

of the company is also required. The insurance commissioner may require additional reinsurance if necessary to protect the policyholders of the company. An association authorized to transact business in this state before July 1, 1990, shall meet this requirement not later than July 1, 1992.

Sec. 72. Section 521A.1, subsection 6, unnumbered paragraph 1, Code 1989, is amended to read as follows:

Insurer ~~shall mean~~ means a company qualified and licensed by the insurance division to transact the business of insurance in this state by certificate issued pursuant to chapters 508, 514B, 515, 518A, and 520, except that it shall not include:

Sec. 73.

Sections 5, 6, 33, 34, and 36 of this Act do not affect insurance companies which, on or before the effective date of this Act, were authorized to transact business in this state.

Sec. 74.

Section 1 of this Act, applies to all indebtedness contracted for, general obligation bonds issued, or insurance agreements entered into or renewed pursuant to section 296.7 on or after the effective date of section 1, but shall not apply to an act permitted by section 296.7 at any time prior to January 1, 1990.

Sec. 75.

Sections 1 and 74 of this Act, being deemed of immediate importance, take effect upon enactment.

Sec. 76. Sections 515A.1 through 515A.19, Code 1989, are repealed effective July 1, 1992.

Sec. 77.

The Code editor shall transfer sections 515A.20 through 515A.25 to be a division of new chapter 515F.

Approved May 2, 1990

CHAPTER 1235

PETROLEUM STORAGE TANKS

H.F. 2552

AN ACT relating to storage tanks, including the conditions and funding mechanisms of the Iowa comprehensive petroleum underground storage tank fund, and providing an effective date.

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

Section 1. Section 101.12, Code Supplement 1989, is amended to read as follows:

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 as permitted by the latest edition of the national fire protection association rule 30A, subject to the approval of the governing body of the local governmental subdivision with jurisdiction over the site of the outlet.

Sec. 2. Section 101.21, Code Supplement 1989, is amended to read as follows:

101.21 DEFINITIONS.

As used in this part unless the context otherwise requires:

1. "Aboveground petroleum 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~~ petroleum and the volume of which, including the volume of the underground pipes, is more than ninety percent above the surface of the ground. Aboveground petroleum 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.

2. "Nonoperational aboveground petroleum tank" means an aboveground storage tank in which ~~regulated substances~~ petroleum is not deposited or from which ~~regulated substances~~ petroleum is not dispensed on or after July 1, 1989.

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

4. "Owner" means:

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

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

5. "~~Regulated substance~~ Petroleum" means ~~regulated substance~~ petroleum as defined in section 455B.471.

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

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

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

Sec. 3. Section 101.22, Code Supplement 1989, is amended to read as follows:

101.22 REPORT OF EXISTING AND NEW TANKS – REGISTRATION FEE – TAG – PENALTY.

1. Except as provided in subsection 2, the owner or operator of an aboveground petroleum 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 petroleum 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 from the site. 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 petroleum 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~~ petroleum in an aboveground petroleum 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 is unlawful to deposit a ~~regulated substance~~ petroleum in an aboveground petroleum storage tank which has not been registered pursuant to subsections 1 through ~~5~~ 4.

The state fire marshal shall furnish the owner or operator of an aboveground petroleum storage tank with a registration tag for each aboveground petroleum storage tank registered with the state fire marshal. The owner or operator shall affix the tag to the fill pipe of each registered aboveground petroleum storage tank. A person who conveys or deposits a ~~regulated substance~~ petroleum shall inspect the aboveground petroleum storage tank to determine the existence or absence of the registration tag. If a registration tag is not affixed to the aboveground petroleum storage tank fill pipe, the person conveying or depositing the ~~regulated substance~~ petroleum may deposit the ~~regulated substance~~ petroleum in the unregistered tank ~~provided that~~. However, 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 petroleum 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. 4. NEW SECTION. 101.22A EXEMPTION.

An aboveground petroleum storage tank which is subject to regulation or registration under either the federal department of transportation or state department of transportation or both, is exempt from the registration requirements of section 101.22.

Sec. 5. Section 101.23, Code Supplement 1989, is amended to read as follows:

101.23 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 petroleum storage tanks.

Sec. 6. Section 101.24, subsections 1 and 2, Code Supplement 1989, are amended to read as follows:

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

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

b. Inspect and obtain samples from any person of a petroleum or another 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~~ documents 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 a proceeding under the federal Solid Waste Disposal Act or this division.

2. Maintain an accurate inventory of aboveground petroleum storage tanks.

Sec. 7. Section 312.1, subsection 3, Code Supplement 1989, is amended to read as follows:

3. ~~All~~ Except as provided in section 423.24, revenue derived from the use tax, under chapter 423 on motor vehicles, trailers, and motor vehicle accessories and equipment, as same may be collected as provided by section 423.7.

Sec. 8. Section 423.24, subsection 1, Code 1989, is amended to read as follows:

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

b. ~~All~~ Any remaining revenue derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to section 423.7 shall be credited to the primary road fund to the extent necessary to reimburse that fund for the expenditures, not otherwise eligible to be made from the primary road fund, made for repairing, improving and maintaining bridges over the rivers bordering the state. Expenditures for those portions of bridges within adjacent states may be included when they are made pursuant to an agreement entered into under sections 313.63, 313A.34 and 314.10.

b c. Any remaining revenues derived from the operation of section 423.7 shall be credited to the road use tax fund.

Sec. 9. Section 424.3, subsection 5, Code Supplement 1989, is amended to read as follows:

5. The cost factor is an amount per gallon of diminution determined by the board pursuant to this subsection. The board, after public hearing, may 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 reasonably calculated to generate an annual average revenue, year to year, of twelve million dollars from the charge, excluding penalties and interest, if any.~~ The board may determine or adjust the cost factor at any time after May 5, 1989, but shall at minimum determine the cost factor at least once each fiscal year.

Sec. 10. Section 424.3, subsection 6, Code Supplement 1989, is amended by striking the subsection.

Sec. 11. Section 424.3, subsection 7, Code Supplement 1989, is amended by striking the subsection.

Sec. 12. Section 424.6, subsection 1, Code Supplement 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The department shall permit a credit against the charge due from a person operating an eligible underground bulk storage facility equal to the total volume of petroleum transferred or sold from a tank in bulk quantities and delivered to a person for deposit in a tank which is exempt, deferred, or excluded pursuant to this subsection, multiplied by the diminution rate multiplied by the cost factor, subject to rules adopted by the board. "Bulk quantities" as used in this paragraph means at least a portion of a standard tanker truck load. "Eligible underground bulk storage facility" means an underground bulk storage facility in operation on or before January 1, 1990.

Sec. 13. Section 424.7, subsection 4, Code Supplement 1989, is amended to read as follows:

4. Upon receipt of a payment pursuant to this chapter, the department shall deposit the moneys into the road use tax 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 312.1.

Sec. 14. Section 424.15, Code Supplement 1989, is amended to read as follows:

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 road use tax fund created in section 455G.3, and are limited by the total amount budgeted by the fund's board for charge refunds.

Sec. 15. Section 424.16, subsection 1, Code Supplement 1989, is amended to read as follows:

424.16 NOTICE OF CHANGE IN DIMINUTION RATE — SERVICE OF NOTICE.

1. a. The board shall notify each person who has previously filed an environmental protection charge return, and any other person known to the board who will owe the charge at any address obtainable for that person, at least ~~forty-five~~ thirty 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.~~

b. 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~~ thirty days in advance of the first day of the calendar quarter during which a change in paragraph "a" or "~~b~~" becomes effective.

Sec. 16. Section 455B.304, Code Supplement 1989, is amended by adding the following new unnumbered paragraphs:

NEW UNNUMBERED PARAGRAPH. The commission shall adopt rules providing for the land application of soils resulting from the remediation of underground storage tank releases in the state.

NEW UNNUMBERED PARAGRAPH. The commission shall adopt rules providing for the issuance of a certificate to the owner of an underground petroleum storage tank evidencing completion of a remediation action by cleaning the site to the then current action standards. The certificate shall be issued upon request of the owner if the department does not order further

remediation work to be performed within ninety days of the department's letter acknowledging compliance with current action standards. The certificate may be recorded with the county recorder to evidence completion of a remediation in the chain of title. A person issued a certificate shall not be required to perform further remediation solely because action standards are changed at a later date. The certificate shall not prevent the department from ordering remediation of a new release.

Sec. 17. Section 455G.2, subsection 13, paragraph c, Code Supplement 1989, is amended to read as follows:

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

Sec. 18. Section 455G.2, Code Supplement 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 15. "Third-party liability" means both of the following:

a. Property damage including physical injury to tangible property, but not including loss of use, other than costs to remediate.

b. Bodily injury including sickness, bodily injury, illness, or death.

Third-party liability does not include any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

Sec. 19. Section 455G.3, subsection 1, Code Supplement 1989, is amended to read as follows:

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 this section and sections ~~424.7~~ 423.24, 455G.8, 455G.9, 455G.10, 455G.11, and 455G.13, 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.

Sec. 20. Section 455G.6, subsection 4, Code Supplement 1989, is amended to read as follows:

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~~ revenues derived from the use tax imposed under chapter 423 and deposited in the fund or an account of the fund.

Sec. 21. Section 455G.8, subsection 2, Code Supplement 1989, is amended to read as follows:

2. ~~Environmental protection charge~~ Use tax. The ~~environmental protection charge~~ revenues derived from the use tax imposed under chapter 424 423. The proceeds of the ~~environmental protection charge~~ use tax 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.

Sec. 22. Section 455G.9, subsection 1, paragraph a, subparagraph (1), unnumbered paragraph 2, Code Supplement 1989, is amended to read as follows:

Total payments for claims pursuant to this subparagraph are limited to no more than six million dollars. Claims for eligible retroactive releases shall be prorated if claims filed in a permitted application period or for a particular priority class of applicants exceed six million dollars or the then remaining balance of 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.

Sec. 23. Section 455G.9, subsection 1, paragraph a, subparagraph (1), subparagraph subdivision (a), Code Supplement 1989, is amended by striking the subparagraph subdivision.

Sec. 24. Section 455G.9, subsection 1, paragraph a, subparagraph (2), Code Supplement 1989, is amended to read as follows:

(2) Corrective action, up to one million dollars total, and subject to prioritization rules as established pursuant to section 455G.12A, for a release reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990. Third-party liability is specifically excluded from remedial account coverage. Corrective action coverage provided pursuant to this paragraph may be aggregated with other financial assurance mechanisms as permitted by federal law to satisfy required aggregate and per occurrence limits of financial responsibility for both corrective action and third-party liability, if the owner's or operator's effective financial responsibility compliance date is prior to October 26, 1990.

Sec. 25. Section 455G.9, subsection 1, paragraph b, Code Supplement 1989, is amended to read as follows:

b. Corrective action and third-party liability for a release discovered on or after January 24, 1989, for which a responsible owner or operator able to pay cannot be found and for which the federal underground storage tank trust fund or other federal moneys do not provide coverage. For the purposes of this section property shall not be deeded or quitclaimed to the state or board in lieu of cleanup. Additionally, the ability to pay shall be determined after a claim has been filed. The board is not liable for any cost where either the responsible owner or operator, or both, have a net worth greater than fifteen thousand dollars, or where the responsible party can be determined.

Sec. 26. Section 455G.9, subsection 1, Code Supplement 1989, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. Corrective action for a release reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990, in connection with a tank owned or operated by a state agency or department which elects to participate in the remedial account pursuant to this paragraph. A state agency or department which does not receive a standing unlimited appropriation which may be used to pay for the costs of a corrective action may opt, with the approval of the board, to participate in the remedial account. As a condition of opting to participate in the remedial account, the agency or department shall pay all registration fees, storage tank management fees, environmental protection charges, and all other charges and fees upon all tanks owned or operated by the agency or department in the same manner as if the agency or department were a person required to maintain financial responsibility. Once an agency has opted to participate in the remedial program, it cannot opt out, and shall continue to pay all charges and fees upon all tanks owned or operated by the agency or department so long as the charges or fees are imposed on similarly situated tanks of a person required to maintain financial responsibility. The board shall by rule adopted pursuant to chapter 17A provide the terms and conditions for a state agency or department to opt to participate in the remedial account. A state agency or department which opts to participate in the remedial account shall be subject to the minimum copayment schedule of subsection 4, as if the state agency or department were a person required to maintain financial responsibility.

Sec. 27. Section 455G.9, subsection 2, Code Supplement 1989, is amended to read as follows:

2. REMEDIAL ACCOUNT FUNDING. The remedial account shall be funded by that portion of the proceeds of the ~~environmental protection charge~~ use tax imposed under chapter ~~424~~ 423 and other moneys and revenues budgeted to the remedial account by the board.

Sec. 28. Section 455G.9, subsection 3, Code Supplement 1989, is amended to read as follows:

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.~~

Sec. 29. Section 455G.10, subsection 1, Code Supplement 1989, is amended to read as follows:

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 derived from the use tax imposed under chapter 423 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.

Sec. 30. Section 455G.10, subsection 2, Code Supplement 1989, is amended to read as follows:

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.

Sec. 31. Section 455G.10, Code Supplement 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 3A. In calculating the net worth of an applicant for a loan guarantee, the board shall use the fair market value of any property on which a tank is sited, and not the precorrective action value required for recovery of gain upon later sale of the same property under section 455G.9, subsection 6.

Sec. 32. Section 455G.10, subsection 7, Code Supplement 1989, is amended to read as follows:

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.~~ In administering the program, the board shall periodically determine the necessary loan loss reserve needed and shall set aside the appropriate moneys in the loan loss reserve account for payment of loan defaults. This reserve shall be determined based on the credit quality of the outstanding guaranteed loans at the time that the reserve requirement is being determined. 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. 33. Section 455G.11, subsection 1, Code Supplement 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The source of funds for the insurance account shall be from the following:

a. Moneys allocated to the board or moneys allocated to the account by the board according to the fund budget approved by the board.

b. Moneys collected as an insurance premium including service fees, if any, and investment income attributed to the account by the board.

Sec. 34. Section 455G.11, subsection 3, paragraph c, Code Supplement 1989, is amended to read as follows:

c. The applicant certifies in writing to the board that the tank to be insured will be brought into compliance with either paragraph "a" or "b", on or before October 26, ~~1991~~ 1992, 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~~ 1992, shall not insure that tank through the insurance account unless and until the tank satisfies the requirements of paragraph "a" or "b".

Sec. 35. Section 455G.11, subsection 3, Code Supplement 1989, is amended by adding the following new paragraph:

NEW PARAGRAPH. d. The applicant either:

(1) Is maintaining financial responsibility pursuant to current or previously applicable federal or state financial responsibility requirements on petroleum underground storage tanks within the state.

(2) Complies with the applicable following date for financial responsibility:

(a) On or before April 26, 1990, for a petroleum marketing firm owning at least thirteen, but no more than ninety-nine petroleum underground storage tanks.

(b) On or before October 26, 1990, for an owner or operator not described in subparagraph subdivision (a), and not currently or previously required to maintain financial responsibility by federal or state law on tanks within the state.

Sec. 36. Section 455G.11, subsection 6, unnumbered paragraph 2, Code Supplement 1989, is amended to read as follows:

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, local fire marshal, ~~or state fire marshal's designee, or other person who is unaffiliated with the tank owner, operator, or installer, who is qualified and authorized by the board to perform the required inspection and that the tank and installation of the tank comply with applicable technical standards and manufacturer's instructions and warranty conditions.~~ An inspector 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 31, 1989. For the period from May 5, 1989,~~

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.

Sec. 37. Section 455G.11, Code Supplement 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 6A. The board shall provide for insurance coverage to be offered to installers for a tank installation certified pursuant to subsection 6, through at least one of the following methods:

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

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

Sec. 38. Section 455G.11, subsection 7, paragraph a, Code Supplement 1989, is amended to read as follows:

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. A personal injury is not a compensable third-party liability damage.

Sec. 39. Section 455G.11, Code Supplement 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 8. A person engaged in the wholesale or retail sale of petroleum shall receive a discount of eight percent on that person's annual insurance premium for all tanks located at a site which meets all of the following conditions:

a. The person maintains a tank for the purpose of storing waste oil.

b. The person accepts waste oil from the general public.

c. The person posts a notice at the site in a form and manner approved by the administrator advertising that the person will accept waste oil from the general public.

Sec. 40. **NEW SECTION. 455G.12A COST CONTAINMENT AUTHORITY.**

1. **VALIDITY OF CONTRACTS.** A contract in which one of the parties to the contract is an owner or operator of a petroleum underground storage tank, for goods or services which may be payable or reimbursable from the fund, is invalid unless and until the administrator has approved the contract as fair and equitable to the tank owner or operator, and found that the contract terms are within the range of usual and customary rates for similar or equivalent goods or services within the state, and found that the goods or services are necessary for the owner or operator to comply with fund or regulatory standards. An owner or operator may appoint the administrator as an agent for the purposes of negotiating contracts with suppliers of goods or services compensable by the fund. The administrator may select another contractor for goods or services other than the one offered by the owner or operator, if the scope of the proposed work or actual work of the offered contractor does not reflect the quality of workmanship required, or the costs are determined to be excessive.

2. **CONTRACT APPROVAL.** In the course of review and approval of a contract pursuant to this section, the administrator may require an owner or operator to obtain and submit three bids, provided that the administrator coordinates bid submission with the department. The administrator may require specific terms and conditions in a contract subject to approval.

3. **EXCLUSIVE CONTRACTS.** The administrator may enter into a contract or an exclusive contract with the supplier of goods or services required by a class of tank owners or operators in connection with an expense payable or reimbursable from the fund, to supply a specified good or service for a gross maximum price, fixed rate, on an exclusive basis, or subject to another contract term or condition reasonably calculated to obtain goods or services for

the fund or for tank owners and operators at a reasonable cost. A contract may provide for direct payment from the fund to a supplier.

The administrator may retain, subject to board approval, an independent person to assist in the review of work required in connection with a release or tank system for which fund benefits are sought, and to establish prevailing cost of goods and services needed. Nothing in this section is intended to preempt the regulatory authority of the department.

Sec. 41. Section 455G.17, subsections 1 and 2, Code Supplement 1989, are amended to read as follows:

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, or other person unaffiliated with the tank owner, operator, or installer.

2. The board shall adopt approved ~~curricula~~ curriculum for training both engineers and fire marshals or other unaffiliated persons as a precondition to their certification as underground storage tank installation inspectors.

Sec. 42. Section 558.69, unnumbered paragraph 1, Code 1989, is amended to read as follows:

With each declaration of value submitted to the county recorder under chapter 428A, there shall also be submitted a statement that no known wells are situated on the property, or if known wells are situated on the property, the statement must state the approximate location of each known well and its status with respect to section 159.29 or 455B.190. The statement shall also state that no known disposal site for solid waste, as defined in section 455B.301, which has been deemed to be potentially hazardous by the department of natural resources, exists on the property, or if such a known disposal site does exist, the location of the site on the property. The statement shall additionally state that no known underground storage tank, as defined in section 455B.471, subsection 6, exists on the property, or if a known underground storage tank does exist, the type and size of the tank, and any known substance in the tank. The statement shall also state that no known hazardous waste as defined in section 455B.411, subsection 4, or listed by the department pursuant to section 455B.412, subsection 2, or section 455B.464, exists on the property, or if known hazardous waste does exist, that the waste is being managed in accordance with rules adopted by the department of natural resources. The statement shall be signed by at least one of the sellers or their agents. The county recorder shall refuse to record any deed, instrument, or writing for which a declaration of value is required under chapter 428A unless the statement required by this section has been submitted to the county recorder. A buyer of property shall be provided with a copy of the statement submitted, and, following the fulfillment of this provision, if the statement submitted reveals no well, disposal site, underground storage tank, or hazardous waste on the property, the county recorder may destroy the statement. The land application of sludges or soils resulting from the remediation of underground storage tank releases accomplished in compliance with department of natural resources rules without a permit is not required to be reported as the disposal of solid waste or hazardous waste.

Sec. 43.

Provided that amounts reserved for the retroactive portion of the remedial account claims pursuant to section 455G.9, subsection 1, paragraph "a", subparagraph (1), do not exceed six million dollars, the administrator shall from the effective date of this Act, through September 1, 1990, reopen applications previously received but denied based upon section 455G.9, subsection 1, paragraph "a", subparagraph (1), subparagraph subdivision (a), Code Supplement 1989, which subparagraph subdivision is repealed by this Act, and may accept new applications under section 455G.9, subsection 1, paragraph "a", subparagraph (1) for that period. If claims

reopened or received exceed the remaining balance of unobligated or unreserved funds of the six million dollars, the remaining balance shall be prorated among the reopened and newly received claims. If claims remain partially or totally unpaid after total payments under the retroactive portion of the remedial account exceed six million dollars, all remaining claims are void, and no entitlement exists for further payment. If claims paid pursuant to this section do not exceed the remaining balance of unobligated or unreserved funds of the six million dollars, the remaining balance shall be distributed among the claims accepted for payment which were submitted on or before January 31, 1990, by increasing the allowable percentage of payment contained in section 455G.9, subsection 1, paragraph "a", subparagraph (1) by an amount necessary to reduce the remaining balance of the six million dollars allocated for retroactive claims to zero.

Sec. 44.

In response to concerns over the cost of recurring liability due to regulatory uncertainty and the threat of continued liability in connection with prior contamination after conducting a remediation action or tank closure consistent with current action standards, the petroleum underground storage tank board, in consultation with the state attorney general and the department of natural resources, shall assess state and federal laws regarding liability for site remediation and third-party liability in connection with underground storage tanks. Based on this assessment, the board shall identify whether it is desirable and appropriate to define limits to liability among parties involved in the purchase or transfer of property which has been subject to a remediation action or tank closure consistent with action standards at the time of the action or tank closure. Any recommendations of the board shall be incorporated into a written report and the written report shall be submitted to the general assembly on or before January 15, 1991. The report shall include a discussion of the financial implications of any proposals, including, but not limited to, any risk that the state would incur if the state would assume some portion of the liability to pay for future remedial action due to a change in regulatory action standards.

Sec. 45.

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

Approved May 2, 1990

CHAPTER 1236

LAND SURVEYS AND PLATS

H.F. 724

AN ACT relating to the survey of land including the practice of land surveying and the preparation, recording, and vacation of plats, and subjecting violators to civil penalties.

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

Section 1. **NEW SECTION. 114A.1 DEFINITIONS.**

As used in this chapter unless the context otherwise requires:

1. "Corner" means a point at which two or more lines meet.
2. "Division" means dividing a tract or parcel of land into two parcels of land by conveyance or for tax purposes. The conveyance of an easement, other than a public highway easement, shall not be considered a division for the purpose of this chapter.
3. "Government lot" means a tract, within a section, which is normally described by a lot number as represented and identified on the township plat of the United States public land survey system.