

Reprinted

MAR 14 1990

HOUSE FILE 2552
BY COMMITTEE ON APPROPRIATIONS

APPROPRIATIONS CALENDAR

(SUCCESSOR TO HSB 812)

(SUCCESSOR TO HF 2544)

Passed House, Date 3/26/90 (p.1407) Passed Senate, Date 3/30/90 (p.1426)
Vote: Ayes 95 Nays 1 Vote: Ayes 49 Nays 0
Approved May 2, 1990

A BILL FOR

1 An Act relating to storage tanks, including the conditions and
2 funding mechanisms of the Iowa comprehensive petroleum
3 underground storage tank fund.

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

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

HF 2552

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

3 101.12 ABOVEGROUND PETROLEUM TANKS AUTHORIZED.

4 Rules of the state fire marshal shall permit installation
5 of aboveground petroleum storage tanks for retail motor
6 vehicle fuel outlets ~~in cities of one thousand or less~~
7 population as permitted by the latest edition of the national
8 fire protection association rule 30A, subject to the approval
9 of the governing body of the local governmental subdivision
10 with jurisdiction over the site of the outlet, except an
11 outlet located within a city of more than one thousand
12 population shall not be permitted.

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

15 101.21 DEFINITIONS.

16 As used in this part unless the context otherwise requires:

17 1. "Aboveground petroleum storage tank" means one or a
18 combination of tanks, including connecting pipes connected to
19 the tanks which are used to contain an accumulation of
20 ~~regulated-substances~~ petroleum and the volume of which,
21 including the volume of the underground pipes, is more than
22 ninety percent above the surface of the ground. Aboveground
23 petroleum storage tank does not include any of the following:

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

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

28 c. Underground storage tanks as defined by section
29 455B.471.

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

34 2. "Nonoperational aboveground petroleum tank" means an
35 aboveground storage tank in which ~~regulated-substances-are~~

1 petroleum is not deposited or from which regulated-substances
2 are petroleum is not dispensed on or after July 1, 1989.

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

6 4. "Owner" means:

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

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

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

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

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

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

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

28 101.22 REPORT OF EXISTING AND NEW TANKS -- REGISTRATION
29 FEE -- TAG -- PENALTY.

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

35 2. The owner of an aboveground petroleum storage tank

1 taken out of operation between January 1, 1979, and July 1,
2 1989, shall notify the state fire marshal in writing by July
3 1, 1990, of the existence of the tank unless the owner knows
4 the tank has been removed from the site. The notice shall
5 specify, to the extent known to the owner, the date the tank
6 was taken out of operation, the age of the tank on the date
7 taken out of operation, the size, type, and location of the
8 tank, and the type and quantity of substances left stored in
9 the tank on the date that it was taken out of operation.

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

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

20 5. A person who deposits ~~a-regulated-substance~~ petroleum
21 in an aboveground petroleum storage tank shall notify the
22 owner or operator in writing of the notification requirements
23 of this section.

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

28 7. It ~~shall-be~~ is unlawful to deposit ~~a-regulated~~
29 ~~substance~~ petroleum in an aboveground petroleum storage tank
30 which has not been registered pursuant to subsections 1
31 through 5 4.

32 The state fire marshal shall furnish the owner or operator
33 of an aboveground petroleum storage tank with a registration
34 tag for each aboveground petroleum storage tank registered
35 with the state fire marshal. The owner or operator shall

1 affix the tag to the fill pipe of each registered aboveground
2 petroleum storage tank. A person who conveys or deposits a
3 ~~regulated-substance~~ petroleum shall inspect the aboveground
4 petroleum storage tank to determine the existence or absence
5 of the registration tag. If a registration tag is not affixed
6 to the aboveground petroleum storage tank fill pipe, the
7 person conveying or depositing the ~~regulated-substance~~
8 petroleum may deposit the ~~regulated-substance~~ petroleum in the
9 unregistered tank ~~provided-that.~~ However, the deposit is
10 allowed only in the single instance, that the person provides
11 the owner or operator with another notice as required by
12 subsection 5, and that the person provides the owner or
13 operator with an aboveground petroleum storage tank
14 registration form. It is the owner or operator's duty to
15 comply with registration requirements. A late registration
16 penalty of twenty-five dollars is imposed in addition to the
17 registration fee for a tank registered after the required
18 date.

19 Sec. 4. NEW SECTION. 101.22A EXEMPTION.

20 An aboveground petroleum storage tank which is subject to
21 regulation or registration under either the federal department
22 of transportation or state department of transportation or
23 both, is exempt from the registration requirements of section
24 101.22.

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

27 101.23 STATE FIRE MARSHAL REPORTING RULES.

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

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

34 1. Inspect and investigate the facilities and records of
35 owners and operators of aboveground petroleum storage tanks as

1 may-be necessary to determine compliance with this division
2 and the rules adopted pursuant to this division. An
3 inspection or investigation shall be conducted subject to
4 subsection 4. For purposes of developing a rule, maintaining
5 an accurate inventory, or enforcing this division, the
6 department may:

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

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

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

22 (2) Documents or information obtained from a person under
23 this subsection shall be available to the public except as
24 provided in this subparagraph. Upon a showing satisfactory to
25 the state fire marshal by a person that public disclosure of
26 documents or information, or a particular part of the
27 documents or information to which the state fire marshal has
28 access under this subsection would divulge commercial or
29 financial information entitled to protection as a trade
30 secret, the state fire marshal shall consider the documents or
31 information or the particular portion of the documents or
32 information confidential. However, the document documents or
33 information may be disclosed to officers, employees, or
34 authorized representatives of the United States charged with
35 implementing the federal Solid Waste Disposal Act, to

1 employees of the state of Iowa or of other states when the
2 document or information is relevant to the discharge of their
3 official duties, and when relevant in any a proceeding under
4 the federal Solid Waste Disposal Act or this division.

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

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

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

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

15 1. a. Twenty-five percent of all revenue derived from the
16 use tax on motor vehicles, trailers, and motor vehicle
17 accessories and equipment as collected pursuant to section
18 423.7 shall be deposited into the Iowa comprehensive petroleum
19 underground storage tank fund created in section 455G.3, and
20 the moneys so deposited are a continuing appropriation for
21 expenditure under chapter 455G, and moneys so appropriated
22 shall not be used for other purposes. However, the amount
23 deposited into the Iowa comprehensive petroleum underground
24 storage tank fund in any quarter shall not exceed three
25 million dollars.

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

1 313.63, 313A.34 and 314.10.

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

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

6 5. The cost factor is an amount per gallon of diminution
7 determined by the board pursuant to this subsection. The
8 board, after public hearing, may determine, or may adjust, the
9 cost factor to an amount ~~deemed-sufficient-by-the-board-to~~
10 ~~maintain-the-financial-soundness-of-the-fund, but not to~~
11 ~~exceed-an-amount-reasonably-necessary-to-assure-financial~~
12 ~~soundness, in light of known and expected expenses, known and~~
13 ~~expected income from other sources, the volume of diminution~~
14 ~~presumed-by-law-to-occur, the debt service and reserve~~
15 ~~requirements for that portion of any bonds issued for the~~
16 ~~fund, and any other factors determined to be significant by~~
17 ~~the board, including economic reasonableness to owners and~~
18 operators reasonably calculated to generate an annual average
19 revenue, year to year, of twelve million dollars from the
20 charge, excluding penalties and interest, if any. The board
21 may determine or adjust the cost factor at any time after May
22 5, 1989, but shall at minimum determine the cost factor at
23 least once each fiscal year.

24 Sec. 10. Section 424.3, subsection 6, Code Supplement
25 1989, is amended by striking the subsection.

26 Sec. 11. Section 424.3, subsection 7, Code Supplement
27 1989, is amended by striking the subsection.

28 Sec. 12. Section 424.7, subsection 4, Code Supplement
29 1989, is amended to read as follows:

30 4. Upon receipt of a payment pursuant to this chapter, the
31 department shall deposit the moneys into the road use tax fund
32 ~~created in section 4556.3, and the moneys so deposited are a~~
33 ~~continuing appropriation for expenditure under chapter 4556,~~
34 ~~and moneys so appropriated shall not be used for other~~
35 ~~purposes unless the appropriation is changed by the first~~

1 ~~session-of-a-biennial-general-assembly~~ 312.1.

2 Sec. 13. Section 424.15, Code Supplement 1989, is amended
3 to read as follows:

4 424.15 ENVIRONMENTAL PROTECTION CHARGE REFUND.

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

14 Refunds may be made only from the unallocated or
15 uncommitted moneys in the road use tax fund ~~created-in-section~~
16 ~~4556-3~~, and are limited by the total amount budgeted by the
17 ~~fund's~~ board for charge refunds.

18 Sec. 14. Section 424.16, subsection 1, Code Supplement
19 1989, is amended to read as follows:

20 424.16 NOTICE OF CHANGE IN DIMINUTION RATE -- SERVICE OF
21 NOTICE.

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

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

30 ~~b.--The-environmental-protection-charge-is-to-be~~
31 ~~discontinued-or-reimposed-pursuant-to-section-4556-9.~~

32 b. Notice shall be provided by mailing a notice of the
33 change to the address listed on the person's last return. The
34 mailing of the notice is presumptive evidence of the receipt
35 of the notice by the person to whom addressed. The board

1 shall also publish the same notice at least twice in a paper
2 of general circulation within the state at least ~~forty-five~~
3 thirty days in advance of the first day of the calendar
4 quarter during which a change in paragraph "a" or "~~b~~" becomes
5 effective.

6 Sec. 15. Section 455B.479, Code Supplement 1989, is
7 amended to read as follows:

8 455B.479 STORAGE TANK MANAGEMENT FEE.

9 An owner or operator of an underground storage tank shall
10 pay an annual storage tank management fee of sixty-five
11 dollars per tank for each of the following:

12 1. A farm or residential tank of over one thousand one
13 hundred gallons capacity.

14 2. A tank of over one hundred ten gallons capacity, which
15 is not a farm or residential tank.

16 PARAGRAPH DIVIDED. Twenty-three percent of the fees
17 collected shall be deposited in the storage tank management
18 account of the groundwater protection fund. Seventy-seven
19 percent of the fees collected shall be deposited in the Iowa
20 comprehensive petroleum underground storage tank fund created
21 in chapter 455G.

22 Sec. 16. Section 455E.11, subsection 2, paragraph d,
23 subparagraph (2), Code Supplement 1989, is amended to read as
24 follows:

25 (2) Twenty-three percent of the proceeds of the fees
26 imposed pursuant to section 455B.473, subsection 5, and
27 section 455B.479 shall be deposited in the account annually,
28 up to a maximum of ~~three-hundred-fifty~~ four hundred eighteen
29 thousand dollars. If twenty-three percent of the proceeds
30 exceeds ~~three-hundred-fifty~~ four hundred eighteen thousand
31 dollars, the excess shall be deposited into the fund created
32 in section 455G.3. ~~Three-hundred-fifty~~ Four hundred eighteen
33 thousand dollars is appropriated from the storage tank
34 management account to the department of natural resources for
35 the administration of a state storage tank program pursuant to

1 chapter 455B, division IV, part 8, and for programs which
2 reduce the potential for harm to the environment and the
3 public health from storage tanks.

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

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

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

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

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

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

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

22 Sec. 19. Section 455G.3, subsection 1, Code Supplement
23 1989, is amended to read as follows:

24 1. The Iowa comprehensive petroleum underground storage
25 tank fund is created as a separate fund in the state treasury,
26 and any funds remaining in the fund at the end of each fiscal
27 year shall not revert to the general fund but shall remain in
28 the Iowa comprehensive petroleum underground storage tank
29 fund. Interest or other income earned by the fund shall be
30 deposited in the fund. The fund shall include moneys credited
31 to the fund under this section and sections ~~424-7~~ 423.24,
32 455G.8, 455G.9, 455G.10, 455G.11, and 455G.13, and other funds
33 which by law may be credited to the fund. The moneys in the
34 fund are appropriated to and for the purposes of the board as
35 provided in this chapter. Amounts in the fund shall not be

1 subject to appropriation for any other purpose by the general
2 assembly, but shall be used only for the purposes set forth in
3 this chapter. The treasurer of state shall act as custodian
4 of the fund and disburse amounts contained in it as directed
5 by the board including automatic disbursements of funds as
6 received pursuant to the terms of bond indentures and
7 documents and security provisions to trustees and custodians.
8 The treasurer of state is authorized to invest the funds
9 deposited in the fund at the direction of the board and
10 subject to any limitations contained in any applicable bond
11 proceedings. The income from such investment shall be
12 credited to and deposited in the fund. The fund shall be
13 administered by the board which shall make expenditures from
14 the fund consistent with the purposes of the programs set out
15 in this chapter without further appropriation. The fund may
16 be divided into different accounts with different depositories
17 as determined by the board and to fulfill the purposes of this
18 chapter.

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

21 4. Grant a mortgage, lien, pledge, assignment, or other
22 encumbrance on one or more improvements, revenues, asset of
23 right, accounts, or funds established or received in
24 connection with the fund, including ~~environmental-protection~~
25 charges revenues derived from the use tax imposed under
26 chapter 423 and deposited in the fund or an account of the
27 fund.

28 Sec. 21. Section 455G.8, subsection 2, Code Supplement
29 1989, is amended to read as follows:

30 2. ~~Environmental-protection-charge~~ Use tax. The
31 ~~environmental-protection-charge~~ revenues derived from the use
32 tax imposed under chapter ~~424~~ 423. The proceeds of the
33 ~~environmental-protection-charge~~ use tax shall be allocated,
34 consistent with this chapter, among the fund's accounts, for
35 debt service and other fund expenses, according to the fund

1 budget, resolution, trust agreement, or other instrument
2 prepared or entered into by the board or authority under
3 direction of the board.

4 Sec. 22. Section 455G.9, subsection 1, paragraph a,
5 subparagraph (1), subparagraph subdivision (a), Code
6 Supplement 1989, is amended by striking the subparagraph
7 subdivision.

8 Sec. 23. Section 455G.9, subsection 1, paragraph a,
9 subparagraph (2), Code Supplement 1989, is amended to read as
10 follows;

11 (2) Corrective action, up to one million dollars total,
12 and subject to prioritization rules as established pursuant to
13 section 455G.12A, for a release reported to the department of
14 natural resources after May 5, 1989, and on or before October
15 26, 1990. Third-party liability is specifically excluded from
16 remedial account coverage. Corrective action coverage
17 provided pursuant to this paragraph may be aggregated with
18 other financial assurance mechanisms as permitted by federal
19 law to satisfy required aggregate and per occurrence limits of
20 financial responsibility for both corrective action and third-
21 party liability, if the owner's or operator's effective
22 financial responsibility compliance date is prior to October
23 26, 1990.

24 Sec. 24. Section 455G.9, subsection 1, paragraph b, Code
25 Supplement 1989, is amended to read as follows:

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

1 a net worth greater than fifteen thousand dollars, or where
2 the responsible party can be determined.

3 Sec. 25. Section 455G.9, subsection 2, Code Supplement
4 1989, is amended to read as follows:

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

10 Sec. 26. Section 455G.9, subsection 3, Code Supplement
11 1989, is amended to read as follows:

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

25 Sec. 27. Section 455G.10, subsection 1, Code Supplement
26 1989, is amended to read as follows:

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

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

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

34 Moneys from the ~~environmental-protection-charge~~ revenues
35 derived from the use tax imposed under chapter 423 may be used

1 to fund the loan guarantee account according to the fund
2 budget as approved by the board. Loan guarantees shall be
3 made on terms and conditions determined by the board to be
4 reasonable, except that in no case may a loan guarantee
5 satisfy more than ninety percent of the outstanding balance of
6 a loan.

7 Sec. 28. Section 455G.10, subsection 2, Code Supplement
8 1989, is amended to read as follows:

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

17 Sec. 29. Section 455G.10, Code Supplement 1989, is amended
18 by adding the following new subsection:

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

25 Sec. 30. Section 455G.10, subsection 7, Code Supplement
26 1989, is amended to read as follows:

27 7. A loan loss reserve account shall be established within
28 the loan guarantee account. A default on a loan guaranteed
29 under this section shall be paid from such reserve account.
30 ~~In administering the program the board shall not guarantee~~
31 ~~loan values in excess of the amount credited to the reserve~~
32 ~~account and only moneys set aside in the reserve account may~~
33 ~~be used for the payment of a default.~~ In administering the
34 program, the board shall periodically determine the necessary
35 loan loss reserve needed and shall set aside the appropriate

1 moneys in the loan loss reserve account for payment of loan
2 defaults. This reserve shall be determined based on the
3 credit quality of the outstanding guaranteed loans at the time
4 that the reserve requirement is being determined. A default
5 is not eligible for payment until the lender has satisfied all
6 administrative and legal remedies for settlement of the loan
7 and the loan has been reduced to judgment by the lender.
8 After the default has been reduced to judgment and the
9 guarantee paid from the reserve account, the board is entitled
10 to an assignment of the judgment. The board shall take all
11 appropriate action to enforce the judgment or may enter into
12 an agreement with the lender to provide for enforcement. Upon
13 collection of the amount guaranteed, any excess collected
14 shall be deposited into the fund. The general assembly is not
15 obligated to appropriate any moneys to pay for any defaults or
16 to appropriate any moneys to be credited to the reserve
17 account. The loan guarantee program does not obligate the
18 state or the board except to the extent provided in this
19 section, and the board in administering the program shall not
20 give or lend the credit of the state of Iowa.

21 Sec. 31. Section 455G.11, subsection 1, Code Supplement
22 1989, is amended by adding the following new unnumbered
23 paragraph:

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

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

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

32 Sec. 32. Section 455G.11, subsection 3, paragraph c, Code
33 Supplement 1989, is amended to read as follows:

34 c. The applicant certifies in writing to the board that
35 the tank to be insured will be brought into compliance with

1 either paragraph "a" or "b", on or before October 26, ~~1991~~
2 1992, provided that prior to the provision of insurance
3 account coverage, the tank site tests release free. For a
4 tank qualifying for insurance coverage pursuant to this
5 paragraph at the time of application or renewal, the owner or
6 operator shall pay a per tank premium equal to two times the
7 normally scheduled premium for a tank satisfying paragraph "a"
8 or "b". An owner or operator who fails to comply as certified
9 to the board on or before October 26, ~~1991~~ 1992, shall not
10 insure that tank through the insurance account unless and
11 until the tank satisfies the requirements of paragraph "a" or
12 "b".

13 Sec. 33. Section 455G.11, subsection 6, unnumbered
14 paragraph 2, Code Supplement 1989, is amended to read as
15 follows:

16 The board shall adopt rules requiring certification of tank
17 installations and require certification of a new tank
18 installation as a precondition to offering insurance to an
19 owner or operator or an installer. The board shall set in the
20 rule the effective date for the certification requirement.
21 Certification rules shall at minimum require that an
22 installation be personally inspected by an independent
23 licensed engineer, local fire marshal, or state fire marshal's
24 designee, or other person who is unaffiliated with the tank
25 owner, operator, or installer, who is qualified and authorized
26 by the board to perform the required inspection and that the
27 tank and installation of the tank comply with applicable
28 technical standards and manufacturer's instructions and
29 warranty conditions. An inspector shall not be an owner or
30 operator of a tank, or an employee of an owner, operator, or
31 installer. ~~The insurance coverage shall be extended to~~
32 ~~premium-paying installers on or before December 31, 1989. For~~
33 ~~the period from May 5, 1989, to and including the date that~~
34 ~~insurance coverage under the fund is extended to installers,~~
35 ~~the fund shall not seek third-party recovery from an~~

1 installer:

2 Sec. 34. Section 455G.11, Code Supplement 1989, is amended
3 by adding the following new subsection:

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

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

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

16 Sec. 35. Section 455G.11, subsection 7, paragraph a, Code
17 Supplement 1989, is amended to read as follows:

18 a. To take corrective action for and to compensate a third
19 party for damages, including but not limited to payment of a
20 judgment for bodily injury or property damage caused by a
21 release from a tank, where coverage has been provided to the
22 owner or operator from the insurance account, up to the limits
23 of coverage extended. A personal injury is not a compensable
24 third-party liability damage.

25 Sec. 36. Section 455G.11, Code Supplement 1989, is amended
26 by adding the following new subsection:

27 NEW SUBSECTION. 8. As a condition of purchasing coverage
28 through the insurance account, a person engaged in the
29 wholesale or retail sale of petroleum products shall accept
30 waste oil for recycling and shall provide for the delivery of
31 waste oil so accepted to a person willing to accept the waste
32 oil for recycling. If the department of natural resources
33 certifies to the administrator that no person is willing to
34 accept the waste oil for recycling, the administrator may
35 permit disposal of the waste oil in another environmentally

1 sound manner. A person subject to this subsection shall post
2 a notice in a form and manner approved by the administrator,
3 advertising that the person will accept waste oil for
4 recycling. The administrator, after consultation with the
5 department, may provide by rule for mechanisms or procedures
6 to protect against the contamination of waste oil with
7 hazardous substances other than waste oil.

8 Sec. 37. NEW SECTION. 455G.12A COST CONTAINMENT
9 AUTHORITY.

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

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

35 3. EXCLUSIVE CONTRACTS. The administrator may enter into

S.F.

H.F.

2552

1 a contract or an exclusive contract with the supplier of goods
2 or services required by a class of tank owners or operators in
3 connection with an expense payable or reimbursable from the
4 fund, to supply a specified good or service for a gross
5 maximum price, fixed rate, on an exclusive basis, or subject
6 to another contract term or condition reasonably calculated to
7 obtain goods or services for the fund or for tank owners and
8 operators at a reasonable cost. A contract may provide for
9 direct payment from the fund to a supplier.

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

16 Sec. 38. Section 455G.17, subsections 1 and 2, Code
17 Supplement 1989, are amended to read as follows:

18 1. The board shall adopt certification procedures and
19 standards for the following classes of persons as underground
20 storage tank installation inspectors, except that if underground st
21 a. A licensed engineer, except that if underground st
22 tank installation is within the scope of practice of a
23 particular class of licensed engineer, additional train
24 shall not be required for that class. A licensed engi
25 whom underground storage tank installation is within
26 of practice shall be an "authorized inspector", rath
27 "certified inspector".

28 b. A fire marshal, or other person unaffiliated
29 tank owner, operator, or installer.
30 2. The board shall adopt approved curricula
training both engineers and fire marshals or ot
affiliated persons as a precondition to their
and storage tank installation insp
reserved for the r

1 of the remedial account claims pursuant to section 455G.9,
2 subsection 1, paragraph "a", subparagraph (1), do not exceed
3 six million dollars, the administrator shall from July 1,
4 1990, through September 1, 1990, reopen applications
5 previously received but denied based upon section 455G.9,
6 subsection 1, paragraph "a", subparagraph (1), subparagraph
7 subdivision (a), Code Supplement 1989, which subparagraph
8 subdivision is repealed by this Act, and may accept new
9 applications for that two-month period. If claims reopened or
10 received exceed the remaining balance of unobligated or
11 unreserved funds of the six million dollars, the remaining
12 balance shall be prorated among the reopened and newly
13 received claims. If claims remain partially or totally unpaid
14 after total payments under the retroactive portion of the
15 remedial account exceed six million dollars, all remaining
16 claims are void, and no entitlement exists for further
17 payment.

18 Sec. 40. Section 101.28, Code Supplement 1989, is
19 repealed.

20 EXPLANATION

21 This bill generally amends the storage tank bill, House
22 File 447, enacted by the 1989 Session of the General Assembly.

23 The authorization for aboveground petroleum tanks in retail
24 motor vehicle outlets is revised to permit use of such tanks
25 anywhere except in a city with more than 1,000 population.
26 Current law could be interpreted to prevent installation of
27 aboveground petroleum tanks for a gas station in an
28 unincorporated rural area. The fire marshal's rules are to
29 substantially parallel new model rules for aboveground tank
30 safety adopted by the national fire protection association.
31 The local government with jurisdiction over an aboveground
32 tank site must also approve this installation.

33 The scope of the aboveground storage tank registration
34 requirements is limited by the bill to petroleum tanks not
35 otherwise regulated by the federal or state department of

1 transportation. Currently, aboveground tanks containing any
2 regulated substance are required to be registered and
3 questions concerning intent to register tanker trucks and
4 trailers have arisen.

5 The applicability of the storage tank management fee is
6 extended downward in terms of volume from 1,100 gallons to 110
7 gallons for commercial and industrial tanks, and the
8 appropriation to the department of natural resources for
9 regulation from such revenue is increased.

10 A variety of amendments requested by the Iowa comprehensive
11 petroleum underground storage tank fund board are included: a
12 definition of "third-party liability" to parallel federal law;
13 additional limitations on state or fund liability; a reduction
14 in the required notice to change the cost factor of the
15 environmental protection charge; restrictions upon the
16 definition of a "responsible owner" to parallel federally
17 defined liability; and an extension from October 26, 1991, to
18 October 26, 1992, for an operator to complete required
19 improvements to a clean site to qualify immediately for
20 insurance despite current noncompliance with underwriting
21 standards.

22 The bill revises the funding mechanism by depositing the
23 environmental protection charge on petroleum diminution into
24 the road use tax fund, and exchanging the environmental
25 protection charge revenues for an equivalent \$12,000,000 in
26 motor vehicle use tax revenues out of the constitutionally
27 unrestricted portions of the road use tax fund.

28 Eligibility for certain UST financial assistance programs
29 are changed. The retroactive eligibility is expanded to
30 permit compensation of persons who cleaned up tanks prior to
31 May 5, 1989, but who are no longer engaged in the business for
32 which the tank was operated. Current law authorized
33 \$6,000,000 for retroactive benefits. Qualifying claims
34 amounted to approximately \$4,500,000. Compensating those made
35 eligible by this amendment would cost approximately the

1 remaining \$1,500,000. The maximum net worth for loan
2 guarantee net worth is increased from \$200,000 to \$400,000 and
3 the value of the contaminated site for calculating net worth
4 is to be the precorrective action value. The fund
5 administrator estimates these changes will increase the number
6 of eligible applicants by 40 percent to 50 percent.

7 The bill also adopts the federal definition of "responsible
8 owner or operator" to provide a limit on liability. If an
9 owner or operator has a net worth of under \$15,000, the owner
10 or operation will not be held liable as a "responsible owner
11 or operator". This is similar to Medicare's spousal
12 impoverishment provision. An owner or operator does not cease
13 to be a responsible owner or operator simply by quit claiming
14 the contaminated property.

15 The bill sets out the form and substance of insurance to be
16 offered to tank installers pursuant to an existing
17 authorization to issue such insurance.

18 A new condition of insurance is imposed. Insureds are
19 required to accept waste oil for recycling.

20 The bill authorizes cost containment mechanisms exercisable
21 by the administrator of the underground storage tank fund to
22 control expenses payable from the fund or by tank owners and
23 operators.

24 Contracts involving expenses compensable from the fund are
25 made invalid unless and until a contract is approved by the
26 administrator. Under the contract terms of the insurance
27 program, the administrator has such authority to control
28 unreasonable charges from contractors or consultants. This
29 bill would provide similar authority to the administrator to
30 limit expenses incurred by tank owners and operators, and
31 prevent price gouging, in connection with the remedial
32 account.

33 The administrator is authorized to enter into contracts
34 with a supplier of goods or services if the contract involves
35 a compensable item, to provide the item at a fixed cost, gross

1 maximum price, or other term or condition reasonably intended
2 to obtain the lowest cost for tank owners and operators and
3 the fund. Again, the administrator is provided such cost
4 containment authority under the insurance contract's terms,
5 but the statute does not now authorize cost containment
6 authority for the remedial account.

7 The bill authorizes an additional class of unaffiliated
8 inspectors to conduct inspections of tank installations to
9 assure compliance and safe installations.

- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35

**HOUSE FILE 2552
FISCAL NOTE**

A fiscal note for House File 2552 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 2552 amends last session's underground storage tank cleanup bill (H.F. 447). The bill clarifies the law relating to aboveground storage tank locations, as well as reduces the number of aboveground tanks that need to be registered. The number of underground storage tanks that need to register is expanded. The funding mechanism for the program is modified for Constitutional considerations, and the funding cap of \$12,000,000 is clarified to allow the program to average \$12,000,000 per year, as opposed to a strict cap of no more than \$12,000,000 in any year. This will allow the program to make up in future years for any funding excess or deficiency from previous years.

Retroactive coverage of previous cleanups is expanded. This will allow additional owners of underground storage tanks who have previously paid for cleanups to recover part of that cost from the program.

The bill also allows the program administrator to implement cost containment measures to protect the solvency of the program.

Assumptions:

1. Expanding the number of underground storage tanks subject to the \$65 annual registration fee will result in an additional 4,600 tank registrations. Funds from underground tanks are used by the Department of Natural Resources (DNR) and the Underground Storage Tank (UST) Fund.
2. 23% of the additional income from underground storage tanks is deposited in the Groundwater Fund and is used for DNR administration of the storage tank program. 77% is transferred to the UST Fund.
3. Reducing the number of aboveground storage tanks subject to the \$10 registration fee will result in 15,000 fewer tank registrations.
4. \$1,500,000 in retroactive expenses will qualify for the expanded coverage.

Fiscal Effect:

The increase in the number of underground tanks registered will generate \$300,000 in additional revenue. \$68,000 would be available for DNR enforcement of storage tank regulations, and \$232,000 will be transferred to the UST Fund.

The decrease in the number of aboveground storage tanks subject to registration will result in a reduction of \$150,000 to the General Fund.

Expanding the retroactive coverage of cleanups will result in the expenditure of an additional \$1,500,000 from the Fund. However, the original underground storage tank legislation earmarked a total of \$6,000,000 for these types of cleanups, and only \$4,500,000 to date has been obligated.

The provisions allowing cost-containment procedures to be used by the UST

-2-

program administrator will reduce the demand on the Fund. However, the amount of savings cannot be estimated.

(LSB 7806hz, JWR)

FILED MARCH 16, 1990

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 2552

H-5813

1 Amend House File 2552 as follows:

2 1. Page 6, line 18, by inserting after the figure
3 "423.7" the following: ", up to a maximum of three
4 million dollars per quarter,".

5 2. Page 6, by striking lines 22 through 25, and
6 inserting the following: "shall not be used for other
7 purposes."

8 3. Page 13, by inserting after line 2, the
9 following:

10 "Sec. ____ . Section 455G.9, subsection 1, Code
11 Supplement 1989, is amended by adding the following
12 new paragraph:

13 NEW PARAGRAPH. f. Corrective action for a release
14 reported to the department of natural resources after
15 May 5, 1989, and on or before October 26, 1990, in
16 connection with a tank owned or operated by a state
17 agency or department which elects to participate in
18 the remedial account pursuant to this paragraph. A
19 state agency or department which does not receive a
20 standing unlimited appropriation which may be used to
21 pay for the costs of a corrective action may opt, with
22 the approval of the board, to participate in the
23 remedial account. As a condition of opting to
24 participate in the remedial account, the agency or
25 department shall pay all registration fees, storage
26 tank management fees, environmental protection
27 charges, and all other charges and fees upon all tanks
28 owned or operated by the agency or department in the
29 same manner as if the agency or department were a
30 person required to maintain financial responsibility.
31 Once an agency has opted to participate in the
32 remedial program, it cannot opt out, and shall
33 continue to pay all charges and fees upon all tanks
34 owned or operated by the agency or department so long
35 as the charges or fees are imposed on similarly
36 situated tanks of a person required to maintain
37 financial responsibility. The board shall by rule
38 adopted pursuant to chapter 17A provide the terms and
39 conditions for a state agency or department to opt to
40 participate in the remedial account. A state agency
41 or department which opts to participate in the
42 remedial account shall be subject to the minimum
43 copayment schedule of subsection 4, as if the state
44 agency or department were a person required to
45 maintain financial responsibility."

46 4. Page 16, by inserting after line 12, the
47 following:

48 "Sec. ____ . Section 455G.11, subsection 3, Code
49 Supplement 1989, is amended by adding the following
50 new paragraph:

H-5813

Page 2

1 NEW PARAGRAPH. d. The applicant either:
 2 (1) Is maintaining financial responsibility
 3 pursuant to current or previously applicable federal
 4 or state financial responsibility requirements on
 5 petroleum underground storage tanks within the state.
 6 (2) Complies with the applicable following date
 7 for financial responsibility:
 8 (a) On or before April 26, 1990, for a petroleum
 9 marketing firm owning at least thirteen, but no more
 10 than ninety-nine petroleum underground storage tanks.
 11 (b) On or before October 26, 1990, for an owner or
 12 operator not described in subparagraph subdivision
 13 (a), and not currently or previously required to
 14 maintain financial responsibility by federal or state
 15 law on tanks within the state."
 16 5. Page 18, line 4, by striking the word
 17 "administrator" and inserting the following:
 18 "department".
 19 6. Page 18, line 5, by striking the word
 20 "department" and inserting the following:
 21 "administrator".
 22 7. Page 18, line 5, by inserting after the word
 23 "procedures" the following: "to administer this
 24 subsection and".
 25 8. By renumbering, relettering, and redesignating
 26 as necessary.

By HATCH of Polk

H-5813 FILED MARCH 22, 1990

Adopted 3/26 (p. 1406)

HOUSE FILE 2552

H-5796

1 Amend House File 2552 as follows:
 2 1. Page 12, by striking lines 4 through 7, and
 3 inserting the following:
 4 "Sec. ____ . Section 455G.9, subsection 1, paragraph
 5 a, subparagraph (1), unnumbered paragraph 1, Code
 6 Supplement 1989, is amended to read as follows:
 7 Corrective action for an eligible release reported
 8 to the department of natural resources on or after
 9 July 1, 1987, but prior to May 5, 1989. Third-party
 10 liability is specifically excluded from remedial
 11 account coverage. For a claim for a release under
 12 this subparagraph, the remedial program shall pay no
 13 more than the lesser of twenty-five thousand dollars
 14 or one-third one-half of the total costs of corrective
 15 action for that release, subsection 4 notwithstanding.
 16 For a release to be eligible for coverage under this
 17 subparagraph the following conditions must be
 18 satisfied:"
 19 2. By striking page 19, line 34, through page 20,
 20 line 17.)
 21 3. By renumbering as necessary.

By FOGARTY of Palo Alto

H-5796 FILED MARCH 21, 1990

w/d 3/26 (p. 1406)

Sen. Wap. Means 3/28 Amend (5777) v. D. Pass 3/29 (p. 1402)

HOUSE FILE 2552
BY COMMITTEE ON APPROPRIATIONS

(SUCCESSOR TO HSB 812)
(SUCCESSOR TO HF 2544)

(As Amended and Passed by the House March 26, 1990)

Passed House, Date 3/26/90 (p. 1407) Passed Senate, Date 3/30/90 (p. 1426)
Vote: Ayes 95 Nays 1 Vote: Ayes 49 Nays 0

Approved May 3, 1990

*Repassed House per 6028 amendment
4/4/90 (p. 1878)
90-0*

*Repassed Senate as further amended
4/4/90 (p. 1540)
47-1*

A BILL FOR

1 An Act relating to storage tanks, including the conditions and
2 funding mechanisms of the Iowa comprehensive petroleum
3 underground storage tank fund.

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

House Amendments _____

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

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

3 101.12 ABOVEGROUND PETROLEUM TANKS AUTHORIZED.

4 Rules of the state fire marshal shall permit installation
5 of aboveground petroleum storage tanks for retail motor
6 vehicle fuel outlets ~~in-cities-of-one-thousand-or-less~~
7 population as permitted by the latest edition of the national
8 fire protection association rule 30A, subject to the approval
9 of the governing body of the local governmental subdivision
10 with jurisdiction over the site of the outlet, except an
11 outlet located within a city of more than one thousand
12 population shall not be permitted.

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

15 101.21 DEFINITIONS.

16 As used in this part unless the context otherwise requires:

17 1. "Aboveground petroleum storage tank" means one or a
18 combination of tanks, including connecting pipes connected to
19 the tanks which are used to contain an accumulation of
20 ~~regulated-substances~~ petroleum and the volume of which,
21 including the volume of the underground pipes, is more than
22 ninety percent above the surface of the ground. Aboveground
23 petroleum storage tank does not include any of the following:

- 24 a. Aboveground tanks of one thousand one hundred gallons
25 or less capacity.
- 26 b. Tanks used for storing heating oil for consumptive use
27 on the premises where stored.
- 28 c. Underground storage tanks as defined by section
29 455B.471.
- 30 d. A flow-through process tank, or a tank containing a
31 regulated substance, other than motor vehicle fuel used for
32 transportation purposes, for use as part of a manufacturing
33 process, system, or facility.

34 2. "Nonoperational aboveground petroleum tank" means an
35 aboveground storage tank in which ~~regulated-substances-are~~

1 petroleum is not deposited or from which regulated-substances
2 are petroleum is not dispensed on or after July 1, 1989.

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

6 4. "Owner" means:

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

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

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

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

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

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

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

28 101.22 REPORT OF EXISTING AND NEW TANKS -- REGISTRATION
29 FEE -- TAG -- PENALTY.

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

35 2. The owner of an aboveground petroleum storage tank

1 taken out of operation between January 1, 1979, and July 1,
2 1989, shall notify the state fire marshal in writing by July
3 1, 1990, of the existence of the tank unless the owner knows
4 the tank has been removed from the site. The notice shall
5 specify, to the extent known to the owner, the date the tank
6 was taken out of operation, the age of the tank on the date
7 taken out of operation, the size, type, and location of the
8 tank, and the type and quantity of substances left stored in
9 the tank on the date that it was taken out of operation.

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

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

20 5. A person who deposits ~~a-regulated-substance~~ petroleum
21 in an aboveground petroleum storage tank shall notify the
22 owner or operator in writing of the notification requirements
23 of this section.

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

28 7. It ~~shall-be~~ is unlawful to deposit ~~a-regulated~~
29 ~~substance~~ petroleum in an aboveground petroleum storage tank
30 which has not been registered pursuant to subsections 1
31 through 5 4.

32 The state fire marshal shall furnish the owner or operator
33 of an aboveground petroleum storage tank with a registration
34 tag for each aboveground petroleum storage tank registered
35 with the state fire marshal. The owner or operator shall

1 affix the tag to the fill pipe of each reg
 2 petroleum storage tank. A person who convey
 3 regulated-substance petroleum shall inspect
 4 petroleum storage tank to determine the exist
 5 of the registration tag. If a registration tank fill
 6 to the aboveground petroleum tag. However, the depo
 7 person conveying or depositing the regulated-substance petr
 8 petroleum may deposit the regulated-substance petr
 9 unregistered tank provided that the person
 10 allowed only in the single instance, that the owner
 11 the owner or operator with another notice as required
 12 subsection 5, and that the person provides the owner
 13 operator with an aboveground petroleum storage tank
 14 registration form. It is the owner or operator's duty
 15 comply with registration requirements. A late registrati
 16 penalty of twenty-five dollars is imposed in addition to
 17 registration fee for a tank registered after the required
 18 date.

19
 20 Sec. 4. NEW SECTION. 101.22A EXEMPTION.
 21 An aboveground petroleum storage tank which is subject to
 22 regulation or registration under either the federal department
 23 of transportation or state department of transportation or
 24 both, is exempt from the registration requirements of section
 25 101.22.

26 Sec. 5. Section 101.23, Code Supplement 1989, is amended
 27 to read as follows:
 28 101.23 STATE FIRE MARSHAL REPORTING RULES.
 29 The state fire marshal shall adopt rules pursuant to
 30 chapter 17A relating to reporting requirement necessary to
 31 enable the state fire marshal to maintain an accurate
 32 inventory of aboveground petroleum storage tanks.

33 Sec. 6. Section 101.24, subsections 1 and 2, Code
 34 Supplement 1989, are amended to read as follows:
 35 1. Inspect and investigate the facilities
 owners and operators of aboveground petr

1 ~~may-be~~ necessary to determine compliance with this division
2 and the rules adopted pursuant to this division. An
3 inspection or investigation shall be conducted subject to
4 subsection 4. For purposes of developing a rule, maintaining
5 an accurate inventory, or enforcing this division, the
6 department may:

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

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

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

22 (2) Documents or information obtained from a person under
23 this subsection shall be available to the public except as
24 provided in this subparagraph. Upon a showing satisfactory to
25 the state fire marshal by a person that public disclosure of
26 documents or information, or a particular part of the
27 documents or information to which the state fire marshal has
28 access under this subsection would divulge commercial or
29 financial information entitled to protection as a trade
30 secret, the state fire marshal shall consider the documents or
31 information or the particular portion of the documents or
32 information confidential. However, the ~~document~~ documents or
33 information may be disclosed to officers, employees, or
34 authorized representatives of the United States charged with
35 implementing the federal Solid Waste Disposal Act, to

1 employees of the state of Iowa or of other states when the
2 document or information is relevant to the discharge of their
3 official duties, and when relevant in any a proceeding under
4 the federal Solid Waste Disposal Act or this division.

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

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

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

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

15 1. a. Twenty-five percent of all revenue derived from the
16 use tax on motor vehicles, trailers, and motor vehicle
17 accessories and equipment as collected pursuant to section
18 423.7, up to a maximum of three million dollars per quarter,
19 shall be deposited into the Iowa comprehensive petroleum
20 underground storage tank fund created in section 455G.3, and
21 the moneys so deposited are a continuing appropriation for
22 expenditure under chapter 455G, and moneys so appropriated
23 shall not be used for other purposes.

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

35 b c. Any remaining revenues derived from the operation of

1 section 423.7 shall be credited to the road use tax fund.

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

4 5. The cost factor is an amount per gallon of diminution
5 determined by the board pursuant to this subsection. The
6 board, after public hearing, may determine, or may adjust, the
7 cost factor to an amount ~~deemed-sufficient-by-the-board-to~~
8 ~~maintain-the-financial-soundness-of-the-fund,-but-not-to~~
9 ~~exceed-an-amount-reasonably-necessary-to-assure-financial~~
10 ~~soundness,-in-light-of-known-and-expected-expenses,-known-and~~
11 ~~expected-income-from-other-sources,-the-volume-of-diminution~~
12 ~~presumed-by-law-to-occur,-the-debt-service-and-reserve~~
13 ~~requirements-for-that-portion-of-any-bonds-issued-for-the~~
14 ~~fund,-and-any-other-factors-determined-to-be-significant-by~~
15 ~~the-board,-including-economic-reasonableness-to-owners-and~~
16 ~~operators~~ reasonably calculated to generate an annual average
17 revenue, year to year, of twelve million dollars from the
18 charge, excluding penalties and interest, if any. The board
19 may determine or adjust the cost factor at any time after May
20 5, 1989, but shall at minimum determine the cost factor at
21 least once each fiscal year.

22 Sec. 10. Section 424.3, subsection 6, Code Supplement
23 1989, is amended by striking the subsection.

24 Sec. 11. Section 424.3, subsection 7, Code Supplement
25 1989, is amended by striking the subsection.

26 Sec. 12. Section 424.7, subsection 4, Code Supplement
27 1989, is amended to read as follows:

28 4. Upon receipt of a payment pursuant to this chapter, the
29 department shall deposit the moneys into the road use tax fund
30 created in section 4556.3, ~~and-the-moneys-so-deposited-are-a~~
31 ~~continuing-appropriation-for-expenditure-under-chapter-4556,~~
32 ~~and-moneys-so-appropriated-shall-not-be-used-for-other~~
33 ~~purposes-unless-the-appropriation-is-changed-by-the-first~~
34 ~~session-of-a-biennial-general-assembly~~ 312.1.

35 Sec. 13. Section 424.15, Code Supplement 1989, is amended

1 to read as follows:

2 424.15 ENVIRONMENTAL PROTECTION CHARGE REFUND.

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

12 Refunds may be made only from the unallocated or
13 uncommitted moneys in the road use tax fund created-in-section
14 4556-3, and are limited by the total amount budgeted by the
15 fund's board for charge refunds.

16 Sec. 14. Section 424.16, subsection 1, Code Supplement
17 1989, is amended to read as follows:

18 424.16 NOTICE OF CHANGE IN DIMINUTION RATE -- SERVICE OF
19 NOTICE.

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

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

28 ~~b---The-environmental-protection-charge-is-to-be~~
29 ~~discontinued-or-reimposed-pursuant-to-section-4556-9-~~

30 b. Notice shall be provided by mailing a notice of the
31 change to the address listed on the person's last return. The
32 mailing of the notice is presumptive evidence of the receipt
33 of the notice by the person to whom addressed. The board
34 shall also publish the same notice at least twice in a paper
35 of general circulation within the state at least forty-five

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

4 Sec. 15. Section 455B.479, Code Supplement 1989, is
5 amended to read as follows:

6 455B.479 STORAGE TANK MANAGEMENT FEE.

7 An owner or operator of an underground storage tank shall
8 pay an annual storage tank management fee of sixty-five
9 dollars per tank for each of the following:

- 10 1. A farm or residential tank of over one thousand one
- 11 hundred gallons capacity.
- 12 2. A tank of over one hundred ten gallons capacity, which
- 13 is not a farm or residential tank.

14 PARAGRAPH DIVIDED. Twenty-three percent of the fees
15 collected shall be deposited in the storage tank management
16 account of the groundwater protection fund. Seventy-seven
17 percent of the fees collected shall be deposited in the Iowa
18 comprehensive petroleum underground storage tank fund created
19 in chapter 455G.

20 Sec. 16. Section 455E.11, subsection 2, paragraph d,
21 subparagraph (2), Code Supplement 1989, is amended to read as
22 follows:

23 (2) Twenty-three percent of the proceeds of the fees
24 imposed pursuant to section 455B.473, subsection 5, and
25 section 455B.479 shall be deposited in the account annually,
26 up to a maximum of three-hundred-fifty four hundred eighteen
27 thousand dollars. If twenty-three percent of the proceeds
28 exceeds three-hundred-fifty four hundred eighteen thousand
29 dollars, the excess shall be deposited into the fund created
30 in section 455G.3. Three-hundred-fifty Four hundred eighteen
31 thousand dollars is appropriated from the storage tank
32 management account to the department of natural resources for
33 the administration of a state storage tank program pursuant to
34 chapter 455B, division IV, part 8, and for programs which
35 reduce the potential for harm to the environment and the

1 public health from storage tanks.

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

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

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

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

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

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

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

20 Sec. 19. Section 455G.3, subsection 1, Code Supplement
21 1989, is amended to read as follows:

22 1. The Iowa comprehensive petroleum underground storage
23 tank fund is created as a separate fund in the state treasury,
24 and any funds remaining in the fund at the end of each fiscal
25 year shall not revert to the general fund but shall remain in
26 the Iowa comprehensive petroleum underground storage tank
27 fund. Interest or other income earned by the fund shall be
28 deposited in the fund. The fund shall include moneys credited
29 to the fund under this section and sections ~~424.7~~ 423.24,
30 455G.8, 455G.9, 455G.10, 455G.11, and 455G.13, and other funds
31 which by law may be credited to the fund. The moneys in the
32 fund are appropriated to and for the purposes of the board as
33 provided in this chapter. Amounts in the fund shall not be
34 subject to appropriation for any other purpose by the general
35 assembly, but shall be used only for the purposes set forth in

1 this chapter. The treasurer of state shall act as custodian
2 of the fund and disburse amounts contained in it as directed
3 by the board including automatic disbursements of funds as
4 received pursuant to the terms of bond indentures and
5 documents and security provisions to trustees and custodians.
6 The treasurer of state is authorized to invest the funds
7 deposited in the fund at the direction of the board and
8 subject to any limitations contained in any applicable bond
9 proceedings. The income from such investment shall be
10 credited to and deposited in the fund. The fund shall be
11 administered by the board which shall make expenditures from
12 the fund consistent with the purposes of the programs set out
13 in this chapter without further appropriation. The fund may
14 be divided into different accounts with different depositories
15 as determined by the board and to fulfill the purposes of this
16 chapter.

17 Sec. 20. Section 455G.6, subsection 4, Code Supplement
18 1989, is amended to read as follows:

19 4. Grant a mortgage, lien, pledge, assignment, or other
20 encumbrance on one or more improvements, revenues, asset of
21 right, accounts, or funds established or received in
22 connection with the fund, including ~~environmental-protection~~
23 ~~charges~~ revenues derived from the use tax imposed under
24 chapter 423 and deposited in the fund or an account of the
25 fund.

26 Sec. 21. Section 455G.8, subsection 2, Code Supplement
27 1989, is amended to read as follows:

28 2. ~~Environmental-protection-charge~~ Use tax. The
29 ~~environmental-protection-charge~~ revenues derived from the use
30 tax imposed under chapter ~~424~~ 423. The proceeds of the
31 ~~environmental-protection-charge~~ use tax shall be allocated,
32 consistent with this chapter, among the fund's accounts, for
33 debt service and other fund expenses, according to the fund
34 budget, resolution, trust agreement, or other instrument
35 prepared or entered into by the board or authority under

1 direction of the board.

2 Sec. 22. Section 455G.9, subsection 1, paragraph a,
3 subparagraph (1), subparagraph subdivision (a), Code
4 Supplement 1989, is amended by striking the subparagraph
5 subdivision.

6 Sec. 23. Section 455G.9, subsection 1, paragraph a,
7 subparagraph (2), Code Supplement 1989, is amended to read as
8 follows;

9 (2) Corrective action, up to one million dollars total,
10 and subject to prioritization rules as established pursuant to
11 section 455G.12A, for a release reported to the department of
12 natural resources after May 5, 1989, and on or before October
13 26, 1990. Third-party liability is specifically excluded from
14 remedial account coverage. Corrective action coverage
15 provided pursuant to this paragraph may be aggregated with
16 other financial assurance mechanisms as permitted by federal
17 law to satisfy required aggregate and per occurrence limits of
18 financial responsibility for both corrective action and third-
19 party liability, if the owner's or operator's effective
20 financial responsibility compliance date is prior to October
21 26, 1990.

22 Sec. 24. Section 455G.9, subsection 1, paragraph b, Code
23 Supplement 1989, is amended to read as follows:

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

1 Sec. 25. Section 455G.9, subsection 1, Code Supplement
2 1989, is amended by adding the following new paragraph:
3 NEW PARAGRAPH. f. Corrective action for a release
4 reported to the department of natural resources after May 5,
5 1989, and on or before October 26, 1990, in connection with a
6 tank owned or operated by a state agency or department which
7 elects to participate in the remedial account pursuant to this
8 paragraph. A state agency or department which does not
9 receive a standing unlimited appropriation which may be used
10 to pay for the costs of a corrective action may opt, with the
11 approval of the board, to participate in the remedial account.
12 As a condition of opting to participate in the remedial
13 account, the agency or department shall pay all registration
14 fees, storage tank management fees, environmental protection
15 charges, and all other charges and fees upon all tanks owned
16 or operated by the agency or department in the same manner as
17 if the agency or department were a person required to maintain
18 financial responsibility. Once an agency has opted to
19 participate in the remedial program, it cannot opt out, and
20 shall continue to pay all charges and fees upon all tanks
21 owned or operated by the agency or department so long as the
22 charges or fees are imposed on similarly situated tanks of a
23 person required to maintain financial responsibility. The
24 board shall by rule adopted pursuant to chapter 17A provide
25 the terms and conditions for a state agency or department to
26 opt to participate in the remedial account. A state agency or
27 department which opts to participate in the remedial account
28 shall be subject to the minimum copayment schedule of
29 subsection 4, as if the state agency or department were a
30 person required to maintain financial responsibility.

31 Sec. 26. Section 455G.9, subsection 2, Code Supplement
32 1989, is amended to read as follows:

33 2. REMEDIAL ACCOUNT FUNDING. The remedial account shall
34 be funded by that portion of the proceeds of the environmental
35 protection-charge use tax imposed under chapter 424 423 and

1 other moneys and revenues budgeted to the remedial account by
2 the board.

3 Sec. 27. Section 455G.9, subsection 3, Code Supplement
4 1989, is amended to read as follows:

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

18 Sec. 28. Section 455G.10, subsection 1, Code Supplement
19 1989, is amended to read as follows:

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

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

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

27 Moneys from the ~~environmental-protection-charge~~ revenues
28 derived from the use tax imposed under chapter 423 may be used
29 to fund the loan guarantee account according to the fund
30 budget as approved by the board. Loan guarantees shall be
31 made on terms and conditions determined by the board to be
32 reasonable, except that in no case may a loan guarantee
33 satisfy more than ninety percent of the outstanding balance of
34 a loan.

35 Sec. 29. Section 455G.10, subsection 2, Code Supplement

1 1989, is amended to read as follows:
2

3 2. A separate nonlapsing loan guarantee account shall be established within the fund. Any funds remaining in the account at the end of each fiscal year shall not revert to the treasurer of state. The general fund but shall remain in the account shall be payable for expenses incurred by the loan account beyond this amount. Section 455G.10, Code Supplement 1989, is amended to read as follows:
4
5
6
7
8
9
10
11
12

NEW SUBSECTION.

13 3A. In calculating the net worth of an applicant for a loan guarantee, the board shall use the fair market value of any property on which a tank is sited, and upon later sale of the same property under section 455G.9, subsection 6.
14
15
16
17
18

Sec. 31.

19 Section 455G.10, subsection 7, Code Supplement 1989, is amended to read as follows:
20
21
22
23
24

7.

25 A loan loss reserve account shall be established within the loan guarantee account. A default on a loan guaranteed by the board shall be paid from such reserve account. In administering the program, the board shall periodically determine the necessary loan loss reserve and shall set aside the appropriate moneys in the loan loss reserve account for payment of loan defaults. This reserve shall be determined based on the credit quality of the outstanding guaranteed loans at the time that the reserve requirement is being determined. A default is not eligible for payment until the lender has satisfied all administrative and legal remedies for settlement of the loan and the loan has been reduced to judgment by the court.
26
27
28
29
30
31
32
33
34
35

1 After the default has been reduced to judgment and the
2 guarantee paid from the reserve account, the board is entitled
3 to an assignment of the judgment. The board shall take all
4 appropriate action to enforce the judgment or may enter into
5 an agreement with the lender to provide for enforcement. Upon
6 collection of the amount guaranteed, any excess collected
7 shall be deposited into the fund. The general assembly is not
8 obligated to appropriate any moneys to pay for any defaults or
9 to appropriate any moneys to be credited to the reserve
10 account. The loan guarantee program does not obligate the
11 state or the board except to the extent provided in this
12 section, and the board in administering the program shall not
13 give or lend the credit of the state of Iowa.

14 Sec. 32. Section 455G.11, subsection 1, Code Supplement
15 1989, is amended by adding the following new unnumbered
16 paragraph:

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

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

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

25 Sec. 33. Section 455G.11, subsection 3, paragraph c, Code
26 Supplement 1989, is amended to read as follows:

27 c. The applicant certifies in writing to the board that
28 the tank to be insured will be brought into compliance with
29 either paragraph "a" or "b", on or before October 26, ~~1991~~
30 1992, provided that prior to the provision of insurance
31 account coverage, the tank site tests release free. For a
32 tank qualifying for insurance coverage pursuant to this
33 paragraph at the time of application or renewal, the owner or
34 operator shall pay a per tank premium equal to two times the
35 normally scheduled premium for a tank satisfying paragraph "a"

1 or "b". An owner or operator who fails to comply as certified
2 to the board on or before October 26, ~~1991~~ 1992, shall not
3 insure that tank through the insurance account unless and
4 until the tank satisfies the requirements of paragraph "a" or
5 "b".

6 Sec. 34. Section 455G.11, subsection 3, Code Supplement
7 1989, is amended by adding the following new paragraph:

8 NEW PARAGRAPH. d. The applicant either:

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

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

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

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

23 Sec. 35. Section 455G.11, subsection 6, unnumbered
24 paragraph 2, Code Supplement 1989, is amended to read as
25 follows:

26 The board shall adopt rules requiring certification of tank
27 installations and require certification of a new tank
28 installation as a precondition to offering insurance to an
29 owner or operator or an installer. The board shall set in the
30 rule the effective date for the certification requirement.
31 Certification rules shall at minimum require that an
32 installation be personally inspected by an independent
33 licensed engineer, local fire marshal, or state fire marshal's
34 designee, or other person who is unaffiliated with the tank
35 owner, operator, or installer, who is qualified and authorized

1 by the board to perform the required inspection and that the
2 tank and installation of the tank comply with applicable
3 technical standards and manufacturer's instructions and
4 warranty conditions. An inspector shall not be an owner or
5 operator of a tank, or an employee of an owner, operator, or
6 installer. ~~The insurance coverage shall be extended to
7 premium-paying installers on or before December 31, 1989. For
8 the period from May 5, 1989, to and including the date that
9 insurance coverage under the fund is extended to installers,
10 the fund shall not seek third-party recovery from an
11 installer.~~

12 Sec. 36. Section 455G.11, Code Supplement 1989, is amended
13 by adding the following new subsection:

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

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

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

26 Sec. 37. Section 455G.11, subsection 7, paragraph a, Code
27 Supplement 1989, is amended to read as follows:

28 a. To take corrective action for and to compensate a third
29 party for damages, including but not limited to payment of a
30 judgment for bodily injury or property damage caused by a
31 release from a tank, where coverage has been provided to the
32 owner or operator from the insurance account, up to the limits
33 of coverage extended. A personal injury is not a compensable
34 third-party liability damage.

35 Sec. 38. Section 455G.11, Code Supplement 1989, is amended

1 by adding the following new subsection:

2 NEW SUBSECTION. 8. As a condition of purchasing coverage
3 through the insurance account, a person engaged in the
4 wholesale or retail sale of petroleum products shall accept
5 waste oil for recycling and shall provide for the delivery of
6 waste oil so accepted to a person willing to accept the waste
7 oil for recycling. If the department of natural resources
8 certifies to the administrator that no person is willing to
9 accept the waste oil for recycling, the administrator may
10 permit disposal of the waste oil in another environmentally
11 sound manner. A person subject to this subsection shall post
12 a notice in a form and manner approved by the administrator,
13 advertising that the person will accept waste oil for
14 recycling. The department, after consultation with the
15 administrator, may provide by rule for mechanisms or
16 procedures to administer this subsection and to protect
17 against the contamination of waste oil with hazardous
18 substances other than waste oil.

19 Sec. 39. NEW SECTION. 455G.12A COST CONTAINMENT
20 AUTHORITY.

21 1. VALIDITY OF CONTRACTS. A contract in which one of the
22 parties to the contract is an owner or operator of a petroleum
23 underground storage tank, for goods or services which may be
24 payable or reimbursable from the fund, is invalid unless and
25 until the administrator has approved the contract as fair and
26 equitable to the tank owner or operator, and found that the
27 contract terms are within the range of usual and customary
28 rates for similar or equivalent goods or services within the
29 state, and found that the goods or services are necessary for
30 the owner or operator to comply with fund or regulatory
31 standards. An owner or operator may appoint the administrator
32 as an agent for the purposes of negotiating contracts with
33 suppliers of goods or services compensable by the fund. The
34 administrator may select another contractor for goods or
35 services other than the one offered by the owner or operator,

1 if the scope of the proposed work or actual work of the
2 offered contractor does not reflect the quality of workmanship
3 required, or the costs are determined to be excessive.

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

11 3. EXCLUSIVE CONTRACTS. The administrator may enter into
12 a contract or an exclusive contract with the supplier of goods
13 or services required by a class of tank owners or operators in
14 connection with an expense payable or reimbursable from the
15 fund, to supply a specified good or service for a gross
16 maximum price, fixed rate, on an exclusive basis, or subject
17 to another contract term or condition reasonably calculated to
18 obtain goods or services for the fund or for tank owners and
19 operators at a reasonable cost. A contract may provide for
20 direct payment from the fund to a supplier.

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

27 Sec. 40. Section 455G.17, subsections 1 and 2, Code
28 Supplement 1989, are amended to read as follows:

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

32 a. A licensed engineer, except that if underground storage
33 tank installation is within the scope of practice of a
34 particular class of licensed engineer, additional training
35 shall not be required for that class. A licensed engineer for

1 whom underground storage tank installation is
 2 of practice shall be an "authorized inspector"
 3 "certified inspector".
 4 b. A fire marshal, or other person unaffiliated
 5 tank owner, operator, or installer.

6 2. The board shall adopt approved curricula curricula
 7 training both engineers and fire marshals or other
 8 unaffiliated persons as a precondition to their cert
 9 as underground storage tank installation inspectors.
 10 Sec. 41.

11 Provided that amounts reserved for the retroactive p
 12 of the remedial account claims pursuant to section 455G.
 13 subsection 1, paragraph "a", subparagraph (1), do not exc
 14 six million dollars, the administrator shall from July 1,
 15 1990, through September 1, 1990, reopen applications
 16 previously received but denied based upon section 455G.9,
 17 subsection 1, paragraph "a", subparagraph (1), subparagraph
 18 subdivision (a), Code Supplement 1989, which subparagraph
 19 subdivision 1, paragraph "a", subparagraph (1), subparagraph
 20 applications is repealed by this Act, and may accept new
 21 received exceed the remaining balance of unobligated or
 22 unreserved funds of the six million dollars, the remaining
 23 balance shall be prorated among the reopened and newly
 24 received claims. If claims remain partially or totally unpaid
 25 after total payments under the retroactive portion of the
 26 remedial account exceed six million dollars, all remaining
 27 claims are void, and no entitlement exists for further
 28 payment. If claims paid pursuant to this section do not
 29 exceed the remaining balance of unobligated or unreserved
 30 funds of the six million dollars, the remaining balance shall
 31 be distributed among the claims accepted for payment which
 32 were submitted on or before January 31, 1990, by increasing
 33 the allowable percentage of payment contained in section
 34 455G.9, subsection 1, paragraph "a", subparagraph (1)
 35 amount necessary to reduce the remaining balance

1 million dollars allocated for retroactive claims to zero.

2 Sec. 42. Section 101.28, Code Supplement 1989, is

3 repealed.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

HOUSE FILE 2552

H-5857

1 Amend House File 2552 as follows:
2 1. Page 20, line 17, by inserting after the word
3 "payment." the following: "If claims paid pursuant to
4 this section do not exceed the remaining balance of
5 unobligated or unreserved funds of the six million
6 dollars, the remaining balance shall be distributed
7 among the claims accepted for payment which were
8 submitted on or before January 31, 1990, by increasing
9 the allowable percentage of payment contained in
10 section 455G.9, subsection 1, paragraph "a",
11 subparagraph (1) by an amount necessary to reduce the
12 remaining balance of the six million dollars allocated
13 for retroactive claims to zero."

By FOGARTY of Palo Alto
HATCH of Polk

H-5857 FILED MARCH 23, 1990

Adopted 3/26 (p. 1407)

S-5777

Page 3

1 property, or if such a known disposal site does exist,
2 the location of the site on the property. The
3 statement shall additionally state that no known
4 underground storage tank, as defined in section
5 455B.471, subsection 6, exists on the property, or if
6 a known underground storage tank does exist, the type
7 and size of the tank, and any known substance in the
8 tank. The statement shall also state that no known
9 hazardous waste as defined in section 455B.411,
10 subsection 4, or listed by the department pursuant to
11 section 455B.412, subsection 2, or section 455B.464,
12 exists on the property, or if known hazardous waste
13 does exist, that the waste is being managed in
14 accordance with rules adopted by the department of
15 natural resources. The statement shall be signed by
16 at least one of the sellers or their agents. The
17 county recorder shall refuse to record any deed,
18 instrument, or writing for which a declaration of
19 value is required under chapter 428A unless the
20 statement required by this section has been submitted
21 to the county recorder. A buyer of property shall be
22 provided with a copy of the statement submitted, and,
23 following the fulfillment of this provision, if the
24 statement submitted reveals no well, disposal site,
25 underground storage tank, or hazardous waste on the
26 property, the county recorder may destroy the
27 statement. The land application of sludges or soils
28 resulting from the remediation of underground storage
29 tank releases accomplished in compliance with
30 department of natural resources rules without a permit
31 is not required to be reported as the disposal of
32 solid waste or hazardous waste."

33 8. Page 21, lines 14 and 15, by striking the
34 words and figures "July 1, 1990" and inserting the
35 following: "the effective date of this Act".

36 9. Page 21, line 20, by striking the words "for
37 that two-month" and inserting the following: "under
38 section 455G.9, subsection 1, paragraph "a",
39 subparagraphs (1) and (3) for that".

40 10. By striking page 21, line 23, through page
41 22, line 1, and inserting the following: "balance
42 shall be distributed according to the following
43 priority:

44 1. Claims submitted pursuant to section 455G.9,
45 subsection 1, paragraph "a", subparagraph (3), first.

46 2. Claims reopened or submitted pursuant to
47 section 455G.9, subsection 1, paragraph "a",
48 subparagraph (1), second.

49 3. Claims submitted pursuant to section 455G.9,
50 subsection 1, paragraph "a", subparagraph (3), not

S-5777

Page 4

1 previously accepted for payment or paid because the
2 claim was ineligible solely on the basis of section
3 455G.9, subsection 1, paragraph "a", subparagraph (3),
4 subparagraph subdivision (a), third.

5 4. If claims paid pursuant to subsections 1, 2,
6 and 3 do not exceed the remaining balance of
7 unobligated or unreserved funds of the six million
8 dollars, the remaining balance shall be distributed
9 among the claims accepted for payment which were
10 submitted on or before January 31, 1990, by increasing
11 the allowable percentage of payment contained in
12 section 455G.9, subsection 1, paragraph "a",
13 subparagraph (1) by an amount necessary to reduce the
14 remaining balance of the six million dollars allocated
15 for retroactive claims to zero.

16 If claims remain partially or totally unpaid after
17 total payments under the retroactive portion of the
18 remedial account equal six million dollars, all
19 remaining claims are void, and no entitlement exists
20 for further payment."

21 11. Page 22, by striking lines 2 and 3, and
22 inserting the following:

23 "Sec. ____.

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

26 12. Title page, line 3, by inserting after the
27 word "fund" the following: ", and providing an
28 effective date".

29 13. By renumbering as necessary.

By COMMITTEE ON WAYS AND MEANS
WILLIAM W. DIELEMAN, CHAIRPERSON

S-5777 FILED MARCH 29, 1990

Adopted as amended by 5808 & 5810 3/30 (7 1425)

HOUSE FILE 2552

S-5777

1 Amend House File 2552, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, by striking lines 10 through 12, and
4 inserting the following: "with jurisdiction over the
5 site of the outlet."

6 2. Page 9, by inserting after line 3, the
7 following:

8 "Sec. ____ . Section 455B.304, Code Supplement 1989,
9 is amended by adding the following new unnumbered
10 paragraph:

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

15 3. Page 9, by striking lines 4 through 19.

16 4. By striking page 9, line 20, through page 10,
17 line 1.

18 5. Page 12, by inserting after line 1, the
19 following:

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

23 Total payments for claims pursuant to this
24 subparagraph and subparagraph (3) are limited to no
25 more than six million dollars. Claims for eligible
26 retroactive releases shall be prorated if claims filed
27 in a permitted application period or for a particular
28 priority class of applicants exceed six million
29 dollars or the then remaining balance of six million
30 dollars. If claims remain partially or totally unpaid
31 after total payments equal six million dollars, all
32 remaining claims are void, and no entitlement exists
33 for further payment.

34 Sec. ____ . Section 455G.9, subsection 1, paragraph
35 a, Code Supplement 1989, is amended by adding the
36 following new subparagraph:

37 NEW SUBPARAGRAPH. (3) Corrective action for an
38 eligible release reported to the department of natural
39 resources on or after January 1, 1985, but prior to
40 July 1, 1987. Third-party liability is specifically
41 excluded from remedial account coverage. For a claim
42 for a release under this subparagraph, the remedial
43 program shall pay no more than the lesser of twenty-
44 five thousand dollars or one-third of the total costs
45 of corrective action for that release, subsection 4
46 notwithstanding. For a release to be eligible for
47 coverage under this subparagraph the following
48 conditions must be satisfied:

49 (a) The owner or operator applying for coverage
50 must be currently engaged in the business for which

S-5777

Page 2

1 the tank connected with the release was used prior to
2 the report of the release.

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

7 (c) The owner or operator applying for coverage
8 shall not have claimed bankruptcy any time on or after
9 July 1, 1987.

10 (d) The claim for coverage pursuant to this
11 subparagraph must have been filed with the board prior
12 to September 1, 1990.

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

21 6. Page 19, by striking lines 2 through 18, and
22 inserting the following:

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

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

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

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

36 7. Page 21, by inserting after line 9, the
37 following:

38 "Sec. ____ . Section 558.69, unnumbered paragraph 1,
39 Code 1989, is amended to read as follows:

40 With each declaration of value submitted to the
41 county recorder under chapter 428A, there shall also
42 be submitted a statement that no known wells are
43 situated on the property, or if known wells are
44 situated on the property, the statement must state the
45 approximate location of each known well and its status
46 with respect to section 159.29 or 455B.190. The
47 statement shall also state that no known disposal site
48 for solid waste, as defined in section 455B.301, which
49 has been deemed to be potentially hazardous by the
50 department of natural resources, exists on the

HOUSE FILE 2552

S-5799

1 Amend House File 2552, as amended, passed, and
2 reprinted by the House, as follows:

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

5 "Sec. ____ . Section 424.2, subsection 12, Code
6 Supplement 1989, is amended to read as follows:

7 12. "Tank" means an underground storage tank
8 subject to regulation under chapter 455G or an above-
9 ground storage tank, as defined in section 101.21, if
10 the aboveground storage tank is used in the retail
11 sale of motor vehicle fuels."

12 2. Page 19, line 1, by striking the word "sub-
13 section" and inserting the following: "subsections".

14 3. Page 19, by inserting after line 18, the
15 following:

16 "NEW SUBECTION. 9. The board may offer an
17 insurance policy to an owner or operator of a
18 petroleum aboveground storage tank on the same terms
19 and conditions as for a petroleum underground storage
20 tank."

21 4. By renumbering as necessary.

By MARK HAGERLA

S-5799 FILED MARCH 30, 1990

WITHDRAWN (of 1425)

HOUSE FILE 2552

S-5780

1 Amend House File 2552, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 7, by inserting after line 25, the
4 following:
5 "Sec. ____ . Section 424.6, subsection 1, Code
6 Supplement 1989, is amended by adding the following
7 new unnumbered paragraph:
8 "NEW UNNUMBERED PARAGRAPH. The department shall
9 permit a credit against the charge due from a person
10 equal to the total volume of petroleum transferred or
11 sold from a tank in bulk quantities to a person for
12 deposit in a tank which is exempt, deferred, or
13 excluded pursuant to this subsection, multiplied by
14 the diminution rate multiplied by the cost factor,
15 subject to rules adopted by the board. "Bulk
16 quantities" as used in this paragraph means at least a
17 standard tanker truck load, or more."
18 2. By renumbering as necessary.

By JOHN KIBBIE

S-5780 FILED MARCH 29, 1990

Adopted as amended by 5812 3/30 (p. 1426)

HOUSE FILE 2552

S-5810

1 Amend the amendment, S-5777, to House File 2552, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 1, line 10, by striking the word
5 "paragraph" and inserting the following:
6 "paragraphs".

7 2. Page 1, by inserting after line 14 the
8 following:

9 "NEW UNNUMBERED PARAGRAPH. The commission shall
10 adopt rules providing for the issuance of a
11 certificate to the owner of an underground petroleum
12 storage tank evidencing completion of a remediation
13 action by cleaning the site to the then current action
14 standards. The certificate shall be issued upon
15 request of the owner if the department does not order
16 further remediation work to be performed within ninety
17 days of the department's letter acknowledging
18 compliance with current action standards. The
19 certificate may be recorded with the county recorder
20 to evidence completion of a remediation in the chain
21 of title. A person issued a certificate shall not be
22 required to perform further remediation solely because
23 action standards are changed at a later date. The
24 certificate shall not prevent the department from
25 ordering remediation of a new release."

26 3. Page 3, line 32, by inserting after the word
27 "waste." the following: "For a property for which a
28 certificate evidencing completion of a remediation
29 action has been issued pursuant to section 455B.304,
30 the past presence of an underground storage tank
31 closed pursuant to department rules or the presence of
32 any hazardous waste or contamination related solely to
33 the prior underground storage tank which was the
34 subject of the remediation need not be disclosed,
35 provided that no new underground storage tank has been
36 installed on the property."

By JACK W. HESTER
RICHARD F. DRAKE

S-5810 FILED MARCH 30, 1990
ADOPTED (p. 1425)

HOUSE FILE 2552

S-5812

1 Amend the amendment, S-5780, to House File 2552, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 1, line 11, by inserting after the word
5 "quantities" the following: "and delivered".

6 2. Page 1, by striking line 17 and inserting the
7 following: "portion of a standard tanker truck
8 load.""

By JOHN P. KIBBIE

S-5812 FILED MARCH 30, 1990
ADOPTED (p. 1425)

HOUSE FILE 2552

S-5804

1 Amend House File 2552, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 7, by inserting after line 25, the
4 following:
5 "Sec. ____ . Section 424.6, subsection 1, Code
6 Supplement 1989, is amended by adding the following
7 new unnumbered paragraph:
8 "NEW UNNUMBERED PARAGRAPH. The department shall
9 permit a credit against the charge due from a person
10 equal to the total volume of petroleum transferred or
11 sold from a tank in bulk quantities to a person for
12 deposit in a tank which is exempt, deferred, or
13 excluded pursuant to this subsection, multiplied by
14 the diminution rate multiplied by the cost factor,
15 subject to rules adopted by the board. "Bulk
16 quantities" as used in this paragraph means at least a
17 standard tanker truck load, or more."
18 2. By renumbering as necessary.

By JOHN KIBBIE
MICHAEL E. GRONSTAL
EMIL J. HUSAK

S-5804 FILED MARCH 30, 1990
RULED OUT OF ORDER (p.1426)

HOUSE FILE 2552

S-5808

1 Amend amendment, S-5777, to House File 2552, as
2 amended, passed, and reprinted by the House, as
3 follows:
4 1. Page 2, line 9, by striking the word and
5 figures "July 1, 1987" and inserting the following:
6 "January 1, 1985".

By EMIL HUSAK
RICHARD F. DRAKE
EUGENE FRAISE

S-5808 FILED MARCH 30, 1990
ADOPTED (p.1425)

SENATE AMENDMENT TO HOUSE FILE 2552

H-6028

1 Amend House File 2552, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, by striking lines 10 through 12, and
4 inserting the following: "with jurisdiction over the
5 site of the outlet."

6 2. Page 7, by inserting after line 25, the
7 following:

8 "Sec. ____ . Section 424.6, subsection 1, Code
9 Supplement 1989, is amended by adding the following
10 new unnumbered paragraph:

11 "NEW UNNUMBERED PARAGRAPH. The department shall
12 permit a credit against the charge due from a person
13 equal to the total volume of petroleum transferred or
14 sold from a tank in bulk quantities and delivered to a
15 person for deposit in a tank which is exempt,
16 deferred, or excluded pursuant to this subsection,
17 multiplied by the diminution rate multiplied by the
18 cost factor, subject to rules adopted by the board.
19 "Bulk quantities" as used in this paragraph means at
20 least a portion of a standard tanker truck load."

21 3. Page 9, by inserting after line 3, the
22 following:

23 "Sec. ____ . Section 455B.304, Code Supplement 1989,
24 is amended by adding the following new unnumbered
25 paragraphs:

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

30 "NEW UNNUMBERED PARAGRAPH. The commission shall
31 adopt rules providing for the issuance of a
32 certificate to the owner of an underground petroleum
33 storage tank evidencing completion of a remediation
34 action by cleaning the site to the then current action
35 standards. The certificate shall be issued upon
36 request of the owner if the department does not order
37 further remediation work to be performed within ninety
38 days of the department's letter acknowledging
39 compliance with current action standards. The
40 certificate may be recorded with the county recorder
41 to evidence completion of a remediation in the chain
42 of title. A person issued a certificate shall not be
43 required to perform further remediation solely because
44 action standards are changed at a later date. The
45 certificate shall not prevent the department from
46 ordering remediation of a new release."

47 4. Page 9, by striking lines 4 through 19.

48 5. By striking page 9, line 20, through page 10,
49 line 1.

50 6. Page 12, by inserting after line 1, the

H-6028

Page 2

1 following:

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

5 Total payments for claims pursuant to this
6 subparagraph and subparagraph (3) are limited to no
7 more than six million dollars. Claims for eligible
8 retroactive releases shall be prorated if claims filed
9 in a permitted application period or for a particular
10 priority class of applicants exceed six million
11 dollars or the then remaining balance of six million
12 dollars. If claims remain partially or totally unpaid
13 after total payments equal six million dollars, all
14 remaining claims are void, and no entitlement exists
15 for further payment.

16 Sec. ____ . Section 455G.9, subsection 1, paragraph
17 a, Code Supplement 1989, is amended by adding the
18 following new subparagraph:

19 NEW SUBPARAGRAPH. (3) Corrective action for an
20 eligible release reported to the department of natural
21 resources on or after January 1, 1985, but prior to
22 July 1, 1987. Third-party liability is specifically
23 excluded from remedial account coverage. For a claim
24 for a release under this subparagraph, the remedial
25 program shall pay no more than the lesser of twenty-
26 five thousand dollars or one-third of the total costs
27 of corrective action for that release, subsection 4
28 notwithstanding. For a release to be eligible for
29 coverage under this subparagraph the following
30 conditions must be satisfied:

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

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

39 (c) The owner or operator applying for coverage
40 shall not have claimed bankruptcy any time on or after
41 January 1, 1985.

42 (d) The claim for coverage pursuant to this
43 subparagraph must have been filed with the board prior
44 to September 1, 1990.

45 (e) The owner or operator at the time the release
46 was reported to the department of natural resources
47 must have been in compliance with then current
48 monitoring requirements, if any, or must have been in
49 the process of compliance efforts with anticipated
50 requirements, including installation of monitoring

H-6028

Page 3

1 devices, a new tank, tank improvements or retrofit, or
2 any combination."

3 7. Page 19, by striking lines 2 through 18, and
4 inserting the following:

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

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

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

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

18 8. Page 21, by inserting after line 9, the
19 following:

20 "Sec. ____ . Section 558.69, unnumbered paragraph 1,
21 Code 1989, is amended to read as follows:

22 With each declaration of value submitted to the
23 county recorder under chapter 428A, there shall also
24 be submitted a statement that no known wells are
25 situated on the property, or if known wells are
26 situated on the property, the statement must state the
27 approximate location of each known well and its status
28 with respect to section 159.29 or 455B.190. The
29 statement shall also state that no known disposal site
30 for solid waste, as defined in section 455B.301, which
31 has been deemed to be potentially hazardous by the
32 department of natural resources, exists on the
33 property, or if such a known disposal site does exist,
34 the location of the site on the property. The
35 statement shall additionally state that no known
36 underground storage tank, as defined in section
37 455B.471, subsection 6, exists on the property, or if
38 a known underground storage tank does exist, the type
39 and size of the tank, and any known substance in the
40 tank. The statement shall also state that no known
41 hazardous waste as defined in section 455B.411,
42 subsection 4, or listed by the department pursuant to
43 section 455B.412, subsection 2, or section 455B.464,
44 exists on the property, or if known hazardous waste
45 does exist, that the waste is being managed in
46 accordance with rules adopted by the department of
47 natural resources. The statement shall be signed by
48 at least one of the sellers or their agents. The
49 county recorder shall refuse to record any deed,
50 instrument, or writing for which a declaration of

H-6028

Page 4

1 value is required under chapter 428A unless the
2 statement required by this section has been submitted
3 to the county recorder. A buyer of property shall be
4 provided with a copy of the statement submitted, and,
5 following the fulfillment of this provision, if the
6 statement submitted reveals no well, disposal site,
7 underground storage tank, or hazardous waste on the
8 property, the county recorder may destroy the
9 statement. The land application of sludges or soils
10 resulting from the remediation of underground storage
11 tank releases accomplished in compliance with
12 department of natural resources rules without a permit
13 is not required to be reported as the disposal of
14 solid waste or hazardous waste. For a property for
15 which a certificate evidencing completion of a
16 remediation action has been issued pursuant to section
17 455B.304, the past presence of an underground storage
18 tank closed pursuant to department rules or the
19 presence of any hazardous waste or contamination
20 related solely to the prior underground storage tank
21 which was the subject of the remediation need not be
22 disclosed, provided that no new underground storage
23 tank has been installed on the property."

24 9. Page 21, lines 14 and 15, by striking the
25 words and figures "July 1, 1990" and inserting the
26 following: "the effective date of this Act".

27 10. Page 21, line 20, by striking the words "for
28 that two-month" and inserting the following: "under
29 section 455G.9, subsection 1, paragraph "a",
30 subparagraphs (1) and (3) for that".

31 11. By striking page 21, line 23, through page
32 22, line 1, and inserting the following: "balance
33 shall be distributed according to the following
34 priority:

35 1. Claims submitted pursuant to section 455G.9,
36 subsection 1, paragraph "a", subparagraph (3), first.

37 2. Claims reopened or submitted pursuant to
38 section 455G.9, subsection 1, paragraph "a",
39 subparagraph (1), second.

40 3. Claims submitted pursuant to section 455G.9,
41 subsection 1, paragraph "a", subparagraph (3), not
42 previously accepted for payment or paid because the
43 claim was ineligible solely on the basis of section
44 455G.9, subsection 1, paragraph "a", subparagraph (3),
45 subparagraph subdivision (a), third.

46 4. If claims paid pursuant to subsections 1, 2,
47 and 3 do not exceed the remaining balance of
48 unobligated or unreserved funds of the six million
49 dollars, the remaining balance shall be distributed
50 among the claims accepted for payment which were

H-6028

Page 5

1 submitted on or before January 31, 1990, by increasing
2 the allowable percentage of payment contained in
3 section 455G.9, subsection 1, paragraph "a",
4 subparagraph (1) by an amount necessary to reduce the
5 remaining balance of the six million dollars allocated
6 for retroactive claims to zero.

7 If claims remain partially or totally unpaid after
8 total payments under the retroactive portion of the
9 remedial account equal six million dollars, all
10 remaining claims are void, and no entitlement exists
11 for further payment."

12 12. Page 22, by striking lines 2 and 3, and
13 inserting the following:

14 "Sec. ____.

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

17 13. Title page, line 3, by inserting after the
18 word "fund" the following: ", and providing an
19 effective date".

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

RECEIVED FROM THE SENATE

H-6028 FILED MARCH 30, 1990

Has concurred as amended by 6075A 4/4 (p.1878)

HOUSE FILE 2552

H-6075

1 Amend the Senate amendment, H-6028, to House File
2 2552, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 1, line 12, by inserting after the word
5 "person" the following: "operating an eligible
6 underground bulk storage facility".

7 2. Page 1, line 20, by inserting after the word
8 "load." the following: "'Eligible underground bulk
9 storage facility" means an underground bulk storage
10 facility in operation on or before January 1, 1990."

11 3. Page 1, line 25, by striking the word
12 "paragraphs" and inserting the following:
13 "paragraph".

14 4. Page 1, line 29, by striking the word "state."
15 and inserting the following: "state."

16 5. Page 1, by striking lines 30 through 46.

17 6. Page 2, line 6, by striking the words "and
18 subparagraph (3)".

19 7. Page 2, line 15, by striking the word
20 "payment." and inserting the following: "payment."

21 8. By striking page 2, line 16, through page 3,
22 line 2.

23 9. Page 3, by striking lines 3 through 17, and
24 inserting the following:

25 " . Page 19, line 5, by inserting after the
26 word "recycling" the following: "or proper disposal".

27 . Page 19, by striking lines 7 through 11, and
28 inserting the following: "oil for recycling or proper

29 disposal. A person required to install a waste oil
30 tank at a site to satisfy this condition shall receive

31 a discount of five percent on that person's annual
32 insurance premium for all tanks located at that site.

33 A person subject to this subsection shall post".

34 10. Page 4, by striking lines 14 through 23, and
35 inserting the following: "solid waste or hazardous
36 waste."

37 11. Page 4, line 30, by striking the words and
38 figures "subparagraphs (1) and (3)" and inserting the
39 following: "subparagraph (1)".

40 12. By striking page 4, line 31, through page 5,
41 line 11.

42 13. Page 5, by inserting after line 13, the
43 following:

44 "Sec. _____.

45 In response to concerns over the cost of recurring
46 liability due to regulatory uncertainty and the threat

47 of continued liability in connection with prior
48 contamination after conducting a remediation action or

49 tank closure consistent with current action standards,
50 the petroleum underground storage tank board, in

H-6075

Page 2

1 consultation with the state attorney general and the
2 department of natural resources, shall assess state
3 and federal laws regarding liability for site
4 remediation and third-party liability in connection
5 with underground storage tanks. Based on this
6 assessment, the board shall identify whether it is
7 desirable and appropriate to define limits to
8 liability among parties involved in the purchase or
9 transfer of property which has been subject to a
10 remediation action or tank closure consistent with
11 action standards at the time of the action or tank
12 closure. Any recommendations of the board shall be
13 incorporated into a written report and the written
14 report shall be submitted to the general assembly on
15 or before January 15, 1991. The report shall include
16 a discussion of the financial implications of any
17 proposals, including, but not limited to, any risk
18 that the state would incur if the state would assume
19 some portion of the liability to pay for future
20 remedial action due to a change in regulatory action
21 standards."

22 14. By renumbering, relettering, and
23 redesignating as necessary.

By HATCH of Polk

H-6075 FILED APRIL 3, 1990

A-Adopted, B+C-Last 4/4 (of 1818)

HOUSE AMENDMENT TO SENATE AMENDMENT TO
HOUSE FILE 2552

S-5898

1 Amend the Senate amendment, H-6028, to House File
2 2552, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 1, line 12, by inserting after the word
5 "person" the following: "operating an eligible
6 underground bulk storage facility".

7 2. Page 1, line 20, by inserting after the word
8 "load." the following: "'Eligible underground bulk
9 storage facility" means an underground bulk storage
10 facility in operation on or before January 1, 1990."

11 3. Page 1, line 25, by striking the word
12 "paragraphs" and inserting the following:
13 "paragraph".

14 4. Page 1, line 29, by striking the word "state."
15 and inserting the following: "state.""

16 5. Page 2, line 6, by striking the words "and
17 subparagraph (3)".

18 6. Page 2, line 15, by striking the word
19 "payment." and inserting the following: "payment.""

20 7. By striking page 2, line 16, through page 3,
21 line 2.

22 8. Page 4, by striking lines 14 through 23, and
23 inserting the following: "solid waste or hazardous
24 waste.""

25 9. Page 4, line 30, by striking the words and
26 figures "subparagraphs (1) and (3)" and inserting the
27 following: "subparagraph (1)".

28 10. By striking page 4, line 31, through page 5,
29 line 11.

30 11. Page 5, by inserting after line 13, the
31 following:

32 "Sec. ____.

33 In response to concerns over the cost of recurring
34 liability due to regulatory uncertainty and the threat
35 of continued liability in connection with prior
36 contamination after conducting a remediation action or
37 tank closure consistent with current action standards,
38 the petroleum underground storage tank board, in
39 consultation with the state attorney general and the
40 department of natural resources, shall assess state
41 and federal laws regarding liability for site
42 remediation and third-party liability in connection
43 with underground storage tanks. Based on this
44 assessment, the board shall identify whether it is
45 desirable and appropriate to define limits to
46 liability among parties involved in the purchase or
47 transfer of property which has been subject to a
48 remediation action or tank closure consistent with
49 action standards at the time of the action or tank
50 closure. Any recommendations of the board shall be

S-5898

Page 2

1 incorporated into a written report and the written
2 report shall be submitted to the general assembly on
3 or before January 15, 1991. The report shall include
4 a discussion of the financial implications of any
5 proposals, including, but not limited to, any risk
6 that the state would incur if the state would assume
7 some portion of the liability to pay for future
8 remedial action due to a change in regulatory action
9 standards."
10 12. By renumbering, relettering, and
11 redesignating as necessary.

RECEIVED FROM THE HOUSE

S-5898 FILED APRIL 4, 1990

CONCURRED "14 (p. 1540)"

HOUSE FILE 2552

AN ACT

RELATING TO STORAGE TANKS, INCLUDING THE CONDITIONS AND FUNDING MECHANISMS OF THE IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND, AND PROVIDING AN EFFECTIVE DATE.

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

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

101.12 ABOVEGROUND PETROLEUM TANKS AUTHORIZED.

Rules of the state fire marshal shall permit installation of aboveground petroleum storage tanks for retail motor vehicle fuel outlets ~~in cities of one thousand or less population as permitted by the latest edition of the national fire protection association rule 30A, subject to the approval of the governing body of the local governmental subdivision with jurisdiction over the site of the outlet.~~

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

101.21 DEFINITIONS.

As used in this part unless the context otherwise requires:

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

- a. Aboveground tanks of one thousand one hundred gallons or less capacity.
- b. Tanks used for storing heating oil for consumptive use on the premises where stored.

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

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

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

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

4. "Owner" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. It shall be is unlawful to deposit a-regulated substance petroleum in an aboveground petroleum storage tank which has not been registered pursuant to subsections 1 through 5 4.

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

Sec. 4. NEW SECTION. 101.22A EXEMPTION.

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

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

101.23 STATE FIRE MARSHAL REPORTING RULES.

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

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

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

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

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

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

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

employees of the state of Iowa or of other states when the document or information is relevant to the discharge of their official duties, and when relevant in any a proceeding under the federal Solid Waste Disposal Act or this division.

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

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

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

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

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

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

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

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

5. The cost factor is an amount per gallon of diminution determined by the board pursuant to this subsection. The board, after public hearing, may determine, or may adjust, the cost factor to an amount ~~deemed sufficient by the board to maintain the financial soundness of the fund, but not to exceed an amount reasonably necessary to assure financial soundness, in light of known and expected expenses, known and expected income from other sources, the volume of diminution presumed by law to occur, the debt service and reserve requirements for that portion of any bonds issued for the fund, and any other factors determined to be significant by the board, including economic reasonableness to owners and operators~~ reasonably calculated to generate an annual average revenue, year to year, of twelve million dollars from the charge, excluding penalties and interest, if any. The board may determine or adjust the cost factor at any time after May 5, 1989, but shall at minimum determine the cost factor at least once each fiscal year.

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

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

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

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

storage facility" means an underground bulk storage facility in operation on or before January 1, 1990.

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

4. Upon receipt of a payment pursuant to this chapter, the department shall deposit the moneys into the road use tax fund created in section 4550.3, and the moneys so deposited are a continuing appropriation for expenditure under chapter 4550, and moneys so appropriated shall not be used for other purposes unless the appropriation is changed by the first session of a biennial general assembly 312.1.

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

424.15 ENVIRONMENTAL PROTECTION CHARGE REFUND.

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

Refunds may be made only from the unallocated or uncommitted moneys in the road use tax fund created in section 4550.3, and are limited by the total amount budgeted by the fund's board for charge refunds.

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

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

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

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

~~b. The environmental protection charge is to be discontinued or reimposed pursuant to section 455G.9.~~

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

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

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

NEW UNNUMBERED PARAGRAPH. The commission shall adopt rules providing for the issuance of a certificate to the owner of an underground petroleum storage tank evidencing completion of a remediation action by cleaning the site to the then current action standards. The certificate shall be issued upon request of the owner if the department does not order further remediation work to be performed within ninety days of the department's letter acknowledging compliance with current action standards. The certificate may be recorded with the county recorder to evidence completion of a remediation in the chain of title. A person issued a certificate shall not be required to perform further remediation solely because action standards are changed at a later date. The certificate shall not prevent the department from ordering remediation of a new release.

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

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

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

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

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

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

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

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

1. The Iowa comprehensive petroleum underground storage tank fund is created as a separate fund in the state treasury, and any funds remaining in the fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Iowa comprehensive petroleum underground storage tank fund. Interest or other income earned by the fund shall be deposited in the fund. The fund shall include moneys credited to the fund under this section and sections 424.7 423.24, 455G.8, 455G.9, 455G.10, 455G.11, and 455G.13, and other funds which by law may be credited to the fund. The moneys in the fund are appropriated to and for the purposes of the board as provided in this chapter. Amounts in the fund shall not be subject to appropriation for any other purpose by the general assembly, but shall be used only for the purposes set forth in this chapter. The treasurer of state shall act as custodian of the fund and disburse amounts contained in it as directed by the board including automatic disbursements of funds as received pursuant to the terms of bond indentures and documents and security provisions to trustees and custodians. The treasurer of state is authorized to invest the funds deposited in the fund at the direction of the board and

subject to any limitations contained in any applicable bond proceedings. The income from such investment shall be credited to and deposited in the fund. The fund shall be administered by the board which shall make expenditures from the fund consistent with the purposes of the programs set out in this chapter without further appropriation. The fund may be divided into different accounts with different depositories as determined by the board and to fulfill the purposes of this chapter.

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

4. Grant a mortgage, lien, pledge, assignment, or other encumbrance on one or more improvements, revenues, asset of right, accounts, or funds established or received in connection with the fund, including environmental-protection charges revenues derived from the use tax imposed under chapter 423 and deposited in the fund or an account of the fund.

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

2. Environmental-protection-charge Use tax. The environmental-protection-charge revenues derived from the use tax imposed under chapter 424 423. The proceeds of the environmental-protection-charge use tax shall be allocated, consistent with this chapter, among the fund's accounts, for debt service and other fund expenses, according to the fund budget, resolution, trust agreement, or other instrument prepared or entered into by the board or authority under direction of the board.

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

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

then remaining balance of six million dollars. If claims remain partially or totally unpaid after total payments equal six million dollars, all remaining claims are void, and no entitlement exists for further payment.

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. All or a portion of the expenses incurred by the applicant small business for its share of corrective action.
- b. Tank and monitoring equipment improvements necessary to satisfy federal technical standards to become insurable.

Moneys from the environmental protection-charge revenues derived from the use tax imposed under chapter 423 may be used to fund the loan guarantee account according to the fund budget as approved by the board. Loan guarantees shall be made on terms and conditions determined by the board to be reasonable, except that in no case may a loan guarantee satisfy more than ninety percent of the outstanding balance of a loan.

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

2. A separate nonlapsing loan guarantee account is created within the fund. Any funds remaining in the account at the end of each fiscal year shall not revert to the fund or the

general fund but shall remain in the account. The loan account shall be maintained by the treasurer of state. All expenses incurred by the loan account shall be payable solely from the loan account and no liability or obligation shall be imposed upon the state beyond this amount.

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

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

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

7. A loan loss reserve account shall be established within the loan guarantee account. A default on a loan guaranteed under this section shall be paid from such reserve account. ~~In administering the program the board shall not guarantee loan values in excess of the amount credited to the reserve account and only moneys set aside in the reserve account may be used for the payment of a default.~~ In administering the program, the board shall periodically determine the necessary loan loss reserve needed and shall set aside the appropriate moneys in the loan loss reserve account for payment of loan defaults. This reserve shall be determined based on the credit quality of the outstanding guaranteed loans at the time that the reserve requirement is being determined. A default is not eligible for payment until the lender has satisfied all administrative and legal remedies for settlement of the loan and the loan has been reduced to judgment by the lender. After the default has been reduced to judgment and the guarantee paid from the reserve account, the board is entitled to an assignment of the judgment. The board shall take all appropriate action to enforce the judgment or may enter into an agreement with the lender to provide for enforcement. Upon collection of the amount guaranteed, any excess collected

shall be deposited into the fund. The general assembly is not obligated to appropriate any moneys to pay for any defaults or to appropriate any moneys to be credited to the reserve account. The loan guarantee program does not obligate the state or the board except to the extent provided in this section, and the board in administering the program shall not give or lend the credit of the state of Iowa.

Sec. 33. Section 455G.11, subsection 1, Code Supplement 1989, is amended by adding the following new unnumbered paragraph:

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

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

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

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

c. The applicant certifies in writing to the board that the tank to be insured will be brought into compliance with either paragraph "a" or "b", on or before October 26, 1991 1992, provided that prior to the provision of insurance account coverage, the tank site tests release free. For a tank qualifying for insurance coverage pursuant to this paragraph at the time of application or renewal, the owner or operator shall pay a per tank premium equal to two times the normally scheduled premium for a tank satisfying paragraph "a" or "b". An owner or operator who fails to comply as certified to the board on or before October 26, 1991 1992, shall not insure that tank through the insurance account unless and until the tank satisfies the requirements of paragraph "a" or "b".

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

NEW PARAGRAPH. d. The applicant either:

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

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

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

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

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

The board shall adopt rules requiring certification of tank installations and require certification of a new tank installation as a precondition to offering insurance to an owner or operator or an installer. The board shall set in the rule the effective date for the certification requirement. Certification rules shall at minimum require that an installation be personally inspected by an independent licensed engineer, local fire marshal, or state fire marshal's designee, or other person who is unaffiliated with the tank owner, operator, or installer, who is qualified and authorized by the board to perform the required inspection and that the tank and installation of the tank comply with applicable technical standards and manufacturer's instructions and warranty conditions. An inspector shall not be an owner or operator of a tank, or an employee of an owner, operator, or installer. ~~The insurance coverage shall be extended to premium-paying installers on or before December 31, 1989. For the period from May 5, 1989, to and including the date that insurance coverage under the fund is extended to installers, the fund shall not seek third-party recovery from an installer.~~

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

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

- a. Directly through the fund with premiums and deductibles as provided for owners and operators in subsection 4.
- b. In cooperation with a private insurance carrier with excess or stop loss coverage provided by the fund to reduce the cost of insurance to such installers, and including such other terms and conditions as the board deems necessary and convenient to provide adequate coverage for a certified tank installation at a reasonable premium.

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

- a. To take corrective action for and to compensate a third party for damages, including but not limited to payment of a judgment for bodily injury or property damage caused by a release from a tank, where coverage has been provided to the owner or operator from the insurance account, up to the limits of coverage extended. A personal injury is not a compensable third-party liability damage.

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

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

- a. The person maintains a tank for the purpose of storing waste oil.
- b. The person accepts waste oil from the general public.
- c. The person posts a notice at the site in a form and manner approved by the administrator advertising that the person will accept waste oil from the general public.

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

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

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

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

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

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

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

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

b. A fire marshal, or other person unaffiliated with the tank owner, operator, or installer.

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

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

With each declaration of value submitted to the county recorder under chapter 428A, there shall also be submitted a statement that no known wells are situated on the property, or if known wells are situated on the property, the statement must state the approximate location of each known well and its status with respect to section 159.29 or 455B.190. The statement shall also state that no known disposal site for solid waste, as defined in section 455B.301, which has been deemed to be potentially hazardous by the department of natural resources, exists on the property, or if such a known disposal site does exist, the location of the site on the

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

Sec. 43.

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

paragraph "a", subparagraph (1) for that period. If claims reopened or received exceed the remaining balance of unobligated or unreserved funds of the six million dollars, the remaining balance shall be prorated among the reopened and newly received claims. If claims remain partially or totally unpaid after total payments under the retroactive portion of the remedial account exceed six million dollars, all remaining claims are void, and no entitlement exists for further payment. If claims paid pursuant to this section do not exceed the remaining balance of unobligated or unreserved funds of the six million dollars, the remaining balance shall be distributed among the claims accepted for payment which were submitted on or before January 31, 1990, by increasing the allowable percentage of payment contained in section 4850.9, subsection 1, paragraph "a", subparagraph (1) by an amount necessary to reduce the remaining balance of the six million dollars allocated for retroactive claims to zero.

Sec. 44.

In response to concerns over the cost of recurring liability due to regulatory uncertainty and the threat of continued liability in connection with prior contamination after conducting a remediation action or tank closure consistent with current action standards, the petroleum underground storage tank board, in consultation with the state attorney general and the department of natural resources, shall assess state and federal laws regarding liability for site remediation and third-party liability in connection with underground storage tanks. Based on this assessment, the board shall identify whether it is desirable and appropriate to define limits to liability among parties involved in the purchase or transfer of property which has been subject to a remediation action or tank closure consistent with action standards at the time of the action or tank closure. Any recommendations of the board shall be incorporated into a written report and the written report shall be submitted to the general assembly on or before January 15, 1991. The report shall include a discussion of the financial

HF 2552

implications of any proposals, including, but not limited to, any risk that the state would incur if the state would assume some portion of the liability to pay for future remedial action due to a change in regulatory action standards.

Sec. 45.

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

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 2552, Seventy-third General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved May 2, 1990

TERRY E. BRANSTAD
Governor