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WAYS & MEANS CALENDAR

HOUSE FILE 447

BY COMMITTEE ON WAYS AND MEANS

Sen. Environ. & Energy Utilities

(SUCCESSOR TO HF 1)

Passed House, Date 3/6/89 (p/6/89) Passed Senate, Date _____
 Vote: Ayes 97 Nays 1 Vote: Ayes _____ Nays _____
 Approved _____

A BILL FOR

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

HF 447

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

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DIVISION I

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

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

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

20 3. It is necessary to provide a reasonable means to share
21 the cost of cleanup of past and existing petroleum leaks to
22 make the Iowa petroleum underground storage tank population
23 insurable and environmentally safe, and to protect groundwater
24 safety for the citizens of the state. Because of the nature
25 of the problem of underground petroleum leaks and releases it
26 is inherently difficult if not impossible to discover each
3296-27 release, past, present, and future, and determine all the
28 responsible parties, in a timely manner and with reasonable
29 administrative expenses. Further, even if the responsible
30 persons could be identified, the potential damages often far
31 exceed an individual's ability to pay. The environmental
32 protection charge is intended to have all potentially
33 responsible parties pay in exchange for the availability of
34 certain benefits to a responsible party who is able to be
35 identified, subject to certain conditions.

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

14 a. Ernst and Whinney study for the Michigan Petroleum
15 Association, which concluded that among various factors
16 supporting Michigan's "shrinkage and evaporation tax credit"
17 (substantially similar to Iowa's), "physical shrinkage" and
18 "losses from other factors" (which included spillages)
19 accounted for one and thirty-four hundredths percent of
20 petroleum volume. Diminution is not identical to "shrinkage
21 and evaporation" as used for tax credit purposes. Diminution
22 contains no "administrative cost" consideration and is not
23 primarily concerned with evaporation. Because of this, it is
24 not significant that diesel, being significantly less volatile
25 than gasoline, is less subject to evaporation. Diesel does
26 experience spillage and leakage, and thus "diminution".

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

35 c. Analysis of the Iowa shrinkage and evaporation tax

1 credit claims, a portion of which is attributable to product
2 loss and spillage, using the Ernst and Whinney's approach,
3 yields similar results, indicating that in Iowa, one and
4 thirty-four hundredths percent of the total volume of
5 petroleum products entering the state's petroleum distribution
6 system is diminution, or loss of product into the environment.
7 d. The Alexander and Alexander actuarial report prepared
8 for the general assembly in 1988, also supports the finding of
9 diminution and the reasonableness of the diminution rate
10 determined. The Alexander and Alexander report includes an
11 opinion letter from Ernst and Whinney. The letter is based on
12 the research performed for their Michigan study and
13 information supplied to Ernst and Whinney regarding the Iowa
14 tank population, Iowa's antidiversionary amendment, and the
15 definition of diminution and diminution rate. The letter
16 relates that the range of physical shrinkage was twenty-nine
17 hundredths percent through nine-tenths percent. Based on this
18 range it is reasonable to conclude that a petroleum tank in
19 Iowa would experience diminution; that the diminution rate
20 chosen by the general assembly is substantially less than the
21 normal industry average for diminution as defined; and that
22 the diminution rate of one tenth of one percent is below the
23 range of actual diminution likely to be experienced by any
24 owner or operator. The general assembly finds that a
25 reasonable and conservative estimate of the diminution rate is
26 one-tenth of one percent, and one-tenth of one percent shall
27 be the diminution rate used for purposes of the environmental
28 protection charge.

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

1 thus experience greater than average diminution.

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

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

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

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

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

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

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

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

35 9. The public health and safety of the state will benefit

1 from providing new methods to finance the capital outlays
2 required to repair, upgrade, and replace petroleum underground
3 storage tanks by small business owners of such tanks.

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

7 DIVISION II

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

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

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

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

34 DIVISION III

35 Sec. 3. NEW SECTION. 220.202 AUTHORITY TO ISSUE IOWA

1 TANK ASSISTANCE BONDS.

2 The authority shall assist the Iowa comprehensive petroleum
3 underground storage tank fund as provided in chapter 455G.

4 DIVISION IV

5 Sec. 4. NEW SECTION. 424.1 TITLE -- DIRECTOR'S
6 AUTHORITY.

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

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

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

19 Sec. 5. NEW SECTION. 424.2 DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

5 10. "Petroleum" means petroleum as defined in section
6 455G.2.

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

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

14 Sec. 6. NEW SECTION. 424.3 ENVIRONMENTAL PROTECTION
15 CHARGE IMPOSED UPON PETROLEUM DIMINUTION.

16 1. A depositor shall collect from the receiver of
326-17 petroleum deposited into a tank the environmental protection
18 charge imposed under this section each time petroleum is
19 deposited into the tank, and pay the charge to the department
20 as directed by this chapter.

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

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

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

27 5. The cost factor is an amount per gallon of diminution
28 determined by the board pursuant to this subsection. The
29 board, after public hearing, may determine, or may adjust, the
30 cost factor to an amount deemed sufficient by the board to
31 maintain the financial soundness of the fund, in light of
32 known and expected expenses, known and expected income from
33 other sources, the volume of diminution presumed by law to
34 occur, the debt service and reserve requirements for that
35 portion of any bonds issued for the fund, and any other

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

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

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

28 8. The environmental protection charge is imposed on one
29 tenth of one percent of the total volume of petroleum
30 deposited in a tank at the time of deposit as provided by this
31 chapter.

32 Sec. 7. NEW SECTION. 424.4 ADDING OF CHARGE.

33 A depositor shall, as far as practicable, add the charge
34 imposed under this chapter, or the average equivalent of the
35 charge, to the depositor's sales price for the petroleum

1 subject to the charge and when added such charge shall
2 constitute a part of the depositor's price, shall be a debt
3 from the receiver to the depositor until paid, and shall be
4 recoverable at law in the same manner as other debts.

5 Sec. 8. NEW SECTION. 424.5 DEPOSITOR PERMITS REQUIRED --
6 APPLICATIONS -- REVOCATION.

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

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

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

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

32 5. If the holder of a permit fails to comply with any of
33 the provisions of this chapter or any order or rule of the
34 department or is substantially delinquent in the payment of a
35 tax or charge administered by the department or the interest

1 or penalty on the tax or charge, the director may revoke the
2 permit.

32963 6. To revoke a permit the director shall send notice by
4 mail to the permit holder informing that person of the
5 director's intent to revoke the permit and of the permit
6 holder's right to a hearing on the matter. If the permit
7 holder petitions the director for a hearing on the proposed
8 revocation, after giving ten days' notice of the time and
9 place of the hearing in accordance with section 17A.18,
10 subsection 3, the matter may be heard and a decision rendered.
11 The director may restore permits after revocation. The
12 director shall adopt rules setting forth the period of time a
13 depositor must wait before a permit may be restored or a new
14 permit may be issued. The waiting period shall not exceed
15 ninety days from the date of the revocation of the permit.

16 Sec. 9. NEW SECTION. 424.6 EXEMPTION CERTIFICATES FOR
17 RECEIVERS OF PETROLEUM UNDERGROUND STORAGE TANKS NOT SUBJECT
18 TO FINANCIAL RESPONSIBILITY RULES.

19 1. The department of natural resources shall issue an
20 exemption certificate in the form prescribed by the director
21 of the department of natural resources to an applicant who is
22 an owner or operator of a petroleum underground storage tank
23 which is exempt, deferred, or excluded from regulation under
24 chapter 455G, for that tank. The director of the department
25 of natural resources shall revoke and require the return of an
26 exemption certificate if the petroleum underground storage
27 tank later becomes subject to chapter 455G pursuant to section
28 455G.1. A tank is subject to chapter 455G when the federal
29 regulation subjecting that tank to financial responsibility
30 becomes effective and not upon the effective compliance date
31 unless the effective compliance date is the effective date of
32 the regulation.

33 2. Liability for the charge is upon the depositor and the
34 receiver unless the depositor takes in good faith from the
35 receiver a valid exemption certificate and records the

1 exemption certificate number and related transaction
2 information required by the director and submits such
3 information as part of the environmental protection charge
4 return. If petroleum is deposited into a tank, pursuant to a
5 valid exemption certificate which is taken in good faith by
6 the depositor, and the receiver is liable for the charge, the
7 receiver is solely liable for the charge and shall remit the
8 charge directly to the department and this chapter applies to
9 that receiver as if the receiver was a depositor.

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

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

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

33 6. The board may waive the requirement for an exemption
34 certificate for one or more classes of exempt, deferred, or
35 excluded tanks, if in the board's judgment an exemption

1 certificate is not required for effective and efficient
2 collection of the charge. If an exemption certificate is not
3 required for a class pursuant to this subsection, the
4 depositor shall maintain and file such records and information
5 as may be required by the director regarding deposits into a
6 tank subject to the waiver.

7 Sec. 10. NEW SECTION. 424.7 DEPOSIT OF MONEYS -- FILING
8 OF ENVIRONMENTAL PROTECTION CHARGE RETURN.

9 1. A depositor shall, on or before the last day of the
10 month following the close of each calendar quarter during
11 which the depositor is or has become or ceased being subject
12 to the provisions of section 424.3, make, sign, and file an
13 environmental protection charge return for that calendar
14 quarter in such form as may be required by the director. The
15 return shall show information relating to gross receipts from
16 the deposit of petroleum into underground storage tanks, the
17 volume of petroleum deposited into tanks subject to the
18 charge, and any claimed exemptions, exclusions, or deductions,
19 the receipts subject to the charge, a calculation of charges
20 due, and such other information for the period covered by the
21 return as may be required by the director. The depositor may
22 be granted an extension of time not exceeding thirty days for
23 filing a quarterly return, upon a proper showing of necessity.
24 If an extension is granted, the depositor shall have paid by
25 the thirtieth day of the month following the close of the
26 quarter ninety percent of the estimated charges due.

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

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

34 Sec. 11. NEW SECTION. 424.8 PAYMENT OF ENVIRONMENTAL
35 PROTECTION CHARGE.

1 1. The charge levied under this chapter is due and payable
3296 2 in quarterly installments on or before the last day of the
3 month following each quarterly period except as otherwise
4 provided in this section.

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

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

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

35 Sec. 12. NEW SECTION. 424.9 BOND FOR ENVIRONMENTAL

1 PROTECTION CHARGE COLLECTION.

2 The director, when necessary and advisable in order to
3 secure the collection of the environmental protection charge
4 imposed by section 424.3, may require a depositor to file a
5 bond with the director. The bond shall assure collection by
6 the department of the amount of the charge required to be
7 collected or the amount actually collected by the depositor
8 required to file the bond, whichever is greater. The bond
9 shall be issued by a surety company authorized to conduct
10 business in this state and approved by the commissioner of
11 insurance as to solvency and responsibility, in an amount as
12 the director may fix, to secure the payment of the charge, and
13 penalty due or which may become due. In lieu of the bond,
14 securities, or cash shall be kept in the custody of the
15 department and securities may be sold by the director at
16 public or private sale, without notice to the depositor, if it
17 becomes necessary to do so in order to recover any charge and
18 penalty due. Upon a sale, any surplus above the amounts due
19 under this section shall be returned to the person who
20 deposited the securities.

21 Sec. 13. NEW SECTION 424.10 FAILURE TO FILE RETURN --
22 INCORRECT RETURN.

23 1. As soon as practicable after a return is filed and in
24 any event within five years after the return is filed the
25 department shall examine it, assess and determine the charge
26 due if the return is found to be incorrect, and give notice to
27 the depositor of such assessment and determination as provided
28 in subsection 2. The period for the examination and
29 determination of the correct amount of the charge is unlimited
30 in the case of a false or fraudulent return made with the
31 intent to evade the charge or in the case of a failure to file
32 a return. If the determination that a return is incorrect is
33 the result of an audit of the books and records of the
34 depositor, the charge, or additional charge, if any is found
35 due, shall be assessed and determined and the notice to the

1 depositor shall be given by the department within one year
2 after the completion of the examination of the books and
3 records.

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

22 Sec. 14. NEW SECTION. 424.11 ENVIRONMENTAL PROTECTION
23 CHARGE LIEN -- COLLECTION -- ACTION AUTHORIZED.

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

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

1 the appropriate county and from the time of such filing, the
2 lien shall be extended to the property in such county for ten
3 years, unless sooner released or otherwise adopted, with no
4 limit on the number of extensions. The director shall charge
5 off any account whose lien is allowed to lapse and may charge
6 off any account and release the corresponding lien before the
7 lien has lapsed if the director determines under uniform rules
8 adopted by the director that the account is uncollectable or
9 collection costs involved would not warrant collection of the
10 amount due.

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

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

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

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

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

35 The department shall proceed, substantially as provided in

3296-1 sections 445.6 and 445.7, to collect all charges and penalties
2 as soon as practicable after the same become delinquent,
3 except that no property of the depositor shall be exempt from
4 the payment of the charge. In the event service has not been
5 made on a distress warrant by the officer to whom addressed
6 within five days from the date the distress warrant was
7 received by the officer, the authorized revenue agents of the
8 department are hereby empowered to serve and make return of
9 the warrant to the clerk of the district court of the county
10 named in the distress warrant, and all subsequent procedure
11 shall be in compliance with chapter 626.

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

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

24 Sec. 15. NEW SECTION. 424.12 RECORDS REQUIRED.

25 It shall be the duty of every depositor required to make a
26 report and pay any charge under this chapter, to preserve such
27 records as the director may require and it shall be the duty
28 of every depositor to preserve for a period of five years all
29 invoices and other records; and all such books, invoices, and
30 other records shall be open to examination at any time by the
31 department, and shall be made available within this state for
32 such examination upon reasonable notice when the director
33 shall so order. When requested to do so by any person from
34 whom a charge payer is seeking credit, or with whom the charge
35 payer is negotiating the sale of any personal property, or by

1 any other person having a legitimate interest in such
2 information, the director, upon being satisfied that such a
3 situation exists, shall inform such person as to the amount of
4 unpaid charges due by the charge payer under the provisions of
5 this chapter. The giving of such information under such
6 circumstances shall not be deemed a violation of section
7 422.72 as applied to this chapter.

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

10 Sec. 16. NEW SECTION. 424.13 DISPUTED DIMINUTION RATE --
11 APPEAL INVOLVING ENVIRONMENTAL PROTECTION CHARGE.

12 1. A depositor's, receiver's, or other person's challenge
13 of the diminution rate, if allowed, shall be subject to a
14 clear and convincing burden of proof.

15 2. An appeal of the environmental protection charge or any
16 act of the director or department under this chapter shall be
17 heard as a contested case pursuant to chapter 17A.

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

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

27 Sec. 17. NEW SECTION. 424.14 REVISION OF CHARGE.

28 A charge payer may appeal to the director for revision of
29 the charge, interest, or penalties assessed at any time within
30 sixty days from the date of the notice of the assessment of
31 charge, additional charge, interest, or penalties. The
32 director shall grant a hearing and if, upon the hearing, the
33 director determines that the charge, interest, or penalties
34 are excessive or incorrect, the director shall revise them
35 according to the law and the facts and adjust the computation

1 of the charge, interest, or penalties accordingly. The
2 director shall notify the charge payer by mail of the result
3 of the hearing and shall refund to the charge payer the
4 amount, if any, paid in excess of the charge, interest, or
5 penalties found by the director to be due, with interest after
6 sixty days from the date of payment at the rate in effect
7 under section 421.7 for each month or a fraction of a month.
8 The director may, on the director's own motion at any time,
9 abate any portion of charge, interest, or penalties which the
10 director determines is excessive in amount, or erroneously or
11 illegally assessed. The director shall prepare quarterly
12 reports, which shall be included in the annual statistical
13 reports required under section 422.75, summarizing each case
14 in which an abatement of charge, interest, or penalties was
15 made under this section, but a report shall not disclose the
16 identity of the charge payer.

17 Sec. 18. NEW SECTION. 424.15 ENVIRONMENTAL PROTECTION
18 CHARGE REFUND.

19 If it appears that, as a result of mistake, an amount of a
20 charge, penalty, or interest has been paid which was not due
21 under the provisions of this chapter, then such amount shall
22 be credited against any charge due, or to become due, on the
23 books of the department from the person who made the erroneous
24 payment, or such amount shall be refunded to such person by
25 the department. A claim for refund or credit that has not
26 been filed with the department within five years after the
27 charge payment upon which a refund or credit is claimed became
28 due, or five years after such charge payment was made,
29 whichever time is the later, shall not be allowed by the
30 director.

31 Sec. 19. NEW SECTION. 424.16 NOTICE IN CHANGE OF
32 DIMINUTION RATE -- SERVICE OF NOTICE.

33 1. The board shall notify each person who has previously
34 filed an environmental protection charge return at least
35 forty-five days in advance of the start of any calendar

1 quarter during which either of the following will occur:

2 a. An administrative change in the diminution rate becomes
3 effective.

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

14 2. A notice authorized or required under this section may
15 be given by mailing the notice to the person for whom it is
16 intended, addressed to that person at the address given in the
17 last return filed by the person pursuant to this chapter, or
18 if no return has been filed, then to any address obtainable.
19 The mailing of the notice is presumptive evidence of the
20 receipt of the notice by the person to whom addressed. Any
21 period of time which is determined according to this chapter
22 by the giving of notice commences to run from the date of
23 mailing of the notice.

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

29 Sec. 20. NEW SECTION. 424.17 PENALTIES -- OFFENSES --
30 LIMITATION.

31 1. If a depositor fails to remit at least ninety percent
32 of the charge due with the filing of the return on or before
33 the due date, or pays less than ninety percent of any charge
34 required to be shown on the return, excepting the period
35 between the completion of an examination of the books and

1 records of a charge payer and the giving of notice to the
2 charge payer that a charge or additional charge is due, there
3 shall be added to the charge a penalty of fifteen percent of
4 the amount of the charge due, except as provided in section
5 421.27. In case of willful failure to file a return or
6 willful filing of a false return with intent to evade charges,
7 in lieu of the penalty otherwise provided in this subsection,
8 there shall be added to the amount required to be shown as a
9 charge on the return seventy-five percent of the amount of the
10 charge. The charge payer shall also pay interest on the
11 charge or additional charge at the rate in effect under
12 section 421.7 for each month counting each fraction of a month
13 as an entire month, computed from the date the return was
14 required to be filed. The penalty and interest shall be paid
15 to the department and disposed of in the same manner as other
16 receipts under this chapter. Unpaid penalties and interest
17 may be enforced in the same manner as the charge imposed by
18 this chapter.

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

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

28 4. A person required to pay a charge, or to make, sign, or
29 file a return or supplemental return, who willfully makes a
30 false or fraudulent return, or willfully fails to pay at least
31 ninety percent of the charge or willfully fails to make, sign,
32 or file the return, at the time required by law, is guilty of
33 a fraudulent practice.

34 5. For purposes of determining the place of trial, the
35 situs of an offense specified in this section is in the county

1 of the residence of the person charged with the offense,
2 unless the person is a nonresident of this state or the
3 residence of the person cannot be established, in which event
4 the situs of the offense is in Polk county.

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

7 DIVISION V

8 Sec. 21. NEW SECTION. 427B.18 LOCAL OPTION REMEDIAL
9 ACTION PROPERTY TAX CREDIT -- PUBLIC HEARING.

10 1. A city council, or a county board of supervisors for
11 property not under the jurisdiction of a city, may provide by
12 ordinance for a partial or total property tax credit
13 sufficient to produce a reduction in tax over the permitted
14 period not exceeding the actual portion of the costs paid by
15 the owner or operator of an underground storage tank in
16 connection with a remedial action for which the Iowa
17 comprehensive petroleum underground storage tank fund shares
18 in the cost of corrective action. The credit shall be taken
19 on the property where the underground tank is situated.

20 "Actual portion of the costs paid by the owner or operator
21 of an underground storage tank in connection with a remedial
22 action for which the Iowa comprehensive petroleum underground
23 storage tank fund shares in the cost of corrective action" as
24 used in this division means the amount determined by the
25 fund's board, or the board's designee, as the administrator of
26 the Iowa comprehensive petroleum underground storage tank
27 fund.

28 2. The ordinance may be enacted not less than thirty days
29 after a public hearing is held in accordance with section
30 358A.6 in the case of a county, or section 362.3 in the case
31 of a city. The ordinance shall designate the length of time
32 the partial or total credit shall be available, and shall
33 include a credit schedule and description of the terms and
34 conditions of the credit.

35 3. In adopting the ordinance a city council or county

3296-1 board must find that the proposed tax credit would further the
2 community interest in protecting its drinking water supply or
3 the preservation of convenient access, competition, business,
4 and industry within the municipality, or other public
5 interests.

6 4. To grant a credit under the provisions of this section
7 the county board of supervisors shall comply with all of the
8 requirements imposed by this chapter upon the city council of
9 a city.

10 Sec. 22. NEW SECTION. 427B.19 PERIOD OF REMEDIAL ACTION
11 TAX CREDIT.

12 The maximum permitted period of the tax credit under this
13 division is ten years. However, the city council or board of
14 supervisors may impose such terms and conditions upon the
15 credit as it, in its sole discretion, deems reasonable to
16 accomplish its intended goals; for instance, by way of example
17 and not exclusion, if a city council or board of supervisors
18 granted a credit to assist in the protection of local drinking
19 water supplies and to preserve local access to petroleum, the
20 council or board could provide that if the property ceases to
21 be used for gasoline marketing or distribution, the partial or
22 total credit shall not be allowed for subsequent years.

23 Sec. 23. NEW SECTION. 427B.20 APPLICATION FOR CREDIT BY
24 UNDERGROUND STORAGE TANK OWNER OR OPERATOR.

25 An application shall be filed by an owner or operator of an
26 eligible underground storage tank for each property for which
27 a credit is sought. The application for credit shall be filed
28 by the owner or operator with the county treasurer by February
29 1 of the calendar year following the calendar year in which a
30 cost of remedial action was paid by the owner or operator and
31 the credit shall apply to property taxes payable in the
32 following fiscal year. Applications for credit shall be made
33 on forms prescribed by the director of revenue and finance and
34 shall contain information pertaining to the nature of the
35 release, the cost of corrective action, and other information

1 deemed necessary by the director.

2 Sec. 24. NEW SECTION. 427B.21 CREDIT MAY BE REPEALED.

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

9 DIVISION VI

10 Sec. 25. Section 455B.471, subsection 3, Code 1989, is
11 amended by adding the following new unnumbered paragraph:

12 NEW UNNUMBERED PARAGRAPH. "Owner" does not include a
13 person, who, without participating in the management or
14 operation of the underground storage tank or the tank site,
15 holds indicia of ownership primarily to protect that person's
16 security interest in the underground storage tank or the tank
17 site property, prior to obtaining ownership or control through
18 debt enforcement, debt settlement, or otherwise.

19 Sec. 26. Section 455B.471, subsection 5, Code 1989, is
20 amended to read as follows:

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

25 Sec. 27. Section 455B.471, Code 1989, is amended by adding
26 the following new subsections:

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

29 NEW SUBSECTION. 9. "Corrective action" means an action
30 taken to minimize, eliminate, or cleanup a release to protect
31 the public health and welfare or the environment. Corrective
32 action includes, but is not limited to, excavation of an
33 underground storage tank for the purpose of repairing a leak
34 or removal of a tank, removal of contaminated soil, disposal
35 or processing of contaminated soil, and cleansing of

1 groundwaters or surface waters. Corrective action does not
2 include replacement of an underground storage tank.
3 Corrective action specifically excludes third-party liability.

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

6 Sec. 28. Section 455B.479, Code 1989, is amended to read
7 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 fifteen sixty-
11 five dollars per tank of over one thousand one hundred gallons
12 capacity. The Twenty-three percent of the fees collected
13 shall be deposited in the storage tank management account of
14 the groundwater protection fund. Seventy-seven percent of the
15 fees collected shall be deposited in the Iowa comprehensive
16 petroleum underground storage tank fund created in chapter
17 455G.

18 Sec. 29. Section 455B.477, Code 1989, is amended by adding
19 the following new subsections:

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

26 NEW SUBSECTION. 8. "Petroleum" means petroleum, including
27 crude oil or any fraction of crude oil which is liquid at
28 standard conditions of temperature and pressure (sixty degrees
29 Fahrenheit and fourteen and seven-tenths pounds per square
30 inch absolute).

31 Sec. 30. Section 455E.11, subsection 2, paragraph d, Code
32 1989, is amended to read as follows:

33 d. A storage tank management account. All fees collected
34 pursuant to section 455B.473, subsection 5, and section
35 455B.479, shall be deposited in the storage tank management

1 account. Funds shall be expended for the following purposes:

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

3966 (2) Seventy twenty-three percent of the moneys deposited
7 in the account annually, up to a maximum of three hundred
8 fifty thousand dollars, are appropriated to the department of
9 natural resources for the administration of a state storage
10 tank program pursuant to chapter 455B, division IV, part 8,
11 and for programs which reduce the potential for harm to the
12 environment and the public health from storage tanks.

13 ~~For the fiscal year beginning July 1, 1987, and ending~~
14 ~~June 30, 1988, twenty-five thousand dollars is appropriated~~
15 ~~from the account to the division of insurance for payment of~~
16 ~~costs incurred in the establishment of the plan of operations~~
17 ~~program regarding the financial responsibility of owners and~~
18 ~~operators of underground storage tanks which store petroleum.~~
19 (4) The remaining funds in the account are appropriated
20 annually to the ~~department of natural resources for the~~
21 ~~funding of state remedial cleanup efforts~~ Iowa comprehensive
22 petroleum underground storage tank fund.

23

DIVISION VII

24 Sec. 31. NEW SECTION. 455G.1 TITLE -- SCOPE.

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

27 2. This chapter applies to a petroleum underground storage
28 tank required to maintain proof of financial responsibility
29 under federal law, from the effective date of the regulation
30 of the federal environmental protection agency governing that
31 tank, and not from the effective compliance date, unless the
32 effective compliance date of the regulation is the effective
33 date of the regulation. An owner or operator of a petroleum
34 underground storage tank required by federal law to maintain
35 proof of financial responsibility for that underground storage

1 tank, or who will be required on a date definite, is subject
2 to this chapter and chapter 424.

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

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

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

11 (3) A septic tank.

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

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

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

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

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

20 (6) A storm water or wastewater collection system.

21 (7) A flow-through process tank.

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

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

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

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

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

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

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

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

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

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

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

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

25 (10) Airport hydrant fuel distribution systems.

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

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

1 subject to department of natural resource rules on proof of
2 financial responsibility.

3 Sec. 32. NEW SECTION. 455G.2 DEFINITIONS.

4 As used in this chapter unless the context otherwise
5 requires:

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

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

10 3. "Bond" means a bond issued by the authority for the
11 fund.

12 4. "Corrective action" means an action taken to minimize,
13 eliminate, or clean up a release to protect the public health
14 and welfare or the environment. Corrective action includes,
15 but is not limited to, excavation of an underground storage
16 tank for the purpose of repairing a leak or removal of a tank,
17 removal of contaminated soil, and cleansing of groundwaters or
18 surface waters. Corrective action does not include
19 replacement of an underground storage tank or other capital
20 improvements to the tank. Corrective action specifically
21 excludes third-party liability.

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

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

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

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

35 9. "Insurance" includes any form of financial assistance

1 or showing of financial responsibility sufficient to comply
2 with the federal Resource Conservation and Recovery Act or the
3 Iowa department of natural resources' underground storage tank
4 financial responsibility rules.

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

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

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

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

18 a. Is independently owned and operated.

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

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

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

29 Sec. 33. NEW SECTION. 455G.3 ESTABLISHMENT OF IOWA
30 COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND.

31 1. The Iowa comprehensive petroleum underground storage
32 tank fund is created as a separate fund in the state treasury,
33 and any funds remaining in the fund at the end of each fiscal
34 year shall not revert to the general fund but shall remain in
35 the Iowa comprehensive petroleum underground storage tank

1 fund. Interest or other income earned by the fund shall be
2 deposited in the fund.

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

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

12 a. A remedial account to fund corrective action for
13 petroleum releases as provided by section 455G.9.

14 b. A loan guarantee account, as provided by and to the
15 extent permitted by section 455G.10.

16 c. An insurance account for insurable underground storage
17 tank risks within the state as provided by section 455G.11.

18 ²⁵⁻ Sec. 34. NEW SECTION. 455G.4 GOVERNING BOARD.

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

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

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

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

328827 d. Two public members with financial or insurance industry
28 expertise appointed by the governor and confirmed by the
29 senate to staggered four-year terms, except that of the first
30 members appointed, one public member shall be appointed for a
31 term of two years and one for a term of four years. No more
32 than one of the private members shall be of the same sex.

33 The filling of positions reserved for public
34 representatives, vacancies, membership terms, payment of
35 compensation and expenses, and removal of members are governed

1 by chapter 69. Members of the board are entitled to receive
2 reimbursement of actual expenses incurred in the discharge of
3 their duties within the limits of funds appropriated to the
4 board or made available to the fund. Each member of the board
5 may also be eligible to receive compensation as provided in
6 section 7E.6. The members shall elect a voting chairperson of
7 the board from among the members of the board.

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

13 3. RULES AND EMERGENCY RULES.

32A-14 a. The board shall adopt rules regarding its practice and
15 procedures, development of underwriting standards,
16 establishment of premiums for insurance account coverage and
17 risk factors, procedures for investigating and settling claims
18 made against the fund, determination of appropriate
19 deductibles or retentions in coverages or benefits offered,
20 and otherwise implement and administer this chapter.

21 b. The board may adopt administrative rules under section
22 17A.4, subsection 2, and section 17A.5, subsection 2,
23 paragraph "b", to implement this subsection for one year after
24 the effective date of this section.

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

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

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

1 financial responsibility regulations.

2 Sec. 35. NEW SECTION. 455G.5 INDEPENDENT CONTRACTORS TO
3 BE RETAINED BY BOARD.

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

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

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

22 Sec. 36. NEW SECTION. 455G.6 IOWA COMPREHENSIVE
23 PETROLEUM UNDERGROUND STORAGE TANK FUND -- GENERAL AND
24 SPECIFIC POWERS.

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

29 1. Guarantee secured and unsecured loans, and enter into
30 agreements for corrective action, acquisition and construction
31 of tank improvements, and provide for the insurance program.
32 The loan guarantees may be made to a person or entity owning
33 or operating a tank. The board may take any action which is
34 reasonable and lawful to protect its security and to avoid
35 losses from its loan guarantees.

- 1 2. Acquire, hold, and mortgage personal property and real
2 estate and interests in real estate to be used.
- 3 3. Purchase, construct, improve, furnish, equip, lease,
4 option, sell, exchange, or otherwise dispose of one or more
5 improvements under the terms it determines.
- 6 4. Grant a mortgage, lien, pledge, assignment, or other
7 encumbrance on one or more improvements, revenues, asset of
8 right, accounts, or funds established or received in
9 connection with the fund, including environmental protection
10 charges deposited in the fund or an account of the fund.
- 11 5. Provide that the interest on obligations may vary in
12 accordance with a base or formula.
- 13 6. Contract for the acquisition, construction, or both of
14 one or more improvements or parts of one or more improvements
15 and for the leasing, subleasing, sale, or other disposition of
16 one or more improvements in a manner it determines.
- 17 7. The board may contract with the authority for the
18 authority to issue bonds for the fund. The authority may
19 issue the authority's bonds in principal amounts which, in the
20 opinion of the board, are necessary to provide sufficient
21 funds for the fund, the payment of interest on the bonds, the
22 establishment of reserves to secure the bonds, the costs of
23 issuance of the bonds, other expenditures of the authority
24 incident to and necessary or convenient to carry out the bond
25 issue for the fund, and all other expenditures of the board
26 necessary or convenient to administer the fund. The bonds are
27 investment securities and negotiable instruments within the
28 meaning of and for purposes of the uniform commercial code.
- 29 8. Bonds issued under this section are payable solely and
30 only out of the moneys, assets, or revenues of the fund, all
31 of which may be pledged by the board to the payment thereof,
32 and are not an indebtedness of this state or the authority, or
33 a charge against the general credit or general fund of the
34 state or the authority, and the state shall not be liable for
35 any financial undertakings with respect to the fund. Bonds

1 issued under this chapter shall contain on their face a
2 statement that the bonds do not constitute an indebtedness of
3 the state or the authority.

4 9. The proceeds of bonds issued by the authority and not
5 required for immediate disbursement may be invested in any
6 investment approved by the authority and specified in the
7 trust indenture, resolution, or other instrument pursuant to
8 which the bonds are issued without regard to any limitation
9 otherwise provided by law.

10 10. The bonds shall be:

11 a. In a form, issued in denominations, executed in a man-
12 ner, and payable over terms and with rights of redemption, and
13 be subject to such other terms and conditions as prescribed in
14 the trust indenture, resolution, or other instrument
15 authorizing their issuance.

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

20 c. Subject to the terms, conditions, and covenants pro-
21 viding for the payment of the principal, redemption premiums,
22 if any, interest, and other terms, conditions, covenants, and
23 protective provisions safeguarding payment, not inconsistent
24 with this chapter and as determined by the trust indenture,
25 resolution, or other instrument authorizing their issuance.

26 11. The bonds are securities in which public officers and
27 bodies of this state; political subdivisions of this state;
28 insurance companies and associations and other persons
29 carrying on an insurance business; banks, trust companies,
30 savings associations, savings and loan associations, and
31 investment companies; administrators, guardians, executors,
32 trustees, and other fiduciaries; and other persons authorized
33 to invest in bonds or other obligations of the state, may
34 properly and legally invest funds, including capital, in their
35 control or belonging to them.

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

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

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

17 15. Moneys in the fund or fund accounts may be expended
18 for administration expenses, civil penalties, moneys paid
19 under an agreement, stipulation, or settlement, and for the
20 costs of any other activities as the board may determine are
21 necessary and convenient to facilitate compliance with and to
22 implement the intent of federal laws and regulations and this
23 chapter.

24 16. The board shall cooperate with the department of
25 natural resources in the implementation and administration of
26 this division to assure that in combination with existing
27 state statutes and rules governing underground storage tanks,
28 the state will be, and continue to be, recognized by the
29 federal government as having an "approved state account" under
30 the federal Resource Conservation and Recovery Act, especially
31 by compliance with the Act's subtitle I financial responsi-
32 bility requirements as enacted in the federal Superfund
33 Amendments and Reauthorization Act of 1986 and the financial
34 responsibility regulations adopted by the United States en-
35 vironmental protection agency at 40 C.F.R. pts. 280 and 281.

1 Whenever possible this division shall be interpreted to
2 further the purposes of, and to comply, and not to conflict,
3 with such federal requirements.

4 Sec. 37. NEW SECTION. 455G.7 SECURITY FOR BONDS -- CAPI-
5 TAL RESERVE FUND -- IRREVOCABLE CONTRACTS.

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

- 16 a. The payment of the principal of and interest on bonds
- 17 or of the sinking fund payments with respect to those bonds.
- 18 b. The purchase or redemption of the bonds.
- 19 c. The payment of a redemption premium required to be paid
- 20 when the bonds are redeemed before maturity.

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

34 2. If the authority decides to issue bonds secured by a
35 capital reserve fund, the bonds shall not be issued if the

1 amount in the capital reserve fund is less than the capital
2 reserve fund requirement, unless at the time of issuance of
3 the bonds the authority deposits in the capital reserve fund
4 from the proceeds of the bonds to be issued or from other
5 sources, an amount which, together with the amount then in the
6 capital reserve fund, is not less than the capital reserve
7 fund requirement.

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

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

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

31 6. All amounts paid by the state pursuant to this section
32 shall be considered advances by the state and, subject to the
33 rights of the holders of any bonds of the authority that have
34 previously been issued or will be issued, shall be repaid to
35 the state without interest from all available revenues of the

1 fund in excess of amounts required for the payment of bonds of
2 the authority, the capital reserve fund, and operating
3 expenses.

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

13 Sec. 38. NEW SECTION. 455G.8 REVENUE SOURCES FOR FUND.

14 Revenue for the fund shall include, but is not limited, to
15 the following, which shall be deposited with the board and
16 credited to the fund:

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

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

29 3. STORAGE TANK MANAGEMENT FEE. That portion of the
30 storage tank management fee proceeds appropriated to the fund.

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

34 5. COST RECOVERY ENFORCEMENT. Cost recovery enforcement
35 net proceeds as provided by section 455G.12 shall be allocated

1 among the fund's accounts as directed by the board.

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

8 Sec. 39. NEW SECTION. 455G.9 REMEDIAL PROGRAM.

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

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

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

27 c. Corrective action and third-party liability for a tank
28 owned or operated by a financial institution eligible to
29 participate in the remedial account under section 455G.15 if
30 the prior owner or operator is unable to pay, if so authorized
31 by the board as part of a condition or incentive for financial
32 institution participation in the fund pursuant to section
33 455G.15.

34 d. One hundred percent of the costs of corrective action
35 and third party liability for a release situated on property

1 acquired by a county for delinquent taxes pursuant to chapters
2 445 through 448, for which a responsible owner or operator
3 able to pay, other than the county, cannot be found. A county
4 is not a "responsible party" for a release in connection with
5 property which it acquires in connection with delinquent
6 taxes, and does not become a responsible party by sale or
7 transfer of property so acquired.

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

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

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

29 4. MINIMUM COPAYMENT SCHEDULE FOR REMEDIAL ACCOUNT

30 BENEFITS. An owner or operator who reports a release to the
31 department of natural resources on or before October 26, 1990,
32 shall pay the greater of five thousand dollars or twenty-five
33 percent of the total costs of corrective action for that
34 release. The remedial account shall pay the remainder, as
35 required by federal regulations, of the total cost of the

1 corrective action for that release, except that a county shall
2 not be required to pay a copayment in connection with a
3 release situated on property acquired in connection with
4 delinquent taxes, as provided in subsection 1, paragraph "d",
5 unless subsequent to acquisition the county actively operates
6 a tank on the property for purposes other than risk
7 assessment, risk management, or tank closure.

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

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

28 This subsection shall not apply if the sale or transfer is
29 pursuant to a power of eminent domain, or benefits.

30 Sec. 40. NEW SECTION. 455G.10 LOAN GUARANTEE ACCOUNT.

31 1. The board may create a loan guarantee account to offer
32 loan guarantees to small businesses for tank and monitoring
33 equipment improvements necessary to satisfy federal technical
34 standards and to become insurable. Moneys from the
35 environmental protection charge revenues may be used to fund

1 the loan guarantee account according to the fund budget as
2 approved by the board. Loan guarantees shall be made on terms
3 and conditions determined by the board to be reasonable.

3295- 4 2. A separate nonlapsing loan guarantee account is created
5 within the fund. Any funds remaining in the account at the
6 end of each fiscal year shall not revert to the fund or the
7 general fund but shall remain in the account. The loan
8 account shall be maintained by the treasurer of state. All
9 expenses incurred by the loan account shall be payable solely
10 from the loan account and no liability or obligation shall be
11 imposed upon the state beyond this amount.

3296- 12 3. The administrator shall administer the loan account
13 under the direct supervision and direction of the board. The
14 board shall adopt rules to provide loans, guarantees, or
15 interest buy-downs to financially qualified small businesses
16 for the purposes of repairing, upgrading, or replacing
17 petroleum underground storage tanks to meet applicable state
18 or federal standards. Financial assistance from the account,
19 whether in the form of a loan, guarantee, or interest buy-
20 down, is conditioned upon the repair, upgrade, or installation
21 for which assistance is provided resulting in a state-of-the-
22 art tank and monitoring system. The board may impose such
23 other terms and conditions as it deems reasonable and
24 necessary or appropriate. The board shall take appropriate
25 steps to publicize the existence of the loan account.

26 4. As a condition of eligibility for financial assistance
27 from the loan guarantee account, a small business shall
28 demonstrate satisfactory attempts to obtain financing from
29 private lending sources. When applying for loan guarantee
30 account assistance, the small business shall demonstrate good
31 faith attempts to obtain financing from at least two financial
32 institutions. The board shall first refer a tank owner or
33 operator to a financial institution eligible to participate in
34 the fund under section 455G.15; however, if no such financial
35 institution is currently willing and able to make the required

1 loan, the small business shall determine if any of the
2 previously contacted financial institutions would make the
3 loan in participation with the loan guarantee account. The
4 loan guarantee account may offer to guarantee a loan, or
5 provide other forms of financial assistance to facilitate a
6 private loan.

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

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

16 a. Loan guarantee account income, including loan guarantee
17 ³⁹⁶ service fees, if any. and investment income attributed to the
18 account by the board.

19 b. Moneys allocated to the account by the board according
20 ³⁹⁶ to the fund budget prepared by the administrator and approved
21 by the board.

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

24 Sec. 41. NEW SECTION. 455G.11 INSURANCE ACCOUNT.

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

33 2. LIMITS OF COVERAGE AVAILABLE. An owner or operator
34 required to maintain proof of financial responsibility may
35 purchase coverage up to the federally required levels for that

1 owner or operator subject to the terms and conditions under
2 this section and those adopted by the board.

3 3. ELIGIBILITY OF OWNERS AND OPERATORS FOR INSURANCE
4 ACCOUNT COVERAGE. An owner or operator, subject to under-
5 writing requirements and such terms and conditions deemed
6 necessary and convenient by the board, may purchase insurance
7 coverage from the insurance account to provide proof of
8 financial responsibility provided that a tank to be insured
9 meets current federal and state technical requirements for a
10 new tank.

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

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

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

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

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

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

24 f. For subsequent years, an owner or operator applying for
25 coverage shall pay an annually adjusted insurance premium for
26 coverage by the insurance account. The board may only approve
27 fund coverage through the payment of a premium established on
28 an actuarially sound basis. Risk factors shall be taken into
29 account in establishing premiums. Among other risk factors to
30 be considered in establishing premiums for coverage, the most
31 favorable premiums shall be offered to state-of-the-art
32 underground storage tanks and risk management systems and
33 practices. It is the intent of the general assembly that an
34 actuarially sound premium reflect the risk to the insurance
35 account presented by the insured. Risk factor adjustments

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

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

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15 5. The board shall require all tanks installed after
16 January 1, 1990, for which an owner or operator applies for
17 insurance account coverage, to be state-of-the-art
18 installations and therefore require higher standards for
19 insurability than the minimum technical requirements imposed
20 by state or federal law. The board shall define "state-of-
21 the-art".

22 6. The future repeal of this section shall not terminate
23 the following obligations or authorities necessary to
24 administer the obligations until these obligations are
25 satisfied:

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

35 b. The resolution of a cost recovery action filed prior to

1 the effective date of the repeal.

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

19 The board shall adopt rules requiring certification of tank
20 installations and require certification of a new tank
21 installation as a precondition to offering insurance to an
22 owner or operator or an installer after the effective date of
23 the certification rules. Certification rules shall at minimum
24 require that an installation be personally inspected by an
25 independent licensed engineer or fire marshal qualified and
26 authorized 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. The insurance coverage shall be extended
30 to premium paying installers on or before December 1, 1989.
31 For the period from the effective date of this Act to and
32 including the date that insurance coverage under the fund is
33 extended to installers, the fund shall not seek third-party
34 recovery from an installer.

35 The board's actuarial study shall include, but is not

1 limited to, the following topics:

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

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

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

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

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

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

21 8. ACCOUNT EXPENDITURES. Moneys in the insurance account
22 may be expended for the following purposes:

23 a. To take corrective action for and to compensate a third
24 party for damages, including but not limited to payment of a
25 judgment for bodily injury or property damage caused by a
26 release from a tank, where coverage has been provided to the
27 owner or operator from the insurance account, up to the limits
28 of coverage extended.

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

33 Sec. 42. NEW SECTION. 455G.12 COST RECOVERY ENFORCEMENT.

34 1. FULL RECOVERY SOUGHT FROM OWNER. The board shall seek
35 full recovery from the owner or operator of the tank which

1 released the petroleum and which is the subject of a
2 corrective action, for which the fund expends moneys for
3 corrective action or third-party liability, and for all other
4 costs or moneys expended by the fund in connection with the
5 release.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 8. THIRD-PARTY CONTRACTS NOT BINDING ON BOARD, PROCEEDINGS

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

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

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

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

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

1 Sec. 43. NEW SECTION. 455G.13 FUND NOT SUBJECT TO
2 REGULATION.

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

6 Sec. 44. NEW SECTION. 455G.14 FUND NOT PART OF THE IOWA
7 INSURANCE GUARANTY ASSOCIATION.

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

13 Sec. 45. NEW SECTION. 455G.15 FINANCIAL INSTITUTION
14 PARTICIPATION IN FUND.

15 The board may impose conditions on the participation of a
16 financial institution in the fund. Conditions shall be
17 reasonably intended to increase the quantity of private
18 capital available for loans to tank owners or operators who
19 are small businesses within the meaning of section 455G.2.
20 Additionally, the board may offer incentives to financial
21 institutions meeting conditions imposed by the board.

22 Incentives may include extended fund coverage of corrective
23 action or third-party liability expenses, waiver of co-payment
24 or deductible requirements, or other benefits not offered to
25 other participants, if reasonably intended to increase the
26 quantity of private capital available for loans by an amount
27 greater than the increased costs of the incentives to the
28 fund.

29 Sec. 46. NEW SECTION. 455G.16 MERGED AREA SCHOOLS
30 EDUCATION.

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

34 a. A licensed engineer, except that if underground storage
35 tank installation is within the scope of practice of a

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

6 b. A fire marshal.

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

10 3. The board shall adopt approved curricula for training
11 persons to install underground storage tanks in such a manner
12 that the resulting installation may be certified under section
13 455G.11, subsection 7.

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

25 DIVISION VIII

26 Sec. 47. If any provision of this Act or the application
27 thereof to any person is invalidated, the invalidity shall not
28 affect the provisions or application of this Act which can be
29 given effect without the invalidated provisions or
30 application, and to this end the provisions of this Act are
31 severable.

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

35 1. To the extent a person or class of persons is

1 determined not to be liable for future payments of the
2 environmental protection charge, that person or class of
3 persons shall not be eligible for benefits from, or to
4 participate in any manner in, the Iowa comprehensive petroleum
5 underground storage tank fund.

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

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

26 Sec. 48. Section 455G.11 is repealed effective July 1,
27 2004.

28 Sec. 49. Section 455G.10 is repealed effective July 1,
29 1999.

30 Sec. 50. Sections 455G.6 and 455G.7 are repealed effective
31 July 1, 2009.

32 Sec. 51. This Act, being deemed of immediate importance,
33 takes effect upon enactment.

34 EXPLANATION

35 This bill creates a state fund for petroleum underground

1 storage tanks to provide a means for owners and operators of
2 such tanks to comply with federally mandated technical
3 standards and financial responsibility regulations. The fund
4 is supervised by a board consisting of state officials
5 involved in the issues implicated and persons with experience
6 in insurance or actuarial services. The fund is to be managed
7 by a professional administrator retained by the board as an
8 independent contractor.

9 The fund has three major components. A remedial account
10 provides a social cost spreading mechanism to pay for
11 correcting existing leaks. An environmental protection charge
12 on petroleum diminution is the primary funding mechanism for
13 the remedial account. Annual revenue from the environmental
14 protection charge is limited to twelve million dollars. The
15 existing storage tank management fee is also increased fifty
16 dollars per tank to provide moneys for the fund. The owner or
17 operator remains responsible for a portion of the cost of a
18 corrective action under the remedial account in the form of a
19 copayment equal to the greater of five thousand dollars or
20 twenty-five percent of the cost of the corrective action. The
21 owner or operator also remains solely responsible for any
22 third-party liability incurred.

23 A local option remedial action property tax credit is
24 offered owners and operators to permit local governments to
25 assist tank owners or operators pay their share of any
26 remedial action expenses. The tax credit will also free
27 cashflow to permit an owner or operator to service any debt
28 incurred for corrective action or to install new tanks to meet
29 federal technical standards.

30 The second component is a loan guarantee account. The loan
31 guarantee account may make referrals to private lenders
32 obligated to make certain loans as a condition of
33 participation in the remedial account. The loan guarantee
34 account may also, in cooperation with a private lender
35 guarantee a loan to a qualified small business tank owner or

1 operator. The loan guarantee account's primary sources of
2 income are any loan guarantee service fees imposed and moneys
3 budgeted by the fund's board from the proceeds of the
4 environmental protection charge. The loan guarantee account
5 is to provide capital for bringing the state's tank population
6 into compliance with federal technical standards for tank
7 construction, installation, and monitoring within the
8 allotted time. A tank not in compliance with federal
9 technical or financial responsibility requirements must be
10 closed within sixty days of the effective compliance date.

11 Cleanup of existing leaks and upgrading or replacement of
12 old tanks to satisfy the new federal technical standards is a
13 precondition to obtain insurance coverage under the third
14 component, the insurance account, or from the few private
15 insurers offering insurance. The insurance account will offer
16 coverage for prospective releases of petroleum to insurable
17 tanks and to tank installers. During the first five years of
18 the insurance account, coverage will be offered for a fixed
19 annual premium increasing by fifty dollar increments from one
20 hundred dollars per tank in year one to three hundred dollars
21 per tank in year five. The fixed premiums may require
22 subsidization of the insurance account by the environmental
23 protection charge or other sources of fund income. After the
24 first five years insurance account coverage will only be
25 offered on an actuarially sound, risk-factor-adjusted basis,
26 i.e., the owner or operator will pay a tank premium for
27 coverage, based upon the risk presented to the insurance
28 account by that tank. Private insurance coverage is not
29 generally available to tank owners and operators at this time
30 to satisfy the federal requirement to maintain proof of
31 financial responsibility. Federal law requires a person with
32 less than ten thousand gallons per month average throughput to
33 maintain \$500,000 per occurrence and \$1,000,000 aggregate
34 coverage to satisfy both potential corrective action and
35 third-party liability in the event of a future release. In

1 contrast, the remedial fund for existing leaks only provides
2 coverage for corrective action, not third-party liability.
3 The owner or operator remains responsible for third-party
4 liability under state and federal law, but is not required to
5 maintain proof in advance of the ability to pay a third-party
6 claim should it arise on an existing leak. Larger owners and
7 operators are required to maintain \$1,000,000 per occurrence
8 and up to \$2,000,000 aggregate coverage. It is anticipated
9 that private insurance will be offered in the future based
10 upon the experience of the insurance account and improvements
11 to the general tank population to make more tanks insurable.
12 The bill contains an automatic repeal, or sunset, of the
13 insurance account in fifteen years based on this assumption of
14 limited need.

15 The fund is to be capitalized by revenue bond issues
16 authorized by the board, and issued by the Iowa finance
17 authority. The bonds will be repaid out of the proceeds of
18 the environmental protection charge, loan guarantee service
19 fees, investment income, third-party enforcement and
20 collection actions, insurance premiums, and other fund
21 revenues. To permit issuance of marketable bonds at a
22 favorable rate of interest, the bill provides for the creation
23 of capital reserve funds to permit debt service on the bonds
24 to continue in the event of a revenue shortfall. The board
25 will report a shortfall to the governor and general assembly
26 for resolution prior to the exhaustion of the capital reserve
27 funds.

28 The tank fund and its components are to be managed in an
29 actuarially sound manner, with the environmental protection
30 charge and premiums adjusted within allowed limits, as
31 necessary, to prevent resort to the backup funding mechanism.
32 The bonds permit spreading the cleanup costs which are
33 incurred in the first two to five years over fifteen years,
34 reducing the annual revenue required in any one year.

35 The bill provides for the automatic repeal, or sunset of

1 its various provisions. The loan account is repealed at the
2 end of ten years and the new bonding authority and
3 environmental protection charge are repealed or eliminated at
4 the end of fifteen years. Under federal law all tanks must be
5 improved to current technical standards within that time
6 period. The insurance account is repealed at the end of
7 fifteen years in expectation that with an improved tank
8 population and better experience, private insurance will be
9 generally available by then. The bill provides a temporary
10 transition mechanism from the unregulated environment to the
11 new federal regulatory regimen. Existing state statutes and
12 rules qualify as a federally approved state program. This
13 bill assists owners and operators to comply with the program.
14 An approved state program may administer the regulations at
15 the state level and is eligible to receive moneys from the
16 federal underground storage tank trust fund if a release
17 causes more than \$1,000,000 in coverage, or if a responsible
18 owner, able to pay for a required cleanup cannot be found.

19 Certain penalties are imposed or authorized in the bill to
20 encourage or compel compliance, including the authorization of
21 treble punitive damages for certain intentional acts,
22 including failure to respond to a release of petroleum as
23 ordered by the director of the department of natural
24 resources, failure to register a known underground storage
25 tank subject to registration requirements, and intentional
26 failure to report a known release. Penalties, both civil and
27 criminal, are imposed with relation to the collection
28 procedures for the environmental protection charge. The bill
29 takes effect upon enactment. The bill may include a state
30 mandate as defined in chapter 25B.

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HOUSE FILE 447
FISCAL NOTE

A fiscal note for HOUSE FILE 447 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 447 provides for the remedial clean up and insurance of the State's underground petroleum storage tank population. The bill adds \$20 to the present tank management fee of \$15 (Section 455B.479, Code of Iowa), establishes a state subsidized per tank insurance premium of \$100 with \$50 per year increases, provides for a petroleum diminution fee with a maximum annual revenue cap of \$12,000,000, establishes a local option property tax reduction, and creates a loan guarantee mechanism for qualified tank replacements.

Diminution is defined as the petroleum released into the environment prior to its intended use. The rate of diminution is defined as 0.1 percent of the petroleum placed in an underground storage tank.

The legislature employed the firm of Alexander & Alexander as an actuary to determine the estimated cost of the remedial, insurance and loan programs as well as the financial assumptions associated with the bond issues. The report provided by Alexander & Alexander is the basis for the cost estimates within this Fiscal Note.

Major Assumptions:

1. \$70,000,000 remedial bond issue.
2. \$71,000,000 insurance bond issue.
3. 2,200,000,000 gallons of petroleum products are sold in Iowa each year.
4. 23,837 tanks are registered in the state.
5. 9% of the registered tank population are presently leaking.
6. The average remedial clean up will cost \$98,321.
7. 8,000 tanks will join the insurance fund in the first year, 10,000 additional in the second and 4,000 more in the third.
8. 2% of the insured tanks will develop leaks in each of the first three years, with 1% developing leaks each year thereafter.
9. Insured leaks will cost an average of \$73,000 in remedial clean up and third party liability.

Fiscal Effect:

The Fund will be responsible for a total remedial clean up of \$81,163,221, with a majority of the costs incurred in the first four years. The five year cost to the fund for the subsidized insurance program will be \$101,927,920. Over fifteen years, the loan account will experience \$271,077 in loan defaults. The total cost of administration of the fund will be \$4,150,000. Bond interest will total \$119,782,468.

The Fund will receive income from several sources. Interest on the unspent balances in the various funds will generate \$30,848,029, the tank insurance premium will bring in \$20,000,000, and the per gallon diminution fee will generate \$180,000,000 over 15 years.

The following table details the revenues and expenses associated with the operation of the Fund. The numbers are rounded to the nearest \$100,000. The expenses are after the co-payment, deductible, recovered moneys and available federal funds are applied.

TOTAL 15 YEAR PROGRAM PROJECTION

EXPENSES

Bond Interest Paid	\$ 119,800,000
Remedial Clean Up	81,200,000
Insurance Losses	101,900,000
Loan Account Losses	300,000
Fund Administration	4,200,000
	\$ 307,400,000

REVENUES

Interest on Fund Bal.	\$ 30,800,000
Tank Ins. Premium	20,000,000
Diminution Fee	180,000,000
Per Tank Fee	16,500,000
	\$ 247,300,000

Based on the cost assumptions within the Alexander & Alexander report, the Ways & Means amendment will underfund the problem by \$4,000,000 per year for the 15 year life of the program. The funding shortfall will not develop if the number of leaking tanks are less than projected, the cost per clean up is less, the rate of payout is slower, interest rates fall, and/or the \$12,000,000 per year revenue cap is raised.

If the per tank fee, remedial fee, and insurance premium costs are all passed on to the consumer, this program will increase the price of petroleum products by approximately 66% of one cent per gallon (\$.0066).

No estimate of the fiscal impact on local governments of the local option property tax reduction provision can be determined. Additional funding for Department of Natural Resources activities associated with this bill should not be necessary. At this time, no estimate of increased costs to the Department of Revenue and Finance is available.

(LSB 1458hv, JWR)

ED MARCH 2, 1989

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 447
AMENDMENT H-3285 TO HOUSE FILE 447
FISCAL NOTE

A fiscal note for AMENDMENT H-3285 TO H.F. 447 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.

Amendment H-3285 to House File 447 requires the Waste Management Authority Division of the Iowa Department of Natural Resources to: designate one facility to accept used underground storage tanks for final disposal, forbid disposal of tanks in landfill (with the exception of the approved site, if it is a landfill), and adopt rules governing the processing and disposal of tanks by the designated disposal site.

The amendment also provides that the Iowa Comprehensive Petroleum Underground Storage Tank Fund shall compensate the designated site for the difference between the cost of disposal and the scrap value of the tank.

Assumptions:

1. The average tank size is 10,000 gallons.
2. The average tank weighs 7,000 pounds.
3. The average disposal cost is \$750 per tank.
4. The average value of scrap steel is \$0.05 per pound.
5. Disposal of an average of 225 tanks each year for the first five years, and 50 tanks annually in the final ten years will be needed.
6. All tanks will be disposed of at the designated site.

Fiscal Effect:

Each tank disposed of at the designated disposal site will require a payment to the site of \$400. This translates to a total fiscal impact on the fund of \$650,000.

The cost to the Waste Management Authority would not be substantial. However, the Authority does not presently have a procedure for designating the disposal of a material at a single site.

(LSB 1458hv.2, JWR)

FILED MARCH 6, 1989

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 447

H-3285

Amend House File 447 as follows:

1. Page 26, by inserting before line 31, the following:

"Sec. ____ . NEW SECTION. 455B.490 USED STORAGE TANK DISPOSAL.

The waste management authority shall designate one facility within the state for the acceptance of used underground storage tanks for final disposal. The facility shall accept any underground storage tank originally sited within the state, provided that the facility may require as a condition of acceptance, reasonable preparation, procedures, and information regarding the tank to facilitate safe processing and disposal. A sanitary landfill, other than the designated facility if the facility is a sanitary landfill, shall not accept underground storage tanks for disposal. A commercial scrap metal or recycler may accept a tank for processing. The Iowa comprehensive petroleum underground storage tank fund shall compensate the designated tank disposal facility for the costs associated with processing or disposal of a tank delivered to the facility for final disposal pursuant to this section, minus any amounts received by the facility for scrap or salvage. The facility shall not charge a fee to an owner or operator of the underground storage tank as a condition of acceptance. The waste management authority shall adopt rules as necessary to govern the processing and disposal of underground storage tanks by the designated tank disposal facility."

2. By renumbering as necessary.

By DE GROOT of Lyon

H-3285 FILED MARCH 2, 1989

Adopted 3-6-89 (p. 633)

HOUSE FILE 447

H-3288

1 Amend House File 447 as follows:

2 1. Page 32, by striking lines 27 through 32, and
3 inserting the following:

4 "d. Two public members appointed by the governor
5 and confirmed by the senate to staggered four-year
6 terms, except that of the first members appointed, one
7 public member shall be appointed for a term of two
8 years and one for a term of four years. A public
9 member shall have experience or expertise in one or
10 more of the following fields:

11 (1) Financial markets.

12 (2) Environmental or safety regulation or environ-
13 mental interests.

14 A public member shall not have a conflict of
15 interest. For purposes of this section a "conflict of
16 interest" means an affiliation, past or present, with
17 the regulated tank community, or with a person or
18 property and casualty insurer offering competitive
19 insurance or other means of financial assurance or
20 which previously offered environmental hazard
21 insurance for a member of the regulated tank
22 community."

By DODERER of Johnson

H-3288 FILED MARCH 2, 1989

adopted 3-6-89 (p 654)

HOUSE FILE 447

H-3295

1 Amend House File 447 as follows:

2 1. Page 32, by inserting after line 17, the
3 following:

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

23 2. Page 44, line 3, by inserting after the word
24 "reasonable" the following: ", except that in no case
25 may a loan guarantee satisfy more than ninety percent
26 of the outstanding balance of a loan".

27 3. Page 47, by inserting after line 14, the
28 following:

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

32 4. By renumbering as necessary.

By OSTERBERG of Linn

H-3295 FILED MARCH 6, 1989

ADOPTED 3681 (p. 655)

HOUSE FILE 447

H-3296

- 1 Amend House File 447 as follows:
- 2 1. Page 1, line 27, by inserting before the word
- 3 "determine" the following: "to".
- 4 2. Page 8, line 17, by striking the word "tank"
- 5 and inserting the following: "tank,".
- 6 3. Page 11, by striking lines 3 and 4, and
- 7 inserting the following:
- 8 "6. To revoke a permit the director shall serve
- 9 notice as required by section 17A.18 to the permit
- 10 holder informing that person of the".
- 11 4. Page 14, line 2, by inserting before the word
- 12 "quarterly" the following: "calendar".
- 13 5. Page 17, line 3, by striking the word
- 14 "adopted" and inserting the following: "discharged".
- 15 6. Page 18, line 1 by striking the words and
- 16 figures "sections 445.6 and 445.7" and inserting the
- 17 following: "this chapter".
- 18 7. Page 22, by striking lines 28 through 33.
- 19 8. Page 24, line 1, by inserting after the word
- 20 "board" the following: "of supervisors".
- 21 9. Page 27, line 6, by striking the word "twenty-
- 22 three" and inserting the following: "Twenty-three".
- 23 10. Page 30, line 16, by striking the word
- 24 "purpose" and inserting the following: "purposes".
- 25 11. Page 33, line 15, by striking the words
- 26 "development of" and inserting the following:
- 27 "develop".
- 28 12. Page 33, line 16, by striking the words
- 29 "establishment of" and inserting the following:
- 30 "establish".
- 31 13. Page 33, line 18, by striking the words
- 32 "determination of" and inserting the following:
- 33 "determine".
- 34 14. Page 44, line 12, by striking the word
- 35 "administrator" and inserting the following: "board".
- 36 15. Page 45, line 17, by striking the word "any."
- 37 and inserting the following: "any,".
- 38 16. Page 45, line 20, by striking the words
- 39 "prepared by the administrator and".
- 40 17. Page 53, line 23, by striking the word "co-
- 41 payment" and inserting the following: "copayment".
- 42 18. By renumbering as necessary.

By HATCH of Polk

H-3296 FILED MARCH 6, 1989

ADOPTED

36-89 (P 650)

Sen. Finance & Economy 3/9/89 (p. 710) Dr. Law 3/14 (p. 788)
DO PASS 3-16-89 (p. 829)

HOUSE FILE 447
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HF 1)

(As Amended and Passed by the House March 6, 1989)

Passed House, Date 4-26-89 (p. 2009) Passed Senate, Date 3-20-89 (p. 887)
Vote: Ayes 97 Nays 0 Vote: Ayes 49 Nays 0
Approved 5-5-89 (p. 2590)

A BILL FOR Repassed Senate
4-26-89 (p. 1697)
Ayes 44 NAYS 2

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

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

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House Amendments _____
Deleted Language *

DIVISION I

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

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

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

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

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

14 a. Ernst and Whinney study for the Michigan Petroleum
15 Association, which concluded that among various factors
16 supporting Michigan's "shrinkage and evaporation tax credit"
17 (substantially similar to Iowa's), "physical shrinkage" and
18 "losses from other factors" (which included spillages)
19 accounted for one and thirty-four hundredths percent of
20 petroleum volume. Diminution is not identical to "shrinkage
21 and evaporation" as used for tax credit purposes. Diminution
22 contains no "administrative cost" consideration and is not
23 primarily concerned with evaporation. Because of this, it is
24 not significant that diesel, being significantly less volatile
25 than gasoline, is less subject to evaporation. Diesel does
26 experience spillage and leakage, and thus "diminution".

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

35 c. Analysis of the Iowa shrinkage and evaporation tax

1 credit claims, a portion of which is attributable to product
2 loss and spillage, using the Ernst and Whinney's approach,
3 yields similar results, indicating that in Iowa, one and
4 thirty-four hundredths percent of the total volume of
5 petroleum products entering the state's petroleum distribution
6 system is diminution, or loss of product into the environment.
7 d. The Alexander and Alexander actuarial report prepared
8 for the general assembly in 1988, also supports the finding of
9 diminution and the reasonableness of the diminution rate
10 determined. The Alexander and Alexander report includes an
11 opinion letter from Ernst and Whinney. The letter is based on
12 the research performed for their Michigan study and
13 information supplied to Ernst and Whinney regarding the Iowa
14 tank population, Iowa's antidiversionary amendment, and the
15 definition of diminution and diminution rate. The letter
16 relates that the range of physical shrinkage was twenty-nine
17 hundredths percent through nine-tenths percent. Based on this
18 range it is reasonable to conclude that a petroleum tank in
19 Iowa would experience diminution; that the diminution rate
20 chosen by the general assembly is substantially less than the
21 normal industry average for diminution as defined; and that
22 the diminution rate of one tenth of one percent is below the
23 range of actual diminution likely to be experienced by any
24 owner or operator. The general assembly finds that a
25 reasonable and conservative estimate of the diminution rate is
26 one-tenth of one percent, and one-tenth of one percent shall
27 be the diminution rate used for purposes of the environmental
28 protection charge.

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

1 thus experience greater than average diminution.

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

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

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

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

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

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

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

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

35 9. The public health and safety of the state will benefit

1 from providing new methods to finance the capital outlays
2 required to repair, upgrade, and replace petroleum underground
3 storage tanks by small business owners of such tanks.

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

7 DIVISION II

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

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

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

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

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34 DIVISION III

35 Sec. 3. NEW SECTION. 220.202 AUTHORITY TO ISSUE IOWA

3498, 1 TANK ASSISTANCE BONDS.

334- 2 The authority shall assist the Iowa comprehensive petroleum
3 underground storage tank fund as provided in chapter 455G.

4 DIVISION IV

5 Sec. 4. NEW SECTION. 424.1 TITLE -- DIRECTOR'S
6 AUTHORITY.

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

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

3498-14 3. The director shall enter into a contract or agreement
15 with the board to provide assistance requested by the board.
16 Policy issues arising under this chapter or chapter 455G shall
330-17 be determined by the board, and the board may be joined as a
18 real party in interest when a policy issue is raised.

3311- 19 Sec. 5. NEW SECTION. 424.2 DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

5 10. "Petroleum" means petroleum as defined in section
6 455G.2.

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

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

14 Sec. 6. NEW SECTION. 424.3 ENVIRONMENTAL PROTECTION
15 CHARGE IMPOSED UPON PETROLEUM DIMINUTION.

348, 331-

16 1. A depositor shall collect from the receiver of
17 petroleum deposited into a tank, the environmental protection
18 charge imposed under this section each time petroleum is
19 deposited into the tank, and pay the charge to the department
20 as directed by this chapter.

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

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

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

27 5. The cost factor is an amount per gallon of diminution
28 determined by the board pursuant to this subsection. The
29 board, after public hearing, may determine, or may adjust, the
30 cost factor to an amount deemed sufficient by the board to

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31 maintain the financial soundness of the fund, in light of
32 known and expected expenses, known and expected income from
33 other sources, the volume of diminution presumed by law to
34 occur, the debt service and reserve requirements for that
35 portion of any bonds issued for the fund, and any other

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

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

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

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3311-28 8. The environmental protection charge is imposed on one
29 tenth of one percent of the total volume of petroleum
30 deposited in a tank at the time of deposit as provided by this
31 chapter.

32 Sec. 7. NEW SECTION. 424.4 ADDING OF CHARGE.

33 A depositor shall, as far as practicable, add the charge
34 imposed under this chapter, or the average equivalent of the
35 charge, to the depositor's sales price for the petroleum

1 subject to the charge and when added such charge shall
2 constitute a part of the depositor's price, shall be a debt
3 from the receiver to the depositor until paid, and shall be
4 recoverable at law in the same manner as other debts.

5 Sec. 8. NEW SECTION. 424.5 DEPOSITOR PERMITS REQUIRED --
6 APPLICATIONS -- REVOCATION.

3498, 3311-

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

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

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

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

3498, 3311-

32 5. If the holder of a permit fails to comply with any of
33 the provisions of this chapter or any order or rule of the
34 department or is substantially delinquent in the payment of a
35 tax or charge administered by the department or the interest

1 or penalty on the tax or charge, the director may revoke the
2 permit.

3 6. To revoke a permit the director shall serve notice as
4 required by section 17A.18 to the permit holder informing that
5 person of the director's intent to revoke the permit and of
6 the permit holder's right to a hearing on the matter. If the
7 permit holder petitions the director for a hearing on the
8 proposed revocation, after giving ten days' notice of the time
9 and place of the hearing in accordance with section 17A.18,
10 subsection 3, the matter may be heard and a decision rendered.
11 The director may restore permits after revocation. The
12 director shall adopt rules setting forth the period of time a
13 depositor must wait before a permit may be restored or a new
14 permit may be issued. The waiting period shall not exceed
15 ninety days from the date of the revocation of the permit.

16 Sec. 9. NEW SECTION. 424.6 EXEMPTION CERTIFICATES FOR
17 RECEIVERS OF PETROLEUM UNDERGROUND STORAGE TANKS NOT SUBJECT
18 TO FINANCIAL RESPONSIBILITY RULES.

19 1. The department of natural resources shall issue an
20 exemption certificate in the form prescribed by the director
21 of the department of natural resources to an applicant who is
22 an owner or operator of a petroleum underground storage tank
23 which is exempt, deferred, or excluded from regulation under
24 chapter 455G, for that tank. The director of the department
25 of natural resources shall revoke and require the return of an
26 exemption certificate if the petroleum underground storage
27 tank later becomes subject to chapter 455G pursuant to section
28 455G.1. A tank is subject to chapter 455G when the federal
29 regulation subjecting that tank to financial responsibility
30 becomes effective and not upon the effective compliance date
31 unless the effective compliance date is the effective date of
32 the regulation.

33 2. Liability for the charge is upon the depositor and the
34 receiver unless the depositor takes in good faith from the
35 receiver a valid exemption certificate and records the

1 exemption certificate number and related transaction
2 information required by the director and submits such
3 information as part of the environmental protection charge
4 return. If petroleum is deposited into a tank, pursuant to a
5 valid exemption certificate which is taken in good faith by
6 the depositor, and the receiver is liable for the charge, the
7 receiver is solely liable for the charge and shall remit the
8 charge directly to the department and this chapter applies to
9 that receiver as if the receiver was a depositor.

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

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

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

33 6. The board may waive the requirement for an exemption
34 certificate for one or more classes of exempt, deferred, or
35 excluded tanks, if in the board's judgment an exemption

1 certificate is not required for effective and efficient
2 collection of the charge. If an exemption certificate is not
3 required for a class pursuant to this subsection, the
4 depositor shall maintain and file such records and information
5 as may be required by the director regarding deposits into a
6 tank subject to the waiver.

7 Sec. 10. NEW SECTION. 424.7 DEPOSIT OF MONEYS -- FILING
8 OF ENVIRONMENTAL PROTECTION CHARGE RETURN.

3448, 331t 9 1. A depositor shall, on or before the last day of the
10 month following the close of each calendar quarter during
11 which the depositor is or has become or ceased being subject
12 to the provisions of section 424.3, make, sign, and file an
13 environmental protection charge return for that calendar
14 quarter in such form as may be required by the director. The
15 return shall show information relating to gross receipts from
16 the deposit of petroleum into underground storage tanks, the
17 volume of petroleum deposited into tanks subject to the
18 charge, and any claimed exemptions, exclusions, or deductions,
19 the receipts subject to the charge, a calculation of charges
20 due, and such other information for the period covered by the
21 return as may be required by the director. The depositor may
22 be granted an extension of time not exceeding thirty days for
23 filing a quarterly return, upon a proper showing of necessity.
24 If an extension is granted, the depositor shall have paid by
25 the thirtieth day of the month following the close of the
26 quarter ninety percent of the estimated charges due.

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

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

3448, 331t- 34 Sec. 11. NEW SECTION. 424.8 PAYMENT OF ENVIRONMENTAL
35 PROTECTION CHARGE.

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

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

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

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

35 Sec. 12. NEW SECTION. 424.9 BOND FOR ENVIRONMENTAL

1 PROTECTION CHARGE COLLECTION.

2 The director, when necessary and advisable in order to
3 secure the collection of the environmental protection charge
4 imposed by section 424.3, may require a depositor to file a
5 bond with the director. The bond shall assure collection by
6 the department of the amount of the charge required to be
7 collected or the amount actually collected by the depositor
8 required to file the bond, whichever is greater. The bond
9 shall be issued by a surety company authorized to conduct
10 business in this state and approved by the commissioner of
11 insurance as to solvency and responsibility, in an amount as
12 the director may fix, to secure the payment of the charge, and
13 penalty due or which may become due. In lieu of the bond,
14 securities, or cash shall be kept in the custody of the
15 department and securities may be sold by the director at
16 public or private sale, without notice to the depositor, if it
17 becomes necessary to do so in order to recover any charge and
18 penalty due. Upon a sale, any surplus above the amounts due
19 under this section shall be returned to the person who
20 deposited the securities.

21 Sec. 13. NEW SECTION 424.10 FAILURE TO FILE RETURN --
22 INCORRECT RETURN.

23 1. As soon as practicable after a return is filed and in
24 any event within five years after the return is filed the
25 department shall examine it, assess and determine the charge
26 due if the return is found to be incorrect, and give notice to
27 the depositor of such assessment and determination as provided
28 in subsection 2. The period for the examination and
29 determination of the correct amount of the charge is unlimited
30 in the case of a false or fraudulent return made with the
31 intent to evade the charge or in the case of a failure to file
32 a return. If the determination that a return is incorrect is
33 the result of an audit of the books and records of the
34 depositor, the charge, or additional charge, if any is found
35 due, shall be assessed and determined and the notice to the

1 depositor shall be given by the department within one year
2 after the completion of the examination of the books and
3 records.

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

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22 Sec. 14. NEW SECTION. 424.11 ENVIRONMENTAL PROTECTION
23 CHARGE LIEN -- COLLECTION -- ACTION AUTHORIZED.

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

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

1 the appropriate county and from the time of such filing, the
2 lien shall be extended to the property in such county for ten
3 years, unless sooner released or otherwise discharged, with no
4 limit on the number of extensions. The director shall charge
5 off any account whose lien is allowed to lapse and may charge
6 off any account and release the corresponding lien before the
7 lien has lapsed if the director determines under uniform rules
3498 331-8 adopted by the director that the account is uncollectable or
9 collection costs involved would not warrant collection of the
10 amount due.

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

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

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

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

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

35 The department shall proceed, substantially as provided in

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

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

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

24 Sec. 15. NEW SECTION. 424.12 RECORDS REQUIRED.

25 It shall be the duty of every depositor required to make a
26 report and pay any charge under this chapter, to preserve such
27 records as the director may require and it shall be the duty
28 of every depositor to preserve for a period of five years all
29 invoices and other records; and all such books, invoices, and
30 other records shall be open to examination at any time by the
31 department, and shall be made available within this state for
32 such examination upon reasonable notice when the director
33 shall so order. When requested to do so by any person from
34 whom a charge payer is seeking credit, or with whom the charge
35 payer is negotiating the sale of any personal property, or by

1 any other person having a legitimate interest in such
2 information, the director, upon being satisfied that such a
3 situation exists, shall inform such person as to the amount of
4 unpaid charges due by the charge payer under the provisions of
5 this chapter. The giving of such information under such
6 circumstances shall not be deemed a violation of section
7 422.72 as applied to this chapter.

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

3498,
3311-10 Sec. 16. NEW SECTION. 424.13 DISPUTED DIMINUTION RATE --
11 APPEAL INVOLVING ENVIRONMENTAL PROTECTION CHARGE.

12 1. A depositor's, receiver's, or other person's challenge
13 of the diminution rate, if allowed, shall be subject to a
14 clear and convincing burden of proof.

15 2. An appeal of the environmental protection charge or any
16 act of the director or department under this chapter shall be
17 heard as a contested case pursuant to chapter 17A.

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

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

318,3311-27 Sec. 17. NEW SECTION. 424.14 REVISION OF CHARGE.

28 A charge payer may appeal to the director for revision of
29 the charge, interest, or penalties assessed at any time within
30 sixty days from the date of the notice of the assessment of
31 charge, additional charge, interest, or penalties. The
32 director shall grant a hearing and if, upon the hearing, the
33 director determines that the charge, interest, or penalties
34 are excessive or incorrect, the director shall revise them
35 according to the law and the facts and adjust the computation

1 of the charge, interest, or penalties accordingly. The
 2 director shall notify the charge payer by mail of the result
 3 of the hearing and shall refund to the charge payer the
 4 amount, if any, paid in excess of the charge, interest, or
 5 penalties found by the director to be due, with interest after
 6 sixty days from the date of payment at the rate in effect
 7 under section 421.7 for each month or a fraction of a month.
 8 The director may, on the director's own motion at any time,
 9 abate any portion of charge, interest, or penalties which the
 10 director determines is excessive in amount, or erroneously or
 11 illegally assessed. The director shall prepare quarterly
 12 reports, which shall be included in the annual statistical
 13 reports required under section 422.75, summarizing each case
 14 in which an abatement of charge, interest, or penalties was
 15 made under this section, but a report shall not disclose the
 16 identity of the charge payer.

17 Sec. 18. NEW SECTION. 424.15 ENVIRONMENTAL PROTECTION
 18 CHARGE REFUND.

3498, 3311-19 If it appears that, as a result of mistake, an amount of a
 20 charge, penalty, or interest has been paid which was not due
 21 under the provisions of this chapter, then such amount shall
 22 be credited against any charge due, or to become due, on the
 23 books of the department from the person who made the erroneous
 24 payment, or such amount shall be refunded to such person by
 25 the department. A claim for refund or credit that has not
 26 been filed with the department within five years after the
 27 charge payment upon which a refund or credit is claimed became
 28 due, or five years after such charge payment was made,
 29 whichever time is the later, shall not be allowed by the
 30 director.

3311-31 Sec. 19. NEW SECTION. 424.16 NOTICE IN CHANGE OF
 32 DIMINUTION RATE -- SERVICE OF NOTICE.

3498, 3311-33 1. The board shall notify each person who has previously
 34 filed an environmental protection charge return at least
 35 forty-five days in advance of the start of any calendar

1 quarter during which either of the following will occur:

3498, 331-2 a. An administrative change in the diminution rate becomes
3 effective.

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

14 2. A notice authorized or required under this section may
15 be given by mailing the notice to the person for whom it is
16 intended, addressed to that person at the address given in the
17 last return filed by the person pursuant to this chapter, or
18 if no return has been filed, then to any address obtainable.
19 The mailing of the notice is presumptive evidence of the
20 receipt of the notice by the person to whom addressed. Any
21 period of time which is determined according to this chapter
22 by the giving of notice commences to run from the date of
3498, 331-23 mailing of the notice.

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

29 Sec. 20. NEW SECTION. 424.17 PENALTIES -- OFFENSES --
30 LIMITATION.

331-31 1. If a depositor fails to remit at least ninety percent
32 of the charge due with the filing of the return on or before
33 the due date, or pays less than ninety percent of any charge
34 required to be shown on the return, excepting the period
35 between the completion of an examination of the books and

1 records of a charge payer and the giving of notice to the
2 charge payer that a charge or additional charge is due, there
3 shall be added to the charge a penalty of fifteen percent of
4 the amount of the charge due, except as provided in section
5 421.27. In case of willful failure to file a return or
6 willful filing of a false return with intent to evade charges,
7 in lieu of the penalty otherwise provided in this subsection,
8 there shall be added to the amount required to be shown as a
9 charge on the return seventy-five percent of the amount of the
10 charge. The charge payer shall also pay interest on the
11 charge or additional charge at the rate in effect under
12 section 421.7 for each month counting each fraction of a month
13 as an entire month, computed from the date the return was
14 required to be filed. The penalty and interest shall be paid
15 to the department and disposed of in the same manner as other
16 receipts under this chapter. Unpaid penalties and interest
17 may be enforced in the same manner as the charge imposed by
18 this chapter.

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

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

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

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

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DIVISION V

1
2 Sec. 21. NEW SECTION. 427B.18 LOCAL OPTION REMEDIAL
3 ACTION PROPERTY TAX CREDIT -- PUBLIC HEARING.

388, 331 4 1. A city council, or a county board of supervisors for
5 property not under the jurisdiction of a city, may provide by
6 ordinance for a partial or total property tax credit
7 sufficient to produce a reduction in tax over the permitted
8 period not exceeding the actual portion of the costs paid by
9 the owner or operator of an underground storage tank in
10 connection with a remedial action for which the Iowa
11 comprehensive petroleum underground storage tank fund shares
12 in the cost of corrective action. The credit shall be taken
13 on the property where the underground tank is situated.

14 "Actual portion of the costs paid by the owner or operator
15 of an underground storage tank in connection with a remedial
16 action for which the Iowa comprehensive petroleum underground
17 storage tank fund shares in the cost of corrective action" as
18 used in this division means the amount determined by the
19 fund's board, or the board's designee, as the administrator of
20 the Iowa comprehensive petroleum underground storage tank
21 fund.

22 2. The ordinance may be enacted not less than thirty days
23 after a public hearing is held in accordance with section
24 358A.6 in the case of a county, or section 362.3 in the case
25 of a city. The ordinance shall designate the length of time
26 the partial or total credit shall be available, and shall
27 include a credit schedule and description of the terms and
28 conditions of the credit.

29 3. In adopting the ordinance a city council or county
30 board of supervisors must find that the proposed tax credit
31 would further the community interest in protecting its
32 drinking water supply or the preservation of convenient
33 access, competition, business, and industry within the
34 municipality, or other public interests.

35 4. To grant a credit under the provisions of this section

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1 the county board of supervisors shall comply with all of the
2 requirements imposed by this chapter upon the city council of
3 a city.

4 Sec. 22. NEW SECTION. 427B.19 PERIOD OF REMEDIAL ACTION
5 TAX CREDIT.

6 The maximum permitted period of the tax credit under this
7 division is ten years. However, the city council or board of
8 supervisors may impose such terms and conditions upon the
9 credit as it, in its sole discretion, deems reasonable to
10 accomplish its intended goals; for instance, by way of example
11 and not exclusion, if a city council or board of supervisors
12 granted a credit to assist in the protection of local drinking
13 water supplies and to preserve local access to petroleum, the
14 council or board could provide that if the property ceases to
15 be used for gasoline marketing or distribution, the partial or
16 total credit shall not be allowed for subsequent years.

17 Sec. 23. NEW SECTION. 427B.20 APPLICATION FOR CREDIT BY
18 UNDERGROUND STORAGE TANK OWNER OR OPERATOR.

19 An application shall be filed by an owner or operator of an
20 eligible underground storage tank for each property for which
21 a credit is sought. The application for credit shall be filed
22 by the owner or operator with the county treasurer by February
23 1 of the calendar year following the calendar year in which a
24 cost of remedial action was paid by the owner or operator and
25 the credit shall apply to property taxes payable in the
26 following fiscal year. Applications for credit shall be made
27 on forms prescribed by the director of revenue and finance and
28 shall contain information pertaining to the nature of the
29 release, the cost of corrective action, and other information
30 deemed necessary by the director.

31 Sec. 24. NEW SECTION. 427B.21 CREDIT MAY BE REPEALED.

32 If in the opinion of the city council or the county board
33 of supervisors continuation of the credit granted pursuant to
34 this division ceases to be of benefit to the city or county,
35 the city council or the county board of supervisors may repeal

1 the ordinance authorized by section 427B.18, but all existing
2 credits shall continue until their expiration.

3 DIVISION VI

4 Sec. 25. Section 455B.471, subsection 3, Code 1989, is
5 amended by adding the following new unnumbered paragraph:

6 NEW UNNUMBERED PARAGRAPH. "Owner" does not include a
7 person, who, without participating in the management or
8 operation of the underground storage tank or the tank site,
9 holds indicia of ownership primarily to protect that person's
10 security interest in the underground storage tank or the tank
11 site property, prior to obtaining ownership or control through
12 debt enforcement, debt settlement, or otherwise.

13 Sec. 26. Section 455B.471, subsection 5, Code 1989, is
14 amended to read as follows:

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

19 Sec. 27. Section 455B.471, Code 1989, is amended by adding
20 the following new subsections:

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

23 NEW SUBSECTION. 9. "Corrective action" means an action
24 taken to minimize, eliminate, or cleanup a release to protect
25 the public health and welfare or the environment. Corrective
26 action includes, but is not limited to, excavation of an
27 underground storage tank for the purpose of repairing a leak
28 or removal of a tank, removal of contaminated soil, disposal
29 or processing of contaminated soil, and cleansing of
30 groundwaters or surface waters. Corrective action does not
31 include replacement of an underground storage tank.

32 Corrective action specifically excludes third-party liability.

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

35 Sec. 28. Section 455B.479, Code 1989, is amended to read

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1 as follows:

2 455B.479 STORAGE TANK MANAGEMENT FEE.

3 An owner or operator of an underground storage tank shall
4 pay an annual storage tank management fee of fifteen sixty-
5 five dollars per tank of over one thousand one hundred gallons
6 capacity. The Twenty-three percent of the fees collected
7 shall be deposited in the storage tank management account of
8 the groundwater protection fund. Seventy-seven percent of the
9 fees collected shall be deposited in the Iowa comprehensive
10 petroleum underground storage tank fund created in chapter
11 455G.

12 Sec. 29. Section 455B.477, Code 1989, is amended by adding
13 the following new subsections:

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3498, 3307-

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

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20 NEW SUBSECTION. 8. "Petroleum" means petroleum, including
21 crude oil or any fraction of crude oil which is liquid at
22 standard conditions of temperature and pressure (sixty degrees
23 Fahrenheit and fourteen and seven-tenths pounds per square
24 inch absolute).

25 Sec. 30. NEW SECTION. 455B.490 USED STORAGE TANK
26 DISPOSAL.

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27 The waste management authority shall designate one facility
28 within the state for the acceptance of used underground
29 storage tanks for final disposal. The facility shall accept
30 any underground storage tank originally sited within the
31 state, provided that the facility may require as a condition
32 of acceptance, reasonable preparation, procedures, and
33 information regarding the tank to facilitate safe processing
34 and disposal. A sanitary landfill, other than the designated
35 facility if the facility is a sanitary landfill, shall not

1 accept underground storage tanks for disposal. A commercial
2 scrap metal or recycler may accept a tank for processing. The
3 Iowa comprehensive petroleum underground storage tank fund
4 shall compensate the designated tank disposal facility for the
5 costs associated with processing or disposal of a tank
6 delivered to the facility for final disposal pursuant to this
7 section, minus any amounts received by the facility for scrap
8 or salvage. The facility shall not charge a fee to an owner
9 or operator of the underground storage tank as a condition of
10 acceptance. The waste management authority shall adopt rules
11 as necessary to govern the processing and disposal of
12 underground storage tanks by the designated tank disposal
13 facility.

14 Sec. 31. Section 455E.11, subsection 2, paragraph d, Code
15 1989, is amended to read as follows:

16 d. A storage tank management account. All fees collected
17 pursuant to section 455B.473, subsection 5, and section
18 455B.479, shall be deposited in the storage tank management
3408,
3311-19 account. Funds shall be expended for the following purposes:

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

3408,
3311-24 (2) Seventy Twenty-three percent of the moneys deposited
25 in the account annually, up to a maximum of three hundred
26 fifty thousand dollars, are appropriated to the department of
27 natural resources for the administration of a state storage
28 tank program pursuant to chapter 455B, division IV, part 8,
29 and for programs which reduce the potential for harm to the
30 environment and the public health from storage tanks.

31 ~~(3) For the fiscal year beginning July 1, 1987, and ending~~
32 ~~June 30, 1988, twenty-five thousand dollars is appropriated~~
33 ~~from the account to the division of insurance for payment of~~
34 ~~costs incurred in the establishment of the plan of operations~~
35 ~~program regarding the financial responsibility of owners and~~

1 operators-of-underground-storage-tanks-which-store-petroleum-
2 (4) The remaining funds in the account are appropriated
3 annually to the department-of-natural-resources-for-the
4 funding-of-state-remedial-cleanup-efforts Iowa comprehensive
5 petroleum underground storage tank fund.

6 DIVISION VII

7 Sec. 32. NEW SECTION. 455G.1 TITLE -- SCOPE.

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

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

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

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

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

29 (3) A septic tank.

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

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

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

35 (c) State laws comparable to the provisions of the law

1 referred to in subparagraph subdivision (a) or (b).

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

3 (6) A storm water or wastewater collection system.

4 (7) A flow-through process tank.

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

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

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

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

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

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

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

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

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

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

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

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

8 (10) Airport hydrant fuel distribution systems.

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

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

21 Sec. 33. NEW SECTION. 455G.2 DEFINITIONS.

22 As used in this chapter unless the context otherwise
23 requires:

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

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

348, 331- 28 3. "Bond" means a bond issued by the authority for the
29 fund.

30 4. "Corrective action" means an action taken to minimize,
31 eliminate, or clean up a release to protect the public health
32 and welfare or the environment. Corrective action includes,
33 but is not limited to, excavation of an underground storage
34 tank for the purposes of repairing a leak or removal of a
35 tank, removal of contaminated soil, and cleansing of

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1 groundwaters or surface waters. Corrective action does not
2 include replacement of an underground storage tank or other
3 capital improvements to the tank. Corrective action
4 specifically excludes third-party liability.

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

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

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

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

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

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

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

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

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

- 1 a. Is independently owned and operated.
- 2 b. Owns at least one, but no more than twelve tanks at no
- 3 more than two different tank sites.
- 4 c. Has a net worth of two hundred thousand dollars or
- 5 less.

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

12 Sec. 34. NEW SECTION. 455G.3 ESTABLISHMENT OF IOWA
 13 COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND.

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

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

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

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30 a. A remedial account to fund corrective action for
 31 petroleum releases as provided by section 455G.9.

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32 b. A loan guarantee account, as provided by and to the
 33 extent permitted by section 455G.10.

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34 c. An insurance account for insurable underground storage
 35 tank risks within the state as provided by section 455G.11.

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

17 Sec. 35. NEW SECTION. 455G.4 GOVERNING BOARD.

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

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

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

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

26 d. Two public members appointed by the governor and
27 confirmed by the senate to staggered four-year terms, except
28 that of the first members appointed, one public member shall
29 be appointed for a term of two years and one for a term of
30 four years. A public member shall have experience or
31 expertise in one or more of the following fields:

32 (1) Financial markets.

33 (2) Environmental or safety regulation or environmental
34 interests.

35 A public member shall not have a conflict of interest. For

1 purposes of this section a "conflict of interest" means an
2 affiliation, past or present, with the regulated tank
3 community, or with a person or property and casualty insurer
4 offering competitive insurance or other means of financial
5 assurance or which previously offered environmental hazard
6 insurance for a member of the regulated tank community.

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

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

22 3. RULES AND EMERGENCY RULES.

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

30 b. The board may adopt administrative rules under section
31 17A.4, subsection 2, and section 17A.5, subsection 2,
32 paragraph "b", to implement this subsection for one year after
33 the effective date of this section.

34 c. Rules necessary for the implementation and collection
35 of the environmental protection charge shall be adopted on or

1 before June 1, 1989.

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

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

11 Sec. 36. NEW SECTION. 455G.5 INDEPENDENT CONTRACTORS TO
12 BE RETAINED BY BOARD.

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

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

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

31 Sec. 37. NEW SECTION. 455G.6 IOWA COMPREHENSIVE
32 PETROLEUM UNDERGROUND STORAGE TANK FUND -- GENERAL AND
33 SPECIFIC POWERS.

34 In administering the fund, the board has all of the general
35 powers reasonably necessary and convenient to carry out its

1 purposes and duties and may do any of the following, subject
2 to express limitations contained in this chapter:

3 1. Guarantee secured and unsecured loans, and enter into
4 agreements for corrective action, acquisition and construction
5 of tank improvements, and provide for the insurance program.
6 The loan guarantees may be made to a person or entity owning
7 or operating a tank. The board may take any action which is
8 reasonable and lawful to protect its security and to avoid
9 losses from its loan guarantees.

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

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

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

3498, 3311-20 5. Provide that the interest on obligations may vary in
21 accordance with a base or formula.

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

3498, 3311-26 7. The board may contract with the authority for the
27 authority to issue bonds for the fund. The authority may
28 issue the authority's bonds in principal amounts which, in the
29 opinion of the board, are necessary to provide sufficient
30 funds for the fund, the payment of interest on the bonds, the
31 establishment of reserves to secure the bonds, the costs of
32 issuance of the bonds, other expenditures of the authority
33 incident to and necessary or convenient to carry out the bond
34 issue for the fund, and all other expenditures of the board
35 necessary or convenient to administer the fund. The bonds are

1 investment securities and negotiable instruments within the
2 meaning of and for purposes of the uniform commercial code.

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3 8. Bonds issued under this section are payable solely and
4 only out of the moneys, assets, or revenues of the fund, all
5 of which may be pledged by the board to the payment thereof,
6 and are not an indebtedness of this state or the authority, or
7 a charge against the general credit or general fund of the
8 state or the authority, and the state shall not be liable for
9 any financial undertakings with respect to the fund. Bonds
10 issued under this chapter shall contain on their face a
11 statement that the bonds do not constitute an indebtedness of
12 the state or the authority.

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13 9. The proceeds of bonds issued by the authority and not
14 required for immediate disbursement may be invested in any
15 investment approved by the authority and specified in the
16 trust indenture, resolution, or other instrument pursuant to
17 which the bonds are issued without regard to any limitation
18 otherwise provided by law.

19 10. The bonds shall be:

20 a. In a form, issued in denominations, executed in a man-
21 ner, and payable over terms and with rights of redemption, and
22 be subject to such other terms and conditions as prescribed in
23 the trust indenture, resolution, or other instrument
24 authorizing their issuance.

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

29 c. Subject to the terms, conditions, and covenants pro-
30 viding for the payment of the principal, redemption premiums,
31 if any, interest, and other terms, conditions, covenants, and
32 protective provisions safeguarding payment, not inconsistent
33 with this chapter and as determined by the trust indenture,
34 resolution, or other instrument authorizing their issuance.

35 11. The bonds are securities in which public officers and

1 bodies of this state; political subdivisions of this state;
2 insurance companies and associations and other persons
3 carrying on an insurance business; banks, trust companies,
4 savings associations, savings and loan associations, and
5 investment companies; administrators, guardians, executors,
6 trustees, and other fiduciaries; and other persons authorized
7 to invest in bonds or other obligations of the state, may
8 properly and legally invest funds, including capital, in their
9 control or belonging to them.

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

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

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

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26 15. Moneys in the fund or fund accounts may be expended
27 for administration expenses, civil penalties, moneys paid
28 under an agreement, stipulation, or settlement, and for the
29 costs of any other activities as the board may determine are
30 necessary and convenient to facilitate compliance with and to
31 implement the intent of federal laws and regulations and this
32 chapter.

33 16. The board shall cooperate with the department of
34 natural resources in the implementation and administration of
35 this division to assure that in combination with existing

1 state statutes and rules governing underground storage tanks,
2 the state will be, and continue to be, recognized by the
3 federal government as having an "approved state account" under
4 the federal Resource Conservation and Recovery Act, especially
5 by compliance with the Act's subtitle I financial responsi-
6 bility requirements as enacted in the federal Superfund
7 Amendments and Reauthorization Act of 1986 and the financial
8 responsibility regulations adopted by the United States en-
9 vironmental protection agency at 40 C.F.R. pts. 280 and 281.
10 Whenever possible this division shall be interpreted to
11 further the purposes of, and to comply, and not to conflict,
12 with such federal requirements.

13 Sec. 38. NEW SECTION. 455G.7 SECURITY FOR BONDS -- CAPI-
14 TAL RESERVE FUND -- IRREVOCABLE CONTRACTS.

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

- 25 a. The payment of the principal of and interest on bonds
26 or of the sinking fund payments with respect to those bonds.
27 b. The purchase or redemption of the bonds.
28 c. The payment of a redemption premium required to be paid
29 when the bonds are redeemed before maturity.

30 However, money in a capital reserve fund shall not be
31 withdrawn if the withdrawal would reduce the amount in the
32 capital reserve fund to less than the capital reserve fund
33 requirement, except for the purpose of making payment, when
34 due, of principal, interest, redemption premiums on the bonds,
35 and making sinking fund payments when other money pledged to

1 the payment of the bonds is not available for the payments.
2 Income or interest earned by, or increment to, a capital
3 reserve fund from the investment of all or part of the capital
4 reserve fund may be transferred by the authority to other
5 accounts of the fund if the transfer does not reduce the
6 amount of the capital reserve fund below the capital reserve
7 fund requirement.

8 2. If the authority decides to issue bonds secured by a
9 capital reserve fund, the bonds shall not be issued if the
10 amount in the capital reserve fund is less than the capital
11 reserve fund requirement, unless at the time of issuance of
12 the bonds the authority deposits in the capital reserve fund
13 from the proceeds of the bonds to be issued or from other
14 sources, an amount which, together with the amount then in the
15 capital reserve fund, is not less than the capital reserve
16 fund requirement.

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

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

26 5. To assure maintenance of the capital reserve funds, the
27 authority shall, on or before July 1 of each calendar year,
28 make and deliver to the governor the authority's certificate
29 stating the sum, if any, required to restore each capital
30 reserve fund to the capital reserve fund requirement for that
31 fund. Within thirty days after the beginning of the session
32 of the general assembly next following the delivery of the
33 certificate, the governor may submit to both houses printed
34 copies of a budget including the sum, if any, required to
35 restore each capital reserve fund to the capital reserve fund

1 requirement for that fund. Any sums appropriated by the
2 general assembly and paid to the authority pursuant to this
3 section shall be deposited in the applicable capital reserve
4 fund.

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

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

22 Sec. 39. NEW SECTION. 455G.8 REVENUE SOURCES FOR FUND.

23 Revenue for the fund shall include, but is not limited, to
24 the following, which shall be deposited with the board and
25 credited to the fund:

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

30 2. ENVIRONMENT PROTECTION CHARGE. The environmental
31 protection charge imposed under chapter 424. The proceeds of
32 the environmental protection charge shall be allocated,
33 consistent with this chapter, among the fund's accounts, for
34 debt service and other fund expenses, according to the fund
35 budget, resolution, trust agreement, or other instrument

1 prepared or entered into by the board or authority under
2 direction of the board.

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3 3. STORAGE TANK MANAGEMENT FEE. That portion of the
4 storage tank management fee proceeds appropriated to the fund.

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

8 5. COST RECOVERY ENFORCEMENT. Cost recovery enforcement
9 net proceeds as provided by section 455G.12 shall be allocated
10 among the fund's accounts as directed by the board.

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

17 Sec. 40. NEW SECTION. 455G.9 REMEDIAL PROGRAM.

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

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

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

3330-1 c. Corrective action and third-party liability for a tank
2 owned or operated by a financial institution eligible to
3 participate in the remedial account under section 455G.15 if
4 the prior owner or operator is unable to pay, if so authorized
5 by the board as part of a condition or incentive for financial
6 institution participation in the fund pursuant to section
7 455G.15.

8 d. One hundred percent of the costs of corrective action
9 and third party liability for a release situated on property
10 acquired by a county for delinquent taxes pursuant to chapters
11 445 through 448, for which a responsible owner or operator
12 able to pay, other than the county, cannot be found. A county
13 is not a "responsible party" for a release in connection with
14 property which it acquires in connection with delinquent
15 taxes, and does not become a responsible party by sale or
16 transfer of property so acquired.

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

3324- 21 2. REMEDIAL ACCOUNT FUNDING. The remedial account shall
22 be funded by that portion of the proceeds of the environmental
23 protection charge imposed under chapter 424 and other moneys
24 and revenues budgeted to the remedial account by the board.

25 3. TRUST FUND TO BE ESTABLISHED. When the remedial
26 account has accumulated sufficient capital to provide
27 dependable income to cover the expenses of expected future
28 releases or expected future losses for which no responsible
29 owner is available, the excess capital shall be transferred to
30 a trust fund administered by the board and created for that
31 purpose. Collection of the environmental protection charge
32 shall be discontinued when the trust fund is created and fully
33 funded, except to resolve outstanding claims. The
34 environmental protection charge may be reimposed to restore
35 and recapitalize the trust fund in the event future losses

1 deplete the fund so that the board does not expect it to have
2 sufficient income and assets to cover expected future losses.

3 4. MINIMUM COPAYMENT SCHEDULE FOR REMEDIAL ACCOUNT

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

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

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

1 of sale or transfer, subject to the terms of this section.

2 This subsection shall not apply if the sale or transfer is
3 pursuant to a power of eminent domain, or benefits.

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4 Sec. 41. NEW SECTION. 455G.10 LOAN GUARANTEE ACCOUNT.

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5 1. The board may create a loan guarantee account to offer
6 loan guarantees to small businesses for tank and monitoring
7 equipment improvements necessary to satisfy federal technical
8 standards and to become insurable. Moneys from the
9 environmental protection charge revenues may be used to fund
10 the loan guarantee account according to the fund budget as
11 approved by the board. Loan guarantees shall be made on terms
12 and conditions determined by the board to be reasonable,
13 except that in no case may a loan guarantee satisfy more than
14 ninety percent of the outstanding balance of a loan.

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

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23 3. The board shall administer the loan account under the
24 direct supervision and direction of the board. The board
25 shall adopt rules to provide loans, guarantees, or interest
26 buy-downs to financially qualified small businesses for the
27 purposes of repairing, upgrading, or replacing petroleum
28 underground storage tanks to meet applicable state or federal
29 standards. Financial assistance from the account, whether in
30 the form of a loan, guarantee, or interest buy-down, is
31 conditioned upon the repair, upgrade, or installation for
32 which assistance is provided resulting in a state-of-the-art
33 tank and monitoring system. The board may impose such other
34 terms and conditions as it deems reasonable and necessary or
35 appropriate. The board shall take appropriate steps to

1 publicize the existence of the loan account.

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

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

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

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

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

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

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34 Sec. 42. NEW SECTION. 455G.11 INSURANCE ACCOUNT.

35 1. INSURANCE ACCOUNT AS A FINANCIAL ASSURANCE MECHANISM.

1 The insurance account shall offer financial assurance for a
2 qualified owner or operator under the terms and conditions
3 provided for under this section. Coverage may be provided to
4 the owner or the operator, or to each separately. The board
5 is not required to resolve whether the owner or operator, or
6 both are responsible for a release under the terms of any
7 agreement between the owner and operator.

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

13 3. ELIGIBILITY OF OWNERS AND OPERATORS FOR INSURANCE
14 ACCOUNT COVERAGE. An owner or operator, subject to under-
15 writing requirements and such terms and conditions deemed
16 necessary and convenient by the board, may purchase insurance
17 coverage from the insurance account to provide proof of
18 financial responsibility provided that a tank to be insured
19 meets current federal and state technical requirements for a
20 new tank.

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

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

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

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

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

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

34 f. For subsequent years, an owner or operator applying for
35 coverage shall pay an annually adjusted insurance premium for

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

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

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

3498,3302-28 5. The board shall require all tanks installed after
29 January 1, 1990, for which an owner or operator applies for
30 insurance account coverage, to be state-of-the-art
31 installations and therefore require higher standards for
32 insurability than the minimum technical requirements imposed
33 by state or federal law. The board shall define "state-of-
34 the-art".

35 6. The future repeal of this section shall not terminate

1 the following obligations or authorities necessary to
2 administer the obligations until these obligations are
3 satisfied:

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

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

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

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33B-32 The board shall adopt rules requiring certification of tank
33 installations and require certification of a new tank
34 installation as a precondition to offering insurance to an
35 owner or operator or an installer after the effective date of

1 the certification rules. Certification rules shall at minimum
2 require that an installation be personally inspected by an
3 independent licensed engineer or fire marshal qualified and
4 authorized to perform the required inspection and that the
5 tank and installation of the tank comply with applicable
6 technical standards and manufacturer's instructions and
7 warranty conditions. The insurance coverage shall be extended
8 to premium paying installers on or before December 1, 1989.
9 For the period from the effective date of this Act to and
10 including the date that insurance coverage under the fund is
11 extended to installers, the fund shall not seek third-party
12 recovery from an installer.

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

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

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

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

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

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

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

34 8. ACCOUNT EXPENDITURES. Moneys in the insurance account
35 may be expended for the following purposes:

1 a. To take corrective action for and to compensate a third
2 party for damages, including but not limited to payment of a
3 judgment for bodily injury or property damage caused by a
4 release from a tank, where coverage has been provided to the
5 owner or operator from the insurance account, up to the limits
6 of coverage extended.

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3311-7 b. For the costs of any other activities as the authority
8 may determine are necessary and convenient to facilitate
9 compliance with and to implement the intent of federal laws
10 and regulations and this chapter.

11 Sec. 43. NEW SECTION. 455G.12 COST RECOVERY ENFORCEMENT.

12 1. FULL RECOVERY SOUGHT FROM OWNER. The board shall seek
13 full recovery from the owner or operator of the tank which
14 released the petroleum and which is the subject of a
15 corrective action, for which the fund expends moneys for
16 corrective action or third-party liability, and for all other
17 costs or moneys expended by the fund in connection with the
18 release.

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

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

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

33 3. OWNER OR OPERATOR NOT IN COMPLIANCE, SUBJECT TO FULL
34 AND TOTAL COST RECOVERY. Notwithstanding subsection 2, the
35 liability of an owner or operator shall be the full and total

1 costs of corrective action and bodily injury or property
2 damage to third parties, as specified in subsection 1, if the
3 owner or operator has not complied with the financial
4 responsibility or other underground storage tank rules of the
5 department of natural resources or with this chapter and rules
6 adopted under this chapter.

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

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

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

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

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

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

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

30 5. LIEN ON TANK SITE. Any amount for which an owner or
31 operator is liable to the fund, if not paid when due, by

32 statute, rule, or contract, or determination of liability by
33 the authority or department of natural resources after

34 hearing, shall constitute a lien upon the real property where
35 the tank, which was the subject of corrective action, is

1 situated, and the liability shall be collected in the same
2 manner as the environmental protection charge pursuant to
3 section 424.11.

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

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

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

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

32 10. SUBROGATION RIGHTS. Payment of a claim by the fund
33 pursuant to this chapter shall be conditioned upon the board's
34 acquiring by subrogation the rights of the claimant to recover
35 those costs and expenditures for corrective action for which

1 the fund has compensated the claimant, from the person
2 responsible or liable for the unauthorized release. A
3 claimant is precluded from receiving double compensation for
4 the same injury.

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

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

14 Sec. 44. NEW SECTION. 455G.13 FUND NOT SUBJECT TO
15 REGULATION.

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

19 Sec. 45. NEW SECTION. 455G.14 FUND NOT PART OF THE IOWA
20 INSURANCE GUARANTY ASSOCIATION.

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

333D-26 Sec. 46. NEW SECTION. 455G.15 FINANCIAL INSTITUTION
27 PARTICIPATION IN FUND.

28 The board may impose conditions on the participation of a
29 financial institution in the fund. Conditions shall be
30 reasonably intended to increase the quantity of private
31 capital available for loans to tank owners or operators who
32 are small businesses within the meaning of section 455G.2.

33 Additionally, the board may offer incentives to financial
34 institutions meeting conditions imposed by the board.

35 Incentives may include extended fund coverage of corrective

1 action or third-party liability expenses, waiver of copayment
2 or deductible requirements, or other benefits not offered to
3 other participants, if reasonably intended to increase the
4 quantity of private capital available for loans by an amount
5 greater than the increased costs of the incentives to the
6 fund.

7 Sec. 47. NEW SECTION. 455G.16 MERGED AREA SCHOOLS
8 EDUCATION.

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

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

19 b. A fire marshal.

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

23 3. The board shall adopt approved curricula for training
24 persons to install underground storage tanks in such a manner
25 that the resulting installation may be certified under section
26 455G.11, subsection 7.

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27 4. The board shall require by rule that all certified or
28 authorized underground storage tank inspectors register with
29 the board and that all persons trained to perform or
30 performing certified tank installations register with the
31 board. A person's failure to register shall not affect the
32 person's certification, or the certification of an otherwise
33 eligible installation performed by that person, but rules may
34 provide for a civil penalty of no more than fifty dollars.

35 The board may provide a list of registrants to any interested

1 person. The board may impose a fee for registration to
2 recover the costs of administering the registration account.

3 DIVISION VIII

4 Sec. 48. If any provision of this Act or the application
5 thereof to any person is invalidated, the invalidity shall not
6 affect the provisions or application of this Act which can be
7 given effect without the invalidated provisions or
8 application, and to this end the provisions of this Act are
9 severable.

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

13 1. To the extent a person or class of persons is
14 determined not to be liable for future payments of the
15 environmental protection charge, that person or class of
16 persons shall not be eligible for benefits from, or to
17 participate in any manner in, the Iowa comprehensive petroleum
18 underground storage tank fund.

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

33 Any contract entered into by a tank owner or operator, or
34 other recipient of fund benefits, in the course of
35 administration or implementation of this Act, shall include as

1 a condition of the contract, terms consistent with this
2 section, to assure reciprocity of obligation and benefits as
3 provided.

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4 Sec. 49. Section 455G.11 is repealed effective July 1,
5 2004.

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6 Sec. 50. Section 455G.10 is repealed effective July 1,
7 1999.

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8 Sec. 51. Sections 455G.6 and 455G.7 are repealed effective
9 July 1, 2009.

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10 Sec. 52. This Act, being deemed of immediate importance,
11 takes effect upon enactment.

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HOUSE FILE 447

S-3293

1 Amend House File 447, as amended, passed, and
2 reprinted by the House, as follows:

3 1. By striking page 33, line 30 through page 34,
4 line 6, and inserting the following: "four years. A
5 public member shall have experience, knowledge, and
6 expertise of the subject matter embraced within this
7 chapter, including, but not limited to, one or more of
8 the following fields:

9 (1) Financial markets or insurance.

10 (2) Environmental or safety engineering."

11 2. Page 57, by inserting after line 9, the
12 following:

13 "Sec. ____ . Section 214A.18, Code 1989, is
14 repealed."

15 3. By renumbering as necessary.

By RICHARD F. DRAKE

LINN FUHRMAN

JOE WELSH

WILLIAM W. DIELEMAN

BOB CARR

S-3293 FILED MARCH 16, 1989

Div A + B Adopted 3-20-89 (p884)

HOUSE FILE 447

3306

Amend House File 447, as amended, passed, and
reprinted by the House, as follows:

1. Page 46, by inserting after line 33, the
following:

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

2. Page 57, line 5, by inserting after the figure
"2004" the following: ", subject to the
qualifications of section 455G.11, subsection 6".

3. Page 57, line 7, by inserting after the figure
"1999" the following: ", except such repeal shall not
effect any outstanding contractual rights".

4. Page 57, line 9, by inserting after the figure
"2009" the following: ", except as such sections
apply with respect to any outstanding bonds issued
thereunder, or refinancing of such outstanding bonds".

5. By renumbering as necessary.

By EMIL J. HUSAK

S-3306 FILED MARCH 20, 1989

ADOPTED

3-20-89 (p. 884)

HOUSE FILE 447

S-3307

- 1 Amend House File 447, as amended, passed, and
2 reprinted by the House, as follows:
- 3 1. Page 6, by inserting after line 33, the
4 following:
- 5 "Sec. ____ . NEW SECTION. 101.101 DEFINITIONS.
6 As used in this part unless the context otherwise
7 requires:
- 8 1. "Nonoperational aboveground tank" means an
9 aboveground storage tank in which regulated substances
10 are not deposited or from which regulated substances
11 are not dispensed after July 1, 1989.
- 12 2. "Operator" means a person in control of, or
13 having responsibility for, the daily operation of the
14 aboveground storage tank.
- 15 3. "Owner" means:
- 16 a. In the case of an aboveground storage tank in
17 use on or after July 1, 1989, a person who owns the
18 aboveground storage tank used for the storage, use, or
19 dispensing of regulated substances.
- 20 b. In the case of an aboveground storage tank in
21 use before July 1, 1989, but no longer in use on that
22 date, a person who owned the tank immediately before
23 the discontinuation of its use.
- 24 4. "Regulated substance" means regulated substance
25 as defined in section 455B.471.
- 26 5. "Release" means spilling, leaking, emitting,
27 discharging, escaping, leaching, or disposing from an
28 aboveground storage tank into groundwater, surface
29 water, or subsurface soils.
- 30 6. "Aboveground storage tank" means one or a
31 combination of tanks, including connecting pipes
32 connected to the tanks which are used to contain an
33 accumulation of regulated substances and the volume of
34 which, including the volume of the underground pipes,
35 is more than ninety percent above the surface of the
36 ground. Aboveground storage tank does not include any
37 of the following:
- 38 a. Aboveground tanks of one thousand one hundred
39 gallons or less capacity used for storing motor fuel
40 for noncommercial purposes.
- 41 b. Tanks used for storing heating oil for
42 consumptive use on the premises where stored.
- 43 c. Underground storage tanks as defined by section
44 455B.471.
- 45 7. "Tank site" means a tank or grouping of tanks
46 within close proximity of each other located on the
47 facility for the purpose of storing regulated
48 substances.
- 49 8. "State fire marshal" means the state fire
50 marshal, or the state fire marshal's designee.

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1 Sec. . NEW SECTION. 101.102 REPORT OF
2 EXISTING AND NEW TANKS -- FEE.

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

9 2. The owner of an aboveground storage tank taken
10 out of operation between January 1, 1979 and July 1,
11 1989, shall notify the state fire marshal in writing
12 by July 1, 1990, of the existence of the tank unless
13 the owner knows the tank has been removed. The notice
14 shall specify to the extent known to the owner, the
15 date the tank was taken out of operation, the age of
16 the tank on the date taken out of operation, the size,
17 type, and location of the tank, and the type and
18 quantity of substances left stored in the tank on the
19 date that it was taken out of operation.

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

25 4. The registration notice of the owner or
26 operator to the state fire marshal under subsections 1
27 through 3 shall be accompanied by a fee of twenty-five
28 dollars for each tank included in the notice. All
29 moneys collected shall be deposited in the general
30 fund.

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

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

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

43 The state fire marshal shall furnish the owner or
44 operator of an aboveground storage tank with a
45 registration tag for each aboveground storage tank
46 registered with the state fire marshal. The owner or
47 operator shall affix the tag to the fill pipe of each
48 registered aboveground storage tank. A person who
49 conveys or deposits a regulated substance shall
50 inspect the aboveground storage tank to determine the

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1 existence or absence of the registration tag. If a
2 registration tag is not affixed to the aboveground
3 storage tank fill pipe, the person conveying or
4 depositing the regulated substance may deposit the
5 regulated substance in the unregistered tank provided
6 that the deposit is allowed only in the single
7 instance, that the person reports the unregistered
8 tank to the state fire marshal, and that the person
9 provides the owner or operator with an aboveground
10 storage tank registration form and informs the owner
11 or operator of the aboveground storage tank
12 registration requirements. The owner or operator is
13 allowed fifteen days following the report to the state
14 fire marshal of the owner's or operator's unregistered
15 tank to comply with the registration requirements. If
16 an owner or operator fails to register the reported
17 aboveground storage tank during the fifteen-day
18 period, the owner or operator shall pay a fee of
19 twenty-five dollars upon registration of the tank.

20 Sec. ____ . NEW SECTION. 101.103 STATE FIRE
21 MARSHAL REPORTING RULES.

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

26 Sec. ____ . NEW SECTION. 101.104 DUTIES AND POWERS
27 OF THE STATE FIRE MARSHAL.

28 The state fire marshal shall:

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

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

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

46 (1) If the state fire marshal obtains a sample,
47 prior to leaving the premises, the fire marshal shall
48 give the owner, operator, or agent in charge a receipt
49 describing the sample obtained and if requested a
50 portion of each sample equal in volume or weight to

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1 the portion retained. If the sample is analyzed, a
2 copy of the results of the analysis shall be furnished
3 promptly to the owner, operator, or agent in charge.

4 (2) Documents or information obtained from a
5 person under this subsection shall be available to the
6 public except as provided in this subparagraph. Upon
7 a showing satisfactory to the state fire marshal by a
8 person that public disclosure of documents or
9 information, or a particular part of the documents or
10 information to which the state fire marshal has access
11 under this subsection would divulge commercial or
12 financial information entitled to protection as a
13 trade secret, the state fire marshall shall consider
14 the documents or information or the particular portion
15 of the documents or information confidential.

16 However, the document or information may be disclosed
17 to officers, employees, or authorized representatives
18 of the United States charged with implementing the
19 federal Solid Waste Disposal Act, to employees of the
20 state of Iowa or of other states when the document or
21 information is relevant to the discharge of their
22 official duties, and when relevant in any proceeding
23 under the federal Solid Waste Disposal Act or this
24 part.

25 2. Maintain an accurate inventory of aboveground
26 storage tanks.

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

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

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

47 b. In the application the state fire marshal shall
48 state that an inspection of the premises is mandated
49 by the laws of this state or that a search of certain
50 premises, areas, or things designated in the

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1 application may result in evidence tending to reveal
2 the existence of violations of public health, safety,
3 or welfare requirements imposed by statutes, rules, or
4 ordinances established by the state or a political
5 subdivision of the state. The application shall
6 describe the area, premises, or thing to be searched,
7 give the date of the last inspection if known, give
8 the date and time of the proposed inspection, declare
9 the need for such inspection, recite that notice of
10 the desire to make an inspection has been given to
11 affected persons and that admission was refused if
12 that be the fact, and state that the inspection has no
13 purpose other than to carry out the purpose of the
14 statute, rule, or ordinance pursuant to which
15 inspection is to be made. If an item of property is
16 sought by the state fire marshal it shall be
17 identified in the application.

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

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

27 (1) Within ten days after its date.

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

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

34 Sec. ____ . NEW SECTION. 101.105 VIOLATIONS --
35 ORDERS.

36 1. If substantial evidence exists that a person
37 has violated or is violating a provision of this
38 division or a rule adopted under this division the
39 state fire marshal may issue an order directing the
40 person to desist in the practice which constitutes the
41 violation, and to take corrective action as necessary
42 to ensure that the violation will cease, and may
43 impose appropriate administrative penalties pursuant
44 to section 101.106. The person to whom the order is
45 issued may appeal the order as provided in chapter
46 17A. On appeal, the administrative law judge may
47 affirm, modify, or vacate the order of the state fire
48 marshal.

49 2. However, if it is determined by the state fire
50 marshal that an emergency exists respecting any matter

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1 affecting or likely to affect the public health, the
2 fire marshal may issue any order necessary to
3 terminate the emergency without notice and without
4 hearing. The order is binding and effective
5 immediately and until the order is modified or vacated
6 at an administrative hearing or by a district court.

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

10 Sec. . NEW SECTION. 101.106 PENALTIES --
11 BURDEN OF PROOF.

12 1. A person who violates this division or a rule
13 or order adoption issued pursuant to this division is
14 subject to a civil penalty not to exceed one hundred
15 dollars for each day during which the violation
16 continues, up to a maximum of one thousand dollars;
17 however, if the tank is registered within thirty days
18 after the state fire marshal issues a cease and desist
19 order pursuant to section 101.105, subsection 1, the
20 civil penalty under this section shall not accrue.
21 The civil penalty is an alternative to a criminal
22 penalty provided under this division.

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

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

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

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

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1 section.

2 Sec. ____ . NEW SECTION. 101.107 JUDICIAL REVIEW.

3 Except as provided in section 101.106, subsection
4 5, judicial review of an order or other action of the
5 state fire marshal may be sought in accordance with
6 chapter 17A. Notwithstanding chapter 17A, the Iowa
7 administrative procedure Act, petitions for judicial
8 review may be filed in the district court of the
9 county in which the alleged offense was committed or
10 the final order was entered.

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

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

23 2. Page 22, by inserting after line 35, the
24 following:

25 "Sec. ____ . NEW SECTION. 424.18 EFFECTIVE DATE.

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

36 3. Page 25, by inserting before line 35, the
37 following:

38 "Sec. ____ . Section 455B.474, subsection 1, Code
39 1989, is amended by adding the following new
40 paragraph:

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

48 4. Page 26, line 14, by inserting after the word
49 "penalties" the following: "or other damages or
50 moneys".

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1 5. Page 26, line 19, by inserting after the word
2 "budget." the following: "Any federal moneys,
3 including but not limited to federal underground
4 storage tank trust fund moneys, received by the state
5 or the department of natural resources in connection
6 with a release occurring on or after the effective
7 date of this Act or received generally for underground
8 storage tank programs on or after the effective date
9 of this Act, shall be credited to the fund created in
10 section 455G.3 and allocated between fund accounts
11 according to the fund budget, unless such use would be
12 contrary to federal law. The department shall
13 cooperate with the board of the Iowa comprehensive
14 petroleum underground storage tank fund to maximize
15 the state's eligibility for and receipt of federal
16 funds for underground storage tank related purposes."

17 6. Page 26, line 27, by striking the words "one
18 facility" and inserting the following: "at least two
19 facilities".

20 7. Page 26, line 29, by striking the word "The"
21 and inserting the following: "A designated".

22 8. Page 26, line 34, by striking the word "the"
23 and inserting the following: "a".

24 9. Page 27, line 4, by striking the words "the
25 designated tank disposal facility" and inserting the
26 following: "a designated facility".

27 10. Page 27, line 8, by striking the word "The"
28 and inserting the following: "A designated".

29 11. Page 27, line 12, by striking the word "the"
30 and inserting the following: "a".

31 12. Page 31, line 4, by inserting after the word
32 "liability." the following: "Corrective action
33 includes the expenses incurred to prepare an
34 assessment plan for approval by the department of
35 natural resources detailing the planned response to a
36 release or suspected release, but not necessarily all
37 actions proposed to be taken by an assessment plan."

38 13. Page 42, by striking line 20, and inserting
39 the following:

40 "a. (1) Corrective action for an eligible release
41 reported to the department of natural resources on or
42 after April 1, 1988, but prior to the effective date
43 of this Act. Third-party liability is specifically
44 excluded from remedial account coverage. For a claim
45 for a release under this subparagraph, the remedial
46 program shall pay no more than the lesser of twenty-
47 five thousand dollars or one-third of the total costs
48 of corrective action for that release, subsection 4
49 notwithstanding. For a release to be eligible for
50 coverage under this subparagraph the following

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1 conditions must be satisfied:

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

3331- 6 (b) The owner or operator applying for coverage
7 shall not be a person who is maintaining, or has
8 maintained, proof of financial responsibility for
9 federal regulations through self-insurance.

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

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

16 Total payments for claims pursuant to this
17 subparagraph are limited to no more than six million
18 dollars. Claims for eligible releases shall have
19 priority according to their date of filing with the
20 board, with the first claim having first priority. If
21 claims remain unpaid after the total payments equal
22 six million dollars, all remaining claims are void,
23 and no entitlement exists for further payment.

24 (2) Corrective action for a release reported to
25 the".

26 14. Page 45, by inserting after line 3, the
27 following:

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

44 15. Page 45, line 6, by striking the word "tank"
45 and inserting the following: "the following purposes:

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

49 b. Tank".

50 16. Page 45, by striking line 8, and inserting

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Page 10

1 the following: "standards to become insurable.
 2 Moneys from the".
 3 17. Page 45, by striking lines 23 through 33, and
 4 inserting the following:
 5 "3. The board shall administer the loan guarantee
 6 account. The board may delegate administration of the
 7 account, provided that the administrator is subject to
 8 the board's direct supervision and direction. The
 9 board shall adopt rules regarding the provision of
 10 loan guarantees to financially qualified small
 11 businesses for the purposes permitted by subsection 1.
 12 The board may impose such".
 13 18. Page 48, by striking lines 4 through 8 and
 14 inserting the following: "account in establishing
 15 premiums. It is the intent of the general assembly
 16 that an".
 17 19. Page 48, by striking lines 28 through 34.
 18 20. Page 55, by inserting after line 26, the
 19 following:
 20 " _____. The department of natural resources shall
 21 adopt approved curricula for training persons to
 22 conduct corrective actions consistent with the
 23 requirements of the department of natural resources."
 24 21. Page 57, by inserting after line 3, the
 25 following:
 26 "Sec. _____. The Code editor shall codify sections
 27 101.101 through 101.108 as a new division II of
 28 chapter 101."
 29 22. By renumbering, relettering, or redesignating
 30 and correcting internal references as necessary.

By EMIL HUSAK PAUL PATE
 MICHAEL GRONSTAL H. KAY HEDGE
 PATRICK DELUHERY JACK RIFE

S-3307 FILED MARCH 20, 1989

ADOPTED

3-20-89 (p.883)
 motion to reconsider 3-20-89 (p.884)
 motion lost

HOUSE FILE 447
FISCAL NOTE

A fiscal note for AMENDMENT S-3307 TO H.P. 447 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.

Amendment S-3307 to H.P. 447 allows the State Fire Marshall to charge a fee for the inspection of petroleum storage tanks, provides for an effective date for the initiation of the diminution fee of July 1, 1989, allows the inclusion of the release assessment cost as part of the owner's deductible, specifies that recovered monies shall be placed in the fund, raises the number of designated used tank disposal sights from one to two, provides for the registration of above ground petroleum storage tanks, provides for the eligibility of leaks reported from April 1, 1988, to the effective date of the bill, with such leaks being eligible for fund coverage of up to one third of the remedial clean up, provides that recurring leaks shall be treated as new leaks, provides that the owner's co-payment shall be eligible for loan guarantees under the fund's loan program, and removes requirements for state-of-the-art tank installations before a site qualifies for the insurance program.

Assumptions:

1. There will be 430 leaks eligible for retroactive remedial clean up.
2. Each leak will cost an average of \$50,000.
3. The total cost of clean up for the 430 leaks will be \$21,500,000.
4. The fund will be responsible for one third of the cost of each leak.
5. All eligible leaks will apply for fund coverage.
6. Given the option to not install state-of-the-art equipment, the owners of underground storage tanks will not make such an installation.
7. Non-state-of-the-art installations will leak at a higher rate than state-of-the-art installations.

Fiscal Effect:

Section 14 - Retroactive coverage

One third of the costs of leaks reported between April 1, 1988, and the effective date of the bill will exceed the \$6,000,000 cap. Therefore, the cost to the fund will be \$6,000,000, and some eligible leaks will not receive assistance from the fund. To protect the funds solvency, the remedial bond would have to be raised from \$71,000,000 to \$77,000,000, and the cap would have to be raise from \$12,000,000 per year to \$12,660,000.

Section 15 - Recurring leaks

This section will have an indeterminate adverse impact on the fund. It is not known how many clean ups which have been approved by the Department will

-2-

experience leaks in the future.

Section 16 - Co-payment eligible for loan guarantee

Loan guarantees are at the discretion of the board. The original Fiscal Note indicated that the fund would be underfunded. It is likely that the Board will not issue loan guarantees when faced with a possible funding deficit.

Sections 17,19 & 20 - State-of-the-art stricken

Removing the requirement that new installations be state-of-the-art will have an indeterminate adverse impact on the fund. State-of-the-art installations are assumed to leak at a lower rate than lesser installations. The Alexander & Alexander study showing the cost to the fund of the subsidized insurance program was premised upon state-of-the-art installations. Any factor which increases the likelihood of future leaks will increase the level of funding needed to cover the losses.

Overall Fiscal Effect

The original Fiscal Note on H.P. 447 estimated that the cap of \$12,000,000 would leave the fund \$4,000,000 short per year. Amendment 10007 would make this shortfall more pronounced. Funding shortfalls would cause payments to be delayed and would require future Legislative action to alleviate. It is also possible that the sale of bonds required for this program would be hampered by a projected funding shortfall.

Source: Alexander & Alexander Actuarial Model

(LSB 1458hv.3, JWR)

FILED MARCH 20, 1989

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 447

S-3311

1 Amend House File 447, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 7, by striking lines 2 and 3, and
4 inserting the following:

5 "The authority shall assist the Iowa comprehensive
6 petroleum underground storage tank fund as provided in
7 chapter 455G and the authority shall have all of the
8 powers that the Iowa comprehensive petroleum
9 underground storage tank fund board possesses and
10 which that board delegates to the authority in a
11 chapter 28E agreement or a contract between the
12 authority and the Iowa comprehensive petroleum
13 underground storage tank fund board with respect to
14 the issuance and securing of bonds and carrying out
15 the purposes of chapter 455G."

16 2. Page 7, line 17, by striking the word "may"
17 and inserting the following: "shall".

18 3. Page 7, by inserting after line 18, the
19 following:

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

28 4. Page 8, line 16, by inserting after the figure
29 "1." the following: "An environmental protection
30 charge is imposed upon diminution."

31 5. Page 8, line 18, by inserting after the word
32 "section" the following: "on diminution".

33 6. Page 8, by striking line 31, and inserting the
34 following: "maintain the financial soundness of the
35 fund, but not to exceed an amount reasonably necessary
36 to assure financial soundness, in light of".

37 7. Page 9, by striking lines 28 through 31.

38 8. Page 10, line 12, by striking the word
39 "director" and inserting the following: "board".

40 9. Page 10, line 15, by striking the word
41 "director" and inserting the following: "board".

42 10. Page 10, line 23, by inserting after the word
43 "tax" the following: "or charge".

44 11. Page 10, line 24, by inserting after the word
45 "tax" the following: "or charge".

46 12. Page 10, line 27, by inserting after the word
47 "tax" the following: "or charge".

48 13. Page 10, line 34, by inserting after the word
49 "department" the following: ", or rule or order of
50 the board pursuant to this chapter,".

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Page 2

1 14. Page 13, by striking lines 15 and 16, and
2 inserting the following: "return shall show
3 information relating to the".

4 15. Page 13, by striking lines 18 and 19, and
5 inserting the following: "charge, and any claimed
6 exemptions or exclusions from the charge, a
7 calculation of charges".

8 16. Page 13, by inserting after line 33, the
9 following:

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

18 17. Page 16, by inserting after line 21, the
19 following:

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

24 3. If the amount paid is greater than the correct
25 charge, penalty, and interest due, the department
26 shall refund the excess, with interest after sixty
27 days from the date of payment at the rate in effect
28 under section 421.7, pursuant to rules prescribed by
29 the director. However, the director shall not allow a
30 claim for refund that has not been filed with the
31 department within five years after the charge payment
32 upon which a refund is claimed became due, or one year
33 after the charge payment was made, whichever time is
34 later. A determination by the department of the
35 amount of charge, penalty, and interest due, or the
36 amount of refund for any excess amount paid, is final
37 unless the person aggrieved by the determination
38 appeals to the director for a revision of the
39 determination within thirty days from the postmark
40 date of the notice of determination of charge,
41 penalty, and interest due or refund owing. The
42 director shall grant a hearing, and upon hearing the
43 director shall determine the correct charge, penalty,
44 and interest due or refund owing, and notify the
45 appellant of the decision by mail. The decision of
46 the director is final unless the appellant seeks
47 judicial review of the director's decision under
48 section 424.13."

49 18. Page 17, line 8, by striking the word
50 "director" and inserting the following: "board".

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Page 3

- 1 19. Page 19, by striking lines 10 through 17, and
2 inserting the following:
3 "Sec. ____ . NEW SECTION. 424.13 JUDICIAL REVIEW.
4 1. Judicial review of contested cases under this
5 chapter may be sought in accordance with chapter 17A."
6 20. By striking page 19, line 27, through page
7 20, line 16.
8 21. Page 20, by striking lines 22 through 24, and
9 inserting the following: "be refunded to such person
10 by".
11 22. Page 20, line 25, by striking the words "or
12 credit".
13 23. Page 20, line 27, by striking the words "or
14 credit".
15 24. Page 20, line 28, by striking the words "five
16 years" and inserting the following: "one year".
17 25. Page 20, by inserting after line 30, the
18 following:
19 "Refunds may be made only from the unallocated or
20 uncommitted moneys in the fund created in section
21 455G.3, and are limited by the total amount budgeted
22 by the fund's board for charge refunds."
23 26. Page 20, line 34, by inserting after the word
24 "return" the following: ", and to any other person
25 known to the board who will owe the charge at any
26 address obtainable for that person,".
27 27. Page 21, line 2, by striking the words
28 "diminution rate" and inserting the following: "cost
29 factor, pursuant to section 424.3, subsection 5,".
30 28. Page 21, line 23, by inserting after the word
31 "notice." the following: "Neither mailed notice or
32 notice by publication is required for the initial
33 determination and imposition of the charge. The board
34 shall undertake to provide reasonable notice of the
35 environmental protection charge and procedures, as in
36 the board's sole discretion it deems appropriate,
37 provided that the actual charge and procedures are
38 published in the Iowa administrative bulletin prior to
39 the effective date of the charge."
40 29. Page 22, by striking lines 15 and 16, and
41 inserting the following: "to the department and
42 disposed of in the same manner as the charge imposed
43 under this chapter. Unpaid penalties and interest".
44 30. Page 23, by striking line 5, and inserting
45 the following: "property not within the corporate
46 limits of a city, may provide by".
47 31. Page 24, by inserting after line 3, the
48 following:
49 "5. A property tax credit provided under this
50 section shall be paid for out of any available funds

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Page 4

1 budgeted for that purpose by the council or board.
2 Cities may certify a tax for the general fund levy and
3 a county may certify a tax for the rural county
4 service fund levy, for the property tax credit
5 authorized by this section. A city council shall
6 grant a credit only against city taxes and a county
7 board of supervisors shall only grant a credit against
8 county taxes."

9 32. Page 25, by inserting after line 34, the
10 following:

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

16 33. Page 26, line 13, by striking the word
17 "subsections" and inserting the following:
18 "subsection".

19 34. Page 26, by striking lines 20 through 24.

20 35. Page 27, line 19, by inserting after the word
21 "account" the following: "except those moneys
22 deposited into the Iowa comprehensive petroleum
23 underground storage tank fund pursuant to section
24 455B.479".

25 36. Page 27, by striking lines 24 through 26, and
26 inserting the following:

27 "(2) Seventy Twenty-three percent of the moneys
28 proceeds of the fees imposed pursuant to section
29 455B.473, subsection 5, and section 455B.479 shall be
30 deposited in the account annually, up to a maximum of
31 three hundred fifty thousand dollars. If twenty-three
32 percent of the proceeds exceeds three hundred fifty
33 thousand dollars, the excess shall be deposited into
34 the fund created in section 455G.3. Three hundred and
35 fifty thousand dollars, are appropriated from the
36 storage tank management account to the department of".

37 37. Page 30, by striking lines 28 and 29, and
38 inserting the following:

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

42 38. Page 32, by striking line 20, and inserting
43 the following: "deposited in the fund. The fund
44 shall include moneys credited to the fund under
45 sections 424.7, 455G.3, 455G.8, 455G.9, 455G.10,
46 455G.11, and 455G.12, and other funds which by law may
47 be credited to the fund. The moneys in the fund are
48 appropriated to and for the purposes of the board as
49 provided in this chapter. Amounts in the fund shall
50 not be subject to appropriation for any other purpose

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Page 5

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

20 39. Page 32, line 30, by striking the word "A"
21 and inserting the following: "To establish a".

22 40. Page 32, line 32, by striking the word "A"
23 and inserting the following: "To establish a".

24 41. Page 32, line 34, by striking the word "An"
25 and inserting the following: "To establish an".

26 42. Page 36, by striking line 20, and inserting
27 the following:

28 "5. Provide that the interest on bonds may vary
29 in".

30 43. Page 36, by striking lines 26 and 27, and
31 inserting the following:

32 "7. The board may contract with the authority for
33 the authority to issue bonds and do all things
34 necessary with respect to the purposes of the fund, as
35 set out in the contract between the board and the
36 authority. The board may delegate to the authority
37 and the authority shall then have all of the powers of
38 the board which are necessary to issue and secure
39 bonds and carry out the purposes of the fund, to the
40 extent provided in the contract between the board and
41 the authority. The authority may".

42 44. Page 37, by striking line 5, and inserting
43 the following: "of which may be deposited with
44 trustees or depositories in accordance with bond or
45 security documents and pledged by the board to the
46 payment thereof,".

47 45. Page 37, by striking line 14, and inserting
48 the following: "required for immediate disbursement
49 may be deposited with a trustee or depository as
50 provided in the bond documents and invested in any".

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Page 6

- 1 46. Page 38, line 25, by striking the word
2 "trust" and inserting the following: "inheritance".
3 47. Page 38, by striking line 26, and inserting
4 the following:
5 "15. Subject to the terms of any bond documents,
6 moneys in the fund or fund accounts may be expended".
7 48. Page 41, by striking line 24, and inserting
8 the following: "the following, which shall be
9 deposited with the board or its designee as provided
10 by any bond or security documents and".
11 49. Page 42, by striking line 4, and inserting
12 the following: "storage tank management fee proceeds
13 which are deposited into the fund, pursuant to section
14 455B.479."
15 50. Page 46, by striking line 18, and inserting
16 the following:
17 "5. The maturity for each financial assistance
18 package made by the board".
19 51. Page 51, line 7, by striking the word
20 "authority" and inserting the following: "board".
21 52. Page 52, line 33, by striking the word
22 "authority" and inserting the following: "board".
23 53. By renumbering, relettering, or redesignating
24 and correcting internal references as necessary.

By EMIL HUSAK

MICHAEL GRONSTAL

PATRICK DELUHERY

PAUL PATE

H. KAY HEDGE

JACK RIFE

S-3311 FILED MARCH 20, 1989

ADOPTED

3-20-89 (p. 883)

HOUSE FILE 447

S-3316

1 Amend the amendment, S-3307, to House File 447, as
 2 amended, passed, and reprinted by the House, as
 3 follows:
 4 1. Page 1, by inserting after line 44, the
 5 following:
 6 "d. A flow-through process tank, or a tank
 7 containing a regulated substance, other than motor
 8 vehicle fuel used for transportation purposes, for use
 9 as part of a manufacturing process, system, or
 10 facility, if that tank is located within a fully
 11 enclosed building."

By MICHAEL E. GRONSTAL
 EMIL J. HUSAK

S-3316 FILED MARCH 20, 1989
 ADOPTED 3-20-89 (p. 883)

HOUSE FILE 447

S-3317

1 Amend House File 447, as amended, passed, and
 2 reprinted by the House, as follows:
 3 1. Page 46, by striking lines 8 through 10, and
 4 inserting the following: "institutions. However, if
 5 no such financial".
 6 2. Page 46, line 11, by striking the word "and"
 7 and inserting the following: "or".

By MICHAEL E. GRONSTAL

S-3317 FILED MARCH 20, 1989
 ADOPTED 3-20-89 (p. 884)

HOUSE FILE 447

S-3322

1 Amend the amendment, S-3307, to House File 447, as
 2 amended, passed, and reprinted by the House, as
 3 follows:
 A 4 1. Page 2, line 27, by striking the word "twenty-
 5 five" and inserting the following: "ten".
 B 6 2. Page 3, by striking lines 3 through 19, and
 7 inserting the following: "storage tank fill pipe, the
 8 person conveying or depositing the regulated substance
 9 may deposit the regulated substance in the
 10 unregistered tank provided that the deposit is allowed
 11 only in the single instance, that the person provides
 12 the owner or operator with another notice as required
 13 by subsection 5, and that the person provides the
 14 owner or operator with an aboveground storage tank
 15 registration form. It is the owner or operator's duty
 16 to comply with registration requirements. A late
 17 registration penalty of twenty-five dollars is imposed
 18 in addition to the registration fee for a tank
 19 registered after the required date."

By LEONARD L. BOSWELL

S-3322 FILED MARCH 20, 1989
 DIVISION A-WITHDRAWN, DIVISION B-ADOPTED 3-20-89 (p. 883)

HOUSE FILE 447

S-3313

1 Amend House File 447, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 50, by striking lines 3 and 4, and
4 inserting the following: "independent licensed
5 engineer, fire marshal, or other person or class of
6 persons qualified and authorized by the board to
7 perform the required inspection and that the".

By MARK R. HAGERLA

S-3313 FILED MARCH 20, 1989

ADOPTED 3-20-89 (p. 884)

HOUSE FILE 447

S-3314

1 Amend the amendment, S-3307, to House File 447 as
2 amended, passed, and reprinted by the House as follows:
3 1. Page 2, line 27, by striking the word "twenty-five"
4 and inserting the following: "ten".

By MICHAEL E. GRONSTAL

S-3314 FILED MARCH 20, 1989

ADOPTED 3-20-89 (p. 883)

HOUSE FILE 447

S-3330

- 1 Amend House File 447, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 43, by striking lines 2 through 7, and
- 4 inserting the following: "owned or operated by a
- 5 financial institution which has obtained ownership or
- 6 control through debt enforcement or debt settlement,
- 7 if the prior owner or operator is unable to pay."
- 8 2. By striking page 54, line 26 through page 55,
- 9 line 6.
- 10 3. By renumbering, relettering, or redesignating,
- 11 and correcting internal references as necessary.

By JACK RIFE

S-3330 FILED MARCH 20, 1989

LOST 3-20-89 (p. 884)

HOUSE FILE 447

S-3331

- 1 Amend the amendment, S-3307, to House File 447, as
- 2 amended, passed, and reprinted by the House, as
- 3 follows:
- 4 1. Page 9, by striking lines 6 through 9.
- 5 2. By renumbering as necessary.

By JIM LIND
JOHN JENSEN

S-3331 FILED MARCH 20, 1989

Ruled out of order p 886 3-20-89

HOUSE FILE 447

S-3332

- 1 Amend House File 447, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 6, by inserting after line 33, the
- 4 following:
- 5 "Sec. ____ . NEW SECTION. 101.12 ABOVEGROUND
- 6 PETROLEUM TANKS AUTHORIZED.
- 7 Rules of the state fire marshal shall permit
- 8 installation of aboveground petroleum storage tanks
- 9 for retail motor vehicle fuel outlets in cities of one
- 10 thousand or less population."
- 11 2. By renumbering as necessary.

By BERL E. PRIEBE

S-3332 FILED MARCH 20, 1989

ADOPTED 3-20-89 (p 886)

HOUSE FILE 447

S-3326

1 Amend House File 447, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 43, by inserting after line 20 the
4 following:
5 "f. The costs of corrective action for a release
6 reported to the department of natural resources prior
7 to the effective date of this Act, to the extent that
8 corrective action has not yet been performed, and
9 excluding the costs of corrective action already
10 performed or paid for, whether or not additional
11 corrective action is required."

By WILMER RENSINK

S-3326 FILED MARCH 20, 1989

LOST 3-20-89 (p.884)

HOUSE FILE 447

S-3327

1 Amend House File 447, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 25, by inserting before line 35 the fol-
4 lowing:
5 "Sec. ____ . Section 455B.474, subsection 2,
6 paragraph a, Code 1989, is amended by adding the
7 following new unnumbered paragraph:
8 NEW UNNUMBERED PARAGRAPH. A person who establishes
9 financial responsibility by self-insurance shall not
10 require or shall not enforce an indemnification
11 agreement with an operator or owner of the tank
12 covered by the self-insurance obligation, unless the
13 owner or operator has committed a substantial breach
14 of a contract between the self-insurer and the owner
15 or operator, and that substantial breach relates
16 directly to the operation of the tank in an
17 environmentally sound manner. This paragraph applies
18 to all contracts between a self-insurer and an owner
19 or operator entered into on or after the effective
20 date of this Act."

By PAUL D. PATE
JACK RIFE

S-3327 FILED MARCH 20, 1989

ADOPTED 3-20-89 (p.884)

SENATE AMENDMENT TO HOUSE FILE 447

H-3498

1 Amend House File 447, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 6, by inserting after line 33, the
4 following:

5 "Sec. ____ . NEW SECTION. 101.12 ABOVEGROUND
6 PETROLEUM TANKS AUTHORIZED.

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

11 2. Page 6, by inserting after line 33, the
12 following:

13 "Sec. ____ . NEW SECTION. 101.101 DEFINITIONS.

14 As used in this part unless the context otherwise
15 requires:

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

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

23 3. "Owner" means:

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

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

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

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

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

423b-46 a. Aboveground tanks of one thousand one hundred
47 gallons or less capacity used for storing motor fuel
48 for noncommercial purposes.

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

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1 c. Underground storage tanks as defined by section
2 455B.471.

4.2343 d. A flow-through process tank, or a tank
4 containing a regulated substance, other than motor
5 vehicle fuel used for transportation purposes, for use
6 as part of a manufacturing process, system, or
7 facility, if that tank is located within a fully
8 enclosed building.

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

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

15 Sec. ____ . NEW SECTION. 101.102 REPORT OF
16 EXISTING AND NEW TANKS -- FEE.

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

23 2. The owner of an aboveground storage tank taken
24 out of operation between January 1, 1979 and July 1,
25 1989, shall notify the state fire marshal in writing
26 by July 1, 1990, of the existence of the tank unless
27 the owner knows the tank has been removed. The notice
28 shall specify to the extent known to the owner, the
29 date the tank was taken out of operation, the age of
30 the tank on the date taken out of operation, the size,
31 type, and location of the tank, and the type and
32 quantity of substances left stored in the tank on the
33 date that it was taken out of operation.

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

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

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

48 6. A person who sells or constructs a tank
49 intended to be used as an aboveground storage tank
50 shall notify the purchaser of the tank in writing of

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1 the notification requirements of this section

2 applicable to the purchaser.

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

6 The state fire marshal shall furnish the owner or
7 operator of an aboveground storage tank with a
8 registration tag for each aboveground storage tank
9 registered with the state fire marshal. The owner or
10 operator shall affix the tag to the fill pipe of each
11 registered aboveground storage tank. A person who
12 conveys or deposits a regulated substance shall
13 inspect the aboveground storage tank to determine the
14 existence or absence of the registration tag. If a
15 registration tag is not affixed to the aboveground
16 storage tank fill pipe, the person conveying or
17 depositing the regulated substance may deposit the
18 regulated substance in the unregistered tank provided
19 that the deposit is allowed only in the single
20 instance, that the person provides the owner or
21 operator with another notice as required by subsection
22 5, and that the person provides the owner or operator
23 with an aboveground storage tank registration form.
24 It is the owner or operator's duty to comply with
25 registration requirements. A late registration
26 penalty of twenty-five dollars is imposed in addition
27 to the registration fee for a tank registered after
28 the required date.

29 Sec. ____ . NEW SECTION. 101.103 STATE FIRE
30 MARSHAL REPORTING RULES.

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

35 Sec. ____ . NEW SECTION. 101.104 DUTIES AND POWERS
36 OF THE STATE FIRE MARSHAL.

37 The state fire marshal shall:

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

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

49 b. Inspect and obtain samples from any person of a
50 regulated substance and conduct monitoring or testing

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1 of the tanks, associated equipment, contents or
2 surrounding soils, air, surface water and groundwater.
3 Each inspection shall be commenced and completed with
4 reasonable promptness.

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

13 (2) Documents or information obtained from a
14 person under this subsection shall be available to the
15 public except as provided in this subparagraph. Upon
16 a showing satisfactory to the state fire marshal by a
17 person that public disclosure of documents or
18 information, or a particular part of the documents or
19 information to which the state fire marshal has access
20 under this subsection would divulge commercial or
21 financial information entitled to protection as a
22 trade secret, the state fire marshall shall consider
23 the documents or information or the particular portion
24 of the documents or information confidential.
25 However, the document or information may be disclosed
26 to officers, employees, or authorized representatives
27 of the United States charged with implementing the
28 federal Solid Waste Disposal Act, to employees of the
29 state of Iowa or of other states when the document or
30 information is relevant to the discharge of their
31 official duties, and when relevant in any proceeding
32 under the federal Solid Waste Disposal Act or this
33 part.

34 2. Maintain an accurate inventory of aboveground
35 storage tanks.

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

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

49 a. If the owner or operator of any property
50 refuses admittance, or if prior to such refusal the

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1 state fire marshal demonstrates the necessity for a
2 warrant, the state fire marshal may make application
3 under oath or affirmation to the district court of the
4 county in which the property is located for the
5 issuance of a search warrant.

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

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

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

36 (1) Within ten days after its date.

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

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

43 Sec. ____ . NEW SECTION. 101.105 VIOLATIONS --
44 ORDERS.

45 1. If substantial evidence exists that a person
46 has violated or is violating a provision of this
47 division or a rule adopted under this division the
48 state fire marshal may issue an order directing the
49 person to desist in the practice which constitutes the
50 violation, and to take corrective action as necessary

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1 to ensure that the violation will cease, and may
2 impose appropriate administrative penalties pursuant
3 to section 101.106. The person to whom the order is
4 issued may appeal the order as provided in chapter
5 17A. On appeal, the administrative law judge may
6 affirm, modify, or vacate the order of the state fire
7 marshal.

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

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

19 Sec. . NEW SECTION. 101.106 PENALTIES --
20 BURDEN OF PROOF.

21 1. A person who violates this division or a rule
22 or order adoption issued pursuant to this division is
23 subject to a civil penalty not to exceed one hundred
24 dollars for each day during which the violation
25 continues, up to a maximum of one thousand dollars;
26 however, if the tank is registered within thirty days
27 after the state fire marshal issues a cease and desist
28 order pursuant to section 101.105, subsection 1, the
29 civil penalty under this section shall not accrue.
30 The civil penalty is an alternative to a criminal
31 penalty provided under this division.

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

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

49 4. In all proceedings with respect to an alleged
50 violation of this division or a rule adopted or order

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1 issued by the state fire marshal pursuant to this
2 division, the burden of proof is upon the state fire
3 marshal.

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

11 Sec. ____ . NEW SECTION. 101.107 JUDICIAL REVIEW.

12 Except as provided in section 101.106, subsection
13 5, judicial review of an order or other action of the
14 state fire marshal may be sought in accordance with
15 chapter 17A. Notwithstanding chapter 17A, the Iowa
16 administrative procedure Act, petitions for judicial
17 review may be filed in the district court of the
18 county in which the alleged offense was committed or
19 the final order was entered.

20 Sec. ____ . NEW SECTION. 101.108 FEES FOR
21 CERTIFICATION INSPECTIONS OF UNDERGROUND STORAGE
22 TANKS.

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

32 3. Page 7, by striking lines 2 and 3, and
33 inserting the following:

34 "The authority shall assist the Iowa comprehensive
35 petroleum underground storage tank fund as provided in
36 chapter 455G and the authority shall have all of the
37 powers that the Iowa comprehensive petroleum
38 underground storage tank fund board possesses and
39 which that board delegates to the authority in a
40 chapter 28E agreement or a contract between the
41 authority and the Iowa comprehensive petroleum
42 underground storage tank fund board with respect to
43 the issuance and securing of bonds and carrying out
44 the purposes of chapter 455G."

45 4. Page 7, line 17, by striking the word "may"
46 and inserting the following: "shall".

47 5. Page 7, by inserting after line 18, the
48 following:

49 "4. The board shall retain rulemaking authority,
50 but may contract with the department for assistance in

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- 1 drafting rules. The board shall retain contested case
2 jurisdiction over any challenge to the diminution rate
3 or cost factor. The department shall conduct all
4 other contested cases and be responsible for other
5 agency action in connection with the environmental
6 protection charge imposed under this chapter."
7 6. Page 8, line 16, by inserting after the figure
8 "1." the following: "An environmental protection
9 charge is imposed upon diminution."
10 7. Page 8, line 18, by inserting after the word
11 "section" the following: "on diminution".
12 8. Page 8, by striking line 31, and inserting the
13 following: "maintain the financial soundness of the
14 fund, but not to exceed an amount reasonably necessary
15 to assure financial soundness, in light of".
16 9. Page 9, by striking lines 28 through 31.
17 10. Page 10, line 12, by striking the word
18 "director" and inserting the following: "board".
19 11. Page 10, line 15, by striking the word
20 "director" and inserting the following: "board".
21 12. Page 10, line 23, by inserting after the word
22 "tax" the following: "or charge".
23 13. Page 10, line 24, by inserting after the word
24 "tax" the following: "or charge".
25 14. Page 10, line 27, by inserting after the word
26 "tax" the following: "or charge".
27 15. Page 10, line 34, by inserting after the word
28 "department" the following: ", or rule or order of
29 the board pursuant to this chapter,".
30 16. Page 13, by striking lines 15 and 16, and
31 inserting the following: "return shall show
32 information relating to the".
33 17. Page 13, by striking lines 18 and 19, and
34 inserting the following: "charge, and any claimed
35 exemptions or exclusions from the charge, a
36 calculation of charges".
37 18. Page 13, by inserting after line 33, the
38 following:
39 "4. Upon receipt of a payment pursuant to this
40 chapter, the department shall deposit the moneys into
41 the fund created in section 455G.3, and the moneys so
42 deposited are a continuing appropriation for
43 expenditure under chapter 455G, and moneys so
44 appropriated shall not be used for other purposes
45 unless the appropriation is changed by the first
46 session of a biennial general assembly."
47 19. Page 16, by inserting after line 21, the
48 following:
49 "If a depositor's, receiver's, or other person's
50 challenge relates to the diminution rate, the burden

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1 of proof upon the challenger shall only be satisfied
2 by clear and convincing evidence.
3 3. If the amount paid is greater than the correct
4 charge, penalty, and interest due, the department
5 shall refund the excess, with interest after sixty
6 days from the date of payment at the rate in effect
7 under section 421.7, pursuant to rules prescribed by
8 the director. However, the director shall not allow a
9 claim for refund that has not been filed with the
10 department within five years after the charge payment
11 upon which a refund is claimed became due, or one year
12 after the charge payment was made, whichever time is
13 later. A determination by the department of the
14 amount of charge, penalty, and interest due, or the
15 amount of refund for any excess amount paid, is final
16 unless the person aggrieved by the determination
17 appeals to the director for a revision of the
18 determination within thirty days from the postmark
19 date of the notice of determination of charge,
20 penalty, and interest due or refund owing. The
21 director shall grant a hearing, and upon hearing the
22 director shall determine the correct charge, penalty,
23 and interest due or refund owing, and notify the
24 appellant of the decision by mail. The decision of
25 the director is final unless the appellant seeks
26 judicial review of the director's decision under
27 section 424.13."

28 20. Page 17, line 8, by striking the word
29 "director" and inserting the following: "board".

30 21. Page 19, by striking lines 10 through 17, and
31 inserting the following:

32 "Sec. ____ . NEW SECTION. 424.13 JUDICIAL REVIEW.

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

35 22. By striking page 19, line 27, through page
36 20, line 16.

37 23. Page 20, by striking lines 22 through 24, and
38 inserting the following: "be refunded to such person
39 by".

40 24. Page 20, line 25, by striking the words "or
41 credit".

42 25. Page 20, line 27, by striking the words "or
43 credit".

44 26. Page 20, line 28, by striking the words "five
45 years" and inserting the following: "one year".

46 27. Page 20, by inserting after line 30, the
47 following:

48 "Refunds may be made only from the unallocated or
49 uncommitted moneys in the fund created in section
50 455G.3, and are limited by the total amount budgeted

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1 by the fund's board for charge refunds."

2 28. Page 20, line 34, by inserting after the word
3 "return" the following: ", and to any other person
4 known to the board who will owe the charge at any
5 address obtainable for that person,".

6 29. Page 21, line 2, by striking the words
7 "diminution rate" and inserting the following: "cost
8 factor, pursuant to section 424.3, subsection 5,".

9 30. Page 21, line 23, by inserting after the word
10 "notice." the following: "Neither mailed notice or
11 notice by publication is required for the initial
12 determination and imposition of the charge. The board
13 shall undertake to provide reasonable notice of the
14 environmental protection charge and procedures, as in
15 the board's sole discretion it deems appropriate,
16 provided that the actual charge and procedures are
17 published in the Iowa administrative bulletin prior to
18 the effective date of the charge."

19 31. Page 22, by striking lines 15 and 16, and
20 inserting the following: "to the department and
21 disposed of in the same manner as the charge imposed
22 under this chapter. Unpaid penalties and interest".

23 32. Page 22, by inserting after line 35, the
24 following:

25 "Sec. ____ . NEW SECTION. 424.18 EFFECTIVE DATE.

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

4236 36 33. Page 23, by striking line 5, and inserting
37 the following: "property not within the corporate
38 limits of a city, may provide by".

39 34. Page 24, by inserting after line 3, the
40 following:

41 "5. A property tax credit provided under this
42 section shall be paid for out of any available funds
43 budgeted for that purpose by the council or board.
44 Cities may certify a tax for the general fund levy and
45 a county may certify a tax for the rural county
46 service fund levy, for the property tax credit
47 authorized by this section. A city council shall
48 grant a credit only against city taxes and a county
49 board of supervisors shall only grant a credit against
50 county taxes."

1 35. Page 25, by inserting after line 34, the
2 following:

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

8 36. Page 25, by inserting before line 35, the
9 following:

10 "Sec. ____ . Section 455B.474, subsection 1, Code
11 1989, is amended by adding the following new
12 paragraph:

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

20 37. Page 25, by inserting before line 35 the fol-
21 lowing:

22 "Sec. ____ . Section 455B.474, subsection 2,
23 paragraph a, Code 1989, is amended by adding the
24 following new unnumbered paragraph:

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

38 38. Page 26, line 13, by striking the word
39 "subsections" and inserting the following:
40 "subsection".

41 39. Page 26, line 14, by inserting after the word
42 "penalties" the following: "or other damages or
43 moneys".

44 40. Page 26, line 19, by inserting after the word
45 "budget." the following: "Any federal moneys,
46 including but not limited to federal underground
47 storage tank trust fund moneys, received by the state
48 or the department of natural resources in connection
49 with a release occurring on or after the effective
50 date of this Act or received generally for underground

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1 storage tank programs on or after the effective date
2 of this Act, shall be credited to the fund created in
3 section 455G.3 and allocated between fund accounts
4 according to the fund budget, unless such use would be
5 contrary to federal law. The department shall
6 cooperate with the board of the Iowa comprehensive
7 petroleum underground storage tank fund to maximize
8 the state's eligibility for and receipt of federal
9 funds for underground storage tank related purposes."

10 41. Page 26, by striking lines 20 through 24.

4230 11 42. Page 26, line 27, by striking the words "one
12 facility" and inserting the following: "at least two
13 facilities".

14 43. Page 26, line 29, by striking the word "The"
15 and inserting the following: "A designated".

16 44. Page 26, line 34, by striking the word "the"
17 and inserting the following: "a".

18 45. Page 27, line 4, by striking the words "the
19 designated tank disposal facility" and inserting the
20 following: "a designated facility".

21 46. Page 27, line 8, by striking the word "The"
22 and inserting the following: "A designated".

23 47. Page 27, line 12, by striking the word "the"
24 and inserting the following: "a".

25 48. Page 27, line 19, by inserting after the word
26 "account" the following: "except those moneys
27 deposited into the Iowa comprehensive petroleum
28 underground storage tank fund pursuant to section
29 455B.479".

30 49. Page 27, by striking lines 24 through 26, and
31 inserting the following:

32 "(2) Seventy Twenty-three percent of the moneys
33 proceeds of the fees imposed pursuant to section
34 455B.473, subsection 5, and section 455B.479 shall be
35 deposited in the account annually, up to a maximum of
36 three hundred fifty thousand dollars. If twenty-three
37 percent of the proceeds exceeds three hundred fifty
38 thousand dollars, the excess shall be deposited into
39 the fund created in section 455G.3. Three hundred and
40 fifty thousand dollars, are appropriated from the
41 storage tank management account to the department of".

42 50. Page 30, by striking lines 28 and 29, and
43 inserting the following:

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

47 51. Page 31, line 4, by inserting after the word
48 "liability." the following: "Corrective action
49 includes the expenses incurred to prepare an
50 assessment plan for approval by the department of

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1 natural resources detailing the planned response to a
 2 release or suspected release, but not necessarily all
 3 actions proposed to be taken by an assessment plan."
 4 52. Page 32, by striking line 20, and inserting
 5 the following: "deposited in the fund. The fund
 6 shall include moneys credited to the fund under
 7 sections 424.7, 455G.3, 455G.8, 455G.9, 455G.10,
 8 455G.11, and 455G.12, and other funds which by law may
 9 be credited to the fund. The moneys in the fund are
 10 appropriated to and for the purposes of the board as
 11 provided in this chapter. Amounts in the fund shall
 12 not be subject to appropriation for any other purpose
 13 by the general assembly, but shall be used only for
 14 the purposes set forth in this chapter. The treasurer
 15 of state shall act as custodian of the fund and
 16 disburse amounts contained in it as directed by the
 17 board including automatic disbursements of funds as
 18 received pursuant to the terms of bond indentures and
 19 documents and security provisions to trustees and
 20 custodians. The treasurer of state is authorized to
 21 invest the funds deposited in the fund at the
 22 direction of the board and subject to any limitations
 23 contained in any applicable bond proceedings. The
 24 income from such investment shall be credited to and
 25 deposited in the fund. The fund shall be administered
 26 by the board which shall make expenditures from the
 27 fund consistent with the purposes of the programs set
 28 out in this chapter without further appropriation.
 29 The fund may be divided into different accounts with
 30 different depositories as determined by the board and
 31 to fulfill the purposes of this chapter."

32 53. Page 32, line 30, by striking the word "A"
 33 and inserting the following: "To establish a".

34 54. Page 32, line 32, by striking the word "A"
 35 and inserting the following: "To establish a".

36 55. Page 32, line 34, by striking the word "An"
 37 and inserting the following: "To establish an".

4236 38 56. By striking page 33, line 30 through page 34,
 39 line 6, and inserting the following: "four years. A
 40 public member shall have experience, knowledge, and
 41 expertise of the subject matter embraced within this
 42 chapter, including, but not limited to, one or more of
 43 the following fields:

- 44 (1) Financial markets or insurance.
- 45 (2) Environmental or safety engineering."

4236 46 57. Page 36, by striking line 20, and inserting
 47 the following:

48 "5. Provide that the interest on bonds may vary
 49 in".

50 58. Page 36, by striking lines 26 and 27, and

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1 inserting the following:

2 "7. The board may contract with the authority for
3 the authority to issue bonds and do all things
4 necessary with respect to the purposes of the fund, as
5 set out in the contract between the board and the
6 authority. The board may delegate to the authority
7 and the authority shall then have all of the powers of
8 the board which are necessary to issue and secure
9 bonds and carry out the purposes of the fund, to the
10 extent provided in the contract between the board and
11 the authority. The authority may".

12 59. Page 37, by striking line 5, and inserting
13 the following: "of which may be deposited with
14 trustees or depositories in accordance with bond or
15 security documents and pledged by the board to the
16 payment thereof,".

17 60. Page 37, by striking line 14, and inserting
18 the following: "required for immediate disbursement
19 may be deposited with a trustee or depository as
20 provided in the bond documents and invested in any".

21 61. Page 38, line 25, by striking the word
22 "trust" and inserting the following: "inheritance".

23 62. Page 38, by striking line 26, and inserting
24 the following:

25 "15. Subject to the terms of any bond documents,
26 moneys in the fund or fund accounts may be expended".

27 63. Page 41, by striking line 24, and inserting
28 the following: "the following, which shall be
29 deposited with the board or its designee as provided
30 by any bond or security documents and".

31 64. Page 42, by striking line 4, and inserting
32 the following: "storage tank management fee proceeds
33 which are deposited into the fund, pursuant to section
34 455B.479."

35 65. Page 42, by striking line 20, and inserting
36 the following:

37 "a. (1) Corrective action for an eligible release
38 reported to the department of natural resources on or
39 after April 1, 1988, but prior to the effective date
40 of this Act. 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

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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 April 1, 1988.

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

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13 Total payments for claims pursuant to this
14 subparagraph are limited to no more than six million
15 dollars. Claims for eligible releases shall have
16 priority according to their date of filing with the
17 board, with the first claim having first priority. If
18 claims remain unpaid after the total payments equal
19 six million dollars, all remaining claims are void,
20 and no entitlement exists for further payment.

21 (2) Corrective action for a release reported to
22 the".

23 66. Page 45, by inserting after line 3, the
24 following:

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

41 67. Page 45, line 6, by striking the word "tank"
42 and inserting the following: "the following purposes:

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

46 b. Tank".

47 68. Page 45, by striking line 8, and inserting
48 the following: "standards to become insurable.

49 Moneys from the".

50 69. Page 45, by striking lines 23 through 33, and

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Page 16

1 inserting the following:

2 "3. The board shall administer the loan guarantee
3 account. The board may delegate administration of the
4 account, provided that the administrator is subject to
5 the board's direct supervision and direction. The
6 board shall adopt rules regarding the provision of
7 loan guarantees to financially qualified small
8 businesses for the purposes permitted by subsection 1.
9 The board may impose such".

4256-10 70. Page 46, by striking lines 8 through 10, and
11 inserting the following: "institutions. However, if
12 no such financial".

13 71. Page 46, line 11, by striking the word "and"
14 and inserting the following: "or".

15 72. Page 46, by striking line 18, and inserting
16 the following:

17 "5. The maturity for each financial assistance
18 package made by the board".

19 73. Page 46, by inserting after line 33, the
20 following:

21 "7. A loan loss reserve account shall be
22 established within the loan guarantee account. A
23 default on a loan guaranteed under this section shall
24 be paid from such reserve account. In administering
25 the program the board shall not guarantee loan values
26 in excess of the amount credited to the reserve
27 account and only moneys set aside in the reserve
28 account may be used for the payment of a default. A
29 default is not eligible for payment until the lender
30 has satisfied all administrative and legal remedies
31 for settlement of the loan and the loan has been
32 reduced to judgment by the lender. After the default
33 has been reduced to judgment and the guarantee paid
34 from the reserve account, the board is entitled to an
35 assignment of the judgment. The board shall take all
36 appropriate action to enforce the judgment or may
37 enter into an agreement with the lender to provide for
38 enforcement. Upon collection of the amount
39 guaranteed, any excess collected shall be deposited
40 into the fund. The general assembly is not obligated
41 to appropriate any moneys to pay for any defaults or
42 to appropriate any moneys to be credited to the
43 reserve account. The loan guarantee program does not
44 obligate the state or the board except to the extent
45 provided in this section, and the board in
46 administering the program shall not give or lend the
47 credit of the state of Iowa."

4257-48 74. Page 48, by striking lines 4 through 8 and
49 inserting the following: "account in establishing
50 premiums. It is the intent of the general assembly

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1 that an".

2 75. Page 48, by striking lines 28 through 34.

3 76. Page 50, by striking lines 3 and 4, and
4 inserting the following: "independent licensed
5 engineer, fire marshal, or other person or class of
6 persons qualified and authorized by the board to
7 perform the required inspection and that the".8 77. Page 51, line 7, by striking the word
9 "authority" and inserting the following: "board".10 78. Page 52, line 33, by striking the word
11 "authority" and inserting the following: "board".12 79. Page 55, by inserting after line 26, the
13 following:14 "____. The department of natural resources shall
15 adopt approved curricula for training persons to
16 conduct corrective actions consistent with the
17 requirements of the department of natural resources."18 80. Page 57, by inserting after line 3, the
19 following:20 "Sec. _____. The Code editor shall codify sections
21 101.101 through 101.108 as a new division II of
22 chapter 101."23 81. Page 57, line 5, by inserting after the
24 figure "2004" the following: ", subject to the
25 qualifications of section 455G.11, subsection 6".26 82. Page 57, line 7, by inserting after the
27 figure "1999" the following: ", except such repeal
28 shall not effect any outstanding contractual rights".29 83. Page 57, line 9, by inserting after the
30 figure "2009" the following: ", except as such
31 sections apply with respect to any outstanding bonds
32 issued thereunder, or refinancing of such outstanding
33 bonds".34 84. Page 57, by inserting after line 9, the
35 following:36 "Sec. _____. Section 214A.18, Code 1989, is
37 repealed."38 85. By renumbering, relettering, or redesignating
39 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-3498 FILED MARCH 21, 1989

House Concurred 4-26-89 (p. 2009)

HOUSE FILE 447

H-3583

1 Amend the Senate amendment, H-3498, to House File
2 447 as amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 14, line 40, by inserting after the word
5 "Act" the following: ", or a release reported prior
6 to April 1, 1988, if the release was discovered in the
7 course of installing monitoring wells to comply with
8 state mandated monitoring requirements".

By PELLETT of Cass

H-3583 FILED MARCH 23, 1989

withdrawn 4-26-89 (proof)

HOUSE FILE 447

H-4234

1 Amend amendment, H-3498, to House File 447, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 17, by striking lines 34 through 37.

By HALVORSON of Webster
LAGESCHULTE of Bremmer
SVOBODA of Tama
OSTERBERG of Linn
GRONINGA of Cerro Gordo
GARMAN of Story
CONNOLLY of Dubuque
MAULSBY of Calhoun
CARPENTER of Polk

DIEMER of Black Hawk
GRUHN of Dickinson
EDDIE of Buena Vista
FEY of Scott
MAY of Worth
MUHLBAUER of Crawford
SHEARER of Louisa
BRAMMER of Linn
BEATTY of Warren

H-4234 FILED APRIL 25, 1989

lost 4-26-89 (proof)

HOUSE FILE 447

H-4236

1 Amend the amendment, H-3498, to House File 447, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 1, by striking lines 47 and 48, and
5 inserting the following: "gallons or less capacity."

6 2. Page 2, by striking lines 7 and 8, and
7 inserting the following: "facility."

8 3. Page 7, by inserting after line 44, the
9 following:

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

16 4. Page 10, by striking lines 36 through 50, and
17 inserting the following:

18 "_____. By striking page 23, line 2 through page
19 25, line 2, and inserting the following:

20 "Sec. _____. NEW SECTION. 427B.18 LOCAL OPTION
21 REMEDIAL ACTION PROPERTY TAX CREDIT -- PUBLIC HEARING.

22 1. In order to further the public interests of
23 protecting the drinking water supply, preserving
24 business and industry within a community, preserving
25 convenient access to gas stations within a community,
26 or other public purposes, a city council or county
27 board of supervisors may provide by ordinance for
28 partial or total property tax credits to owners of
29 small businesses that own or operate an underground
30 storage tank to reduce the amount of property taxes
31 paid over the permitted period in amounts not to
32 exceed the actual portion of costs paid by the
33 business owner in connection with a remedial action
34 for which the Iowa comprehensive petroleum underground
35 storage tank fund shares in the cost of corrective
36 action, and for which the small business owner was not
37 reimbursed from any other source. A county board of
38 supervisors may grant credits only for property
39 located outside of the corporate limits of a city, and
40 a city council may grant credits only for property
41 located within the corporate limits of the city. The
42 credit shall be taken on the property where the
43 underground storage tank is situated. The credit
44 granted by the council or board shall not exceed the
45 amount of taxes generated by the property for the
46 respective city or county. The credit shall apply to
47 property taxes payable in the fiscal year following
48 the calendar year in which a cost of remedial action
49 was paid by the small business owner.

50 As used in this division, "actual portion of the

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1 costs paid by the owner or operator of an underground
2 storage tank in connection with a remedial action for
3 which the Iowa comprehensive petroleum underground
4 storage tank fund shares in the cost of corrective
5 action" means the amount determined by the fund's
6 board, or the board's designee, as the administrator
7 of the Iowa comprehensive petroleum underground
8 storage tank fund, and for which the owner or operator
9 was not reimbursed from any other source.

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

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

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

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

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

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

48 In reviewing the applications, the board of
49 supervisors or city council shall consider whether
50 granting the credit would serve a public purpose.

1 Upon approval of the application by the board of
 2 supervisors, and after the applicant has paid any
 3 property taxes due, the board shall direct the county
 4 treasurer to issue a warrant to the small business
 5 owner in the amount of the credit granted. Upon
 6 approval of the application by the city council, and
 7 after the applicant has paid any property taxes due,
 8 the council shall direct the city clerk to issue a
 9 warrant to the small business owner in the amount of
 10 the credit granted.

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

20 Sec. ____ . NEW SECTION. 427B.20 CREDIT MAY BE
 21 REPEALED.

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

30 5. Page 12, by striking lines 11 through 24, and
 31 inserting the following:

32 " ____ . By striking page 26, line 25, through page
 33 27, line 13, and inserting the following:

34 "Sec. ____ . NEW SECTION. 455B.490 USED STORAGE
 35 TANK DISPOSAL.

36 The waste management authority shall designate at
 37 least two facilities, but as many qualified facilities
 38 as apply or contract with the authority and the board,
 39 within the state for the acceptance of used
 40 underground storage tanks for final disposal. A
 41 designated facility shall accept any underground
 42 storage tank originally sited within the state,
 43 provided that the facility may require as a condition
 44 of acceptance, reasonable preparation, procedures, and
 45 information regarding the tank to facilitate safe
 46 processing and disposal. A sanitary landfill, other
 47 than a designated facility which is a sanitary
 48 landfill, shall not accept underground storage tanks
 49 for disposal after the date on which at least two
 50 facilities have been designated by the waste

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1 management authority pursuant to this section. A
2 commercial scrap metal dealer or recycler may accept a
3 tank for processing. The Iowa comprehensive petroleum
4 underground storage tank fund may compensate a
5 designated facility for all or a portion of the costs
6 associated with processing or disposal of a tank
7 delivered to the facility for final disposal pursuant
8 to this section, if the department of natural
9 resources determines that alternative satisfactory
10 disposal options for used storage tanks do not then
11 exist. A commercial scrap metal dealer or recycler
12 may be a designated facility. A designated facility
13 shall not charge a fee to an owner or operator of the
14 underground storage tank as a condition of acceptance.
15 The waste management authority shall adopt rules as
16 necessary to govern the processing and disposal of
17 underground storage tanks by a designated facility."

18 6. Page 13, by striking lines 38 and 39, and
19 inserting the following:

20 "_____. Page 33, by striking lines 30 through 34,
21 and inserting the following: "four years. A"."

22 7. Page 13, by striking lines 42 through 45, and
23 inserting the following: "chapter. Two public
24 members shall be appointed with experience in either,
25 or both, financial markets or insurance."

26 8. Page 13, by inserting after line 45, the
27 following:

28 "_____. Page 34, line 2, by striking the words
29 "past or present" and inserting the following:
30 "within the twelve months before the member's
31 appointment"."

32 9. Page 14, by inserting after line 34, the
33 following:

34 "_____. Page 42, line 10, by inserting after the
35 word "board." the following: "When federal cleanup
36 funds are recovered, the funds are to be deposited to
37 the remedial account of the fund and used solely for
38 the purpose of future cleanup activities.""

39 10. Page 14, line 39, by striking the word and
40 figures "April 1, 1988" and inserting the following:
41 "July 1, 1987".

42 11. Page 15, by inserting after line 12, the
43 following:

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

1 any combination."

2 12. Page 15, by striking lines 15 through 19, and
3 inserting the following: "dollars. Claims for
4 eligible releases shall be prorated if claims filed
5 exceed six million dollars. If claims remain
6 partially or totally unpaid after total payments equal
7 six million dollars, all remaining claims are void,".

8 13. Page 15, by inserting after line 22, the
9 following:

10 "____. Page 45, line 3, by inserting after the
11 word "benefits." the following: "When federal cleanup
12 funds are recovered, the funds are to be deposited to
13 the remedial account of the fund and used solely for
14 the purpose of future cleanup activities.""

15 14. Page 16, by striking lines 10 through 12, and
16 inserting the following:

17 "____. Page 46, line 8, by striking the word
18 "shall" and inserting the word "may"."

19 15. Page 16, by inserting after line 47 the
20 following:

21 "____. Page 47, by striking lines 19 and 20, and
22 inserting the following: "satisfies one of the
23 following conditions:

24 a. Satisfies performance standards for new
25 underground storage tank systems as specified by the
26 federal environmental protection agency in 40 C.F.R. §
27 280.20, as amended through January 1, 1989.

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

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

48 16. Page 17, by inserting after line 2, the
49 following:

50 "____. By striking page 49, line 35 through page

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1 50, line 1, and inserting the following: "owner or
2 operator or an installer. The board shall set in the
3 rule the effective date for the certification
4 requirement. Certification rules shall at minimum".

5 17. Page 17, lines 5 and 6, by striking the words
6 ", or other person or class of persons" and inserting
7 the following: "or state fire marshal's designee".

8 18. Page 17, by inserting after line 7, the
9 following:

10 "_____. Page 50, line 7, by inserting after the
11 word "conditions." the following: "An inspector shall
12 not be an owner or operator of a tank, or an employee
13 of an owner, operator, or installer.""

14 19. Page 17, by inserting after line 9, the
15 following:

16 "_____. Page 51, by inserting after line 10, the
17 following:

18 "Sec. _____. NEW SECTION. 455G.11A BOARD AUTHORITY
19 FOR PRIORITIZATION.

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

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

31 1. The positive environmental impact of assistance
32 prioritization.

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

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

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

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

46 20. Page 17, by inserting after line 9, the
47 following:

48 "_____. Page 51, line 18, by inserting after the
49 word "release." the following: "When federal cleanup
50 funds are recovered, the funds are to be deposited to

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- 1 the remedial account of the fund and used solely for
- 2 the purpose of future cleanup activities.""
- 3 21. By renumbering as necessary.

By HATCH of Polk
TRENT of Muscatine
OSTERBERG of Linn

H-4236 FILED APRIL 25, 1989

Adopted 4-26-89 (p. 209)

HOUSE AMENDMENT TO SENATE AMENDMENT TO
HOUSE FILE 447

S-3945

1 Amend the amendment, H-3498, to House File 447, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 1, by striking lines 47 and 48, and
5 inserting the following: "gallons or less capacity."

6 2. Page 2, by striking lines 7 and 8, and
7 inserting the following: "facility."

8 3. Page 7, by inserting after line 44, the
9 following:

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

16 4. Page 10, by striking lines 36 through 50, and
17 inserting the following:

18 "_____. By striking page 23, line 2 through page
19 25, line 2, and inserting the following:

20 "Sec. _____. NEW SECTION. 427B.18 LOCAL OPTION
21 REMEDIAL ACTION PROPERTY TAX CREDIT -- PUBLIC HEARING.

22 1. In order to further the public interests of
23 protecting the drinking water supply, preserving
24 business and industry within a community, preserving
25 convenient access to gas stations within a community,
26 or other public purposes, a city council or county
27 board of supervisors may provide by ordinance for
28 partial or total property tax credits to owners of
29 small businesses that own or operate an underground
30 storage tank to reduce the amount of property taxes
31 paid over the permitted period in amounts not to
32 exceed the actual portion of costs paid by the
33 business owner in connection with a remedial action
34 for which the Iowa comprehensive petroleum underground
35 storage tank fund shares in the cost of corrective
36 action, and for which the small business owner was not
37 reimbursed from any other source. A county board of
38 supervisors may grant credits only for property
39 located outside of the corporate limits of a city, and
40 a city council may grant credits only for property
41 located within the corporate limits of the city. The
42 credit shall be taken on the property where the
43 underground storage tank is situated. The credit
44 granted by the council or board shall not exceed the
45 amount of taxes generated by the property for the
46 respective city or county. The credit shall apply to
47 property taxes payable in the fiscal year following
48 the calendar year in which a cost of remedial action
49 was paid by the small business owner.

50 As used in this division, "actual portion of the

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1 costs paid by the owner or operator of an underground
2 storage tank in connection with a remedial action for
3 which the Iowa comprehensive petroleum underground
4 storage tank fund shares in the cost of corrective
5 action" means the amount determined by the fund's
6 board, or the board's designee, as the administrator
7 of the Iowa comprehensive petroleum underground
8 storage tank fund, and for which the owner or operator
9 was not reimbursed from any other source.

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

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

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

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

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

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

48 In reviewing the applications, the board of
49 supervisors or city council shall consider whether
50 granting the credit would serve a public purpose.

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1 Upon approval of the application by the board of
2 supervisors, and after the applicant has paid any
3 property taxes due, the board shall direct the county
4 treasurer to issue a warrant to the small business
5 owner in the amount of the credit granted. Upon
6 approval of the application by the city council, and
7 after the applicant has paid any property taxes due,
8 the council shall direct the city clerk to issue a
9 warrant to the small business owner in the amount of
10 the credit granted.

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

20 Sec. ____ . NEW SECTION. 427B.20 CREDIT MAY BE
21 REPEALED.

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

30 5. Page 12, by striking lines 11 through 24, and
31 inserting the following:

32 " ____ . By striking page 26, line 25, through page
33 27, line 13, and inserting the following:

34 "Sec. ____ . NEW SECTION. 455B.490 USED STORAGE
35 TANK DISPOSAL.

36 The waste management authority shall designate at
37 least two facilities, but as many qualified facilities
38 as apply or contract with the authority and the board,
39 within the state for the acceptance of used
40 underground storage tanks for final disposal. A
41 designated facility shall accept any underground
42 storage tank originally sited within the state,
43 provided that the facility may require as a condition
44 of acceptance, reasonable preparation, procedures, and
45 information regarding the tank to facilitate safe
46 processing and disposal. A sanitary landfill, other
47 than a designated facility which is a sanitary
48 landfill, shall not accept underground storage tanks
49 for disposal after the date on which at least two
50 facilities have been designated by the waste

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1 management authority pursuant to this section. A
2 commercial scrap metal dealer or recycler may accept a
3 tank for processing. The Iowa comprehensive petroleum
4 underground storage tank fund may compensate a
5 designated facility for all or a portion of the costs
6 associated with processing or disposal of a tank
7 delivered to the facility for final disposal pursuant
8 to this section, if the department of natural
9 resources determines that alternative satisfactory
10 disposal options for used storage tanks do not then
11 exist. A commercial scrap metal dealer or recycler
12 may be a designated facility. A designated facility
13 shall not charge a fee to an owner or operator of the
14 underground storage tank as a condition of acceptance.
15 The waste management authority shall adopt rules as
16 necessary to govern the processing and disposal of
17 underground storage tanks by a designated facility.""

18 6. Page 13, by striking lines 38 and 39, and
19 inserting the following:
20 "____. Page 33, by striking lines 30 through 34,
21 and inserting the following: "four years. A"."

22 7. Page 13, by striking lines 42 through 45, and
23 inserting the following: "chapter. Two public
24 members shall be appointed with experience in either,
25 or both, financial markets or insurance."

26 8. Page 13, by inserting after line 45, the
27 following:
28 "____. Page 34, line 2, by striking the words
29 "past or present" and inserting the following:
30 "within the twelve months before the member's
31 appointment"."

32 9. Page 14, by inserting after line 34, the
33 following:
34 "____. Page 42, line 10, by inserting after the
35 word "board." the following: "When federal cleanup
36 funds are recovered, the funds are to be deposited to
37 the remedial account of the fund and used solely for
38 the purpose of future cleanup activities.""

39 10. Page 14, line 39, by striking the word and
40 figures "April 1, 1988" and inserting the following:
41 "July 1, 1987".

42 11. Page 15, by inserting after line 12, the
43 following:
44 "(e) The owner or operator at the time the release
45 was reported to the department of natural resources
46 must have been in compliance with then current
47 monitoring requirements, if any, or must have been in
48 the process of compliance efforts with anticipated
49 requirements, including installation of monitoring
50 devices, a new tank, tank improvements or retrofit, or

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1 any combination."

2 12. Page 15, by striking lines 15 through 19, and
3 inserting the following: "dollars. Claims for
4 eligible releases shall be prorated if claims filed
5 exceed six million dollars. If claims remain
6 partially or totally unpaid after total payments equal
7 six million dollars, all remaining claims are void,".

8 13. Page 15, by inserting after line 22, the
9 following:

10 "____. Page 45, line 3, by inserting after the
11 word "benefits." the following: "When federal cleanup
12 funds are recovered, the funds are to be deposited to
13 the remedial account of the fund and used solely for
14 the purpose of future cleanup activities.""

15 14. Page 16, by striking lines 10 through 12, and
16 inserting the following:

17 "____. Page 46, line 8, by striking the word
18 "shall" and inserting the word "may"."

19 15. Page 16, by inserting after line 47 the
20 following:

21 "____. Page 47, by striking lines 19 and 20, and
22 inserting the following: "satisfies one of the
23 following conditions:

24 a. Satisfies performance standards for new
25 underground storage tank systems as specified by the
26 federal environmental protection agency in 40 C.F.R. §
27 280.20, as amended through January 1, 1989.

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

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

48 16. Page 17, by inserting after line 2, the
49 following:

50 "____. By striking page 49, line 35 through page

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1 50, line 1, and inserting the following: "owner or
2 operator or an installer. The board shall set in the
3 rule the effective date for the certification
4 requirement. Certification rules shall at minimum".

5 17. Page 17, lines 5 and 6, by striking the words
6 ", or other person or class of persons" and inserting
7 the following: "or state fire marshal's designee".

8 18. Page 17, by inserting after line 7, the
9 following:

10 "_____. Page 50, line 7, by inserting after the
11 word "conditions." the following: "An inspector shall
12 not be an owner or operator of a tank, or an employee
13 of an owner, operator, or installer.""

14 19. Page 17, by inserting after line 9, the
15 following:

16 "_____. Page 51, by inserting after line 10, the
17 following:

18 "Sec. _____. NEW SECTION. 455G.11A BOARD AUTHORITY
19 FOR PRIORITIZATION.

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

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

31 1. The positive environmental impact of assistance
32 prioritization.

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

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

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

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

46 20. Page 17, by inserting after line 9, the
47 following:

48 "_____. Page 51, line 18, by inserting after the
49 word "release." the following: "When federal cleanup
50 funds are recovered, the funds are to be deposited to
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1 the remedial account of the fund and used solely for
2 the purpose of future cleanup activities.""

3 21. By renumbering as necessary.

RECEIVED FROM THE HOUSE

Senate Journal 4-26-89 (p. 1692)

HOUSE FILE 447

AN ACT

RELATING TO PETROLEUM UNDERGROUND STORAGE TANKS, BY CREATING A STATE FUND AND AN ADMINISTRATIVE BOARD AND PROCEDURES FOR THE FUND, AUTHORIZING THE FUND TO EXPEND MONEYS FOR REMEDIAL ACTION, TANK IMPROVEMENT LOAN GUARANTEES, AND THE OFFERING OF INSURANCE TO SATISFY FEDERAL PROOF OF FINANCIAL RESPONSIBILITY REQUIREMENTS, IMPOSING AN ENVIRONMENTAL PROTECTION CHARGE ON PETROLEUM DIMINUTION AND PROVIDING FOR THE COLLECTION OF THE CHARGE, INCREASING THE STORAGE TANK MANAGEMENT FEE, AUTHORIZING REVENUE BOND ISSUES AND THE CREATION OF CAPITAL RESERVE FUNDS TO ASSURE AND FACILITATE TIMELY PAYMENT OF REVENUE BOND OBLIGATIONS, AUTHORIZING A LOCAL OPTION REMEDIAL ACTION PROPERTY TAX CREDIT, PROVIDING CIVIL AND CRIMINAL PENALTIES, PROVIDING FUTURE AUTOMATIC REPEALS, AND PROVIDING EFFECTIVE DATES.

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

DIVISION I

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

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

2. Private financing at low-interest rates for small business owners and operators of petroleum underground storage

tanks is generally not available due to the potential liability for petroleum releases which financial institutions are unwilling to incur and the high cost of compliance with federal regulatory standards.

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

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

a. Ernst and Whinney study for the Michigan Petroleum Association, which concluded that among various factors

supporting Michigan's "shrinkage and evaporation tax credit" (substantially similar to Iowa's), "physical shrinkage" and "losses from other factors" (which included spillages) accounted for one and thirty-four hundredths percent of petroleum volume. Diminution is not identical to "shrinkage and evaporation" as used for tax credit purposes. Diminution contains no "administrative cost" consideration and is not primarily concerned with evaporation. Because of this, it is not significant that diesel, being significantly less volatile than gasoline, is less subject to evaporation. Diesel does experience spillage and leakage, and thus "diminution".

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

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

d. The Alexander and Alexander actuarial report prepared for the general assembly in 1988, also supports the finding of diminution and the reasonableness of the diminution rate determined. The Alexander and Alexander report includes an opinion letter from Ernst and Whinney. The letter is based on the research performed for their Michigan study and information supplied to Ernst and Whinney regarding the Iowa tank population, Iowa's antidiversionary amendment, and the definition of diminution and diminution rate. The letter

relates that the range of physical shrinkage was twenty-nine hundredths percent through nine-tenths percent. Based on this range it is reasonable to conclude that a petroleum tank in Iowa would experience diminution; that the diminution rate chosen by the general assembly is substantially less than the normal industry average for diminution as defined; and that the diminution rate of one tenth of one percent is below the range of actual diminution likely to be experienced by any owner or operator. The general assembly finds that a reasonable and conservative estimate of the diminution rate is one-tenth of one percent, and one-tenth of one percent shall be the diminution rate used for purposes of the environmental protection charge.

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

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

All who pay the environmental protection charge benefit directly or indirectly from the imposition of the charge and the extension of the benefits from the fund, made possible by the charge. A source of recovery for releases benefits the individual and the industry, not least because the federal government mandates proof of financial responsibility. Each

member of the regulated tank community benefits by assistance to the entire petroleum distribution network. If each were to pay for only that individual's releases or reported "diminution" it would be impossible to comply with federal financial responsibility requirements, and the social benefits of risk spreading and sharing the social costs would be precluded as well.

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

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

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

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

7. The creation of a state assistance account initially capitalized by revenue bond issues will make available the necessary capital to finance remedial actions, to improve storage tanks to required standards, and to provide insurance on an interim basis until a competitive private insurance market develops. The use of bonds to spread the high initial cost of conversion to federal standards will maximize Iowa's

receipt of federal matching funds, reduce the impact upon service and preserve the availability of petroleum products in rural Iowa by offering financing to owners and operators of tanks, including local gas stations and factories, at favorable interest rates with reduced administrative costs.

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

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

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

DIVISION II

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

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

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

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

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

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

Sec. 4. NEW SECTION. 101.101 DEFINITIONS.

As used in this part unless the context otherwise requires:

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

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

3. "Owner" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The state fire marshal shall:

1. Inspect and investigate the facilities and records of owners and operators of aboveground storage tanks as may be necessary to determine compliance with this part and the rules

adopted pursuant to this part. An inspection or investigation shall be conducted subject to subsection 4. For purposes of developing a rule, maintaining an accurate inventory or enforcing this part, the department may:

- a. Enter at reasonable times any establishment or other place where an aboveground storage tank is located.
- b. Inspect and obtain samples from any person of a regulated substance and conduct monitoring or testing of the tanks, associated equipment, contents or surrounding soils, air, surface water and groundwater. Each inspection shall be commenced and completed with reasonable promptness.

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

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

2. Maintain an accurate inventory of aboveground storage tanks.
3. Take any action allowed by law which, in the state fire marshal's judgment, is necessary to enforce or secure compliance with this division or any rule adopted pursuant to this division.
4. Conduct investigations of complaints received directly, referred by other agencies, or other investigations deemed necessary. While conducting an investigation, the state fire marshal may enter at any reasonable time in and upon any private or public property to investigate any actual or possible violation of this division or the rules or standards adopted under this division. However, the owner or person in charge shall be notified.

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

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

rule, or ordinance pursuant to which inspection is to be made. If an item of property is sought by the state fire marshal it shall be identified in the application.

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

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

(1) Within ten days after its date.

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

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

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

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

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

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

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

1. A person who violates this division or a rule or order adoption issued pursuant to this division is subject to a civil penalty not to exceed one hundred dollars for each day during which the violation continues, up to a maximum of one thousand dollars; however, if the tank is registered within thirty days after the state fire marshal issues a cease and desist order pursuant to section 101.105, subsection 1, the civil penalty under this section shall not accrue. The civil penalty is an alternative to a criminal penalty provided under this division.

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

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

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

5. If the attorney general has instituted legal proceedings in accordance with this section, all related issues which could otherwise be raised by the alleged violator

In a proceeding for judicial review under section 101.107 shall be raised in the legal proceedings instituted in accordance with this section.

Sec. 10. NEW SECTION. 101.107 JUDICIAL REVIEW.

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

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

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

DIVISION III

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

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

The board shall reimburse the department of revenue and finance by contract for the reasonable cost of administration

of the environmental protection charge imposed under this chapter and for other duties delegated to the department or to the director by the board.

DIVISION IV

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

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

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

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

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

Sec. 14. NEW SECTION. 424.2 DEFINITIONS.

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

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

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

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

4. "Department" means the department of revenue and finance.
5. "Depositor" means the person who deposits petroleum into a tank subject to regulation under chapter 455G.
6. "Diminution" means the petroleum released into the environment prior to its intended beneficial use.
7. "Director" means the director of revenue and finance.
8. "Fund" means the Iowa comprehensive petroleum underground storage tank fund.
9. "Owner or operator" means "owner or operator" as used in chapter 455G.
10. "Petroleum" means petroleum as defined in section 455G.2.
11. "Receiver" means, if the owner or operator are not the same person, the person who, under a contract between the owner and operator, is responsible for payment for petroleum deposited into a tank; and if the owner and operator of a tank are the same person, means the owner.
12. "Tank" means an underground storage tank subject to regulation under chapter 455G.

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

1. An environmental protection charge is imposed upon diminution. A depositor shall collect from the receiver of petroleum deposited into a tank, the environmental protection charge imposed under this section on diminution each time petroleum is deposited into the tank, and pay the charge to the department as directed by this chapter.
2. The environmental protection charge shall be equal to the total volume of petroleum deposited in a tank multiplied by the diminution rate multiplied by the cost factor.
3. The diminution rate is one tenth of one percent.
4. Diminution equals total volume of petroleum deposited multiplied by the diminution rate established in subsection 3.

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

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

7. The environmental protection charge shall be reduced or eliminated upon the later of fifteen years after the effective date of this Act or such time as the trust fund provided for

under section 455G.9 is created, and is actuarially sound, and self-sustaining. The environmental protection charge may be reinstated as provided in section 455G.9, subsection 3.

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

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

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

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

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

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

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

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

6. To revoke a permit the director shall serve notice as required by section 17A.18 to the permit holder informing that person of the director's intent to revoke the permit and of the permit holder's right to a hearing on the matter. If the permit holder petitions the director for a hearing on the proposed revocation, after giving ten days' notice of the time and place of the hearing in accordance with section 17A.18, subsection 3, the matter may be heard and a decision rendered. The director may restore permits after revocation. The director shall adopt rules setting forth the period of time a depositor must wait before a permit may be restored or a new permit may be issued. The waiting period shall not exceed ninety days from the date of the revocation of the permit.

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

1. The department of natural resources shall issue an exemption certificate in the form prescribed by the director of the department of natural resources to an applicant who is an owner or operator of a petroleum underground storage tank which is exempt, deferred, or excluded from regulation under chapter 455G, for that tank. The director of the department of natural resources shall revoke and require the return of an exemption certificate if the petroleum underground storage

tank later becomes subject to chapter 455G pursuant to section 455G.1. A tank is subject to chapter 455G when the federal regulation subjecting that tank to financial responsibility becomes effective and not upon the effective compliance date unless the effective compliance date is the effective date of the regulation.

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

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

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

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

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

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

1. A depositor shall, on or before the last day of the month following the close of each calendar quarter during which the depositor is or has become or ceased being subject to the provisions of section 424.3, make, sign, and file an environmental protection charge return for that calendar quarter in such form as may be required by the director. The return shall show information relating to the volume of petroleum deposited into tanks subject to the charge, and any claimed exemptions or exclusions from the charge, a calculation of charges due, and such other information for the period covered by the return as may be required by the director. The depositor may be granted an extension of time not exceeding thirty days for filing a quarterly return, upon a proper showing of necessity. If an extension is granted, the depositor shall have paid by the thirtieth day of the month following the close of the quarter ninety percent of the estimated charges due.

2. If necessary or advisable in order to ensure the payment of the charge imposed by this chapter, the director

may require returns and payment of the charge to be made for other than quarterly periods.

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

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

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

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

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

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

b. If a depositor subject to this chapter sells the depositor's business or stock of petroleum or quits the business, the depositor shall prepare a final return and pay all charges due within the time required by law. The immediate successor to the depositor, if any, shall withhold a sufficient amount of the purchase price, in money or money's worth, to pay the amount of delinquent charge, interest, or penalty due and unpaid. If the immediate successor of the

business or stock of petroleum intentionally fails to withhold the amount due from the purchase price as provided in this paragraph, the immediate successor is personally liable for the payment of the delinquent charges, interest, and penalty accrued and unpaid on account of the operation of the business by the immediate predecessor depositor, except when the purchase is made in good faith as provided in section 424.6. However, a person foreclosing on a valid security interest or retaking possession of premises under a valid lease is not an "immediate successor" for purposes of this paragraph. The department may waive the liability of the immediate successor under this paragraph if the immediate successor exercised good faith in establishing the amount of the previous liability.

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

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

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

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

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

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

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

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

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

The environmental protection charge lien shall attach at the time the charge becomes due and payable and shall continue

for ten years from the time the lien attaches unless sooner released or otherwise discharged. The lien may be extended, within ten years from the date the lien attaches, by filing for record a notice with the appropriate county official of the appropriate county and from the time of such filing, the lien shall be extended to the property in such county for ten years, unless sooner released or otherwise discharged, with no limit on the number of extensions. The director shall charge off any account whose lien is allowed to lapse and may charge off any account and release the corresponding lien before the lien has lapsed if the director determines under uniform rules adopted by the board that the account is uncollectible or collection costs involved would not warrant collection of the amount due.

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

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

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

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

Upon the payment of a charge as to which the director has filed notice with a county recorder, the director shall immediately file with the recorder a satisfaction of the

charge and the recorder shall enter the satisfaction on the notice on file in the recorder's office and indicate that fact on the index.

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

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

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

Sec. 24. NEW SECTION. 424.12 RECORDS REQUIRED.

It shall be the duty of every depositor required to make a report and pay any charge under this chapter, to preserve such records as the director may require and it shall be the duty of every depositor to preserve for a period of five years all invoices and other records; and all such books, invoices, and other records shall be open to examination at any time by the department, and shall be made available within this state for

such examination upon reasonable notice when the director shall so order. When requested to do so by any person from whom a charge payer is seeking credit, or with whom the charge payer is negotiating the sale of any personal property, or by any other person having a legitimate interest in such information, the director, upon being satisfied that such a situation exists, shall inform such person as to the amount of unpaid charges due by the charge payer under the provisions of this chapter. The giving of such information under such circumstances shall not be deemed a violation of section 422.72 as applied to this chapter.

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

Sec. 25. NEW SECTION. 424.13 JUDICIAL REVIEW.

1. Judicial review of contested cases under this chapter may be sought in accordance with chapter 17A.
2. The petitioner shall file with the clerk of the district court a bond for the use of the respondent, with sureties approved by the clerk, in penalty at least double the amount of charge appealed from, and in no case shall the bond be less than fifty dollars, conditioned that the petitioner shall perform the orders of the court.

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

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

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

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

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

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

- a. An administrative change in the cost factor, pursuant to section 424.3, subsection 5, becomes effective.
- b. The environmental protection charge is to be discontinued or reimposed pursuant to section 455G.9. Notice shall be provided by mailing a notice of the change to the address listed on the person's last return. The mailing of the notice is presumptive evidence of the receipt of the notice by the person to whom addressed. The board shall also publish the same notice at least twice in a paper of general circulation within the state at least forty-five days in advance of the first day of the calendar quarter during which a change in paragraph "a" or "b" becomes effective.

2. A notice authorized or required under this section may be given by mailing the notice to the person for whom it is intended, addressed to that person at the address given in the last return filed by the person pursuant to this chapter, or if no return has been filed, then to any address obtainable. The mailing of the notice is presumptive evidence of the receipt of the notice by the person to whom addressed. Any period of time which is determined according to this chapter by the giving of notice commences to run from the date of mailing of the notice. Neither mailed notice or notice by publication is required for the initial determination and

imposition of the charge. The board shall undertake to provide reasonable notice of the environmental protection charge and procedures, as in the board's sole discretion it deems appropriate, provided that the actual charge and procedures are published in the Iowa administrative bulletin prior to the effective date of the charge.

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

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

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

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

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

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

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

Sec. 29. NEW SECTION. 424.18 EFFECTIVE DATE.

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

DIVISION V

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

1. In order to further the public interests of protecting the drinking water supply, preserving business and industry within a community, preserving convenient access to gas stations within a community, or other public purposes, a city council or county board of supervisors may provide by ordinance for partial or total property tax credits to owners

of small businesses that own or operate an underground storage tank to reduce the amount of property taxes paid over the permitted period in amounts not to exceed the actual portion of costs paid by the business owner in connection with a remedial action for which the Iowa comprehensive petroleum underground storage tank fund shares in the cost of corrective action, and for which the small business owner was not reimbursed from any other source. A county board of supervisors may grant credits only for property located outside of the corporate limits of a city, and a city council may grant credits only for property located within the corporate limits of the city. The credit shall be taken on the property where the underground storage tank is situated. The credit granted by the council or board shall not exceed the amount of taxes generated by the property for the respective city or county. The credit shall apply to property taxes payable in the fiscal year following the calendar year in which a cost of remedial action was paid by the small business owner.

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

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

2. The ordinance may be enacted not less than thirty days after a public hearing is held in accordance with section 350A.6 in the case of a county, or section 362.3 in the case of a city. The ordinance shall designate the length of time

the partial or total credit shall be available, and shall include a credit schedule and description of the terms and conditions of the credit.

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

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

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

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

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

clerk to issue a warrant to the small business owner in the amount of the credit granted.

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

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

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

DIVISION VI

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

NEW UNNUMBERED PARAGRAPH. "Owner" does not include a person, who, without participating in the management or operation of the underground storage tank or the tank site, holds indicia of ownership primarily to protect that person's security interest in the underground storage tank or the tank site property, prior to obtaining ownership or control through debt enforcement, debt settlement, or otherwise.

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

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

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

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

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

Corrective action specifically excludes third-party liability.

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

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

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

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

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

NEW UNNUMBERED PARAGRAPH. A person who establishes financial responsibility by self-insurance shall not require or shall not enforce an indemnification agreement with an

operator or owner of the tank covered by the self-insurance obligation, unless the owner or operator has committed a substantial breach of a contract between the self-insurer and the owner or operator, and that substantial breach relates directly to the operation of the tank in an environmentally sound manner. This paragraph applies to all contracts between a self-insurer and an owner or operator entered into on or after the effective date of this Act.

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

455B.479 STORAGE TANK MANAGEMENT FEE.

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

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

NEW SUBSECTION. 7. The civil penalties or other damages or moneys recovered by the state or the petroleum underground storage tank fund in connection with a petroleum underground storage tank under this part of this division or chapter 455G shall be credited to the fund created in section 455G.3 and allocated between fund accounts according to the fund budget. Any federal moneys, including but not limited to federal underground storage tank trust fund moneys, received by the state or the department of natural resources in connection with a release occurring on or after the effective date of this Act or received generally for underground storage tank programs on or after the effective date of this Act, shall be credited to the fund created in section 455G.3 and allocated

between fund accounts according to the fund budget, unless such use would be contrary to federal law. The department shall cooperate with the board of the Iowa comprehensive petroleum underground storage tank fund to maximize the state's eligibility for and receipt of federal funds for underground storage tank related purposes.

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

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

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

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

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

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

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

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

DIVISION VII

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

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

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

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

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

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

(3) A septic tank.

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

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

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

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

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

(6) A storm water or wastewater collection system.

(7) A flow-through process tank.

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

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

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

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

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

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

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

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

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

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

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

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

(10) Airport hydrant fuel distribution systems.

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

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

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

As used in this chapter unless the context otherwise requires:

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

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

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

4. "Corrective action" means an action taken to minimize, eliminate, or clean up a release to protect the public health and welfare or the environment. Corrective action includes, but is not limited to, excavation of an underground storage tank for the purposes of repairing a leak or removal of a tank, removal of contaminated soil, and cleansing of groundwaters or surface waters. Corrective action does not include replacement of an underground storage tank or other

capital improvements to the tank. Corrective action specifically excludes third-party liability. Corrective action includes the expenses incurred to prepare an assessment plan for approval by the department of natural resources detailing the planned response to a release or suspected release, but not necessarily all actions proposed to be taken by an assessment plan.

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

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

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

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

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

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

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

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

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

- a. Is independently owned and operated.
- b. Owns at least one, but no more than twelve tanks at no more than two different tank sites.
- c. Has a net worth of two hundred thousand dollars or less.

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

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

1. The Iowa comprehensive petroleum underground storage tank fund is created as a separate fund in the state treasury, and any funds remaining in the fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Iowa comprehensive petroleum underground storage tank fund. Interest or other income earned by the fund shall be deposited in the fund. The fund shall include moneys credited to the fund under sections 424.7, 455G.3, 455G.8, 455G.9, 455G.10, 455G.11, and 455G.12, and other funds which by law may be credited to the fund. The moneys in the fund are appropriated to and for the purposes of the board as provided in this chapter. Amounts in the fund shall not be subject to appropriation for any other purpose by the general assembly, but shall be used only for the purposes set forth in this chapter. The treasurer of state shall act as custodian of the fund and disburse amounts contained in it as directed by the board including automatic disbursements of funds as received pursuant to the terms of bond indentures and documents and security provisions to trustees and custodians. The treasurer of state is authorized to invest the funds deposited in the

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

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

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

- a. To establish a remedial account to fund corrective action for petroleum releases as provided by section 455G.9.
- b. To establish a loan guarantee account, as provided by and to the extent permitted by section 455G.10.
- c. To establish an insurance account for insurable underground storage tank risks within the state as provided by section 455G.11.
- d. The state, the general fund of the state, or any other fund of the state, other than the Iowa comprehensive petroleum underground storage tank fund, is not liable for a claim or cause of action in connection with a tank not owned or operated by the state, or agency of the state. All expenses incurred by the fund shall be payable solely from the fund and no liability or obligation shall be imposed upon the state. The liability of the fund is limited to the extent of coverage provided by the account under which a claim is submitted, subject to the terms and conditions of that coverage. The

liability of the fund is further limited by the moneys made available to the fund, and no remedy shall be ordered which would require the fund to exceed its then current funding limitations to satisfy an award or which would restrict the availability of moneys for higher priority sites. The state is not liable for a claim presented against the fund.

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

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

- a. The director of the department of natural resources, or the director's designee.
- b. The treasurer of state, or the treasurer's designee.
- c. The commissioner of insurance, or the commissioner's designee.

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

A public member shall not have a conflict of interest. For purposes of this section a "conflict of interest" means an affiliation, within the twelve months before the member's appointment, with the regulated tank community, or with a person or property and casualty insurer offering competitive insurance or other means of financial assurance or which previously offered environmental hazard insurance for a member of the regulated tank community.

The filling of positions reserved for public representatives, vacancies, membership terms, payment of compensation and expenses, and removal of members are governed by chapter 69. Members of the board are entitled to receive

reimbursement of actual expenses incurred in the discharge of their duties within the limits of funds appropriated to the board or made available to the fund. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. The members shall elect a voting chairperson of the board from among the members of the board.

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

3. RULES AND EMERGENCY RULES.

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

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

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

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

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

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

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

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

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

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

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

1. Guarantee secured and unsecured loans, and enter into agreements for corrective action, acquisition and construction of tank improvements, and provide for the insurance program. The loan guarantees may be made to a person or entity owning or operating a tank. The board may take any action which is reasonable and lawful to protect its security and to avoid losses from its loan guarantees.

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

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

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

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

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

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

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

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

10. The bonds shall be:

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

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

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

11. The bonds are securities in which public officers and bodies of this state; political subdivisions of this state; insurance companies and associations and other persons carrying on an insurance business; banks, trust companies, savings associations, savings and loan associations, and investment companies; administrators, guardians, executors, trustees, and other fiduciaries; and other persons authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

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

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

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

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

16. The board shall cooperate with the department of natural resources in the implementation and administration of

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

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

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

- a. The payment of the principal of and interest on bonds or of the sinking fund payments with respect to those bonds.
- b. The purchase or redemption of the bonds.
- c. The payment of a redemption premium required to be paid when the bonds are redeemed before maturity.

However, money in a capital reserve fund shall not be withdrawn if the withdrawal would reduce the amount in the capital reserve fund to less than the capital reserve fund requirement, except for the purpose of making payment, when due, of principal, interest, redemption premiums on the bonds,

and making sinking fund payments when other money pledged to the payment of the bonds is not available for the payments. Income or interest earned by, or increment to, a capital reserve fund from the investment of all or part of the capital reserve fund may be transferred by the authority to other accounts of the fund if the transfer does not reduce the amount of the capital reserve fund below the capital reserve fund requirement.

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

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

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

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

restore each capital reserve fund to the capital reserve fund requirement for that fund. Any sums appropriated by the general assembly and paid to the authority pursuant to this section shall be deposited in the applicable capital reserve fund.

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

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

Sec. 49. NEW SECTION. 4550.8 REVENUE SOURCES FOR FUND.

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

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

2. ENVIRONMENT PROTECTION CHARGE. The environmental protection charge imposed under chapter 424. The proceeds of the environmental protection charge shall be allocated, consistent with this chapter, among the fund's accounts, for

debt service and other fund expenses, according to the fund budget, resolution, trust agreement, or other instrument prepared or entered into by the board or authority under direction of the board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. **TRUST FUND TO BE ESTABLISHED.** When the remedial account has accumulated sufficient capital to provide dependable income to cover the expenses of expected future releases or expected future losses for which no responsible owner is available, the excess capital shall be transferred to a trust fund administered by the board and created for that

purpose. Collection of the environmental protection charge shall be discontinued when the trust fund is created and fully funded, except to resolve outstanding claims. The environmental protection charge may be reimposed to restore and recapitalize the trust fund in the event future losses deplete the fund so that the board does not expect it to have sufficient income and assets to cover expected future losses.

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

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

6. **RECOVERY OF GAIN ON SALE OF PROPERTY.** If an owner or operator ceases to own or operate a tank site for which remedial account benefits were received within five years of the receipt of any account benefit and sells or transfers a property interest in the tank site for an amount which exceeds one hundred twenty percent of the precorrective action value, the owner or operator shall refund to the remedial account an amount equal to ninety percent of the amount in excess of one hundred twenty percent of the precorrective action value up to a maximum of the expenses incurred by the remedial account associated with the tank site plus interest, equal to the

Interest for the most recent twelve-month period for the most recent bond issue for the fund, on the expenses incurred, compounded annually. Expenses incurred by the fund are a lien upon the property recordable and collectible in the same manner as the lien provided for in section 424.11 at the time of sale or transfer, subject to the terms of this section.

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

7. RECURRING RELEASES TREATED AS A NEWLY REPORTED RELEASE.

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

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

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

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

Moneys from the environmental protection charge revenues may be used to fund the loan guarantee account according to

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

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

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

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

loan in participation with the loan guarantee account. The loan guarantee account may offer to guarantee a loan, or provide other forms of financial assistance to facilitate a private loan.

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

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

a. Loan guarantee account income, including loan guarantee service fees, if any, and investment income attributed to the account by the board.

b. Moneys allocated to the account by the board according to the fund budget approved by the board.

c. Moneys appropriated by the federal government or general assembly and made available to the loan account.

7. A loan loss reserve account shall be established within the loan guarantee account. A default on a loan guaranteed under this section shall be paid from such reserve account. In administering the program the board shall not guarantee loan values in excess of the amount credited to the reserve account and only moneys set aside in the reserve account may be used for the payment of a default. A default is not eligible for payment until the lender has satisfied all administrative and legal remedies for settlement of the loan and the loan has been reduced to judgment by the lender. After the default has been reduced to judgment and the guarantee paid from the reserve account, the board is entitled to an assignment of the judgment. The board shall take all appropriate action to enforce the judgment or may enter into an agreement with the lender to provide for enforcement. Upon

collection of the amount guaranteed, any excess collected shall be deposited into the fund. The general assembly is not obligated to appropriate any moneys to pay for any defaults or to appropriate any moneys to be credited to the reserve account. The loan guarantee program does not obligate the state or the board except to the extent provided in this section, and the board in administering the program shall not give or lend the credit of the state of Iowa.

Sec. 52. NEW SECTION. 455G.11 INSURANCE ACCOUNT.

1. INSURANCE ACCOUNT AS A FINANCIAL ASSURANCE MECHANISM. The insurance account shall offer financial assurance for a qualified owner or operator under the terms and conditions provided for under this section. Coverage may be provided to the owner or the operator, or to each separately. The board is not required to resolve whether the owner or operator, or both are responsible for a release under the terms of any agreement between the owner and operator.

2. LIMITS OF COVERAGE AVAILABLE. An owner or operator required to maintain proof of financial responsibility may purchase coverage up to the federally required levels for that owner or operator subject to the terms and conditions under this section and those adopted by the board.

3. ELIGIBILITY OF OWNERS AND OPERATORS FOR INSURANCE ACCOUNT COVERAGE. An owner or operator, subject to underwriting requirements and such terms and conditions deemed necessary and convenient by the board, may purchase insurance coverage from the insurance account to provide proof of financial responsibility provided that a tank to be insured satisfies one of the following conditions:

a. Satisfies performance standards for new underground storage tank systems as specified by the federal environmental protection agency in 40 C.F.R. § 280.20, as amended through January 1, 1989.

b. Has satisfied on or before the date of the application standards for upgraded underground storage tank systems as

specified by the federal environmental protection agency in 40 C.F.R. § 280.21, as amended through January 1, 1989.

c. The applicant certifies in writing to the board that the tank to be insured will be brought into compliance with either paragraph "a" or "b", on or before October 26, 1991, provided that prior to the provision of insurance account coverage, the tank site tests release free. For a tank qualifying for insurance coverage pursuant to this paragraph at the time of application or renewal, the owner or operator shall pay a per tank premium equal to two times the normally scheduled premium for a tank satisfying paragraph "a" or "b". An owner or operator who fails to comply as certified to the board on or before October 26, 1991, shall not insure that tank through the insurance account unless and until the tank satisfies the requirements of paragraph "a" or "b".

4. ACTUARIALLY SOUND PREMIUMS BASED ON RISK FACTOR ADJUSTMENTS AFTER FIVE YEARS. The annual premium for insurance coverage shall be:

a. For the year July 1, 1989, through June 30, 1990, one hundred dollars per tank.

b. For the year July 1, 1990, through June 30, 1991, one hundred fifty dollars per tank.

c. For the year July 1, 1991, through June 30, 1992, two hundred dollars per tank.

d. For the year July 1, 1992, through June 30, 1993, two hundred fifty dollars per tank.

e. For the year July 1, 1993, through June 30, 1994, three hundred dollars per tank.

f. For subsequent years, an owner or operator applying for coverage shall pay an annually adjusted insurance premium for coverage by the insurance account. The board may only approve fund coverage through the payment of a premium established on an actuarially sound basis. Risk factors shall be taken into account in establishing premiums. It is the intent of the general assembly that an actuarially sound premium reflect the

risk to the insurance account presented by the insured. Risk factor adjustments should reflect the range of risk presented by the variety of tank systems, monitoring systems, and risk management practices in the general insurable tank population. Premium adjustments for risk factors should at minimum take into account lifetime costs of a tank and monitoring system and insurance account premiums for that tank system so as to provide a positive economic incentive to the owner or operator to install the more environmentally safe option so as to reduce the exposure of the insurance account to loss. Actuarially sound is not limited in its meaning to fund premium revenue equaling or exceeding fund expenditures for the general tank population.

If coverage is purchased for any part of a year the purchaser shall pay the full annual premium.

g. The insurance account may offer, at the buyer's option, a range of deductibles. A ten thousand dollar deductible policy shall be offered.

5. The future repeal of this section shall not terminate the following obligations or authorities necessary to administer the obligations until these obligations are satisfied:

a. The payment of claims filed prior to the effective date of any future repeal, against the insurance account until moneys in the account are exhausted. Upon exhaustion of the moneys in the account, any remaining claims shall be invalid. If following satisfaction of the obligations pursuant to this section, moneys remain in the account, the remaining moneys and moneys due the account shall be prorated and returned to premium payers on an equitable basis as determined by the board.

b. The resolution of a cost recovery action filed prior to the effective date of the repeal.

6. INSTALLERS' INCLUSION IN FUND. The Iowa comprehensive petroleum underground storage tank fund board shall offer

insurance coverage under the fund's insurance account to an installer of a certified underground storage tank installation within the state for environmental hazard coverage in connection with the certified installation as provided in this subsection. The board shall perform an actuarial study to determine the actuarially sound premiums, deductibles, terms, and conditions to be offered to installers for certified installations in Iowa. The insurance coverage offered to installers shall provide for no greater deductibles and the same or greater limits of coverage as offered to owners and operators of tanks. Coverage under this subsection shall be limited to environmental hazard coverage for both corrective action and third-party liability for a certified tank installation in Iowa in connection with a release from that tank.

The board shall adopt rules requiring certification of tank installations and require certification of a new tank installation as a precondition to offering insurance to an owner or operator or an installer. The board shall set in the rule the effective date for the certification requirement. Certification rules shall at minimum require that an installation be personally inspected by an independent licensed engineer, fire marshal or state fire marshal's designee qualified and authorized by the board to perform the required inspection and that the tank and installation of the tank comply with applicable technical standards and manufacturer's instructions and warranty conditions. An inspector shall not be an owner or operator of a tank, or an employee of an owner, operator, or installer. The insurance coverage shall be extended to premium paying installers on or before December 1, 1989. For the period from the effective date of this Act to and including the date that insurance coverage under the fund is extended to installers, the fund shall not seek third-party recovery from an installer.

The board's actuarial study shall include, but is not limited to, the following topics:

- a. Actuarial estimate of the per-tank premium necessary to provide actuarially sound coverage to a tank installer for that certified tank installation. The study may include available loss data on past installations for installers, existing claims against installers for corrective action and third-party liability, and other information deemed relevant by the board.
- b. The type of certification standards and procedures or other preconditions to providing coverage to a tank installer.
- c. The cost and availability of private insurance for installers.
- d. The number of installers doing business in the state.
- e. Suggested limits of coverage, deductible levels, and other coverage features, terms, or conditions provided the same are no less favorable than that offered owners and operators under this section.

The results of the study shall be submitted to the division of insurance prior to the extension of coverage to installers under this subsection.

7. ACCOUNT EXPENDITURES. Moneys in the insurance account may be expended for the following purposes:

- a. To take corrective action for and to compensate a third party for damages, including but not limited to payment of a judgment for bodily injury or property damage caused by a release from a tank, where coverage has been provided to the owner or operator from the insurance account, up to the limits of coverage extended.
- b. For the costs of any other activities as the board may determine are necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and this chapter.

Sec. 53. NEW SECTION. 455G.11A BOARD AUTHORITY FOR PRIORITIZATION.

If the board determines that, within the realm of sound business judgment and practice, prioritization of assistance is necessary in light of funds available for loan guarantees or insurance coverage, the board may develop rules for assistance or coverage prioritization based upon adherence or planned adherence of the owner or operator to higher than minimum environmental protection and safety compliance considerations.

Prior to the adoption of prioritization rules, the board shall at minimum review the following issues:

1. The positive environmental impact of assistance prioritization.
2. The economic feasibility, including the availability of private financing, for an owner or operator to obtain priority status.
3. Any negative impact on Iowa's rural petroleum distribution network which could result from prioritization.
4. Any similar prioritization systems in use by the private financing or insurance markets in this state, including terms, conditions, or exclusions.
5. The intent of this Act that the board shall maximize the availability of reasonably priced, financially sound insurance coverage or loan guarantee assistance.

Sec. 54. NEW SECTION. 455G.12 COST RECOVERY ENFORCEMENT.

1. **PULL RECOVERY SOUGHT FROM OWNER.** The board shall seek full recovery from the owner or operator of the tank which released the petroleum and which is the subject of a corrective action, for which the fund expends moneys for corrective action or third-party liability, and for all other costs or moneys expended by the fund in connection with the release. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.
2. **LIMITATION OF LIABILITY OF OWNER OR OPERATOR.** Except as provided in subsection 3:

a. The board or the department of natural resources shall not seek recovery for expenses in connection with corrective action for a release from an owner or operator eligible for assistance under the remedial account except for any unpaid portion of the deductible or copayment. This section does not affect any authorization of the department of natural resources to impose or collect civil or administrative fines or penalties or fees. The remedial account shall not be held liable for any third-party liability.

b. An owner or operator's liability for a release for which coverage is admitted under the insurance account shall not exceed the amount of the deductible.

3. **OWNER OR OPERATOR NOT IN COMPLIANCE, SUBJECT TO FULL AND TOTAL COST RECOVERY.** Notwithstanding subsection 2, the liability of an owner or operator shall be the full and total costs of corrective action and bodily injury or property damage to third parties, as specified in subsection 1, if the owner or operator has not complied with the financial responsibility or other underground storage tank rules of the department of natural resources or with this chapter and rules adopted under this chapter.

4. **TREBLE DAMAGES FOR CERTAIN VIOLATIONS.** Notwithstanding subsections 2 and 3, the owner or operator, or both, of a tank are liable to the fund for punitive damages in an amount equal to three times the amount of any cost incurred or moneys expended by the fund as a result of a release of petroleum from the tank if the owner or operator did any of the following:

a. Failed, without sufficient cause, to respond to a release of petroleum from the tank upon, or in accordance with, a notice issued by the director of the department of natural resources.

b. After the effective date of this section failed to perform any of the following:

(1) Failed to register the tank, which was known to exist or reasonably should have been known to exist.

(2) Intentionally failed to report a known release.

The punitive damages imposed under this subsection are in addition to any costs or expenditures recovered from the owner or operator pursuant to this chapter and in addition to any other penalty or relief provided by this chapter or any other law.

However, the state, a city, county, or other political subdivision shall not be liable for punitive damages.

5. LIEN ON TANK SITE. Any amount for which an owner or operator is liable to the fund, if not paid when due, by statute, rule, or contract, or determination of liability by the board or department of natural resources after hearing, shall constitute a lien upon the real property where the tank, which was the subject of corrective action, is situated, and the liability shall be collected in the same manner as the environmental protection charge pursuant to section 424.11.

6. JOINDER OF PARTIES. The department of natural resources has standing in any case or contested action related to the fund or a tank, and upon motion and sufficient showing by a party, the court or the administrative law judge shall join to the action any person who may be liable for costs and expenditures of the type recoverable pursuant to this section.

7. STRICT LIABILITY. The standard of liability for a release of petroleum or other regulated substance as defined in section 455B.471 is strict liability.

8. THIRD-PARTY CONTRACTS NOT BINDING ON BOARD, PROCEEDINGS AGAINST RESPONSIBLE PARTY. An insurance, indemnification, hold harmless, conveyance, or similar risk-sharing or risk-shifting agreement shall not be effective to transfer any liability for costs recoverable under this section. The fund, board, or department of natural resources may proceed directly against the owner or operator or other allegedly responsible party. This section does not bar any agreement to insure,

hold harmless, or indemnify a party to the agreement for any costs or expenditures under this chapter, and does not modify rights between the parties to an agreement.

9. LATER PROCEEDINGS PERMITTED AGAINST OTHER PARTIES. The entry of judgment against a party to the action does not bar a future action by the board or the department of natural resources against another person who is later alleged to be or discovered to be liable for costs and expenditures paid by the fund. Subsequent successful proceedings against another party shall not modify or reduce the liability of a party against whom judgment has been previously entered.

10. SUBROGATION RIGHTS. Payment of a claim by the fund pursuant to this chapter shall be conditioned upon the board's acquiring by subrogation the rights of the claimant to recover those costs and expenditures for corrective action for which the fund has compensated the claimant, from the person responsible or liable for the unauthorized release. A claimant is precluded from receiving double compensation for the same injury.

In an action brought pursuant to this chapter seeking damages for corrective action or third-party liability, the court shall permit evidence and argument as to the replacement or indemnification of actual economic losses incurred or to be incurred in the future by the claimant by reason of insurance benefits, governmental benefits or programs, or from any other source.

11. EXCLUSION OF PUNITIVE DAMAGES. The fund shall not be liable in any case for punitive damages.

Sec. 55. NEW SECTION. 455G.13 PUND NOT SUBJECT TO REGULATION.

The fund, including but not limited to insurance coverage offered by the insurance account, is not subject to regulation under chapter 502 or title XX, chapters 505 through 523C.

Sec. 56. NEW SECTION. 455G.14 PUND NOT PART OF THE IOWA INSURANCE GUARANTY ASSOCIATION.

Notwithstanding any other provisions of law to the contrary, the fund shall not be considered an insurance company or insurer under the laws of this state and shall not be a member of nor be entitled to claim against the Iowa insurance guarantee association created under chapter 515B.

Sec. 57. NEW SECTION. 455G.15 FINANCIAL INSTITUTION PARTICIPATION IN FUND.

The board may impose conditions on the participation of a financial institution in the fund. Conditions shall be reasonably intended to increase the quantity of private capital available for loans to tank owners or operators who are small businesses within the meaning of section 455G.2. Additionally, the board may offer incentives to financial institutions meeting conditions imposed by the board. Incentives may include extended fund coverage of corrective action or third-party liability expenses, waiver of copayment or deductible requirements, or other benefits not offered to other participants, if reasonably intended to increase the quantity of private capital available for loans by an amount greater than the increased costs of the incentives to the fund.

Sec. 58. NEW SECTION. 455G.16 MERGED AREA SCHOOLS EDUCATION.

1. The board shall adopt certification procedures and standards for the following classes of persons as underground storage tank installation inspectors:

a. A licensed engineer, except that if underground storage tank installation is within the scope of practice of a particular class of licensed engineer, additional training shall not be required for that class. A licensed engineer for whom underground storage tank installation is within the scope of practice shall be an "authorized inspector", rather than a "certified inspector".

b. A fire marshal.

2. The board shall adopt approved curricula for training engineers and fire marshals as a precondition to certification as underground storage tank installation inspectors.

3. The board shall adopt approved curricula for training persons to install underground storage tanks in such a manner that the resulting installation may be certified under section 455G.11, subsection 7.

4. The department of natural resources shall adopt approved curricula for training persons to conduct corrective actions consistent with the requirements of the department of natural resources.

5. The board shall require by rule that all certified or authorized underground storage tank inspectors register with the board and that all persons trained to perform or performing certified tank installations register with the board. A person's failure to register shall not affect the person's certification, or the certification of an otherwise eligible installation performed by that person, but rules may provide for a civil penalty of no more than fifty dollars. The board may provide a list of registrants to any interested person. The board may impose a fee for registration to recover the costs of administering the registration account.

DIVISION VIII

Sec. 59. If any provision of this Act or the application thereof to any person is invalidated, the invalidity shall not affect the provisions or application of this Act which can be given effect without the invalidated provisions or application, and to this end the provisions of this Act are severable.

However, if a finding of invalidity relates to the environmental protection charge, the following conditions apply:

1. To the extent a person or class of persons is determined not to be liable for future payments of the environmental protection charge, that person or class of

persons shall not be eligible for benefits from, or to participate in any manner in, the Iowa comprehensive petroleum underground storage tank fund.

2. If a person or class of persons is entitled to a refund of any amount of the environmental protection charge previously collected or is otherwise relieved of any liability to the Iowa comprehensive petroleum underground storage tank fund under this Act, that person or class of persons shall be liable for the refund of all benefits previously received from the fund and shall not be eligible for benefits or to participate in any manner in the fund. The fund is entitled to a setoff of any environmental protection charge refund liability against the person's liability to the fund to refund any benefits received. Insurance premiums previously received shall not be refundable even though a person becomes ineligible for participation in the fund or for the receipt of benefits from the fund after payment.

Any contract entered into by a tank owner or operator, or other recipient of fund benefits, in the course of administration or implementation of this Act, shall include as a condition of the contract, terms consistent with this section, to assure reciprocity of obligation and benefits as provided.

Sec. 60. The Code editor shall codify sections 101.101 through 101.108 as a new division II of chapter 101.

Sec. 61. Section 455G.11 is repealed effective July 1, 2004, subject to the qualifications of section 455G.11, subsection 6.

Sec. 62. Section 455G.10 is repealed effective July 1, 1999, except such repeal shall not effect any outstanding contractual rights.

Sec. 63. Sections 455G.6 and 455G.7 are repealed effective July 1, 2009, except as such sections apply with respect to any outstanding bonds issued thereunder, or refinancing of such outstanding bonds.

Sec. 64. Section 214A.10, Code 1989, is repealed.

Sec. 65. 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 447, Seventy-third General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved May 5, 1989

TERRY E. BRANSTAD
Governor