.
21 (2) Underground storage tanks.
22 (3) Other possessory interests in real estate, including
23 easements and licenses.
24 2. DEFENSES.
25 a. A buyer shall not be held liable for contamination
26 which occurred prior to the buyer's acquisition of the
27 property if the buyer obtained an environmental audit of the
28 property which did not disclose the presence or likely
29 presence of contamination on the property. The buyer must
30 include with each environmental audit an affirmation by each
31 environmental professional conducting any portion of the
32 environmental audit that the facts stated in the environmental
33 audit are true to the best of the environmental professional's
34 knowledge following due diligent investigation, and made under
35 a penalty of perjury as defined in section 720.2.

1 b. A buyer of property for which corrective action has
2 been completed shall not be held liable for contamination
3 which was the subject of the completed corrective action. A
4 buyer shall not be held liable for contamination other than
5 contamination which was the subject of the corrective action
6 plan if the buyer obtained an environmental audit as required
7 under paragraph "a".
8 c. (1) A buyer of contaminated property which is the
9 subject of a corrective action plan shall have the buyer's
10 liability limited as to the corrective action cost if, prior
11 to or at the time of the buyer's acquisition of the property,
12 the buyer agrees, in writing, to implement the corrective
13 action plan and agrees with the department as to the
14 corrective action cost.
15 (2) If the actual cost of implementing and completing the
16 corrective action plan exceeds by fifty percent, the
17 corrective action cost agreed upon under subparagraph (1), the
18 buyer may elect to stop implementation of the corrective
19 action plan and use reasonable efforts to sell the property.
20 However, if failure to take corrective action creates or
21 continues a substantial and imminent danger to the public
22 health, the buyer shall continue the buyer's corrective action
23 activities only to the extent required to eliminate the
24 imminence of the danger. In addition, a buyer whose
25 corrective action efforts have caused or materially
26 exacerbated the contamination shall be held liable for the
27 resulting increased corrective action cost.
28 (3) "Reasonable efforts" to sell property means as
29 provided in 40 C.F.R. § 300.1100(d)(2)(i).
30 (4) If a corrective action plan exists and the seller, the
31 buyer, or a potentially responsible party provides the
32 department with adequate assurance that the corrective action
33 plan will be completed, the buyer shall have no further
34 liability for the contamination. A seller or potentially
35 responsible party can provide adequate assurance that a

1 corrective action plan will be completed if both of the
2 following apply:
3 (a) The seller or other potentially responsible party
4 accepts, in writing, responsibility for implementation and
5 completion of the corrective action plan.
6 (b) The seller or other potentially responsible party has
7 a net worth equal to the lesser of ten times the estimated
8 corrective action cost or ten million dollars or provides the
9 department with a security instrument equal to two hundred
10 percent of the corrective action costs.
11 d. To claim any defense under this section the buyer shall
12 do all of the following:
13 (1) Allow the department and any potentially responsible
14 party acting at the department's direction, reasonable access
15 to the property to take corrective action as to any
16 contamination on the property or to determine the presence of
17 contamination on the property. In exercising reasonable
18 access, the potentially responsible party shall agree to take
19 reasonable precautions not to disrupt the buyer's operations,
20 to restore the property to its prior state upon completion of
21 any corrective action, and to be liable for any damages to the
22 property resulting from the corrective action conducted by or
23 on behalf of the potentially responsible party, including,
24 without limitation, any contamination caused as a result of
25 the corrective action.
26 (2) Deliver, at the written request of the department, an
27 environmental audit, written compilation, or explanatory
28 reports of information reviewed in the course of preparation
29 of an environmental audit.
30 3. EXEMPTIONS. The department may enter into an agreement
31 which exempts a buyer from payment of corrective action costs.
32 4. RECORDS. A state or local regulatory authority may
33 establish a reasonable fee for processing requests received
34 for records under this section. All fees collected by the
35 department shall be deposited in the general fund of the

1 state. Notwithstanding any other provision to the contrary a
2 request received under this section for records shall be
3 processed within thirty days of the receipt of the request.
4 5. DEPARTMENTAL REVIEW. A regulatory authority is not
5 required to review, approve, or certify the results of an
6 environmental audit. The performance of an environmental
7 audit shall in no way entitle a buyer to a presumption of
8 regulatory authority approval or certification of the results
9 of the environmental audit.
10 6. LIABILITY FOR ACTIONS.
11 a. A buyer does not assume liability for existing
12 contamination solely as a result of conducting any acts
13 identifying the presence of any contaminant or preparing and
14 submitting to the department a corrective action plan. A
15 buyer whose investigative or corrective action efforts cause
16 or exacerbate a spill, release, or discharge of any
17 contaminant shall be liable for all resulting increased
18 corrective action costs associated with the subsequent
19 contamination.
20 b. The buyer remains liable in the same manner and to the
21 same extent as any potentially responsible party for any
22 contamination that occurs after the acquisition of the
23 property and for conditions creating a public or private
24 nuisance that originate after the acquisition of the property.
25 Sec. 16. CONDITIONAL RECEIPT OF SECTION 455G.9 BENEFITS.
26 Receipt of benefits under section 455G.9 shall be conditioned
27 upon the compliance of an owner or operator with the
28 following:
29 1. Allowing an adjacent property owner, who is eligible
30 for remedial benefits under section 455G.9, access to a site
31 to conduct on-site testing if it is necessary for the adjacent
32 property owner to do so to complete a site cleanup report.
33 Prior to entering the property, the adjacent property owner
34 shall agree to take reasonable precautions not to disrupt the
35 owner's or operator's operations, to restore the property to

1 its prior state upon completion of testing, and to be liable
2 for any damages to the property resulting from the testing.
3 2. Allowing the adjacent property owner, who is eligible
4 for remedial benefits under section 455G.9, access to
5 completed test results from the owner's or operator's site.
6 The owner or operator or groundwater professional hired by the
7 owner or operator shall be prohibited from assessing a fee to
8 the adjacent property owner for use of completed test results
9 if those results were paid in part or in whole by the fund.
10 Sec. 17. DEPARTMENT OF NATURAL RESOURCES -- UNDERGROUND
11 STORAGE TANK FUND BOARD -- EXECUTIVE DIRECTOR -- GROUNDWATER
12 PROFESSIONAL TRAINING. The department of natural resources,
13 in conjunction with the executive director of the underground
14 storage tank fund board, shall provide training courses which
15 shall be required attendance for all groundwater professionals
16 conducting work on sites which receive fund benefits. The
17 training shall focus on successful completion of the site
18 cleanup report and the corrective action design report by the
19 groundwater professional and the cost implications of various
20 remedial techniques. The goal of the training courses shall
21 be to increase the percentage of first-time approvals by the
22 department for site cleanup reports and corrective action
23 design reports and the cost containment of the proposed
24 remedial designs.
25 Sec. 18. ON-SITE REVIEW -- SITE CLEANUP REPORTS -- COR-
26 RECTIVE ACTION DESIGN REPORTS. The underground storage tank
27 fund board shall enter into an agreement authorized under
28 chapter 28E with the department of natural resources to employ
29 additional groundwater professionals to review site cleanup
30 reports and corrective action design reports. As of the
31 effective date of this Act, each site cleanup report and
32 corrective action design report shall be reviewed on-site by a
33 person employed by the department of natural resources through
34 the 28E agreement. The goal of this review shall be to
35 correct errors and to provide sufficient information to the

1 department so that the initial submission of the site cleanup
2 report or corrective action design report will be accepted by
3 the department.
4 Sec. 19. IMPLEMENTATION OF UNDERGROUND STORAGE INSTALLERS
5 PROVISIONS. The rules and procedures adopted by the
6 underground storage tank fund board regarding inspection of
7 underground storage tanks, as related to section 1 of this
8 Act, shall remain in effect until amended or rescinded by the
9 state fire marshal. The underground storage tank fund board
10 shall provide the state fire marshal with the computer
11 software which has been developed by and is in the possession
12 of Williams and Company to administer the underground storage
13 tank installation inspector program.
14 Sec. 20. DEPARTMENT OF REVENUE AND FINANCE -- EFFECTIVE
15 DATE AND TRAINING. Rules implementing section 3 of this Act
16 shall be adopted by the department of revenue and finance
17 pursuant to section 441.21, subsection 12, and shall be in
18 effect no later than December 31, 1994, for the assessment
19 year commencing January 1, 1995. The department shall offer
20 training sessions to assist in the implementation of the new
21 standards for assessments and valuation of environmentally
22 contaminated property.
23 Sec. 21. PRIORITIZATION -- EFFECTIVE DATE. All work
24 completed prior to the effective date of section 12 of this
25 Act shall be paid. All program eligible sites shall continue
26 to have budgets reviewed as required by chapter 455G and rules
27 adopted by the board.
28 Sec. 22. Section 455G.17, Code 1993, is repealed.
29 EXPLANATION
30 This bill makes several changes to the underground storage
31 tank program. The bill transfers oversight of the installers
32 and inspectors certification program from the underground
33 storage tank fund board to the state fire marshal's office.
34 It requires that all tanks be installed, lined, tested,
35 inspected, and removed by a licensed inspector and that all

1 persons who install, line, test, inspect, and remove under-
2 ground storage tanks be licensed.
3 The bill increases the maximum amount to be allocated from
4 use tax moneys under section 423.24 to the underground storage
5 tank fund from $3,825,000 per quarter to $4,075,000 per
6 quarter. Currently, the environmental diminution fee is
7 actually raising an amount that is greater than what is being
8 allocated to the underground storage tank fund through the use
9 tax.
10 The bill modifies the site classification system which the
11 department of natural resources uses to determine the amount
12 of cleanup which is required per site. It strikes the use of
13 the word "potential" and the phrase "likely to affect" and
14 requires that a high risk site must only be cleaned to
15 "reasonably practicable" corrective action levels if the site
16 is actively used as a water source for public or private water
17 supplies. High risk sites upon which contamination affects a
18 water source that is not being actively used as a public or
19 private water source must comply with requirements for low
20 risk sites and monitoring. This bill changes the maximum
21 amount of monitoring required from 12 years to five years.
22 The bill changes the copayment schedule for remedial
23 claims. Current law requires that all owners or operators pay
24 18 percent of the first $80,000 of the costs to clean a site
25 and 35 percent of the remainder. The bill bases copayment
26 amounts upon net worth. An owner with a net worth of $400,000
27 or less pays the current level. An owner or operator with a
28 net worth between $400,000 and $10 million pays 30 percent of
29 the first $80,000 of cleanup costs and 50 percent of the
30 remainder. An owner or operator with a net worth in excess of
31 $10 million pays 50 percent of the total costs of cleanup on
32 each site.
33 Also, the bill codifies the prioritization rules which were
34 proposed by the comprehensive petroleum underground storage
35 tank fund (UST) board. The board has authority to prioritize

1 the remaining fund moneys if there is a shortfall. This
2 provision states that moneys shall be prioritized so that
3 expenditures are allocated first to expenses of administering
4 the program, costs for site cleanup reports, overexcavation
5 costs, sites individually approved by the board, benefits
6 payable to counties for back taxes if the county files a claim
7 by January 1, 1995, and high risk sites that are not being
8 monitored.
9 The bill makes several changes to the ability of the board
10 to recover costs by making cost recovery authority retroactive
11 and defining owner and operator to include past owners and
12 operators.
13 Additionally, the bill replaces the current chairperson of
14 the UST board with a full-time executive director employed by
15 the insurance division of the department of commerce. The
16 bill prohibits the UST board from issuing bonds that have a
17 redemption date later than December 31, 2014.
18 This bill provides several mechanisms relating to the
19 marketability of property which has been contaminated by a
20 regulated substance under section 455B.471, subsection 8. A
21 regulated substance is defined as an element, compound,
22 mixture, solution or substance which, when released into the
23 environment may present substantial danger to the public
24 health or welfare or the environment and includes substances
25 designated in 40 C.F.R., Parts 61 and 116, and section 401.15,
26 and petroleum including crude oil. A regulated substance does
27 not include a substance regulated as a hazardous waste under
28 the federal Resource Conservation and Recovery Act of 1976
29 (RCRA).
30 The bill requires valuations of environmentally
31 contaminated property as of January 1, 1995, to be made in
32 accordance with national standards for the assessment and
33 valuation of environmentally contaminated property.
34 Environmentally contaminated property is defined as property
35 which has been contaminated with a regulated substance and the

1 contamination has been reported to the department of natural
2 resources. The bill states that the rules shall be adopted by
3 the department of revenue and finance and effective no later
4 than December 31, 1994, for the assessment year commencing
5 January 1, 1995, and requires the department to provide
6 training sessions for assessors to implement the new
7 standards.
8 The bill provides for the transfer of a "clean" certificate
9 issued under section 455B.304, subsection 15, or a monitoring
10 certificate issued under section 455B.474, subsection 1,
11 paragraph "h", to the subsequent purchaser of contaminated
12 property. A clean certificate is issued on property which has
13 been contaminated by a regulated substance when the property
14 has been cleaned to current action level standards. A person
15 who has been issued a clean certificate is not required to
16 undertake additional remediation if the action level standards
17 are changed at a later date. A monitoring certificate
18 indicates that the site has been classified as a low risk site
19 and that the only action required to be taken on the site is
20 monitoring.
21 The bill amends the definition of "owner or operator" for
22 purposes of receiving remedial benefits under the underground
23 storage tank fund to include a subsequent purchaser of the
24 property which is the subject of a remedial claim. It will
25 allow a current owner or operator to sell property which is
26 eligible for benefits under the underground storage tank fund
27 and to transfer those benefits with the transfer of the
28 property.
29 The cost recovery provisions contained in section 455G.13
30 are amended to allow for contribution. The bill allows a
31 person to seek contribution from an owner or operator who is
32 liable for payment of corrective action costs. In addition,
33 the bill recognizes the settlements that are made between an
34 owner or operator and by a regulatory authority or the courts,
35 and releases the owner or operator from liability to other

1 parties to the extent that the liability is addressed in the
2 settlement.
3 Finally, the bill provides for defenses to liability in
4 three situations where a buyer is purchasing property. First,
5 a buyer who purchases property and has an environmental audit
6 performed which shows that there is no contamination present
7 on the property, is not liable for subsequently discovered
8 contamination.
9 Second, a buyer who purchases property which is
10 contaminated and upon which a corrective action plan has been
11 completed, is released from liability for any further
12 contamination of the remediated portions of the property.
13 Third, a buyer who purchases contaminated property for
14 which a corrective action plan has not been established and
15 for which no corrective action has been taken, may enter into
16 an agreement with the department of natural resources as to
17 the costs of the corrective action plan. The buyer is only
18 liable for costs which exceed by 50 percent the agreed upon
19 costs. However, the buyer must agree to use reasonable
20 efforts to sell the property once the buyer exceeds the
21 additional 50 percent.
22 The bill requires an owner who receives fund benefits to
23 allow testing by an adjacent property owner and requires
24 sharing test results. It requires that the department of
25 natural resources and the executive director of the UST board
26 conduct training sessions for groundwater professionals.
27 Finally, the bill requires that the department of natural
28 resources conduct on-site reviews of site cleanup reports and
29 corrective action design reports and provides for funding of
30 additional departmental personnel through the terms of a 28E
31 agreement with the UST board.
32 This bill may include a state mandate as defined in section
33 25B.3.
34
35