

*Substituted
by H. F. 508*

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WITHDRAWN 4/28/95 (p. 1532)

SENATE FILE **413**

BY COMMITTEE ON NATURAL
RESOURCES, ENVIRONMENT
AND ENERGY

(SUCCESSOR TO SSB 333)
(COMPANION TO LSB 2592HV BY
COMMITTEE ON ENVIRONMENTAL
PROTECTION)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to underground storage tanks by increasing the
2 environmental protection charge, providing for the use of
3 risk-based corrective action standards, expanding property
4 transfer insurance and loan guarantees, extending the
5 compliance date for upgrade requirements, creating
6 marketability and innocent landowner funds and providing
7 benefits, requiring certification of groundwater professionals
8 and creating a penalty, requiring a study, and providing for
9 repeals, and implementation, effective date, and retroactive
10 applicability provisions.

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

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WITHDRAWN

S.F. 413

1 Section 1. Section 423.24, subsection 1, paragraph a, Code
2 1995, is amended to read as follows:

3 a. (1) Twenty-five percent of all such revenue, up to a
4 maximum of three four million eight two hundred twenty-five
5 fifty thousand dollars per quarter, shall be deposited into
6 and credited to the Iowa comprehensive petroleum underground
7 storage tank fund created in section 455G.3, and the moneys so
8 deposited are a continuing appropriation for expenditure under
9 chapter 455G, and moneys so appropriated shall not be used for
10 other purposes.

11 (2) Four million two hundred fifty thousand dollars per
12 quarter, shall be deposited into and credited to the Iowa
13 comprehensive petroleum underground storage tank marketability
14 fund created in section 455G.21, and the moneys so deposited
15 are a continuing appropriation to be expended in accordance
16 with section 455G.21, and the moneys shall not be used for
17 other purposes.

18 Sec. 2. Section 424.3, subsection 5, Code 1995, is amended
19 to read as follows:

20 5. a. The cost factor is an amount per gallon of
21 diminution determined by the board pursuant to this
22 subsection. The board, after public hearing, shall determine,
23 or shall adjust, the cost factor to the greater of either an
24 amount reasonably calculated to generate an annual average
25 revenue, year to year, of fifteen seventeen million three
26 hundred-thousand dollars from the charge, excluding penalties
27 and interest, or ten dollars. The board may determine or
28 adjust the cost factor at any time but shall at minimum
29 determine the cost factor at least once each fiscal year.

30 b. Beginning July 1, 1995, the board shall adjust the cost
31 factor to the greater of either an amount reasonably
32 calculated to generate an annual average revenue of seventeen
33 million dollars from the charge, excluding penalties and
34 interest, or ten dollars. The revenue generated in this
35 paragraph shall be in addition to the revenue generated

1 pursuant to paragraph "a".

2 Sec. 3. Section 455B.304, subsection 15, Code 1995, is
3 amended by striking the subsection.

4 Sec. 4. Section 455B.471, subsection 2, Code 1995, is
5 amended by striking the subsection and inserting in lieu
6 thereof the following:

7 2. "Corrective action" means an action taken to reduce,
8 minimize, eliminate, clean up, control, or monitor a release
9 to protect the public health and safety or the environment.
10 Corrective action includes, but is not limited to, excavation
11 of an underground storage tank for purposes of repairing a
12 leak or removal of a tank, removal of contaminated soil,
13 disposal or processing of contaminated soil, cleansing of
14 groundwaters or surface waters, natural biodegradation,
15 institutional controls, and site management practices.
16 Corrective action does not include replacement of an
17 underground storage tank. Corrective action specifically
18 excludes third-party liability.

19 Sec. 5. Section 455B.474, subsection 1, paragraph d,
20 subparagraph (2), subparagraph subdivision (a), unnumbered
21 paragraph 1, Code 1995, is amended by striking the unnumbered
22 paragraph and inserting in lieu thereof the following:

23 A site shall be considered high risk when it is determined
24 that contamination from the site presents an unreasonable risk
25 to public health and safety or the environment under any of
26 the following conditions:

27 Sec. 6. Section 455B.474, subsection 1, paragraph d,
28 subparagraph (2), subparagraph subdivision (d), Code 1995, is
29 amended by striking the subparagraph subdivision and inserting
30 in lieu thereof the following:

31 (d) For purposes of reclassifying a site as either low
32 risk or no action required, the department shall rely upon the
33 example tier one risk-based screening level look-up table of
34 the American society for testing of materials' emergency
35 standard, ES38-94, or other look-up table as determined by the

1 department by rule.

2 Sec. 7. Section 455B.474, subsection 1, paragraph d,
3 subparagraph (2), Code 1995, is amended by adding the
4 following new subparagraph subdivision:

5 NEW SUBPARAGRAPH SUBDIVISION. (e) A site cleanup report
6 which classifies a site as either high risk, low risk, or no
7 action required shall be submitted by a groundwater
8 professional to the department with a certification that the
9 report complies with the provisions of this chapter and rules
10 adopted by the department. The report shall be determinative
11 of the appropriate classification of the site. However, if
12 the report is found to be inaccurate or incomplete, and if
13 based upon information in the report the risk classification
14 of the site cannot be reasonably determined by the department
15 based upon industry standards, the department shall work with
16 the groundwater professional to obtain the additional
17 information necessary to appropriately classify the site. A
18 groundwater professional who knowingly or intentionally makes
19 a false statement or misrepresentation which results in a
20 mistaken classification of a site shall be guilty of a serious
21 misdemeanor and shall have the groundwater professional's
22 certification revoked under section 455G.18.

23 Sec. 8. Section 455B.474, subsection 1, paragraph f,
24 subparagraphs (4), (5), and (6), Code 1995, are amended by
25 striking the subparagraphs and inserting in lieu thereof the
26 following:

27 (4) High risk sites shall be addressed pursuant to a
28 corrective action design report, as submitted by a groundwater
29 professional and as accepted by the department. The
30 corrective action design report shall determine the most
31 appropriate response to the high risk conditions presented.
32 The appropriate corrective action response shall be based upon
33 industry standards and shall take into account the following:

34 (a) The extent of remediation required to reclassify the
35 site as a low risk site.

1 (b) The most appropriate exposure scenarios based upon
2 residential, commercial, or industrial use or other predefined
3 industry accepted scenarios.

4 (c) Exposure pathway characterizations including
5 contaminant sources, transport mechanisms, and exposure
6 pathways.

7 (d) Affected human or environmental receptors and exposure
8 scenarios based on current and projected use scenarios.

9 (e) Risk-based corrective action assessment principles
10 which identify the risks presented to the public health and
11 safety or the environment by each release in a manner that
12 will protect the public health and safety or the environment
13 using a tiered procedure consistent with the American society
14 for testing of materials' emergency standard, ES38-94.

15 (f) Other relevant site specific factors such as the
16 feasibility of available technologies, existing background
17 contaminant levels, current and planned future uses,
18 ecological, aesthetic, and other relevant criteria, and the
19 applicability and availability of engineering and
20 institutional controls.

21 (5) A corrective action design report, submitted by a
22 groundwater professional shall be accepted by the department
23 and shall be primarily relied upon by the department to
24 determine the corrective action response requirements of the
25 site. However, if the corrective action design report is
26 found to be inaccurate or incomplete, and if based upon
27 information in the report the appropriate corrective action
28 response cannot be reasonably determined by the department
29 based upon industry standards, the department shall work with
30 the groundwater professional to obtain the additional
31 information necessary to appropriately determine the
32 corrective action response requirements. A groundwater
33 professional who knowingly or intentionally makes a false
34 statement or misrepresentation which results in an improper or
35 incorrect corrective action response shall be guilty of a

1 serious misdemeanor and shall have the groundwater
2 professional's certification revoked under section 455G.18.

3 (6) Low risk sites shall be monitored as deemed necessary
4 by the department consistent with industry standards.
5 Monitoring shall not be required on a site which has received
6 a no further action certificate.

7 Sec. 9. Section 455B.474, subsection 1, paragraph f, Code
8 1995, is amended by adding the following new subparagraphs:

9 NEW SUBPARAGRAPH. (6A) Corrective action, for the release
10 of a regulated substance from an underground storage tank
11 required to maintain financial responsibility under chapter
12 455G, which occurs on or after January 1, 1996, shall be in
13 accordance with corrective action rules of the department
14 existing on January 1, 1995, rather than pursuant to this
15 paragraph "f".

16 NEW SUBPARAGRAPH. (6B) An owner or operator may elect to
17 proceed with additional corrective action on the site.
18 However, any action taken in addition to that required
19 pursuant to this paragraph "f" shall be solely at the expense
20 of the owner or operator and shall not be considered
21 corrective action for purposes of section 455G.9.

22 Sec. 10. Section 455B.474, subsection 1, paragraph h, Code
23 1995, is amended by striking the paragraph and inserting in
24 lieu thereof the following:

25 h. Issuing a no further action certificate or a monitoring
26 certificate to the owner or operator of an underground storage
27 tank site.

28 (1) A no further action certificate shall be issued by the
29 department for a site which has been classified as a no
30 further action site or which has been reclassified pursuant to
31 completion of a corrective action plan or monitoring plan to
32 be a no further action site.

33 (2) A monitoring certificate shall be issued by the
34 department for a site which does not require remediation, but
35 does require monitoring of the site.

1 (3) A certificate may be recorded with the county
2 recorder. The owner or operator of a site who has been issued
3 a certificate under this paragraph "h" or a subsequent
4 purchaser of the site shall not be required to perform further
5 corrective action solely because action standards are changed
6 at a later date. A certificate shall not prevent the
7 department from ordering corrective action of a new release.

8 Sec. 11. Section 455G.3, subsection 1, Code 1995, is
9 amended to read as follows:

10 1. The Iowa comprehensive petroleum underground storage
11 tank fund is created as a separate fund in the state treasury,
12 and any funds remaining in the fund at the end of each fiscal
13 year shall not revert to the general fund but shall remain in
14 the Iowa comprehensive petroleum underground storage tank
15 fund. Interest or other income earned by the fund shall be
16 deposited in the fund. The fund shall include moneys credited
17 to the fund under this section and sections 423.24, subsection
18 1, paragraph "a", subparagraph (1), 455G.8, 455G.9, 455G.10,
19 455G.11, and 455G.13, and other funds which by law may be
20 credited to the fund. The moneys in the fund are appropriated
21 to and for the purposes of the board as provided in this
22 chapter. Amounts in the fund shall not be subject to
23 appropriation for any other purpose by the general assembly,
24 but shall be used only for the purposes set forth in this
25 chapter. The treasurer of state shall act as custodian of the
26 fund and disburse amounts contained in it as directed by the
27 board including automatic disbursements of funds as received
28 pursuant to the terms of bond indentures and documents and
29 security provisions to trustees and custodians. The treasurer
30 of state is authorized to invest the funds deposited in the
31 fund at the direction of the board and subject to any
32 limitations contained in any applicable bond proceedings. The
33 income from such investment shall be credited to and deposited
34 in the fund. The fund shall be administered by the board
35 which shall make expenditures from the fund consistent with

1 the purposes of the programs set out in this chapter without
2 further appropriation. The fund may be divided into different
3 accounts with different depositories as determined by the
4 board and to fulfill the purposes of this chapter.

5 Sec. 12. Section 455G.3, subsection 3, Code 1995, is
6 amended by adding the following new paragraph:

7 NEW PARAGRAPH. d. To establish a marketability fund for
8 the purposes as stated in section 455G.21.

9 Sec. 13. Section 455G.6, subsection 4, Code 1995, is
10 amended to read as follows:

11 4. Grant a mortgage, lien, pledge, assignment, or other
12 encumbrance on one or more improvements, revenues, asset of
13 right, accounts, or funds established or received in
14 connection with the fund, including revenues derived from the
15 use tax ~~imposed~~ under ~~chapter-423~~ section 423.24, subsection
16 1, paragraph "a", subparagraph (1), and deposited in the fund
17 or an account of the fund.

18 Sec. 14. Section 455G.8, subsection 2, Code 1995, is
19 amended to read as follows:

20 2. USE TAX. The revenues derived from the use tax imposed
21 under chapter 423. The proceeds of the use tax under section
22 423.24, subsection 1, paragraph "a", subparagraph (1), shall
23 be allocated, consistent with this chapter, among the fund's
24 accounts, for debt service and other fund expenses, according
25 to the fund budget, resolution, trust agreement, or other
26 instrument prepared or entered into by the board or authority
27 under direction of the board. The proceeds of the use tax
28 under section 423.24, subsection 1, paragraph "a",
29 subparagraph (2), shall be allocated in accordance with
30 section 455G.21.

31 Sec. 15. Section 455G.9, subsection 5, Code 1995, is
32 amended by striking the subsection.

33 Sec. 16. Section 455G.10, subsections 1, 3, 5, and 6, Code
34 1995, are amended to read as follows:

35 1. The board may create a loan guarantee account to offer

1 loan guarantees ~~to-small-businesses~~ for the following
2 purposes:

3 a. All or a portion of the expenses incurred by the
4 applicant ~~small-business~~ for its share of corrective action.

5 b. Tank and monitoring equipment improvements necessary to
6 satisfy federal technical standards to become insurable.

7 c. Capital improvements made on a tank site.

8 d. Purchase of a leaking underground storage tank site.

9 Moneys from the revenues derived from the use tax imposed
10 under ~~chapter-423~~ section 423.24, subsection 1, paragraph "a",
11 subparagraph (1), may be used to fund the loan guarantee
12 account according to the fund budget as approved by the board.

13 Loan guarantees shall be made on terms and conditions
14 determined by the board to be reasonable, except that in no
15 case may a loan guarantee satisfy more than ninety percent of
16 the outstanding balance of a loan.

17 3. The board shall administer the loan guarantee account.
18 The board may delegate administration of the account, provided
19 that the administrator is subject to the board's direct
20 supervision and direction. The board shall adopt rules
21 regarding the provision of loan guarantees ~~to-financially~~
22 ~~qualified-small-businesses-for-the-purposes-permitted-by~~
23 ~~subsection-1.~~ The board may impose such terms and conditions
24 as it deems reasonable and necessary or appropriate. The
25 board shall take appropriate steps to publicize the existence
26 of the loan account.

27 ~~The-benefits-under-this-section-shall-be-available-to-small~~
28 ~~businesses-entering-into-the-petroleum-business-~~

29 5. As a condition of eligibility for financial assistance
30 from the loan guarantee account, ~~a-small-business~~ an applicant
31 shall demonstrate satisfactory attempts to obtain financing
32 from private lending sources. When applying for loan
33 guarantee account assistance, the ~~small-business~~ applicant
34 shall demonstrate good faith attempts to obtain financing from
35 at least two financial institutions. The board may first

1 refer a tank owner or operator to a financial institution
2 eligible to participate in the fund under section 455G.16;
3 however, if no such financial institution is currently willing
4 or able to make the required loan, the ~~small-business~~
5 applicant shall determine if any of the previously contacted
6 financial institutions would make the loan in participation
7 with the loan guarantee account. The loan guarantee account
8 may offer to guarantee a loan, or provide other forms of
9 financial assistance to facilitate a private loan.

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

17 Sec. 17. Section 455G.11, subsection 3, paragraph c, Code
18 1995, 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 ~~January-17-1995~~
22 December 22, 1998, provided that prior to the provision of
23 insurance account coverage, the tank site tests release free.
24 An owner or operator who fails to comply as certified to the
25 board on or before ~~January-17-1995~~ December 22, 1998, shall
26 not insure that tank through the insurance account unless and
27 until the tank satisfies the requirements of paragraph "a" or
28 "b". An owner or operator who fails to comply with either
29 paragraph "a" or "b" by October 26, 1993, or who fails to
30 enter into a contract on or before October 26, 1993, which,
31 upon completion, will bring the owner or operator into
32 compliance with either paragraph "a" or "b" by ~~January-17-~~
33 ~~1995~~-shall-pay December 22, 1998, may be eligible for
34 financial assurance under this section but shall be subject to
35 an additional surcharge of ~~four~~ eight hundred dollars per tank

1 in addition to payment of a premium that is equal to two times
2 the cost of the premium required under subsection 4, paragraph
3 "g", per insured time period.

4 Sec. 18. Section 455G.11, subsection 4, paragraph g, Code
5 1995, is amended by adding the following new unnumbered
6 paragraph:

7 NEW UNNUMBERED PARAGRAPH. Tanks receiving financial
8 assurance pursuant to subsection 3, paragraph "c", shall not
9 be included in the general tank population for purposes of
10 determining actuarially sound premiums under this paragraph.

11 Sec. 19. Section 455G.11, subsection 5, paragraph a, Code
12 1995, is amended by striking the paragraph and inserting in
13 lieu thereof the following:

14 a. The payment of claims filed prior to the effective date
15 of any future repeal, against the insurance account until
16 moneys in the account are exhausted. Upon exhaustion of the
17 moneys in the account, any remaining claims shall be invalid.

18 Sec. 20. Section 455G.11, subsection 10, paragraph a, Code
19 1995, is amended to read as follows:

20 a. ADDITIONAL CLEANUP REQUIREMENTS. An owner, operator,
21 landowner, or financial institution may purchase insurance
22 coverage under the insurance account to cover environmental
23 damage caused by a tank in the event that governmental action
24 requires additional cleanup ~~beyond action-level-standards-in~~
25 ~~effect that which was required~~ at the time a ~~certificate-of~~
26 ~~clean-was-issued-under-section-455B-3047-subsection-15,~~ no
27 further action certificate or a monitoring certificate was
28 issued under section 455B.474, subsection 1, paragraph "h".

29 Sec. 21. Section 455G.11, subsection 10, paragraph b,
30 subparagraphs (1) and (4), Code 1995, are amended to read as
31 follows:

32 (1) ~~A certificate-of-clean-has-been-issued-for-the-site~~
33 ~~under-section-455B-3047-subsection-15,~~ no further action
34 certificate or a monitoring certificate has been issued for
35 the site under section 455B.474, subsection 1, paragraph "h".

1 Property transfer coverage shall be effective on a monitored
2 site only for the time period for which monitoring is allowed
3 as specified in the monitoring certificate. A site which has
4 not been issued a no further action certificate ~~of-clear~~ or a
5 monitoring certificate shall not be eligible for property
6 transfer coverage.

7 (4) The additional cleanup is ~~required-to-meet-new~~
8 ~~corrective-action-level-standards~~ mandated by governmental
9 action requiring cleanup beyond that which was required at the
10 time a no further action certificate or a monitoring
11 certificate under section 455B.474, subsection 1, paragraph
12 "h", was issued for a site.

13 Sec. 22. Section 455G.11, subsection 10, paragraph d,
14 subparagraph (5), Code 1995, is amended by striking the
15 subparagraph.

16 Sec. 23. Section 455G.11, subsection 10, paragraph h, Code
17 1995, is amended by striking the paragraph.

18 Sec. 24. Section 455G.18, Code 1995, is amended to read as
19 follows:

20 455G.18 GROUNDWATER PROFESSIONALS -- REGISTRATION
21 CERTIFICATION.

22 1. The department of natural resources shall adopt rules
23 pursuant to chapter 17A requiring that the certification of
24 groundwater professionals register-with-the-department-of
25 ~~natural-resources~~. The rules shall include provisions for
26 suspension or revocation of registration certification for
27 good cause. The administrator of the fund shall administer
28 the certification program.

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

33 a. A person certified by the American institute of
34 hydrology, the national water well association, the American
35 board of industrial hygiene, or the association of groundwater

1 scientists and engineers.

2 b. A professional engineer registered in Iowa.

3 c. A professional geologist certified by a national
4 organization.

5 d. Any person who has five years of direct and related
6 experience and training as a groundwater professional or in
7 the field of earth sciences as of June 10, 1991.

8 e. Any other person with a license, certification, or
9 registration to practice hydrogeology or groundwater hydrology
10 issued by any state in the United States or by any national
11 organization, provided that the license, certification, or
12 registration process requires, at a minimum, all of the
13 following:

14 (1) Possession of a bachelor's degree from an accredited
15 college.

16 (2) Five years of related professional experience.

17 3. The department of natural resources may provide for a
18 civil penalty of no more than fifty dollars for the failure to
19 register obtain certification. An interested person may
20 obtain a list of registrants certified groundwater
21 professionals from the department of natural resources. The
22 department of natural resources may impose a fee for the
23 registration certification of persons under this section.

24 4. The registration certification of groundwater
25 professionals shall not impose liability on the board, the
26 department, or the fund for any claim or cause of action of
27 any nature, based on the action or inaction of groundwater
28 professionals registered certified pursuant to this section.

29 5. Any person who was not previously registered as a
30 groundwater professional who requests certification under this
31 section, after January 1, 1996, shall be required to attend a
32 course of instruction and pass a certification examination.
33 The administrator of the fund shall hold certification courses
34 and offer examinations. An applicant who successfully passes
35 the examination shall be certified as a groundwater

1 professional.

2 6. A groundwater professional who was registered prior to
3 January 1, 1996, shall not be required to attend the course of
4 instruction but shall be required to pass the certification
5 examination by January 1, 1997.

6 7. All groundwater professionals shall be required to
7 complete continuing education requirements as adopted by rule
8 by the department.

9 8. Notwithstanding the certification requirements of this
10 section, a site cleanup report or corrective action design
11 report submitted by a registered groundwater professional
12 shall be accepted by the department in accordance with
13 sections 455B.474, subsection 1, paragraph "d", subparagraph
14 (2), subparagraph subdivision (e), and paragraph "f",
15 subparagraph (5).

16 Sec. 25. NEW SECTION. 455G.21 MARKETABILITY FUND.

17 1. A marketability fund is created as a separate fund in
18 the state treasury under the control of the board. The board
19 shall administer the marketability fund. Notwithstanding
20 section 8.33, moneys remaining in the marketability fund at
21 the end of each fiscal year shall not revert to the general
22 fund but shall remain in the marketability fund. The
23 marketability fund shall include the following moneys:

24 a. Seventeen million dollars per year pursuant to section
25 423.24, subsection 1, paragraph "a", subparagraph (2).

26 b. Notwithstanding section 12C.7, interest earned by the
27 marketability fund or other income specifically allocated to
28 the marketability fund.

29 2. The marketability fund shall be used for the following
30 purposes:

31 a. Five million dollars per year shall be allocated to the
32 innocent landowners fund which shall be established as a
33 separate fund in the state treasury under the control of the
34 board. Notwithstanding section 455G.1, subsection 2, benefits
35 for the costs of corrective action shall be provided to the

1 owner of a petroleum contaminated property, who is not
2 otherwise eligible to receive benefits under section 455G.9.
3 An owner of a petroleum contaminated property shall be
4 eligible for payment of total corrective action costs subject
5 to copayment requirements under section 455G.9, subsection 4,
6 paragraph "a", subparagraphs (1) and (2). The board may adopt
7 rules conditioning receipt of benefits under this paragraph to
8 those petroleum contaminated properties which present a higher
9 degree of risk to the public health and safety or the
10 environment and may adopt rules providing for denial of
11 benefits under this paragraph to a person who did not make a
12 good faith attempt to comply with the provisions of this
13 chapter. This paragraph does not confer a legal right to an
14 owner of petroleum contaminated property for receipt of
15 benefits under this paragraph.

16 b. Twelve million dollars per year shall be used for
17 payment of remedial benefits as provided in section 455G.9.

18 3. Moneys in the fund shall not be used for purposes of
19 bonding or providing security for bonding under chapter 455G.

20 Sec. 26. REPEAL.

21 1. Section 423.24, subsection 1, paragraph "a",
22 subparagraph (2), and section 424.3, subsection 5, paragraph
23 "b", are repealed on July 1, 2002.

24 2. Section 455G.19, Code 1995, is repealed.

25 Sec. 27. DEPARTMENTAL RULES.

26 1. In adopting the rules to implement the amendments to
27 section 455B.474, contained in this Act, the environmental
28 protection commission shall:

29 a. Direct the department to work jointly with a technical
30 advisory committee to prepare a draft of these rules and
31 standards for the commission's consideration.

32 (1) The technical advisory committee members shall consist
33 of the following:

34 (a) The chairperson of the Iowa environmental council or
35 the chairperson's designee.

- 1 (b) The managing director of the petroleum marketers of
2 Iowa or the managing director's designee.
- 3 (c) The executive director of the Iowa league of cities or
4 the executive director's designee.
- 5 (d) The president of the Iowa groundwater association or
6 the president's designee who is a groundwater professional
7 pursuant to section 455G.18.
- 8 (e) The executive director of the Iowa petroleum council
9 or the executive director's designee.
- 10 (f) The executive director of the consulting engineers of
11 Iowa or the executive director's designee who is a registered
12 engineer.
- 13 (g) The executive director of the Iowa association of
14 business and industry or the executive director's designee.
- 15 (h) The administrator of the Iowa comprehensive petroleum
16 underground storage tank fund board.
- 17 (2) The technical advisory committee shall:
- 18 (a) Draw upon the technical expertise of its members'
19 constituent organizations.
- 20 (b) Submit a written report to the environmental
21 protection commission concerning rules and standards to
22 implement section 455B.474, as amended by this Act, by October
23 15, 1995.
- 24 (3) The technical advisory committee shall cease to exist
25 upon completion of the report in subparagraph (2).
- 26 b. File a notice of intended action with the
27 administrative rules review committee by November 15, 1995.
- 28 2. In implementing the amendments to section 455B.474
29 contained in this Act, the department:
- 30 a. May allow but shall not require revision, modification,
31 or replacement of any site cleanup report, site assessment, or
32 remedial investigation previously accepted by the department.
- 33 b. Shall collect information from historical records,
34 visual inspections, and minimal site assessment data in order
35 to determine whether the release is appropriate for regulatory

1 concern and whether a site cleanup report is required.

2 c. Take steps to assure that department staff is
3 adequately trained to implement and utilize the standards
4 being enacted pursuant to this section by January 1, 1996. In
5 preparing its staff, the department shall utilize, to the
6 fullest extent possible, training and funding programs offered
7 by the United States environmental protection agency, the
8 American society for testing and materials (ASTM), or other
9 appropriate entities.

10 d. May use existing ASTM standards until the rules
11 implementing the changes to section 455B.474 contained in this
12 Act are adopted.

13 Sec. 28. STUDY.

14 1. The Iowa comprehensive petroleum underground storage
15 tank fund board shall study the following issues:

16 a. Privatization of all or a portion of the insurance
17 program under section 455G.11.

18 b. Expansion of innocent landowner benefits under section
19 455G.21.

20 2. The board shall provide the general assembly with the
21 study's report and recommendations by January 1, 1996.

22 Sec. 29. RETROACTIVE APPLICABILITY. Sections 17 and 18 of
23 this Act, which amend section 455G.11, subsections 3 and 4,
24 apply retroactively to January 1, 1995.

25 Sec. 30. EFFECTIVE DATE. Sections 3 through 10, sections
26 15 through 25, section 26, subsection 2, and sections 27
27 through 29, being deemed of immediate importance, take effect
28 upon enactment. Sections 1 and 2, sections 11 through 14, and
29 section 26, subsection 1, are effective July 1, 1995.

30 EXPLANATION

31 This bill makes several changes to the underground storage
32 tank program.

33 1. Environmental Protection Charge. This bill amends
34 sections 423.24 and 424.3 to increase the amount of the
35 environmental protection charge. The environmental protection

1 charge is based upon diminution of petroleum and is collected
2 by a depositor from a receiver of petroleum when deposited
3 into a tank. Currently per statute, the amount that is
4 allocated to the Iowa comprehensive petroleum underground
5 storage tank fund from use tax revenues is \$15.3 million per
6 year. This bill increases that amount in two ways. First, it
7 raises the cap on the initial environmental protection charge
8 to \$17 million. Secondly, it increases the environmental
9 protection charge by a cost factor which is equivalent to an
10 extra one cent per gallon which generates an additional \$17
11 million. The additional one cent increase in the
12 environmental protection charge is allocated to the new
13 marketability fund and is repealed on July 1, 2002.

14 2. Marketability Fund. This bill creates a new
15 marketability fund which receives the additional \$17 million
16 per year from the increase in the environmental protection
17 charge. Five million dollars of the moneys allocated to the
18 marketability fund are to be appropriated to the innocent
19 landowner fund which is also created in this bill. The
20 innocent landowner fund will provide an owner of petroleum
21 contaminated property, who is not otherwise eligible for
22 receipt of benefits under the remedial account, benefits for
23 the costs of corrective action, subject to the copayment
24 requirements of section 455G.9, subsection 4. The first
25 \$20,000 of site cleanup report costs will be paid by the
26 innocent landowner fund. The owner is required to pay 18
27 percent of the first \$80,000 of corrective action costs and 35
28 percent of the remainder. The bill provides that the UST
29 board may adopt rules conditioning receipt of benefits to
30 those petroleum contaminated properties which present a higher
31 degree of risk to the public health and safety or the
32 environment and may adopt rules providing for exclusion of
33 benefits to a person who did not make a good faith attempt to
34 comply with the provisions of chapter 455G. The bill states
35 that the provisions of the innocent landowner fund do not

1 confer a legal right to an owner of petroleum contaminated
2 property for receipt of benefits under the fund. The
3 remaining \$12 million per year is to be used solely for
4 providing remedial benefits under section 455G.9. The bill
5 specifically prohibits use of the moneys in the marketability
6 fund for bonding purposes. The bill requires the underground
7 storage tank fund board to conduct a study and provide the
8 general assembly with recommendations regarding expansion of
9 the innocent landowner fund to include additional corrective
10 action benefits by January 1, 1996.

11 3. Risk-Based Corrective Action (RBCA) Standards. The
12 bill amends provisions contained in chapter 455B relating to
13 site classification and cleanup requirements in order to
14 require the department of natural resources to implement the
15 use of national risk-based corrective action standards
16 developed by the American Society for Testing and Materials
17 (ASTM). The Emergency Standard Guide for Risk-Based
18 Corrective Action Applied at Petroleum Release Sites (ES38-94)
19 states that RBCA is a "consistent decision-making process for
20 the assessment and response to subsurface contamination, based
21 upon the protection of human health and environmental
22 resources The RBCA process utilizes a tiered
23 approach where assessment and remediation activities are
24 appropriately tailored to site-specific conditions and risks."

25 a. Classification. The bill retains the current
26 designations for high risk sites and adds overriding criteria
27 requiring an initial determination of unreasonable risk. The
28 bill states that a site shall be considered high risk when it
29 is determined that contamination from the site presents an
30 unreasonable risk to public health and safety or the
31 environment if contamination at the site is affecting or
32 likely to affect groundwater which is used as a source water
33 for public or private water supplies, to a level rendering
34 them unsafe for human consumption, if contamination is
35 actually affecting or is likely to affect surface water bodies

1 to a level where surface water quality standards will be
2 exceeded, or if harmful or explosive concentrations of
3 petroleum substances or vapors affecting structures or utility
4 installations exist or are likely to occur. Currently sites
5 which do not meet this high risk criteria are classified as
6 either a low risk or no further action site. This bill
7 requires that reclassification of a site is to be based upon
8 risk-based screening levels contained in the ASTM standards.

9 b. Corrective Action Response Requirements. The bill
10 makes major changes in determining the extent of cleanup
11 required on a high risk site. It requires that when
12 determining the appropriate corrective action response, the
13 corrective action design report must consider the extent of
14 remediation required to reclassify the site to a low risk
15 site, the most appropriate exposure scenarios, exposure
16 pathway characterizations, current and projected use
17 scenarios, risk-based corrective action assessment principles,
18 and other relevant site specific factors such as the
19 feasibility of available technologies, existing background
20 contaminate levels, current and planned future uses,
21 ecological, aesthetic, and other relevant criteria, and the
22 applicability and availability of engineering and
23 institutional controls. The bill requires that corrective
24 action for releases which occur on or after January 1, 1996,
25 must be remediated in accordance with corrective action rules
26 and regulations of the department of natural resources
27 existing on January 1, 1995, if the release is from an
28 underground storage tank required to maintain financial
29 responsibility under chapter 455G. The bill allows an owner
30 or operator to perform additional corrective action at the
31 owner's or operator's expense.

32 c. Monitoring. The bill strikes the current monitoring
33 schedule and provides that low risk sites shall be monitored
34 as the department of natural resources deems necessary and as
35 consistent with industry standards. Section 455B.474

1 currently requires that low risk sites be monitored a maximum
2 of three times per year for years one through three, a maximum
3 of two times per year for years 4 through 6, one time per year
4 for years 7 through 9, and one time in the 12th year. If
5 there has been no significant increase or movement of
6 contamination after the 12th year, the department is directed
7 to reclassify the site to a no further action site.

8 d. Certificates. The bill strikes references to the
9 current clean site certificate and replaces it with a no
10 further action certificate for a site upon which the
11 department of natural resources has determined that no further
12 action is required.

13 e. Site Cleanup and Corrective Action Design Reports. The
14 bill requires that the department must accept a site cleanup
15 report or corrective action design report submitted by a
16 groundwater professional unless the report is found to be
17 incomplete or inaccurate or if based upon information in the
18 report or plan the site classification or appropriate
19 corrective action response cannot be reasonably determined.
20 The groundwater professional is required to certify that the
21 site cleanup report complies with the provisions of chapter
22 455B and rules adopted by the department. A false statement
23 or misrepresentation made by a groundwater professional which
24 results in a mistaken classification of a site or an improper
25 or incorrect corrective action response is a serious
26 misdemeanor and results in revocation of the groundwater
27 professional's certification under section 455G.18. A serious
28 misdemeanor is punishable by a fine of at least \$250 but not
29 to exceed \$1,500 and imprisonment not to exceed one year.

30 f. Implementation of Risk-Based Corrective Action (RBCA)
31 Standards. Finally, the bill includes several provisions
32 relating to implementation of the new RBCA rules by the
33 department of natural resources. The bill requires formation
34 of a technical advisory committee to work with and assist the
35 department in development of rules for approval by the

1 environmental protection commission. The members of the
2 technical advisory committee consist of representatives of the
3 following groups: the Iowa environmental council, the
4 petroleum marketers of Iowa, the Iowa league of cities, the
5 Iowa groundwater association, the Iowa petroleum council, the
6 consulting engineers of Iowa, the Iowa association of business
7 and industry, and the administrator of the underground storage
8 tank fund board. The technical advisory committee is required
9 to submit a written report to the environmental protection
10 commission by October 15, 1995. Upon completion of the
11 report, the committee will cease to exist.

12 The environmental protection commission is directed to file
13 a notice of intended action with the administrative rules
14 review committee to adopt rules for implementation of RBCA
15 standards by November 15, 1995. The department is prohibited
16 from requiring any revision, modification, or replacement of
17 any site cleanup report, site assessment, or remedial
18 investigation previously accepted by the department. In
19 addition the department is directed to collect information
20 from historical records, visual inspections, and minimal site
21 assessment data in order to determine whether a release is
22 appropriate for regulatory concern and whether a site cleanup
23 report is necessary and to ensure that departmental staff are
24 properly trained to implement RBCA standards by January 1,
25 1996. The department is authorized to use existing RBCA
26 standards until the rules are adopted.

27 4. Prioritization. The bill amends section 455G.9 by
28 striking subsection 5 which authorizes the underground storage
29 tank fund board to prioritize remedial benefits if the fund
30 cannot currently pay all claims. The administrative rules
31 review committee approved rules in January 1995 which gave
32 priority in allocation of benefits to small business owners on
33 high risk sites. This means that larger owners and political
34 subdivisions, i.e., school districts, cities, and counties,
35 must wait to receive benefits. A small business as defined in

1 section 455G.2 means an independently owned and operated
2 business with no more than 12 tanks at no more than two
3 different tank sites with a net worth of \$400,000 or less.

4 5. Loan Guarantee Account. The current loan guarantee
5 program offers a 90 percent guarantee on behalf of small
6 businesses for the payment of corrective action costs or
7 upgrades. This bill expands the loan guarantee program under
8 section 455G.10 by striking the requirement that the applicant
9 be a small business, thus allowing anyone to apply for a loan
10 guarantee and by providing that a loan guarantee may be
11 granted for capital improvements on a tank site or for
12 purchase of property contaminated by a leaking underground
13 storage tank. A person must attempt to obtain financing from
14 at least two private lending sources before requesting a loan
15 guarantee.

16 6. Insurance. The bill amends section 455G.11 to extend
17 the upgrade date to December 22, 1998, and to provide for
18 expanded property transfer insurance coverage. The federal
19 government has mandated that regulated tanks conform to
20 technical upgrade requirements by December 22, 1998. In Iowa,
21 an owner or operator was to have upgraded a tank by January 1,
22 1995, in order to continue to be eligible for insurance
23 coverage under the fund. This bill extends the state upgrade
24 date to be consistent with the federally mandated upgrade date
25 and allows an owner or operator to maintain state insurance
26 with an \$800 per tank surcharge in addition to paying two
27 times the normal premium rate. The bill provides that tanks
28 that are not upgraded shall not be included within the general
29 tank population for purposes of determining actuarially sound
30 premiums under section 455G.11, subsection 4, paragraph "g".
31 The section in this bill that amends section 455G.11,
32 subsection 3, paragraph "c", to extend upgrade dates is
33 effective upon enactment and is retroactively applicable to
34 January 1, 1995.

35 Property transfer insurance is currently provided to cover

1 environmental damage caused by a tank in the event that
2 governmental action requires additional cleanup beyond action
3 level standards in effect at the time a certificate of clean
4 was issued or a monitoring certificate was issued. This bill
5 expands the coverage by providing that any cleanup beyond that
6 which was required at the time a no further action certificate
7 or a monitoring certificate was issued shall be covered by the
8 policy instead of requiring that action standards change in
9 order to receive coverage. In addition, the bill strikes a
10 provision conditioning coverage upon continued approval by the
11 United States environmental protection agency.

12 7. Groundwater Professionals. This bill amends section
13 455G.18 by requiring that all groundwater professionals be
14 certified. A groundwater professional is a person who
15 provides subsurface soil contamination and groundwater
16 consulting services or who contracts to perform remediation or
17 corrective action services. Currently section 455G.18
18 requires that all groundwater professionals be registered with
19 the department of natural resources. The bill provides that
20 any person not previously registered as a groundwater
21 professional who requests certification after January 1, 1996,
22 must complete a course of instruction and pass a certification
23 examination. Groundwater professionals registered prior to
24 January 1, 1996, must pass the certification examination by
25 January 1, 1997. The bill requires that all groundwater
26 professionals must take continuing education requirements in
27 order to maintain certification. In addition, the bill
28 provides that the administrator of the underground storage
29 tank fund will administer the groundwater professional
30 certification program.

31 8. Environmental Damage Offset. This bill repeals the
32 environmental damage offset. The environmental damage offset
33 applied to a person receiving benefits under section 455G.9
34 who closed a tank but still used the site for commercial
35 purposes and required that person to pay a predetermined

1 amount per year or deduct the amount from benefits received
2 under the underground storage tank fund. The environmental
3 damage offset was equal to the amount of the environmental
4 protection charge which would have been paid by a tank that
5 was similar in size to the tank that was closed.

6 9. Underground Storage Tank Fund Board Study. The bill
7 requires the Iowa comprehensive petroleum underground storage
8 tank fund board to study two issues and provide
9 recommendations to the general assembly by January 1, 1996.
10 The two issues are privatization of the insurance fund and
11 expansion of innocent landowner benefits under section
12 455G.21.

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SENATE FILE 413
FISCAL NOTE

REQ. BY SENATOR GRONSTAL

A fiscal note for Amendment S-3497 to SF 413 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-3497 to SF 413 places restrictions on the Underground Storage Tank (UST) Program's ability to recover money from certain parties responsible under law for petroleum contamination remediated at Program expense.

Background:

1. Section 455G.13, Code of Iowa allows the UST Board to seek recovery from certain parties responsible under law for contamination at a Program-eligible site.
2. The UST Board has restricted the recovery to responsible parties with sufficient financial resources.
3. The UST Board has further restricted cost recovery to cases in which it is likely the recovery will exceed the cost of litigation.
4. To date, recoveries have exceeded legal expenses. Under current UST Board policy, recoveries should continue to exceed expenses.

Fiscal Impact:

The amount of potential cost recovery revenue is estimated at \$30.0 million. The percentage of the potential that would actually be recovered can not be estimated, as it is dependent on court rulings.

NOTE: Future revenue and expenditure projections for the UST Program do not presently contain cost recovery funds as a source of revenue. Any funds recovered from other responsible parties would be available to close any funding deficit, expand cleanup in the future, or would reduce the projected need for Use Tax revenue.

Source: Office of the Attorney General

(LSB 2592SV.3, JWR)

FILED APRIL 26, 1995

BY DENNIS PROUTY, FISCAL DIRECTOR

**SENATE FILE 413
FISCAL NOTE**

A fiscal note for Amendment S-3579 to SF 413 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-3579 to SF 413 changes the method of increasing Use Tax revenue to the Underground Storage Tank (UST) Program. The amendment strikes the addition of \$17.0 million per year in Use Tax revenue to the Program's resources, and strikes the addition of a second one cent per gallon diminution fee to replace the income lost by the Road Use Tax Fund due to the change in Use Tax allocation. The amendment instead allocates \$10.0 million per year for calendar years 1996 and 1997, and \$17.0 million per year in calendar years 1998 through 2002 of Use Tax revenues to the UST Program.

Fiscal Impact:

Compared to the Use Tax/diminution fee combination contained in SF 413, amendment S-3579 reduces revenue to the Road Use Tax Fund by a total of \$119.0 million from calendar year 1996 through 2002, and decreases revenue to the UST Program by \$15.0 million.

The estimated fiscal impact of SF 413 left the UST Program with a projected funding deficit of \$4.1 million. With amendment S-3579, the projected funding deficit would rise to \$19.1 million.

(LSB 2592SV.2, JWR)

FILED APRIL 26, 1995

BY DENNIS PROUTY, FISCAL DIRECTOR

**SENATE FILE 413
FISCAL NOTE**

A fiscal note for Senate File 413 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 413 makes several changes to the State's Underground Storage Tank (UST) Program.

1. Increases funding to the Program by raising the amount of motor vehicle use tax dedicated to the Program from \$15.3 million per year to \$17.0 million, and by imposing an additional one cent per gallon diminution fee on certain automotive petroleum products. The additional one cent fee is imposed from FY 1996 through FY 2002 (seven years).
2. Decreases Program revenues by eliminating the Environmental Offset charge against commercial properties receiving Program benefits but not selling petroleum products subject to the diminution fee.
3. Decreases UST Program expenditures by requiring the use of Risk Based Corrective Action (RBCA) standards in the evaluation of property presently contaminated with petroleum.
4. Increases Program expenditures by offering benefits to a new class of "innocent landowners", and allowing a total of \$5.0 million per year to be expended on that class of sites.
5. Allows certain non-upgraded tanks to qualify for State-offered insurance. The insurance premiums would be double the standard premium, plus a surcharge of \$800 per tank.
6. Removes the UST Board's ability to prioritize the allocation of UST Fund monies when projected expenses exceed projected revenues.
7. Expands eligibility for loan guarantees.
8. Changes requirements for groundwater professionals.
9. Subjects groundwater professionals who intentionally file false site classification reports that result in an incorrect corrective action response to a penalty (serious misdemeanor).
10. Requires the UST Board to report to the next General Assembly on innocent landowner and insurance privatization issues.

Assumptions:

1. Under current law, projections of expenses and revenues for the UST Program indicate the Program faces a deficit of \$166.4 million.
2. The UST Board has used its prioritization authority to reduce projected expenses by \$168.7 million.
3. The present one cent diminution fee will remain in place through FY 2014 (19 years).
4. For cash flow purposes, the UST Board will bond with the additional \$32.3 million Use Tax allocation.
5. Under current law, the Environmental Offset will generate an average of \$500,000 per year through FY 2003 (eight years).
6. Expanding the Loan Guarantee will have a negligible fiscal impact.

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7. The additional insurance premiums paid for non-upgraded tanks will equal the additional cleanup expenditures associated with insuring those tanks.
Fiscal Impact:

The impact on UST Program revenues would be \$147.3 million due to:

An increase of \$119.0 million from the additional one cent per gallon diminution fee.

An increase of \$32.3 million from raising the Use Tax cap (present one cent per gallon diminution fee) from \$15.3 million per year to \$17.0 million.

A decrease of \$4.0 million due to the elimination of the Environmental Offset fee.

The impact on UST Program expenditures would be a decrease of \$15.0 million due to:

A decrease of \$64.0 million due to the use of RBCA standards for corrective action.

An increase of \$13.9 million due to bonding with the additional \$32.3 million.

An increase of \$35.0 million to expand benefits to innocent landowners.

An increase of \$80,000 to complete the required study.

Therefore, the Bill would reduce the UST Program pre-prioritization deficit from \$166.4 million to \$4.1 million.

The Bill would have a fiscal impact on the Department of Natural Resources by reducing the backlog of underground storage tank work that has accumulated. Approximately 75.0% to 90.0% of future savings would be associated with federal funding.

Removal of the UST Board's prioritization authority and increasing the Program's revenues would impact the Department of Transportation and local governments, as many sites owned by these entities are currently ineligible due to the implementation of prioritization. The total positive impact on these entities could exceed \$20.0 million.

Correctional Impact:

The creation of a serious misdemeanor for groundwater professionals who intentionally file false site cleanup reports would have a negligible impact on the corrections system.

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Sources:

Department of Natural Resources
Underground Storage Tank Administrator's Office

(LSB 2592SV, JWR)

FILED APRIL 6, 1995

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 413

S-3650

- 1 Amend Senate File 413 as follows:
2 1. Page 1, by striking lines 11 through 14 and
3 inserting the following:
4 "(2) Beginning January 1, 1996, through December
5 31, 1997, two million five hundred thousand dollars
6 per quarter, shall be deposited into and credited to
7 the Iowa comprehensive petroleum underground storage
8 tank marketability fund created in section 455G.21.
9 Beginning January 1, 1998, through December 31, 2002,
10 four million two hundred fifty thousand dollars per
11 quarter, shall be deposited into and credited to the
12 Iowa comprehensive petroleum underground storage tank
13 marketability fund created in section 455G.21. The
14 moneys so deposited".
15 2. Page 1, line 20, by striking the letter "a."
16 3. By striking page 1, line 30, through page 2,
17 line 1.
18 4. Page 2, line 31, by striking the word
19 "reclassifying" and inserting the following:
20 "classifying".
21 5. Page 4, by inserting after line 20 the
22 following:
23 "(g) Remediation shall not be required on a site
24 that does not present an increased cancer risk at the
25 point of exposure of one in one million for
26 residential areas or one in ten thousand for
27 nonresidential areas."
28 6. Page 6, line 19, by striking the figures and
29 word "455G.11, and 455G.13," and inserting the
30 following: "and 455G.11, and-455G-137".
31 7. Page 7, by inserting after line 30 the
32 following:
33 "Sec. 100. Section 455G.8, subsection 5, Code
34 1995, is amended to read as follows:
35 5. COST RECOVERY ENFORCEMENT. Cost recovery
36 enforcement net proceeds as provided by section
37 455G.13 shall be allocated ~~among the fund's accounts~~
38 as directed by the board to the innocent landowners
39 fund created under section 455G.21, subsection 2,
40 paragraph "a". When federal cleanup funds are
41 recovered, the funds are to be deposited to the
42 remedial account of the fund and used solely for the
43 purpose of future cleanup activities."
44 8. Page 11, by inserting after line 17 the
45 following:
46 "Sec. 101. Section 455G.13, subsection 1, Code
47 1995, is amended to read as follows:
48 1. ~~FHBB~~ RECOVERY SOUGHT FROM OWNER. The board
49 ~~shall~~ may seek ~~full~~ recovery from the owner, operator,
50 or other potentially responsible party liable for the

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Page 2

1 released petroleum which is the subject of a
2 corrective action, for which the fund expends moneys
3 from the remedial account for corrective action or
4 third-party liability, and for all other costs,
5 including reasonable and necessary attorney fees and
6 costs of litigation for which moneys are expended by
7 the fund in connection with the release. The
8 liability of the owner, operator or other potentially
9 responsible party is limited to that percentage of the
10 released petroleum which was the subject of the
11 corrective action and which the board by a
12 preponderance of the evidence, demonstrates was
13 released by the owner, operator, or other potentially
14 responsible party. When federal cleanup funds are
15 recovered, the funds are to be deposited to the
16 remedial account of the fund and used solely for the
17 purpose of future cleanup activities."

18 9. Page 13, by inserting after line 8 the
19 following:

20 "7A. The board may provide for exemption from the
21 certification requirements of this section for a
22 professional engineer registered pursuant to chapter
23 542B, if the person is qualified in the field of
24 geotechnical, hydrological, environmental groundwater,
25 or hydrogeological engineering."

26 10. Page 13, line 23, by striking the word
27 "moneys".

28 11. Page 13, line 24, by striking the words
29 "Seventeen million dollars per year" and inserting the
30 following: "Moneys allocated to the fund".

31 12. Page 13, line 34, by inserting after the word
32 "board." the following: "The innocent landowners fund
33 shall also include any moneys recovered pursuant to
34 cost recovery enforcement under section 455G.13."

35 13. Page 14, line 16, by striking the words
36 "Twelve million dollars per year" and inserting the
37 following: "The remainder of the moneys".

38 14. Page 14, by striking lines 22 and 23 and
39 inserting the following: "subparagraph (2) is
40 repealed on January 1, 2003."

41 15. Page 15, line 20, by inserting after the word
42 "report" the following: "jointly with the department
43 of natural resources".

44 16. Page 15, by striking line 25 and inserting
45 the following: "when final rules referred to in
46 subparagraph (2) are adopted by the environmental
47 protection commission."

48 17. Page 16, line 2, by striking the word "Take"
49 and inserting the following: "Shall take".

50 18. Page 16, by striking lines 10 through 12 and

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Page 3

1 inserting the following:
2 "3. During the period of time from the enactment
3 of this Act until such time as the rules implementing
4 the amendments to section 455B.474, contained in this
5 Act, become effective, the department of natural
6 resources may require an owner or operator to proceed
7 with corrective action only if the action is necessary
8 to protect public health and safety or the
9 environment. An owner or operator may elect to
10 proceed with corrective action pursuant to rules of
11 the department existing on January 1, 1995, until such
12 time as the rules implementing the amendments to
13 section 455B.474, contained in this Act, become
14 effective. However, the board may refuse to pay
15 corrective action costs on a site during the interim
16 period if it is likely that the site would be
17 reclassified as a lower risk site when the rules
18 implementing risk-based corrective action standards
19 become effective."

20 19. Page 16, by inserting after line 21 the
21 following:

22 "Sec. ____ . APPLICABILITY. The section of this Act
23 that amends section 455G.13, subsection 1, applies to
24 all cases that are tried on or after the effective
25 date of this Act."

26 20. Page 16, line 26, by striking the figure "25"
27 and inserting the following: "24".

28 21. Page 16, line 29, by inserting after the
29 figure "1995." the following: "Section 25 is
30 effective January 1, 1996. Sections 100 and 101 of
31 this Act, being deemed of immediate importance, take
32 effect upon enactment."

33 22. Title page, line 5, by inserting after the
34 word "requirements," the following: "relating to cost
35 recovery,".

36 23. By renumbering as necessary.

By MICHAEL E. GRONSTAL

S-3650 FILED APRIL 28, 1995

ADOPTED (p. 1523)

SENATE FILE 413

S-3614

1 Amend Senate File 413 as follows:

2 1. Page 7, by inserting after line 30 the
3 following:

4 "Sec. . . . Section 455G.9, subsection 4, paragraph
5 a, Code 1995, is amended to read as follows:

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

10 (1) If the owner or operator has a net worth of
11 one hundred thousand dollars or less, the owner or
12 operator shall pay no more than eighteen percent of
13 the total costs of corrective action for that release.
14 For purposes of this subparagraph, "net worth" means
15 the fair market value of the site, which shall include
16 an adjustment for anticipated benefits under this
17 section.

18 ~~(1)~~ (2) If a site's total anticipated expenses are
19 not reserved for more than, or actual expenses do not
20 exceed, eighty thousand dollars, the owner or operator
21 shall pay the greater of five thousand dollars or
22 eighteen percent of the total costs of corrective
23 action for that release.

24 ~~(2)~~ (3) If a site's total anticipated expenses are
25 reserved for more than, or actual expenses exceed,
26 eighty thousand dollars, the owner or operator shall
27 pay the amount as designated in subparagraph ~~(1)~~ (2)
28 plus thirty-five percent of the total costs of the
29 corrective action for that release which exceed eighty
30 thousand dollars."

31 2. By renumbering as necessary.

By EMIL J. HUSAK
BRAD BANKS
BILL FINK

TONY BISIGNANO
MICHAEL E. GRONSTAL

S-3614 FILED APRIL 28, 1995
NO RULING

SENATE FILE 413

S-3636

1 Amend the amendment, S-3614, to Senate File 413 as
2 follows:

3 1. Page 1, line 11, by inserting after the word
4 "less" the following: "and the owner or operator owns
5 no more than one site".

By EMIL J. HUSAK
BRAD BANKS

S-3636 FILED APRIL 28, 1995
NO RULING

SENATE FILE 413

S-3609

- 1 Amend Senate File 413 as follows:
2 1. Page 2, by striking lines 7 through 18 and
3 inserting the following:
4 "2. "Corrective action" means an action taken to
5 reduce, minimize, eliminate, clean up, control, or
6 monitor a release to protect the public health and
7 safety or the environment. Corrective action includes
8 both passive and active systems:
9 a. Passive systems include only soil monitoring,
10 groundwater monitoring, natural attenuation, natural
11 biodegradation, and site management practices. A
12 passive system must be conducted under the direction
13 of a registered groundwater professional.
14 b. Active systems include, but are not limited to,
15 excavation of an underground storage tank for purposes
16 of repairing a leak or removal of a tank, removal of
17 contaminated soil, disposal or processing of
18 contaminated soil, cleansing of groundwaters or
19 surface waters, enhanced bioremediation, and
20 institutional controls. An active system must be
21 conducted under the direction of a professional
22 engineer registered under chapter 542B.
23 Corrective action does not include replacement of
24 an underground storage tank. Corrective action
25 specifically excludes third-party liability."
26 2. By renumbering as necessary.

By MARY LUNDBY

S-3609 FILED APRIL 27, 1995

SENATE FILE 413

S-3579

1 Amend Senate File 413 as follows:

2 1. Page 1, by striking lines 11 through 14 and
3 inserting the following:

4 "(2) Beginning January 1, 1996, through December
5 31, 1997, two million five hundred thousand dollars
6 per quarter, shall be deposited into and credited to
7 the Iowa comprehensive petroleum underground storage
8 tank marketability fund created in section 455G.21.
9 Beginning January 1, 1998, through December 31, 2002,
10 four million two hundred fifty thousand dollars per
11 quarter, shall be deposited into and credited to the
12 Iowa comprehensive petroleum underground storage tank
13 marketability fund created in section 455G.21. The
14 moneys so deposited".

15 2. Page 1, line 20, by striking the letter "a."

16 3. By striking page 1, line 30, through page 2,
17 line 1.

18 4. Page 2, line 31, by striking the word
19 "reclassifying" and inserting the following:
20 "classifying".

21 5. Page 4, by inserting after line 20 the
22 following:

23 "(g) Remediation shall not be required on a site
24 that does not present an increased cancer risk at the
25 point of exposure of one in one million for
26 residential areas or one in ten thousand for
27 nonresidential areas."

28 6. Page 13, by inserting after line 8 the
29 following:

30 "7A. The board may provide for exemption from the
31 certification requirements of this section for a
32 professional engineer registered pursuant to chapter
33 542B, if the person is qualified in the field of
34 geotechnical, hydrological, environmental groundwater,
35 or hydrogeological engineering."

36 7. Page 13, line 23, by striking the word
37 "moneys".

38 8. Page 13, line 24, by striking the words
39 "Seventeen million dollars per year" and inserting the
40 following: "Moneys allocated to the fund".

41 9. Page 14, line 16, by striking the words
42 "Twelve million dollars per year" and inserting the
43 following: "The remainder of the moneys".

44 10. Page 14, by striking lines 22 and 23 and
45 inserting the following: "subparagraph (2) is
46 repealed on January 1, 2003."

47 11. Page 15, line 20, by inserting after the word
48 "report" the following: "jointly with the department
49 of natural resources".

50 12. Page 15, by striking line 25 and inserting

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SENATE FILE 413

S-3578

- 1 Amend Senate File 413 as follows:
2 1. Page 6, line 19, by striking the figures and
3 word "455G.11, and 455G.13," and inserting the
4 following: "and 455G.11, and 455G.13,".
5 2. Page 7, by inserting after line 30 the
6 following:
7 "Sec. ____ . Section 455G.8, subsection 5, Code
8 1995, is amended to read as follows:
9 5. COST RECOVERY ENFORCEMENT. Cost recovery
10 enforcement net proceeds as provided by section
11 455G.13 shall be allocated ~~among the fund's accounts~~
12 as directed by the board to the innocent landowners
13 fund created under section 455G.21, subsection 2,
14 paragraph "a". When federal cleanup funds are
15 recovered, the funds are to be deposited to the
16 remedial account of the fund and used solely for the
17 purpose of future cleanup activities."
18 3. Page 13, line 34, by inserting after the word
19 "board." the following: "The innocent landowners fund
20 shall also include any moneys recovered pursuant to
21 cost recovery enforcement under section 455G.13."
22 4. By renumbering as necessary.

By MICHAEL E. GRONSTAL

S-3578 FILED APRIL 26, 1995

ADOPTED

(p.1442) MTR 4/28/95 (p.1522) Gronstal
Motion prevailed
Amendment withdrawn (p.1522)

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Page 2

1 the following: "when final rules referred to in
2 subparagraph (2) are adopted by the environmental
3 protection commission."

4 13. Page 16, line 2, by striking the word "Take"
5 and inserting the following: "Shall take".

6 14. Page 16, by striking lines 10 through 12 and
7 inserting the following:

8 "3. During the period of time from the enactment
9 of this Act until such time as the rules implementing
10 the amendments to section 455B.474, contained in this
11 Act, become effective, the department of natural
12 resources may require an owner or operator to proceed
13 with corrective action only if the action is necessary
14 to protect public health and safety or the
15 environment. An owner or operator may elect to
16 proceed with corrective action pursuant to rules of
17 the department existing on January 1, 1995, until such
18 time as the rules implementing the amendments to
19 section 455B.474, contained in this Act, become
20 effective. However, the board may refuse to pay
21 corrective action costs on a site during the interim
22 period if it is likely that the site would be
23 reclassified as a lower risk site when the rules
24 implementing risk-based corrective action standards
25 become effective."

26 15. Page 16, line 26, by striking the figure "25"
27 and inserting the following: "24".

28 16. Page 16, line 29, by inserting after the
29 figure "1995." the following: "Section 25 is
30 effective January 1, 1996."

By MICHAEL E. GRONSTAL

S-3579 FILED APRIL 26, 1995

ADOPTED

(p. 1442)

*MTR 4/28/95 (p. 1522) Gronstal amendment withdrawn (p. 1522)
Motion prevailed*

SENATE FILE 413

S-3584

1 Amend the amendment, S-3497, to Senate File 413 as
2 follows:

3 1. Page 1, lines 19 and 20, by striking the words
4 "through clear and convincing" and inserting the
5 following: "by a preponderance of the".

By RANDAL J. GIANNETTO

S-3584 FILED APRIL 26, 1995

ADOPTED

SENATE FILE 413

S-3570

1 Amend Senate File 413 as follows:

2 1. Page 6, by inserting after line 7 the
3 following:

4 "Sec. ____ . Section 455G.2, subsection 15, Code
5 1995, is amended by striking the subsection and
6 inserting in lieu thereof the following:

7 15. "Responsible person" means any of the
8 following:

9 a. The owner or operator of the property, site, or
10 facility at which, or an underground storage tank from
11 which, a petroleum release occurred.

12 b. A person who at the time of a petroleum release
13 owned or operated the property, site, or facility at
14 which, or an underground storage tank from which, the
15 release occurred.

16 c. A person who owned the property, site, or
17 facility or owned or operated an underground storage
18 tank at the property, site, or facility at any time
19 when released petroleum was present unless the
20 underground storage tank was not operated on the
21 property, site, or facility during the period of that
22 ownership and the owner had no actual knowledge that
23 the underground storage tank had been operated on the
24 property, site, or facility.

25 d. A person who by contract, agreement, or
26 otherwise arranged for disposal or caused any release
27 of petroleum.

28 e. A person who caused or contributed to a
29 petroleum release on the property, site, or facility.

30 f. Successors or assigns of a responsible person."

31 2. Page 11, by inserting after line 17 the
32 following:

33 "Sec. ____ . Section 455G.13, Code 1995, is amended
34 to read as follows:

35 455G.13 COST RECOVERY ENFORCEMENT.

36 1. ~~FUND~~ COST RECOVERY ~~SOUGHT-FROM-OWNER ACTIONS.~~

37 a. ~~The board shall seek full recovery, a claimant,~~
38 ~~or both, may recover from the owner, operator, or~~
39 ~~other potentially a responsible party liable for the~~
40 ~~released petroleum which is the subject of a~~
41 ~~corrective action, for which the fund expends moneys~~
42 ~~person moneys that have been expended or will be~~
43 ~~expended in the future for corrective action or and~~
44 ~~third-party liability, and for all other costs,~~
45 ~~including reasonable attorney fees and costs of~~
46 ~~litigation for which moneys are expended by the fund~~
47 ~~in connection with the release. The board shall not~~
48 ~~seek recovery from past or present owners or operators~~
49 ~~and other responsible persons who are small~~
50 ~~businesses, except pursuant to subsections 2, 3, and~~

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1 4.

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

7 2. LIMITATION OF LIABILITY OF OWNER OR OPERATOR.

8 Except as provided in subsection 3:

9 a. The board or the department of natural
10 resources shall not seek recovery for expenses in
11 connection with corrective action for a release under
12 subsection 1 from an owner or operator eligible for
13 regarding any site where the owner or operator
14 receives assistance under the remedial account for
15 that site, except for any unpaid portion of the
16 insurance deductible under section 455G.11 or remedial
17 copayment amounts under section 455G.9, subsection 4.
18 This section does not affect any authorization of the
19 department of natural resources to impose or collect
20 civil or administrative fines or penalties or fees.
21 The remedial account shall not be held liable for any
22 third-party liability.

23 b. An owner or operator's liability for a release
24 for which coverage is admitted under the insurance
25 account shall not exceed the amount of the deductible
26 The liability of an owner or operator who is insured
27 under the insurance account for the release for which
28 coverage is admitted shall not exceed the amount of
29 the deductible.

30 c. The department of natural resources shall not
31 seek recovery from an owner or operator regarding any
32 site where the owner or operator receives assistance
33 under the remedial account for that site. This
34 section does not affect the department of natural
35 resources' authority to impose or collect civil or
36 administrative fines or penalties or fees.

37 3. OWNER OR OPERATOR NOT IN COMPLIANCE, SUBJECT TO
38 FULL AND TOTAL COST RECOVERY. Notwithstanding
39 subsection 2, the liability of an owner or operator
40 shall be the full and total costs of corrective action
41 and bodily injury or property damage to third parties,
42 as specified in subsection 1, if the owner or operator
43 has not complied with the financial responsibility or
44 other underground storage tank rules of the department
45 of natural resources or with this chapter and rules
46 adopted under this chapter.

47 4. TREBLE DAMAGES FOR CERTAIN VIOLATIONS.

48 Notwithstanding subsections 2 and 3, the owner or
49 operator, or both, of a tank who receive benefits
50 under section 455G.9 are liable to the fund for

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Page 3

1 punitive damages in an amount equal to three times the
2 amount of any ~~cost-incurred-or moneys expended-by-the~~
3 ~~fund-as-a-result-of-a-release-of-petroleum-from-the~~
4 ~~tank recoverable~~ under subsection 1, if the owner or
5 operator did any of the following:

6 a. Failed, without sufficient cause, to respond to
7 a release of petroleum from the tank upon, or in
8 accordance with, a notice issued by the director of
9 the department of natural resources.

10 b. After May 5, 1989, failed to perform any of the
11 following:

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

15 (2) Intentionally failed to report a known
16 release.

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

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

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

27 5. LIEN ON UNDERGROUND STORAGE TANK SITE. Any
28 amount for which ~~an-owner-or-operator~~ a claimant is
29 liable to the fund, if not paid when due, by statute,
30 rule, or contract, or determination of liability by
31 the board or department of natural resources after
32 hearing, shall constitute a lien upon the real
33 property where the underground storage tank, which was
34 the subject of corrective action, is situated, and the
35 liability shall be collected in the same manner as the
36 environmental protection charge pursuant to section
37 424.11.

38 6. JOINDER OF PARTIES. The department of natural
39 resources has standing in any case or contested action
40 related to the fund or a an underground storage tank
41 to assert any claim that the department may have
42 regarding the underground storage tank at issue in the
43 case or contested action, ~~upon motion and sufficient~~
44 ~~showing by a party to a cost recovery or subrogation~~
45 ~~action provided for under this section, the court or~~
46 ~~the administrative law judge shall join to the action~~
47 ~~any potentially responsible party who may be liable~~
48 ~~for costs and expenditures of the type recoverable~~
49 ~~pursuant to this section.~~ No other action may be
50 joined with an action brought under subsection 1.

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1 7. STRICT LIABILITY, DEFENSES AND DAMAGES --
2 COMPARATIVE FAULT. The standard of liability for a
3 release of petroleum or other regulated substance as
4 defined in section 455B:471 is strict liability.
5 Responsible persons are strictly liable for damages
6 and costs recoverable under this section. The rule of
7 joint and several liability applies in any action
8 brought pursuant to this section.

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

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

18 8. THIRD-PARTY CONTRACTS NOT BINDING ON BOARD,
19 PROCEEDINGS AGAINST RESPONSIBLE PARTY NO TRANSFER OF
20 LIABILITY. An insurance, indemnification, hold
21 harmless, conveyance, or similar risk-sharing or risk-
22 shifting agreement shall not be effective to transfer
23 any liability for costs expenditures recoverable under
24 this section. The fund, board, or department of
25 natural resources may proceed directly against the
26 owner or operator or other allegedly a responsible
27 party person. This section does not bar any agreement
28 to insure, hold harmless, or indemnify a party to the
29 agreement for any costs or expenditures under this
30 chapter, and does not modify rights between the
31 parties to an the agreement, except to the extent the
32 agreement shifts liability to an owner or operator
33 eligible for assistance under the remedial account for
34 any damages or other expenses in connection with a
35 corrective action for which another potentially
36 responsible party is or may be liable a claimant. Any
37 such provision is null and void and of no force or
38 effect.

39 9. LATER PROCEEDINGS PERMITTED AGAINST OTHER
40 PARTIES. The entry of judgment against a party to the
41 a cost recovery action does not bar a future action by
42 the board, a claimant, or the department of natural
43 resources against another person who is later alleged
44 to be or discovered to be liable for costs and
45 expenditures paid by the fund recoverable under this
46 section. Notwithstanding section 668-5 no other
47 potentially responsible party may seek contribution or
48 any other recovery from an owner or operator eligible
49 for assistance under the remedial account for damages
50 or other expenses in connection with corrective action

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1 ~~for a release for which the potentially responsible~~
2 ~~party is or may be liable.~~ Subsequent successful
3 proceedings against another party shall not modify or
4 reduce the liability of a party against whom judgment
5 has been previously entered.

6 ~~10. -- CLAIMS AGAINST POTENTIALLY RESPONSIBLE~~
7 ~~PARTIES. -- Upon payment by the fund for corrective~~
8 ~~action or third party liability pursuant to this~~
9 ~~chapter, the rights of the claimant to recover payment~~
10 ~~from any potentially responsible party, are assumed by~~
11 ~~the board to the extent paid by the fund. -- A claimant~~
12 ~~is precluded from receiving double compensation for~~
13 ~~the same injury.~~

14 10. CLAIMANT'S ACTION. In an action brought by a
15 claimant pursuant to this chapter seeking damages for
16 corrective action or third party liability section,
17 the court shall permit evidence and argument as to the
18 replacement or indemnification of actual economic
19 losses incurred or to be incurred in the future by the
20 claimant by reason of insurance benefits, governmental
21 benefits or programs, or from any other source.

22 If evidence and argument regarding previous
23 payments or future rights of payment is permitted
24 pursuant to this subsection, the court shall also
25 permit evidence and argument as to the costs to the
26 claimant of procuring the previous payments or future
27 rights of payment and as to any existing rights of
28 indemnification or subrogation relating to the
29 previous payments or future rights of payment.

30 If evidence or argument is permitted pursuant to
31 this subsection, the court shall, unless otherwise
32 agreed to by all parties, except the board, instruct
33 the jury to answer special interrogatories or, if
34 there is no jury, shall make findings indicating the
35 effect of such evidence or argument on the verdict.

36 A claimant may elect to permit the board to pursue
37 the claimant's cause of action for ~~any injury not~~
38 ~~compensated by the fund against any potentially~~
39 ~~responsible party~~ moneys expended by the claimant
40 recoverable under this section, provided the attorney
41 general determines such representation would not be a
42 conflict of interest. If a claimant so elects, the
43 board's litigation expenses shall be shared on a pro
44 rata proportionate basis with the claimant, but the
45 claimant's share of litigation expenses are payable
46 exclusively from any share of the settlement or
47 judgment payable to the claimant.

48 11. EXCLUSION OF PUNITIVE DAMAGES. The fund shall
49 not be liable in any case for punitive damages.

50 12. RECOVERY OR SUBROGATION -- INSTALLERS AND

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1 INSPECTORS. Notwithstanding any other provision
2 contained in this chapter, the board or a person
3 insured under the insurance account has no right of
4 recovery or right of subrogation against an installer
5 or an inspector insured by the fund for at the time of
6 the installation or inspection of the underground
7 storage tank giving rise to the liability other than
8 for recovery of any deductibles paid.

9 13. CONTRIBUTION. A defendant to a cost recovery
10 action under this section shall not seek contribution,
11 fault allocation, or any recovery from the board or a
12 claimant in an action allowed under this section.

13 14. LIMITATIONS OF ACTIONS. A suit brought under
14 this section for the recovery of moneys expended under
15 the remedial account must be commenced no later than
16 five years after the last payment for corrective
17 action.

18 15. RIGHT TO JURY TRIAL. Any party to an action
19 brought pursuant to this section is entitled to a jury
20 trial upon demand.

21 16. DEFINITIONS. For purposes of this section:

22 a. "Operator" means a person who has or had
23 control of or the responsibility for the operation of
24 an underground storage tank or the property, site, or
25 facility where the underground storage tank is or was
26 situated.

27 b. "Owner" means the person who owns or owned the
28 underground storage tank or the property, site, or
29 facility where the underground storage tank is or was
30 situated.

31 c. "Underground storage tank" means as defined in
32 section 455B.471, subsection 11, notwithstanding the
33 requirement to maintain proof of financial
34 responsibility under federal or state law.

35 17. RETROACTIVE APPLICATION. This section applies
36 to any release whether existing before or after the
37 effective date of this section of this Act."

38 3. Title page, line 7, by inserting after the
39 word "benefits," the following: "expanding cost
40 recovery enforcement,".

41 4. By renumbering as necessary.

By MICHAEL E. GRONSTAL

SENATE FILE 413

S-3497

1 Amend Senate File 413 as follows:

2 1. Page 11, by inserting after line 17 the
3 following:

4 "Sec. ____ . Section 455G.13, subsection 1, Code
5 1995, is amended to read as follows:

6 1. ~~FUND~~ RECOVERY SOUGHT FROM OWNER. The board
7 ~~shall~~ may seek ~~full~~ recovery from the owner, operator,
8 or other potentially responsible party liable for the
9 released petroleum which is the subject of a
10 corrective action, for which the fund expends moneys
11 from the remedial account for corrective action or
12 third-party liability, and for all other costs,
13 including reasonable and necessary attorney fees and
14 costs of litigation for which moneys are expended by
15 the fund in connection with the release. The
16 liability of the owner, operator or other potentially
17 responsible party is limited to that percentage of the
18 released petroleum which was the subject of the
19 corrective action and which the board through clear
20 and convincing evidence, demonstrates was released by
21 the owner, operator, or other potentially responsible
22 party. When federal cleanup funds are recovered, the
23 funds are to be deposited to the remedial account of
24 the fund and used solely for the purpose of future
25 cleanup activities."

26 2. Page 16, by inserting after line 21 the
27 following:

28 "Sec. ____ . APPLICABILITY. The section of this Act
29 that amends section 455G.13, subsection 1, applies to
30 all cases that are tried on or after the effective
31 date of this Act."

32 3. Title page, line 5, by inserting after the
33 word "requirements," the following: "limiting cost
34 recovery,".

35 4. By renumbering as necessary.

By BRAD BANKS

RANDAL J. GIANNETTO

DERRYL McLAREN

WILLIAM D. PALMER

JOANN DOUGLAS

BERL E. PRIEBE

SHELDON RITTNER

TONY BISIGNANO

S-3497 FILED APRIL 19, 1995

SENATE FILE 413

S-3584

- 1 Amend the amendment, S-3497, to Senate File 413 as
- 2 follows:
- 3 1. Page 1, lines 19 and 20, by striking the words
- 4 "through clear and convincing" and inserting the
- 5 following: "by a preponderance of the".

By RANDAL J. GIANNETTO

S-3584 FILED APRIL 26, 1995

ADOPTED, MTR 4/28 (p. 1522) Gronstal, Motion prevailed, amendment w/d

SENATE FILE 413

S-3589

- 1 Amend the amendment, S-3497, to Senate File 413 as
- 2 follows:
- 3 1. Page 1, line 15, by striking the word "The"
- 4 and inserting the following: "Except when the
- 5 contamination is commingled, the".

By MICHAEL E. GRONSTAL

S-3589 FILED APRIL 26, 1995

LOST

(P. 1442)

Gronstal
Fink
DeLuhery
Banks
Lundby

SSB 333
~~Natural Resources~~
SENATE FILE 413

BY (PROPOSED COMMITTEE ON
NATURAL RESOURCES,
ENVIRONMENT AND ENERGY
BILL BY CHAIRPERSON FINK)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to underground storage tanks by increasing the
2 environmental protection charge, providing for the use of
3 risk-based corrective action standards, expanding property
4 transfer insurance and loan guarantees, extending the
5 compliance date for upgrade requirements, creating
6 marketability and innocent landowner funds and providing
7 benefits, requiring certification of groundwater professionals
8 and creating a penalty, requiring a study, and providing for
9 repeals, and implementation, effective date, and retroactive
10 applicability provisions.

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

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1 Section 1. Section 423.24, subsection 1, paragraph a, Code
2 1995, is amended to read as follows:

3 a. (1) Twenty-five percent of all such revenue, up to a
4 maximum of three ~~four~~ million eight ~~two~~ hundred twenty-five
5 fifty thousand dollars per quarter, shall be deposited into
6 and credited to the Iowa comprehensive petroleum underground
7 storage tank fund created in section 455G.3, and the moneys so
8 deposited are a continuing appropriation for expenditure under
9 chapter 455G, and moneys so appropriated shall not be used for
10 other purposes.

11 (2) Four million two hundred fifty thousand dollars per
12 quarter, shall be deposited into and credited to the Iowa
13 comprehensive petroleum underground storage tank marketability
14 fund created in section 455G.21, and the moneys so deposited
15 are a continuing appropriation to be expended in accordance
16 with section 455G.21, and the moneys shall not be used for
17 other purposes.

18 Sec. 2. Section 424.3, subsection 5, Code 1995, is amended
19 to read as follows:

20 5. a. The cost factor is an amount per gallon of
21 diminution determined by the board pursuant to this
22 subsection. The board, after public hearing, shall determine,
23 or shall adjust, the cost factor to the greater of either an
24 amount reasonably calculated to generate an annual average
25 revenue, year to year, of fifteen ~~seventeen~~ million three
26 hundred-thousand dollars from the charge, excluding penalties
27 and interest, or ten dollars. The board may determine or
28 adjust the cost factor at any time but shall at minimum
29 determine the cost factor at least once each fiscal year.

30 b. Beginning July 1, 1995, the board shall adjust the cost
31 factor to the greater of either an amount reasonably
32 calculated to generate an annual average revenue of seventeen
33 million dollars from the charge, excluding penalties and
34 interest, or ten dollars. The revenue generated in this
35 paragraph shall be in addition to the revenue generated

1 pursuant to paragraph "a".

2 Sec. 3. Section 455B.304, subsection 15, Code 1995, is
3 amended by striking the subsection.

4 Sec. 4. Section 455B.471, subsection 2, Code 1995, is
5 amended by striking the subsection and inserting in lieu
6 thereof the following:

7 2. "Corrective action" means an action taken to reduce,
8 minimize, eliminate, clean up, control, or monitor a release
9 to protect the public health and safety or the environment.
10 Corrective action includes, but is not limited to, excavation
11 of an underground storage tank for purposes of repairing a
12 leak or removal of a tank, removal of contaminated soil,
13 disposal or processing of contaminated soil, cleansing of
14 groundwaters or surface waters, natural biodegradation,
15 institutional controls, and site management practices.
16 Corrective action does not include replacement of an
17 underground storage tank. Corrective action specifically
18 excludes third-party liability.

19 Sec. 5. Section 455B.474, subsection 1, paragraph d,
20 subparagraph (2), subparagraph subdivision (a), unnumbered
21 paragraph 1, Code 1995, is amended by striking the unnumbered
22 paragraph and inserting in lieu thereof the following:

23 A site shall be considered high risk when it is determined
24 that contamination from the site presents an unreasonable risk
25 to public health and safety or the environment under any of
26 the following conditions:

27 Sec. 6. Section 455B.474, subsection 1, paragraph d,
28 subparagraph (2), subparagraph subdivision (d), Code 1995, is
29 amended by striking the subparagraph subdivision and inserting
30 in lieu thereof the following:

31 (d) For purposes of reclassifying a site as either low
32 risk or no action required, the department shall rely upon the
33 example tier one risk-based screening level look-up table of
34 the American society for testing of materials' emergency
35 standard, ES38-94, or other look-up table as determined by the

1 department by rule.

2 Sec. 7. Section 455B.474, subsection 1, paragraph d,
3 subparagraph (2), Code 1995, is amended by adding the
4 following new subparagraph subdivision:

5 NEW SUBPARAGRAPH SUBDIVISION. (e) A site cleanup report
6 which classifies a site as either high risk, low risk, or no
7 action required shall be submitted by a groundwater
8 professional to the department with a certification that the
9 report complies with the provisions of this chapter and rules
10 adopted by the department. The report shall be determinative
11 of the appropriate classification of the site. However, if
12 the report is found to be inaccurate or incomplete, and if
13 based upon information in the report the risk classification
14 of the site cannot be reasonably determined by the department
15 based upon industry standards, the department shall work with
16 the groundwater professional to obtain the additional
17 information necessary to appropriately classify the site. A
18 groundwater professional who knowingly or intentionally makes
19 a false statement or misrepresentation which results in a
20 mistaken classification of a site shall be guilty of a serious
21 misdemeanor and shall have the groundwater professional's
22 certification revoked under section 455G.18.

23 Sec. 8. Section 455B.474, subsection 1, paragraph f,
24 subparagraphs (4), (5), and (6), Code 1995, are amended by
25 striking the subparagraphs and inserting in lieu thereof the
26 following:

27 (4) High risk sites shall be addressed pursuant to a
28 corrective action design report, as submitted by a groundwater
29 professional and as accepted by the department. The
30 corrective action design report shall determine the most
31 appropriate response to the high risk conditions presented.
32 The appropriate corrective action response shall be based upon
33 industry standards and shall take into account the following:

34 (a) The extent of remediation required to reclassify the
35 site as a low risk site.

1 (b) The most appropriate exposure scenarios based upon
2 residential, commercial, or industrial use or other predefined
3 industry accepted scenarios.

4 (c) Exposure pathway characterizations including
5 contaminant sources, transport mechanisms, and exposure
6 pathways.

7 (d) Affected human or environmental receptors and exposure
8 scenarios based on current and projected use scenarios.

9 (e) Risk-based corrective action assessment principles
10 which identify the risks presented to the public health and
11 safety or the environment by each release in a manner that
12 will protect the public health and safety or the environment
13 using a tiered procedure consistent with the American society
14 for testing of materials' emergency standard, ES38-94.

15 (f) Other relevant site specific factors such as the
16 feasibility of available technologies, existing background
17 contaminant levels, current and planned future uses,
18 ecological, aesthetic, and other relevant criteria, and the
19 applicability and availability of engineering and
20 institutional controls.

21 (5) A corrective action design report, submitted by a
22 groundwater professional shall be accepted by the department
23 and shall be primarily relied upon by the department to
24 determine the corrective action response requirements of the
25 site. However, if the corrective action design report is
26 found to be inaccurate or incomplete, and if based upon
27 information in the report the appropriate corrective action
28 response cannot be reasonably determined by the department
29 based upon industry standards, the department shall work with
30 the groundwater professional to obtain the additional
31 information necessary to appropriately determine the
32 corrective action response requirements. A groundwater
33 professional who knowingly or intentionally makes a false
34 statement or misrepresentation which results in an improper or
35 incorrect corrective action response shall be guilty of a

1 serious misdemeanor and shall have the groundwater
2 professional's certification revoked under section 455G.18.

3 (6) Low risk sites shall be monitored as deemed necessary
4 by the department consistent with industry standards.
5 Monitoring shall not be required on a site which has received
6 a no further action certificate.

7 Sec. 9. Section 455B.474, subsection 1, paragraph f, Code
8 1995, is amended by adding the following new subparagraphs:

9 NEW SUBPARAGRAPH. (6A) Corrective action, for the release
10 of a regulated substance from an underground storage tank
11 required to maintain financial responsibility under chapter
12 455G, which occurs on or after January 1, 1996, shall be in
13 accordance with corrective action rules of the department
14 existing on January 1, 1995, rather than pursuant to this
15 paragraph "f".

16 NEW SUBPARAGRAPH. (6B) An owner or operator may elect to
17 proceed with additional corrective action on the site.
18 However, any action taken in addition to that required
19 pursuant to this paragraph "f" shall be solely at the expense
20 of the owner or operator and shall not be considered
21 corrective action for purposes of section 455G.9.

22 Sec. 10. Section 455B.474, subsection 1, paragraph h, Code
23 1995, is amended by striking the paragraph and inserting in
24 lieu thereof the following:

25 h. Issuing a no further action certificate or a monitoring
26 certificate to the owner or operator of an underground storage
27 tank site.

28 (1) A no further action certificate shall be issued by the
29 department for a site which has been classified as a no
30 further action site or which has been reclassified pursuant to
31 completion of a corrective action plan or monitoring plan to
32 be a no further action site.

33 (2) A monitoring certificate shall be issued by the
34 department for a site which does not require remediation, but
35 does require monitoring of the site.

1 (3) A certificate may be recorded with the county
2 recorder. The owner or operator of a site who has been issued
3 a certificate under this paragraph "h" or a subsequent
4 purchaser of the site shall not be required to perform further
5 corrective action solely because action standards are changed
6 at a later date. A certificate shall not prevent the
7 department from ordering corrective action of a new release.

8 Sec. 11. Section 455G.3, subsection 1, Code 1995, is
9 amended to read as follows:

10 1. The Iowa comprehensive petroleum underground storage
11 tank fund is created as a separate fund in the state treasury,
12 and any funds remaining in the fund at the end of each fiscal
13 year shall not revert to the general fund but shall remain in
14 the Iowa comprehensive petroleum underground storage tank
15 fund. Interest or other income earned by the fund shall be
16 deposited in the fund. The fund shall include moneys credited
17 to the fund under this section and sections 423.24, subsection
18 1, paragraph "a", subparagraph (1), 455G.8, 455G.9, 455G.10,
19 455G.11, and 455G.13, and other funds which by law may be
20 credited to the fund. The moneys in the fund are appropriated
21 to and for the purposes of the board as provided in this
22 chapter. Amounts in the fund shall not be subject to
23 appropriation for any other purpose by the general assembly,
24 but shall be used only for the purposes set forth in this
25 chapter. The treasurer of state shall act as custodian of the
26 fund and disburse amounts contained in it as directed by the
27 board including automatic disbursements of funds as received
28 pursuant to the terms of bond indentures and documents and
29 security provisions to trustees and custodians. The treasurer
30 of state is authorized to invest the funds deposited in the
31 fund at the direction of the board and subject to any
32 limitations contained in any applicable bond proceedings. The
33 income from such investment shall be credited to and deposited
34 in the fund. The fund shall be administered by the board
35 which shall make expenditures from the fund consistent with

1 the purposes of the programs set out in this chapter without
2 further appropriation. The fund may be divided into different
3 accounts with different depositories as determined by the
4 board and to fulfill the purposes of this chapter.

5 Sec. 12. Section 455G.3, subsection 3, Code 1995, is
6 amended by adding the following new paragraph:

7 NEW PARAGRAPH. d. To establish a marketability fund for
8 the purposes as stated in section 455G.21.

9 Sec. 13. Section 455G.6, subsection 4, Code 1995, is
10 amended to read as follows:

11 4. Grant a mortgage, lien, pledge, assignment, or other
12 encumbrance on one or more improvements, revenues, asset of
13 right, accounts, or funds established or received in
14 connection with the fund, including revenues derived from the
15 use tax imposed under chapter-423 section 423.24, subsection
16 1, paragraph "a", subparagraph (1), and deposited in the fund
17 or an account of the fund.

18 Sec. 14. Section 455G.8, subsection 2, Code 1995, is
19 amended to read as follows:

20 2. USE TAX. The revenues derived from the use tax imposed
21 under chapter 423. The proceeds of the use tax under section
22 423.24, subsection 1, paragraph "a", subparagraph (1), shall
23 be allocated, consistent with this chapter, among the fund's
24 accounts, for debt service and other fund expenses, according
25 to the fund budget, resolution, trust agreement, or other
26 instrument prepared or entered into by the board or authority
27 under direction of the board. The proceeds of the use tax
28 under section 423.24, subsection 1, paragraph "a",
29 subparagraph (2), shall be allocated in accordance with
30 section 455G.21.

31 Sec. 15. Section 455G.9, subsection 5, Code 1995, is
32 amended by striking the subsection.

33 Sec. 16. Section 455G.10, subsections 1, 3, 5, and 6, Code
34 1995, are amended to read as follows:

35 1. The board may create a loan guarantee account to offer

1 loan guarantees ~~to-small-businesses~~ for the following
2 purposes:

3 a. All or a portion of the expenses incurred by the
4 applicant ~~small-business~~ for its share of corrective action.

5 b. Tank and monitoring equipment improvements necessary to
6 satisfy federal technical standards to become insurable.

7 c. Capital improvements made on a tank site.

8 d. Purchase of a leaking underground storage tank site.

9 Moneys from the revenues derived from the use tax imposed
10 under ~~chapter-423~~ section 423.24, subsection 1, paragraph "a",
11 subparagraph (1), may be used to fund the loan guarantee
12 account according to the fund budget as approved by the board.
13 Loan guarantees shall be made on terms and conditions
14 determined by the board to be reasonable, except that in no
15 case may a loan guarantee satisfy more than ninety percent of
16 the outstanding balance of a loan.

17 3. The board shall administer the loan guarantee account.
18 The board may delegate administration of the account, provided
19 that the administrator is subject to the board's direct
20 supervision and direction. The board shall adopt rules
21 regarding the provision of loan guarantees ~~to-financially~~
22 ~~qualified-small-businesses-for-the-purposes-permitted-by~~
23 ~~subsection-1.~~ The board may impose such terms and conditions
24 as it deems reasonable and necessary or appropriate. The
25 board shall take appropriate steps to publicize the existence
26 of the loan account.

27 ~~The-benefits-under-this-section-shall-be-available-to-small~~
28 ~~businesses-entering-into-the-petroleum-business-~~

29 5. As a condition of eligibility for financial assistance
30 from the loan guarantee account, ~~a-small-business~~ an applicant
31 shall demonstrate satisfactory attempts to obtain financing
32 from private lending sources. When applying for loan
33 guarantee account assistance, the ~~small-business~~ applicant
34 shall demonstrate good faith attempts to obtain financing from
35 at least two financial institutions. The board may first

1 refer a tank owner or operator to a financial institution
2 eligible to participate in the fund under section 455G.16;
3 however, if no such financial institution is currently willing
4 or able to make the required loan, the ~~small-business~~
5 applicant shall determine if any of the previously contacted
6 financial institutions would make the loan in participation
7 with the loan guarantee account. The loan guarantee account
8 may offer to guarantee a loan, or provide other forms of
9 financial assistance to facilitate a private loan.

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

17 Sec. 17. Section 455G.11, subsection 3, paragraph c, Code
18 1995, 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 ~~January-17-1995~~
22 December 22, 1998, provided that prior to the provision of
23 insurance account coverage, the tank site tests release free.
24 An owner or operator who fails to comply as certified to the
25 board on or before ~~January-17-1995~~ December 22, 1998, shall
26 not insure that tank through the insurance account unless and
27 until the tank satisfies the requirements of paragraph "a" or
28 "b". An owner or operator who fails to comply with either
29 paragraph "a" or "b" by October 26, 1993, or who fails to
30 enter into a contract on or before October 26, 1993, which,
31 upon completion, will bring the owner or operator into
32 compliance with either paragraph "a" or "b" by ~~January-17~~
33 ~~1995~~ shall pay December 22, 1998, may be eligible for
34 financial assurance under this section but shall be subject to
35 an additional surcharge of ~~four~~ eight hundred dollars per tank

1 in addition to payment of a premium that is equal to two times
2 the cost of the premium required under subsection 4, paragraph
3 "g", per insured time period.

4 Sec. 18. Section 455G.11, subsection 4, paragraph g, Code
5 1995, is amended by adding the following new unnumbered
6 paragraph:

7 NEW UNNUMBERED PARAGRAPH. Tanks receiving financial
8 assurance pursuant to subsection 3, paragraph "c", shall not
9 be included in the general tank population for purposes of
10 determining actuarially sound premiums under this paragraph.

11 Sec. 19. Section 455G.11, subsection 5, paragraph a, Code
12 1995, is amended by striking the paragraph and inserting in
13 lieu thereof the following:

14 a. The payment of claims filed prior to the effective date
15 of any future repeal, against the insurance account until
16 moneys in the account are exhausted. Upon exhaustion of the
17 moneys in the account, any remaining claims shall be invalid.

18 Sec. 20. Section 455G.11, subsection 10, paragraph a, Code
19 1995, is amended to read as follows:

20 a. ADDITIONAL CLEANUP REQUIREMENTS. An owner, operator,
21 landowner, or financial institution may purchase insurance
22 coverage under the insurance account to cover environmental
23 damage caused by a tank in the event that governmental action
24 requires additional cleanup beyond ~~action-level-standards-in~~
25 effect that which was required at the time a certificate-of
26 clean-was-issued-under-section-455B-3047-subsection-15, no
27 further action certificate or a monitoring certificate was
28 issued under section 455B.474, subsection 1, paragraph "h".

29 Sec. 21. Section 455G.11, subsection 10, paragraph b,
30 subparagraphs (1) and (4), Code 1995, are amended to read as
31 follows:

32 (1) ~~A certificate-of-clean-has-been-issued-for-the-site~~
33 ~~under-section-455B-3047-subsection-15, no further action~~
34 certificate or a monitoring certificate has been issued for
35 the site under section 455B.474, subsection 1, paragraph "h".

1 Property transfer coverage shall be effective on a monitored
2 site only for the time period for which monitoring is allowed
3 as specified in the monitoring certificate. A site which has
4 not been issued a no further action certificate ~~of-clear~~ or a
5 monitoring certificate shall not be eligible for property
6 transfer coverage.

7 (4) The additional cleanup is ~~required-to-meet-new~~
8 ~~corrective-action-level-standards~~ mandated by governmental
9 action requiring cleanup beyond that which was required at the
10 time a no further action certificate or a monitoring
11 certificate under section 455B.474, subsection 1, paragraph
12 "h", was issued for a site.

13 Sec. 22. Section 455G.11, subsection 10, paragraph d,
14 subparagraph (5), Code 1995, is amended by striking the
15 subparagraph.

16 Sec. 23. Section 455G.11, subsection 10, paragraph h, Code
17 1995, is amended by striking the paragraph.

18 Sec. 24. Section 455G.18, Code 1995, is amended to read as
19 follows:

20 455G.18 GROUNDWATER PROFESSIONALS -- REGISTRATION
21 CERTIFICATION.

22 1. The department of natural resources shall adopt rules
23 pursuant to chapter 17A requiring that the certification of
24 groundwater professionals register-with-the-department-of
25 natural-resources. The rules shall include provisions for
26 suspension or revocation of registration certification for
27 good cause. The administrator of the fund shall administer
28 the certification program.

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

33 a. A person certified by the American institute of
34 hydrology, the national water well association, the American
35 board of industrial hygiene, or the association of groundwater

1 scientists and engineers.

2 b. A professional engineer registered in Iowa.

3 c. A professional geologist certified by a national
4 organization.

5 d. Any person who has five years of direct and related
6 experience and training as a groundwater professional or in
7 the field of earth sciences as of June 10, 1991.

8 e. Any other person with a license, certification, or
9 registration to practice hydrogeology or groundwater hydrology
10 issued by any state in the United States or by any national
11 organization, provided that the license, certification, or
12 registration process requires, at a minimum, all of the
13 following:

14 (1) Possession of a bachelor's degree from an accredited
15 college.

16 (2) Five years of related professional experience.

17 3. The department of natural resources may provide for a
18 civil penalty of no more than fifty dollars for the failure to
19 register obtain certification. An interested person may
20 obtain a list of registrants certified groundwater
21 professionals from the department of natural resources. The
22 department of natural resources may impose a fee for the
23 registration certification of persons under this section.

24 4. The registration certification of groundwater
25 professionals shall not impose liability on the board, the
26 department, or the fund for any claim or cause of action of
27 any nature, based on the action or inaction of groundwater
28 professionals registered certified pursuant to this section.

29 5. Any person who was not previously registered as a
30 groundwater professional who requests certification under this
31 section, after January 1, 1996, shall be required to attend a
32 course of instruction and pass a certification examination.
33 The administrator of the fund shall hold certification courses
34 and offer examinations. An applicant who successfully passes
35 the examination shall be certified as a groundwater

1 professional.

2 6. A groundwater professional who was registered prior to
3 January 1, 1996, shall not be required to attend the course of
4 instruction but shall be required to pass the certification
5 examination by January 1, 1997.

6 7. All groundwater professionals shall be required to
7 complete continuing education requirements as adopted by rule
8 by the department.

9 8. Notwithstanding the certification requirements of this
10 section, a site cleanup report or corrective action design
11 report submitted by a registered groundwater professional
12 shall be accepted by the department in accordance with
13 sections 455B.474, subsection 1, paragraph "d", subparagraph
14 (2), subparagraph subdivision (e), and paragraph "f",
15 subparagraph (5).

16 Sec. 25. NEW SECTION. 455G.21 MARKETABILITY FUND.

17 1. A marketability fund is created as a separate fund in
18 the state treasury under the control of the board. The board
19 shall administer the marketability fund. Notwithstanding
20 section 8.33, moneys remaining in the marketability fund at
21 the end of each fiscal year shall not revert to the general
22 fund but shall remain in the marketability fund. The
23 marketability fund shall include the following moneys:

24 a. Seventeen million dollars per year pursuant to section
25 423.24, subsection 1, paragraph "a", subparagraph (2).

26 b. Notwithstanding section 12C.7, interest earned by the
27 marketability fund or other income specifically allocated to
28 the marketability fund.

29 2. The marketability fund shall be used for the following
30 purposes:

31 a. Five million dollars per year shall be allocated to the
32 innocent landowners fund which shall be established as a
33 separate fund in the state treasury under the control of the
34 board. Notwithstanding section 455G.1, subsection 2, benefits
35 for the costs of corrective action shall be provided to the

1 owner of a petroleum contaminated property, who is not
2 otherwise eligible to receive benefits under section 455G.9.
3 An owner of a petroleum contaminated property shall be
4 eligible for payment of total corrective action costs subject
5 to copayment requirements under section 455G.9, subsection 4,
6 paragraph "a", subparagraphs (1) and (2). The board may adopt
7 rules conditioning receipt of benefits under this paragraph to
8 those petroleum contaminated properties which present a higher
9 degree of risk to the public health and safety or the
10 environment and may adopt rules providing for denial of
11 benefits under this paragraph to a person who did not make a
12 good faith attempt to comply with the provisions of this
13 chapter. This paragraph does not confer a legal right to an
14 owner of petroleum contaminated property for receipt of
15 benefits under this paragraph.

16 b. Twelve million dollars per year shall be used for
17 payment of remedial benefits as provided in section 455G.9.

18 3. Moneys in the fund shall not be used for purposes of
19 bonding or providing security for bonding under chapter 455G.

20 Sec. 26. REPEAL.

21 1. Section 423.24, subsection 1, paragraph "a",
22 subparagraph (2), and section 424.3, subsection 5, paragraph
23 "b", are repealed on July 1, 2002.

24 2. Section 455G.19, Code 1995, is repealed.

25 Sec. 27. DEPARTMENTAL RULES.

26 1. In adopting the rules to implement the amendments to
27 section 455B.474, contained in this Act, the environmental
28 protection commission shall:

29 a. Direct the department to work jointly with a technical
30 advisory committee to prepare a draft of these rules and
31 standards for the commission's consideration.

32 (1) The technical advisory committee members shall consist
33 of the following:

34 (a) The chairperson of the Iowa environmental council or
35 the chairperson's designee.

1 (b) The managing director of the petroleum marketers of
2 Iowa or the managing director's designee.

3 (c) The executive director of the Iowa league of cities or
4 the executive director's designee.

5 (d) The president of the Iowa groundwater association or
6 the president's designee who is a groundwater professional
7 pursuant to section 455G.18.

8 (e) The executive director of the Iowa petroleum council
9 or the executive director's designee.

10 (f) The executive director of the consulting engineers of
11 Iowa or the executive director's designee who is a registered
12 engineer.

13 (g) The executive director of the Iowa association of
14 business and industry or the executive director's designee.

15 (h) The administrator of the Iowa comprehensive petroleum
16 underground storage tank fund board.

17 (2) The technical advisory committee shall:

18 (a) Draw upon the technical expertise of its members'
19 constituent organizations.

20 (b) Submit a written report to the environmental
21 protection commission concerning rules and standards to
22 implement section 455B.474, as amended by this Act, by October
23 15, 1995.

24 (3) The technical advisory committee shall cease to exist
25 upon completion of the report in subparagraph (2).

26 b. File a notice of intended action with the
27 administrative rules review committee by November 15, 1996.

28 2. In implementing the amendments to section 455B.474
29 contained in this Act, the department:

30 a. May allow but shall not require revision, modification,
31 or replacement of any site cleanup report, site assessment, or
32 remedial investigation previously accepted by the department.

33 b. Shall collect information from historical records,
34 visual inspections, and minimal site assessment data in order
35 to determine whether the release is appropriate for regulatory

1 concern and whether a site cleanup report is required.

2 c. Take steps to assure that department staff is
3 adequately trained to implement and utilize the standards
4 being enacted pursuant to this section by January 1, 1996. In
5 preparing its staff, the department shall utilize, to the
6 fullest extent possible, training and funding programs offered
7 by the United States environmental protection agency, the
8 American society for testing and materials (ASTM), or other
9 appropriate entities.

10 d. May use existing ASTM standards until the rules
11 implementing the changes to section 455B.474 contained in this
12 Act are adopted.

13 Sec. 28. STUDY.

14 1. The Iowa comprehensive petroleum underground storage
15 tank fund board shall study the following issues:

16 a. Privatization of all or a portion of the insurance
17 program under section 455G.11.

18 b. Expansion of innocent landowner benefits under section
19 455G.21.

20 2. The board shall provide the general assembly with the
21 study's report and recommendations by January 1, 1996.

22 Sec. 29. RETROACTIVE APPLICABILITY. Sections 17 and 18 of
23 this Act, which amend section 455G.11, subsections 3 and 4,
24 apply retroactively to January 1, 1995.

25 Sec. 30. EFFECTIVE DATE. Sections 3 through 10, sections
26 15 through 25, section 26, subsection 2, and sections 27
27 through 29, being deemed of immediate importance, take effect
28 upon enactment. Sections 1 and 2, sections 11 through 14, and
29 section 26, subsection 1, are effective July 1, 1995.

30 EXPLANATION

31 This bill makes several changes to the underground storage
32 tank program.

33 1. Environmental Protection Charge. This bill amends
34 sections 423.24 and 424.3 to increase the amount of the
35 environmental protection charge. The environmental protection

S.F. _____ H.F. _____

1 charge is based upon diminution of petroleum and is collected
2 by a depositor from a receiver of petroleum when deposited
3 into a tank. Currently per statute, the amount that is
4 allocated to the Iowa comprehensive petroleum underground
5 storage tank fund from use tax revenues is \$15.3 million per
6 year. This bill increases that amount in two ways. First, it
7 raises the cap on the initial environment protection charge to
8 \$17 million. Secondly, it increases the environmental
9 protection charge by a cost factor which is equivalent to an
10 extra one cent per gallon which generates an additional \$17
11 million. The additional one cent increase in the
12 environmental protection charge is allocated to the new
13 marketability fund and is repealed on July 1, 2002.

14 2. Marketability Fund. This bill creates a new
15 marketability fund which receives the additional \$17 million
16 per year from the increase in the environmental protection
17 charge. Five million dollars of the moneys allocated to the
18 marketability fund are to be appropriated to the innocent
19 landowner fund which is also created in this bill. The
20 innocent landowner fund will provide an owner of petroleum
21 contaminated property, who is not otherwise eligible for
22 receipt of benefits under the remedial account, benefits for
23 the costs of corrective action, subject to the copayment
24 requirements of section 455G.9, subsection 4. The first
25 \$20,000 of site cleanup report costs will be paid by the
26 innocent landowner fund. The owner is required to pay 18
27 percent of the first \$80,000 of corrective action costs and 35
28 percent of the remainder. The bill provides that the UST
29 board may adopt rules conditioning receipt of benefits to
30 those petroleum contaminated properties which present a higher
31 degree of risk to the public health and safety or the
32 environment and may adopt rules providing for exclusion of
33 benefits to a person who did not make a good faith attempt to
34 comply with the provisions of chapter 455G. The bill states
35 that the provisions of the innocent landowner fund do not

1 confer a legal right to an owner of petroleum contaminated
 2 property for receipt of benefits under the fund. The
 3 remaining \$12 million per year is to be used solely for
 4 providing remedial benefits under section 455G.9. The bill
 5 specifically prohibits use of the moneys in the marketability
 6 fund for bonding purposes. The bill requires the underground
 7 storage tank fund board to conduct a study and provide the
 8 general assembly with recommendations regarding expansion of
 9 the innocent landowner fund to include additional corrective
 10 action benefits by January 1, 1996.

11 3. Risk-Based Corrective Action Standards (RBCA). The
 12 bill amends provisions contained in chapter 455B relating to
 13 site classification and cleanup requirements in order to
 14 require the department of natural resources to implement the
 15 use of national risk based corrective action standards
 16 developed by the American Society for Testing and Materials
 17 (ASTM). The Emergency Standard Guide for Risk-Based
 18 Corrective Action Applied at Petroleum Release Sites (ES 38-
 19 94) states that RBCA is a "consistent decision-making process
 20 for the assessment and response to subsurface contamination,
 21 based upon the protection of human health and environmental
 22 resources The RBCA process utilizes a tiered
 23 approach where assessment and remediation activities are
 24 appropriately tailored to site-specific conditions and risks."

25 a. Classification. The bill retains the current
 26 designations for high risk sites and adds overriding criteria
 27 requiring an initial determination of unreasonable risk. The
 28 bill states that a site shall be considered high risk when it
 29 is determined that contamination from the site presents an
 30 unreasonable risk to public health and safety or the
 31 environment if contamination at the site is affecting or
 32 likely to affect groundwater which is used as a source water
 33 for public or private water supplies, to a level rendering
 34 them unsafe for human consumption, if contamination is
 35 actually affecting or is likely to affect surface water bodies

1 to a level where surface water quality standards will be
2 exceeded, or if harmful or explosive concentrations of
3 petroleum substances or vapors affecting structures or utility
4 installations exist or are likely to occur. Currently sites
5 which do not meet this high risk criteria are classified as
6 either a low risk or no further action site. This bill
7 requires that reclassification of a site is to be based upon
8 risk-based screening levels contained in the ASTM standards.

9 b. Corrective Action Response Requirements. The bill
10 makes major changes in determining the extent of cleanup
11 required on a high risk site. It requires that when
12 determining the appropriate corrective action response, the
13 corrective action design report must consider the extent of
14 remediation required to reclassify the site to a low risk
15 site, the most appropriate exposure scenarios, exposure
16 pathway characterizations, current and projected use
17 scenarios, risk-based corrective action assessment principles,
18 and other relevant site specific factors such as the
19 feasibility of available technologies, existing background
20 contaminate levels, current and planned future uses,
21 ecological, aesthetic, and other relevant criteria, and the
22 applicability and availability of engineering and
23 institutional controls. The bill requires that corrective
24 action for releases which occur on or after January 1, 1996,
25 must be remediated in accordance with corrective action rules
26 and regulations of the department of natural resources
27 existing on January 1, 1995, if the release is from an
28 underground storage tank required to maintain financial
29 responsibility under chapter 455G. The bill allows an owner
30 or operator to perform additional corrective action at the
31 owner's or operator's expense.

32 c. Monitoring. The bill strikes the current monitoring
33 schedule and provides that low risk sites shall be monitored
34 as the department of natural resources deems necessary and as
35 consistent with industry standards. Section 455B.474

1 currently requires that low risk sites be monitored a maximum
 2 of three times per year for years one through three, a maximum
 3 of two times per year for years 4 through 6, one time per year
 4 for years 7 through 9, and one time in the 12th year. If
 5 there has been no significant increase or movement of
 6 contamination after the 12th year, the department is directed
 7 to reclassify the site to a no further action site.

8 d. Certificates. The bill strikes references to the
 9 current clean site certificate and replaces it with a no
 10 further action certificate for a site upon which the
 11 department of natural resources has determined that no further
 12 action is required.

13 e. Site Cleanup and Corrective Action Design Reports. The
 14 bill requires that the department must accept a site cleanup
 15 report or corrective action design report submitted by a
 16 groundwater professional unless the report is found to be
 17 incomplete or inaccurate or if based upon information in the
 18 report or plan the site classification or appropriate
 19 corrective action response cannot be reasonably determined.
 20 The groundwater professional is required to certify that the
 21 site cleanup report complies with the provisions of chapter
 22 455B and rules adopted by the department. A false statement
 23 or misrepresentation made by a groundwater professional which
 24 results in a mistaken classification of a site or an improper
 25 or incorrect corrective action response is a serious
 26 misdemeanor and results in revocation of the groundwater
 27 professional's certification under section 455G.18. A serious
 28 misdemeanor is punishable by a fine of at least \$250 but not
 29 to exceed \$1,500 and imprisonment not to exceed one year.

30 f. Implementation of Risk-Based Correction Action
 31 Standards. Finally, the bill includes several provisions
 32 relating to implementation of the new RBCA rules by the
 33 department of natural resources. The bill requires formation
 34 of a technical advisory committee to work with and assist the
 35 department in development of rules for approval by the

1 environmental protection commission. The members of the
2 technical advisory committee consist of representatives of the
3 following groups: the environmental council, the petroleum
4 marketers of Iowa, the Iowa league of cities, the Iowa
5 groundwater association, the Iowa petroleum council, the
6 consulting engineers of Iowa, the Iowa association of business
7 and industry, and the administrator of the underground storage
8 tank fund board. The technical advisory committee is required
9 to submit a written report to the environmental protection
10 commission by December 15, 1995. Upon completion of the
11 report, the committee will cease to exist.

12 The environmental protection commission is directed to
13 adopt rules for implementation of RBCA standards by January 1,
14 1996. The department is prohibited from requiring any
15 revision, modification, or replacement of any site cleanup
16 report, site assessment, or remedial investigation previously
17 accepted by the department. In addition the department is
18 directed to collect information from historical records,
19 visual inspections, and minimal site assessment data in order
20 to determine whether a release is appropriate for regulatory
21 concern and whether a site cleanup report is necessary and to
22 ensure that departmental staff are properly trained to
23 implement RBCA standards by January 1, 1996. The department
24 is authorized to use existing RBCA standards until the rules
25 are adopted.

26 4. Prioritization. The bill amends section 455G.9 by
27 striking subsection 5 which authorizes the underground storage
28 tank board to prioritize remedial benefits if the fund cannot
29 currently pay all claims. The administrative rules review
30 committee approved rules in January 1995 which gave priority
31 in allocation of benefits to small business owners on high
32 risk sites. This means that larger owners and political
33 subdivisions, i.e., school districts, cities, and counties,
34 must wait to receive benefits. A small business as defined in
35 section 455G.2 means an independently owned and operated

1 business with no more than 12 tanks at no more than two
2 different tank sites with a net worth of \$400,000 or less.

3 5. Loan Guarantee Account. The current loan guarantee
4 program offers a 90 percent guarantee on behalf of small
5 businesses for the payment of corrective action costs or
6 upgrades. This bill expands the loan guarantee program under
7 section 455G.10 by striking the requirement that the applicant
8 be a small business, thus allowing anyone to apply for a loan
9 guarantee and by providing that a loan guarantee may be
10 granted for capital improvements on a tank site or for
11 purchase of property contaminated by a leaking underground
12 storage tank. A person must attempt to obtain financing from
13 at least two private lending sources before requesting a loan
14 guarantee.

15 6. Insurance. The bill amends section 455G.11 to extend
16 the upgrade date to December 22, 1998, and to provide for
17 expanded property transfer insurance coverage. The federal
18 government has mandated that regulated tanks conform to
19 technical upgrade requirements by December 22, 1998. In Iowa,
20 an owner or operator was to have upgraded a tank by January 1,
21 1995, in order to continue to be eligible for insurance
22 coverage under the fund. This bill extends the state upgrade
23 date to be consistent with the federally mandated upgrade date
24 and allows an owner or operator to maintain state insurance
25 with an \$800 per tank surcharge in addition to paying two
26 times the normal premium rate. The bill provides that tanks
27 that are not upgraded shall not be included within the general
28 tank population for purposes of determining actuarially sound
29 premiums under section 455G.11, subsection 4, paragraph "g".
30 The section in this bill that amends section 455G.11,
31 subsection 3, paragraph "c", to extend upgrade dates is
32 effective upon enactment and is retroactively applicable to
33 January 1, 1995.

34 Property transfer insurance is currently provided to cover
35 environmental damage caused by a tank in the event that

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1 governmental action requires additional cleanup beyond action
2 level standards in effect at the time a certificate of clean
3 was issued or a monitoring certificate was issued. This bill
4 expands the coverage by providing that any cleanup beyond that
5 which was required at the time a no further action certificate
6 or a monitoring certificate was issued shall be covered by the
7 policy instead of requiring that action standards change in
8 order to receive coverage. In addition, the bill strikes a
9 provision conditioning coverage upon continued approval by the
10 United States environmental protection agency.

11 7. Groundwater Professionals. This bill amends section
12 455G.18 by requiring that all groundwater professionals be
13 certified. A groundwater professional is a person who
14 provides subsurface soil contamination and groundwater
15 consulting services or who contracts to perform remediation or
16 corrective action services. Currently section 455G.18
17 requires that all groundwater professionals be registered with
18 the department of natural resources. The bill provides that
19 any person not previously registered as a groundwater
20 professional who requests certification after January 1, 1996,
21 must complete a course of instruction and pass a certification
22 examination. Groundwater professionals registered prior to
23 January 1, 1996, must pass the certification examination by
24 January 1, 1997. The bill requires that all groundwater
25 professionals must take continuing education requirements in
26 order to maintain certification. In addition, the bill
27 provides that the administrator of the underground storage
28 tank fund will administer the groundwater professional
29 certification program.

30 8. Environmental Damage Offset. This bill repeals the
31 environmental damage offset. The environmental damage offset
32 applied to a person receiving benefits under section 455G.9
33 who closed a tank but still used the site for commercial
34 purposes and required that person to pay a predetermined
35 amount per year or deduct the amount from benefits received

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1 under the underground storage tank fund. The environmental
2 damage offset was equal to the amount of the environmental
3 protection charge which would have been paid by a tank that
4 was similar in size to the tank that was closed.

5 9. Underground Storage Tank Board Study. The bill
6 requires the Iowa comprehensive petroleum underground storage
7 tank fund board to study two issues and provide
8 recommendations to the general assembly by January 1, 1996.
9 The two issues are privatization of the insurance fund and
10 expansion of innocent landowner benefits under section
11 455G.21.

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