CHAPTER 131

PETROLEUM UNDERGROUND STORAGE TANKS

H.F. 447

AN ACT relating to petroleum underground storage tanks, by creating a state fund and an administrative board and procedures for the fund, authorizing the fund to expend moneys for remedial action, tank improvement loan guarantees, and the offering of insurance to satisfy federal proof of financial responsibility requirements, imposing an environmental protection charge on petroleum diminution and providing for the collection of the charge, increasing the storage tank management fee, authorizing revenue bond issues and the creation of capital reserve funds to assure and facilitate timely payment of revenue bond obligations, authorizing a local option remedial action property tax credit, providing civil and criminal penalties, providing future automatic repeals, and providing effective dates.

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

DIVISION I

Section 1. LEGISLATIVE FINDINGS. The following findings support the establishment of the Iowa comprehensive petroleum underground storage tank fund and imposition of the environmental protection charge authorized by this Act for the purposes of the fund:

1. Maintenance of Iowa's petroleum distribution network, particularly in rural Iowa, is dependent upon the provision of moneys to cleanup existing petroleum releases and the availability of financing at affordable interest rates for petroleum underground storage tank improvements to permit compliance with mandated federal technical and financial responsibility standards.

2. Private financing at low-interest rates for small business owners and operators of petroleum underground storage tanks is generally not available due to the potential liability for petroleum releases which financial institutions are unwilling to incur and the high cost of compliance with federal regulatory standards.

3. It is necessary to provide a reasonable means to share the cost of cleanup of past and existing petroleum leaks to make the Iowa petroleum underground storage tank population insurable and environmentally safe, and to protect groundwater safety for the citizens of the state. Because of the nature of the problem of underground petroleum leaks and releases it is inherently difficult if not impossible to discover each release, past, present, and future, and to determine all the responsible parties, in a timely manner and with reasonable administrative expenses. Further, even if the responsible persons could be identified, the potential damages often far exceed an individual's ability to pay. The environmental protection charge is intended to have all potentially responsible parties pay in exchange for the availability of certain benefits to a responsible party who is able to be identified, subject to certain conditions.

The environmental protection charge is predicated on the amount of petroleum which is released or otherwise escapes from the petroleum distribution network within the state prior to being dispensed for its intended uses. After studying the issue of leaking underground storage tanks for more than two legislative sessions, including an interim study committee, and with reliance upon the active insurance division working group which included industry participation, the general assembly finds that a reasonable estimate of this "diminution" is one-tenth of one percent of the petroleum entering petroleum underground storage tanks. Various sources were relied upon in determining this diminution rate, including but not limited to the following:

a. Ernst and Whinney study for the Michigan Petroleum Association, which concluded that among various factors supporting Michigan's "shrinkage and evaporation tax credit" (substantially similar to Iowa's), "physical shrinkage" and "losses from other factors" (which included spillages) accounted for one and thirty-four hundredths percent of petroleum volume. Diminution is not identical to "shrinkage and evaporation" as used for tax credit purposes. Diminution contains no "administrative cost" consideration and is not primarily concerned with evaporation. Because of this, it is not significant that diesel, being significantly less volatile

than gasoline, is less subject to evaporation. Diesel does experience spillage and leakage, and thus "diminution".

b. The Tillinghast actuarial study of the Iowa comprehensive petroleum underground storage tank fund prepared for the general assembly in 1987, and the studies of tank leak rates cited in the Tillinghast report, and various federal environmental protection agency reports collected by legislative staff and the general assembly, support the finding that all petroleum products, including gasoline and diesel fuel, experience diminution.

c. Analysis of the Iowa shrinkage and evaporation tax credit claims, a portion of which is attributable to product loss and spillage, using the Ernst and Whinney's approach, yields similar results, indicating that in Iowa, one and thirty-four hundredths percent of the total volume of petroleum products entering the state's petroleum distribution system is diminution, or loss of product into the environment.

d. The Alexander and Alexander actuarial report prepared for the general assembly in 1988, also supports the finding of diminution and the reasonableness of the diminution rate determined. The Alexander and Alexander report includes an opinion letter from Ernst and Whinney. The letter is based on the research performed for their Michigan study and information supplied to Ernst and Whinney regarding the Iowa tank population, Iowa's antidiversionary amendment, and the definition of diminution and diminution rate. The letter relates that the range of physical shrinkage was twenty-nine hundredths percent through nine-tenths percent. Based on this range it is reasonable to conclude that a petroleum tank in Iowa would experience diminution; that the diminution rate chosen by the general assembly is substantially less than the normal industry average for diminution as defined; and that the diminution rate of one tenth of one percent is below the range of actual diminution likely to be experienced by any owner or operator. The general assembly finds that a reasonable and conservative estimate of the diminution rate is one-tenth of one percent, and one-tenth of one percent shall be the diminution rate used for purposes of the environmental protection charge.

A particular owner or operator may be able to demonstrate that that owner or operator has not experienced this presumed rate of diminution over a specific time period, but that should not be a defense to payment of the environmental protection charge. The diminution rate is an average over time. There can be no proof that the same owner or operator may not experience a catastrophic release in the future and thus experience greater than average diminution.

The environmental protection charge is based on the statewide average diminution and in deference to the range of debate the actual diminution rate selected is well below the actual statewide average determined by the legislative fiscal bureau. Average diminution is used to provide a fair, pro rata distribution of the fee when it is impossible and impractical to determine every person's liability on an individual basis.

All who pay the environmental protection charge benefit directly or indirectly from the imposition of the charge and the extension of the benefits from the fund, made possible by the charge. A source of recovery for releases benefits the individual and the industry, not least because the federal government mandates proof of financial responsibility. Each member of the regulated tank community benefits by assistance to the entire petroleum distribution network. If each were to pay for only that individual's releases or reported "diminution" it would be impossible to comply with federal financial responsibility requirements, and the social benefits of risk spreading and sharing the social costs would be precluded as well.

The distribution of the costs of remedial action through the pro rata environmental protection charge is determined to be the most reasonable, fair, and equitable way of providing assistance to the regulated tank community to comply with federal financial responsibility regulations for both practical administrative considerations and policy reasons.

4. Private market insurance is currently not generally available for environmental hazards like petroleum releases, due to a lack of actuarial experience and uncertainty as to the extent of liability.

5. Tank owners and operators must often make capital improvements as a precondition to obtaining insurance, even when insurance is available.

6. Because federal regulations will require tanks to be insured, or otherwise demonstrate financial responsibility, for amounts ranging from five hundred thousand dollars to one million dollars per occurrence on or before October 26, 1990, it is necessary to provide an interim means of providing insurance or a showing of financial responsibility and to encourage the development of private market sources of insurance or other private financial guarantees.

7. The creation of a state assistance account initially capitalized by revenue bond issues will make available the necessary capital to finance remedial actions, to improve storage tanks to required standards, and to provide insurance on an interim basis until a competitive private insurance market develops. The use of bonds to spread the high initial cost of conversion to federal standards will maximize Iowa's receipt of federal matching funds, reduce the impact upon service and preserve the availability of petroleum products in rural Iowa by offering financing to owners and operators of tanks, including local gas stations and factories, at favorable interest rates with reduced administrative costs.

8. The storage of petroleum in underground storage tanks poses a hazard to public health and welfare by endangering soil and groundwater with petroleum contamination. Groundwater containing one part of petroleum per one million parts of water exceeds safe drinking water standards. Petroleum experiences diminution by its nature, by the methods of transportation, by storage, and by human error and mechanical failure. The means and funding mechanism to take prompt corrective action upon discovery of a petroleum release are necessary to protect the public health and welfare. To protect and restore the state's vital groundwater, it is necessary and essential that the state use all practical means to control or eliminate pollution hazards posed by petroleum underground storage tanks.

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

10. All of the purposes stated in this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned, or granted.

DIVISION II

Sec. 2. LEGISLATIVE INTENT. It is the intent of this Act to assist owners and operators, and especially small businesses, to comply with the minimum federal technical and financial responsibility standards and to protect and improve the quality of Iowa's environment by correcting existing petroleum underground storage tank releases and by prevention and early detection of future releases to minimize damages and costs to society.

Implementation and interpretation of this Act shall recognize the following additional goals: to provide adequate and reliable financial assurance for the costs of corrective action for preexisting petroleum underground storage tank releases; to create a financial responsibility assurance mechanism that provides certainty, sufficiency, and availability of funds to cover the costs of corrective action and third-party liability for prospective releases.

The fund created in this Act is intended as an interim measure to address the short-term unavailability of financial responsibility assurance mechanisms in the private market. This Act shall be administered to promote the expansion of existing assurance mechanisms and the creation of new ones, so that the insurance account may be phased out and discontinued when market mechanisms are generally available.

To minimize societal costs and environmental damage, speed is of the essence in responding to a release and taking corrective action.

Sec. 3. NEW SECTION. 101.12 ABOVEGROUND PETROLEUM TANKS AUTHORIZED.

Rules of the state fire marshal shall permit installation of aboveground petroleum storage tanks for retail motor vehicle fuel outlets in cities of one thousand or less population.

Sec. 4. NEW SECTION. 101.101 DEFINITIONS.

As used in this part unless the context otherwise requires:

1. "Nonoperational aboveground tank" means an aboveground storage tank in which regulated substances are not deposited or from which regulated substances are not dispensed after July 1, 1989.

2. "Operator" means a person in control of, or having responsibility for, the daily operation of the aboveground storage tank.

3. "Owner" means:

a. In the case of an aboveground storage tank in use on or after July 1, 1989, a person who owns the aboveground storage tank used for the storage, use, or dispensing of regulated substances.

b. In the case of an aboveground storage tank in use before July 1, 1989, but no longer in use on that date, a person who owned the tank immediately before the discontinuation of its use.

4. "Regulated substance" means regulated substance as defined in section 455B.471.

5. "Release" means spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an aboveground storage tank into groundwater, surface water, or subsurface soils.

6. "Aboveground storage tank" means one or a combination of tanks, including connecting pipes connected to the tanks which are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes, is more than ninety percent above the surface of the ground. Aboveground storage tank does not include any of the following:

a. Aboveground tanks of one thousand one hundred gallons or less capacity.

b. Tanks used for storing heating oil for consumptive use on the premises where stored.

c. Underground storage tanks as defined by section 455B.471.

d. A flow-through process tank, or a tank containing a regulated substance, other than motor vehicle fuel used for transportation purposes, for use as part of a manufacturing process, system, or facility.

7. "Tank site" means a tank or grouping of tanks within close proximity of each other located on the facility for the purpose of storing regulated substances.

8. "State fire marshal" means the state fire marshal, or the state fire marshal's designee.

Sec. 5. NEW SECTION. 101.102 REPORT OF EXISTING AND NEW TANKS — FEE.

1. Except as provided in subsection 2, the owner or operator of an aboveground storage tank existing on or before July 1, 1989, shall notify the state fire marshal in writing by May 1, 1990, of the existence of each tank and specify the age, size, type, location, and uses of the tank.

2. The owner of an aboveground storage tank taken out of operation between January 1, 1979 and July 1, 1989, shall notify the state fire marshal in writing by July 1, 1990, of the existence of the tank unless the owner knows the tank has been removed. The notice shall specify to the extent known to the owner, the date the tank was taken out of operation, the age of the tank on the date taken out of operation, the size, type, and location of the tank, and the type and quantity of substances left stored in the tank on the date that it was taken out of operation.

3. An owner or operator which brings into use an aboveground storage tank after July 1, 1989, shall notify the state fire marshal in writing within thirty days of the existence of the tank and specify the age, size, type, location, and uses of the tank.

4. The registration notice of the owner or operator to the state fire marshal under subsections 1 through 3 shall be accompanied by a fee of ten dollars for each tank included in the notice. All moneys collected shall be deposited in the general fund.

5. A person who deposits a regulated substance in an aboveground storage tank shall notify the owner or operator in writing of the notification requirements of this section.

6. A person who sells or constructs a tank intended to be used as an aboveground storage tank shall notify the purchaser of the tank in writing of the notification requirements of this section applicable to the purchaser.

7. It shall be unlawful to deposit a regulated substance in an aboveground storage tank which has not been registered pursuant to subsections 1 through 5.

The state fire marshal shall furnish the owner or operator of an aboveground storage tank with a registration tag for each aboveground storage tank registered with the state fire marshal. The owner or operator shall affix the tag to the fill pipe of each registered aboveground storage tank. A person who conveys or deposits a regulated substance shall inspect the aboveground storage tank to determine the existence or absence of the registration tag. If a registration tag is not affixed to the aboveground storage tank fill pipe, the person conveying or depositing the regulated substance may deposit the regulated substance in the unregistered tank provided that the deposit is allowed only in the single instance, that the person provides the owner or operator with another notice as required by subsection 5, and that the person provides the owner or operator with an aboveground storage tank registration form. It is the owner or operator's duty to comply with registration requirements. A late registration penalty of twenty-five dollars is imposed in addition to the registration fee for a tank registered after the required date.

Sec. 6. NEW SECTION. 101.103 STATE FIRE MARSHAL REPORTING RULES.

The state fire marshal shall adopt rules pursuant to chapter 17A relating to reporting requirements necessary to enable the state fire marshal to maintain an accurate inventory of aboveground storage tanks.

Sec. 7. NEW SECTION. 101.104 DUTIES AND POWERS OF THE STATE FIRE MARSHAL.

The state fire marshal shall:

1. Inspect and investigate the facilities and records of owners and operators of aboveground storage tanks as may be necessary to determine compliance with this part and the rules adopted pursuant to this part. An inspection or investigation shall be conducted subject to subsection 4. For purposes of developing a rule, maintaining an accurate inventory or enforcing this part, the department may:

a. Enter at reasonable times any establishment or other place where an aboveground storage tank is located.

b. Inspect and obtain samples from any person of a regulated substance and conduct monitoring or testing of the tanks, associated equipment, contents or surrounding soils, air, surface water and groundwater. Each inspection shall be commenced and completed with reasonable promptness.

(1) If the state fire marshal obtains a sample, prior to leaving the premises, the fire marshal shall give the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each sample equal in volume or weight to the portion retained. If the sample is analyzed, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

(2) Documents or information obtained from a person under this subsection shall be available to the public except as provided in this subparagraph. Upon a showing satisfactory to the state fire marshal by a person that public disclosure of documents or information, or a particular part of the documents or information to which the state fire marshal has access under this subsection would divulge commercial or financial information entitled to protection as a trade secret, the state fire marshal shall consider the documents or information or the particular portion of the documents or information confidential. However, the document or information may be disclosed to officers, employees, or authorized representatives of the United States charged with implementing the federal Solid Waste Disposal Act, to employees of the state of Iowa or of other states when the document or information is relevant to the discharge of their official duties, and when relevant in any proceeding under the federal Solid Waste Disposal Act or this part.

2. Maintain an accurate inventory of aboveground storage tanks.

3. Take any action allowed by law which, in the state fire marshal's judgment, is necessary to enforce or secure compliance with this division or any rule adopted pursuant to this division.

4. Conduct investigations of complaints received directly, referred by other agencies, or other investigations deemed necessary. While conducting an investigation, the state fire marshal may enter at any reasonable time in and upon any private or public property to investigate any actual or possible violation of this division or the rules or standards adopted under this division. However, the owner or person in charge shall be notified.

a. If the owner or operator of any property refuses admittance, or if prior to such refusal the state fire marshal demonstrates the necessity for a warrant, the state fire marshal may make application under oath or affirmation to the district court of the county in which the property is located for the issuance of a search warrant.

b. In the application the state fire marshal shall state that an inspection of the premises is mandated by the laws of this state or that a search of certain premises, areas, or things designated in the application may result in evidence tending to reveal the existence of violations of public health, safety, or welfare requirements imposed by statutes, rules, or ordinances established by the state or a political subdivision of the state. The application shall describe the area, premises, or thing to be searched, give the date of the last inspection if known, give the date and time of the proposed inspection, declare the need for such inspection, recite that notice of the desire to make an inspection has been given to affected persons and that admission was refused if that be the fact, and state that the inspection has no purpose other than to carry out the purpose of the statute, rule, or ordinance pursuant to which inspection is to be made. If an item of property is sought by the state fire marshal it shall be identified in the application.

c. If the court is satisfied from the examination of the applicant, and of other witnesses, if any, and of the allegations of the application of the existence of the grounds of the application, or that there is probable cause to believe in their existence, the court may issue a search warrant.

d. In making inspections and searches pursuant to the authority of this division, the state fire marshal must execute the warrant as follows:

(1) Within ten days after its date.

(2) In a reasonable manner, and any property seized shall be treated in accordance with the provisions of chapters 808 and 809.

(3) Subject to any restrictions imposed by the statute, rule or ordinance pursuant to which inspection is made.

Sec. 8. NEW SECTION. 101.105 VIOLATIONS – ORDERS.

1. If substantial evidence exists that a person has violated or is violating a provision of this division or a rule adopted under this division the state fire marshal may issue an order directing the person to desist in the practice which constitutes the violation, and to take corrective action as necessary to ensure that the violation will cease, and may impose appropriate administrative penalties pursuant to section 101.106. The person to whom the order is issued may appeal the order as provided in chapter 17A. On appeal, the administrative law judge may affirm, modify, or vacate the order of the state fire marshal.

2. However, if it is determined by the state fire marshal that an emergency exists respecting any matter affecting or likely to affect the public health, the fire marshal may issue any order necessary to terminate the emergency without notice and without hearing. The order is binding and effective immediately and until the order is modified or vacated at an administrative hearing or by a district court.

3. The state fire marshal may request the attorney general to institute legal proceedings pursuant to section 101.106.

Sec. 9. NEW SECTION. 101.106 PENALTIES – BURDEN OF PROOF.

1. A person who violates this division or a rule or order adoption issued pursuant to this division is subject to a civil penalty not to exceed one hundred dollars for each day during

which the violation continues, up to a maximum of one thousand dollars; however, if the tank is registered within thirty days after the state fire marshal issues a cease and desist order pursuant to section 101.105, subsection 1, the civil penalty under this section shall not accrue. The civil penalty is an alternative to a criminal penalty provided under this division.

2. A person who knowingly fails to notify or makes a false statement, representation, or certification in a record, report, or other document filed or required to be maintained under this division, or violates an order issued under this division, is guilty of an aggravated misdemeanor.

3. The attorney general, at the request of the state fire marshal, shall institute any legal proceedings, including an action for an injunction, necessary to enforce the penalty provisions of this division or to obtain compliance with the provisions of this division or rules adopted or order pursuant to this division. In any action, previous findings of fact of the state fire marshal after notice and hearing are conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

4. In all proceedings with respect to an alleged violation of this division or a rule adopted or order issued by the state fire marshal pursuant to this division, the burden of proof is upon the state fire marshal.

5. If the attorney general has instituted legal proceedings in accordance with this section, all related issues which could otherwise be raised by the alleged violator in a proceeding for judicial review under section 101.107 shall be raised in the legal proceedings instituted in accordance with this section.

Sec. 10. NEW SECTION. 101.107 JUDICIAL REVIEW.

Except as provided in section 101.106, subsection 5, judicial review of an order or other action of the state fire marshal may be sought in accordance with chapter 17A. Notwithstanding chapter 17A, the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed or the final order was entered.

Sec. 11. NEW SECTION. 101.108 FEES FOR CERTIFICATION INSPECTIONS OF UNDERGROUND STORAGE TANKS.

The state fire marshal, the state fire marshal's designee, or a local fire marshal, authorized to conduct underground storage tank certification inspections under section 455G.11, subsection 7, shall charge the person requesting a certification inspection a fee to recover the costs of authorized training, inspection, and inspection program administration subject to rules adopted by the state fire marshal.

DIVISION III

Sec. 12. NEW SECTION. 220.202 AUTHORITY TO ISSUE IOWA TANK ASSISTANCE BONDS.

The authority shall assist the Iowa comprehensive petroleum underground storage tank fund as provided in chapter 455G and the authority shall have all of the powers that the Iowa comprehensive petroleum underground storage tank fund board possesses and which that board delegates to the authority in a chapter 28E agreement or a contract between the authority and the Iowa comprehensive petroleum underground storage tank fund board with respect to the issuance and securing of bonds and carrying out the purposes of chapter 455G.

The board shall reimburse the department of revenue and finance by contract for the reasonable cost of administration of the environmental protection charge imposed under this chapter and for other duties delegated to the department or to the director by the board.

DIVISION IV

Sec. 13. NEW SECTION. 424.1 TITLE – DIRECTOR'S AUTHORITY.

1. This chapter is entitled "Environmental Protection Charge on Petroleum Diminution".

2. The director's and the department's authority and power under chapter 421 and other provisions of the tax code relevant to administration apply to this chapter, and the charge imposed under this chapter is imposed as if the charge was a tax within the meaning of that chapter or provision.

3. The director shall enter into a contract or agreement with the board to provide assistance requested by the board. Policy issues arising under this chapter or chapter 455G shall be determined by the board, and the board shall be joined as a real party in interest when a policy issue is raised.

4. The board shall retain rulemaking authority, but may contract with the department for assistance in drafting rules. The board shall retain contested case jurisdiction over any challenge to the diminution rate or cost factor. The department shall conduct all other contested cases and be responsible for other agency action in connection with the environmental protection charge imposed under this chapter.

Sec. 14. NEW SECTION. 424.2 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Charge" means the environmental protection charge imposed upon petroleum diminution pursuant to section 424.3.

2. "Charge payer" means a depositor, receiver, or tank owner or operator obligated to pay the environmental protection charge under this chapter.

3. "Board" means the Iowa comprehensive petroleum underground storage tank board.

4. "Department" means the department of revenue and finance.

5. "Depositor" means the person who deposits petroleum into a tank subject to regulation under chapter 455G.

6. "Diminution" means the petroleum released into the environment prior to its intended beneficial use.

7. "Director" means the director of revenue and finance.

8. "Fund" means the Iowa comprehensive petroleum underground storage tank fund.

9. "Owner or operator" means "owner or operator" as used in chapter 455G.

10. "Petroleum" means petroleum as defined in section 455G.2.

11. "Receiver" means, if the owner or operator are not the same person, the person who, under a contract between the owner and operator, is responsible for payment for petroleum deposited into a tank; and if the owner and operator of a tank are the same person, means the owner.

12. "Tank" means an underground storage tank subject to regulation under chapter 455G.

Sec. 15. NEW SECTION. 424.3 ENVIRONMENTAL PROTECTION CHARGE IMPOSED UPON PETROLEUM DIMINUTION.

1. An environmental protection charge is imposed upon diminution. A depositor shall collect from the receiver of petroleum deposited into a tank, the environmental protection charge imposed under this section on diminution each time petroleum is deposited into the tank, and pay the charge to the department as directed by this chapter.

2. The environmental protection charge shall be equal to the total volume of petroleum deposited in a tank multiplied by the diminution rate multiplied by the cost factor.

3. The diminution rate is one tenth of one percent.

4. Diminution equals total volume of petroleum deposited multiplied by the diminution rate established in subsection 3.

5. The cost factor is an amount per gallon of diminution determined by the board pursuant to this subsection. The board, after public hearing, may determine, or may adjust, the cost factor to an amount deemed sufficient by the board to maintain the financial soundness of the fund, but not to exceed an amount reasonably necessary to assure financial soundness, in light of known and expected expenses, known and expected income from other sources, the volume of diminution presumed by law to occur, the debt service and reserve requirements for that portion of any bonds issued for the fund, and any other factors determined to be significant

by the board, including economic reasonableness to owners and operators. The board may determine or adjust the cost factor at any time after the effective date of this Act, but shall at minimum determine the cost factor at least once each fiscal year.

6. The cost factor shall not exceed an amount which is reasonably calculated to generate more than twelve million dollars in annual revenue from the charge, excluding penalties and interest, if any. If the board determines that to maintain the financial soundness of the fund the cost factor should be higher than allowed by the twelve million dollar cap on annual revenues, the board shall, on or before January 1 of each calendar year, make and deliver to the governor and the general assembly the board's certificate stating the sum per year required to maintain financial soundness of the fund. Within thirty days after the beginning of the session of the general assembly next following the delivery of the certificate, the governor may submit to both houses printed copies of a budget including the sum, if any, required to maintain the financial soundness of the fund, or other proposed legislative solutions to eliminate the shortfall.

7. The environmental protection charge shall be reduced or eliminated upon the later of fifteen years after the effective date of this Act or such time as the trust fund provided for under section 455G.9 is created, and is actuarially sound, and self-sustaining. The environmental protection charge may be reinstated as provided in section 455G.9, subsection 3.

Sec. 16. NEW SECTION. 424.4 ADDING OF CHARGE.

A depositor shall, as far as practicable, add the charge imposed under this chapter, or the average equivalent of the charge, to the depositor's sales price for the petroleum subject to the charge and when added such charge shall constitute a part of the depositor's price, shall be a debt from the receiver to the depositor until paid, and shall be recoverable at law in the same manner as other debts.

Sec. 17. NEW SECTION. 424.5 DEPOSITOR PERMITS REQUIRED – APPLICATIONS – REVOCATION.

1. It is unlawful for any person to deposit petroleum into a tank in this state, unless a depositor permit has been issued to that person under this section. A depositor shall file with the department an application for a permit. An application for a permit shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location or locations of the applicant's place of business, and any other information as the board may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of the person's authority.

2. The department may deny a permit to an applicant who is substantially delinquent in paying a tax or charge due, or the interest or penalty on the tax or charge, administered by the department at the time of application. If the applicant is a partnership, a permit may be denied if the partner is substantially delinquent in paying any delinquent tax or charge, penalty, or interest.

3. A permit is not assignable and is valid only for the person in whose name it is issued.

4. A permit issued under this chapter is valid and effective until revoked by the department.

5. If the holder of a permit fails to comply with any of the provisions of this chapter or any order or rule of the department, or rule or order of the board pursuant to this chapter, or is substantially delinquent in the payment of a tax or charge administered by the department or the interest or penalty on the tax or charge, the director may revoke the permit.

6. To revoke a permit the director shall serve notice as required by section 17A.18 to the permit holder informing that person of the director's intent to revoke the permit and of the permit holder's right to a hearing on the matter. If the permit holder petitions the director for a hearing on the proposed revocation, after giving ten days' notice of the time and place of the hearing in accordance with section 17A.18, subsection 3, the matter may be heard and a decision rendered. The director may restore permits after revocation. The director shall

adopt rules setting forth the period of time a depositor must wait before a permit may be restored or a new permit may be issued. The waiting period shall not exceed ninety days from the date of the revocation of the permit.

Sec. 18. NEW SECTION. 424.6 EXEMPTION CERTIFICATES FOR RECEIVERS OF PETROLEUM UNDERGROUND STORAGE TANKS NOT SUBJECT TO FINANCIAL RESPONSIBILITY RULES.

1. The department of natural resources shall issue an exemption certificate in the form prescribed by the director of the department of natural resources to an applicant who is an owner or operator of a petroleum underground storage tank which is exempt, deferred, or excluded from regulation under chapter 455G, for that tank. The director of the department of natural resources shall revoke and require the return of an exemption certificate if the petroleum underground storage tank later becomes subject to chapter 455G pursuant to section 455G.1. A tank is subject to chapter 455G when the federal regulation subjecting that tank to financial responsibility becomes effective and not upon the effective compliance date unless the effective compliance date is the effective date of the regulation.

2. Liability for the charge is upon the depositor and the receiver unless the depositor takes in good faith from the receiver a valid exemption certificate and records the exemption certificate number and related transaction information required by the director and submits such information as part of the environmental protection charge return. If petroleum is deposited into a tank, pursuant to a valid exemption certificate which is taken in good faith by the depositor, and the receiver is liable for the charge, the receiver is solely liable for the charge and shall remit the charge directly to the department and this chapter applies to that receiver as if the receiver was a depositor.

3. A valid exemption certificate is an exemption certificate which is complete and correct according to the requirements of the director of the department of natural resources.

4. A valid exemption certificate is taken in good faith by the depositor when the depositor has exercised that caution and diligence which honest persons of ordinary prudence would exercise in handling their own business affairs, and includes an honesty of intention and freedom from knowledge of circumstances which ought to put one upon inquiry as to the facts. A depositor has constructive notice of the classes of exempt, deferred, or excluded tanks. In order for a depositor to take a valid exemption certificate in good faith, the depositor must exercise reasonable prudence to determine the facts supporting the valid exemption certificate, and if any facts upon such certificate would lead a reasonable person to further inquiry, then such inquiry must be made with an honest intent to discover the facts.

5. If the circumstances change and the tank becomes subject to financial responsibility regulations, the tank owner or operator is liable solely for the charges and shall remit the charges directly to the department of revenue and finance pursuant to this chapter.

6. The board may waive the requirement for an exemption certificate for one or more classes of exempt, deferred, or excluded tanks, if in the board's judgment an exemption certificate is not required for effective and efficient collection of the charge. If an exemption certificate is not required for a class pursuant to this subsection, the depositor shall maintain and file such records and information as may be required by the director regarding deposits into a tank subject to the waiver.

Sec. 19. NEW SECTION. 424.7 DEPOSIT OF MONEYS — FILING OF ENVIRONMENTAL PROTECTION CHARGE RETURN.

1. A depositor shall, on or before the last day of the month following the close of each calendar quarter during which the depositor is or has become or ceased being subject to the provisions of section 424.3, make, sign, and file an environmental protection charge return for that calendar quarter in such form as may be required by the director. The return shall show information relating to the volume of petroleum deposited into tanks subject to the charge, and any claimed exemptions or exclusions from the charge, a calculation of charges due, and such other information for the period covered by the return as may be required by the director. The

depositor may be granted an extension of time not exceeding thirty days for filing a quarterly return, upon a proper showing of necessity. If an extension is granted, the depositor shall have paid by the thirtieth day of the month following the close of the quarter ninety percent of the estimated charges due.

2. If necessary or advisable in order to ensure the payment of the charge imposed by this chapter, the director may require returns and payment of the charge to be made for other than quarterly periods.

3. Returns shall be signed by the depositor or the depositor's duly authorized agent, and must be duly certified by the depositor to be correct.

4. Upon receipt of a payment pursuant to this chapter, the department shall deposit the moneys into the fund created in section 455G.3, and the moneys so deposited are a continuing appropriation for expenditure under chapter 455G, and moneys so appropriated shall not be used for other purposes unless the appropriation is changed by the first session of a biennial general assembly.

Sec. 20. NEW SECTION. 424.8 PAYMENT OF ENVIRONMENTAL PROTECTION CHARGE.

1. The charge levied under this chapter is due and payable in calendar quarterly installments on or before the last day of the month following each quarterly period except as otherwise provided in this section.

2. Every permit holder at the time of making the return required hereunder, shall compute and pay to the department the charges due for the preceding period.

3. a. If a receiver fails to pay charges imposed by this chapter to the depositor required to collect the charge, then in addition to all of the rights, obligations, and remedies provided, the charge is payable by the receiver directly to the department, and this chapter applies to the receiver as if the receiver were a depositor.

b. If a depositor subject to this chapter sells the depositor's business or stock of petroleum or quits the business, the depositor shall prepare a final return and pay all charges due within the time required by law. The immediate successor to the depositor, if any, shall withhold a sufficient amount of the purchase price, in money or money's worth, to pay the amount of delinquent charge, interest, or penalty due and unpaid. If the immediate successor of the business or stock of petroleum intentionally fails to withhold the amount due from the purchase price as provided in this paragraph, the immediate successor is personally liable for the payment of the delinquent charges, interest, and penalty accrued and unpaid on account of the operation of the business by the immediate predecessor depositor, except when the purchase is made in good faith as provided in section 424.6. However, a person foreclosing on a valid security interest or retaking possession of premises under a valid lease is not an "immediate successor" for purposes of this paragraph. The department may waive the liability of the immediate successor under this paragraph if the immediate successor exercised good faith in establishing the amount of the previous liability.

Sec. 21. NEW SECTION. 424.9 BOND FOR ENVIRONMENTAL PROTECTION CHARGE COLLECTION.

The director, when necessary and advisable in order to secure the collection of the environmental protection charge imposed by section 424.3, may require a depositor to file a bond with the director. The bond shall assure collection by the department of the amount of the charge required to be collected or the amount actually collected by the depositor required to file the bond, whichever is greater. The bond shall be issued by a surety company authorized to conduct business in this state and approved by the commissioner of insurance as to solvency and responsibility, in an amount as the director may fix, to secure the payment of the charge, and penalty due or which may become due. In lieu of the bond, securities, or cash shall be kept in the custody of the department and securities may be sold by the director at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover

any charge and penalty due. Upon a sale, any surplus above the amounts due under this section shall be returned to the person who deposited the securities.

Sec. 22. NEW SECTION. 424.10 FAILURE TO FILE RETURN – INCORRECT RETURN.

1. As soon as practicable after a return is filed and in any event within five years after the return is filed the department shall examine it, assess and determine the charge due if the return is found to be incorrect, and give notice to the depositor of such assessment and determination as provided in subsection 2. The period for the examination and determination of the correct amount of the charge is unlimited in the case of a false or fraudulent return made with the intent to evade the charge or in the case of a failure to file a return. If the determination that a return is incorrect is the result of an audit of the books and records of the depositor, the charge, or additional charge, if any is found due, shall be assessed and determined and the notice to the depositor shall be given by the department within one year after the completion of the examination of the books and records.

2. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient and the maker fails to file a corrected or sufficient return within twenty days after the return is required by notice from the department, the department shall determine the amount of charge due from such information as the department may be able to obtain and, if necessary, may estimate the charge on the basis of external indices or factors. The department shall give notice of such determination to the person liable for the charge. Such determination shall finally and irrevocably fix the charge unless the person against whom it is assessed shall, within thirty days after the giving of notice of such determination, apply to the director for a hearing or unless the director on the director's motion shall reduce the charge. At such hearing evidence may be offered to support such determination or to prove that it is incorrect. After such hearing the director shall give notice of the decision to the person liable for the charge.

If a depositor's, receiver's, or other person's challenge relates to the diminution rate, the burden of proof upon the challenger shall only be satisfied by clear and convincing evidence.

3. If the amount paid is greater than the correct charge, penalty, and interest due, the department shall refund the excess, with interest after sixty days from the date of payment at the rate in effect under section 421.7, pursuant to rules prescribed by the director. However, the director shall not allow a claim for refund that has not been filed with the department within five years after the charge payment upon which a refund is claimed became due, or one year after the charge payment was made, whichever time is later. A determination by the department of the amount of charge, penalty, and interest due, or the amount of refund for any excess amount paid, is final unless the person aggrieved by the determination appeals to the director for a revision of the determination within thirty days from the postmark date of the notice of determination of charge, penalty, and interest due or refund owing. The director shall grant a hearing, and upon hearing the director shall determine the correct charge, penalty, and interest due or refund owing, and notify the appellant of the decision by mail. The decision of the director is final unless the appellant seeks judicial review of the director's decision under section 424.13.

Sec. 23. NEW SECTION. 424.11 ENVIRONMENTAL PROTECTION CHARGE LIEN – COLLECTION – ACTION AUTHORIZED.

Whenever a person liable to pay a charge refuses or neglects to pay the charge, the amount, including any interest, penalty, or addition to the charge, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to that person.

The environmental protection charge lien shall attach at the time the charge becomes due and payable and shall continue for ten years from the time the lien attaches unless sooner released or otherwise discharged. The lien may be extended, within ten years from the date the lien attaches, by filing for record a notice with the appropriate county official of the appropriate county and from the time of such filing, the lien shall be extended to the property in such

county for ten years, unless sooner released or otherwise discharged, with no limit on the number of extensions. The director shall charge off any account whose lien is allowed to lapse and may charge off any account and release the corresponding lien before the lien has lapsed if the director determines under uniform rules adopted by the board that the account is uncollectible or collection costs involved would not warrant collection of the amount due.

In order to preserve the lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the director shall file with the recorder of the county, in which the property is located, a notice of the lien.

The county recorder of each county shall record an environmental protection charge lien in the "index of income tax liens".

The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve the notice, and shall immediately index the notice in the index book and record the lien in the manner provided for recording real estate mortgages, and the lien shall be effective from the time of its indexing.

The department shall pay a recording fee as provided in section 331.604, for the recording of the lien, or for its satisfaction.

Upon the payment of a charge as to which the director has filed notice with a county recorder, the director shall immediately file with the recorder a satisfaction of the charge and the recorder shall enter the satisfaction on the notice on file in the recorder's office and indicate that fact on the index.

The department shall proceed, substantially as provided in this chapter, to collect all charges and penalties as soon as practicable after the same become delinquent, except that no property of the depositor shall be exempt from the payment of the charge. In the event service has not been made on a distress warrant by the officer to whom addressed within five days from the date the distress warrant was received by the officer, the authorized revenue agents of the department are hereby empowered to serve and make return of the warrant to the clerk of the district court of the county named in the distress warrant, and all subsequent procedure shall be in compliance with chapter 626.

The attorney general shall, upon the request of the director, bring an action at law or in equity, as the facts may justify, without bond, to enforce payment of any charges and penalties, and in such action the attorney general shall have the assistance of the county attorney of the county in which the action is pending.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the director or attorney general shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

Sec. 24. NEW SECTION. 424.12 RECORDS REQUIRED.

It shall be the duty of every depositor required to make a report and pay any charge under this chapter, to preserve such records as the director may require and it shall be the duty of every depositor to preserve for a period of five years all invoices and other records; and all such books, invoices, and other records shall be open to examination at any time by the department, and shall be made available within this state for such examination upon reasonable notice when the director shall so order. When requested to do so by any person from whom a charge payer is seeking credit, or with whom the charge payer is negotiating the sale of any personal property, or by any other person having a legitimate interest in such information, the director, upon being satisfied that such a situation exists, shall inform such person as to the amount of unpaid charges due by the charge payer under the provisions of this chapter. The giving of such information under such circumstances shall not be deemed a violation of section 422.72 as applied to this chapter.

Section 422.72 applies to this chapter as if the environmental protection charge were a tax.

Sec. 25. NEW SECTION. 424.13 JUDICIAL REVIEW.

1. Judicial review of contested cases under this chapter may be sought in accordance with chapter 17A.

2. The petitioner shall file with the clerk of the district court a bond for the use of the respondent, with sureties approved by the clerk, in penalty at least double the amount of charge appealed from, and in no case shall the bond be less than fifty dollars, conditioned that the petitioner shall perform the orders of the court.

3. An appeal may be taken by the charge payer or the director to the supreme court of this state irrespective of the amount involved.

Sec. 26. NEW SECTION. 424.15 ENVIRONMENTAL PROTECTION CHARGE REFUND.

If it appears that, as a result of mistake, an amount of a charge, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount shall be refunded to such person by the department. A claim for refund that has not been filed with the department within five years after the charge payment upon which a refund is claimed became due, or one year after such charge payment was made, whichever time is the later, shall not be allowed by the director.

Refunds may be made only from the unallocated or uncommitted moneys in the fund created in section 455G.3, and are limited by the total amount budgeted by the fund's board for charge refunds.

Sec. 27. NEW SECTION. 424.16 NOTICE IN CHANGE OF DIMINUTION RATE — SERVICE OF NOTICE.

1. The board shall notify each person who has previously filed an environmental protection charge return, and to any other person known to the board who will owe the charge at any address obtainable for that person, at least forty-five days in advance of the start of any calendar quarter during which either of the following will occur:

a. An administrative change in the cost factor, pursuant to section 424.3, subsection 5, becomes effective.

b. The environmental protection charge is to be discontinued or reimposed pursuant to section 455G.9. Notice shall be provided by mailing a notice of the change to the address listed on the person's last return. The mailing of the notice is presumptive evidence of the receipt of the notice by the person to whom addressed. The board shall also publish the same notice at least twice in a paper of general circulation within the state at least forty-five days in advance of the first day of the calendar quarter during which a change in paragraph "a" or "b" becomes effective.

2. A notice authorized or required under this section may be given by mailing the notice to the person for whom it is intended, addressed to that person at the address given in the last return filed by the person pursuant to this chapter, or if no return has been filed, then to any address obtainable. The mailing of the notice is presumptive evidence of the receipt of the notice by the person to whom addressed. Any period of time which is determined according to this chapter by the giving of notice commences to run from the date of mailing of the notice. Neither mailed notice or notice by publication is required for the initial determination and imposition of the charge. The board shall undertake to provide reasonable notice of the environmental protection charge and procedures, as in the board's sole discretion it deems appropriate, provided that the actual charge and procedures are published in the Iowa administrative bulletin prior to the effective date of the charge.

3. The provisions of the Code relative to the limitation of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any charge or penalty provided by this chapter.

Sec. 28. NEW SECTION. 424.17 PENALTIES — OFFENSES — LIMITATION.

1. If a depositor fails to remit at least ninety percent of the charge due with the filing of the return on or before the due date, or pays less than ninety percent of any charge required

to be shown on the return, excepting the period between the completion of an examination of the books and records of a charge payer and the giving of notice to the charge payer that a charge or additional charge is due, there shall be added to the charge a penalty of fifteen percent of the amount of the charge due, except as provided in section 421.27. In case of willful failure to file a return or willful filing of a false return with intent to evade charges, in lieu of the penalty otherwise provided in this subsection, there shall be added to the amount required to be shown as a charge on the return seventy-five percent of the amount of the charge. The charge payer shall also pay interest on the charge or additional charge at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as the charge imposed under this chapter. Unpaid penalties and interest may be enforced in the same manner as the charge imposed by this chapter.

2. A person who willfully attempts to evade a charge imposed by this chapter or the payment of the charge or a person who makes or causes to be made a false or fraudulent return with intent to evade the charge imposed by this chapter or the payment of charge tax is guilty of a class "D" felony.

3. The certificate of the director to the effect that a charge has not been paid, that a return has not been filed, or that information has not been supplied pursuant to this chapter, shall be prima facie evidence thereof.

4. For purposes of determining the place of trial, the situs of an offense specified in this section is in the county of the residence of the person charged with the offense, unless the person is a nonresident of this state or the residence of the person cannot be established, in which event the situs of the offense is in Polk county.

5. A prosecution for an offense specified in this section shall be commenced within six years after its commission.

Sec. 29. NEW SECTION. 424.18 EFFECTIVE DATE.

The environmental protection charge is imposed beginning July 1, 1989. For all deposits subject to the charge made on or after July 1, 1989, the depositor and receiver are obligated to pay the charge as provided in this chapter. The amount of the initial environmental protection charge as calculated after determination of the cost factor by the board and the required forms and procedures shall be published in the Iowa administrative bulletin prior to July 1, 1989.

DIVISION V

Sec. 30. NEW SECTION. 427B.18 LOCAL OPTION REMEDIAL ACTION PROPERTY TAX CREDIT – PUBLIC HEARING.

1. In order to further the public interests of protecting the drinking water supply, preserving business and industry within a community, preserving convenient access to gas stations within a community, or other public purposes, a city council or county board of supervisors may provide by ordinance for partial or total property tax credits to owners of small businesses that own or operate an underground storage tank to reduce the amount of property taxes paid over the permitted period in amounts not to exceed the actual portion of costs paid by the business owner in connection with a remedial action for which the Iowa comprehensive petroleum underground storage tank fund shares in the cost of corrective action, and for which the small business owner was not reimbursed from any other source. A county board of supervisors may grant credits only for property located outside of the corporate limits of a city, and a city council may grant credits only for property located within the corporate limits of the city. The credit shall be taken on the property where the underground storage tank is situated. The credit granted by the council or board shall not exceed the amount of taxes generated by the property for the respective city or county. The credit shall apply to property taxes payable in the fiscal year following the calendar year in which a cost of remedial action was paid by the small business owner.

As used in this division, "actual portion of the costs paid by the owner or operator of an underground storage tank in connection with a remedial action for which the Iowa comprehensive petroleum underground storage tank fund shares in the cost of corrective action" means the amount determined by the fund's board, or the board's designee, as the administrator of the Iowa comprehensive petroleum underground storage tank fund, and for which the owner or operator was not reimbursed from any other source.

As used in this division, "small business" means a business with gross receipts of less than five hundred thousand dollars per year.

2. The ordinance may be enacted not less than thirty days after a public hearing is held in accordance with section 358A.6 in the case of a county, or section 362.3 in the case of a city. The ordinance shall designate the length of time the partial or total credit shall be available, and shall include a credit schedule and description of the terms and conditions of the credit.

3. A property tax credit provided under this section shall be paid for out of any available funds budgeted for that purpose by the city council or county board of supervisors. A city council may certify a tax for the general fund levy and a county board of supervisors may certify a tax for the rural county service fund levy for property tax credits authorized by this section.

4. The maximum permitted period of a tax credit granted under this section is ten years.

Sec. 31. NEW SECTION. 427B.19 APPLICATION FOR CREDIT BY UNDERGROUND STORAGE TANK OWNER OR OPERATOR — APPROVAL BY COUNTY BOARD OF SUPERVISORS OR CITY COUNCIL.

An application shall be filed by an owner of a small business that owns or operates an underground storage tank for each property for which a credit is sought. Applications shall be filed with the respective county board of supervisors or the city council by September 30 of the year following the calendar year in which a cost of remedial action was paid by the owner or operator. Small business owners receiving credits shall file applications for renewal of the credit by September 30 of each year. A credit may be renewed only if title to the credited property remains in the name of the person or entity originally receiving the credit.

In reviewing the applications, the board of supervisors or city council shall consider whether granting the credit would serve a public purpose. Upon approval of the application by the board of supervisors, and after the applicant has paid any property taxes due, the board shall direct the county treasurer to issue a warrant to the small business owner in the amount of the credit granted. Upon approval of the application by the city council, and after the applicant has paid any property taxes due, the council shall direct the city clerk to issue a warrant to the small business owner in the amount of the credit granted.

Applications for credit shall be made on forms prescribed by the director of revenue and finance and shall contain information pertaining to the nature of the release, the total cost of corrective action, the actual portion of the costs paid by the small business owner and for which the owner was not reimbursed from any other source, the small business owner's income tax form from the most recent tax year, and other information deemed necessary by the director.

Sec. 32. NEW SECTION. 427B.20 CREDIT MAY BE REPEALED.

If in the opinion of the city council or the county board of supervisors continuation of the credit granted pursuant under an ordinance adopted pursuant to this division ceases to be of benefit to the city or county, the city council or the county board of supervisors may repeal the ordinance authorized by section 427B.18, but all existing credits shall continue until their expiration.

DIVISION VI

Sec. 33. Section 455B.471, subsection 3, Code 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. "Owner" does not include a person, who, without participating in the management or operation of the underground storage tank or the tank

site, holds indicia of ownership primarily to protect that person's security interest in the underground storage tank or the tank site property, prior to obtaining ownership or control through debt enforcement, debt settlement, or otherwise.

Sec. 34. Section 455B.471, subsection 5, Code 1989, is amended to read as follows:

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

Sec. 35. Section 455B.471, Code 1989, is amended by adding the following new subsections:

NEW SUBSECTION. 8. "Board" means the Iowa comprehensive petroleum underground storage tank fund board.

NEW SUBSECTION. 9. "Corrective action" means an action taken to minimize, eliminate, or cleanup a release to protect the public health and welfare or the environment. Corrective action includes, but is not limited to, excavation of an underground storage tank for the purpose of repairing a leak or removal of a tank, removal of contaminated soil, disposal or processing of contaminated soil, and cleansing of groundwaters or surface waters. Corrective action does not include replacement of an underground storage tank. Corrective action specifically excludes third-party liability.

NEW SUBSECTION. 10. "Fund" means the Iowa comprehensive petroleum underground storage tank fund.

NEW SUBSECTION. 11. "Petroleum" means petroleum, including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute).

Sec. 36. Section 455B.474, subsection 1, Code 1989, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. Assessment plans for taking required release corrective action. The department shall mail a copy of the approved release assessment plan to the owner or operator of an underground storage tank, the copy mailed to the owner or operator shall be in addition to any copies provided to a contractor or agent of the owner or operator.

Sec. 37. Section 455B.474, subsection 2, paragraph a, Code 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A person who establishes financial responsibility by self-insurance shall not require or shall not enforce an indemnification agreement with an operator or owner of the tank covered by the self-insurance obligation, unless the owner or operator has committed a substantial breach of a contract between the self-insurer and the owner or operator, and that substantial breach relates directly to the operation of the tank in an environmentally sound manner. This paragraph applies to all contracts between a self-insurer and an owner or operator entered into on or after the effective date of this Act.

Sec. 38. Section 455B.479, Code 1989, is amended to read as follows:

455B.479 STORAGE TANK MANAGEMENT FEE.

An owner or operator of an underground storage tank shall pay an annual storage tank management fee of ~~fifteen~~ sixty-five dollars per tank of over one thousand one hundred gallons capacity. ~~The~~ Twenty-three percent of the fees collected shall be deposited in the storage tank management account of the groundwater protection fund. Seventy-seven percent of the fees collected shall be deposited in the Iowa comprehensive petroleum underground storage tank fund created in chapter 455G.

Sec. 39. Section 455B.477, Code 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 7. The civil penalties or other damages or moneys recovered by the state or the petroleum underground storage tank fund in connection with a petroleum underground storage tank under this part of this division or chapter 455G shall be credited to the fund created in section 455G.3 and allocated between fund accounts according to the fund

budget. Any federal moneys, including but not limited to federal underground storage tank trust fund moneys, received by the state or the department of natural resources in connection with a release occurring on or after the effective date of this Act or received generally for underground storage tank programs on or after the effective date of this Act, shall be credited to the fund created in section 455G.3 and allocated between fund accounts according to the fund budget, unless such use would be contrary to federal law. The department shall cooperate with the board of the Iowa comprehensive petroleum underground storage tank fund to maximize the state's eligibility for and receipt of federal funds for underground storage tank related purposes.

Sec. 40. NEW SECTION. 455B.490 USED STORAGE TANK DISPOSAL.

The waste management authority shall designate at least two facilities, but as many qualified facilities as apply or contract with the authority and the board, within the state for the acceptance of used underground storage tanks for final disposal. A designated facility shall accept any underground storage tank originally sited within the state, provided that the facility may require as a condition of acceptance, reasonable preparation, procedures, and information regarding the tank to facilitate safe processing and disposal. A sanitary landfill, other than a designated facility which is a sanitary landfill, shall not accept underground storage tanks for disposal after the date on which at least two facilities have been designated by the waste management authority pursuant to this section. A commercial scrap metal dealer or recycler may accept a tank for processing. The Iowa comprehensive petroleum underground storage tank fund may compensate a designated facility for all or a portion of the costs associated with processing or disposal of a tank delivered to the facility for final disposal pursuant to this section, if the department of natural resources determines that alternative satisfactory disposal options for used storage tanks do not then exist. A commercial scrap metal dealer or recycler may be a designated facility. A designated facility shall not charge a fee to an owner or operator of the underground storage tank as a condition of acceptance. The waste management authority shall adopt rules as necessary to govern the processing and disposal of underground storage tanks by a designated facility.

Sec. 41. Section 455E.11, subsection 2, paragraph d, Code 1989, is amended to read as follows:

d. A storage tank management account. All fees collected pursuant to section 455B.473, subsection 5, and section 455B.479, shall be deposited in the storage tank management account, except those moneys deposited into the Iowa comprehensive petroleum underground storage tank fund pursuant to section 455B.479. Funds shall be expended for the following purposes:

(1) One thousand dollars is appropriated annually to the Iowa department of public health to carry out departmental duties under section 135.11, subsections 20 and 21, and section 139.35.

(2) ~~Seventy~~ Twenty-three percent of the ~~moneys~~ proceeds of the fees imposed pursuant to section 455B.473, subsection 5, and section 455B.479 shall be deposited in the account annually, up to a maximum of three hundred fifty thousand dollars. If twenty-three percent of the proceeds exceeds three hundred fifty thousand dollars, the excess shall be deposited into the fund created in section 455G.3. Three hundred and fifty thousand dollars, are appropriated from the storage tank management account to the department of natural resources for the administration of a state storage tank program pursuant to chapter 455B, division IV, part 8, and for programs which reduce the potential for harm to the environment and the public health from storage tanks.

(3) ~~For the fiscal year beginning July 1, 1987, and ending June 30, 1988, twenty-five thousand dollars is appropriated from the account to the division of insurance for payment of costs incurred in the establishment of the plan of operations program regarding the financial responsibility of owners and operators of underground storage tanks which store petroleum.~~

~~(4)~~ The remaining funds in the account are appropriated annually to the ~~department of natural resources for the funding of state remedial cleanup efforts~~ Iowa comprehensive petroleum underground storage tank fund.

DIVISION VII

Sec. 42. NEW SECTION. 455G.1 TITLE — SCOPE.

1. This chapter is entitled the "Iowa Comprehensive Petroleum Underground Storage Tank Fund Act".

2. This chapter applies to a petroleum underground storage tank required to maintain proof of financial responsibility under federal law, from the effective date of the regulation of the federal environmental protection agency governing that tank, and not from the effective compliance date, unless the effective compliance date of the regulation is the effective date of the regulation. An owner or operator of a petroleum underground storage tank required by federal law to maintain proof of financial responsibility for that underground storage tank, or who will be required on a date definite, is subject to this chapter and chapter 424.

a. As of the effective date of this Act, tanks excluded by the federal Resource Conservation and Recovery Act, subtitle I, included the following:

(1) A farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.

(2) A tank used for storing heating oil for consumptive use on the premises where stored.

(3) A septic tank.

(4) A pipeline facility, including gathering lines, regulated under any of the following:

(a) The federal Natural Gas Pipeline Safety Act of 1968.

(b) The federal Hazardous Liquid Petroleum Pipeline Safety Act of 1979.

(c) State laws comparable to the provisions of the law referred to in subparagraph subdivision (a) or (b).

(5) A surface impoundment, pit, pond, or lagoon.

(6) A storm water or wastewater collection system.

(7) A flow-through process tank.

(8) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(9) A storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor to permit inspection of its entire surface.

b. As of the effective date of this Act, tanks exempted or excluded by United States environmental protection agency financial responsibility regulations, 40 C.F.R. § 280.90, included the following:

(1) Underground storage tank systems removed from operation, pursuant to applicable department of natural resources rules, prior to the applicable federal compliance date established in 40 C.F.R. § 280.91.

(2) Those owned or operated by state and federal governmental entities whose debts and liabilities are the debts and liabilities of a state or the United States.

(3) Any underground storage tank system holding hazardous wastes listed or identifiable under subtitle C of the federal Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.

(4) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) or 402 of the federal Clean Water Act.

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

(6) Any underground storage tank system whose capacity is one hundred ten gallons or less.

(7) Any underground storage tank system that contains a de minimis concentration of regulated substances.

(8) Any emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.

(9) Any underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 C.F.R. pt. 50, appendix A.

(10) Airport hydrant fuel distribution systems.

(11) Underground storage tank systems with field-constructed tanks.

c. If and when federal law changes, the department of natural resources shall adopt by rule such additional requirements, exemptions, deferrals, or exclusions as required by federal law. It is expected that certain classes of tanks currently exempted or excluded by federal regulation will be regulated by the United States environmental protection agency in the future. A tank which is not required by federal law to maintain proof of financial responsibility shall not be subject to department of natural resource rules on proof of financial responsibility.

Sec. 43. NEW SECTION. 455G.2 DEFINITIONS.

As used in this chapter unless the context otherwise requires:

1. "Authority" means the Iowa finance authority created in chapter 220.

2. "Board" means the Iowa comprehensive petroleum underground storage tank fund board.

3. "Bond" means a bond, note, or other obligation issued by the authority for the fund and the purposes of this chapter.

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

5. "Diminution" is the amount of petroleum which is released into the environment prior to its intended beneficial use.

6. "Diminution rate" is the presumed rate at which petroleum experiences diminution, and is equal to one-tenth of one percent of all petroleum deposited into a tank.

7. "Fund" means the Iowa comprehensive petroleum underground storage tank fund.

8. "Improvement" means the acquisition, construction, or improvement of any tank, tank system, or monitoring system in order to comply with state and federal technical requirements or to obtain insurance to satisfy financial responsibility requirements.

9. "Insurance" includes any form of financial assistance or showing of financial responsibility sufficient to comply with the federal Resource Conservation and Recovery Act or the Iowa department of natural resources' underground storage tank financial responsibility rules.

10. "Insurance premium" includes any form of premium or payment for insurance or for obtaining other forms of financial assurance, or showing of financial responsibility.

11. "Petroleum" means petroleum, including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute).

12. "Precorrective action value" means the assessed value of the tank site immediately prior to the discovery of a petroleum release.

13. "Small business" means a business that meets all of the following requirements:

a. Is independently owned and operated.

b. Owns at least one, but no more than twelve tanks at no more than two different tank sites.

c. Has a net worth of two hundred thousand dollars or less.

14. "Tank" means an underground storage tank for which proof of financial responsibility is, or on a date definite will be, required to be maintained pursuant to the federal Resource Conservation and Recovery Act and the regulations from time to time adopted pursuant to that Act or successor Acts or amendments.

Sec. 44. NEW SECTION. 455G.3 ESTABLISHMENT OF IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND.

1. The Iowa comprehensive petroleum underground storage tank fund is created as a separate fund in the state treasury, and any funds remaining in the fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Iowa comprehensive petroleum underground storage tank fund. Interest or other income earned by the fund shall be deposited

in the fund. The fund shall include moneys credited to the fund under sections 424.7, 455G.3, 455G.8, 455G.9, 455G.10, 455G.11, and 455G.12, and other funds which by law may be credited to the fund. The moneys in the fund are appropriated to and for the purposes of the board as provided in this chapter. Amounts in the fund shall not be subject to appropriation for any other purpose by the general assembly, but shall be used only for the purposes set forth in this chapter. The treasurer of state shall act as custodian of the fund and disburse amounts contained in it as directed by the board including automatic disbursements of funds as received pursuant to the terms of bond indentures and documents and security provisions to trustees and custodians. The treasurer of state is authorized to invest the funds deposited in the fund at the direction of the board and subject to any limitations contained in any applicable bond proceedings. The income from such investment shall be credited to and deposited in the fund. The fund shall be administered by the board which shall make expenditures from the fund consistent with the purposes of the programs set out in this chapter without further appropriation. The fund may be divided into different accounts with different depositories as determined by the board and to fulfill the purposes of this chapter.

2. The board shall assist Iowa's owners and operators of petroleum underground storage tanks in complying with federal environmental protection agency technical and financial responsibility regulations by establishment of the Iowa comprehensive petroleum underground storage tank fund. The authority may issue its bonds, or series of bonds, to assist the board, as provided in this chapter.

3. The purposes of this chapter shall include but are not limited to any of the following:

a. To establish a remedial account to fund corrective action for petroleum releases as provided by section 455G.9.

b. To establish a loan guarantee account, as provided by and to the extent permitted by section 455G.10.

c. To establish an insurance account for insurable underground storage tank risks within the state as provided by section 455G.11.

d. The state, the general fund of the state, or any other fund of the state, other than the Iowa comprehensive petroleum underground storage tank fund, is not liable for a claim or cause of action in connection with a tank not owned or operated by the state, or agency of the state. All expenses incurred by the fund shall be payable solely from the fund and no liability or obligation shall be imposed upon the state. The liability of the fund is limited to the extent of coverage provided by the account under which a claim is submitted, subject to the terms and conditions of that coverage. The liability of the fund is further limited by the moneys made available to the fund, and no remedy shall be ordered which would require the fund to exceed its then current funding limitations to satisfy an award or which would restrict the availability of moneys for higher priority sites. The state is not liable for a claim presented against the fund.

Sec. 45. NEW SECTION. 455G.4 GOVERNING BOARD.

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

a. The director of the department of natural resources, or the director's designee.

b. The treasurer of state, or the treasurer's designee.

c. The commissioner of insurance, or the commissioner's designee.

d. Two public members appointed by the governor and confirmed by the senate to staggered four-year terms, except that of the first members appointed, one public member shall be appointed for a term of two years and one for a term of four years. A public member shall have experience, knowledge, and expertise of the subject matter embraced within this chapter. Two public members shall be appointed with experience in either, or both, financial markets or insurance.

A public member shall not have a conflict of interest. For purposes of this section a "conflict of interest" means an affiliation, within the twelve months before the member's appointment, with the regulated tank community, or with a person or property and casualty insurer

offering competitive insurance or other means of financial assurance or which previously offered environmental hazard insurance for a member of the regulated tank community.

The filling of positions reserved for public representatives, vacancies, membership terms, payment of compensation and expenses, and removal of members are governed by chapter 69. Members of the board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties within the limits of funds appropriated to the board or made available to the fund. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. The members shall elect a voting chairperson of the board from among the members of the board.

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

3. RULES AND EMERGENCY RULES.

a. The board shall adopt rules regarding its practice and procedures, develop underwriting standards, establish premiums for insurance account coverage and risk factors, procedures for investigating and settling claims made against the fund, determine appropriate deductibles or retentions in coverages or benefits offered, and otherwise implement and administer this chapter.

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

c. Rules necessary for the implementation and collection of the environmental protection charge shall be adopted on or before June 1, 1989.

d. Rules necessary for the implementation and collection of insurance account premiums shall be adopted prior to offering insurance to an owner or operator of a petroleum underground storage tank or other person.

e. Rules related to the establishment of the insurance account and the terms and conditions of coverage shall be adopted as soon as practicable to permit owners and operators to meet their applicable compliance date with federal financial responsibility regulations.

Sec. 46. NEW SECTION. 455G.5 INDEPENDENT CONTRACTORS TO BE RETAINED BY BOARD.

The board shall administer the fund. A contract to retain a person under this section may be individually negotiated, and is not subject to public bidding requirements.

The board may enter into a contract or an agreement authorized under chapter 28E with a private agency or person, the department of natural resources, the Iowa finance authority, the department of revenue and finance, other departments, agencies, or governmental subdivisions of this state, another state, or the United States, in connection with its administration and implementation of this chapter or chapter 424 or 455B.

The board may reimburse a contractor, public or private, retained pursuant to this section for expenses incurred in the execution of a contract or agreement. Reimbursable expenses include, by way of example, but not exclusion, the costs of collecting the environmental protection charge or administering specific delegated duties or powers of the board.

Sec. 47. NEW SECTION. 455G.6 IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND – GENERAL AND SPECIFIC POWERS.

In administering the fund, the board has all of the general powers reasonably necessary and convenient to carry out its purposes and duties and may do any of the following, subject to express limitations contained in this chapter:

1. Guarantee secured and unsecured loans, and enter into agreements for corrective action, acquisition and construction of tank improvements, and provide for the insurance program. The loan guarantees may be made to a person or entity owning or operating a tank. The board

may take any action which is reasonable and lawful to protect its security and to avoid losses from its loan guarantees.

2. Acquire, hold, and mortgage personal property and real estate and interests in real estate to be used.

3. Purchase, construct, improve, furnish, equip, lease, option, sell, exchange, or otherwise dispose of one or more improvements under the terms it determines.

4. Grant a mortgage, lien, pledge, assignment, or other encumbrance on one or more improvements, revenues, asset of right, accounts, or funds established or received in connection with the fund, including environmental protection charges deposited in the fund or an account of the fund.

5. Provide that the interest on bonds may vary in accordance with a base or formula.

6. Contract for the acquisition, construction, or both of one or more improvements or parts of one or more improvements and for the leasing, subleasing, sale, or other disposition of one or more improvements in a manner it determines.

7. The board may contract with the authority for the authority to issue bonds and do all things necessary with respect to the purposes of the fund, as set out in the contract between the board and the authority. The board may delegate to the authority and the authority shall then have all of the powers of the board which are necessary to issue and secure bonds and carry out the purposes of the fund, to the extent provided in the contract between the board and the authority. The authority may issue the authority's bonds in principal amounts which, in the opinion of the board, are necessary to provide sufficient funds for the fund, the payment of interest on the bonds, the establishment of reserves to secure the bonds, the costs of issuance of the bonds, other expenditures of the authority incident to and necessary or convenient to carry out the bond issue for the fund, and all other expenditures of the board necessary or convenient to administer the fund. The bonds are investment securities and negotiable instruments within the meaning of and for purposes of the uniform commercial code.

8. Bonds issued under this section are payable solely and only out of the moneys, assets, or revenues of the fund, all of which may be deposited with trustees or depositories in accordance with bond or security documents and pledged by the board to the payment thereof, and are not an indebtedness of this state or the authority, or a charge against the general credit or general fund of the state or the authority, and the state shall not be liable for any financial undertakings with respect to the fund. Bonds issued under this chapter shall contain on their face a statement that the bonds do not constitute an indebtedness of the state or the authority.

9. The proceeds of bonds issued by the authority and not required for immediate disbursement may be deposited with a trustee or depository as provided in the bond documents and invested in any investment approved by the authority and specified in the trust indenture, resolution, or other instrument pursuant to which the bonds are issued without regard to any limitation otherwise provided by law.

10. The bonds shall be:

a. In a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, and be subject to such other terms and conditions as prescribed in the trust indenture, resolution, or other instrument authorizing their issuance.

b. Negotiable instruments under the laws of the state and may be sold at prices, at public or private sale, and in a manner, as prescribed by the authority. Chapters 23, 74, 74A and 75 do not apply to their sale or issuance of the bonds.

c. Subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter and as determined by the trust indenture, resolution, or other instrument authorizing their issuance.

11. The bonds are securities in which public officers and bodies of this state; political subdivisions of this state; insurance companies and associations and other persons carrying on an insurance business; banks, trust companies, savings associations, savings and loan associations, and investment companies; administrators, guardians, executors, trustees, and other fiduciaries;

and other persons authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

12. Bonds must be authorized by a trust indenture, resolution, or other instrument of the authority, approved by the board. However, a trust indenture, resolution, or other instrument authorizing the issuance of bonds may delegate to an officer of the issuer the power to negotiate and fix the details of an issue of bonds.

13. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created needs to be recorded or filed under the Iowa uniform commercial code to be valid, binding, or effective.

14. Bonds issued under the provisions of this section are declared to be issued for an essential public and governmental purpose and all bonds issued under this chapter shall be exempt from taxation by the state of Iowa and the interest on the bonds shall be exempt from the state income tax and the state inheritance and estate tax.

15. Subject to the terms of any bond documents, moneys in the fund or fund accounts may be expended for administration expenses, civil penalties, moneys paid under an agreement, stipulation, or settlement, and for the costs of any other activities as the board may determine are necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and this chapter.

16. The board shall cooperate with the department of natural resources in the implementation and administration of this division to assure that in combination with existing state statutes and rules governing underground storage tanks, the state will be, and continue to be, recognized by the federal government as having an "approved state account" under the federal Resource Conservation and Recovery Act, especially by compliance with the Act's subtitle I financial responsibility requirements as enacted in the federal Superfund Amendments and Reauthorization Act of 1986 and the financial responsibility regulations adopted by the United States environmental protection agency at 40 C.F.R. pts. 280 and 281. Whenever possible this division shall be interpreted to further the purposes of, and to comply, and not to conflict, with such federal requirements.

Sec. 48. NEW SECTION. 455G.7 SECURITY FOR BONDS — CAPITAL RESERVE FUND — IRREVOCABLE CONTRACTS.

1. For the purpose of securing one or more issues of bonds for the fund, the authority, with the approval of the board, may authorize the establishment of one or more special funds, called "capital reserve funds". The authority may pay into the capital reserve funds the proceeds of the sale of its bonds and other money which may be made available to the authority from other sources for the purposes of the capital reserve funds. Except as provided in this section, money in a capital reserve fund shall be used only as required for any of the following:

a. The payment of the principal of and interest on bonds or of the sinking fund payments with respect to those bonds.

b. The purchase or redemption of the bonds.

c. The payment of a redemption premium required to be paid when the bonds are redeemed before maturity.

However, money in a capital reserve fund shall not be withdrawn if the withdrawal would reduce the amount in the capital reserve fund to less than the capital reserve fund requirement, except for the purpose of making payment, when due, of principal, interest, redemption premiums on the bonds, and making sinking fund payments when other money pledged to the payment of the bonds is not available for the payments. Income or interest earned by, or increment to, a capital reserve fund from the investment of all or part of the capital reserve fund may be transferred by the authority to other accounts of the fund if the transfer does not reduce the amount of the capital reserve fund below the capital reserve fund requirement.

2. If the authority decides to issue bonds secured by a capital reserve fund, the bonds shall not be issued if the amount in the capital reserve fund is less than the capital reserve fund requirement, unless at the time of issuance of the bonds the authority deposits in the capital reserve fund from the proceeds of the bonds to be issued or from other sources, an amount

which, together with the amount then in the capital reserve fund, is not less than the capital reserve fund requirement.

3. In computing the amount of a capital reserve fund for the purpose of this section, securities in which all or a portion of the capital reserve fund is invested shall be valued by a reasonable method established by the authority. Valuation shall include the amount of interest earned or accrued as of the date of valuation.

4. In this section, "capital reserve fund requirement" means the amount required to be on deposit in the capital reserve fund as of the date of computation.

5. To assure maintenance of the capital reserve funds, the authority shall, on or before July 1 of each calendar year, make and deliver to the governor the authority's certificate stating the sum, if any, required to restore each capital reserve fund to the capital reserve fund requirement for that fund. Within thirty days after the beginning of the session of the general assembly next following the delivery of the certificate, the governor may submit to both houses printed copies of a budget including the sum, if any, required to restore each capital reserve fund to the capital reserve fund requirement for that fund. Any sums appropriated by the general assembly and paid to the authority pursuant to this section shall be deposited in the applicable capital reserve fund.

6. All amounts paid by the state pursuant to this section shall be considered advances by the state and, subject to the rights of the holders of any bonds of the authority that have previously been issued or will be issued, shall be repaid to the state without interest from all available revenues of the fund in excess of amounts required for the payment of bonds of the authority, the capital reserve fund, and operating expenses.

7. If any amount deposited in a capital reserve fund is withdrawn for payment of principal, premium, or interest on the bonds or sinking fund payments with respect to bonds thus reducing the amount of that fund to less than the capital reserve fund requirement, the authority shall immediately notify the governor and the general assembly of this event and shall take steps to restore the capital reserve fund to the capital reserve fund requirement for that fund from any amounts designated as being available for such purpose.

Sec. 49. NEW SECTION. 455G.8 REVENUE SOURCES FOR FUND.

Revenue for the fund shall include, but is not limited, to the following, which shall be deposited with the board or its designee as provided by any bond or security documents and credited to the fund:

1. BONDS ISSUED TO CAPITALIZE FUND. The proceeds of bonds issued to capitalize and pay the costs of the fund, and investment earnings on the proceeds except as required for the capital reserve funds.

2. ENVIRONMENT PROTECTION CHARGE. The environmental protection charge imposed under chapter 424. The proceeds of the environmental protection charge shall be allocated, consistent with this chapter, among the fund's accounts, for debt service and other fund expenses, according to the fund budget, resolution, trust agreement, or other instrument prepared or entered into by the board or authority under direction of the board.

3. STORAGE TANK MANAGEMENT FEE. That portion of the storage tank management fee proceeds which are deposited into the fund, pursuant to section 455B.479.

4. INSURANCE PREMIUMS. Insurance premium income as provided by section 455G.11 shall be credited to the insurance account.

5. COST RECOVERY ENFORCEMENT. Cost recovery enforcement net proceeds as provided by section 455G.12 shall be allocated among the fund's accounts as directed by the board. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

6. OTHER SOURCES. Interest attributable to investment of money in the fund or an account of the fund. Moneys in the form of a devise, gift, bequest, donation, federal or other grant, reimbursement, repayment, judgment, transfer, payment, or appropriation from any source intended to be used for the purposes of the fund.

Ch 131, §50 Amend Enact
Ch 307, §46–89 Acts

Sec. 50. NEW SECTION. 455G.9 REMEDIAL PROGRAM.

1. LIMITS OF REMEDIAL ACCOUNT COVERAGE. Moneys in the remedial account shall only be paid out for the following:

a. (1) Corrective action for an eligible release reported to the department of natural resources on or after July 1, 1987, but prior to the effective date of this Act. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release under this subparagraph, the remedial program shall pay no more than the lesser of twenty-five thousand dollars or one-third of the total costs of corrective action for that release, subsection 4 notwithstanding. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage must be currently engaged in the business for which the tank connected with the release was used prior to the report of the release.

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

(c) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after April 1, 1988.

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

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

Total payments for claims pursuant to this subparagraph are limited to no more than six million dollars. Claims for eligible releases shall be prorated if claims filed exceed six million dollars. If claims remain partially or totally unpaid after total payments equal six million dollars, all remaining claims are void, and no entitlement exists for further payment.

(2) Corrective action for a release reported to the department of natural resources after the effective date of this Act and on or before October 26, 1990. Third-party liability is specifically excluded from remedial account coverage. Corrective action coverage provided pursuant to this paragraph may be aggregated with other financial assurance mechanisms as permitted by federal law to satisfy required aggregate and per occurrence limits of financial responsibility for both corrective action and third-party liability, if the owner's or operator's effective financial responsibility compliance date is prior to October 26, 1990.

b. Corrective action and third-party liability for a release discovered on or after January 24, 1989, for which a responsible owner or operator able to pay cannot be found and for which the federal underground storage tank trust fund or other federal moneys do not provide coverage.

c. Corrective action and third-party liability for a tank owned or operated by a financial institution eligible to participate in the remedial account under section 455G.15 if the prior owner or operator is unable to pay, if so authorized by the board as part of a condition or incentive for financial institution participation in the fund pursuant to section 455G.15.

d. One hundred percent of the costs of corrective action and third party liability for a release situated on property acquired by a county for delinquent taxes pursuant to chapters 445 through 448, for which a responsible owner or operator able to pay, other than the county, cannot be found. A county is not a "responsible party" for a release in connection with property which it acquires in connection with delinquent taxes, and does not become a responsible party by sale or transfer of property so acquired.

e. For the costs of any other activities which the board determines are necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and this chapter.

2. REMEDIAL ACCOUNT FUNDING. The remedial account shall be funded by that portion of the proceeds of the environmental protection charge imposed under chapter 424 and other moneys and revenues budgeted to the remedial account by the board.

3. TRUST FUND TO BE ESTABLISHED. When the remedial account has accumulated sufficient capital to provide dependable income to cover the expenses of expected future releases or expected future losses for which no responsible owner is available, the excess capital shall be transferred to a trust fund administered by the board and created for that purpose. Collection of the environmental protection charge shall be discontinued when the trust fund is created and fully funded, except to resolve outstanding claims. The environmental protection charge may be reimposed to restore and recapitalize the trust fund in the event future losses deplete the fund so that the board does not expect it to have sufficient income and assets to cover expected future losses.

4. MINIMUM COPAYMENT SCHEDULE FOR REMEDIAL ACCOUNT BENEFITS. An owner or operator who reports a release to the department of natural resources on or before October 26, 1990, shall pay the greater of five thousand dollars or twenty-five percent of the total costs of corrective action for that release. The remedial account shall pay the remainder, as required by federal regulations, of the total cost of the corrective action for that release, except that a county shall not be required to pay a copayment in connection with a release situated on property acquired in connection with delinquent taxes, as provided in subsection 1, paragraph "d", unless subsequent to acquisition the county actively operates a tank on the property for purposes other than risk assessment, risk management, or tank closure.

5. PRIORITY OF CLAIMS. The board shall adopt rules to prioritize claims and allocate available money if funds are not available to immediately settle all current claims.

6. RECOVERY OF GAIN ON SALE OF PROPERTY. If an owner or operator ceases to own or operate a tank site for which remedial account benefits were received within five years of the receipt of any account benefit and sells or transfers a property interest in the tank site for an amount which exceeds one hundred twenty percent of the precorrective action value, the owner or operator shall refund to the remedial account an amount equal to ninety percent of the amount in excess of one hundred twenty percent of the precorrective action value up to a maximum of the expenses incurred by the remedial account associated with the tank site plus interest, equal to the interest for the most recent twelve-month period for the most recent bond issue for the fund, on the expenses incurred, compounded annually. Expenses incurred by the fund are a lien upon the property recordable and collectible in the same manner as the lien provided for in section 424.11 at the time of sale or transfer, subject to the terms of this section.

This subsection shall not apply if the sale or transfer is pursuant to a power of eminent domain, or benefits. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

7. RECURRING RELEASES TREATED AS A NEWLY REPORTED RELEASE. A release shall be treated as a release reported on or after the effective date of this Act if prior to the effective date of this Act a release was reported to the department, corrective action was taken pursuant to an assessment plan approved by the department, and the work performed was accepted by the department. For purposes of this subsection, work performed is accepted by the department if the department did not order further action within ninety days of the date on which the department had notice that the work was completed, unless the department clearly indicated in writing to the owner, operator, contractor, or other agent that additional work would be required beyond that specified in the assessment plan or in addition to the work actually performed.

Sec. 51. NEW SECTION. 455G.10 LOAN GUARANTEE ACCOUNT.

1. The board may create a loan guarantee account to offer loan guarantees to small businesses for the following purposes:

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

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

Moneys from the environmental protection charge revenues may be used to fund the loan guarantee account according to the fund budget as approved by the board. Loan guarantees shall be made on terms and conditions determined by the board to be reasonable, except that in no case may a loan guarantee satisfy more than ninety percent of the outstanding balance of a loan.

2. A separate nonlapsing loan guarantee account is created within the fund. Any funds remaining in the account at the end of each fiscal year shall not revert to the fund or the general fund but shall remain in the account. The loan account shall be maintained by the treasurer of state. All expenses incurred by the loan account shall be payable solely from the loan account and no liability or obligation shall be imposed upon the state beyond this amount.

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

4. As a condition of eligibility for financial assistance from the loan guarantee account, a small business shall demonstrate satisfactory attempts to obtain financing from private lending sources. When applying for loan guarantee account assistance, the small business shall demonstrate good faith attempts to obtain financing from at least two financial institutions. The board may first refer a tank owner or operator to a financial institution eligible to participate in the fund under section 455G.15; however, if no such financial institution is currently willing or able to make the required loan, the small business shall determine if any of the previously contacted financial institutions would make the loan in participation with the loan guarantee account. The loan guarantee account may offer to guarantee a loan, or provide other forms of financial assistance to facilitate a private loan.

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

6. The source of funds for the loan account shall be from the following:

a. Loan guarantee account income, including loan guarantee service fees, if any, and investment income attributed to the account by the board.

b. Moneys allocated to the account by the board according to the fund budget approved by the board.

c. Moneys appropriated by the federal government or general assembly and made available to the loan account.

7. A loan loss reserve account shall be established within the loan guarantee account. A default on a loan guaranteed under this section shall be paid from such reserve account. In administering the program the board shall not guarantee loan values in excess of the amount credited to the reserve account and only moneys set aside in the reserve account may be used for the payment of a default. A default is not eligible for payment until the lender has satisfied all administrative and legal remedies for settlement of the loan and the loan has been reduced to judgment by the lender. After the default has been reduced to judgment and the guarantee paid from the reserve account, the board is entitled to an assignment of the judgment. The board shall take all appropriate action to enforce the judgment or may enter into an agreement with the lender to provide for enforcement. Upon collection of the amount guaranteed, any excess collected shall be deposited into the fund. The general assembly is not obligated to appropriate any moneys to pay for any defaults or to appropriate any moneys to be credited to the reserve account. The loan guarantee program does not obligate the state or the board

except to the extent provided in this section, and the board in administering the program shall not give or lend the credit of the state of Iowa.

Sec. 52. NEW SECTION. 455G.11 INSURANCE ACCOUNT.

1. INSURANCE ACCOUNT AS A FINANCIAL ASSURANCE MECHANISM. The insurance account shall offer financial assurance for a qualified owner or operator under the terms and conditions provided for under this section. Coverage may be provided to the owner or the operator, or to each separately. The board is not required to resolve whether the owner or operator, or both are responsible for a release under the terms of any agreement between the owner and operator.

2. LIMITS OF COVERAGE AVAILABLE. An owner or operator required to maintain proof of financial responsibility may purchase coverage up to the federally required levels for that owner or operator subject to the terms and conditions under this section and those adopted by the board.

3. ELIGIBILITY OF OWNERS AND OPERATORS FOR INSURANCE ACCOUNT COVERAGE. An owner or operator, subject to underwriting requirements and such terms and conditions deemed necessary and convenient by the board, may purchase insurance coverage from the insurance account to provide proof of financial responsibility provided that a tank to be insured satisfies one of the following conditions:

a. Satisfies performance standards for new underground storage tank systems as specified by the federal environmental protection agency in 40 C.F.R. § 280.20, as amended through January 1, 1989.

b. Has satisfied on or before the date of the application standards for upgraded underground storage tank systems as specified by the federal environmental protection agency in 40 C.F.R. § 280.21, as amended through January 1, 1989.

c. The applicant certifies in writing to the board that the tank to be insured will be brought into compliance with either paragraph "a" or "b", on or before October 26, 1991, provided that prior to the provision of insurance account coverage, the tank site tests release free. For a tank qualifying for insurance coverage pursuant to this paragraph at the time of application or renewal, the owner or operator shall pay a per tank premium equal to two times the normally scheduled premium for a tank satisfying paragraph "a" or "b". An owner or operator who fails to comply as certified to the board on or before October 26, 1991, shall not insure that tank through the insurance account unless and until the tank satisfies the requirements of paragraph "a" or "b".

4. ACTUARIALLY SOUND PREMIUMS BASED ON RISK FACTOR ADJUSTMENTS AFTER FIVE YEARS. The annual premium for insurance coverage shall be:

a. For the year July 1, 1989, through June 30, 1990, one hundred dollars per tank.

b. For the year July 1, 1990, through June 30, 1991, one hundred fifty dollars per tank.

c. For the year July 1, 1991, through June 30, 1992, two hundred dollars per tank.

d. For the year July 1, 1992, through June 30, 1993, two hundred fifty dollars per tank.

e. For the year July 1, 1993, through June 30, 1994, three hundred dollars per tank.

f. For subsequent years, an owner or operator applying for coverage shall pay an annually adjusted insurance premium for coverage by the insurance account. The board may only approve fund coverage through the payment of a premium established on an actuarially sound basis. Risk factors shall be taken into account in establishing premiums. It is the intent of the general assembly that an actuarially sound premium reflect the risk to the insurance account presented by the insured. Risk factor adjustments should reflect the range of risk presented by the variety of tank systems, monitoring systems, and risk management practices in the general insurable tank population. Premium adjustments for risk factors should at minimum take into account lifetime costs of a tank and monitoring system and insurance account premiums for that tank system so as to provide a positive economic incentive to the owner or operator to install the more environmentally safe option so as to reduce the exposure of the insurance account to loss. Actuarially sound is not limited in its meaning to fund premium revenue equaling or exceeding fund expenditures for the general tank population.

If coverage is purchased for any part of a year the purchaser shall pay the full annual premium.

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

5. The future repeal of this section shall not terminate the following obligations or authorities necessary to administer the obligations until these obligations are satisfied:

a. The payment of claims filed prior to the effective date of any future repeal, against the insurance account until moneys in the account are exhausted. Upon exhaustion of the moneys in the account, any remaining claims shall be invalid. If following satisfaction of the obligations pursuant to this section, moneys remain in the account, the remaining moneys and moneys due the account shall be prorated and returned to premium payers on an equitable basis as determined by the board.

b. The resolution of a cost recovery action filed prior to the effective date of the repeal.

6. INSTALLERS' INCLUSION IN FUND. The Iowa comprehensive petroleum underground storage tank fund board shall offer insurance coverage under the fund's insurance account to an installer of a certified underground storage tank installation within the state for environmental hazard coverage in connection with the certified installation as provided in this subsection. The board shall perform an actuarial study to determine the actuarially sound premiums, deductibles, terms, and conditions to be offered to installers for certified installations in Iowa. The insurance coverage offered to installers shall provide for no greater deductibles and the same or greater limits of coverage as offered to owners and operators of tanks. Coverage under this subsection shall be limited to environmental hazard coverage for both corrective action and third-party liability for a certified tank installation in Iowa in connection with a release from that tank.

The board shall adopt rules requiring certification of tank installations and require certification of a new tank installation as a precondition to offering insurance to an owner or operator or an installer. The board shall set in the rule the effective date for the certification requirement. Certification rules shall at minimum require that an installation be personally inspected by an independent licensed engineer, fire marshal or state fire marshal's designee qualified and authorized by the board to perform the required inspection and that the tank and installation of the tank comply with applicable technical standards and manufacturer's instructions and warranty conditions. An inspector shall not be an owner or operator of a tank, or an employee of an owner, operator, or installer. The insurance coverage shall be extended to premium paying installers on or before December 1, 1989. For the period from the effective date of this Act to and including the date that insurance coverage under the fund is extended to installers, the fund shall not seek third-party recovery from an installer.

The board's actuarial study shall include, but is not limited to, the following topics:

a. Actuarial estimate of the per-tank premium necessary to provide actuarially sound coverage to a tank installer for that certified tank installation. The study may include available loss data on past installations for installers, existing claims against installers for corrective action and third-party liability, and other information deemed relevant by the board.

b. The type of certification standards and procedures or other preconditions to providing coverage to a tank installer.

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

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

e. Suggested limits of coverage, deductible levels, and other coverage features, terms, or conditions provided the same are no less favorable than that offered owners and operators under this section.

The results of the study shall be submitted to the division of insurance prior to the extension of coverage to installers under this subsection.

7. ACCOUNT EXPENDITURES. Moneys in the insurance account may be expended for the following purposes:

a. To take corrective action for and to compensate a third party for damages, including but not limited to payment of a judgment for bodily injury or property damage caused by a release

from a tank, where coverage has been provided to the owner or operator from the insurance account, up to the limits of coverage extended.

b. For the costs of any other activities as the board may determine are necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and this chapter.

Sec. 53. NEW SECTION. 455G.11A BOARD AUTHORITY FOR PRIORITIZATION.

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

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

1. The positive environmental impact of assistance prioritization.

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

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

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

5. The intent of this Act that the board shall maximize the availability of reasonably priced, financially sound insurance coverage or loan guarantee assistance.

Sec. 54. NEW SECTION. 455G.12 COST RECOVERY ENFORCEMENT.

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

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

a. The board or the department of natural resources shall not seek recovery for expenses in connection with corrective action for a release from an owner or operator eligible for assistance under the remedial account except for any unpaid portion of the deductible or copayment. This section does not affect any authorization of the department of natural resources to impose or collect civil or administrative fines or penalties or fees. The remedial account shall not be held liable for any third-party liability.

b. An owner or operator's liability for a release for which coverage is admitted under the insurance account shall not exceed the amount of the deductible.

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

4. TREBLE DAMAGES FOR CERTAIN VIOLATIONS. Notwithstanding subsections 2 and 3, the owner or operator, or both, of a tank are liable to the fund for punitive damages in an amount equal to three times the amount of any cost incurred or moneys expended by the fund as a result of a release of petroleum from the tank if the owner or operator did any of the following:

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

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

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

(2) Intentionally failed to report a known release.

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

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

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

6. JOINDER OF PARTIES. The department of natural resources has standing in any case or contested action related to the fund or a tank, and upon motion and sufficient showing by a party, the court or the administrative law judge shall join to the action any person who may be liable for costs and expenditures of the type recoverable pursuant to this section.

7. STRICT LIABILITY. The standard of liability for a release of petroleum or other regulated substance as defined in section 455B.471 is strict liability.

8. THIRD-PARTY CONTRACTS NOT BINDING ON BOARD, PROCEEDINGS AGAINST RESPONSIBLE PARTY. An insurance, indemnification, hold harmless, conveyance, or similar risk-sharing or risk-shifting agreement shall not be effective to transfer any liability for costs recoverable under this section. The fund, board, or department of natural resources may proceed directly against the owner or operator or other allegedly responsible party. This section does not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs or expenditures under this chapter, and does not modify rights between the parties to an agreement.

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

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

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

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

Sec. 55. NEW SECTION. 455G.13 FUND NOT SUBJECT TO REGULATION.

The fund, including but not limited to insurance coverage offered by the insurance account, is not subject to regulation under chapter 502 or title XX, chapters 505 through 523C.

Sec. 56. NEW SECTION. 455G.14 FUND NOT PART OF THE IOWA INSURANCE GUARANTY ASSOCIATION.

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

Sec. 57. NEW SECTION. 455G.15 FINANCIAL INSTITUTION PARTICIPATION IN FUND.

The board may impose conditions on the participation of a financial institution in the fund. Conditions shall be reasonably intended to increase the quantity of private capital available for loans to tank owners or operators who are small businesses within the meaning of section 455G.2. Additionally, the board may offer incentives to financial institutions meeting conditions imposed by the board. Incentives may include extended fund coverage of corrective action or third-party liability expenses, waiver of copayment or deductible requirements, or other benefits not offered to other participants, if reasonably intended to increase the quantity of private capital available for loans by an amount greater than the increased costs of the incentives to the fund.

Sec. 58. NEW SECTION. 455G.16 MERGED AREA SCHOOLS EDUCATION.

1. The board shall adopt certification procedures and standards for the following classes of persons as underground storage tank installation inspectors:

a. A licensed engineer, except that if underground storage tank installation is within the scope of practice of a particular class of licensed engineer, additional training shall not be required for that class. A licensed engineer for whom underground storage tank installation is within the scope of practice shall be an "authorized inspector", rather than a "certified inspector".

b. A fire marshal.

2. The board shall adopt approved curricula for training engineers and fire marshals as a precondition to certification as underground storage tank installation inspectors.

3. The board shall adopt approved curricula for training persons to install underground storage tanks in such a manner that the resulting installation may be certified under section 455G.11, subsection 7.

4. The department of natural resources shall adopt approved curricula for training persons to conduct corrective actions consistent with the requirements of the department of natural resources.

5. The board shall require by rule that all certified or authorized underground storage tank inspectors register with the board and that all persons trained to perform or performing certified tank installations register with the board. A person's failure to register shall not affect the person's certification, or the certification of an otherwise eligible installation performed by that person, but rules may provide for a civil penalty of no more than fifty dollars. The board may provide a list of registrants to any interested person. The board may impose a fee for registration to recover the costs of administering the registration account.

DIVISION VIII

Sec. 59. If any provision of this Act or the application thereof to any person is invalidated, the invalidity shall not affect the provisions or application of this Act which can be given effect without the invalidated provisions or application, and to this end the provisions of this Act are severable.

However, if a finding of invalidity relates to the environmental protection charge, the following conditions apply:

1. To the extent a person or class of persons is determined not to be liable for future payments of the environmental protection charge, that person or class of persons shall not be

eligible for benefits from, or to participate in any manner in, the Iowa comprehensive petroleum underground storage tank fund.

2. If a person or class of persons is entitled to a refund of any amount of the environmental protection charge previously collected or is otherwise relieved of any liability to the Iowa comprehensive petroleum underground storage tank fund under this Act, that person or class of persons shall be liable for the refund of all benefits previously received from the fund and shall not be eligible for benefits or to participate in any manner in the fund. The fund is entitled to a setoff of any environmental protection charge refund liability against the person's liability to the fund to refund any benefits received. Insurance premiums previously received shall not be refundable even though a person becomes ineligible for participation in the fund or for the receipt of benefits from the fund after payment.

Any contract entered into by a tank owner or operator, or other recipient of fund benefits, in the course of administration or implementation of this Act, shall include as a condition of the contract, terms consistent with this section, to assure reciprocity of obligation and benefits as provided.

Sec. 60. The Code editor shall codify sections 101.101 through 101.108 as a new division II of chapter 101.

Sec. 61. Section 455G.11 is repealed effective July 1, 2004, subject to the qualifications of section 455G.11, subsection 6.

Sec. 62. Section 455G.10 is repealed effective July 1, 1999, except such repeal shall not effect any outstanding contractual rights.

Sec. 63. Sections 455G.6 and 455G.7 are repealed effective July 1, 2009, except as such sections apply with respect to any outstanding bonds issued thereunder, or refinancing of such outstanding bonds.

Sec. 64. Section 214A.18, Code 1989, is repealed.

Sec. 65. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 5, 1989

CHAPTER 132

AUTHORITY AT FIRE SCENES AND EMERGENCIES

H.F. 241

AN ACT relating to the authority of fire chiefs and their officers at fire scenes and emergencies, and providing a penalty for violations.

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

Section 1. NEW SECTION. 100B.1 DEFINITIONS.

As used in this chapter, "fire department" means the fire department of a city, township, or benefited fire district.

Sec. 2. NEW SECTION. 100B.2 AUTHORITY AT FIRES.

A fire chief or other authorized officer of a fire department in charge of a fire scene which involves the protection of life or property, may direct an operation as necessary to extinguish or control a fire, perform a rescue operation, investigate the existence of a suspected or reported fire, gas leak, or other hazardous condition, or take any other action as deemed necessary in