

F I N A L R E P O R T

## UNDERGROUND STORAGE TANK INSURANCE STUDY COMMITTEE

January, 1988

The Underground Storage Tank Insurance Interim Study Committee was mandated by House File 631, section 603. The Legislative Council charged the committee to meet within thirty days following the issuance of the September 15, 1987 Plan of Operations report, prepared by the Department of Commerce, pursuant to House File 631. The committee was required to prepare specific legislation for the implementation of the Underground Storage Tank Insurance program for submission to the Legislature by January 1, 1988.

The following members were appointed:

Senator Michael E. Gronstal, Council Bluffs, Co-chairperson  
Representative Jack Hatch, Des Moines, Co-chairperson  
Senator Dale L. Tieden, Elkader  
Representative Donald J. Paulin, Le Mars  
Doris Meyers, Iowa City  
David Smitherman, Des Moines

MEETING DAYS

The Interim study Committee was authorized two meetings which were held on September 29, 1987, and November 18, 1987.

PRESENTATIONS

On September 29, 1987, the following presentations were made to the Interim Study Committee:

1. Mr. William D. Hager, Iowa Commissioner of Insurance. Commissioner Hager discussed the work of the Advisory Committee mandated by House File 631 and presented the Advisory Committee's September 15, 1987 report, which included the following four subcommittee reports:

1. Data collection;
2. Exemptions from proof of financial responsibility;
3. Other states' handling of the issues; and
4. Mechanisms available to show compliance with federal regulations.

2. Mr. Peter Hamlin, Department of Natural Resources employee, and chairperson of the data collection subcommittee of the

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advisory committee. Mr. Hamlin explained the data collection subcommittee's work, reported on the 28,000 plus registered underground storage tanks and estimated 10,000 unregistered tanks, and described the Department of Natural Resource's experience to date on cleanup.

3. Mr. Sammy Ng, Chief of the Underground Storage Tank branch of the United States Environmental Protection Agency. Mr. Ng explained the applicable federal statutes and proposed rules, including the Resource Conservation and Recovery Act and proposed rules on underground storage tank financial responsibility.

4. Mr. Ed Kistenmacher, representative of the Petroleum Marketers of Iowa, discussed his group's composition and views on the best mechanisms available for Iowa to comply with federal requirements.

5. Mr. Dave Long, of the Iowa League of Municipalities, who discussed municipalities' liability under the federal law, and dependence upon the Legislature to guard against large losses.

6. Mr. Jack Soener, expressed interest in self-insurance as an alternative form of proof of financial responsibility.

7. Mr. Doug Johnson, of AMOCO, stated that his company does not oppose Minnesota-type legislation providing for a state insurance fund, even though AMOCO currently self-insurers.

On November 18, 1987, the following presentations were made to the Interim Study Committee:

1. Mr. William D. Hager, Commissioner of Insurance, Iowa Division of Insurance. Commissioner Hager introduced the actuaries that were contracted, upon instructions given at the Interim Study Committee's first meeting, to conduct a study based upon a bill draft resulting from the work of the advisory committee.

2. Mr. Al Beers and Ms. Amy Bouska, actuaries of Tillinghast, a Towers Perrin Company. The actuaries presented the actuarial report on the current extent of the problem and cost estimates for a proposed comprehensive underground petroleum storage tank fund based on a proposed bill.

3. Ms. Myra R. Anderson, of Environmental Insurance Management of McLean, Virginia. Ms. Anderson argued the appropriate role of government should not totally displace all possibilities of private insurance market involvement in the environmental impairment insurance of petroleum underground storage tanks.

4. In answer to questions put to him by the committee at the first meeting, Mr. Ed Kistenmacher, spokesperson, Petroleum Marketers of Iowa, presented a survey of ownership and operation of all the gas stations located in Jasper County.

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5. Pete Hamlin submitted written answers to questions addressed to the DNR at the first meeting of the committee. A copy of these materials has been provided to committee members and is available upon request from the Legislative Service Bureau. The questions addressed include:

- a. A list of tank manufacturers and the type of warranty offered.
- b. Existing installation procedures and standards.
- c. The names of qualified tank installers.

#### RECOMMENDATIONS AND TOPICS FOR FURTHER RESEARCH

The Committee recommended the following:

1. No exemptions from the fund be made for any specific class of owners or operators of underground petroleum storage tanks.

2. Ambiguous language in House File 631 should be corrected to clarify that one million dollars in financial responsibility is required for corrective action and third-party liability in the aggregate; not one million dollars for each classification of liability.

3. Following the recommendation of the advisory committee, the interim study committee recommended use of the state fund mechanism to comply with the requirements of federal statutes and rules. The study committee rejected other alternative mechanisms presented by the advisory committee as impractical or infeasible.

4. Recommended clarification of the impact on chain of title of the signed affidavit required by House File 631 upon transfer of property regarding the existence of an underground storage tank upon the property to be transferred.

5. Legislative investigation was recommended to explore the imposition of limits upon where a tank may be installed or of regulation and licensing of qualified underground storage tank installers.

6. The Committee encouraged flexibility in light of the possibility of change at the federal level.

7. The Committee requested an actuarial study through the Insurance Division to look at liability and cleanup coverage options based on the Minnesota approach. The actuaries were asked to examine the impact of exemptions on such a program, like the exclusion of likely self-insurers. The report is to be prepared in six weeks time. Different levels of deductibility are to be included from a minimum of \$20,000 to maximum range of \$100,000. The study is to be based on the state fund option, like Minnesota, and premised upon the projected EPA rules. The constitutionality of the Minnesota type fee was raised as an issue for resolution.

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The Committee made the following decisions based upon the issues presented in the draft bill and the decision package assembled to accompany the first actuarial report presented at the second meeting of the committee in response to recommendation 7, above.

8. Third party liability coverage should be included in the state fund. Reasons for reaching this conclusion included: third party coverage is required for a qualifying state program under the proposed EPA rules; savings by excluding third party liability coverage were estimated to be only about one seventh (1/7) of the estimated cost of the program, thus making savings from excluding third party liability minimal compared to the possible unplanned legal exposure for the fund and the difficulties with EPA rules.

9. The level of the deductible will be \$20,000 in the bill reported to the general assembly. The committee selected the lowest of the three deductible levels considered by the actuary's report. The committee did recommend that future actuary projections continue to be run with information for deductibles of \$20,000, \$50,000, and \$100,000 to aid in the decision making process, and cautioned that \$20,000 may prove to be too low if the second actuarial report reflects premiums which are too high at that level of deductible.

10. The deductible may be on a per site basis or per tank basis within the rulemaking discretion of the fund's managing board to facilitate operational considerations, including paralleling final federal rules. The board may define "site" as necessary by rule. The committee discussed a single site in terms to include the average gas station with three to four tanks on a contiguous plot of land, and recognized the scale proposed under the federal rules.

11. An owner or operator unable to prove financial responsibility up to the level of its required deductible would be able to apply to the fund for coverage for the deductible under certain conditions, including a requirement that the owner or operator is not currently insolvent and would not become insolvent by being required to pay the deductible. The committee selected the more stringent insolvency test to protect the fund against accumulating substantial amounts of uncollectible deductibles.

12. The committee decided to instruct the fund administrator to develop a risk factor model granting most favorable rates to owners or operators with state-of-the-art installations and risk management practices, but decided, after discussion, not to define the current state-of-the-art installation as "tanks with secondary containment consisting of double wall construction and provided with a device to monitor the interstitial space between the secondary and primary containment structures." The actuary will be requested to construct a model or sample risk factor model to demonstrate the range of premiums that might be expected for the worst and best risks.

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13. The composition of the public governing board responsible for the fund's policies and for contracting the professional fund administrator was recommended to be:

- 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 representatives from the petroleum industry appointed by the governor to staggered four-year terms.

The composition parallels the three major interest groups of state government involved in the fund and includes representatives of the major regulated industry.

14. The fund's operating philosophy will be to clean up first and find responsible parties to pay for the costs of cleanup later. This policy avoids any delays in cleanup while potential liable parties argue about who should pay and for what while a leaking tank may continue to leak, causing more damage, and increasing the total costs of corrective action.

15. A treble damages punitive damages provision was adopted by the committee to provide strong incentive to both register tanks and report known leaks upon discovery.

16. A low-interest loan program was adopted as part of the proposed legislation to assist small business tank owners or operators in replacing and upgrading underground tank facilities to allow them to more readily comply with and enjoy the benefits of the underground petroleum storage tank fund. A small business for the purposes of this program means an independently owned and operated business owning or operating one, but no more than ten petroleum underground storage tanks.

17. A sunset provision requires review of the program in fifteen years to evaluate its effectiveness and continued need in light of then current conditions. This provision was primarily included on the belief that while private insurance is not a currently viable option, it may become so over time. The actuarial experience under the proposed EPA rules and various approved state programs should provide private insurers predictable, and thus insurable, risks in the future.

18. By record roll call vote the committee voted to report the draft bill to the legislature with no recommendation.

Voting for reporting the bill with no recommendation:

Representative Jack Hatch  
Senator Dale Tieden  
Ms. Doris Meyers  
Mr. David Smitherman

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Voting against reporting the bill with no recommendation:

Senator Michael Gronstal

A copy of the proposed bill is attached.

The chair encouraged members to submit additional information or questions for the actuary's second report prior to preparation of the committee's final report.

REQUESTS DIRECTED TO THE ACTUARIES

The committee or committee members made the following requests to be answered by the actuaries as part of the second actuary report:

1. Rerun the model using the final bill draft for direction.
2. Construct a sample risk factor model to adjust premiums based upon the risk presented by the individual applicant, with the most favorable premiums offered to owners or operators with state-of-the-art installations and risk management practices. The risk factor model should have sufficient incentives to encourage adoption of better technology and techniques sooner. Incentives for upgrading facilities must recognize lifetime costs.
3. Provide examples of deductibles on a per site basis with various definitions of "site" as discussed in the minutes, including an example conforming with the federal scale, and one defining a site as 0-3 tanks on a contiguous plot, 4-7 tanks, etc. . . . Make recommendations on feasibility of per site provision. Highlight considerations in per tank, per site, and per owner debate.
4. Continue to show deductible examples at levels of \$20,000, \$50,000, and \$100,000.
5. Consider information provided by committee member David Smitherman from the American Petroleum Institute, particularly in response to EPA leak estimates. Do these studies alter the actuarial conclusion of an 18% leak rate presented in the first actuarial report? Why or why not?
6. Can a more realistic, or less conservative, estimate be developed of the rate at which claims will be paid out, thus providing a higher rate of investment income to the fund? i.e., Estimate possible discounts to premiums available given reasonable investment income estimates.
7. Plot the cost curve out beyond five years to estimate when the curve will peak and the shape of the downward side of the curve assuming first just monitoring, as in the first actuarial

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report. In a second plot, assume the board or the state will impose reasonable rules as a condition of coverage such as requiring state-of-the-art installations when replacing tanks. Detail possible proposals considered in light of the committee's discussion of technical regulations.

8. Develop, if possible, distinctions between the effectiveness of various types of monitoring systems and distinctions between leak probability of various types of tanks, such as cathodic protection, coated, double wall, fiberglass. Explore the implications of the required use of better systems on short run cost estimates and long run cost estimates for the fund. How well will the fund be doing in ten to fifteen years with just monitoring, and subsequent replacements following current practices, and how well could the fund be doing in the same time frame with altered assumptions. (Recognize potential difficulty in finding sources to compare the effectiveness of types of tanks and monitoring systems).

9. Confirm in writing the estimate of potential savings from exclusion of third-party liability.

10. Estimate the impact upon the fund's costs if the superfund minimum is reduced from \$1,000,000 to \$750,000.

11. In response to the committee's request for individual members to submit additional questions for consideration by the actuary, David Smitherman made the following requests in company with providing copies of studies requested by Representative Hatch during the second meeting:

- a. Suggest definitions of "corrective action" and "third-party liability" if the fund does distinguish between the two.
- b. Respond to the API studies provided for the actuaries' consideration.
- c. Estimate fees, premiums, and costs of a program similar to Virginia's which provides for a deductible of \$100,000 for corrective action and \$300,000 for third-party liability, with the option of applying to a premium driven state pool for coverage of the deductible, but permitting self-insurance for the deductible for those who are able. This question is intended to provide a cost comparison with the program presented to the Committee and passed without recommendation. The solvency of the pool would be guaranteed by a fee imposed on all petroleum underground storage tanks. The fee would also guarantee and fund a second fund providing universal coverage of petroleum underground storage tanks above the deductibles up to the superfund minimum. This separate fee driven fund would provide coverage between the deductible amounts and \$1,000,000, with no exemptions. The fund would also pay for unregistered tanks when a responsible party cannot be identified or is unable to pay the costs of clean-up and third-party liability.

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HOUSE FILE \_\_\_\_\_  
BY (PROPOSED UNDERGROUND STORAGE  
TANK INSURANCE INTERIM STUDY  
COMMITTEE BILL)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to underground storage tanks, establishing  
2 certain fees, and providing penalties.

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

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1 Section 1. Section 455B.471, subsection 5, Code 1987, is  
2 amended to read as follows:

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

7 Sec. 2. Section 455B.471, Code 1987, is amended by adding  
8 the following new subsections:

9 NEW SUBSECTION. 8. "Corrective action" means an action  
10 taken to minimize, eliminate, or cleanup a release to protect  
11 the public health and welfare or the environment.

12 NEW SUBSECTION. 9. "Fund" means the Iowa comprehensive  
13 petroleum underground storage tank fund established in section  
14 455B.479B.

15 NEW SUBSECTION. 10. "Board" means the Iowa comprehensive  
16 petroleum underground storage tank fund board established in  
17 section 455B.479C.

18 Sec. 3. Section 455B.474, subsection 1, paragraph d, Code  
19 Supplement 1987, is amended to read as follows:

20 d. Taking corrective action in response to a release or  
21 threatened release from an underground storage tank including  
22 appropriate testing of drinking water which may be  
23 contaminated by the release. The corrective action rules  
24 shall enable the director to order an owner or operator to  
25 immediately take all corrective actions deemed reasonable and  
26 necessary by the director.

27 Sec. 4. Section 455B.474, subsection 2, unnumbered  
28 paragraph 1, Code Supplement 1987, is amended to read as  
29 follows:

30 The maintenance of evidence of financial responsibility as  
31 the director determines to be feasible and necessary for  
32 taking corrective action and for compensating third parties  
33 for bodily injury and property damage caused by release of a  
34 regulated substance from an underground storage tank, except  
35 an underground storage tank containing petroleum.

1     Sec. 5. Section 455B.477, Code 1987, is amended by adding  
2 the following new subsection:

3     NEW SUBSECTION. 6. The civil penalties recovered by the  
4 state under this part of this division shall be credited to  
5 the fund.

6     Sec. 6. NEW SECTION. 455B.479A PETROLEUM UNDERGROUND  
7 STORAGE TANK FINANCIAL RESPONSIBILITY.

8     1. AGGREGATE FINANCIAL RESPONSIBILITY. An owner or  
9 operator of an underground storage tank containing petroleum  
10 shall annually demonstrate evidence of financial  
11 responsibility in the aggregate amount set by rule under  
12 subsection 6 or one million dollars, whichever is less, to  
13 cover corrective action and third-party bodily injury and  
14 property damage costs for a release from the underground  
15 storage tank. The board may provide by rule the basis on  
16 which financial responsibility shall be required, including  
17 but not limited to, uniformity with federal rules, or a basis  
18 per tank, per site, per owner, or per specified number of  
19 tanks, or some combination of any or all reasonable bases as  
20 the board determines is appropriate for efficient  
21 administration, practical actuarial calculations, and to  
22 accomplish the purposes of this part of this division. The  
23 board may define "site" or other terms as necessary.

24     2. MINIMUM FINANCIAL RESPONSIBILITY, THE "DEDUCTIBLE".  
25 The owner or operator shall demonstrate to the board evidence  
26 of financial responsibility in the amount of not less than  
27 twenty thousand dollars to cover corrective action and third-  
28 party bodily injury and property damage costs through the use  
29 of one or more of the following financial assurance  
30 mechanisms:

- 31     a. Self-insurance.
- 32     b. Guarantee.
- 33     c. Indemnity contract.
- 34     d. Insurance.
- 35     e. Risk retention group coverage.

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1 f. Letter of credit.

2 g. The Iowa comprehensive petroleum underground storage  
3 tank fund.

4 h. Governmental risk pool.

5 The board shall provide by rule that the deductible or  
6 minimum financial responsibility requirement of this  
7 subsection shall be on the same basis as provided for under  
8 subsection 1.

9 3. APPLICATION TO BOARD FOR FUND COVERAGE ABOVE THE  
10 DEDUCTIBLE. To meet the aggregate financial responsibility  
11 requirement of subsection 1, the owner or operator may apply  
12 to the board for coverage above the deductible under  
13 subsection 2, up to the lesser of one million dollars in the  
14 aggregate per occurrence, or the amount provided for under  
15 subsection 6.

16 4. APPLICATION TO BOARD FOR FUND COVERAGE OF THE  
17 DEDUCTIBLE. The owner or operator may apply to the board to  
18 have the fund provide coverage of the deductible and aggregate  
19 financial responsibility as the sole financial assurance  
20 mechanism without the owner or operator having met the minimum  
21 financial responsibility requirement of subsection 2 only if  
22 all of the following requirements are met:

23 a. The owner or operator demonstrates that it has been  
24 unable to establish the minimum financial responsibility  
25 required by subsection 2 and has made every reasonable attempt  
26 to secure coverage from at least two of the financial  
27 assurance mechanisms in subsection 2.

28 b. The owner or operator meets the guidelines for health,  
29 safety, and the public welfare required by law.

30 c. The owner or operator cooperates fully with the board  
31 during the application and investigation process and provide  
32 all documentation and records requested by the board.

33 d. The owner or operator consents to on-site inspection of  
34 the underground storage tank sought to be covered.

35 e. The owner or operator is not insolvent and would not

1 become insolvent by being required to pay the minimum amount  
2 of financial responsibility required by subsection 2.

3 f. Any other reasonable requirements set by the board.

4 5. THE BOARD MAY REFUSE FUND COVERAGE. The board reserves  
5 the right to refuse fund coverage, whether in combination with  
6 any other financial assurance mechanism or as the sole  
7 financial assurance mechanism to those owners or operators who  
8 fail to meet statutory standards and rules adopted by the  
9 board.

10 6. LIMITS OF FUND COVERAGE. The board may approve  
11 coverage up to a maximum of one million dollars in the  
12 aggregate per occurrence, but if the minimum amount for which  
13 federal superfund coverage is provided is less than one  
14 million dollars, the board may provide for a lesser level of  
15 coverage by the fund consistent with the availability of  
16 federal funds.

17 7. FUND COVERAGE ON ACTUARIALLY SOUND BASIS, WITH RISK  
18 FACTOR ADJUSTMENT. The board may only approve fund coverage  
19 through the payment of a premium established on an actuarially  
20 sound basis. Risk factors shall be taken into account in  
21 establishing premiums for individual underground storage  
22 tanks. Among other risk factors to be considered in  
23 establishing premiums for coverage, the most favorable reduced  
24 premiums shall be offered to state-of-the-art underground  
25 storage tanks and risk management practices.

26 Sec. 7. NEW SECTION. 455B.479B IOWA COMPREHENSIVE  
27 PETROLEUM UNDERGROUND STORAGE TANK FUND.

28 The Iowa comprehensive petroleum underground storage tank  
29 fund is established in accordance with federal law as a  
30 financial assurance mechanism to assist in corrective action  
31 and the payment of third-party bodily injury and property  
32 damage liability costs resulting from the accidental release  
33 of petroleum from underground storage tanks. The fund is  
34 established as a separate fund in the state treasury, and any  
35 funds remaining in the fund at the end of each fiscal year

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1 shall not revert to the general fund but shall remain in the  
2 Iowa comprehensive petroleum underground storage tank fund.

3 Sec. 8. NEW SECTION. 455B.479C GOVERNING BOARD.

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

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

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

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

12 d. Two representatives from the petroleum industry  
13 appointed by the governor to staggered four-year terms.

14 The filling of positions reserved for industry  
15 representatives, vacancies, membership terms, payment of  
16 compensation and expenses, and removal of members are governed  
17 by chapter 69. The members shall elect a chairperson of the  
18 board.

19 2. DEPARTMENT OF NATURAL RESOURCES STAFF SUPPORT. The  
20 director of the department of natural resources shall provide  
21 staff to support the activities of the board.

22 3. REQUIRED RULES AND EMERGENCY RULES.

23 a. The board shall adopt rules regarding its practice and  
24 procedures, the form and procedure for application for  
25 financial responsibility certification, development of  
26 underwriting standards, establishment of premiums to be  
27 charged for coverage from the fund, risk factors, procedures  
28 for investigating claims, determination of the basis for the  
29 deductible or minimum financial responsibility requirement of  
30 section 455B.479A, subsection 1, paragraph "a", and  
31 establishment of guidelines outlining the coverage available  
32 from the fund.

33 b. The board may adopt administrative rules under section  
34 17A.4, subsection 2, and section 17A.5, subsection 2,  
35 paragraph "b", to implement this subsection for one year after

1 the effective date of this section.

2 4. PROFESSIONAL ADMINISTRATOR OF FUND. The board shall  
3 employ a professional administrator to manage the fund as an  
4 independent contractor. The professional administrator must  
5 have had insurance or actuarial experience and must  
6 demonstrate management abilities consistent with the  
7 responsibility of managing the fund.

8 Sec. 9. NEW SECTION. 455B.479D FUND'S REVENUE SOURCES.

9 Revenue from the following sources shall be deposited in  
10 the state treasury and credited to the fund:

11 1. Premiums collected for coverage provided by the fund.

12 2. The proceeds from the fee imposed in section 455B.479E.

13 3. Money recovered under sections 455B.477 and 455B.479G,  
14 including administrative expenses, civil penalties, and money  
15 paid under an agreement, stipulation, or settlement.

16 4. Interest attributable to investment of money in the  
17 fund.

18 5. Money received by the board and department in the form  
19 of a gift, bequest, donation, federal grant, grant other than  
20 a federal grant, reimbursement, or appropriation from any  
21 source intended to be used for the purposes of the fund.

22 Sec. 10. NEW SECTION. 455B.479E PETROLEUM TANK FEE.

23 The legislature hereby declares that the storage fees  
24 imposed by this section do not constitute a tax and are not  
25 collected for purposes of increasing state revenues pursuant  
26 to section 30 of Article III or section 7 of Article VII of  
27 the Iowa Constitution.

28 1. GUARANTEE OF FUND'S FINANCIAL SOLVENCY. The board  
29 shall notify the director of revenue and finance if the  
30 unexpended balance of the fund falls below five million  
31 dollars, and the director of revenue and finance shall impose  
32 the fee established in subsection 2 on the use of an  
33 underground storage tank containing petroleum for a thirty-day  
34 period, within sixty days of receiving notice from the board.

35 2. IMPOSITION OF COMPREHENSIVE PETROLEUM UNDERGROUND

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1 STORAGE TANK FEE. A comprehensive petroleum underground  
2 storage tank fee is imposed on the use of underground storage  
3 tanks containing petroleum subject to the fee charged in  
4 section 455B.479. The petroleum tank fee shall be collected  
5 in the same manner provided for the storage tank management  
6 fee under section 455B.479. The board shall adopt rules to  
7 minimize duplication, as much as possible, of forms used for  
8 the collection of the two fees. The fee shall be imposed, as  
9 required under subsection 1 or section 455B.479I, at a rate of  
10 twenty dollars per one thousand gallons of petroleum, which is  
11 a regulated substance as defined in section 455B.471,  
12 subsection 4, rounded to the nearest one thousand gallons. A  
13 distributor as defined by section 324.2, subsection 2, who  
14 fails to pay the fee imposed under this section is subject to  
15 the penalties provided in section 455B.477.

16 3. UNEXPENDED BALANCE RETAINED IN THE FUND. Any  
17 unexpended balance in the fund at the end of the fiscal year  
18 shall be retained in the fund.

19 Sec. 11. NEW SECTION. 455B.479F DISBURSEMENTS.

20 Money in the fund may only be expended for the following  
21 purposes:

22 1. To administer the comprehensive petroleum underground  
23 storage tank program established in this part of this  
24 division, including but not limited to, payment of the  
25 professional administrator on an independent contract basis.

26 2. To take corrective action for a release of petroleum  
27 into the environment from an underground storage tank for  
28 which coverage has been extended by the fund, up to the amount  
29 of coverage extended, but in no case to exceed the lesser of  
30 one million dollars in the aggregate per occurrence or the  
31 amount provided for under section 455B.479A, subsection 6.

32 3. To compensate a third party, including payment of a  
33 judgment for bodily injury or property damage caused by  
34 release of petroleum into the environment from an underground  
35 storage tank, where coverage has been provided to an owner or

1 operator by the fund, up to the amount of coverage extended,  
2 but in no case to exceed the lesser of one million dollars in  
3 the aggregate per occurrence or the amount provided for under  
4 section 455B.479A, subsection 6.

5 4. For the cost of corrective action up to the lesser of  
6 one million dollars in the aggregate per occurrence or the  
7 amount provided for under section 455B.479A, subsection 6, for  
8 a release of petroleum into the environment from an  
9 underground storage tank if one of the following requirements  
10 is met:

11 a. The owner or operator cannot be identified by the board  
12 within ninety days of report of the release to the department.

13 b. The owner or operator is incapable, in the judgment of  
14 the board, of carrying out the reasonable and required  
15 corrective action.

16 5. To fund the petroleum underground storage tank  
17 financing account established pursuant to chapter 455D.

18 Sec. 12. NEW SECTION. 455B.479G COST RECOVERY  
19 ENFORCEMENT.

20 1. GENERAL RULE, RECOVERY SOUGHT FROM OWNER OR OPERATOR.

21 The board shall seek recovery from the owner or operator of  
22 the underground storage tank which released the petroleum and  
23 which is the subject of the corrective action for all costs or  
24 moneys expended from the fund under section 455B.479F.

25 2. EXCEPTION TO GENERAL RULE, LIABILITY OF OWNER OR  
26 OPERATOR NOT TO EXCEED DEDUCTIBLE. Except as provided in  
27 subsection 1, the liability of an owner or operator shall not  
28 exceed the minimum financial responsibility requirement  
29 imposed in section 455B.479A, subsection 2.

30 3. OWNER OR OPERATOR NOT IN COMPLIANCE WITH MINIMUM  
31 FINANCIAL RESPONSIBILITY REQUIREMENTS SUBJECT TO FULL AND  
32 TOTAL COST UNDER GENERAL RULE. Notwithstanding subsection 2,  
33 the liability of an owner or operator shall be the full and  
34 total costs of corrective action and for bodily injury or  
35 property damage to third parties specified in subsection 1 if



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1 the owner or operator has not complied with the requirements  
2 of section 455B.479A.

3 4. TREBLE PUNITIVE DAMAGES FOR CERTAIN VIOLATIONS.

4 Notwithstanding subsection 2, the owner or operator, or both,  
5 of an underground storage tank may be liable to the fund for  
6 punitive damages in an amount equal to three times the amount  
7 of any cost incurred or moneys expended by the fund as a  
8 result of a release of petroleum from the underground storage  
9 tank if the owner or operator did one of the following:

10 a. Failed, without sufficient cause, to respond to a  
11 release of petroleum from the underground storage tank upon,  
12 or in accordance with, a notice issued by the director.

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

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

18 (2) Intentionally failed to report a known release.

19 The punitive damages imposed under this subsection shall be  
20 in addition to any costs or expenditures recovered from the  
21 owner or operator pursuant to this section and in addition to  
22 any other penalty or relief provided by this part or any other  
23 law.

24 5. JOINDER OF PARTIES. Upon motion and sufficient showing  
25 by a party, the court or the department shall join to the  
26 action any person who may be liable for costs and expenditures  
27 of the type recoverable pursuant to this section.

28 6. EXCEPTION TO RULE OF JOINT AND SEVERAL LIABILITY. A  
29 party found liable for any costs or expenditures recoverable  
30 under this section, who establishes by a preponderance of the  
31 evidence that only a portion of those costs or expenditures is  
32 attributable to that party's actions, shall pay only for that  
33 portion.

34 7. APPLICATION OF EQUITABLE PRINCIPLES IF INSUFFICIENT  
35 PROOF TO APPORTION COSTS OR EXPENDITURES. If the trier of

1 fact finds the evidence insufficient to establish each party's  
2 portion of costs or expenditures pursuant to subsection 6, the  
3 court shall apportion those costs or expenditures among the  
4 defendants, to the extent practicable, according to equitable  
5 principles.

6 8. PAYMENT OF COSTS OR EXPENDITURES ABOVE AMOUNT  
7 APPORTIONED. The fund shall pay any portion of the judgment  
8 in excess of the aggregate amount of costs or expenditures  
9 apportioned under subsection 6 or subsection 7.

10 9. STRICT LIABILITY. The standard of liability for any  
11 costs recoverable pursuant to this part of this division is  
12 strict liability.

13 10. THIRD-PARTY CONTRACTS NOT BINDING ON BOARD,  
14 PROCEEDINGS AGAINST RESPONSIBLE PARTY. No insurance,  
15 indemnification, hold harmless, conveyance, or similar risk-  
16 sharing or risk-shifting agreement shall be effective to  
17 transfer any liability for costs recoverable under this  
18 section. The fund may proceed directly against the owner or  
19 operator or other allegedly responsible party. This section  
20 does not bar any agreement to insure, hold harmless, or  
21 indemnify a party to the agreement for any costs or  
22 expenditures under this chapter, and does not modify rights  
23 between the parties to an agreement.

24 11. LATER PROCEEDINGS PERMITTED AGAINST OTHER PARTIES.  
25 The entry of judgment against a party to the action does not  
26 bar a future action by the board against another person who is  
27 later alleged to be or discovered to be liable for costs and  
28 expenditures paid from the fund. Subsequent successful  
29 proceedings against another party shall not modify or reduce  
30 the liability of a party against whom judgment has been  
31 previously entered.

32 12. UPON PAYMENT OF CLAIM, BOARD ACQUIRES SUBROGATION  
33 RIGHTS. Payment of a claim by the fund pursuant to this part  
34 of this chapter shall be conditioned upon the board acquiring  
35 by subrogation the rights of the claimant to recover those

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1 costs and expenditures for corrective action for which the  
2 fund has compensated the claimant, from the person responsible  
3 or liable for the unauthorized release. A claimant is  
4 precluded from receiving double compensation for the same  
5 injury.

6 Sec. 13. NEW SECTION. 455B.479H FUND NOT PART OF THE  
7 IOWA INSURANCE GUARANTY ASSOCIATION.

8 Notwithstanding any other provisions of law to the  
9 contrary, the Iowa comprehensive underground storage tank fund  
10 shall not be considered an insurance company or insurer under  
11 the laws of this state and shall not be a member of nor be  
12 entitled to claim against the Iowa insurance guaranty  
13 association created under chapter 515B.

14 Sec. 14. NEW SECTION. 455B.479I INITIAL FUNDING FOR  
15 COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND.

16 To provide the initial funding for the comprehensive  
17 petroleum underground storage tank fund, the director of  
18 revenue and finance shall impose the fee established in  
19 section 455B.479E, subsection 2, for the months of July and  
20 August 1988 and for the months of July and August 1989. The  
21 fee shall be collected for 1988 during the months of August  
22 and September 1988, and the fee shall be collected for 1989  
23 during the months of August and September 1989.

24 Sec. 15. NEW SECTION. 455D.1 LOANS FOR REPAIR OR  
25 REPLACEMENT OF PETROLEUM UNDERGROUND STORAGE TANKS.

26 This chapter shall be titled, "Loans for Repair or  
27 Replacement of Petroleum Underground Storage Tanks."

28 Sec. 16. NEW SECTION. 455D.2 LEGISLATIVE FINDINGS --  
29 NECESSITY FOR LOAN FUND TO ACCOMPLISH ENVIRONMENTAL GOALS  
30 WHILE PROTECTING SMALL BUSINESSES.

31 The legislature finds the following:

32 1. It is necessary and essential that the state use all  
33 practical means to control or eliminate pollution hazards  
34 posed by leaking petroleum underground storage tanks.

35 2. Small businesses in this state do not always have the

1 financial means necessary to repair and upgrade existing  
2 underground storage tanks to reduce the probability that  
3 unauthorized releases of petroleum may occur.

4 3. The public health and safety of the state will benefit  
5 from providing new methods to finance the capital outlays  
6 required to repair and upgrade petroleum underground storage  
7 tanks by small business owners of such tanks.

8 Sec. 17. NEW SECTION. 455D.3 DEFINITIONS.

9 1. "Account" means the petroleum underground storage tank  
10 financing account established under section 455D.4, subsection  
11 2.

12 2. "Authority" means the Iowa petroleum underground  
13 storage tank financing authority.

14 3. "Small business" means a business that meets all the  
15 following requirements:

16 a. Is independently owned and operated.

17 b. Owns or operates one, but no more than ten petroleum  
18 underground storage tanks.

19 4. "Participating party" means a small business within  
20 this state which requires financing pursuant to the terms of  
21 this section to aid and assist in the repair, upgrading, or  
22 replacement of an existing petroleum underground storage tank.

23 Sec. 18. NEW SECTION. 455D.4 IOWA PETROLEUM UNDERGROUND  
24 STORAGE TANK FINANCING ACCOUNT.

25 1. The governing board of the Iowa comprehensive petroleum  
26 underground storage tank fund established pursuant to section  
27 455B.479C shall constitute the Iowa petroleum underground  
28 storage tank financing authority. The authority shall adopt  
29 rules to provide loans to financially qualified small  
30 businesses for the purposes of repairing, upgrading, or  
31 replacing petroleum underground storage tanks to meet  
32 applicable state or federal standards. The board shall take  
33 appropriate steps to publicize the existence of the loan  
34 program. Administration of the financing account and loan  
35 program are the responsibility of the treasurer of state. All

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1 expenses incurred in carrying out this section shall be  
2 payable solely from the petroleum underground storage tank  
3 financing account and no liability or obligation shall be  
4 imposed upon the state beyond this amount.

5 2. The Iowa petroleum underground storage tank financing  
6 account is established as a separate fund in the state  
7 treasury, and any funds remaining in the account at the end of  
8 each fiscal year shall not revert to the general fund but  
9 shall remain in the Iowa petroleum underground storage tank  
10 financing account.

11 Sec. 19. NEW SECTION. 455D.5 PROOF OF FINANCIAL NEED.

12 As a condition of eligibility for financial assistance  
13 under this chapter, a participating party shall attempt to  
14 obtain financing from private lending sources. If an  
15 institution is unable or unwilling to make the loan, the  
16 participating party shall determine if the institution would  
17 make the loan in participation with the authority as a  
18 guarantor.

19 Sec. 20. NEW SECTION. 455D.6 LENGTH OF LOAN.

20 The maturity for each loan made by the authority pursuant  
21 to this chapter shall be the shortest feasible term  
22 commensurate with the repayment ability of the borrower.  
23 However, the maturity date of a loan shall not exceed ten  
24 years.

25 Sec. 21. NEW SECTION. 455D.7 MAXIMUM LOAN AND LOW COST  
26 INTEREST.

27 A loan made pursuant to this chapter shall not exceed fifty  
28 thousand dollars. The interest charged on a tank loan shall  
29 equal the cost of borrowing money by the state on the first  
30 day of the calendar quarter during which the loan is approved.

31 Sec. 22. NEW SECTION. 455D.8 SOURCE OF REVENUES.

32 The source of funds for the Iowa petroleum underground  
33 storage tank financing account shall be from the following:

34 1. The Iowa comprehensive petroleum underground storage  
35 tank fund in the amount of two percent of fees collected

1 pursuant to section 455B.479F.

2 2. Interest payments received by the authority from  
3 outstanding loans.

4 3. Any money appropriated by the federal government or  
5 general assembly and made available to the account.

6 Sec. 23. NEW SECTION. 455D.9 FUTURE REPEAL.

7 This chapter is repealed effective July 1, 1998. Any  
8 moneys remaining in or due the account shall revert to the  
9 Iowa comprehensive petroleum underground storage tank fund.

10 Sec. 24. NEW SECTION. 455B.490 AUTOMATIC REPEAL OF IOWA  
11 COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND.

12 1. Sections 455B.477 through 455B.479I are repealed  
13 effective July 1, 2003.

14 2. The repeal of the sections listed in subsection 1 shall  
15 not terminate the following obligations or authorities  
16 necessary to administer the obligations until these  
17 obligations are satisfied:

18 a. The payment of claims filed prior to July 1, 2003,  
19 against the Iowa comprehensive petroleum underground storage  
20 tank fund pursuant to section 455B.479E, until moneys in the  
21 fund are exhausted. Upon exhaustion of the fund, any  
22 remaining claims shall be invalid. If following satisfaction  
23 of the obligations pursuant to this section, moneys remain in  
24 the fund, all remaining moneys and moneys due the fund shall  
25 be prorated to premium payers on an equitable basis determined  
26 by the board.

27 b. The resolution of a cost recovery action filed prior to  
28 July 1, 2003.

29 Sec. 25. APPROPRIATION.

30 1. There is appropriated from the general fund of the  
31 state to the department of natural resources for the fiscal  
32 year beginning July 1, 1988, and ending June 30, 1989, seven  
33 hundred fifty thousand (750,000) dollars for transfer to and  
34 deposit in the comprehensive petroleum underground storage  
35 tank fund.

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1     2. The amount appropriated in subsection 1 from the  
 2 general fund of the state is appropriated from the  
 3 comprehensive petroleum underground storage tank fund to the  
 4 treasurer of state to be transferred to and deposited in the  
 5 general fund of the state no later than June 30, 1989.

6     Sec. 26. 1987 Iowa Acts, chapter 225, section 602, is  
 7 repealed.

8

## EXPLANATION

9     This bill creates a state operated insurance fund for  
 10 petroleum underground storage tanks to comply with federal  
 11 requirements for an approved state program to deal with  
 12 releases from petroleum underground storage tanks in order to  
 13 qualify for federal moneys from the Environmental Protection  
 14 Agency's superfund. An Iowa petroleum underground storage  
 15 tank financing account is also created to provide a low-  
 16 interest financing mechanism to assist small businesses to  
 17 meet federal and state environmental standards by upgrading or  
 18 replacing existing petroleum underground storage tanks.

19     Sections 1 through 5 are conforming amendments to existing  
 20 law, and distinguish the program for petroleum tanks from  
 21 other underground storage tank regulation. Section 3 also  
 22 provides the director of the department of natural resources  
 23 with the authority to order immediate corrective action to  
 24 remedy a release of petroleum from an underground storage  
 25 tank.

26     Section 6 establishes an owner or operator's financial  
 27 responsibility for a petroleum underground storage tank in  
 28 conformance with federal requirements. An owner or operator  
 29 must demonstrate one million dollars of financial  
 30 responsibility in the aggregate for corrective action and  
 31 third-party bodily injury and property damage. Several  
 32 alternative mechanisms are made available for proving the  
 33 first twenty thousand dollars of financial responsibility, or  
 34 the "deductible". Coverage from the Iowa comprehensive  
 35 petroleum underground storage tank fund provides proof of

1 financial responsibility above the deductible up to one  
2 million dollars per occurrence, where the federal superfund  
3 moneys become available for states with a qualified state  
4 program. Coverage from the fund is available on an  
5 actuarially sound premium basis. Preferred premium rates are  
6 offered to owners or operators presenting less risk of loss to  
7 the fund. One of the mechanisms for covering the deductible  
8 is application as a last resort for coverage of the deductible  
9 by the fund.

10 Section 7 creates the Iowa comprehensive petroleum  
11 underground storage tank fund as a separate fund in the state  
12 treasury which does not revert to the general fund at the end  
13 of the fiscal year.

14 Section 8 establishes the fund's governing board, and  
15 details certain rulemaking and administrative  
16 responsibilities. The board operates as the policy and  
17 rulemaking public authority to supervise the fund. The day-  
18 to-day operation of the fund is the responsibility of a  
19 professional administrator operating as an independent  
20 contractor.

21 Section 9 details the five sources of revenue for the fund:  
22 premiums collected for fund coverage; the petroleum  
23 underground storage tank fee; money recovered from responsible  
24 parties in the form of civil damages, settlements, fines,  
25 penalties, etc.; investment income; and any money received  
26 from the federal government or other sources.

27 Section 10 imposes a comprehensive petroleum underground  
28 storage tank fee in the amount of twenty cents per one  
29 thousand gallons of petroleum to be imposed at the distributor  
30 level to provide start-up moneys for the fund and to assure  
31 the fund's financial solvency. Section 14 initially imposes  
32 the fee in July and August of both 1988 and 1989. After that  
33 the fee could be imposed on a month-to-month basis, but only  
34 if the unexpended balance of the fund falls below five million  
35 dollars.



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1 Section 11 details permissible purposes for disbursing fund  
2 revenues, including: fund administration; payment for  
3 corrective action for covered tanks; payment to compensate for  
4 third-party bodily injury and property damage resulting from a  
5 release from a covered tank; the petroleum underground storage  
6 tank financing account; and payment up to one million dollars  
7 in the aggregate for both corrective action and third-party  
8 liability if the owner or operator of a tank cannot be  
9 identified within ninety days, or if the owner or operator is  
10 incapable of carrying out the required corrective action.

11 Section 12 provides the fund's authority for recovering  
12 money expended for corrective action and third-party liability  
13 from responsible parties. In general, an owner or operator  
14 must pay the deductible of \$20,000. Fund coverage protects  
15 the owner or operator above the deductible up to a maximum of  
16 one million dollars where federal superfund coverage begins.  
17 However, an owner or operator not in compliance with program  
18 requirements may become responsible for costs incurred by the  
19 fund above the deductible. Additionally, an owner or operator  
20 who either fails to take ordered corrective action, or fails  
21 to register a tank or report a known leak may be liable for  
22 actual damages plus treble punitive damages. The normal rule  
23 of joint and several liability is replaced for purposes of the  
24 fund by the rule that a liable party is responsible only for  
25 the portion of the fund's costs attributable to that party's  
26 actions. The standard of liability is strict liability in  
27 conformance with federal law. Other subsections detail rules  
28 for risk-shifting or risk-sharing contracts, joining necessary  
29 parties, future actions against other persons, and  
30 subrogation.

31 Section 13 provides that the fund is not part of the Iowa  
32 insurance guaranty association.

33 Section 14 imposes the comprehensive petroleum underground  
34 storage tank fee for start-up funding in the months of July  
35 and August of 1988 and 1989.

1 Section 15 through 21 create the petroleum underground  
2 storage tank financing account to assist small business owners  
3 and operators to upgrade or replace existing petroleum  
4 underground storage tanks in order to more readily comply with  
5 federal and state requirements and to qualify for preferred  
6 premium rates from the fund. The account is a source of last  
7 resort for low-interest loans or guarantees for a maximum term  
8 of ten years to finance tank upgrades or replacements. For  
9 purposes of the account, a small business is defined as a  
10 business which is independently owned and operated and which  
11 owns or operates one, but no more than ten, petroleum  
12 underground storage tanks.

13 Section 22 provides that the account's sources of funds are  
14 a percentage of the comprehensive petroleum underground  
15 storage tank fee, investment income, and money appropriated by  
16 the federal government or general assembly and made available  
17 to the account.

18 Section 23 provides for the repeal in ten years of the  
19 petroleum underground storage tank financing account.

20 Section 24 provides for automatic repeal of the  
21 comprehensive petroleum underground storage tank fund in  
22 fifteen years.

23 Section 25 provides for appropriation of seven hundred  
24 fifty thousand dollars from the general fund to the  
25 comprehensive petroleum underground storage tank fund on July  
26 1, 1988, to be repaid to the general fund prior to June 30,  
27 1989.

28 Section 26 repeals the provision which mandated the  
29 underground storage tank insurance interim study committee and  
30 related development of a petroleum underground storage tank  
31 management program, which this bill is a product of.

32 COMPANION TO LSB 7672IS

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