

4.2.93 Senate - Environ.  
4.8.93 Senate - Amend/Do Pass w/s-3469

HOUSE FILE 644  
BY COMMITTEE ON ENERGY AND  
ENVIRONMENTAL PROTECTION

MAR 24 1993

Place On Calendar

(SUCCESSOR TO HSB 275)

Passed House, Date 4-2-93 (p.1025) Passed Senate, Date 4/27/93 (p.1387)  
Vote: Ayes 98 Nays 1 Vote: Ayes 46 Nays 1  
Approved May 21, 1993  
Repassed 99/0 5/1/93 (p. 1993) Repassed 39/9 5-1-93 (p.1540)

A BILL FOR

1 An Act extending upgrade dates and insurance premiums and  
2 requiring a noncompliance surcharge for underground storage  
3 tanks.

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

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HF 644

1 Section 1. Section 455G.11, subsection 3, paragraph c,  
2 Code 1993, is amended to read as follows:

3 c. The applicant certifies in writing to the board that  
4 the tank to be insured will be brought into compliance with  
5 either paragraph "a" or "b", on or before ~~October-267-1993~~  
6 January 1, 1995, provided that prior to the provision of  
7 insurance account coverage, the tank site tests release free.  
8 ~~For-a-tank-qualifying-for-insurance-coverage-pursuant-to-this~~  
9 ~~paragraph-at-the-time-of-application-or-renewal7-the-owner-or~~  
10 ~~operator-shall-pay-a-per-tank-premium-equal-to-two-times-the~~  
11 ~~normally-scheduled-premium-for-a-tank-satisfying-paragraph-"a"~~  
12 ~~or-"b"~~. An owner or operator who fails to comply as certified  
13 to the board on or before ~~October-267-1993~~ January 1, 1995,  
14 shall not insure that tank through the insurance account  
15 unless and until the tank satisfies the requirements of  
16 paragraph "a" or "b". An owner or operator who fails to  
17 comply with either paragraph "a" or "b" by October 26, 1993,  
18 shall pay an additional surcharge of four hundred dollars per  
19 tank, per insured time period.

20 Sec. 2. Section 455G.11, subsection 4, Code 1993, is  
21 amended to read as follows:

22 4. Actuarially sound premiums based on risk factor  
23 adjustments after five years. The annual premium for  
24 insurance coverage shall be:

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

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

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

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

33 e. For the year July 1, 1993, through June 30, 1994, ~~three~~  
34 ~~hundred-dollars-per-tank-~~ in accordance with the following:

35 (1) For a tank satisfying subsection 3, paragraph "a" or

1 "b", three hundred dollars per tank.

2 (2) For a tank qualifying under subsection 3, paragraph  
3 "c", six hundred dollars per tank.

4 f. For the period from July 1, 1994, through December 31,  
5 1994, in accordance with the following:

6 (1) For a tank satisfying subsection 3, paragraph "a" or  
7 "b", three hundred fifty dollars per tank.

8 (2) For a tank qualifying under subsection 3, paragraph  
9 "c", seven hundred dollars per tank.

10 f g. For subsequent years time periods, an owner or  
11 operator applying for coverage shall pay an annually adjusted  
12 insurance premium for coverage by the insurance account. The  
13 board may only approve fund coverage through the payment of a  
14 premium established on an actuarially sound basis. Risk  
15 factors shall be taken into account in establishing premiums.  
16 It is the intent of the general assembly that an actuarially  
17 sound premium reflect the risk to the insurance account  
18 presented by the insured. Risk factor adjustments should  
19 reflect the range of risk presented by the variety of tank  
20 systems, monitoring systems, and risk management practices in  
21 the general insurable tank population. Premium adjustments  
22 for risk factors should at minimum take into account lifetime  
23 costs of a tank and monitoring system and insurance account  
24 premiums for that tank system so as to provide a positive  
25 economic incentive to the owner or operator to install the  
26 more environmentally safe option so as to reduce the exposure  
27 of the insurance account to loss. Actuarially sound is not  
28 limited in its meaning to fund premium revenue equaling or  
29 exceeding fund expenditures for the general tank population.

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

32 g h. The insurance account may offer, at the buyer's  
33 option, a range of deductibles. A ten thousand dollar  
34 deductible policy shall be offered.

35 Sec. 3. Section 455G.11, subsection 6, paragraph b, Code

1 1993, is amended to read as follows:

2 b. ANNUAL PREMIUMS. The annual premium shall be:

3 (1) For the year July 1, 1991, through June 30, 1992, two  
4 hundred dollars per insured tank.

5 (2) For the year July 1, 1992, through June 30, 1993, two  
6 hundred fifty dollars per insured tank.

7 (3) For the year July 1, 1993, through June 30, 1994,  
8 three hundred dollars per insured tank.

9 (4) For the period from July 1, 1994, through December 31,  
10 1994, three hundred fifty dollars per insured tank.

11 ~~(4)~~ (5) For subsequent years time periods, installers and  
12 inspectors shall pay an annually adjusted insurance premium to  
13 maintain coverage on each tank previously installed or newly  
14 insured by the insurance account. The board may only approve  
15 fund coverage through the payment of a premium established on  
16 an actuarially sound basis. The premium paid shall be fully  
17 earned and is not subject to refund or cancellation. If  
18 coverage is purchased for any part of a year the purchaser  
19 shall pay the full annual premium.

20 ~~(5)~~ (6) The board may offer coverage at rates based on  
21 sales if the qualifying installer or inspector cannot be rated  
22 on a per tank basis, or if the work the installer or inspector  
23 performs involves more than tank installation. The rates to  
24 develop premiums shall be based on the premium charged per  
25 tank under subparagraphs (1), (2), ~~and (3)~~, and (4).

26 Sec. 4. Section 455G.11, subsection 10, paragraph c, Code  
27 1993, is amended to read as follows:

28 c. PREMIUMS. The annual premium for insurance coverage  
29 shall be two hundred fifty dollars per party, per location,  
30 with an overall limit of liability per site of five hundred  
31 thousand dollars. The premiums are fully earned. Each party  
32 purchasing coverage at that site will have the total limit of  
33 liability prorated over the total limit among the policies  
34 issued, so as to avoid stacking beyond the total coverage  
35 limit of five hundred thousand dollars. If coverage is

1 purchased for any part of a year, the purchaser shall pay the  
2 full annual premium.

3 After ~~June-30~~ December 31, 1994, an owner, operator,  
4 landowner, or financial institution applying for coverage  
5 shall pay an annually adjusted insurance premium for coverage  
6 by the insurance account. The board may only approve fund  
7 coverage through the payment of a premium established on an  
8 actuarially sound basis.

9 EXPLANATION

10 The bill amends the insurance requirements under the  
11 various insurance programs offered by the fund by extending  
12 the upgrade dates from October 26, 1993, to January 1, 1995.  
13 It also extends the subsidized premiums which are offered by  
14 the insurance program for tanks, installers, and property  
15 transfer insurance. Under current law, the subsidized  
16 premiums are set to expire on June 30, 1994, and the bill  
17 extends that to December 31, 1994, at an increased amount. On  
18 or after January 1, 1995, all premiums offered through the  
19 insurance portion of the program must be actuarially sound.  
20 The bill provides for a \$400 surcharge for owners or operators  
21 who do not comply with upgrades by October 26, 1993, per  
22 insured time period.

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## HOUSE FILE 644

S-3469

Amend House File 644, as passed by the House, as follows:

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

"Section 1. Section 455G.9, subsection 1, Code 1993, is amended by adding the following new paragraph:

NEW PARAGRAPH. i. Corrective action, for a release which was tested prior to October 26, 1990, and for which the site was issued a no further action letter by the department of natural resources and which was later determined, due to sale of the property or removal of a nonoperating tank, to require remediation which was reported to the administrator by October 26, 1992, in an amount as specified in subsection 4. In order to qualify for benefits under this paragraph, the applicant must not have operated a tank on the property during the period of time for which the applicant owned the property."

2. Page 1, by inserting before line 1, the following:

"Sec. \_\_\_\_ . Section 455G.10, subsection 3, Code 1993, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The benefits under this section shall be available to small businesses entering into the petroleum business."

3. Page 1, line 17, by inserting after the figure "1993," the following: "or who fails to enter into a contract on or before October 26, 1993, which, upon completion, will bring the owner or operator into compliance with either paragraph "a" or "b" by January 1, 1995,"

4. Title page, line 1, by inserting before the word "extending" the following: "providing remedial benefits for certain contaminated sites and".

5. Title page, line 3, by inserting after the word "tanks" the following: "and relating to loan guarantees".

6. By renumbering as necessary.

By COMMITTEE ON ENVIRONMENT AND  
ENERGY UTILITIES

RALPH ROSENBERG, Chairperson

S-3469 FILED APRIL 8, 1993

*Adopted 4/27/93 (p. 1369)*

S-3654

1 Amend House File 644, as passed by the House, as  
2 follows:

3 1. Page 1, by inserting before line 1 the follow-  
4 ing:

5 "Sec. \_\_\_\_ . Section 455G.9, subsection 5, Code  
6 1993, is amended by adding the following new  
7 unnumbered paragraph:

8 NEW UNNUMBERED PARAGRAPH. The board shall  
9 establish as the highest priority the completion of  
10 site cleanup reports for all eligible sites and the  
11 remediation of high risk sites classified under  
12 section 455B.474, subsection 1, paragraph "d".

13 2. Title page, line 3, by inserting after the  
14 word "tanks" the following: "and relating to  
15 prioritization".

16 3. By renumbering as necessary.

By JIM KERSTEN

S-3654 FILED APRIL 27, 1993

WITHDRAWN (p. 1387)

HOUSE AMENDMENT TO SENATE AMENDMENT TO  
HOUSE FILE 644

S-3770

1 Amend the Senate amendment, H-4258, to House File  
2 644, as passed by the House, as follows:

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

5 "Sec. \_\_\_\_ Section 455G.4, subsection 3, Code  
6 1993, is amended by adding the following new  
7 paragraph:

8 NEW PARAGRAPH. g. The board shall adopt rules  
9 relating to appeal procedures which shall require the  
10 administrator to deliver notice of appeal to the  
11 affected parties within fifteen days of receipt of  
12 notice, require that the hearing be held within one  
13 hundred eighty days of the filing of the petition  
14 unless good cause is shown for the delay, and require  
15 that a final decision be issued no later than one  
16 hundred twenty days following the close of the  
17 hearing. The time restrictions in this paragraph may  
18 be waived by mutual agreement of the parties.

19 Sec. \_\_\_\_ Section 455G.9, subsection 1, paragraph  
20 a, subparagraph (3), unnumbered paragraph 1, Code  
21 1993, is amended to read as follows:

22 Corrective action for an eligible release reported  
23 to the department of natural resources on or after  
24 January 1, ~~1985~~ 1984, but prior to July 1, 1987.

25 Third-party liability is specifically excluded from  
26 remedial account coverage. For a claim for a release  
27 for a small business under this subparagraph, the  
28 remedial program shall pay in accordance with  
29 subsection 4. For all other claims under this  
30 subparagraph, the remedial program shall pay the  
31 lesser of fifty thousand dollars of the total costs of  
32 corrective action for that release or total corrective  
33 action costs for that release as determined under  
34 subsection 4. For a release to be eligible for  
35 coverage under this subparagraph the following  
36 conditions must be satisfied:

37 Sec. \_\_\_\_ Section 455G.9, subsection 1, paragraph  
38 g, Code 1993, is amended to read as follows:

39 g. Corrective action for the costs of a release  
40 under all of the following conditions:

41 (1) The property upon which the tank causing the  
42 release was situated was transferred by inheritance,  
43 devise, or bequest.

44 (2) The property upon which the tank causing the  
45 release was situated has not been used to store or  
46 dispense petroleum since ~~January 1, 1974~~ December 31,  
47 1975.

48 (3) The person who received the property by  
49 inheritance, devise, or bequest was not the owner of  
50 the property during the period of time when the

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S-3770

Page 2

1 release which is the subject of the corrective action  
2 occurred.

3 (4) The release was reported to the board by ~~July~~  
4 ~~17-1991~~ October 26, 1991.

5 Corrective action costs and copayment amounts under  
6 this paragraph shall be paid in accordance with  
7 subsection 4.

8 A person requesting benefits under this paragraph  
9 may establish that the conditions of subparagraphs  
10 (1), (2), and (3) are met through the use of  
11 supporting documents, including a personal affidavit."

12 2. Page 1, line 8, by striking the word  
13 "Corrective" and inserting the following:  
14 "Notwithstanding section 455G.1, subsection 2,  
15 corrective".

16 3. Page 1, line 19, by inserting after the word  
17 "property" the following: "and the applicant must not  
18 be a financial institution".

19 4. Page 1, by inserting after line 33 the  
20 following:

21 "\_\_\_\_\_. Page 4, by inserting after line 8 the  
22 following:

23 "Sec. \_\_\_\_\_. Section 455G.18, subsection 1, Code  
24 1993, is amended to read as follows:

25 1. The department of natural resources shall adopt  
26 rules pursuant to chapter 17A requiring that  
27 groundwater professionals register with the department  
28 of natural resources. The rules shall include  
29 provisions for suspension or revocation of  
30 registration for good cause."

31 5. Page 1, by striking lines 34 through 39 and  
32 inserting the following:

33 "\_\_\_\_\_. Title page, by striking lines 1 through 3  
34 and inserting the following: "An Act relating to  
35 underground storage tanks and providing penalties.""

36 6. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-3770 FILED MAY 1, 1993

CONCURRED

## HOUSE FILE 644

H-4355

1 Amend the Senate amendment, H-4258, to House File  
2 644, as passed by the House, as follows:

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

5 "Sec. \_\_\_\_ . Section 455G.4, subsection 3, Code  
6 1993, is amended by adding the following new  
7 paragraph:

8 NEW PARAGRAPH. g. The board shall adopt rules  
9 relating to appeal procedures which shall require the  
10 administrator to deliver notice of appeal to the  
11 affected parties within fifteen days of receipt of  
12 notice, require that the hearing be held within one  
13 hundred eighty days of the filing of the petition  
14 unless good cause is shown for the delay, and require  
15 that a final decision be issued no later than one  
16 hundred twenty days following the close of the  
17 hearing. The time restrictions in this paragraph may  
18 be waived by mutual agreement of the parties.

19 Sec. \_\_\_\_ . Section 455G.9, subsection 1, paragraph  
20 a, subparagraph (3), unnumbered paragraph 1, Code  
21 1993, is amended to read as follows:

22 Corrective action for an eligible release reported  
23 to the department of natural resources on or after  
24 January 1, ~~1985~~ 1984, but prior to July 1, 1987.  
25 Third-party liability is specifically excluded from  
26 remedial account coverage. For a claim for a release  
27 for a small business under this subparagraph, the  
28 remedial program shall pay in accordance with  
29 subsection 4. For all other claims under this  
30 subparagraph, the remedial program shall pay the  
31 lesser of fifty thousand dollars of the total costs of  
32 corrective action for that release or total corrective  
33 action costs for that release as determined under  
34 subsection 4. For a release to be eligible for  
35 coverage under this subparagraph the following  
36 conditions must be satisfied:

37 Sec. \_\_\_\_ . Section 455G.9, subsection 1, paragraph  
38 g, Code 1993, is amended to read as follows:

39 g. Corrective action for the costs of a release  
40 under all of the following conditions:

41 (1) The property upon which the tank causing the  
42 release was situated was transferred by inheritance,  
43 devise, or bequest.

44 (2) The property upon which the tank causing the  
45 release was situated has not been used to store or  
46 dispense petroleum since ~~January 1, 1974~~ December 31,  
47 1975.

48 (3) The person who received the property by  
49 inheritance, devise, or bequest was not the owner of  
50 the property during the period of time when the

H-4355

H-4355

Page 2

1 release which is the subject of the corrective action  
2 occurred.

3 (4) The release was reported to the board by July  
4 ~~17-1991~~ October 26, 1991.

5 Corrective action costs and copayment amounts under  
6 this paragraph shall be paid in accordance with  
7 subsection 4.

8 A person requesting benefits under this paragraph  
9 may establish that the conditions of subparagraphs  
10 (1), (2), and (3) are met through the use of  
11 supporting documents, including a personal affidavit."

12 2. Page 1, line 8, by striking the word  
13 "Corrective" and inserting the following:  
14 "Notwithstanding section 455G.1, subsection 2,  
15 corrective".

16 3. Page 1, line 19, by inserting after the word  
17 "property" the following: "and the applicant must not  
18 be a financial institution".

19 4. Page 1, by inserting after line 33 the  
20 following:

21 "\_\_\_\_. Page 4, by inserting after line 8 the  
22 following:

23 "Sec. \_\_\_\_ . Section 455G.18, subsection 1, Code  
24 1993, is amended to read as follows:

25 1. The department of natural resources shall adopt  
26 rules pursuant to chapter 17A requiring that  
27 groundwater professionals register with the department  
28 of natural resources. The rules shall include  
29 provisions for suspension or revocation of  
30 registration for good cause."

31 5. Page 1, by striking lines 34 through 39 and  
32 inserting the following:

33 "\_\_\_\_. Title page, by striking lines 1 through 3  
34 and inserting the following: "An Act relating to  
35 underground storage tanks and providing penalties.""

36 6. By renumbering as necessary.

By RAFFERTY of Scott

H-4355 FILED MAY 1, 1993

ADOPTED

## HOUSE FILE 644

H-4334

1 Amend the Senate amendment, H-4258, to House File  
2 644, as passed by the House, as follows:

3 1. Page 1, by inserting after line 19 the  
4 following:

5 "Sec. \_\_\_\_ . Section 455G.9, subsection 5, Code  
6 1993, is amended by striking the subsection and  
7 inserting in lieu thereof the following:

8 5. PRIORITY OF CLAIMS. Notwithstanding a claim  
9 for benefits under this section, if funds are not  
10 available to immediately settle all current claims,  
11 benefits shall be allocated first to claimants who own  
12 at least one but no more than twelve tanks or to  
13 claimants who have no more than two different tank  
14 sites. The board shall adopt rules to prioritize all  
15 other claims and allocate any remaining moneys."

16 2. Page 1, line 39, by inserting after the word  
17 "guarantees" the following: "and prioritizing  
18 remedial claims".

19 3. By renumbering as necessary.

By FALLON of Polk

H-4334 FILED APRIL 29, 1993

WITHDRAWN  
5-1-93

## HOUSE FILE 644

H-4335

1 Amend the Senate amendment, H-4258, to House File  
2 644, as passed by the House, as follows:

3 1. Page 1, by inserting after line 19 the  
4 following:

5 "Sec. \_\_\_\_ . Section 455G.9, subsection 5, Code  
6 1993, is amended by striking the subsection and  
7 inserting in lieu thereof the following:

8 5. PRIORITY OF CLAIMS. Notwithstanding a claim  
9 for benefits under this section, if funds are not  
10 available to immediately settle all current claims,  
11 benefits shall be allocated first to claimants who own  
12 at least one but no more than thirteen tanks or to  
13 claimants who have no more than three different tank  
14 sites. The board shall adopt rules to prioritize all  
15 other claims and allocate any remaining moneys."

16 2. Page 1, line 39, by inserting after the word  
17 "guarantees" the following: "and prioritizing  
18 remedial claims".

19 3. By renumbering as necessary.

By FALLON of Polk

H-4335 FILED APRIL 29, 1993

WITHDRAWN

5-1-93

SENATE AMENDMENT TO  
HOUSE FILE 644

*Handwritten initials*  
H-4258

1 Amend House File 644, as passed by the House, as  
 2 follows:  
 3 1. Page 1, by inserting before line 1 the  
 4 following:  
 5 "Section 1. Section 455G.9, subsection 1, Code  
 6 1993, is amended by adding the following new  
 7 paragraph:  
 8 NEW PARAGRAPH. i. Corrective action, for a  
 9 release which was tested prior to October 26, 1990,  
 10 and for which the site was issued a no further action  
 11 letter by the department of natural resources and  
 12 which was later determined, due to sale of the  
 13 property or removal of a nonoperating tank, to require  
 14 remediation which was reported to the administrator by  
 15 October 26, 1992, in an amount as specified in  
 16 subsection 4. In order to qualify for benefits under  
 17 this paragraph, the applicant must not have operated a  
 18 tank on the property during the period of time for  
 19 which the applicant owned the property."  
 20 2. Page 1, by inserting before line 1, the  
 21 following:  
 22 "Sec. \_\_\_\_ . Section 455G.10, subsection 3, Code  
 23 1993, is amended by adding the following new  
 24 unnumbered paragraph:  
 25 NEW UNNUMBERED PARAGRAPH. The benefits under this  
 26 section shall be available to small businesses  
 27 entering into the petroleum business."  
 28 3. Page 1, line 17, by inserting after the figure  
 29 "1993," the following: "or who fails to enter into a  
 30 contract on or before October 26, 1993, which, upon  
 31 completion, will bring the owner or operator into  
 32 compliance with either paragraph "a" or "b" by January  
 33 1, 1995,".  
 34 4. Title page, line 1, by inserting before the  
 35 word "extending" the following: "providing remedial  
 36 benefits for certain contaminated sites and".  
 37 5. Title page, line 3, by inserting after the  
 38 word "tanks" the following: "and relating to loan  
 39 guarantees".  
 40 6. By renumbering as necessary.

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FILED APR 27 '93

H-4258

## SENATE AMENDMENT TO HOUSE FILE 644

H-4258

1 Amend House File 644, as passed by the House, as  
2 follows:

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

5 "Section 1. Section 455G.9, subsection 1, Code  
6 1993, is amended by adding the following new  
7 paragraph:

8 NEW PARAGRAPH. i. Corrective action, for a  
9 release which was tested prior to October 26, 1990,  
10 and for which the site was issued a no further action  
11 letter by the department of natural resources and  
12 which was later determined, due to sale of the  
13 property or removal of a nonoperating tank, to require  
14 remediation which was reported to the administrator by  
15 October 26, 1992, in an amount as specified in  
16 subsection 4. In order to qualify for benefits under  
17 this paragraph, the applicant must not have operated a  
18 tank on the property during the period of time for  
19 which the applicant owned the property."

20 2. Page 1, by inserting before line 1, the  
21 following:

22 "Sec. \_\_\_\_ . Section 455G.10, subsection 3, Code  
23 1993, is amended by adding the following new  
24 unnumbered paragraph:

25 NEW UNNUMBERED PARAGRAPH. The benefits under this  
26 section shall be available to small businesses  
27 entering into the petroleum business."

28 3. Page 1, line 17, by inserting after the figure  
29 "1993," the following: "or who fails to enter into a  
30 contract on or before October 26, 1993, which, upon  
31 completion, will bring the owner or operator into  
32 compliance with either paragraph "a" or "b" by January  
33 1, 1995,"."

34 4. Title page, line 1, by inserting before the  
35 word "extending" the following: "providing remedial  
36 benefits for certain contaminated sites and".

37 5. Title page, line 3, by inserting after the  
38 word "tanks" the following: "and relating to loan  
39 guarantees".

40 6. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-4258 FILED APRIL 29, 1993

*House Concurred*  
*4/29/93 (p. 1939)*

HOUSE FILE 644

H-4272

1 Amend the Senate amendment, H-4258, to House File  
2 644, as passed by the House, as follows:

- 3 1. Page 1, by striking lines 3 through 19.
- 4 2. Page 1, by striking lines 34 through 36.
- 5 3. By renumbering as necessary.

By RAFFERTY of Scott

H-4272 FILED APRIL 28, 1993

*Lost 4/29/93 (p. 1814)*

HOUSE FILE 644  
FISCAL NOTE

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A fiscal note for House File 644 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.

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House File 644 delays the implementation of actuarially sound insurance premiums for policies issued by the State's Underground Storage Tank (UST) Program. These policies provide insurance for qualified tank owners, installers, and inspectors, as well as property transfer insurance. The date for the establishment of actuarially sound premiums is moved from October 26, 1993, to January 1, 1995.

For tank owner insurance, the premium for policies issued between July 1, 1994 and January 1, 1995 would be \$350 per tank if the tank has been upgraded to protect against and to detect leaks. If the tank has not been upgraded, the premium for a policy renewed during that time period would be \$1,100 per tank.

The bill also extends eligibility for tank insurance coverage for non-upgraded tanks for an additional 14 months. Present law would prohibit the State from insuring non-upgraded tanks after October 26, 1993. This bill would extend the cutoff date to January 1, 1995.

Assumptions:

1. There are presently 7,000 tanks insured by the Program.
2. An additional 2,500 tanks may apply for insurance in the next 18 months.
3. 75% of tanks insured after June 30, 1994 will be upgraded.
4. Actuarially sound premiums for an upgraded tank will be \$550 per tank (\$200 per-tank subsidy).
5. Actuarially sound premiums for a non-upgraded tank will be \$2,000 (\$900 per-tank subsidy).
6. The premiums established by the bill for inspector, installer, and property transfer insurance are actuarially sound.

Fiscal Impact:

Continuing to subsidize tank insurance premiums for an additional year would increase the UST Fund's cleanup costs. This subsidization would cost the Fund between \$2.6 and \$3.6 million, depending on the number of additional tanks qualifying for insurance.

Source: Underground Storage Tank Board materials

(LSB 2620hv, JWR)

LED APRIL 2, 1993

BY DENNIS PROUTY, FISCAL DIRECTOR

**HOUSE FILE 644  
FISCAL NOTE**

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A fiscal note for Amendment S-3469 to HF 644 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.

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Amendment S-3469 to HF 644 allows certain owners of property contaminated by underground storage tank pollution to receive benefits from the State's Underground Storage Tank (UST) Program.

The bill also expands loan guarantee availability to new petroleum businesses, and limits the \$400 per tank insurance surcharge to those tanks which have not been upgraded and a contract has not been entered into to complete the required upgrade.

Assumptions:

1. The expansion of eligibility for remedial benefits will apply to 20 sites.
2. The sites will average \$100,000 in Program expenses.

Fiscal Impact:

The expansion of eligibility to an additional 20 sites will increase Program expenditures by \$2.0 million.

The exemption from the surcharge on tanks in the insurance program which have not been upgraded will reduce Program income by less than \$200,000.

The loan guarantee expansion will not have a fiscal impact.

Source: UST Program Administrator

(LSB 2620hv.2, JWR)

FILED APRIL 21, 1993

BY DENNIS PROUTY, FISCAL DIRECTOR



Rafferty, Chair

Grubbs

Asterberg

Greig

Schrader

HSB 275

ENERGY AND ENVIRONMENTAL PROTECTION

HOUSE FILE 644

BY (PROPOSED COMMITTEE ON ENERGY AND ENVIRONMENTAL UTILITIES BILL BY CHAIRPERSON RAFFERTY)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to underground storage tanks by amending or  
2 adding provisions limiting the definition of owner, providing  
3 a civil penalty for failing to register a tank, relating to  
4 corrective action standards and liability, appeal procedures,  
5 insurance upgrade requirements, cost recovery enforcement,  
6 groundwater professionals, and community remediation.

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

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1 Section 1. Section 455B.471, subsection 6, unnumbered  
2 paragraph 2, Code 1993, is amended by striking the unnumbered  
3 paragraph and inserting in lieu thereof the following:

4 "Owner" does not include a person who holds indicia of  
5 ownership in the underground storage tank or the tank site  
6 property if either of the following applies to the person:

7 a. The person holds indicia of ownership primarily to  
8 protect that person's security interest in the underground  
9 storage tank or the tank site. "Primarily to protect that  
10 person's security interest" includes, but is not limited to,  
11 ownership acquired as a consequence of the exercise of the  
12 person's rights as a security interest holder, to secure  
13 payment of a loan or other indebtedness, or to preserve the  
14 value of the collateral. A person holding indicia of  
15 ownership in an underground storage tank or tank site who  
16 acquires title or the right to title of the underground  
17 storage tank or tank site upon default under a security  
18 agreement or forfeiture, shall not be an owner for purposes of  
19 this subsection if the ownership interest is held primarily to  
20 protect the collateral secured by the interest and the person  
21 intends to sell the tank site or liquidate the interest in the  
22 tank site rather than hold the property for investment  
23 purposes.

24 b. The person does not exhibit actual, direct, continual,  
25 or recurrent managerial control or responsibility for the  
26 daily operations of the underground storage tank or tank site  
27 which materially divests the control or responsibility of the  
28 owner or operator of the underground storage tank or tank  
29 site.

30 Sec. 2. Section 455B.473, Code 1993, is amended by adding  
31 the following new subsection:

32 NEW SUBSECTION. 10. A person who violates this section is  
33 subject to a civil penalty of not more than two hundred fifty  
34 dollars for the first violation and not more than five hundred  
35 dollars for each subsequent violation. For each violation a

1 penalty shall be assessed against the person who conveys or  
2 deposits the regulated substance and against the tank owner or  
3 operator.

4 Sec. 3. Section 455B.474, subsection 1, paragraph f,  
5 subparagraphs (4) and (5), Code 1993, are amended to read as  
6 follows:

7 (4) High risk sites shall comply with the following  
8 corrective action standards:

9 (a) A site classified under paragraph "d", subparagraph  
10 (2), subparagraph subdivision (a), subparagraph subdivision  
11 part (i), in which the contaminated groundwater plume is  
12 downgradient or moving away from the water source or is not in  
13 hydraulic connection with the water source shall be subject to  
14 the requirements of subparagraph (3) and be monitored in  
15 accordance with subparagraph (5).

16 (b) All other high risk sites shall comply with corrective  
17 action standards as may be determined by the department of  
18 natural resources for that site.

19 (5) Low risk sites shall be monitored according to the  
20 following schedule:

21 (a) Up to three times per year ~~from-years~~ for year one  
22 ~~through-three.~~

23 (b) Up to two times per year ~~from~~ for years ~~four-through~~  
24 ~~six two and three.~~

25 ~~(c) --One-time-per-year-from-years-seven-through-nine-~~

26 ~~(d) (c) In-the-twelfth-year-the-site-shall-be-monitored~~  
27 ~~one-time.--If~~ After the third year, if there has been no  
28 significant increase in contamination or the contamination has  
29 not moved, the site shall be reclassified as a no action  
30 required site. If at any time the contamination has increased  
31 or moved by a significant amount, the site shall be monitored  
32 according to the previous higher monitoring schedule as  
33 established under this subparagraph.

34 ~~(e)~~ (d) The department shall have the authority to order  
35 monitoring in addition to the requirements as specified in

1 this subparagraph with approval by the board.

2 (f) (e) If at any time monitoring indicates that  
3 contamination has fallen below action level standards, the  
4 site shall be reclassified as a no action required site.

5 Sec. 4. Section 455G.4, subsection 3, Code 1993, is  
6 amended by adding the following new paragraph:

7 NEW PARAGRAPH. g. The board shall adopt rules relating to  
8 appeal procedures which shall require the administrator to de-  
9 liver notice of appeal to the presiding officer within fifteen  
10 days of receipt of notice, require that the hearing be held  
11 within one hundred eighty days of the filing of the petition  
12 and require that a final decision be issued no later than one  
13 hundred twenty days following the close of the hearing. The  
14 time restrictions may be waived by mutual agreement of the  
15 parties or if good cause can be shown.

16 Sec. 5. Section 455G.11, subsection 3, paragraph c, Code  
17 1993, is amended to read as follows:

18 c. The applicant certifies in writing to the board that  
19 the tank to be insured will be brought into compliance with  
20 either paragraph "a" or "b", on or before ~~October-26, 1993~~  
21 January 1, 1995, provided that prior to the provision of  
22 insurance account coverage, the tank site tests release free.  
23 For a tank qualifying for insurance coverage pursuant to this  
24 paragraph at the time of application or renewal, the owner or  
25 operator shall pay a per tank premium equal to two times the  
26 normally scheduled premium for a tank satisfying paragraph "a"  
27 or "b". An owner or operator who fails to comply as certified  
28 to the board on or before ~~October-26, 1993~~ January 1, 1995,  
29 shall not insure that tank through the insurance account  
30 unless and until the tank satisfies the requirements of  
31 paragraph "a" or "b".

32 Sec. 6. Section 455G.11, subsection 4, Code 1993, is  
33 amended to read as follows:

34 4. Actuarially sound premiums based on risk factor  
35 adjustments after five years. The annual premium for

1 insurance coverage shall be:

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

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

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

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

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

12 f. For the period from July 1, 1994, through December 31,  
13 1994, one hundred fifty dollars per tank.

14 g. For subsequent years, time periods an owner or  
15 operator applying for coverage shall pay an annually adjusted  
16 insurance premium for coverage by the insurance account. The  
17 board may only approve fund coverage through the payment of a  
18 premium established on an actuarially sound basis. Risk  
19 factors shall be taken into account in establishing premiums.  
20 It is the intent of the general assembly that an actuarially  
21 sound premium reflect the risk to the insurance account  
22 presented by the insured. Risk factor adjustments should  
23 reflect the range of risk presented by the variety of tank  
24 systems, monitoring systems, and risk management practices in  
25 the general insurable tank population. Premium adjustments  
26 for risk factors should at minimum take into account lifetime  
27 costs of a tank and monitoring system and insurance account  
28 premiums for that tank system so as to provide a positive  
29 economic incentive to the owner or operator to install the  
30 more environmentally safe option so as to reduce the exposure  
31 of the insurance account to loss. Actuarially sound is not  
32 limited in its meaning to fund premium revenue equaling or  
33 exceeding fund expenditures for the general tank population.

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

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1 g h. The insurance account may offer, at the buyer's  
2 option, a range of deductibles. A ten thousand dollar  
3 deductible policy shall be offered.

4 Sec. 7. Section 455G.11, subsection 6, paragraph b, Code  
5 1993, is amended to read as follows:

6 b. Annual premiums. The annual premium shall be:

7 (1) For the year July 1, 1991, through June 30, 1992, two  
8 hundred dollars per insured tank.

9 (2) For the year July 1, 1992, through June 30, 1993, two  
10 hundred fifty dollars per insured tank.

11 (3) For the year July 1, 1993, through June 30, 1994,  
12 three hundred dollars per insured tank.

13 (4) For the period from July 1, 1994, through December 31,  
14 1994, one hundred fifty dollars per insured tank.

15 ~~(4)~~ (5) For subsequent ~~years~~ time periods, installers and  
16 inspectors shall pay an annually adjusted insurance premium to  
17 maintain coverage on each tank previously installed or newly  
18 insured by the insurance account. The board may only approve  
19 fund coverage through the payment of a premium established on  
20 an actuarially sound basis. The premium paid shall be fully  
21 earned and is not subject to refund or cancellation. If  
22 coverage is purchased for any part of a year the purchaser  
23 shall pay the full annual premium.

24 ~~(5)~~ (6) The board may offer coverage at rates based on  
25 sales if the qualifying installer or inspector cannot be rated  
26 on a per tank basis, or if the work the installer or inspector  
27 performs involves more than tank installation. The rates to  
28 develop premiums shall be based on the premium charged per  
29 tank under subparagraphs (1), (2), and (3), and (4).

30 Sec. 8. Section 455G.11, subsection 10, paragraph c, Code  
31 1993, is amended to read as follows:

32 c. Premiums. The annual premium for insurance coverage  
33 shall be two hundred fifty dollars per party, per location,  
34 with an overall limit of liability per site of five hundred  
35 thousand dollars. The premiums are fully earned. Each party

1 purchasing coverage at that site will have the total limit of  
2 liability prorated over the total limit among the policies  
3 issued, so as to avoid stacking beyond the total coverage  
4 limit of five hundred thousand dollars. If coverage is  
5 purchased for any part of a year, the purchaser shall pay the  
6 full annual premium.

7 After ~~June-30~~ December 31, 1994, an owner, operator,  
8 landowner, or financial institution applying for coverage  
9 shall pay an annually adjusted insurance premium for coverage  
10 by the insurance account. The board may only approve fund  
11 coverage through the payment of a premium established on an  
12 actuarially sound basis.

13 Sec. 9. Section 455G.13, Code 1993, is amended to read as  
14 follows:

15 455G.13 COST RECOVERY ENFORCEMENT.

16 1. ~~FULL-RECOVERY-SEUGHT-FROM-OWNER~~ COST RECOVERY ACTIONS.

17 The board ~~shall~~ or a claimant may seek full recovery from the  
18 ~~owner, operator, any former landowner, former tank owner,~~  
19 former tank operator, or other potentially responsible party  
20 ~~liable-for-the-released-petroleum-which-is-the-subject-of-a~~  
21 ~~corrective-action, for which-the-fund-expends~~ the expenditure  
22 of moneys for corrective action or third-party liability, and  
23 for all other costs, including reasonable attorney fees and  
24 costs of litigation ~~for-which-moneys-are-expended-by-the-fund~~  
25 ~~in-connection-with-the-release.~~ The board may seek full  
26 recovery from a claimant under subsection 3. When federal  
27 cleanup funds are recovered, the funds are to be deposited to  
28 the remedial account of the fund and used solely for the  
29 purpose of future cleanup activities.

30 2. LIMITATION OF LIABILITY OF ~~OWNER-OR-OPERATOR~~ CLAIMANT.

31 Except as provided in subsection 3:

32 a. The board or the department of natural resources shall  
33 not seek recovery ~~for-expenses-in-connection-with-corrective~~  
34 ~~action-for-a-release~~ from an ~~owner-or-operator-eligible-for~~  
35 ~~assistance-under-the-remedial-account~~ a claimant except for

1 any unpaid portion of the deductible or copayment. This  
2 section does not affect any authorization of the department of  
3 natural resources to impose or collect civil or administrative  
4 fines or penalties or fees. The remedial account shall not be  
5 held liable for any third-party liability.

6 b. ~~An owner or operator's~~ A claimant's liability for a  
7 release for which coverage is admitted under the insurance  
8 account shall not exceed the amount of the deductible.

9 3. ~~Owner or operator~~ CLAIMANT NOT IN COMPLIANCE, SUBJECT  
10 TO FULL AND TOTAL COST RECOVERY. Notwithstanding subsection  
11 2, ~~the liability of an owner or operator shall be the full and~~  
12 ~~total costs of corrective action and bodily injury or property~~  
13 ~~damage to third parties, as specified in subsection 1, if the~~  
14 ~~owner or operator~~ a claimant shall be liable for moneys  
15 expended by the fund, including third party liability, if the  
16 claimant has not complied with the financial responsibility or  
17 other underground storage tank rules of the department of  
18 natural resources or with this chapter and rules adopted under  
19 this chapter.

20 4. TREBLE DAMAGES FOR CERTAIN VIOLATIONS. Notwithstanding  
21 subsections 2 and 3, the owner or operator, as described in  
22 subsection 1, or the owner or operator determined to be liable  
23 under subsection 3, or both the owner and operator, of a tank  
24 are liable to the fund for punitive damages in an amount equal  
25 to three times the amount of any ~~cost incurred or~~ moneys  
26 expended by the fund as a result of a release of petroleum  
27 from the tank if the owner or operator did any of the  
28 following:

29 a. Failed, without sufficient cause, to respond to a  
30 release of petroleum from the tank upon, or in accordance  
31 with, a notice issued by the director of the department of  
32 natural resources.

33 b. After May 5, 1989, failed to perform any of the  
34 following:

35 (1) Failed to register the tank, which was known to exist



1 or reasonably should have been known to exist.

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

3 The punitive damages imposed under this subsection are in  
4 addition to any costs or expenditures recovered from the owner  
5 or operator pursuant to this chapter and in addition to any  
6 other penalty or relief provided by this chapter or any other  
7 law.

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

10 5. LIEN ON TANK SITE. Any amount for which an-owner-or  
11 operator a claimant is liable to the fund, if not paid when  
12 due, by statute, rule, or contract, or determination of  
13 liability by the board or department of natural resources  
14 after hearing, shall constitute a lien upon the real property  
15 where the tank, which was the subject of corrective action, is  
16 situated, and the liability shall be collected in the same  
17 manner as the environmental protection charge pursuant to  
18 section 424.11.

19 6. JOINDER OF PARTIES. The department of natural  
20 resources has standing in any case or contested action related  
21 to the fund or a tank to assert any claim that the department  
22 may have regarding the tank at issue in the case or contested  
23 action; upon. Upon motion and sufficient showing by a party  
24 to a cost recovery or subrogation action provided for under  
25 this section, the court or the administrative law judge shall  
26 join to the action any potentially responsible party who may  
27 be liable for costs and expenditures of the type recoverable  
28 pursuant to this section.

29 7. STRICT STANDARDS OF LIABILITY. The standard of  
30 liability for a release of petroleum or other regulated  
31 substance as defined in section 455B-471 is strict liability.  
32 The standard of liability for cost recovery actions under this  
33 section is strict liability.

34 In order to establish the liability of former and present  
35 landowners, former and present tank owners, and former and

1 present operators, the board or a claimant need only show  
2 petroleum contamination was present during the time of  
3 ownership or operation of the person subject to cost recovery.

4 A former landowner may avoid liability under this  
5 subsection by proving that tanks were not operated on the  
6 property during the former landowner's ownership of the  
7 property and that the former landowner did not have actual  
8 knowledge that tanks had been operated on the property.

9 8. THIRD-PARTY CONTRACTS NOT BINDING ON BOARD, PROCEEDINGS  
10 AGAINST RESPONSIBLE PARTY. An insurance, indemnification,  
11 hold harmless, conveyance, or similar risk-sharing or risk-  
12 shifting agreement shall not be effective to transfer any  
13 liability for costs expenditures recoverable under this  
14 section. The fund, board, or department of natural resources  
15 may proceed directly against ~~the owner or operator or other~~  
16 ~~allegedly responsible party~~ anyone subject to cost recovery.  
17 This section does not bar any agreement to insure, hold  
18 harmless, or indemnify a party to the agreement for any costs  
19 or expenditures under this chapter, and does not modify rights  
20 between the parties to an agreement, except to the extent the  
21 agreement shifts liability to ~~an owner or operator eligible~~  
22 ~~for assistance under the remedial account for any damages or~~  
23 ~~other expenses in connection with a corrective action for~~  
24 ~~which another potentially responsible party is or may be~~  
25 ~~liable~~ a claimant. Any such provision is null and void and of  
26 no force or effect.

27 9. LATER PROCEEDINGS PERMITTED AGAINST OTHER PARTIES. The  
28 entry of judgment against a party to the action does not bar a  
29 future action by the board, a claimant, or the department of  
30 natural resources against another person who is later alleged  
31 to be or discovered to be liable for ~~costs and~~ expenditures  
32 ~~paid by the fund~~ recoverable under this section or recoverable  
33 by the department of natural resources. Notwithstanding  
34 ~~section 668.5 no other potentially responsible party may seek~~  
35 ~~contribution or any other recovery from an owner or operator~~

1 eligible-for-assistance-under-the-remedial-account-for-damages  
2 or-other-expenses-in-connection-with-corrective-action-for-a  
3 release-for-which-the-potentially-responsible-party-is-or-may  
4 be-liable. Subsequent successful proceedings against another  
5 party shall not modify or reduce the liability of a party  
6 against whom judgment has been previously entered.

7 10. CLAIMS AGAINST POTENTIALLY RESPONSIBLE PARTIES. Upon  
8 payment-by-the-fund-for-corrective-action-or-third-party  
9 liability-pursuant-to-this-chapter,--the-rights-of-the-claimant  
10 to-recover-payment-from-any-potentially-responsible-party,--are  
11 assumed-by-the-board-to-the-extent-paid-by-the-fund,--A  
12 claimant-is-precluded-from-receiving-double-compensation-for  
13 the-same-injury.

14 In an action brought pursuant to this chapter seeking  
15 damages for corrective action or third-party liability, the  
16 court shall permit evidence and argument as to the replacement  
17 or indemnification of actual economic losses incurred or to be  
18 incurred in the future by the claimant by reason of insurance  
19 benefits, governmental benefits or programs, or from any other  
20 source.

21 A claimant may elect to permit the board to pursue the  
22 claimant's cause of action for any-injury-not-compensated-by  
23 the-fund-against-any-potentially-responsible-party moneys  
24 expended by the claimant recoverable under this section,  
25 provided the attorney general determines such representation  
26 would not be a conflict of interest. If a claimant so elects,  
27 the board's litigation expenses shall be shared on a pro rata  
28 basis with the claimant, but the claimant's share of  
29 litigation expenses are payable exclusively from any share of  
30 the settlement or judgment payable to the claimant.

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

33 12. RECOVERY OR SUBROGATION -- INSTALLERS AND INSPECTORS.  
34 Notwithstanding any other provision contained in this chapter,  
35 the board or a person insured under the insurance account has

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1 no right of recovery or right of subrogation against an  
2 installer or an inspector insured by the fund for the tank  
3 giving rise to the liability other than for recovery of any  
4 deductibles paid.

5 13. CONTRIBUTION. Notwithstanding section 668.5, no  
6 person subject to cost recovery under this section may seek  
7 contribution or any other recovery from a claimant for damages  
8 or other expenses in connection with corrective action for  
9 petroleum contamination.

10 14. JOINT AND SEVERAL LIABILITY. Notwithstanding section  
11 668.4, the rule of joint and several liability applies in any  
12 action brought by the board or a claimant. Any person may  
13 seek contribution under section 668.6 to the extent not  
14 otherwise prohibited under subsection 13.

15 Sec. 11. Section 455G.18, subsections 1 and 3, Code 1993,  
16 are amended to read as follows:

17 1. The department of natural resources shall adopt rules  
18 pursuant to chapter 17A requiring that groundwater  
19 professionals register with the department of natural  
20 resources. The rules shall include provisions for suspension  
21 and revocation of registration for good cause.

22 3. The department of natural resources may provide for a  
23 civil penalty of no more than fifty two hundred dollars for  
24 the failure to register. An interested person may obtain a  
25 list of registrants from the department of natural resources.  
26 The department of natural resources may impose a fee for the  
27 registration of persons under this section. Suspension,  
28 revocation, and denial of registration shall be public record  
29 and shall be provided by the department upon request.

30 Sec. 12. NEW SECTION. 455G.21 COMMUNITY REMEDIATION.

31 1. An owner or operator, eligible for benefits under  
32 section 455G.9, shall have the option to elect not to par-  
33 ticipate in the corrective action portion of a community  
34 remediation project without losing benefits under section  
35 455G.9, if the owner's or operator's site has not contributed

1 to a plume of contamination within the designated community  
2 remediation area. However, if the election not to participate  
3 adversely affects the board's cost containment efforts in  
4 relation to the community remediation project, the amount of  
5 benefit the owner or operator receives under section 455G.9  
6 shall be limited to the amount the owner or operator would  
7 have received had the owner or operator participated in the  
8 community remediation.

9 2. For purposes of this section, "adversely affect" means  
10 the cost to the fund for owners or operators who participated  
11 in the community remediation site were lower than the cost to  
12 the fund for an owner or operator who elected not to  
13 participate in the community remediation site.

14 EXPLANATION

15 This bill amends several provisions relating to underground  
16 storage tanks. The bill amends the definition of "owner"  
17 under section 455B.471 for purposes of determining  
18 responsibility for cleanup to clarify that a person who holds  
19 indicia of ownership is not considered to be an owner if the  
20 ownership interest is held primarily to protect the person's  
21 security interest in the tank or tank site or if the person  
22 does not exhibit actual, direct, continual, or recurrent  
23 managerial control or responsibility for the daily operations  
24 of the tank or tank site to the point that it materially  
25 divests the control or responsibility of the owner or operator  
26 of the tank or tank site.

27 The bill increases the penalty for failing to notify the  
28 department of natural resources to register a new or existing  
29 tank or if a person who conveys or deposits a regulated  
30 substance fails to inform the department of natural resources  
31 of the existence of an unregistered tank by adding a civil  
32 penalty in the amount of up to \$250 for the first violation  
33 and up to \$500 for each subsequent violation and providing  
34 that a penalty may be assessed against both the person who  
35 conveys or deposits the regulated substance and the tank owner

1 or operator.

2 The bill provides that a site which has already been  
3 classified as a high risk site because the contamination is  
4 affecting or likely to affect groundwater which is used as a  
5 source water for public or private water supplies, to a level  
6 rendering them unsafe for human consumption shall be monitored  
7 as a low-risk site if the contaminated plume is downgradient  
8 or moving away from the water source or if the contaminated  
9 plume is not in hydraulic connection with the water source.

10 All other high risk sites include sites classified as high  
11 risk because the contamination is actually affecting or likely  
12 to affect surface water bodies to a level exceeding surface  
13 water quality standards or sites where harmful or explosive  
14 concentrations of petroleum substances or vapors which are  
15 affecting structures or utility installations exist or are  
16 likely to occur. In addition the bill changes the monitoring  
17 schedule for low-risk sites from requiring monitoring for  
18 twelve years to requiring monitoring for three years.

19 The bill requires the Iowa comprehensive petroleum  
20 underground storage tank board to develop rules relating to  
21 appeal procedures and to provide specific timelines within  
22 which a case must be heard. Specifically, the administrator  
23 must deliver notice of appeal to the presiding officer within  
24 15 days of receipt of the notice, the hearing must be held  
25 within 180 days of the filing of the petition, and the final  
26 decision must be issued no later than 120 days following the  
27 close of the hearing. The time limitations can be waived by  
28 agreement of the parties or if good cause to do so can be  
29 shown.

30 The bill amends the insurance requirements under the  
31 various insurance programs offered by the fund by extending  
32 the upgrade dates from October 26, 1993, to January 1, 1995.  
33 It also extends the subsidized premiums which are offered by  
34 the insurance program for tanks, installers, and property  
35 transfer insurance. Under current law, the subsidized

1 premiums are set to expire on June 30, 1994, and the bill  
2 extends that to December 31, 1994, at the same amount. On or  
3 after January 1, 1995, all premiums offered through the  
4 insurance portion of the program must be actuarially sound.

5 The bill rewrites the cost recovery section to allow the  
6 board to apply cost recovery actions to former tank owners or  
7 landowners or operators, other potentially responsible  
8 parties, and claimants who owned or operated a tank on the  
9 property at any time petroleum contamination was present. The  
10 board or claimant may sue one responsible party who, if found  
11 liable, is liable for the entire cost of cleanup, but the bill  
12 allows that party the right to seek contribution from other  
13 responsible parties. The bill provides for strict liability  
14 and allows for a defense if a former landowner can prove that  
15 there were no tanks operated on the property during the  
16 landowners' period of ownership and that the landowner had no  
17 actual knowledge that tanks had been operated upon the  
18 property.

19 The bill increases the civil penalty for failure by a  
20 groundwater professional to register from \$50 to \$250. It  
21 directs the department of natural resources to adopt rules  
22 providing for suspension and revocation of registration of a  
23 groundwater professional for good cause.

24 Finally, the bill addresses the issue of community  
25 remediation by stating that an owner or operator who is  
26 eligible for benefits under the remedial account may elect not  
27 to participate in the corrective action portion of a community  
28 remediation project without losing benefits if the owner's or  
29 operator's site has not contributed to a plume of  
30 contamination within the designated areas. However, if the  
31 fund is adversely affected by the election not to participate,  
32 the nonparticipating owner or operator is only eligible for  
33 benefits in the amount that they would have received had they  
34 participated in the community remediation. The bill defines  
35 "adversely affect" to mean the cost to the fund for the owners

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1 or operators who participated were lower than the cost to the  
2 fund of owners or operators who elected not to participate.

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HOUSE FILE 644

AN ACT

RELATING TO UNDERGROUND STORAGE TANKS AND PROVIDING PENALTIES.

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

Section 1. Section 455G.4, subsection 3, Code 1993, is amended by adding the following new paragraph:

NEW PARAGRAPH. g. The board shall adopt rules relating to appeal procedures which shall require the administrator to deliver notice of appeal to the affected parties within fifteen days of receipt of notice, require that the hearing be held within one hundred eighty days of the filing of the petition unless good cause is shown for the delay, and require that a final decision be issued no later than one hundred twenty days following the close of the hearing. The time restrictions in this paragraph may be waived by mutual agreement of the parties.

Sec. 2. Section 455G.9, subsection 1, paragraph a, subparagraph (3), unnumbered paragraph 1, Code 1993, is amended to read as follows:

Corrective action for an eligible release reported to the department of natural resources on or after January 1, 1985 ~~1984~~, but prior to July 1, 1987. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release for a small business under this subparagraph, the remedial program shall pay in accordance with subsection 4. For all other claims under this subparagraph, the remedial program shall pay the lesser of fifty thousand dollars of the total costs of corrective action for that release or total corrective action costs for that release as determined under subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

Sec. 3. Section 455G.9, subsection 1, paragraph g, Code 1993, is amended to read as follows:

g. Corrective action for the costs of a release under all of the following conditions:

- (1) The property upon which the tank causing the release was situated was transferred by inheritance, devise, or bequest.
- (2) The property upon which the tank causing the release was situated has not been used to store or dispense petroleum since ~~January 17, 1974~~ December 31, 1975.
- (3) The person who received the property by inheritance, devise, or bequest was not the owner of the property during the period of time when the release which is the subject of the corrective action occurred.
- (4) The release was reported to the board by ~~July 17, 1991~~ October 26, 1991.

Corrective action costs and copayment amounts under this paragraph shall be paid in accordance with subsection 4.

A person requesting benefits under this paragraph may establish that the conditions of subparagraphs (1), (2), and (3) are met through the use of supporting documents, including a personal affidavit.

Sec. 4. Section 455G.9, subsection 1, Code 1993, is amended by adding the following new paragraph:

NEW PARAGRAPH. 1. Notwithstanding section 455G.1, subsection 2, corrective action, for a release which was tested prior to October 26, 1990, and for which the site was issued a no further action letter by the department of natural resources and which was later determined, due to sale of the property or removal of a nonoperating tank, to require remediation which was reported to the administrator by October 26, 1992, in an amount as specified in subsection 4. In order to qualify for benefits under this paragraph, the applicant must not have operated a tank on the property during the period of time for which the applicant owned the property and the applicant must not be a financial institution.

Sec. 5. Section 455G.10, subsection 3, Code 1993, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The benefits under this section shall be available to small businesses entering into the petroleum business.

Sec. 6. Section 455G.11, subsection 3, paragraph c, Code 1993, is amended to read as follows:

c. The applicant certifies in writing to the board that the tank to be insured will be brought into compliance with either paragraph "a" or "b", on or before ~~October 26, 1993~~ January 1, 1995, 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, 1993~~ January 1, 1995, shall not insure that tank through the insurance account unless and until the tank satisfies the requirements of paragraph "a" or "b". An owner or operator who fails to

comply with either paragraph "a" or "b" by October 26, 1993, or who fails to enter into a contract on or before October 26, 1993, which, upon completion, will bring the owner or operator into compliance with either paragraph "a" or "b" by January 1, 1995, shall pay an additional surcharge of four hundred dollars per tank, per insured time period.

Sec. 7. Section 455G.11, subsection 4, Code 1993, is amended to read as follows:

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, in accordance with the following:
  - (1) For a tank satisfying subsection 3, paragraph "a" or "b", three hundred dollars per tank.
  - (2) For a tank qualifying under subsection 3, paragraph "c", six hundred dollars per tank.
- f. For the period from July 1, 1994, through December 31, 1994, in accordance with the following:
  - (1) For a tank satisfying subsection 3, paragraph "a" or "b", three hundred fifty dollars per tank.
  - (2) For a tank qualifying under subsection 3, paragraph "c", seven hundred dollars per tank.
- f.g. For subsequent years time periods, 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 h. The insurance account may offer, at the buyer's option, a range of deductibles. A ten thousand dollar deductible policy shall be offered.

Sec. 8. Section 455G.11, subsection 6, paragraph b, Code 1993, is amended to read as follows:

b. ANNUAL PREMIUMS. The annual premium shall be:

(1) For the year July 1, 1991, through June 30, 1992, two hundred dollars per insured tank.

(2) For the year July 1, 1992, through June 30, 1993, two hundred fifty dollars per insured tank.

(3) For the year July 1, 1993, through June 30, 1994, three hundred dollars per insured tank.

(4) For the period from July 1, 1994, through December 31, 1994, three hundred fifty dollars per insured tank.

f4) [5] For subsequent years time periods, installers and inspectors shall pay an annually adjusted insurance premium to maintain coverage on each tank previously installed or newly

insured by the insurance account. The board may only approve fund coverage through the payment of a premium established on an actuarially sound basis. The premium paid shall be fully earned and is not subject to refund or cancellation. If coverage is purchased for any part of a year the purchaser shall pay the full annual premium.

f5) [5] The board may offer coverage at rates based on sales if the qualifying installer or inspector cannot be rated on a per tank basis, or if the work the installer or inspector performs involves more than tank installation. The rates to develop premiums shall be based on the premium charged per tank under subparagraphs (1), (2), and (3), and (4).

Sec. 9. Section 455G.11, subsection 10, paragraph c, Code 1993, is amended to read as follows:

c. PREMIUMS. The annual premium for insurance coverage shall be two hundred fifty dollars per party, per location, with an overall limit of liability per site of five hundred thousand dollars. *The premiums are fully earned.* Each party purchasing coverage at that site will have the total limit of liability prorated over the total limit among the policies issued, so as to avoid stacking beyond the total coverage limit of five hundred thousand dollars. If coverage is purchased for any part of a year, the purchaser shall pay the full annual premium.

After ~~June-30~~ December 31, 1994, an owner, operator, landowner, or financial institution 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.

Sec. 10. Section 455G.18, subsection 1, Code 1993, is amended to read as follows:

1. The department of natural resources shall adopt rules pursuant to chapter 17A requiring that groundwater professionals register with the department of natural

resources. The rules shall include provisions for suspension or revocation of registration for good cause.

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HAROLD VAN MAANEN  
Speaker of the House

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LEONARD L. BOSWELL  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 644, Seventy-fifth General Assembly.

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ELIZABETH ISAACSON  
Chief Clerk of the House

Approved May 21, 1993

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TERRY E. BRANSTAD  
Governor