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WAYS & MEANS CALENDAR

HOUSE FILE 2441

BY COMMITTEE ON WAYS AND MEANS

(Formerly House File 2239)

Passed House, Date 3/23/88 (P.1504) Passed Senate, Date 4/13/88 (P.1504)

Vote: Ayes 49 Nays 0 Vote: Ayes 42 Nays 6

Approved Item Veto 5/13/88

A BILL FOR

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

4 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. Corrective
12 action includes, but is not limited to, excavation of an
13 underground storage tank for the purpose of repairing a leak
14 or removal of the tank, removal of contaminated soil, disposal
15 or processing of contaminated soil, and cleansing of
16 groundwaters or surface waters. Corrective action does not
17 include replacement of an underground storage tank.

18 NEW SUBSECTION. 9. "Fund" means the Iowa comprehensive
19 petroleum underground storage tank fund established in section
20 455B.479B.

21 NEW SUBSECTION. 10. "Board" means the Iowa comprehensive
22 petroleum underground storage tank fund board established in
23 section 455B.479C.

24 NEW SUBSECTION. 11. "Distributor" means a person who
25 first receives petroleum within this state or a person who
26 dispenses petroleum into an underground storage tank subject
27 to the fee charged in section 455B.479 not owned or operated
28 by the distributor.

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

31 d. Taking corrective action in response to a release or
32 threatened release from an underground storage tank including
33 appropriate testing of drinking water which may be
34 contaminated by the release. The corrective action rules
35 shall enable the director to order an owner or operator to

1 immediately take all corrective actions deemed reasonable and
2 necessary by the director.

3 Sec. 4. Section 455B.474, subsection 1, paragraph f, Code
4 Supplement 1987, is amended by adding the following new
5 unnumbered paragraph:

6 NEW UNNUMBERED PARAGRAPH. The department may waive the
7 mandatory monitoring requirement for an owner or operator who
8 demonstrates plans for tank removal, replacement, filling with
9 an inert material pursuant to a department of natural
10 resources approved variance, or significant tank upgrades or
11 improvements prior to November 1, 1988. The waiver shall
12 include an enforceable schedule of compliance and be effective
13 for six months, from May 1, 1988, through October 31, 1988.
14 Waivers may be renewed or extended for just cause.

15 Sec. 5. Section 455B.474, subsection 2, unnumbered
16 paragraph 1, Code Supplement 1987, is amended to read as
17 follows:

18 The maintenance of evidence of financial responsibility as
19 the director determines to be feasible and necessary for
20 taking corrective action and for compensating third parties
21 for bodily injury and property damage caused by release of a
22 regulated substance from an underground storage tank, except
23 an underground storage tank containing petroleum.

24 Sec. 6. Section 455B.477, Code 1987, is amended by adding
25 the following new subsection:

26 NEW SUBSECTION. 6. The civil penalties recovered by the
27 state or the fund in connection with a petroleum underground
28 storage tank under this part of this division shall be
29 credited to the fund.

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

32 1. AGGREGATE FINANCIAL RESPONSIBILITY. An owner or
33 operator of an underground storage tank containing petroleum
34 shall annually demonstrate evidence of financial
35 responsibility in the aggregate amount set by rule under

1 subsection 6 or one million dollars, whichever is less, to
2 cover corrective action and third-party bodily injury and
3 property damage costs for a release from the underground
4 storage tank. The board shall provide by rule the basis on
5 which financial responsibility shall be required, including
6 but not limited to, uniformity with federal rules, or a basis
7 per tank, per site, per owner, or per specified number of
8 tanks, or some combination of any or all reasonable bases as
9 the board determines is appropriate for efficient
10 administration, practical actuarial calculations, and to
11 accomplish the purposes of this part of this division. The
12 board may define "site" or other terms as necessary.

13 2. MINIMUM FINANCIAL RESPONSIBILITY, THE "DEDUCTIBLE".
14 The owner or operator shall demonstrate to the board evidence
15 of financial responsibility in the amount of not less than
16 twenty thousand dollars to cover corrective action and third-
17 party bodily injury and property damage costs through the use
18 of one or more of the following financial assurance
19 mechanisms:

- 20 a. Self-insurance.
- 21 b. Guarantee.
- 22 c. Indemnity contract.
- 23 d. Insurance.
- 24 e. Risk retention group coverage.
- 25 f. Letter of credit.
- 26 g. The Iowa comprehensive petroleum underground storage
27 tank fund.
- 28 h. Governmental risk pool.
- 29 i. Status as a city, county, or school district, or other
30 political subdivision empowered to enter into insurance
31 agreements obligating the entity to make payments beyond its
32 current budget year to procure or provide for a policy of
33 insurance, a self-insurance program, or a local government
34 risk pool. For the purposes of sections 296.7, 331.301,
35 subsection 11, 364.4, 384.12, subsection 18, and 613A.7,

1 coverage under the fund is an "insurance agreement", the fund
2 deductible is a "self-insurance program", and alternative
3 proof of aggregate financial responsibility pursuant to
4 section 455B.479A, subsection 8, is a "self-insurance
5 program".

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

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

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

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

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

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

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

1 or operator shall pay the reasonable expenses of an on-site
2 inspection under this paragraph.

3 e. The owner or operator is not insolvent and would not
4 become insolvent by being required to pay the minimum amount
5 of financial responsibility required by subsection 2.

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

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

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

20 7. FUND COVERAGE ON ACTUARIALLY SOUND BASIS, WITH RISK
21 FACTOR ADJUSTMENT. The premium for coverage under the fund
22 shall be two hundred dollars per tank per year or the prorated
23 portion of two hundred dollars for a portion of a year before
24 the effective date of the federal environmental protection
25 agency petroleum underground storage tank financial
26 responsibility regulations. Any excess premium payment shall
27 be credited to future premiums or refunded to owners or
28 operators which select the alternative proof of aggregate
29 financial responsibility option. For coverage provided on or
30 after the effective date of the federal environmental
31 protection agency petroleum underground storage tank financial
32 responsibility regulations, the board may only approve fund
33 coverage through the payment of a premium established on an
34 actuarially sound basis. Risk factors shall be taken into
35 account in establishing premiums for individual underground

1 storage tanks. Among other risk factors to be considered in
2 establishing premiums for coverage, the most favorable reduced
3 premiums shall be offered to state-of-the-art underground
4 storage tanks and risk management practices. It is the intent
5 of the general assembly that an actuarially sound premium
6 reflect the risk to the fund presented by the insured. Risk
7 factor adjustments should reflect the range of risk presented
8 by the variety of tank systems, monitoring systems, and risk
9 management practices in the general tank population. Premium
10 adjustments for risk factors should at least take into account
11 lifetime costs of a tank and monitoring system and fund
12 premiums for that tank system so as to provide a positive
13 economic incentive to the owner or operator to install the
14 more environmentally safe option so as to reduce the exposure
15 to loss of the fund. Actuarially sound is not limited in its
16 meaning to fund premium revenue equaling or exceeding fund
17 expenditures for the general tank population.

18 The board in its discretion may require all new
19 installations applying for fund coverage to be state-of-the-
20 art installations.

21 8. ALTERNATIVE PROOF OF AGGREGATE FINANCIAL
22 RESPONSIBILITY. An owner or operator who does not apply for
23 fund coverage shall demonstrate to the board evidence of
24 financial responsibility as required under subsection 1
25 through use of one or more of the financial assurance
26 mechanisms permitted under subsection 2.

27 Sec. 8. NEW SECTION. 455B.479B IOWA COMPREHENSIVE
28 PETROLEUM UNDERGROUND STORAGE TANK FUND.

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

1 funds remaining in the fund at the end of each fiscal year
2 shall not revert to the general fund but shall remain in the
3 Iowa comprehensive petroleum underground storage tank fund.

4 The general fund of the state is not liable for claims
5 presented against the comprehensive petroleum underground
6 storage tank fund. All expenses incurred in carrying out
7 section 455B.479A, this section, and sections 455B.479C
8 through 455B.479H shall be payable solely from the
9 comprehensive petroleum underground storage tank fund and no
10 liability or obligation shall be imposed upon the state beyond
11 this amount.

12 Sec. 9. NEW SECTION. 455B.479C GOVERNING BOARD.

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

- 16 a. The director of the department of natural resources, or
17 the director's designee.
- 18 b. The treasurer of state, or the treasurer's designee.
- 19 c. The commissioner of insurance, or the commissioner's
20 designee.
- 21 d. Two public members with financial or insurance industry
22 expertise appointed by the governor and confirmed by the
23 senate to staggered four-year terms.

24 The filling of positions reserved for public
25 representatives, vacancies, membership terms, payment of
26 compensation and expenses, and removal of members are governed
27 by chapter 69. The members shall elect a chairperson of the
28 board.

29 2. DEPARTMENT OF NATURAL RESOURCES COOPERATION WITH BOARD.
30 The director of the department of natural resources shall
31 cooperate with the board in the implementation of this part so
32 as to minimize unnecessary duplication of effort or paperwork
33 and maximize environmental protection.

34 3. REQUIRED RULES AND EMERGENCY RULES.

35 a. The board shall adopt rules regarding its practice and

1 procedures, the form and procedure for application for
2 financial responsibility certification, development of
3 underwriting standards, establishment of premiums to be
4 charged for coverage from the fund, risk factors, procedures
5 for investigating claims, determination of the basis for the
6 deductible or minimum financial responsibility requirement of
7 section 455B.479A, subsection 2, paragraph "a", and
8 establishment of guidelines outlining the coverage available
9 from the fund.

10 b. The board may adopt administrative rules under section
11 17A.4, subsection 2, and section 17A.5, subsection 2,
12 paragraph "b", to implement this subsection for one year after
13 the effective date of this section.

14 c. Rules necessary for the implementation and collection
15 of the comprehensive petroleum underground storage tank fee,
16 under section 455B.479E, shall be adopted on or before June 1,
17 1988.

18 d. Rules for the implementation of section 455B.479A
19 through 455B.479I, except for rules covered by paragraph "c"
20 and rules related to the establishment of actuarially sound
21 premiums after the effective date of the federal environmental
22 protection agency regulations on petroleum underground storage
23 tank financial responsibility, shall be adopted prior to
24 September 1, 1988.

25 e. Rules related to the establishment of actuarially sound
26 premiums after the effective date of federal regulations shall
27 be adopted as soon as practicable, and no later than three
28 months prior to the effective date of the federal
29 environmental protection agency regulations on petroleum
30 underground storage tank financial responsibility.

31 4. PROFESSIONAL ADMINISTRATOR OF FUND. The board shall
32 employ a professional administrator to manage the fund as an
33 independent contractor. The professional administrator must
34 have had insurance or actuarial experience and must
35 demonstrate management abilities consistent with the

1 responsibility of managing the fund.

2 Sec. 10. NEW SECTION. 455B.479D FUND'S REVENUE SOURCES.

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

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

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

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

10 4. Interest attributable to investment of money in the
11 fund.

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

16 Sec. 11. NEW SECTION. 455B.479E PETROLEUM TANK FEE.

17 The legislature hereby declares that the storage fees
18 imposed by this section do not constitute a tax and are not
19 collected for purposes of increasing state revenues pursuant
20 to section 30 of Article III or section 8 of Article VII of
21 the Iowa Constitution.

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

29 2. IMPOSITION OF COMPREHENSIVE PETROLEUM UNDERGROUND
30 STORAGE TANK FEE. A comprehensive petroleum underground
31 storage tank fee is imposed on the use of underground storage
32 tanks containing petroleum subject to the fee charged in
33 section 455B.479. The petroleum tank fee shall be collected
34 at the distributor level. A distributor shall pay the fee on
35 petroleum which is dispensed by the distributor into an

1 underground storage tank subject to the fee charged in section
2 455B.479 not owned or operated by the distributor. A
3 distributor which initially receives petroleum from out-of-
4 state shall pay the fee on any petroleum deposited into an
5 underground storage tank subject to the fee charged in section
6 455B.479 owned or operated by the distributor. The fee shall
7 be paid only the first time that petroleum is deposited or
8 dispensed into an underground storage tank subject to the fee
9 charged in section 455B.479. A distributor shall receive a
10 credit for the fee paid on petroleum transported and dispensed
11 out-of-state by the distributor. The board shall adopt rules
12 and forms to be used for the collection of the fee. The fee
13 shall be imposed, as required under subsection 1 or section
14 455B.479I, at a rate of twenty dollars per one thousand
15 gallons of petroleum, which is a regulated substance as
16 defined in section 455B.471, subsection 4, rounded to the
17 nearest one thousand gallons. A distributor who fails to pay
18 the fee imposed under this section is subject to the penalties
19 provided in section 455B.477.

20 3. UNEXPENDED BALANCE RETAINED IN THE FUND. Any
21 unexpended balance in the fund at the end of the fiscal year
22 shall be retained in the fund.

23 Sec. 12. NEW SECTION. 455B.479F DISBURSEMENTS.

24 Money in the fund may only be expended for the following
25 purposes:

26 1. To administer the comprehensive petroleum underground
27 storage tank program established in this part of this
28 division, including but not limited to, payment of the
29 professional administrator on an independent contract basis.

30 2. To take corrective action for a release of petroleum
31 into the environment from an underground storage tank for
32 which coverage has been extended by the fund, up to the amount
33 of coverage extended, but in no case to exceed the lesser of
34 one million dollars in the aggregate per occurrence or the
35 amount provided for under section 455B.179A, subsection 6.

1 3. To compensate a third party, including payment of a
2 judgment for bodily injury or property damage caused by
3 release of petroleum into the environment from an underground
4 storage tank, where coverage has been provided to an owner or
5 operator by the fund, up to the amount of coverage extended,
6 but in no case to exceed the lesser of one million dollars in
7 the aggregate per occurrence or the amount provided for under
8 section 455B.479A, subsection 6.

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

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

17 b. The owner or operator is incapable, in the judgment of
18 the board, of carrying out the reasonable and required
19 corrective action.

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

22 Sec. 13. NEW SECTION. 455B.479G COST RECOVERY
23 ENFORCEMENT.

24 1. GENERAL RULE, RECOVERY SOUGHT FROM OWNER OR OPERATOR.
25 The board shall seek recovery from the owner or operator of
26 the underground storage tank which released the petroleum and
27 which is the subject of the corrective action for all costs or
28 moneys expended from the fund under section 455B.479F.

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

34 3. OWNER OR OPERATOR NOT IN COMPLIANCE WITH MINIMUM
35 FINANCIAL RESPONSIBILITY REQUIREMENTS SUBJECT TO FULL AND

1 TOTAL COST UNDER GENERAL RULE. Notwithstanding subsection 2,
2 the liability of an owner or operator shall be the full and
3 total costs of corrective action and for bodily injury or
4 property damage to third parties specified in subsection 1 if
5 the owner or operator has not complied with the requirements
6 of section 455B.479A.

7 4. TREBLE PUNITIVE DAMAGES FOR CERTAIN VIOLATIONS.

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

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

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

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

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

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

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

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

34 6. EXCEPTION TO RULE OF JOINT AND SEVERAL LIABILITY. A
35 party found liable for any costs or expenditures recoverable

1 under this section, who establishes by a preponderance of the
2 evidence that only a portion of those costs or expenditures is
3 attributable to that party's actions, shall pay only for that
4 portion.

5 7. APPLICATION OF EQUITABLE PRINCIPLES IF INSUFFICIENT
6 PROOF TO APPORTION COSTS OR EXPENDITURES. If the trier of
7 fact finds the evidence insufficient to establish each party's
8 portion of costs or expenditures pursuant to subsection 6, the
9 court shall apportion those costs or expenditures among the
10 defendants, to the extent practicable, according to equitable
11 principles.

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

16 9. STRICT LIABILITY. The standard of liability for any
17 costs recoverable pursuant to this part of this division is
18 strict liability.

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

30 11. LATER PROCEEDINGS PERMITTED AGAINST OTHER PARTIES.
31 The entry of judgment against a party to the action does not
32 bar a future action by the board against another person who is
33 later alleged to be or discovered to be liable for costs and
34 expenditures paid from the fund. Subsequent successful
35 proceedings against another party shall not modify or reduce

1 the liability of a party against whom judgment has been
2 previously entered.

3 12. UPON PAYMENT OF CLAIM, BOARD ACQUIRES SUBROGATION
4 RIGHTS. Payment of a claim by the fund pursuant to this part
5 of this chapter shall be conditioned upon the board acquiring
6 by subrogation the rights of the claimant to recover those
7 costs and expenditures for corrective action for which the
8 fund has compensated the claimant, from the person responsible
9 or liable for the unauthorized release. A claimant is
10 precluded from receiving double compensation for the same
11 injury.

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

14 Sec. 14. NEW SECTION. 455B.479H FUND NOT PART OF THE
15 IOWA INSURANCE GUARANTY ASSOCIATION.

16 Notwithstanding any other provisions of law to the
17 contrary, the Iowa comprehensive underground storage tank fund
18 shall not be considered an insurance company or insurer under
19 the laws of this state and shall not be a member of nor be
20 entitled to claim against the Iowa insurance guaranty
21 association created under chapter 515B.

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

24 To provide the initial funding for the comprehensive
25 petroleum underground storage tank fund, the director of
26 revenue and finance shall impose the fee established in
27 section 455B.479E, subsection 2, for the months of July and
28 August 1988 and for the months of July and August 1989. The
29 fee shall be collected for 1988 during the months of August
30 and September 1988, and the fee shall be collected for 1989
31 during the months of August and September 1989.

32 Fund coverage shall not be provided, until on or after
33 November 1, 1988.

34 Sec. 16. NEW SECTION. 455D.1 LOANS FOR REPAIR OR
35 REPLACEMENT OF PETROLEUM UNDERGROUND STORAGE TANKS.

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

3 Sec. 17. NEW SECTION. 455D.2 LEGISLATIVE FINDINGS --
4 NECESSITY FOR LOAN FUND TO ACCOMPLISH ENVIRONMENTAL GOALS
5 WHILE PROTECTING SMALL BUSINESSES.

6 The legislature finds the following:

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

10 2. Small businesses in this state do not always have the
11 financial means necessary to repair and upgrade existing
12 underground storage tanks to reduce the probability that
13 unauthorized releases of petroleum may occur.

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

18 Sec. 18. NEW SECTION. 455D.3 DEFINITIONS.

19 1. "Account" means the petroleum underground storage tank
20 financing account established under section 455D.4, subsection
21 2.

22 2. "Authority" means the Iowa petroleum underground
23 storage tank financing authority.

24 3. "Small business" means a business that meets all the
25 following requirements:

26 a. Is independently owned and operated.

27 b. Owns one, but no more than ten petroleum underground
28 storage tanks at no more than two different sites.

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

33 Sec. 19. NEW SECTION. 455D.4 IOWA PETROLEUM UNDERGROUND
34 STORAGE TANK FINANCING ACCOUNT.

35 1. The governing board of the Iowa comprehensive petroleum

1 underground storage tank fund established pursuant to section
2 455B.479C shall constitute the Iowa petroleum underground
3 storage tank financing authority. The authority shall adopt
4 rules to provide loans, guarantees, or interest buy-downs to
5 financially qualified small businesses for the purposes of
6 repairing, upgrading, or replacing petroleum underground
7 storage tanks to meet applicable state or federal standards.
8 Financial assistance from the account, whether in the form of
9 a loan, guarantee, or interest buy-down, is conditioned upon
10 the repair, upgrade, or installation for which assistance is
11 provided and must result in state-of-the-art tank and
12 monitoring systems. The board shall take appropriate steps to
13 publicize the existence of the loan program. Maintenance of
14 the financing account and loan program are the responsibility
15 of the treasurer of state. All expenses incurred in carrying
16 out this section shall be payable solely from the petroleum
17 underground storage tank financing account and no liability or
18 obligation shall be imposed upon the state beyond this amount.

19 2. The Iowa petroleum underground storage tank financing
20 account is established as a separate fund in the state
21 treasury, and any funds remaining in the account at the end of
22 each fiscal year shall not revert to the general fund but
23 shall remain in the Iowa petroleum underground storage tank
24 financing account.

25 Sec. 20. NEW SECTION. 455D.5 PROOF OF FINANCIAL NEED.

26 As a condition of eligibility for financial assistance
27 under this chapter, a participating party shall attempt to
28 obtain financing from private lending sources. If two
29 financial institutions are unwilling to make the loan, the
30 participating party shall determine if the institution would
31 make the loan in participation with the authority as a
32 guarantor.

33 Sec. 21. NEW SECTION. 455D.6 LENGTH OF LOAN.

34 The maturity for each loan made by the authority pursuant
35 to this chapter shall be the shortest feasible term

1 commensurate with the repayment ability of the borrower.
2 However, the maturity date of a loan shall not exceed ten
3 years.

4 Sec. 22. NEW SECTION. 455D.7 MAXIMUM LOAN AND LOW COST
5 INTEREST.

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

10 Sec. 23. NEW SECTION. 455D.8 SOURCE OF REVENUES.

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

13 1. The Iowa comprehensive petroleum underground storage
14 tank fund in the amount of two percent of fees collected
15 pursuant to section 455B.479E.

16 2. Interest payments received by the authority from
17 outstanding loans.

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

20 Sec. 24. NEW SECTION. 455D.9 FUTURE REPEAL.

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

24 Sec. 25. NEW SECTION. 455B.490 AUTOMATIC REPEAL OF IOWA
25 COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND.

26 1. Sections 455B.477 through 455B.479I are repealed
27 effective July 1, 2003.

28 2. The repeal of the sections listed in subsection 1 shall
29 not terminate the following obligations or authorities
30 necessary to administer the obligations until these
31 obligations are satisfied:

32 a. The payment of claims filed prior to July 1, 2003,
33 against the Iowa comprehensive petroleum underground storage
34 tank fund pursuant to section 455B.479F, until moneys in the
35 fund are exhausted. Upon exhaustion of the fund, any

1 remaining claims shall be invalid. If following satisfaction
2 of the obligations pursuant to this section, moneys remain in
3 the fund, all remaining moneys and moneys due the fund shall
4 be prorated to premium payers on an equitable basis determined
5 by the board.

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

8 Sec. 26. 1987 Iowa Acts, chapter 225, section 602, is
9 repealed.

10 Sec. 27. This Act, being deemed of immediate importance,
11 takes effect upon enactment.

12

EXPLANATION

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

23 Sections 1 through 5 are conforming amendments to existing
24 law, and distinguish the program for petroleum tanks from
25 other underground storage tank regulation. Section 1 includes
26 a key definition of a petroleum "distributor", relevant to
27 imposition of the petroleum underground storage tank fee in
28 section 11. Section 3 also provides the director of the
29 department of natural resources with the authority to order
30 immediate corrective action to remedy a release of petroleum
31 from an underground storage tank. Section 4 permits the
32 department of natural resources to temporarily waive
33 monitoring requirements upon application if an owner or
34 operator is in the process of upgrading facilities to meet
35 requirements.

1 Section 6 allocates civil penalties recovered by the state
2 or the fund, in connection with a petroleum underground
3 storage tank, to the fund.

4 Section 7 establishes an owner or operator's financial
5 responsibility for a petroleum underground storage tank in
6 conformance with federal requirements. An owner or operator
7 must demonstrate one million dollars of financial
8 responsibility in the aggregate for corrective action and
9 third-party bodily injury and property damage. Several
10 alternative mechanisms are made available for proving the
11 first twenty thousand dollars of financial responsibility, or
12 the "deductible". Coverage from the Iowa comprehensive
13 petroleum underground storage tank fund provides proof of
14 financial responsibility above the deductible up to one
15 million dollars per occurrence, where the federal superfund
16 moneys become available for states with a qualified state
17 program. Initially fund coverage is provided for an annual
18 premium of two hundred dollars per tank. After the effective
19 date of the relevant federal rules, coverage from the fund is
20 available only on an actuarially sound premium basis.
21 Preferred premium rates are offered to owners or operators
22 presenting less risk of loss to the fund. One of the
23 mechanisms for covering the deductible is application as a
24 last resort for coverage of the deductible by the fund.

25 Section 8 creates the Iowa comprehensive petroleum
26 underground storage tank fund as a separate fund in the state
27 treasury which does not revert to the general fund at the end
28 of the fiscal year.

29 Section 9 establishes the fund's governing board, and
30 details certain rulemaking and administrative
31 responsibilities. The board operates as the policy and
32 rulemaking public authority to supervise the fund. The day-
33 to-day operation of the fund is the responsibility of a
34 professional administrator operating as an independent
35 contractor. Section 9 also imposes certain rulemaking

1 deadlines to facilitate timely implementation of the bill.

2 Section 10 details the five sources of revenue for the
3 fund: premiums collected for fund coverage; the petroleum
4 underground storage tank fee; money recovered from responsible
5 parties in the form of civil damages, settlements, fines,
6 penalties, etc.; investment income; and any money received
7 from the federal government or other sources.

8 Section 11 imposes a comprehensive petroleum underground
9 storage tank fee in the amount of twenty cents per one
10 thousand gallons of petroleum to be imposed at the distributor
11 level to provide start-up moneys for the fund and to assure
12 the fund's financial solvency. Section 15 initially imposes
13 the fee in July and August of both 1988 and 1989. After that
14 the fee could be imposed on a month-to-month basis, but only
15 if the unexpended balance of the fund falls below five million
16 dollars.

17 Section 12 details permissible purposes for disbursing fund
18 revenues, including: fund administration; payment for
19 corrective action for covered tanks; payment to compensate for
20 third-party bodily injury and property damage resulting from a
21 release from a covered tank; the petroleum underground storage
22 tank financing account; and payment up to one million dollars
23 in the aggregate for both corrective action and third-party
24 liability if the owner or operator of a tank cannot be
25 identified within ninety days, or if the owner or operator is
26 incapable of carrying out the required corrective action.

27 Section 13 provides the fund's authority for recovering
28 money expended for corrective action and third-party liability
29 from responsible parties. In general, an owner or operator
30 must pay the deductible of \$20,000. Fund coverage protects
31 the owner or operator above the deductible up to a maximum of
32 one million dollars where federal superfund coverage begins.
33 However, an owner or operator not in compliance with program
34 requirements may become responsible for costs incurred by the
35 fund above the deductible. Additionally, an owner or operator

1 who either fails to take ordered corrective action, or fails
2 to register a tank or report a known leak may be liable for
3 actual damages plus treble punitive damages. The normal rule
4 of joint and several liability is replaced for purposes of the
5 fund by the rule that a liable party is responsible only for
6 the portion of the fund's costs attributable to that party's
7 actions. The standard of liability is strict liability in
8 conformance with federal law. Other subsections detail rules
9 for risk-shifting or risk-sharing contracts, joining necessary
10 parties, future actions against other persons, and
11 subrogation.

12 Section 14 provides that the fund is not part of the Iowa
13 insurance guaranty association.

14 Section 15 imposes the comprehensive petroleum underground
15 storage tank fee for start-up funding in the months of July
16 and August of 1988 and 1989.

17 Sections 16 through 22 create the petroleum underground
18 storage tank financing account to assist small business owners
19 and operators to upgrade or replace existing petroleum
20 underground storage tanks in order to more readily comply with
21 federal and state requirements and to qualify for preferred
22 premium rates from the fund. The account is a source of last
23 resort for low-interest loans, guarantees, or interest buy-
24 downs for a maximum term of ten years to finance tank upgrades
25 or replacements. For purposes of the account, a small
26 business is defined as a business which is independently owned
27 and operated and which owns or operates one, but no more than
28 ten, petroleum underground storage tanks.

29 Section 23 provides that the account's sources of funds are
30 a percentage of the comprehensive petroleum underground
31 storage tank fee, investment income, and money appropriated by
32 the federal government or general assembly and made available
33 to the account.

34 Section 24 provides for the repeal in ten years of the
35 petroleum underground storage tank financing account.

1 Section 25 provides for automatic repeal of the
2 comprehensive petroleum underground storage tank fund in
3 fifteen years.

4 Section 26 repeals the provision which mandated the
5 underground storage tank insurance interim study committee and
6 related development of a petroleum underground storage tank
7 management program, which this bill is a product of.

8 Section 27 provides a special effective date by specifying
9 the Act becomes effective upon enactment.

10 SUCCESSOR TO HF 2239 (LSB 7465HV)

11 SIMILAR TO HSB 509 (LSB 7465IS)

12 COMPANION TO LSB 7672IS

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HOUSE FILE 2441
FISCAL NOTE

In compliance with a written request received March 10, 1988, a fiscal note for HOUSE FILE 2441 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 2441 is a bill establishing a State insurance and clean-up fund for leaking underground petroleum storage tanks. The bill establishes the Iowa Comprehensive Petroleum Underground Storage Tank Fund in the State Treasury and provides for the Fund's management through the creation of the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board. The Board is directed to establish rules for the operation of the Fund, and to employ a professional to administer the Fund as an independent contractor. Revenue sources for the Fund include a \$200 per tank per year insurance premium paid by tank owners; petroleum fees set at \$20 per 1000 gallons, collected at the distributor level, during the months of July and August of 1988 and 1989, as well as other months when the Fund balance drops below \$5,000,000; interest; moneys recovered through civil action against negligent parties; and any other funds made available to the Fund. The bill expresses that it is the general assembly's intent for the Board to establish actuarially sound premium rates based on an individual tank's risk to the Fund.

The bill requires underground tank owners to show financial responsibility for leaks in the amount of \$1,000,000. Self-insurance is allowed. The State insurance pool is available for those who cannot or who choose not to self-insure. For those who choose the State pool, financial responsibility for the \$20,000 deductible must be shown, with the Fund paying above the deductible, up to \$1,000,000, with federal Superfund moneys covering any amount above \$1,000,000. The State Fund protection is purchased through the \$200 per tank per year premium. Penalties are provided for non-compliance with the mandates of the bill. The State's liability is limited to the moneys in the Fund. A repeal date of July 1, 2003 is included for the insurance fund authorization.

House File 2239 further provides for the creation of the Iowa Petroleum Underground Storage Tank Financing Authority, which may provide loans of last resort to qualified small businesses, for the purpose of repairing or replacing leaking underground petroleum storage tanks. The loan account would primarily be funded by 2% of the \$20 per 1,000 gallons petroleum fee. The loan account provisions would sunset on July 1, 1998.

House File 2239 would go into effect upon enactment.

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Insurance Fund Assumptions:

1. There are 28,745 registered underground petroleum storage tanks presently in the State.
2. There are 10,000 unregistered tanks.
3. Unregistered tanks would remain unregistered and would not pay the \$200 premium, but would still be covered by the Fund if a responsible party could not be found or was unable to pay.
4. Underground petroleum storage tanks leak at a rate of 18% of the total population. This figure is considered high by the petroleum industry, which considers the leak rate to be 2%.
5. Monitoring is in place for 100% of the registered tanks. This is assumed so that the cost of cleaning up all present leaks can be determined. The true level of monitoring is much lower.
6. Monitored tanks that leak are detected 100% of the time.
7. Unmonitored tanks that leak are detected 1.5% of the time.
8. No unregistered tanks are monitored.
9. For tanks that are not monitored, or that are discovered to be already leaking upon installation of the monitor, clean-up costs, excluding administration costs and third-party claims average \$40,900 beyond the deductible.
10. Due to early detection, tanks that begin to leak after installation of a monitoring device will carry clean-up costs of only \$15,500 above the deductible.
11. The probability of a third-party claim arising from each leak is 2%.
12. The severity of the third-party claim is set at an average of \$347,500 per claim.
13. Deductibles are not subtracted from third-party awards because a leak that severe is assumed to have cost over the deductible in site clean-up alone.
14. Deductibles and limits are applied on a per tank basis.
15. All deductibles are recovered.
16. The Fund will recover 5% of its losses from other liable parties.
17. All costs assigned to a given year will not be expended in that year. The nature of litigation and clean-up is such that each claim may take several years before the total cost is felt by the Fund.
18. 130,000,000 gallons of petroleum products are sold in Iowa in each of the months of July and August.
19. Given the above assumptions, leaks have been developing at an average level of 173 per year for registered tanks. 27 leaking unregistered tanks are discovered each year. This gives a total of 200 new leaks discovered each year.
20. The effects of inflation on clean-up costs and interest rates on money within the Fund are not considered. It can only be assumed that the costs associated with claims will rise each year, and that the money deposited within the fund will grow as a function of the interest rate. To some extent the two will tend to be offsetting.

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Computational Formulas:

1. Number of active leaks = Number of tanks X probability of leaking.

Registered: 28,745 tanks X .18 (leak rate) = 5,174 active leaks

Unregistered: 10,000 tanks X .18 (leak rate) = 1,800 active leaks

2. Number of leaks detected = Number of active leaks X probability of detection.

Reg: 5,174 lks X 1.000 prob. of detect. = 5,174 lks detect.

Unreg: 1,800 lks X 0.015 prob. of detect. = $\frac{27}{1}$ lks detect.

Leaking tanks in the 1st year = 5,201

3. Number of third-party claims = Number of leaks detected X probability of third-party claims.

5,201 lks detect. X 2% prob. of 3rd-pty claim = 104 3rd-pty claims.

4. Clean-up costs = Number of leaks detected X clean-up severity.

5,201 leaks detected X \$40,900 per clean-up = \$212,720,900

5. Third-party costs = Number of third-party claims X third-party claim severity.

104 third-party claims X \$347,500 per claim = \$36,140,000

6. Average third-party cost per leak = third-party cost / number of leaks detected.

\$36,140,000 / 5,201 leaks = \$6,949 per leak

7. Average cost per leak = clean-up cost per leak + Average third-party cost per leak.

\$40,900 + \$6,949 = \$47,849 average cost per leak.

8. Total cost to clean-up present leaks = number of leaks detected X average cost per leak.

5,201 leaks X \$47,849 per leak = \$248,862,649

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Fiscal Effect:

As an attempt to determine the total cost of the clean-up, all present leaks in registered tanks are assumed to be discovered. Leaks in unregistered tanks will continue to be discovered at a rate of 1.5% per year. This results in a total cost of \$249,000,000 for clean-up of leaks in the first year. Monitoring is not in place on a majority of these tanks, therefore it can be assumed that they will be, in actuality, discovered over the years. New leaks in tanks will continue to occur and be discovered at a rate of 200 per year. This will result in a cost per year of \$5,176,000 for all registered tank leaks and discovered unregistered leaks. If leaks continue at this rate, the total cost of new leaks for the 15 years of this program would be \$77,640,000, neglecting inflation and interest. Total administrative costs are \$10,660,000 for the 15 years. Recovery of money from liable third-parties is figured at 5% of the total costs over the 15 years. This would result in a return to the fund of \$16,865,000. Therefore, the total 15-year cost of the program, neglecting the effects of inflation on clean-up costs and interest on the Fund money, would be:

Total cost of present leaks	+	\$ 249,000,000
Total cost of new leaks	+	\$ 77,640,000
Total administrative cost	+	\$ 10,660,000
Total recovered judgements	-	\$ 16,865,000
Total 15 year cost		\$ 320,435,000

This would result in a total average yearly Fund output of \$21,362,300. The \$200 per tank premium would result in \$5,749,000 per year. The petroleum storage fee of \$20 would bring in an additional \$2,600,000 per month, or \$5,200,000 for the two months of the bill. This results in a total income, neglecting interest, of \$10,845,000 (\$104,000 subtracted for the Finance Authority, see below).

Under these assumptions, the fund would lose \$10,517,300 per year. This shortfall could be covered by raising premiums to \$560 per tank, by initiation of the petroleum storage fee of \$20 per 1000 gallons for an additional 4 months, or some combination of the two.

Fiscal Effect -- Based Upon Actuarial Study:

According to the actuarial report, losses to the fund could run as high as:

- A. \$ 55,400,000 in the first year.
- B. \$121,700,000 in the second year.
- C. \$164,700,000 in the third year.
- D. \$172,700,000 in the fourth year.
- E. \$177,700,000 in the fifth year.
- F. Probable decrease in total Fund loss each succeeding year.

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The actuarial study reported the total Fund expenditure for the first five years to be \$692,200,000. This can be considered as a high estimate. The actuarial study model is not provided in the report and several assumptions of the study are not well documented. However, the actuarial study was also based on a leak rate of 18% and a similar cost per leak. Contrary to the actuary's assumption that the leak rate is 18%, the report states that a total of 15,060 tanks will be detected leaking by the year 1992. This would be 36.3% of the maximum number of tanks, 41,495, that could be in the ground by that time. This discrepancy is the major contributing factor in the difference between the actuarial study's cost estimate and the estimate given above.

Low Estimate of Fiscal Effect:

If the petroleum industry is correct in its assertion that only 2% of the tanks are leaking, and the Department of Natural Resources' lower estimate of clean-up costs is correct, total costs to the Fund could be as low as \$49,000,000 for the 15-year life of the program.

Fiscal Effect - Tank Finance Authority:

The Iowa Petroleum Underground Storage Tank Financing Authority would receive 2% of the \$20 per 1000 gallon petroleum storage fee. This would result in an influx of \$52,000 to the Fund for each month of the fee's application. No money is provided in any other years, unless the Insurance Fund balance falls below \$5,000,000 and triggers the fee. Each additional month that the fee is implemented increases the amount available to the Finance Authority by \$52,000.

Sources:

Department of Natural Resources

Department of Transportation

Tillinghast Actuarial Study,

Iowa Comprehensive Petroleum Underground Storage Fund (LSB 8437h, JWR)

FILED MARCH 21, 1988

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 2441

H-5635

1 Amend House File 2441 as follows:

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

4 "Sec. ____ . Section 455B.474, subsection 1,
5 paragraph f, unnumbered paragraph 1, Code Supplement
6 1987, is amended to read as follows:

7 Specifying an adequate monitoring system to detect
8 the presence of a leaking underground storage tank and
9 to provide for protection of the groundwater resources
10 for regulated tanks installed prior to May 1, 1986.
11 The commission shall adopt these rules not later than
12 April 1, 1986; however, the effective date of the
13 rules adopted shall be May July 1, 1988. In the event
14 that federal regulations are adopted by the United
15 States environmental protection agency after the
16 commission has adopted state standards pursuant to
17 this subsection, the commission shall immediately
18 proceed to adopt rules consistent with those federal
19 regulations adopted."

20 2. Page 2, line 6, by striking the word "may" and
21 inserting the following: "shall".

22 3. Page 3, line 4, by inserting after the word
23 "tank." the following: "Farm and residential tanks of
24 less than one thousand one hundred gallons capacity,
25 regardless of their date of installation, and
26 hydraulic lift reservoirs, such as for automobile
27 hoists and elevators, containing hydraulic oil, shall
28 not be required to comply with the financial
29 responsibility provisions of sections 455B.479A
30 through 455B.479I."

31 4. Page 4, by inserting after line 5, the
32 following:

33 "The state of Iowa, its agencies, departments, and
34 other administrative subdivisions, are not exempt from
35 this division. The state may purchase coverage from
36 the fund, or the state may prove both minimum
37 financial responsibility and aggregate financial
38 responsibility by its status as a governmental entity
39 capable of self-insuring by reliance upon its taxing
40 powers to satisfy future incurred obligations."

41 5. Page 5, by inserting after line 12, the
42 following:

43 "a. The board shall only extend fund coverage to
44 an owner or operator for a petroleum underground
45 storage tank which has an adequate monitoring system.
46 However, the board may extend fund coverage for a
47 petroleum underground storage tank without an adequate
48 monitoring system, if one or more of the following
49 conditions are satisfied:

50 (1) The owner or operator has been granted, by the

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1 department of natural resources, a waiver with an
2 enforceable schedule of compliance pursuant to section
3 455B.474, subsection 1, paragraph "f". However, if an
4 adequate monitoring system is not installed before the
5 later of November 1, 1988, or the expiration of the
6 waiver or renewals or extensions of the waiver for
7 just cause, the fund shall not provide further
8 coverage to the person who was the owner at the time
9 the waiver was in effect.

10 (2) The owner or operator has been granted a
11 waiver by the board, provided that the waiver shall
12 include an enforceable schedule for installation of
13 monitoring wells satisfactory to the board before
14 November 1, 1988. A waiver shall be granted an owner
15 or operator who demonstrates plans for tank removal,
16 replacement, or filling with an inert material
17 pursuant to a department of natural resources approved
18 variance, or significant tank upgrades or improvements
19 prior to November 1, 1988. Waivers may be renewed or
20 extended for just cause. If monitoring wells are not
21 installed before the later of November 1, 1988, or the
22 expiration of the waiver or renewals or extensions of
23 the waiver for just cause, the fund shall not provide
24 further coverage to the person who was the owner at
25 the time the waiver was in effect.

26 b. For purposes of this section, "an adequate
27 monitoring system" means a system complying with
28 mandatory monitoring rules issued by the department of
29 natural resources or monitoring wells satisfactory to
30 the board."

31 6. Page 5, line 26, by inserting after the word
32 "regulations" the following: ", except as provided by
33 section 455B.479E, subsection 1".

34 7. Page 9, by striking lines 22 through 28, and
35 inserting the following:

36 "1. GUARANTEE OF FUND'S SOLVENCY.

37 a. The board shall do one or both of the
38 following, in its discretion, when the unexpended
39 balance in the fund falls below two million dollars:

40 (1) Notify the director of revenue and finance.
41 When notified that the fund's balance is less than two
42 million dollars, the director of revenue and finance
43 shall impose and collect the fee established in
44 subsection 2 on the use of an underground storage
45 tank, but only in the months of either or both July
46 and August, as necessary to restore the fund balance
47 to more than two million dollars.

48 (2) Increase the premium established pursuant to
49 section 455B.479A, subsection 7, by an amount
50 reasonably calculated to restore the fund balance to

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1 greater than two million dollars within twelve months.
 2 The increase shall be applied to premiums as they
 3 become due upon renewal of coverage.

4 b. The board shall notify the director of revenue
 5 and finance when the unexpended balance in the fund
 6 falls below one million dollars. When notified that
 7 the fund's balance is less than one million dollars,
 8 the director of revenue and finance shall impose and
 9 collect the fee established in subsection 2 on the use
 10 of an underground storage tank for a one-month period,
 11 within sixty days of receiving notice from the board.
 12 The fee shall remain in effect for so many months as
 13 necessary to restore the fund balance to more than one
 14 million dollars."

15 8. Page 14, line 33, by inserting after the
 16 figure "1988" the following: ", except that fund
 17 coverage may be provided on or after July 1, 1988, if
 18 the covered tank is required to have an adequate
 19 monitoring system on that date by department of
 20 natural resources regulation. No claims shall be paid
 21 until on or after November 1, 1988, in any case".

22 9. Page 18, by inserting after line 7, the
 23 following:

24 "Sec. ____ . The Iowa comprehensive petroleum
 25 underground storage tank fund board shall review the
 26 feasibility of including the installers of petroleum
 27 underground storage tanks as premium paying insureds
 28 on an actuarially sound basis either under the Iowa
 29 comprehensive petroleum underground storage tank fund,
 30 or within a newly created separate fund. The study
 31 shall include an actuarial estimate of the per-
 32 installed tank premium necessary to extend actuarially
 33 sound coverage to tank installers. The study shall
 34 include, but is not limited to, the following topics:
 35 Need for licensing or other precondition to providing
 36 coverage to a specific petroleum underground storage
 37 tank installer; the cost and availability of private
 38 insurance for installers; the number of installers
 39 doing business in the state; and loss data from past
 40 or existing claims against installers for both
 41 corrective action and third-party liability. The
 42 results of the study shall be submitted to the general
 43 assembly on or before December 1, 1988. The board may
 44 provide fund coverage to installers on an actuarially
 45 sound premium basis after completion of the
 46 feasibility study, if a positive recommendation for
 47 inclusion of installers in the fund is made."

48 10. By renumbering, relettering, or redesignating
 49 and correcting internal references as necessary.

H-5635 FILED MARCH 15, 1988 BY HATCH of Polk

*Adopted as amended by 57584 5829
 3/22 (p. 1030)*

HOUSE FILE 2441

H-5571

1 Amend House File 2441 as follows:

2 1. Page 11, line 8, by inserting after the figure
3 "6." the following: "However, before the effective
4 date of the federal environmental protection agency
5 rules on petroleum underground storage tank financial
6 responsibility, the fund shall not disburse moneys to
7 compensate an individual third party for a single
8 occurrence for more than two hundred fifty thousand
9 dollars."

H-5571 FILED MARCH 14, 1988 BY PETERSEN of Muscatine

Fact 3/15 (10327)

HOUSE FILE 2441

H-5572

1 Amend House File 2441 as follows:

2 1. Page 9, line 24, by striking the word "five"
3 and inserting the following: "two".

H-5572 FILED MARCH 14, 1988 BY PETERSEN of Muscatine

Class 4/15 (10327)

HOUSE FILE 2441

H-5581

1 Amend House File 2441 as follows:

2 1. Page 2, line 11, by striking the word and
3 figures "November 1, 1988" and inserting the
4 following: "May 1, 1989".

5 2. Page 2, by striking line 13, and inserting the
6 following: "for twelve months, from May 1, 1988,
7 through April 30, 1989."

8 3. Page 7, line 22, by inserting after the word
9 "expertise" the following: ", and two representatives
10 from the petroleum industry, all".

11 4. Page 9, line 28, by inserting after the word
12 "board" the following: ", except that the fee shall
13 not be imposed except during the months of June
14 through August".

15 5. Page 10, by inserting after line 29, the
16 following:

17 "The maximum annual payment to the administrator
18 for fund administration shall not exceed two percent
19 of fund revenues."

H-5581 FILED MARCH 14, 1988 BY VAN CAMP of Scott

*A- 6/15 (10327), B- Fact (10327)
C- Fact (10327)*

HOUSE FILE 2441

H-5756

1 Amend House File 2441 as follows:
2 1. Page 7, line 4, by striking the words "general
3 fund of the".

H-5756 FILED MARCH 21, 1988 BY KOENIGS of Mitchell
Adopted 3/23 (7.1051)

HOUSE FILE 2441

H-5758

1 Amend the amendment, H-5635, to House File 2441 as
2 follows:
3 1. Page 1, by striking lines 48 and 49, and
4 inserting the following: "monitoring system, if the
5 applicable one of the following conditions is
6 satisfied".

7 2. Page 1, line 50, by inserting before the word
8 "The" the following: "TANKS TWENTY-YEARS AND OLDER OR
9 NEWLY INSTALLED."

10 3. Page 1, line 50, by inserting after the word
11 "operator" the following: ", of a tank then subject
12 to Iowa department of natural resources monitoring
13 rules,".

14 4. Page 2, line 10, by inserting before the word
15 "The" the following: "TANKS ZERO TO TWENTY-YEARS."

16 5. Page 2, line 10, by inserting after the word
17 "operator" the following: ", of an underground
18 storage tank less than twenty years old,".

19 6. Page 2, line 12, by inserting after the word
20 "of" the following: "a".

21 7. Page 2, line 13, by striking the word "wells"
22 and inserting the following: "system".

23 8. Page 2, line 14, by striking the figure "1988"
24 and inserting the following: "1989".

25 9. Page 2, line 19, by striking the figure "1988"
26 and inserting the following: "1989".

27 10. Page 2, line 21, by striking the figure
28 "1988" and inserting the following: "1989".

29 11. Page 2, line 25, by inserting after the word
30 "effect." the following: "The board shall not grant a
31 waiver or extension or renewal of a waiver, if the
32 owner or operator has previously been denied a waiver
33 or extension or renewal of a waiver for that tank by
34 the department of natural resources."

35 12. Page 2, line 30, by inserting after the word
36 "board" the following: ", except the board shall not
37 accept the manual inventory method as a satisfactory
38 monitoring system".

H-5758 FILED MARCH 21, 1988 BY HATCH of Polk
Adopted 3/23 (7.1051)

HOUSE FILE 2441

H-5767

1 Amend House File 2441 as follows:
2 1. Page 3, line 16, by striking the word "twenty"
3 and inserting the following: "ten".

H-5767 FILED MARCH 21, 1988 BY SKOW of Guthrie
Adopted 3/23 (7.1051) HUMMEL of Benton

HOUSE FILE 2441

H-5828

1 Amend the amendment H-5635 to House File 2441 as
2 follows:
3 1. Page 1, line 19, by inserting after the word
4 "adopted." the following: "Unless the federal
5 environmental protection agency adopts final rules to
6 the contrary, rules adopted pursuant to this section
7 shall not apply to hydraulic lift reservoirs, such as
8 for automobile hoists and elevators, containing
9 hydraulic oil."

By ROSENBERG of Story

H-5828 FILED MARCH 22, 1988

Adopted 3/22 (7 1038)

HOUSE FILE 2441

H-5835

1 Amend House File 2441 as follows:
2 1. Page 1, by inserting after line 28 the
3 following:
4 "Sec. ____ . NEW SECTION. 455B.473A PETROLEUM
5 UNDERGROUND STORAGE TANK REGISTRATION AMNESTY PROGRAM.
6 A petroleum underground storage tank required to be
7 registered under section 455B.473, which has not been
8 registered prior to July 1, 1988, may be registered
9 under the following conditions:
10 1. The tank registration fee under section
11 455B.473, subsection 5, shall accompany the
12 registration.
13 2. The storage tank management fee of fifteen
14 dollars per tank under section 455B.479 shall be paid
15 for past years in which the tank should have been
16 registered.
17 3. The owner or operator shall demonstrate
18 financial responsibility as required by section
19 455B.479A.
20 If a tank is registered under this section on or
21 prior to October 1, 1989, penalties under section
22 455B.477 shall be waived."
23 2. Page 2, line 25, by striking the word
24 "subsection" and inserting the following:
25 "subsections".
26 3. Page 2, by inserting after line 29, the
27 following:
28 "NEW SUBSECTION. 7. The penalty for intentional
29 failure of an owner or operator to register a
30 petroleum underground storage tank under section
31 455B.473 shall be a minimum of seven thousand five
32 hundred dollars up to a maximum of ten thousand
33 dollars after October 1, 1989."
34 4. Page 2, line 34, by inserting after the word
35 "annually" the following: ", beginning July 1,
36 1989,".

By PAULIN of Plymouth

H-5835 FILED MARCH 23, 1988

ADOPTED as amended by 58-7 3/23 (7 1038)

HOUSE FILE 2441

H-5849

1 Amend the amendment, H-5635, to House File 2441 as
2 follows:

- 3 1. Page 2, line 40, by striking the figure "(1)".
- 4 2. By striking page 2, line 48 through page 3,
- 5 line 3.

By VAN CAMP of Scott

H-5849 FILED MARCH 23, 1988
LOST (f 1029)

HOUSE FILE 2441

H-5836

1 Amend the amendment, H-5635, to House File 2441 as
2 follows:

3 1. Page 3, by striking lines 24 through 47, and
4 inserting the following:

5 ""Sec. ____ . INSTALLER'S FUND STUDY. The board
6 shall perform a study of the feasibility of creating a
7 separate fund to provide coverage to installers of
8 petroleum underground storage tanks. An installer's
9 fund would provide coverage to premium paying insureds
10 on an actuarially sound basis and be managed by the
11 board in conjunction with the comprehensive petroleum
12 underground storage tank fund. Installer's coverage
13 would be limited to environmental hazard coverage for
14 both corrective action and third-party liability for
15 petroleum underground storage tanks installed in Iowa
16 after the creation of the fund. The study shall
17 include, but is not limited to, the following topics:

18 1. Actuarial estimate of the per-tank premium
19 necessary to provide actuarially sound coverage to
20 tank installers.

21 2. Need for licensing or other precondition to
22 providing coverage to a specific petroleum underground
23 storage tank installer.

24 3. The cost and availability of private insurance
25 for installers.

26 4. The number of installers doing business in the
27 state.

28 5. Loss data from past or existing claims against
29 installers for both corrective action and third-party
30 liability.

31 6. Suggested limits of coverage, amount of the
32 deductible, and other fund features.

33 7. The board's recommendation to the general
34 assembly concerning provision of coverage to
35 installers.

36 The results of the study shall be submitted to the
37 general assembly on or before December 1, 1988.""

By HATCH of Polk

H-5836 FILED MARCH 23, 1988

ADOPTED *[Signature]*
3/23/88

HOUSE FILE 2441

H-5847

1 Amend amendment, H-5835 to House File 2441 as
2 follows:

3 1. Page 1, lines 35 and 36, by striking the words
4 "beginning July 1, 1989," and inserting the following:
5 ", beginning on the effective date of the federal
6 environmental protection agency's final rules on
7 petroleum underground storage tank financial
8 responsibility,".

By HATCH of Polk

H-5847 FILED MARCH 23, 1988

ADOPTED *[Signature]*
(3/23/88)

HOUSE FILE 2441

BY COMMITTEE ON WAYS AND MEANS

(As Amended and Passed by the House March 23, 1988)

Passed House, Date See below Passed Senate, Date 4/13/88 (p. 1504)
Vote: Ayes _____ Nays _____ Vote: Ayes 42 Nays 6
Approved Stan Vetter 5/13/88

A BILL FOR

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

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

5
6 House Amendments _____

7 Deleted Language *

8
9 Conference Committee Appointed 4/14/88

10 Representatives Hatch (Chair), Katerberg, Schradler, Paulsen, Van Camp (p. 1983)
11 Senators Groszeta (Chair), Hunsak, Doherty, Rife, & Spaul 4/14 (p. 1538)

12 Passed per Conference Committee Report

13 House: 4/16/88 (p. 2250)
14 85-4

15 Senate: 4/17/88 (p. 1752)
16 28-19

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. Corrective
12 action includes, but is not limited to, excavation of an
13 underground storage tank for the purpose of repairing a leak
14 or removal of the tank, removal of contaminated soil, disposal
15 or processing of contaminated soil, and cleansing of
16 groundwaters or surface waters. Corrective action does not
17 include replacement of an underground storage tank.

18 NEW SUBSECTION. 9. "Fund" means the Iowa comprehensive
19 petroleum underground storage tank fund established in section
20 455B.479B.

21 NEW SUBSECTION. 10. "Board" means the Iowa comprehensive
22 petroleum underground storage tank fund board established in
23 section 455B.479C.

24 NEW SUBSECTION. 11. "Distributor" means a person who
25 first receives petroleum within this state or a person who
26 dispenses petroleum into an underground storage tank subject
27 to the fee charged in section 455B.479 not owned or operated
28 by the distributor.

29 Sec. 3. NEW SECTION. 455B.473A PETROLEUM UNDERGROUND
30 STORAGE TANK REGISTRATION AMNESTY PROGRAM.

31 A petroleum underground storage tank required to be
32 registered under section 455B.473, which has not been
33 registered prior to July 1, 1988, may be registered under the
34 following conditions:

35 1. The tank registration fee under section 455B.473,

1 subsection 5, shall accompany the registration.

2 2. The storage tank management fee of fifteen dollars per
3 tank under section 455B.479 shall be paid for past years in
4 which the tank should have been registered.

5 3. The owner or operator shall demonstrate financial
6 responsibility as required by section 455B.479A.

7 If a tank is registered under this section on or prior to
8 October 1, 1989, penalties under section 455B.477 shall be
9 waived.

10 Sec. 4. Section 455B.474, subsection 1, paragraph d, Code
11 Supplement 1987, is amended to read as follows:

12 d. Taking corrective action in response to a release or
13 threatened release from an underground storage tank including
14 appropriate testing of drinking water which may be
15 contaminated by the release. The corrective action rules
16 shall enable the director to order an owner or operator to
17 immediately take all corrective actions deemed reasonable and
18 necessary by the director.

19 Sec. 5. Section 455B.474, subsection 1, paragraph f,
20 unnumbered paragraph 1, Code Supplement 1987, is amended to
21 read as follows:

22 Specifying an adequate monitoring system to detect the
23 presence of a leaking underground storage tank and to provide
24 for protection of the groundwater resources for regulated
25 tanks installed prior to May 1, 1986. The commission shall
26 adopt these rules not later than April 1, 1986; however, the
27 effective date of the rules adopted shall be May July 1, 1988.
28 In the event that federal regulations are adopted by the
29 United States environmental protection agency after the
30 commission has adopted state standards pursuant to this
31 subsection, the commission shall immediately proceed to adopt
32 rules consistent with those federal regulations adopted.
33 Unless the federal environmental protection agency adopts
34 final rules to the contrary, rules adopted pursuant to this
35 section shall not apply to hydraulic lift reservoirs, such as

1 for automobile hoists and elevators, containing hydraulic oil.

2 Sec. 6. Section 455B.474, subsection 1, paragraph f, Code
3 Supplement 1987, is amended by adding the following new
4 unnumbered paragraph:

5 NEW UNNUMBERED PARAGRAPH. The department shall waive the
6 mandatory monitoring requirement for an owner or operator who
7 demonstrates plans for tank removal, replacement, filling with
8 an inert material pursuant to a department of natural
9 resources approved variance, or significant tank upgrades or
10 improvements prior to November 1, 1988. The waiver shall
11 include an enforceable schedule of compliance and be effective
12 for six months, from May 1, 1988, through October 31, 1988.
13 Waivers may be renewed or extended for just cause.

14 Sec. 7. Section 455B.474, subsection 2, unnumbered
15 paragraph 1, Code Supplement 1987, is amended to read as
16 follows:

17 The maintenance of evidence of financial responsibility as
18 the director determines to be feasible and necessary for
19 taking corrective action and for compensating third parties
20 for bodily injury and property damage caused by release of a
21 regulated substance from an underground storage tank, except
22 an underground storage tank containing petroleum.

23 Sec. 8. Section 455B.477, Code 1987, is amended by adding
24 the following new subsections:

25 NEW SUBSECTION. 6. The civil penalties recovered by the
26 state or the fund in connection with a petroleum underground
27 storage tank under this part of this division shall be
28 credited to the fund.

29 NEW SUBSECTION. 7. The penalty for intentional failure of
30 an owner or operator to register a petroleum underground
31 storage tank under section 455B.473 shall be a minimum of
32 seven thousand five hundred dollars up to a maximum of ten
33 thousand dollars after October 1, 1989.

34 Sec. 9. NEW SECTION. 455B.479A PETROLEUM UNDERGROUND
35 STORAGE TANK FINANCIAL RESPONSIBILITY.

1 1. AGGREGATE FINANCIAL RESPONSIBILITY. An owner or
2 operator of an underground storage tank containing petroleum
3 shall annually, beginning on the effective date of the federal
4 environmental protection agency's final rules on petroleum
5 underground storage tank financial responsibility, demonstrate
6 evidence of financial responsibility in the aggregate amount
7 set by rule under subsection 6 or one million dollars,
8 whichever is less, to cover corrective action and third-party
9 bodily injury and property damage costs for a release from the
10 underground storage tank. Farm and residential tanks of less
11 than one thousand one hundred gallons capacity, regardless of
12 their date of installation, and hydraulic lift reservoirs,
13 such as for automobile hoists and elevators, containing
14 hydraulic oil, shall not be required to comply with the
15 financial responsibility provisions of sections 455B.479A
16 through 455B.479I. The board shall provide by rule the basis
17 on which financial responsibility shall be required, including
18 but not limited to, uniformity with federal rules, or a basis
19 per tank, per site, per owner, or per specified number of
20 tanks, or some combination of any or all reasonable bases as
21 the board determines is appropriate for efficient
22 administration, practical actuarial calculations, and to
23 accomplish the purposes of this part of this division. The
24 board may define "site" or other terms as necessary.

- 25 2. MINIMUM FINANCIAL RESPONSIBILITY, THE "DEDUCTIBLE".
26 The owner or operator shall demonstrate to the board evidence
27 of financial responsibility in the amount of not less than
28 twenty thousand dollars to cover corrective action and third-
29 party bodily injury and property damage costs through the use
30 of one or more of the following financial assurance
31 mechanisms:
32 a. Self-insurance.
33 b. Guarantee.
34 c. Indemnity contract.
35 d. Insurance.

1 e. Risk retention group coverage.

2 f. Letter of credit.

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

5 h. Governmental risk pool.

6 i. Status as a city, county, or school district, or other
7 political subdivision empowered to enter into insurance
8 agreements obligating the entity to make payments beyond its
9 current budget year to procure or provide for a policy of
10 insurance, a self-insurance program, or a local government
11 risk pool. For the purposes of sections 296.7, 331.301,
12 subsection 11, 364.4, 384.12, subsection 18, and 613A.7,
13 coverage under the fund is an "insurance agreement", the fund
14 deductible is a "self-insurance program", and alternative
15 proof of aggregate financial responsibility pursuant to
16 section 455B.479A, subsection 8, is a "self-insurance
17 program".

18 The state of Iowa, its agencies, departments, and other
19 administrative subdivisions, are not exempt from this
20 division. The state may purchase coverage from the fund, or
21 the state may prove both minimum financial responsibility and
22 aggregate financial responsibility by its status as a
23 governmental entity capable of self-insuring by reliance upon
24 its taxing powers to satisfy future incurred obligations.

25 The board shall provide by rule that the deductible or
26 minimum financial responsibility requirement of this
27 subsection shall be on the same basis as provided for under
28 subsection 1.

29 3. APPLICATION TO BOARD FOR FUND COVERAGE ABOVE THE
30 DEDUCTIBLE. To meet the aggregate financial responsibility
31 requirement of subsection 1, the owner or operator may apply
32 to the board for coverage above the deductible under
33 subsection 2, up to the lesser of one million dollars in the
34 aggregate per occurrence, or the amount provided for under
35 subsection 6.

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

8 a. The owner or operator demonstrates that it has been
9 unable to establish the minimum financial responsibility
10 required by subsection 2 and has made every reasonable attempt
11 to secure coverage from at least two of the financial
12 assurance mechanisms in subsection 2.

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

15 c. The owner or operator cooperates fully with the board
16 during the application and investigation process and provide
17 all documentation and records requested by the board.

18 d. The owner or operator consents to on-site inspection of
19 the underground storage tank sought to be covered. The owner
20 or operator shall pay the reasonable expenses of an on-site
21 inspection under this paragraph.

22 e. The owner or operator is not insolvent and would not
23 become insolvent by being required to pay the minimum amount
24 of financial responsibility required by subsection 2.

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

26 5. THE BOARD MAY REFUSE FUND COVERAGE. The board reserves
27 the right to refuse fund coverage, whether in combination with
28 any other financial assurance mechanism or as the sole
29 financial assurance mechanism to those owners or operators who
30 fail to meet statutory standards and rules adopted by the
31 board.

32 a. The board shall only extend fund coverage to an owner
33 or operator for a petroleum underground storage tank which has
34 an adequate monitoring system. However, the board may extend
35 fund coverage for a petroleum underground storage tank without

1 an adequate monitoring system, if the applicable one of the
2 following conditions is satisfied:

3 (1) TANKS TWENTY-YEARS AND OLDER OR NEWLY INSTALLED. The
4 owner or operator, of a tank then subject to Iowa department
5 of natural resources monitoring rules, has been granted, by
6 the department of natural resources, a waiver with an
7 enforceable schedule of compliance pursuant to section
8 455B.474, subsection 1, paragraph "f". However, if an
9 adequate monitoring system is not installed before the later
10 of November 1, 1988, or the expiration of the waiver or
11 renewals or extensions of the waiver for just cause, the fund
12 shall not provide further coverage to the person who was the
13 owner at the time the waiver was in effect.

14 (2) TANKS ZERO TO TWENTY-YEARS. The owner or operator, of
15 an underground storage tank less than twenty years old, has
16 been granted a waiver by the board, provided that the waiver
17 shall include an enforceable schedule for installation of a
18 monitoring system satisfactory to the board before November 1,
19 1989. A waiver shall be granted an owner or operator who
20 demonstrates plans for tank removal, replacement, or filling
21 with an inert material pursuant to a department of natural
22 resources approved variance, or significant tank upgrades or
23 improvements prior to November 1, 1989. Waivers may be
24 renewed or extended for just cause. If monitoring wells are
25 not installed before the later of November 1, 1989, or the
26 expiration of the waiver or renewals or extensions of the
27 waiver for just cause, the fund shall not provide further
28 coverage to the person who was the owner at the time the
29 waiver was in effect. The board shall not grant a waiver or
30 extension or renewal of a waiver, if the owner or operator has
31 previously been denied a waiver or extension or renewal of a
32 waiver for that tank by the department of natural resources.

33 b. For purposes of this section, "an adequate monitoring
34 system" means a system complying with mandatory monitoring
35 rules issued by the department of natural resources or

1 monitoring wells satisfactory to the board, except the board
2 shall not accept the manual inventory method as a satisfactory
3 monitoring system.

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

11 7. FUND COVERAGE ON ACTUARIALLY SOUND BASIS, WITH RISK
12 FACTOR ADJUSTMENT. The premium for coverage under the fund
13 shall be two hundred dollars per tank per year or the prorated
14 portion of two hundred dollars for a portion of a year before
15 the effective date of the federal environmental protection
16 agency petroleum underground storage tank financial
17 responsibility regulations, except as provided by section
18 455B.479E, subsection 1. Any excess premium payment shall be
19 credited to future premiums or refunded to owners or operators
20 which select the alternative proof of aggregate financial
21 responsibility option. For coverage provided on or after the
22 effective date of the federal environmental protection agency
23 petroleum underground storage tank financial responsibility
24 regulations, the board may only approve fund coverage through
25 the payment of a premium established on an actuarially sound
26 basis. Risk factors shall be taken into account in
27 establishing premiums for individual underground storage
28 tanks. Among other risk factors to be considered in
29 establishing premiums for coverage, the most favorable reduced
30 premiums shall be offered to state-of-the-art underground
31 storage tanks and risk management practices. It is the intent
32 of the general assembly that an actuarially sound premium
33 reflect the risk to the fund presented by the insured. Risk
34 factor adjustments should reflect the range of risk presented
35 by the variety of tank systems, monitoring systems, and risk

1 management practices in the general tank population. Premium
2 adjustments for risk factors should at least take into account
3 lifetime costs of a tank and monitoring system and fund
4 premiums for that tank system so as to provide a positive
5 economic incentive to the owner or operator to install the
6 more environmentally safe option so as to reduce the exposure
7 to loss of the fund. Actuarially sound is not limited in its
8 meaning to fund premium revenue equaling or exceeding fund
9 expenditures for the general tank population.

10 The board in its discretion may require all new
11 installations applying for fund coverage to be state-of-the-
12 art installations.

13 8. ALTERNATIVE PROOF OF AGGREGATE FINANCIAL
14 RESPONSIBILITY. An owner or operator who does not apply for
15 fund coverage shall demonstrate to the board evidence of
16 financial responsibility as required under subsection 1
17 through use of one or more of the financial assurance
18 mechanisms permitted under subsection 2.

19 Sec. 10. NEW SECTION. 455B.479B IOWA COMPREHENSIVE
20 PETROLEUM UNDERGROUND STORAGE TANK FUND.

21 The Iowa comprehensive petroleum underground storage tank
22 fund is established in accordance with federal law as a
23 financial assurance mechanism to assist in corrective action
24 and the payment of third-party bodily injury and property
25 damage liability costs resulting from the accidental release
26 of petroleum from underground storage tanks. The fund is
27 established as a separate fund in the state treasury, and any
28 funds remaining in the fund at the end of each fiscal year
29 shall not revert to the general fund but shall remain in the
30 Iowa comprehensive petroleum underground storage tank fund.

* 31 The state is not liable for claims presented against the
32 comprehensive petroleum underground storage tank fund. All
33 expenses incurred in carrying out section 455B.479A, this
34 section, and sections 455B.479C through 455B.479H shall be
35 payable solely from the comprehensive petroleum underground

1 storage tank fund and no liability or obligation shall be
2 imposed upon the state beyond this amount.

3 Sec. 11. 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 public members with financial or insurance industry
13 expertise appointed by the governor and confirmed by the
14 senate to staggered four-year terms.

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

20 2. DEPARTMENT OF NATURAL RESOURCES COOPERATION WITH BOARD.
21 The director of the department of natural resources shall
22 cooperate with the board in the implementation of this part so
23 as to minimize unnecessary duplication of effort or paperwork
24 and maximize environmental protection.

25 3. REQUIRED RULES AND EMERGENCY RULES.

26 a. The board shall adopt rules regarding its practice and
27 procedures, the form and procedure for application for
28 financial responsibility certification, development of
29 underwriting standards, establishment of premiums to be
30 charged for coverage from the fund, risk factors, procedures
31 for investigating claims, determination of the basis for the
32 deductible or minimum financial responsibility requirement of
33 section 455B.479A, subsection 2, paragraph "a", and
34 establishment of guidelines outlining the coverage available
35 from the fund.

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

5 c. Rules necessary for the implementation and collection
6 of the comprehensive petroleum underground storage tank fee,
7 under section 455B.479E, shall be adopted on or before June 1,
8 1988.

9 d. Rules for the implementation of section 455B.479A
10 through 455B.479I, except for rules covered by paragraph "c"
11 and rules related to the establishment of actuarially sound
12 premiums after the effective date of the federal environmental
13 protection agency regulations on petroleum underground storage
14 tank financial responsibility, shall be adopted prior to
15 September 1, 1988.

16 e. Rules related to the establishment of actuarially sound
17 premiums after the effective date of federal regulations shall
18 be adopted as soon as practicable, and no later than three
19 months prior to the effective date of the federal
20 environmental protection agency regulations on petroleum
21 underground storage tank financial responsibility.

22 4. PROFESSIONAL ADMINISTRATOR OF FUND. The board shall
23 employ a professional administrator to manage the fund as an
24 independent contractor. The professional administrator must
25 have had insurance or actuarial experience and must
26 demonstrate management abilities consistent with the
27 responsibility of managing the fund.

28 Sec. 12. NEW SECTION. 455B.479D FUND'S REVENUE SOURCES.

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

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

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

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

1 4. Interest attributable to investment of money in the
2 fund.

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

7 Sec. 13. NEW SECTION. 455B.479E PETROLEUM TANK FEE.

8 The legislature hereby declares that the storage fees
9 imposed by this section do not constitute a tax and are not
10 collected for purposes of increasing state revenues pursuant
11 to section 30 of Article III or section 8 of Article VII of
12 the Iowa Constitution.

13 1. GUARANTEE OF FUND'S SOLVENCY.

14 a. The board shall do one or both of the following, in its
15 discretion, when the unexpended balance in the fund falls
16 below two million dollars:

17 (1) Notify the director of revenue and finance. When
18 notified that the fund's balance is less than two million
19 dollars, the director of revenue and finance shall impose and
20 collect the fee established in subsection 2 on the use of an
21 underground storage tank, but only in the months of either or
22 both July and August, as necessary to restore the fund balance
23 to more than two million dollars.

24 (2) Increase the premium established pursuant to section
25 455B.479A, subsection 7, by an amount reasonably calculated to
26 restore the fund balance to greater than two million dollars
27 within twelve months. The increase shall be applied to
28 premiums as they become due upon renewal of coverage.

29 b. The board shall notify the director of revenue and
30 finance when the unexpended balance in the fund falls below
31 one million dollars. When notified that the fund's balance is
32 less than one million dollars, the director of revenue and
33 finance shall impose and collect the fee established in
34 subsection 2 on the use of an underground storage tank for a
35 one-month period, within sixty days of receiving notice from

1 the board. The fee shall remain in effect for so many months
2 as necessary to restore the fund balance to more than one
3 million dollars.

4 2. IMPOSITION OF COMPREHENSIVE PETROLEUM UNDERGROUND
5 STORAGE TANK FEE. A comprehensive petroleum underground
6 storage tank fee is imposed on the use of underground storage
7 tanks containing petroleum subject to the fee charged in
8 section 455B.479. The petroleum tank fee shall be collected
9 at the distributor level. A distributor shall pay the fee on
10 petroleum which is dispensed by the distributor into an
11 underground storage tank subject to the fee charged in section
12 455B.479 not owned or operated by the distributor. A
13 distributor which initially receives petroleum from out-of-
14 state shall pay the fee on any petroleum deposited into an
15 underground storage tank subject to the fee charged in section
16 455B.479 owned or operated by the distributor. The fee shall
17 be paid only the first time that petroleum is deposited or
18 dispensed into an underground storage tank subject to the fee
19 charged in section 455B.479. A distributor shall receive a
20 credit for the fee paid on petroleum transported and dispensed
21 out-of-state by the distributor. The board shall adopt rules
22 and forms to be used for the collection of the fee. The fee
23 shall be imposed, as required under subsection 1 or section
24 455B.479I, at a rate of twenty dollars per one thousand
25 gallons of petroleum, which is a regulated substance as
26 defined in section 455B.471, subsection 4, rounded to the
27 nearest one thousand gallons. A distributor who fails to pay
28 the fee imposed under this section is subject to the penalties
29 provided in section 455B.477.

30 3. UNEXPENDED BALANCE RETAINED IN THE FUND. Any
31 unexpended balance in the fund at the end of the fiscal year
32 shall be retained in the fund.

33 Sec. 14. NEW SECTION. 455B.479F DISBURSEMENTS.

34 Money in the fund may only be expended for the following
35 purposes:

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

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

11 3. To compensate a third party, including payment of a
12 judgment for bodily injury or property damage caused by
13 release of petroleum into the environment from an underground
14 storage tank, where coverage has been provided to an owner or
15 operator by the fund, up to the amount of coverage extended,
16 but in no case to exceed the lesser of one million dollars in
17 the aggregate per occurrence or the amount provided for under
18 section 455B.479A, subsection 6.

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

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

27 b. The owner or operator is incapable, in the judgment of
28 the board, of carrying out the reasonable and required
29 corrective action.

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

32 Sec. 15. NEW SECTION. 455B.479G COST RECOVERY
33 ENFORCEMENT.

34 1. GENERAL RULE, RECOVERY SOUGHT FROM OWNER OR OPERATOR.
35 The board shall seek recovery from the owner or operator of

1 the underground storage tank which released the petroleum and
2 which is the subject of the corrective action for all costs or
3 moneys expended from the fund under section 455B.479F.

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

9 3. OWNER OR OPERATOR NOT IN COMPLIANCE WITH MINIMUM
10 FINANCIAL RESPONSIBILITY REQUIREMENTS SUBJECT TO FULL AND
11 TOTAL COST UNDER GENERAL RULE. Notwithstanding subsection 2,
12 the liability of an owner or operator shall be the full and
13 total costs of corrective action and for bodily injury or
14 property damage to third parties specified in subsection 1 if
15 the owner or operator has not complied with the requirements
16 of section 455B.479A.

17 4. TREBLE PUNITIVE DAMAGES FOR CERTAIN VIOLATIONS.
18 Notwithstanding subsection 2, the owner or operator, or both,
19 of an underground storage tank may be liable to the fund for
20 punitive damages in an amount equal to three times the amount
21 of any cost incurred or moneys expended by the fund as a
22 result of a release of petroleum from the underground storage
23 tank if the owner or operator did one of the following:

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

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

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

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

33 The punitive damages imposed under this subsection shall be
34 in addition to any costs or expenditures recovered from the
35 owner or operator pursuant to this section and in addition to

1 any other penalty or relief provided by this part or any other
2 law.

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

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

9 6. EXCEPTION TO RULE OF JOINT AND SEVERAL LIABILITY. A
10 party found liable for any costs or expenditures recoverable
11 under this section, who establishes by a preponderance of the
12 evidence that only a portion of those costs or expenditures is
13 attributable to that party's actions, shall pay only for that
14 portion.

15 7. APPLICATION OF EQUITABLE PRINCIPLES IF INSUFFICIENT
16 PROOF TO APPORTION COSTS OR EXPENDITURES. If the trier of
17 fact finds the evidence insufficient to establish each party's
18 portion of costs or expenditures pursuant to subsection 6, the
19 court shall apportion those costs or expenditures among the
20 defendants, to the extent practicable, according to equitable
21 principles.

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

26 9. STRICT LIABILITY. The standard of liability for any
27 costs recoverable pursuant to this part of this division is
28 strict liability.

29 10. THIRD-PARTY CONTRACTS NOT BINDING ON BOARD,
30 PROCEEDINGS AGAINST RESPONSIBLE PARTY. No insurance,
31 indemnification, hold harmless, conveyance, or similar risk-
32 sharing or risk-shifting agreement shall be effective to
33 transfer any liability for costs recoverable under this
34 section. The fund may proceed directly against the owner or
35 operator or other allegedly responsible party. This section

1 does not bar any agreement to insure, hold harmless, or
2 indemnify a party to the agreement for any costs or
3 expenditures under this chapter, and does not modify rights
4 between the parties to an agreement.

5 11. LATER PROCEEDINGS PERMITTED AGAINST OTHER PARTIES.

6 The entry of judgment against a party to the action does not
7 bar a future action by the board against another person who is
8 later alleged to be or discovered to be liable for costs and
9 expenditures paid from the fund. Subsequent successful
10 proceedings against another party shall not modify or reduce
11 the liability of a party against whom judgment has been
12 previously entered.

13 12. UPON PAYMENT OF CLAIM, BOARD ACQUIRES SUBROGATION

14 RIGHTS. Payment of a claim by the fund pursuant to this part
15 of this chapter shall be conditioned upon the board acquiring
16 by subrogation the rights of the claimant to recover those
17 costs and expenditures for corrective action for which the
18 fund has compensated the claimant, from the person responsible
19 or liable for the unauthorized release. A claimant is
20 precluded from receiving double compensation for the same
21 injury.

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

24 Sec. 16. NEW SECTION. 455B.479H FUND NOT PART OF THE
25 IOWA INSURANCE GUARANTY ASSOCIATION.

26 Notwithstanding any other provisions of law to the
27 contrary, the Iowa comprehensive underground storage tank fund
28 shall not be considered an insurance company or insurer under
29 the laws of this state and shall not be a member of nor be
30 entitled to claim against the Iowa insurance guaranty
31 association created under chapter 515B.

32 Sec. 17. NEW SECTION. 455B.479I INITIAL FUNDING FOR
33 COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND.

34 To provide the initial funding for the comprehensive
35 petroleum underground storage tank fund, the director of

1 revenue and finance shall impose the fee established in
2 section 455B.479E, subsection 2, for the months of July and
3 August 1988 and for the months of July and August 1989. The
4 fee shall be collected for 1988 during the months of August
5 and September 1988, and the fee shall be collected for 1989
6 during the months of August and September 1989.

7 Fund coverage shall not be provided, until on or after
8 November 1, 1988, except that fund coverage may be provided on
9 or after July 1, 1988, if the covered tank is required to have
10 an adequate monitoring system on that date by department of
11 natural resources regulation. No claims shall be paid until
12 on or after November 1, 1988, in any case.

13 Sec. 18. NEW SECTION. 455D.1 LOANS FOR REPAIR OR
14 REPLACEMENT OF PETROLEUM UNDERGROUND STORAGE TANKS.

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

17 Sec. 19. NEW SECTION. 455D.2 LEGISLATIVE FINDINGS --
18 NECESSITY FOR LOAN FUND TO ACCOMPLISH ENVIRONMENTAL GOALS
19 WHILE PROTECTING SMALL BUSINESSES.

20 The legislature finds the following:

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

24 2. Small businesses in this state do not always have the
25 financial means necessary to repair and upgrade existing
26 underground storage tanks to reduce the probability that
27 unauthorized releases of petroleum may occur.

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

32 Sec. 20. NEW SECTION. 455D.3 DEFINITIONS.

33 1. "Account" means the petroleum underground storage tank
34 financing account established under section 455D.4, subsection
35 2.

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

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

5 a. Is independently owned and operated.

6 b. Owns one, but no more than ten petroleum underground
7 storage tanks at no more than two different sites.

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

12 Sec. 21. NEW SECTION. 455D.4 IOWA PETROLEUM UNDERGROUND
13 STORAGE TANK FINANCING ACCOUNT.

14 1. The governing board of the Iowa comprehensive petroleum
15 underground storage tank fund established pursuant to section
16 455B.479C shall constitute the Iowa petroleum underground
17 storage tank financing authority. The authority shall adopt
18 rules to provide loans, guarantees, or interest buy-downs to
19 financially qualified small businesses for the purposes of
20 repairing, upgrading, or replacing petroleum underground
21 storage tanks to meet applicable state or federal standards.
22 Financial assistance from the account, whether in the form of
23 a loan, guarantee, or interest buy-down, is conditioned upon
24 the repair, upgrade, or installation for which assistance is
25 provided and must result in state-of-the-art tank and
26 monitoring systems. The board shall take appropriate steps to
27 publicize the existence of the loan program. Maintenance of
28 the financing account and loan program are the responsibility
29 of the treasurer of state. All expenses incurred in carrying
30 out this section shall be payable solely from the petroleum
31 underground storage tank financing account and no liability or
32 obligation shall be imposed upon the state beyond this amount.

33 2. The Iowa petroleum underground storage tank financing
34 account is established as a separate fund in the state
35 treasury, and any funds remaining in the account at the end of

1 each fiscal year shall not revert to the general fund but
2 shall remain in the Iowa petroleum underground storage tank
3 financing account.

4 Sec. 22. NEW SECTION. 455D.5 PROOF OF FINANCIAL NEED.

5 As a condition of eligibility for financial assistance
6 under this chapter, a participating party shall attempt to
7 obtain financing from private lending sources. If two
8 financial institutions are unwilling to make the loan, the
9 participating party shall determine if the institution would
10 make the loan in participation with the authority as a
11 guarantor.

12 Sec. 23. NEW SECTION. 455D.6 LENGTH OF LOAN.

13 The maturity for each loan made by the authority pursuant
14 to this chapter shall be the shortest feasible term
15 commensurate with the repayment ability of the borrower.
16 However, the maturity date of a loan shall not exceed ten
17 years.

18 Sec. 24. NEW SECTION. 455D.7 MAXIMUM LOAN AND LOW COST
19 INTEREST.

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

24 Sec. 25. NEW SECTION. 455D.8 SOURCE OF REVENUES.

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

27 1. The Iowa comprehensive petroleum underground storage
28 tank fund in the amount of two percent of fees collected
29 pursuant to section 455B.479E.

30 2. Interest payments received by the authority from
31 outstanding loans.

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

34 Sec. 26. NEW SECTION. 455D.9 FUTURE REPEAL.

35 This chapter is repealed effective July 1, 1998. Any

1 moneys remaining in or due the account shall revert to the
2 Iowa comprehensive petroleum underground storage tank fund.

3 Sec. 27. NEW SECTION. 455B.490 AUTOMATIC REPEAL OF IOWA
4 COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND.

5 1. Sections 455B.477 through 455B.479I are repealed
6 effective July 1, 2003.

7 2. The repeal of the sections listed in subsection 1 shall
8 not terminate the following obligations or authorities
9 necessary to administer the obligations until these
10 obligations are satisfied:

11 a. The payment of claims filed prior to July 1, 2003,
12 against the Iowa comprehensive petroleum underground storage
13 tank fund pursuant to section 455B.479F, until moneys in the
14 fund are exhausted. Upon exhaustion of the fund, any
15 remaining claims shall be invalid. If following satisfaction
16 of the obligations pursuant to this section, moneys remain in
17 the fund, all remaining moneys and moneys due the fund shall
18 be prorated to premium payers on an equitable basis determined
19 by the board.

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

22 Sec. 28. INSTALLER'S FUND STUDY. The board shall perform
23 a study of the feasibility of creating a separate fund to
24 provide coverage to installers of petroleum underground
25 storage tanks. An installer's fund would provide coverage to
26 premium paying insureds on an actuarially sound basis and be
27 managed by the board in conjunction with the comprehensive
28 petroleum underground storage tank fund. Installer's coverage
29 would be limited to environmental hazard coverage for both
30 corrective action and third-party liability for petroleum
31 underground storage tanks installed in Iowa after the creation
32 of the fund. The study shall include, but is not limited to,
33 the following topics:

34 1. Actuarial estimate of the per-tank premium necessary to
35 provide actuarially sound coverage to tank installers.

1 2. Need for licensing or other precondition to providing
2 coverage to a specific petroleum underground storage tank
3 installer.

4 3. The cost and availability of private insurance for
5 installers.

6 4. The number of installers doing business in the state.

7 5. Loss data from past or existing claims against
8 installers for both corrective action and third-party
9 liability.

10 6. Suggested limits of coverage, amount of the deductible,
11 and other fund features.

12 7. The board's recommendation to the general assembly
13 concerning provision of coverage to installers.

14 The results of the study shall be submitted to the general
15 assembly on or before December 1, 1988.

16 Sec. 29. 1987 Iowa Acts, chapter 225, section 602, is
17 repealed.

18 Sec. 30. This Act, being deemed of immediate importance,
19 takes effect upon enactment.

20 SUCCESSOR TO HF 2239 (LSB 7465HV)

21 SIMILAR TO HSB 509 (LSB 7465IS)

22 COMPANION TO LSB 7672IS

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HOUSE FILE 2441

S-5810

1 Amend House File 2441, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 2, by striking lines 25 and 26, and
4 inserting the following: "tanks installed prior to
5 ~~May-17-1986~~ January 14, 1987. The commission shall
6 ~~adopt these rules not later than April-17-1986,~~
7 ~~however, the~~,"

8 2. Page 2, by striking line 27, and inserting the
9 following: "effective date of the rules adopted shall
10 be ~~May-17-1988~~ January 1, 1989."

11 3. Page 3, by striking lines 5 through 13, and
12 inserting the following:

13 "NEW UNNUMBERED PARAGRAPH. The department may
14 issue a variance, which includes an enforceable
15 compliance schedule, from the mandatory monitoring
16 requirement for an owner or operator who demonstrates
17 plans for tank removal, replacement, or filling with
18 an inert material pursuant to a department approved
19 variance. A variance may be renewed for just cause."

20 4. Page 3, by inserting after line 22, the
21 following:

22 "Sec. ____ . Section 455B.474, subsection 3,
23 paragraph d, Code Supplement 1987, is amended to read
24 as follows:

25 d. Rules adopted by the commission shall specify
26 adequate monitoring systems to detect the presence of
27 a leaking underground storage tank and to provide for
28 protection of the groundwater resources from regulated
29 tanks installed after ~~May-17-1986~~ January 14, 1987.
30 ~~The commission shall adopt these rules not later than~~
31 ~~January-17-1986, however, the effective date of the~~
32 ~~rules adopted shall be May-17-1986.~~ In the event that
33 federal regulations are adopted by the United States
34 environmental protection agency after the commission
35 has adopted state standards pursuant to this
36 subsection, the commission shall immediately proceed
37 to adopt rules consistent with those federal
38 regulations adopted. Tanks installed on or after
39 January 14, 1987, shall continue to be considered new
40 tanks for purposes of this chapter and are subject to
41 state monitoring requirements unless federal
42 requirements are more restrictive."

43 5. Page 7, by striking lines 3 through 32, and
44 inserting the following:

45 "(1) TANKS INSTALLED PRIOR TO JANUARY 14, 1967.
46 The owner or operator of an underground storage tank
47 has been granted a variance by the department which
48 includes an enforceable compliance schedule pursuant
49 to section 455B.474, subsection 1, paragraph "f".
50 However, if an adequate monitoring system is not

S-5810 Page 2

1 installed before the later of January 1, 1989, or the
2 expiration of a variance issued by the department, the
3 fund shall not provide further coverage to the owner
4 or operator of the tank unless the monitoring system
5 has been installed.

6 (2) TANKS INSTALLED BETWEEN JANUARY 14, 1967, AND
7 JANUARY 13, 1987. The owner or operator of an
8 underground storage tank installed between January 14,
9 1967, and January 13, 1987, has been granted a waiver
10 by the board. Waivers shall include an enforceable
11 schedule for installation of a monitoring system
12 satisfactory to the board. A waiver may allow for a
13 delay in the installation of a monitoring system until
14 either November 1, 1989, or until six months from the
15 date on which insurance is provided, whichever is
16 later. A waiver shall be granted to an owner who
17 demonstrates plans for tank removal, replacement, or
18 filling with an inert material pursuant to a
19 department approved variance, or significant tank
20 upgrades or improvements. Waivers may be renewed or
21 extended for just cause within the times set out
22 above, but after the deadline or expiration of a
23 waiver, the fund shall not provide further coverage to
24 the owner or operator of the tank unless the
25 monitoring system is installed."

26 6. Page 8, line 3, by inserting after the word
27 "system" the following: "and the board shall not
28 accept a monitoring system less stringent than
29 department rules require, or published rules will
30 require when effective, for the tank".

31 7. Page 13, by inserting after line 32 the
32 following:

33 "4. FEE COLLECTION. For the purpose of
34 determining the amount of liability for the
35 comprehensive petroleum underground storage tank fee
36 for each distributor, a distributor shall file with
37 the department of revenue and finance, not later than
38 the last day of the month following the month in which
39 the fee is imposed, a monthly fee statement certified
40 under penalties for false certificate. The statement
41 shall show, with reference to each location at which
42 petroleum is subject to the fee, the amount of
43 petroleum deposited into an underground storage tank,
44 the amount of the fee collected in the preceding
45 calendar month, and such information as the department
46 may reasonably require for the proper administration
47 and enforcement of the fee.

48 5. PAYMENTS. The statement shall be accompanied
49 by remittance in the amount of the fee due for the
50 month in which the comprehensive petroleum underground

S-5810 Page 3

1 storage tank fee was imposed.

2 6. DEDUCTIONS AND CREDITS. The statement shall
3 show the amount of deductions or credits claimed by
4 the distributor as authorized in this division in such
5 detail and with such supporting evidence as is
6 prescribed by the department of revenue and finance
7 and as may be required for administration of this
8 division.

9 7. OTHER INFORMATION. Such other information as
10 the department of natural resources, the board, or the
11 department of revenue and finance may require for the
12 enforcement and administration of this chapter.

13 8. ENFORCEMENT. Enforcement of fee collection is
14 the responsibility of the department of revenue and
15 finance."

16 8. Renumber as necessary.

S-5810

Filed April 6, 1988

B-Adopted 4/13 (p. 1499)
... Passed 4/13 (p. 1504)

BY COMMITTEE ON ENVIRONMENT AND
ENERGY UTILITIES
PATRICK J. DELUHERY, Chairperson

STATE OF IOWA

FILED APR 13 1988

FISCAL NOTE

LSB No. 7465h.2
Staff ID. JWR

SENATE AMENDMENT S-5905 TO HOUSE FILE 2441

In compliance with a written request received April 13, 1988, a fiscal note for SENATE AMENDMENT S-5905 TO HOUSE FILE 2441 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate Amendment S-5905 to House File 2441 extends the deadline for installation of leak-detection wells on certain underground petroleum storage tanks one year to July 1, 1989, adds two public members with petroleum industry experience to the Iowa Comprehensive Underground Storage Tank Fund Board, eliminates the \$20 per 1,000 gallon petroleum tank fee, limits any increase in tank insurance premiums to \$50 per tank, provides for a start-up loan of \$500,000 in General Fund moneys which is to be repaid at the end of FY 1989, and sets limits on awards from the fund prior to the effective date of Federal regulations covering underground storage tanks. These limits reduce the amount of the deductible a owner must pay from \$20,000 to \$10,000, reduces the upper limit that the fund covers for clean-up from \$1,000,000 to \$100,000, and prohibits the payment of third-party damages.

Fiscal Effect:

The Federal regulations are to be announced by October of 1988 and are to go into effect two years later. The limits on damages from covered leaks would reduce the average cost per detected leak by one-half, from \$48,000 to \$24,000. This would reduce the yearly costs to the fund from \$21,000,000 to \$10,500,000 up to the effective date of the Federal regulations. After the regulations take effect, the cost per year would rise to \$21,000,000.

Elimination of the \$20 per 1,000 storage tank fee would result in a loss of revenue to the fund of approximately \$5,200,000 per year for the two years prior to the effective date of the Federal regulations. If premiums are raised from \$200 to \$250 per tank, the fund will have available \$7,200,000 per year. This would leave the Fund approximately \$3,400,000 short per year in the first two years and \$13,000,000 short per year when the Federal regulations take effect. With the elimination of the storage tank fee and the cap on premiums, the Fund would be unable to generate enough revenue to remain solvent. The Fund would therefore be unable to repay the \$500,000 loan from the General Fund at the end of FY 1989. Delaying the requirements of leak detection wells would have the affect of limiting costs to the Fund in the first years, but would increase costs by a greater amount in future years due to the fact that the longer a tank leaks, the more it costs to clean-up.

Sources:

- Department of Natural Resources
- Department of Transportation
- Tillinghast Actuarial Study

(LSB 7465h.2, JWR)

Jennis C. Prouty
Fiscal Director

Legislative Fiscal Bureau

Date: 4/13/88

HOUSE FILE 2441

S-5904

1 Amend House File 2441, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 2, by inserting after line 18, the
4 following:
5 "Sec. ____ . Section 455B.474, subsection 1,
6 paragraph e, Code Supplement 1987, is amended to read
7 as follows:
8 " e. The closure of tanks to prevent any future
9 release of a regulated substance into the environment.
10 If consistent with federal environmental protection
11 agency technical standard regulations, state tank
12 closure rules shall include, at the tank owner's
13 election, an option to fill the tank with an inert
14 material. Removal of a tank shall not be required if
15 the tank is filled with an inert material pursuant to
16 department of natural resources rules. A tank closed,
17 or to be closed and which is actually closed, within
18 one year of the effective date of this Act, shall not
19 be required to have a monitoring system installed."
20 2. By renumbering as necessary.

S-5904

led April 11, 1988
Adopted 4/13 (p. 1497)

BY BERL E. PRIEBE
EMIL J. HUSAK
JOHN E. SOORHOLTZ
BILL HUTCHINS
ALVIN V. MILLER
KENNETH SCOTT
DALE TIEDEN
JOE WELSH
LINN FUHRMAN
LEE W. HOLT
TOM MANN
DONALD DOYLE
HURLEY W. HALL
LEONARD L. BOSWELL
EUGENE FRAISE
DONALD GETTINGS
JOHN A. PETERSON

HOUSE FILE 2441

S-5848

- 1 Amend House File 2441, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 14, by striking lines 30 and 31.
- 4 2. By striking page 18, line 13 through page 21,
- 5 line 2.
- 6 3. By renumbering as necessary.

S-5848

Filed April 7, 1988

w/r 4/13 (p 1503)

BY JOE WELSH
JACK RIFE

HOUSE FILE 2441

S-5905

1 Amend House File 2441, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 2, line 27, by striking the figure "1988"
4 and inserting the following: "~~1988~~ 1989".

5 2. Page 9, by inserting after line 18 the
6 following:

7 "9. FUND COVERAGE LIMITED TO CORRECTIVE ACTION
8 PRIOR TO EFFECTIVE DATE OF FEDERAL RULES.

9 Notwithstanding any other provision of this division,
10 before the effective date of the federal environmental
11 protection agency petroleum underground storage tank
12 financial responsibility regulations, the following
13 conditions apply to the operation of the fund:

14 a. The fund shall only insure corrective action,
15 and third-party liability is specifically excluded.

16 b. The deductible is ten thousand dollars.

17 c. The limit of fund coverage shall be one hundred
18 thousand dollars, with the first ten thousand being
19 the minimum financial responsibility of the owner or
20 operator, which is the deductible, so that the fund
21 shall not pay out more than ninety thousand dollars
22 for corrective action per occurrence.

23 d. Fund coverage is for the lesser of one year or
24 the period prior to the effective date of the federal
25 regulations. A risk adjusted premium as required by
26 section 455B.477 shall be required prior to providing
27 coverage for any period of time on or after the
28 effective date of the federal regulations.

29 All other limits, requirements, terms, or
30 conditions of fund coverage or operation apply both
31 before and after the effective date of the federal
32 regulations unless expressly provided otherwise."

33 3. Page 10, by inserting after line 14 the
34 following:

35 "e. Two public members with experience in the
36 petroleum industry, appointed by the governor and
37 confirmed by the senate to staggered four-year terms."

38 4. Page 11, by striking line 32.

39 5. Page 12, line 7, by striking the words
40 "PETROLEUM TANK FEE" and inserting the following:
41 "GUARANTEE OF FUND'S SOLVENCY".

42 6. Page 12, by striking lines 8 through 23.

43 7. Page 12, line 24, by striking the word and
44 figure "(2) Increase" and inserting the following:

45 "1. PREMIUM INCREASES. If the unexpended balance
46 in the fund falls below two million dollars, the board
47 shall increase".

48 8. Page 12, line 27, by inserting after the word
49 "months" the following: ", except that the premium
50 may not be increased more than fifty dollars per

S-5905 Page 2

1 tank".

2 9. By striking page 12, line 29 through page 13,
3 line 29.

4 10. By striking Page 17, line 32, through page
5 18, line 12, and inserting the following:

6 "Sec. ____ . NEW SECTION. 455B.479I BEGINNING DATE
7 OF FUND COVERAGE.

8 Fund coverage shall be provided to eligible
9 applicants no later than the effective date of
10 department of natural resources rules on petroleum
11 underground storage tank monitoring standards,
12 provided that the board, in its discretion, may extend
13 coverage earlier."

14 11. Page 22, by inserting after line 15, the
15 following:

16 "Sec. ____ . 1. There is appropriated from the
17 general fund of the state for the fiscal year
18 beginning July 1, 1988, and ending June 30, 1989, five
19 hundred thousand (500,000) dollars, to be transferred
20 to and deposited in the comprehensive petroleum
21 underground storage tank fund on July 1, 1988.

22 2. The amount appropriated in subsection 1, is
23 appropriated from the comprehensive petroleum
24 underground storage tank fund to be transferred to and
25 deposited in the general fund of the state by June 30,
26 1989."

27 12. By renumbering and relettering as necessary.

S-5905

Filed April 11, 1988

A. Adopted 4/13 (p. 1503)

B. Placed o/o (p. 1504)

BY EMIL J. HUSAK
BERL E. PRIEBE
JIM LIND
JOE WELSH
WILLIAM PALMER
RICHARD F. DRAKE
JOHN JENSEN
DALE TIEDEN
JOHN SOORHOLTZ

HOUSE FILE 2441

S-5922

1 Amend House File 2441, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 14, line 4, by inserting after the word
4 "basis." the following: "The department of revenue
5 and finance shall be compensated for the actual costs
6 incurred for administration, collection, and
7 enforcement of the comprehensive petroleum underground
8 storage tank fee."

S-5922

Filed April 11, 1988

Adopted 4/13 (p. 1503)

BY MICHAEL E. GRONSTAL

-5972

1 Amend House File 2441, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, by inserting before line 1, the
4 following:

DIV 5 "Section 1. Section 312.2, Code Supplement 1987,
6 is amended by adding the following new subsection:

B 7 NEW SUBSECTION. 22. The treasurer of state,
8 before making the allotments provided for in this
9 section, shall credit in the fiscal year beginning
10 July 1, 1988, and ending June 30, 1989, from the
11 revenue to be credited to the road use tax fund under
12 section 423.24, subsection 1, paragraph "b", the sum
13 of five hundred thousand dollars to the comprehensive
14 petroleum underground storage tank fund for the
15 purpose of initial organization, start-up, and
16 capitalization of the fund."

17 2. By striking page 17, line 32, through page 18,
18 line 12, and inserting the following:

DIV 19 "Sec. ____ . NEW SECTION. 455B.479I BEGINNING DATE
20 OF COVERAGE.

A 21 Fund coverage shall be provided to eligible
22 applicants no later than May 1, 1989, provided that
23 the board may begin fund coverage earlier in its
24 discretion."

25 3. Page 22, by inserting after line 15, the
26 following:

27 "Sec. ____ . 1988 Iowa Acts, Senate File 2196,
28 section 4, is amended to read as follows:

29 SEC. 4. Section 312.2, Code Supplement 1987, is
30 amended by adding the following new subsection:

DIV 31 NEW SUBSECTION. 20. The treasurer of state,
32 before making the allotments provided for in this
33 section, shall credit annually from the revenue to be
34 credited to the road use tax fund under section
35 423.24, subsection 1, paragraph "b", the sum of ~~one~~
36 ~~million-dollars~~ five hundred thousand dollars in the
37 fiscal year beginning July 1, 1988, and ending June
38 30, 1989, and one million dollars annually thereafter,
39 to the state department of transportation for the
40 purpose of acquiring, constructing, and improving
41 recreational trails within the state. Unobligated
42 portions of this allotment shall remain available to
43 the state department of transportation for the
44 purposes for which the funds are originally allocated.
45 The state department of transportation shall adopt
46 rules under chapter 17A to establish procedures for
47 the expenditure of the funds allotted under this
48 subsection."

49 4. By renumbering as necessary.

S-5972

Filed April 13, 1988

BY JOE WELSH

DIV A - WITHDRAWN (p. 15²⁴) JACK RIFE
DIV B - ADOPTED (p. 14⁷⁸)

1 Amend House File 2441, as amended, passed, and
2 reprinted by the House, as follows:

3 1. By striking page 4, line 26 through page 5,
4 line 6, and inserting the following:

5 "a. As a condition of fund coverage of aggregate
6 financial responsibility, the owner or operator shall
7 demonstrate to the board evidence of minimum financial
8 responsibility, the deductible, to cover corrective
9 action and third-party bodily injury and property
10 damage costs in an amount determined according to the
11 following formula:

12 (1) For a tank zero to ten years of age, on a site
13 which had five hundred thousand gallons, or less, of
14 petroleum deposited into the owner's or operator's
15 underground storage tanks in the immediate prior year,
16 the deductible shall be ten thousand dollars.

17 (2) For a tank older than ten years, but less than
18 twenty, the deductible is increased one thousand
19 dollars for each additional year over ten years of
20 age, up to a maximum deductible of twenty thousand
21 dollars, and for a tank on a site which had more than
22 five hundred thousand gallons of petroleum deposited
23 into the owner's or operator's underground storage
24 tanks in the immediate prior year, the deductible is
25 increased one thousand dollars for each additional one
26 hundred thousand gallons of petroleum deposited, up to
27 a maximum of twenty thousand dollars per tank.

28 (3) For a tank twenty years of age, or older, or
29 of indeterminate age, or a tank on a site which had
30 one million five hundred thousand gallons, or more, of
31 petroleum deposited into the owner's or operator's
32 underground storage tanks in the immediate prior year,
33 the deductible is twenty thousand dollars.

34 b. The owner or operator shall demonstrate minimum
35 financial responsibility and aggregate financial
36 responsibility through the use of one or more of the
37 following financial assurance mechanisms:

38 (1) Self-insurance.

39 (2) Guarantee.

40 (3) Indemnity contract.

41 (4) Insurance.

42 (5) Risk retention group coverage.

43 (6) Letter of credit.

44 (7) The Iowa comprehensive petroleum underground
45 storage tank fund.

46 (8) Governmental risk pool.

47 (9) Status as a city, county, or school district,
48 or other".

49 2. Page 5, by striking lines 25 through 28.

50 3. Page 10, by striking lines 32 and 33, and

Page 2

1 inserting the following: "aggregate financial
2 responsibility requirement of section 455B.479A,
3 subsection 1, and".

SENATE AMENDMENT TO HOUSE FILE 2441

H-6444

1 Amend House File 2441, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, by inserting before line 1, the
4 following:

5 "Section 1. Section 312.2, Code Supplement 1987,
6 is amended by adding the following new subsection:

7 NEW SUBSECTION. 22. The treasurer of state,
8 before making the allotments provided for in this
9 section, shall credit in the fiscal year beginning
10 July 1, 1988, and ending June 30, 1989, from the
11 revenue to be credited to the road use tax fund under
12 section 423.24, subsection 1, paragraph "b", the sum
13 of five hundred thousand dollars to the comprehensive
14 petroleum underground storage tank fund for the
15 purpose of initial organization, start-up, and
16 capitalization of the fund."

17 2. Page 2, by inserting after line 18, the
18 following:

19 "Sec. ____ . Section 455B.474, subsection 1,
20 paragraph e, Code Supplement 1987, is amended to read
21 as follows:

22 e. The closure of tanks to prevent any future
23 release of a regulated substance into the environment.
24 If consistent with federal environmental protection
25 agency technical standard regulations, state tank
26 closure rules shall include, at the tank owner's
27 election, an option to fill the tank with an inert
28 material. Removal of a tank shall not be required if
29 the tank is filled with an inert material pursuant to
30 department of natural resources rules. A tank closed,
31 or to be closed and which is actually closed, within
32 one year of the effective date of this Act, shall not
33 be required to have a monitoring system installed."

34 3. Page 2, by striking lines 25 and 26, and
35 inserting the following: "tanks installed prior to
36 May-17-1986 January 14, 1987. The commission shall
37 adopt these rules not later than April-17-1986;
38 however, the".

39 4. Page 2, line 27, by striking the figure "1988"
40 and inserting the following: "1988 1989".

41 5. Page 3, by striking lines 5 through 13, and
42 inserting the following:

43 "NEW UNNUMBERED PARAGRAPH. The department may
44 issue a variance, which includes an enforceable
45 compliance schedule, from the mandatory monitoring
46 requirement for an owner or operator who demonstrates
47 plans for tank removal, replacement, or filling with
48 an inert material pursuant to a department approved
49 variance. A variance may be renewed for just cause."

50 6. Page 3, by inserting after line 22, the

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Page 2

1 following:

2 "Sec. _____. Section 455B.474, subsection 3,
3 paragraph d, Code Supplement 1987, is amended to read
4 as follows:

5 d. Rules adopted by the commission shall specify
6 adequate monitoring systems to detect the presence of
7 a leaking underground storage tank and to provide for
8 protection of the groundwater resources from regulated
9 tanks installed after ~~May 17, 1986~~ January 14, 1987.
10 ~~The commission shall adopt these rules not later than~~
11 ~~January 17, 1986, however, the effective date of the~~
12 ~~rules adopted shall be May 17, 1986.~~ In the event that
13 federal regulations are adopted by the United States
14 environmental protection agency after the commission
15 has adopted state standards pursuant to this
16 subsection, the commission shall immediately proceed
17 to adopt rules consistent with those federal
18 regulations adopted. Tanks installed on or after
19 January 14, 1987, shall continue to be considered new
20 tanks for purposes of this chapter and are subject to
21 state monitoring requirements unless federal
22 requirements are more restrictive."

23 7. Page 7, by striking lines 3 through 32, and
24 inserting the following:

25 "(1) TANKS INSTALLED PRIOR TO JANUARY 14, 1967.
26 The owner or operator of an underground storage tank
27 has been granted a variance by the department which
28 includes an enforceable compliance schedule pursuant
29 to section 455B.474, subsection 1, paragraph "f".
30 However, if an adequate monitoring system is not
31 installed before the later of January 1, 1989, or the
32 expiration of a variance issued by the department, the
33 fund shall not provide further coverage to the owner
34 or operator of the tank unless the monitoring system
35 has been installed.

36 (2) TANKS INSTALLED BETWEEN JANUARY 14, 1967, AND
37 JANUARY 13, 1987. The owner or operator of an
38 underground storage tank installed between January 14,
39 1967, and January 13, 1987, has been granted a waiver
40 by the board. Waivers shall include an enforceable
41 schedule for installation of a monitoring system
42 satisfactory to the board. A waiver may allow for a
43 delay in the installation of a monitoring system until
44 either November 1, 1989, or until six months from the
45 date on which insurance is provided, whichever is
46 later. A waiver shall be granted to an owner who
47 demonstrates plans for tank removal, replacement, or
48 filling with an inert material pursuant to a
49 department approved variance, or significant tank
50 upgrades or improvements. Waivers may be renewed or

H-6444

Page 3

1 extended for just cause within the times set out
2 above, but after the deadline or expiration of a
3 waiver, the fund shall not provide further coverage to
4 the owner or operator of the tank unless the
5 monitoring system is installed."

6 8. Page 8, line 3, by inserting after the word
7 "system" the following: "and the board shall not
8 accept a monitoring system less stringent than
9 department rules require, or published rules will
10 require when effective, for the tank".

11 9. Page 9, by inserting after line 18 the
12 following:

13 "9. FUND COVERAGE LIMITED TO CORRECTIVE ACTION
14 PRIOR TO EFFECTIVE DATE OF FEDERAL RULES.

15 Notwithstanding any other provision of this division,
16 before the effective date of the federal environmental
17 protection agency petroleum underground storage tank
18 financial responsibility regulations, the following
19 conditions apply to the operation of the fund:

20 a. The fund shall only insure corrective action,
21 and third-party liability is specifically excluded.

22 b. The deductible is ten thousand dollars.

23 c. The limit of fund coverage shall be one hundred
24 thousand dollars, with the first ten thousand being
25 the minimum financial responsibility of the owner or
26 operator, which is the deductible, so that the fund
27 shall not pay out more than ninety thousand dollars
28 for corrective action per occurrence.

29 d. Fund coverage is for the lesser of one year or
30 the period prior to the effective date of the federal
31 regulations. A risk adjusted premium as required by
32 section 455B.477 shall be required prior to providing
33 coverage for any period of time on or after the
34 effective date of the federal regulations.

35 All other limits, requirements, terms, or
36 conditions of fund coverage or operation apply both
37 before and after the effective date of the federal
38 regulations unless expressly provided otherwise."

39 10. Page 10, by inserting after line 14 the
40 following:

41 "e. Two public members with experience in the
42 petroleum industry, appointed by the governor and
43 confirmed by the senate to staggered four-year terms."

44 11. Page 11, by striking line 32.

45 12. Page 12, line 7, by striking the words
46 "PETROLEUM TANK FEE" and inserting the following:
47 "GUARANTEE OF FUND'S SOLVENCY".

48 13. Page 12, by striking lines 8 through 23.

49 14. Page 12, line 24, by striking the word and
50 figure "(2) Increase" and inserting the following:

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Page 4

1 "1. PREMIUM INCREASES. If the unexpended balance
2 in the fund falls below two million dollars, the board
3 shall increase".

4 15. Page 12, line 27, by inserting after the word
5 "months" the following: ", except that the premium
6 may not be increased more than fifty dollars per
7 tank".

8 16. By striking page 12, line 29 through page 13,
9 line 29.

10 17. Page 13, by inserting after line 32 the
11 following:

12 "4. FEE COLLECTION. For the purpose of
13 determining the amount of liability for the
14 comprehensive petroleum underground storage tank fee
15 for each distributor, a distributor shall file with
16 the department of revenue and finance, not later than
17 the last day of the month following the month in which
18 the fee is imposed, a monthly fee statement certified
19 under penalties for false certificate. The statement
20 shall show, with reference to each location at which
21 petroleum is subject to the fee, the amount of
22 petroleum deposited into an underground storage tank,
23 the amount of the fee collected in the preceding
24 calendar month, and such information as the department
25 may reasonably require for the proper administration
26 and enforcement of the fee.

27 5. PAYMENTS. The statement shall be accompanied
28 by remittance in the amount of the fee due for the
29 month in which the comprehensive petroleum underground
30 storage tank fee was imposed.

31 6. DEDUCTIONS AND CREDITS. The statement shall
32 show the amount of deductions or credits claimed by
33 the distributor as authorized in this division in such
34 detail and with such supporting evidence as is
35 prescribed by the department of revenue and finance
36 and as may be required for administration of this
37 division.

38 7. OTHER INFORMATION. Such other information as
39 the department of natural resources, the board, or the
40 department of revenue and finance may require for the
41 enforcement and administration of this chapter.

42 8. ENFORCEMENT. Enforcement of fee collection is
43 the responsibility of the department of revenue and
44 finance."

45 18. Page 14, line 4, by inserting after the word
46 "basis." the following: "The department of revenue
47 and finance shall be compensated for the actual costs
48 incurred for administration, collection, and
49 enforcement of the comprehensive petroleum underground
50 storage tank fee."

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Page 5

1 19. By striking Page 17, line 32, through page
 2 18, line 12, and inserting the following:
 3 "Sec. ____ . NEW SECTION. 455B.479I BEGINNING DATE
 4 OF FUND COVERAGE.
 5 Fund coverage shall be provided to eligible
 6 applicants no later than the effective date of
 7 department of natural resources rules on petroleum
 8 underground storage tank monitoring standards,
 9 provided that the board, in its discretion, may extend
 10 coverage earlier."

11 20. Page 22, by inserting after line 15, the
 12 following:

13 "Sec. ____ . 1988 Iowa Acts, Senate File 2196,
 14 section 4, is amended to read as follows:
 15 SEC. 4. Section 312.2, Code Supplement 1987, is
 16 amended by adding the following new subsection:
 17 NEW SUBSECTION. 20. The treasurer of state,
 18 before making the allotments provided for in this
 19 section, shall credit annually from the revenue to be
 20 credited to the road use tax fund under section
 21 423.24, subsection 1, paragraph "b", the sum of one
 22 million-dollars five hundred thousand dollars in the
 23 fiscal year beginning July 1, 1988, and ending June
 24 30, 1989, and one million dollars annually thereafter,
 25 to the state department of transportation for the
 26 purpose of acquiring, constructing, and improving
 27 recreational trails within the state. Unobligated
 28 portions of this allotment shall remain available to
 29 the state department of transportation for the
 30 purposes for which the funds are originally allocated.
 31 The state department of transportation shall adopt
 32 rules under chapter 17A to establish procedures for
 33 the expenditure of the funds allotted under this
 34 subsection."

35 21. By renumbering, relettering, or redesignating
 36 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-6444 FILED APRIL 13, 1988

REFUSED TO CONCUR (p. 1841)

Senate considered 4/14 (p. 1534)

REPORT OF THE CONFERENCE COMMITTEE
ON HOUSE FILE 2441

To the Speaker of the House of Representatives and the President of the Senate:

We, the undersigned members of the conference committee appointed to resolve the differences between the House of Representatives and the Senate on House File 2441, a bill for An Act relating to underground storage tanks, establishing certain fees, providing penalties, and providing an effective date, respectfully make the following report:

1. That the Senate amendment, H-6444, to House File 2441, as amended, passed, and reprinted by the House, is amended as follows:

1. Page 1, by striking lines 3 through 16.

2. Page 1, by inserting after line 16, the following:

"___ . Page 1, line 17, by inserting after the word "tank." the following: "Corrective action specifically excludes third-party liability."

___ . Page 1, by inserting after line 28, the following:

"NEW SUBSECTION. 12. "Third-party liability" means liability owed by an owner or operator to a person other than the fund for death, bodily injury, or property damage, but excludes corrective action, even if corrective action compensates a third party, in whole or in part, for injury or damage. Third-party liability is specifically excluded from fund coverage, and a third-party liability claim against an owner or operator covered by the fund is reduced to the extent that corrective action has already compensated the third party."

3. Page 1, line 32, by inserting after the word "Act," the following: "shall be required to complete monitoring or testing as required by the department to ensure that the tank did not leak prior to closure, but".

4. Page 1, by striking lines 39 through 40, and inserting the following:

"___. Page 2, line 27, by striking the word and figures "July 1, 1988" and inserting the following: "~~17-1988~~ January 14, 1989"."

5. Page 2, by inserting after line 22, the following:

"___. By striking page 3, line 35, through page 4, line 24, and inserting the following: "STORAGE TANK FUND."

___. Page 4, lines 28 through 29, by striking the words "and third-party bodily injury and property damage".

___. Page 5, by striking lines 29 through 35, and inserting the following:

"2. APPLICATION TO BOARD FOR FUND COVERAGE. An owner or operator may apply to the board for fund coverage of a tank on the form provided by the board."

___. Page 6, by striking lines 3 through 6, and inserting the following: "have the fund provide coverage of the deductible only if"."

6. Page 3, by striking lines 11 through 38, and inserting the following:

"___. Page 8, by striking lines 5 through 10, and inserting the following: "coverage up to a maximum of five hundred thousand dollars for corrective action per occurrence."

___. By striking page 8, line 11 through page 9, line 9, and inserting the following:

"6. FUND PREMIUMS AND DEDUCTIBLES. Fund coverage shall be offered based upon the following deductible and premium combinations, at the insured's option:

- a. Ten thousand dollar deductible for a four hundred dollar premium.
- b. Twenty thousand dollar deductible for a three hundred twenty-five dollar premium.
- c. Thirty thousand dollar deductible for a two hundred fifty dollar premium.

Premiums for fund coverage are per tank, per year, or the prorated portion of the premium for a portion of a year before the effective date of the federal environmental protection

agency petroleum underground storage tank financial responsibility regulations. Any excess premium payment shall be credited to future premiums or refunded to the owner or operator."

____. Page 9, by striking lines 13 through 18.

____. Page 9, line 22, by striking the words "in accordance with federal law".

____. Page 9, by striking lines 24 and 25, and inserting the following: "resulting from the accidental release".

7. Page 3, by striking lines 39 through 43.

8. Page 3, by inserting after line 43 the following:

"____. Page 10, by striking lines 28 through 35, and inserting the following: "financial responsibility certification, administration and collection of the comprehensive petroleum underground storage tank fee, procedures for investigating and settling claims, and establishment of guidelines outlining coverage available from the fund. The board in cooperation with the department shall require the reporting of the following information from owners and operators of tanks subject to the fee charged in section 455B.479:

(1) Actual cost of corrective action performed, whether or not paid for by the fund.

(2) The number of tanks owned by each owner, and their location, size, age, and amount of petroleum flowing through each site annually, to the extent each item is known or knowable.

(3) The number of tanks operated by each operator, and their location, size, age, and amount of petroleum flowing through each site annually, to the extent each item is known or knowable.

(4) Any other information, including prior loss experience, which the board or department requests relevant to an actuarial description of the tank population.

This information shall be organized and submitted to the general assembly prior to February 14, 1989. Information

submitted by an individual owner or operator shall be confidential and not subject to disclosure under chapter 21 or 22, except as the information is submitted to the general assembly in the aggregate. The board and the division of insurance shall prepare a report on the fund, its project loss experience, the then current federal rules, and other matters relating to the solvency and future operations of the fund and submit the report to the general assembly on or before February 14, 1989."

____. Page 11, by striking lines 10 through 21, and inserting the following: "through 455B.479I, shall be adopted prior to October 1, 1988."

9. By striking page 3, line 44 through page 4, line 9 and inserting the following:

"____. Page 12, by striking line 14 and inserting the following:

"a. The board shall do the following".

____. Page 12, line 15, by striking "discretion,".

____. Page 12, by striking lines 17 through 23.

____. Page 12, line 24, by striking the figure "(2)".

____. By striking page 12, line 27 through page 13, line 3, and inserting the following: "except a premium shall not be surcharged more than twenty-five percent in any one year of continuous coverage. The surcharge shall be applied as an immediate surcharge due within thirty days after mailed notice. Failure to pay the surcharge terminates fund coverage for the owner or operator as of thirty days after mailed notice. An owner or operator failing to make payment within the allotted time must reapply for fund coverage to be effective upon the date of application and conditioned upon payment of the annual premium plus any applicable surcharge then in effect."

____. Page 13, line 12, by inserting after the word "distributor." the following: "Every distributor shall, as required by law, pay to the director of revenue and finance, or to a depository designated by the director, an amount equal to the rate provided under this section."

Page 13, line 23, by striking the words "subsection 1 or".

10. Page 4, by striking lines 48 and 49, and inserting the following: "incurred for acting as the depository of the comprehensive petroleum underground".

11. Page 4, by inserting after line 50 the following:

"Page 14, by striking lines 8 through 18, and inserting the following: "of coverage extended, but in no case to exceed five hundred thousand dollars for corrective action, per occurrence."

Page 14, by striking lines 19 through 21, and inserting the following:

"3. For the cost of corrective action up to five hundred thousand dollars per occurrence for".

Page 15, by striking lines 4 through 8, and inserting the following:

"2. OWNER'S EXCESS LIABILITY. A person asserting a claim against an owner or operator shall proceed directly against the owner or operator. An owner or operator purchasing fund coverage is liable for the deductible, third-party liability, and any corrective action liability above fund coverage limits."

12. Page 5, by striking lines 1 through 10, and inserting the following:

"Page 18, by striking lines 2 through 6, and inserting the following: "section 455B.479E, subsection 2, in the month of August 1988. The fee shall be paid to the department of revenue and finance no later than September 30, 1988."

Page 18, by striking lines 7 through 12, and inserting the following:

"Fund coverage shall be provided to eligible applicants no later than January 14, 1989. The board may, in its discretion, extend coverage earlier. Provided, however, that fund coverage may be provided upon approval of an application, retroactive to the effective date of this Act, if the

applicant has a monitoring system installed on the insured tank in compliance with department of natural resources published rules, then effective, or to become effective, for that tank.""

13. By striking page 5, lines 11 through 34.

14. By renumbering, relettering, or redesignating, and correcting internal references as necessary.

ON THE PART OF THE HOUSE:

JACK HATCH, CHAIR
DAVID OSTERBERG
DONALD PAULIN
DAVID SCHRADER

ON THE PART OF THE SENATE:

MICHAEL GRONSTAL, CHAIR
PATRICK DELUHERY
EMIL HUSAK
JIM LIND

FILED APRIL 16, 1988

See ADOPTED (p. 2216)

See adopted 4/17 (p. 1752)



OFFICE OF THE GOVERNOR

STATE CAPITOL

DES MOINES, IOWA 50319

815 281-521

TERRY E. BRANSTAD
GOVERNOR

May 13, 1988

The Honorable Elaine Baxter
Secretary of State
State Capitol Building
L O C A L

Dear Madam Secretary:

I hereby transmit House File 2441, an act relating to underground storage tanks, establishing certain fees, providing penalties, and providing an effective date.

House File 2441 is approved with the following exceptions which I hereby disapprove.

I am unable to approve the items designated as: Sections 1 & 2 in their entirety; the first paragraph of Section 3, subsection 3; Section 8 in its entirety; Section 10, new subsection 6, in its entirety, and Sections 11 through 30 in their entirety.

House File 2441 establishes a state operated underground storage tank insurance fund. The fund would provide coverage up to \$500,000 per occurrence for leaks from underground storage tanks. This state insurance system is funded by tank fees assessed to owners of underground storage tanks which will raise approximately \$6 million per year. In addition, the legislation requires the imposition of a two cent per gallon tax on all petroleum products stored in the state in August of 1988. This tax increase is expected to raise approximately \$3 million this year.

In addition, House File 2441 includes provisions which delay the state rules requiring monitoring wells around existing tanks from May 1 of this year to January 14 of 1989 and provides additional enforcement tools to the Department of Natural Resources in this area.

I believe that a delay in the implementation of the state rules requiring costly monitoring of wells is in order, given the fact the federal government has yet to issue its rules governing these tanks. In addition, I approve of the additional enforcement tools which are provided to the Department of Natural Resources to deal with leaky underground storage tanks.

The Honorable Elaine Baxter
May 13, 1988
Page 2

However, I cannot approve the items in this bill which:

- ♦ put the state in the insurance business by creating the state underground storage tank insurance fund;
- ♦ raise taxes; and
- ♦ appropriate tax revenues to the fund.

I believe this complicated tax increase and public insurance system sets the state on a fiscally hazardous cause. Moreover, it excessively increases the gas and petroleum taxes for Iowans and prematurely leapfrog federal regulations which have not yet been issued in this area.

First, some background is probably in order. The Congress has passed a law requiring the Environmental Protection Agency (EPA) to establish standards to deal with underground storage tanks. The EPA has been struggling with those standards for over two years. Proposed rules were issued once and then withdrawn after considerable public comment and protest. The key elements of the rules are likely to be monitoring clean up and financial responsibility standards. In the interim, the Iowa Legislature mandated that the state require expensive monitoring wells to be constructed around each existing underground storage tank by May 1 of this year. Most owners of underground storage tanks were simply unable to comply with this mandate. Moreover, many owners of underground storage tanks were unable to obtain insurance necessary to provide funds to clean up underground storage tank leaks if they are found.

This bill is an attempt by the General Assembly to provide state insurance to pay for clean up without knowing what the federal rules which will govern the financial liability of tank owners will require.

My concerns about that action by the state of Iowa are threefold:

- ♦ The under funded insurance effectively exposes the state to considerable liability;
- ♦ The taxes on petroleum products should not be raised again and used for this purpose;
- ♦ State action of this import should not be taken until the federal rules are issued.

The Honorable Elaine Baxter
May 13, 1985
Page 3

I have deep philosophical concerns about involving the state in the insurance business. I generally believe that insurance is best left to the private sector. I do understand that most underground storage tank owners find it difficult, if not impossible, to locate private insurers, however. Nevertheless, House File 2441 establishes an insurance fund, that according to actuarial estimates, will be insolvent by \$10-\$20 million. This \$10-\$20 million unfunded liability would have to be picked up by either tank owners or, in all probability, by the state. Since tank owners do not have the financial ability to pick up those additional costs, it is quite likely that this \$10-20 million of unfunded liability will eventually fall on the state's taxpayers. I am reluctant to commit the state to fund such a substantial liability.

In addition, I am deeply concerned about the method that is used in this legislation to provide public funds for this insurance system. Public funds are provided by a two cent increase in all petroleum products stored in August of this year. We have already adjusted the motor fuel user fee to pay for the Transportation 2000 commercial highway network and to replace lost federal funds needed to repair and maintain our highways. I believe that adjustment is enough. We should not shove another two cent per gallon tax increase in August on to the state's petroleum users.

Moreover, I am concerned about the precedent this legislation sets in using a petroleum tax for purposes other than maintaining our transportation system. Our Constitution appropriately requires that motor fuel user fees be dedicated towards the maintenance of our roadways. This legislation attempts to evade that constitutional provision by taxing petroleum fuels while they are still in the distributor storage tanks and then using them for an insurance fund. Thus, the bill raises serious constitutional questions and, in any event, sets a bad precedent for road funding decisions in the future.

Finally, I believe that House File 2441 attempts to solve a problem that has not yet been defined. The financial responsibility requirements to be placed on owners of underground storage tanks will be established by the rules reportedly due out anywhere from October of this year to the spring of next year. In addition, the preliminary reports indicate that there may be changes in the financial responsibility requirements for tank owners in those rules. And, there are some reports that the effective date of the financial responsibility requirements in the rules could be delayed until 1990 or 1991.


The Honorable Elaine Baxter
May 13, 1988
Page 4

Frankly, until the rules are finally issued, we do not know what type of financial responsibility system should be established to deal with leaky underground storage tanks. The likely size of the problem will probably necessitate some sort of state role in the clean up process and I am certainly willing to consider options to do that, given the important environmental need to maintain clean groundwater. However, I believe it would be premature and ill advised to put in place a two cent per gallon petroleum tax, and a state operated insurance fund with a \$10-20 million unfunded liability until we receive clear indications of just what the federal government will require. We should have a much better idea of what those requirements will be at the time of the commencement of the next General Assembly. Once the final federal rules are issued, I will work closely with the affected parties to develop an appropriate state response to this important environmental issue.

In short, I cannot approve those items in House File 2441 which potentially obligate the state to considerable financial liability, raise the petroleum tax by two cents per gallon on Iowans, and appropriate to and establish the state underground storage insurance fund. I believe it would be premature and fiscally unwise for the state to take this step at this time.

For the above reasons, I hereby respectfully disapprove these items in accordance with Amendment IV of the Amendments of the 1968 Constitution of the State of Iowa. All other items in House File 2441 are hereby approved as of this date.

Sincerely,


Terry E. Branstad
Governor

TEB/ps

cc: Secretary of the Senate
Chief Clerk of the House

HOUSE FILE 2441

AN ACT

RELATING TO UNDERGROUND STORAGE TANKS, ESTABLISHING CERTAIN FEES, PROVIDING PENALTIES, AND PROVIDING AN EFFECTIVE DATE.

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

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

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

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

NEW SUBSECTION. 8. "Corrective action" means an action taken to minimize, eliminate, or cleanup a release to protect the public health and welfare or the environment. Corrective action includes, but is not limited to, excavation of an underground storage tank for the purpose of repairing a leak or removal of the tank, removal of contaminated soil, disposal or processing of contaminated soil, and cleansing of groundwaters or surface waters. Corrective action does not include replacement of an underground storage tank. Corrective action specifically excludes third-party liability.

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

Sections 1 & 2; Section 3, subsection 3 (first paragraph); Section 5, Section 10, subsection 6, Sections 11 through 30.

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

NEW SUBSECTION. 11. "Distributor" means a person who first receives petroleum within this state or a person who dispenses petroleum into an underground storage tank subject to the fee charged in section 455B.479 not owned or operated by the distributor.

NEW SUBSECTION. 12. "Third-party liability" means liability owed by an owner or operator to a person other than the fund for death, bodily injury, or property damage, but excludes corrective action, even if corrective action compensates a third party, in whole or in part, for injury or damage. Third-party liability is specifically excluded from fund coverage, and a third-party liability claim against an owner or operator covered by the fund is reduced to the extent that corrective action has already compensated the third party.

Sec. 3. NEW SECTION. 455B.473A PETROLEUM UNDERGROUND STORAGE TANK REGISTRATION AMNESTY PROGRAM.

A petroleum underground storage tank required to be registered under section 455B.473, which has not been registered prior to July 1, 1988, may be registered under the following conditions:

1. The tank registration fee under section 455B.473, subsection 5, shall accompany the registration.
2. The storage tank management fee of fifteen dollars per tank under section 455B.479 shall be paid for past years in which the tank should have been registered.
3. The owner or operator shall demonstrate financial responsibility as required by section 455B.479A.

If a tank is registered under this section on or prior to October 1, 1989, penalties under section 455B.477 shall be waived.

Sec. 4. Section 455B.474, subsection 1, paragraph d, Code Supplement 1987, is amended to read as follows:

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

Sec. 5. Section 455B.474, subsection 1, paragraph e, Code Supplement 1987, is amended to read as follows:

e. The closure of tanks to prevent any future release of a regulated substance into the environment. If consistent with federal environmental protection agency technical standard regulations, state tank closure rules shall include, at the tank owner's election, an option to fill the tank with an inert material. Removal of a tank shall not be required if the tank is filled with an inert material pursuant to department of natural resources rules. A tank closed, or to be closed and which is actually closed, within one year of the effective date of this Act, shall be required to complete monitoring or testing as required by the department to ensure that the tank did not leak prior to closure, but shall not be required to have a monitoring system installed.

Sec. 6. Section 455B.474, subsection 1, paragraph f, unnumbered paragraph 1, Code Supplement 1987, is amended to read as follows:

Specifying an adequate monitoring system to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources for regulated tanks installed prior to ~~May 17, 1986~~ January 14, 1987. ~~The commission shall adopt these rules not later than April 17, 1986; however, the effective date of the rules adopted shall be May 17, 1988~~ January 14, 1987. In the event that federal regulations are adopted by the United States environmental

protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted. Unless the federal environmental protection agency adopts final rules to the contrary, rules adopted pursuant to this section shall not apply to hydraulic lift reservoirs, such as for automobile hoists and elevators, containing hydraulic oil.

Sec. 7. Section 455B.474, subsection 1, paragraph f, Code Supplement 1987, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The department may issue a variance, which includes an enforceable compliance schedule, from the mandatory monitoring requirement for an owner or operator who demonstrates plans for tank removal, replacement, or filling with an inert material pursuant to a department approved variance. A variance may be renewed for just cause.

Sec. 8. Section 455B.474, subsection 2, unnumbered paragraph 1, Code Supplement 1987, is amended to read as follows:

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

Sec. 9. Section 455B.474, subsection 3, paragraph d, Code Supplement 1987, is amended to read as follows:

d. Rules adopted by the commission shall specify adequate monitoring systems to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources from regulated tanks installed after ~~May 17, 1986~~ January 14, 1987. ~~The commission shall adopt these rules not later than January 17, 1987; however, the effective date of the rules adopted shall be May 17, 1986~~. In the event

that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted. Tanks installed on or after January 14, 1987, shall continue to be considered new tanks for purposes of this chapter and are subject to state monitoring requirements unless federal requirements are more restrictive.

Sec. 10. Section 455B.477, Code 1987, is amended by adding the following new subsections:

NEW SUBSECTION. 6. The civil penalties recovered by the state or the fund in connection with a petroleum underground storage tank under this part of this division shall be credited to the fund.

NEW SUBSECTION. 7. The penalty for intentional failure of an owner or operator to register a petroleum underground storage tank under section 455B.473 shall be a minimum of seven thousand five hundred dollars up to a maximum of ten thousand dollars after October 1, 1989.

Sec. 11. NEW SECTION. 455B.479A PETROLEUM UNDERGROUND STORAGE TANK FUND.

1. MINIMUM FINANCIAL RESPONSIBILITY, THE "DEDUCTIBLE". The owner or operator shall demonstrate to the board evidence of financial responsibility in the amount of not less than twenty thousand dollars to cover corrective action costs through the use of one or more of the following financial assurance mechanisms:

- a. Self-insurance.
- b. Guarantee.
- c. Indemnity contract.
- d. Insurance.
- e. Risk retention group coverage.
- f. Letter of credit.

g. The Iowa comprehensive petroleum underground storage tank fund.

h. Governmental risk pool.

i. Status as a city, county, or school district, or other political subdivision empowered to enter into insurance agreements obligating the entity to make payments beyond its current budget year to procure or provide for a policy of insurance, a self-insurance program, or a local government risk pool. For the purposes of sections 296.7, 331.301, subsection 11, 364.4, 384.12, subsection 18, and 613A.7, coverage under the fund is an "insurance agreement", the fund deductible is a "self-insurance program", and alternative proof of aggregate financial responsibility pursuant to section 455B.479A, subsection 8, is a "self-insurance program".

The state of Iowa, its agencies, departments, and other administrative subdivisions, are not exempt from this division. The state may purchase coverage from the fund, or the state may prove both minimum financial responsibility and aggregate financial responsibility by its status as a governmental entity capable of self-insuring by reliance upon its taxing powers to satisfy future incurred obligations.

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

2. APPLICATION TO BOARD FOR FUND COVERAGE. An owner or operator may apply to the board for fund coverage of a tank on the form provided by the board.

3. APPLICATION TO BOARD FOR FUND COVERAGE OF THE DEDUCTIBLE. The owner or operator may apply to the board to have the fund provide coverage of the deductible only if all of the following requirements are met:

a. The owner or operator demonstrates that it has been unable to establish the minimum financial responsibility

required by subsection 1 and has made every reasonable attempt to secure coverage from at least two of the financial assurance mechanisms in subsection 1.

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

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

d. The owner or operator consents to on-site inspection of the underground storage tank sought to be covered. The owner or operator shall pay the reasonable expenses of an on-site inspection under this paragraph.

e. The owner or operator is not insolvent and would not become insolvent by being required to pay the minimum amount of financial responsibility required by subsection 1.

f. Any other reasonable requirements set by the board.

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

a. The board shall only extend fund coverage to an owner or operator for a petroleum underground storage tank which has an adequate monitoring system. However, the board may extend fund coverage for a petroleum underground storage tank without an adequate monitoring system, if the applicable one of the following conditions is satisfied:

(1) TANKS INSTALLED PRIOR TO JANUARY 14, 1967. The owner or operator of an underground storage tank has been granted a variance by the department which includes an enforceable compliance schedule pursuant to section 455B.474, subsection 1, paragraph "f". However, if an adequate monitoring system is not installed before the later of January 1, 1989, or the expiration of a variance issued by the department, the fund

shall not provide further coverage to the owner or operator of the tank unless the monitoring system has been installed.

(2) TANKS INSTALLED BETWEEN JANUARY 14, 1967, AND JANUARY 13, 1987. The owner or operator of an underground storage tank installed between January 14, 1967, and January 13, 1987, has been granted a waiver by the board. Waivers shall include an enforceable schedule for installation of a monitoring system satisfactory to the board. A waiver may allow for a delay in the installation of a monitoring system until either November 1, 1989, or until six months from the date on which insurance is provided, whichever is later. A waiver shall be granted to an owner who demonstrates plans for tank removal, replacement, or filling with an inert material pursuant to a department approved variance, or significant tank upgrades or improvements. Waivers may be renewed or extended for just cause within the times set out above, but after the deadline or expiration of a waiver, the fund shall not provide further coverage to the owner or operator of the tank unless the monitoring system is installed.

b. For purposes of this section, "an adequate monitoring system" means a system complying with mandatory monitoring rules issued by the department of natural resources or monitoring wells satisfactory to the board, except the board shall not accept the manual inventory method as a satisfactory monitoring system and the board shall not accept a monitoring system less stringent than department rules require, or published rules will require when effective, for the tank.

5. LIMITS OF FUND COVERAGE. The board may approve coverage up to a maximum of five hundred thousand dollars for corrective action per occurrence.

6. FUND PREMIUMS AND DEDUCTIBLES. Fund coverage shall be offered based upon the following deductible and premium combinations, at the insured's option:

a. Ten thousand dollar deductible for a four hundred dollar premium.

b. Twenty thousand dollar deductible for a three hundred twenty-five dollar premium.

c. Thirty thousand dollar deductible for a two hundred fifty dollar premium.

Premiums for fund coverage are per tank, per year, or the prorated portion of the premium for a portion of a year before the effective date of the federal environmental protection agency petroleum underground storage tank financial responsibility regulations. Any excess premium payment shall be credited to future premiums or refunded to the owner or operator.

The board in its discretion may require all new installations applying for fund coverage to be state-of-the-art installations.

Sec. 12. NEW SECTION. 455B.479B IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND.

The Iowa comprehensive petroleum underground storage tank fund is established as a financial assurance mechanism to assist in corrective action resulting from the accidental release of petroleum from underground storage tanks. The fund is established 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.

The state is not liable for claims presented against the comprehensive petroleum underground storage tank fund. All expenses incurred in carrying out section 455B.479A, this section, and sections 455B.479C through 455B.479H shall be payable solely from the comprehensive petroleum underground storage tank fund and no liability or obligation shall be imposed upon the state beyond this amount.

Sec. 13. NEW SECTION. 455B.479C GOVERNING BOARD.

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

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

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

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

d. Two public members with financial or insurance industry expertise appointed by the governor and confirmed by the senate to staggered four-year terms.

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

2. DEPARTMENT OF NATURAL RESOURCES COOPERATION WITH BOARD.

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

3. REQUIRED RULES AND EMERGENCY RULES.

a. The board shall adopt rules regarding its practice and procedures, the form and procedure for application for financial responsibility certification, administration and collection of the comprehensive petroleum underground storage tank fee, procedures for investigating and settling claims, and establishment of guidelines outlining coverage available from the fund. The board in cooperation with the department shall require the reporting of the following information from owners and operators of tanks subject to the fee charged in section 455B.479:

(1) Actual cost of corrective action performed, whether or not paid for by the fund.

(2) The number of tanks owned by each owner, and their location, size, age, and amount of petroleum flowing through each site annually, to the extent each item is known or knowable.

(3) The number of tanks operated by each operator, and their location, size, age, and amount of petroleum flowing through each site annually, to the extent each item is known or knowable.

(4) Any other information, including prior loss experience, which the board or department requests relevant to an actuarial description of the tank population.

This information shall be organized and submitted to the general assembly prior to February 14, 1989. Information submitted by an individual owner or operator shall be confidential and not subject to disclosure under chapter 21 or 22, except as the information is submitted to the general assembly in the aggregate. The board and the division of insurance shall prepare a report on the fund, its project loss experience, the then current federal rules, and other matters relating to the solvency and future operations of the fund and submit the report to the general assembly on or before February 14, 1989.

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

c. Rules necessary for the implementation and collection of the comprehensive petroleum underground storage tank fee, under section 455B.479E, shall be adopted on or before June 1, 1988.

d. Rules for the implementation of sections 455B.479A through 455B.479I, shall be adopted prior to October 1, 1988.

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

Sec. 14. NEW SECTION. 455B.479D FUND'S REVENUE SOURCES.

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

1. Premiums collected for coverage provided by the fund.
2. The proceeds from the fee imposed in section 455B.479E.
3. Money recovered under sections 455B.477 and 455B.479G, including administrative expenses, civil penalties, and money paid under an agreement, stipulation, or settlement.
4. Interest attributable to investment of money in the fund.
5. Money received by the board and department in the form of a gift, bequest, donation, federal grant, grant other than a federal grant, reimbursement, or appropriation from any source intended to be used for the purposes of the fund.

Sec. 15. NEW SECTION. 455B.479E PETROLEUM TANK FEE.

The legislature hereby declares that the storage fees imposed by this section do not constitute a tax and are not collected for purposes of increasing state revenues pursuant to section 30 of Article III or section 8 of Article VII of the Iowa Constitution.

1. GUARANTEE OF FUND'S SOLVENCY.

a. The board shall do the following when the unexpended balance in the fund falls below two million dollars:

Increase the premium established pursuant to section 455B.479A, subsection 6, by an amount reasonably calculated to restore the fund balance to greater than two million dollars except a premium shall not be surcharged more than twenty-five percent in any one year of continuous coverage. The surcharge shall be applied as an immediate surcharge due within thirty days after mailed notice. Failure to pay the surcharge terminates fund coverage for the owner or operator as of thirty days after mailed notice. An owner or operator failing to make payment within the allotted time must reapply for fund coverage to be effective upon the date of application and conditioned upon payment of the annual premium plus any applicable surcharge then in effect.

2. IMPOSITION OF COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FEE. A comprehensive petroleum underground storage tank fee is imposed on the use of underground storage tanks containing petroleum subject to the fee charged in section 455B.479. The petroleum tank fee shall be collected at the distributor level. A distributor shall pay the fee on petroleum which is dispensed by the distributor into an underground storage tank subject to the fee charged in section 455B.479 not owned or operated by the distributor. Every distributor shall, as required by law, pay to the director of revenue and finance, or to a depository designated by the director, an amount equal to the rate provided under this section. A distributor which initially receives petroleum from out-of-state shall pay the fee on any petroleum deposited into an underground storage tank subject to the fee charged in section 455B.479 owned or operated by the distributor. The fee shall be paid only the first time that petroleum is deposited or dispensed into an underground storage tank subject to the fee charged in section 455B.479. A distributor shall receive a credit for the fee paid on petroleum transported and dispensed out-of-state by the distributor. The board shall adopt rules and forms to be used for the collection of the fee. The fee shall be imposed, as required under section 455B.479I, at a rate of twenty dollars per one thousand gallons of petroleum, which is a regulated substance as defined in section 455B.471, subsection 4, rounded to the nearest one thousand gallons. A distributor who fails to pay the fee imposed under this section is subject to the penalties provided in section 455B.477.

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

4. FEE COLLECTION. For the purpose of determining the amount of liability for the comprehensive petroleum underground storage tank fee for each distributor, a

distributor shall file with the department of revenue and finance, not later than the last day of the month following the month in which the fee is imposed, a monthly fee statement certified under penalties for false certificate. The statement shall show, with reference to each location at which petroleum is subject to the fee, the amount of petroleum deposited into an underground storage tank, the amount of the fee collected in the preceding calendar month, and such information as the department may reasonably require for the proper administration and enforcement of the fee.

5. PAYMENTS. The statement shall be accompanied by remittance in the amount of the fee due for the month in which the comprehensive petroleum underground storage tank fee was imposed.

6. DEDUCTIONS AND CREDITS. The statement shall show the amount of deductions or credits claimed by the distributor as authorized in this division in such detail and with such supporting evidence as is prescribed by the department of revenue and finance and as may be required for administration of this division.

7. OTHER INFORMATION. Such other information as the department of natural resources, the board, or the department of revenue and finance may require for the enforcement and administration of this chapter.

8. ENFORCEMENT. Enforcement of fee collection is the responsibility of the department of revenue and finance.

Sec. 16. NEW SECTION. 455B.479F DISBURSEMENTS.

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

1. To administer the comprehensive petroleum underground storage tank program established in this part of this division, including but not limited to, payment of the professional administrator on an independent contract basis. The department of revenue and finance shall be compensated for the actual costs incurred for acting as the depository of the comprehensive petroleum underground storage tank fee.

2. To take corrective action for a release of petroleum into the environment from an underground storage tank for which coverage has been extended by the fund, up to the amount of coverage extended, but in no case to exceed five hundred thousand dollars for corrective action, per occurrence.

3. For the cost of corrective action up to five hundred thousand dollars per occurrence for a release of petroleum into the environment from an underground storage tank if one of the following requirements is met:

- a. The owner or operator cannot be identified by the board within ninety days of report of the release to the department.
- b. The owner or operator is incapable, in the judgment of the board, of carrying out the reasonable and required corrective action.

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

Sec. 17. NEW SECTION. 455B.479G COST RECOVERY ENFORCEMENT.

1. GENERAL RULE, RECOVERY SOUGHT FROM OWNER OR OPERATOR. The board shall seek recovery from the owner or operator of the underground storage tank which released the petroleum and which is the subject of the corrective action for all costs or moneys expended from the fund under section 455B.479P.

2. OWNER'S EXCESS LIABILITY. A person asserting a claim against an owner or operator shall proceed directly against the owner or operator. An owner or operator purchasing fund coverage is liable for the deductible, third-party liability, and any corrective action liability above fund coverage limits.

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

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

4. TREBLE PUNITIVE DAMAGES FOR CERTAIN VIOLATIONS.

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

- a. Failed, without sufficient cause, to respond to a release of petroleum from the underground storage tank upon, or in accordance with, a notice issued by the director.
- b. After the effective date of this section failed to perform any of the following:
 - (1) Failed to register the underground storage tank, which was known to exist or reasonably should have been known to exist.

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

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

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

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

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

7. APPLICATION OF EQUITABLE PRINCIPLES IF INSUFFICIENT PROOF TO APPORTION COSTS OR EXPENDITURES. If the trier of fact finds the evidence insufficient to establish each party's portion of costs or expenditures pursuant to subsection 6, the court shall apportion those costs or expenditures among the defendants, to the extent practicable, according to equitable principles.

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

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

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

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

12. UPON PAYMENT OF CLAIM, BOARD ACQUIRES SUBROGATION RIGHTS. Payment of a claim by the fund pursuant to this part

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

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

Sec. 18. NEW SECTION. 455B.479H PUND NOT PART OF THE IOWA INSURANCE GUARANTY ASSOCIATION.

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

Sec. 19. NEW SECTION. 455B.479I INITIAL FUNDING FOR COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND.

To provide the initial funding for the comprehensive petroleum underground storage tank fund, the director of revenue and finance shall impose the fee established in section 455B.479E, subsection 2, in the month of August 1988. The fee shall be paid to the department of revenue and finance no later than September 30, 1988.

Fund coverage shall be provided to eligible applicants no later than January 14, 1989. The board may, in its discretion, extend coverage earlier. Provided, however, that fund coverage may be provided upon approval of an application, retroactive to the effective date of this Act, if the applicant has a monitoring system installed on the insured tank in compliance with department of natural resources published rules, then effective, or to become effective, for that tank.

Sec. 20. NEW SECTION. 455D.1 LOANS FOR REPAIR OR REPLACEMENT OF PETROLEUM UNDERGROUND STORAGE TANKS.

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

Sec. 21. NEW SECTION. 455D.2 LEGISLATIVE FINDINGS -- NECESSITY FOR LOAN FUND TO ACCOMPLISH ENVIRONMENTAL GOALS WHILE PROTECTING SMALL BUSINESSES.

The legislature finds the following:

1. It is necessary and essential that the state use all practical means to control or eliminate pollution hazards posed by leaking petroleum underground storage tanks.
2. Small businesses in this state do not always have the financial means necessary to repair and upgrade existing underground storage tanks to reduce the probability that unauthorized releases of petroleum may occur.
3. The public health and safety of the state will benefit from providing new methods to finance the capital outlays required to repair and upgrade petroleum underground storage tanks by small business owners of such tanks.

Sec. 22. NEW SECTION. 455D.3 DEFINITIONS.

1. "Account" means the petroleum underground storage tank financing account established under section 455D.4, subsection 2.
2. "Authority" means the Iowa petroleum underground storage tank financing authority.
3. "Small business" means a business that meets all the following requirements:
 - a. Is independently owned and operated.
 - b. Owns one, but no more than ten petroleum underground storage tanks at no more than two different sites.
4. "Participating party" means a small business within this state which requires financing pursuant to the terms of this section to aid and assist in the repair, upgrading, or replacement of an existing petroleum underground storage tank.

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

1. The governing board of the Iowa comprehensive petroleum underground storage tank fund established pursuant to section 455B.479C shall constitute the Iowa petroleum underground storage tank financing authority. The authority shall adopt rules to provide loans, guarantees, or interest buy-downs to financially qualified small businesses for the purposes of repairing, upgrading, or replacing petroleum underground storage tanks to meet applicable state or federal standards. Financial assistance from the account, whether in the form of a loan, guarantee, or interest buy-down, is conditioned upon the repair, upgrade, or installation for which assistance is provided and must result in state-of-the-art tank and monitoring systems. The board shall take appropriate steps to publicize the existence of the loan program. Maintenance of the financing account and loan program are the responsibility of the treasurer of state. All expenses incurred in carrying out this section shall be payable solely from the petroleum underground storage tank financing account and no liability or obligation shall be imposed upon the state beyond this amount.

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

Sec. 24. NEW SECTION. 455D.5 PROOF OF FINANCIAL NEED.

As a condition of eligibility for financial assistance under this chapter, a participating party shall attempt to obtain financing from private lending sources. If two financial institutions are unwilling to make the loan, the participating party shall determine if the institution would make the loan in participation with the authority as a guarantor.

Sec. 25. NEW SECTION. 455D.6 LENGTH OF LOAN.

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

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

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

Sec. 27. NEW SECTION. 455D.8 SOURCE OF REVENUES.

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

1. The Iowa comprehensive petroleum underground storage tank fund in the amount of two percent of fees collected pursuant to section 455B.479E.
2. Interest payments received by the authority from outstanding loans.
3. Any money appropriated by the federal government or general assembly and made available to the account.

Sec. 28. NEW SECTION. 455D.9 FUTURE REPEAL.

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

Sec. 29. NEW SECTION. 455B.490 AUTOMATIC REPEAL OF IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND.

1. Sections 455B.477 through 455B.479I are repealed effective July 1, 2003.
2. The repeal of the sections listed in subsection 1 shall not terminate the following obligations or authorities necessary to administer the obligations until these obligations are satisfied:
 - a. The payment of claims filed prior to July 1, 2003, against the Iowa comprehensive petroleum underground storage

tank fund pursuant to section 455B.479F, until moneys in the fund are exhausted. Upon exhaustion of the fund, any remaining claims shall be invalid. If following satisfaction of the obligations pursuant to this section, moneys remain in the fund, all remaining moneys and moneys due the fund shall be prorated to premium payers on an equitable basis determined by the board.

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

Sec. 30. INSTALLER'S FUND STUDY. The board shall perform a study of the feasibility of creating a separate fund to provide coverage to installers of petroleum underground storage tanks. An installer's fund would provide coverage to premium paying insureds on an actuarially sound basis and be managed by the board in conjunction with the comprehensive petroleum underground storage tank fund. Installer's coverage would be limited to environmental hazard coverage for both corrective action and third-party liability for petroleum underground storage tanks installed in Iowa after the creation of the fund. The study shall include, but is not limited to, the following topics:

1. Actuarial estimate of the per-tank premium necessary to provide actuarially sound coverage to tank installers.
2. Need for licensing or other precondition to providing coverage to a specific petroleum underground storage tank installer.
3. The cost and availability of private insurance for installers.
4. The number of installers doing business in the state.
5. Loss data from past or existing claims against installers for both corrective action and third-party liability.
6. Suggested limits of coverage, amount of the deductible, and other fund features.

7. The board's recommendation to the general assembly concerning provision of coverage to installers.

The results of the study shall be submitted to the general assembly on or before December 1, 1988.

Sec. 31. 1987 Iowa Acts, chapter 225, section 602, is repealed.

Sec. 32. This Act, being deemed of immediate importance, takes effect upon enactment.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2441, Seventy-second General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Stem veto
Approved 5/13, 1988

TERRY E. BRANSTAD
Governor