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& Environmental  
S. 3/17/98 Do Pass

FEB 27 1998  
Place On Calendar

HOUSE FILE **2490**  
BY COMMITTEE ON ENVIRONMENTAL  
PROTECTION

(SUCCESSOR TO HSB 638)

Passed House, <sup>(P. 601)</sup> Date 3/11/98 Passed Senate, <sup>(P. 853)</sup> Date 3/24/98  
Vote: Ayes 95 Nays 0 Vote: Ayes 48 Nays 0  
Approved April 9, 1998

A BILL FOR

1 An Act relating to the administration of the insurance account of  
2 the comprehensive petroleum underground storage tank fund,  
3 creating an underground storage tank insurance board, an  
4 underground storage tank insurance fund, and transferring  
5 assets and liabilities of the insurance account of the  
6 comprehensive petroleum underground storage tank fund.

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

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HF 2490

1 Section 1. Section 455G.2, subsection 4, Code 1997, is  
2 amended to read as follows:

3 4. "Claimant" means an owner or operator who has received  
4 assistance under the remedial account or who has coverage  
5 under the insurance account fund with respect to a release, or  
6 an installer or inspector who has coverage under the insurance  
7 account fund.

8 Sec. 2. Section 455G.2, Code 1997, is amended by adding  
9 the following new subsection:

10 NEW SUBSECTION. 12A. "Insurance board" means the Iowa  
11 underground storage tank insurance board created under section  
12 455G.11.

13 Sec. 3. Section 455G.3, subsection 3, paragraph c, Code  
14 1997, is amended to read as follows:

15 c. To establish an insurance account fund for insurable  
16 underground storage tank risks within the state as provided by  
17 section 455G.11.

18 Sec. 4. Section 455G.3, subsection 4, Code 1997, is  
19 amended to read as follows:

20 4. The state, the general fund of the state, or any other  
21 fund of the state, other than the Iowa comprehensive petroleum  
22 underground storage tank fund, is not liable for a claim or  
23 cause of action in connection with a tank not owned or  
24 operated by the state, or agency of the state. All expenses  
25 incurred by the fund shall be payable solely from the fund and  
26 no liability or obligation shall be imposed upon the state.  
27 The liability of the fund is limited to the extent of coverage  
28 provided by the account or fund under which a claim is  
29 submitted, subject to the terms and conditions of that  
30 coverage. The liability of the fund is further limited by the  
31 moneys made available to the fund, and no remedy shall be  
32 ordered which would require the fund to exceed its then  
33 current funding limitations to satisfy an award or which would  
34 restrict the availability of moneys for higher priority sites.  
35 The state is not liable for a claim presented against the

1 fund.

2     Sec. 5. Section 455G.4, subsection 3, Code 1997, is  
3 amended to read as follows:

4     3. RULES AND EMERGENCY RULES.

5     a. The board shall adopt rules regarding its practice and  
6 procedures, develop underwriting standards, establish premiums  
7 for insurance account fund coverage and risk factors,  
8 procedures for investigating and settling claims made against  
9 the fund, determine appropriate deductibles or retentions in  
10 coverages or benefits offered, and otherwise implement and  
11 administer this chapter.

12     b. The board may adopt administrative rules under section  
13 17A.4, subsection 2, and section 17A.5, subsection 2,  
14 paragraph "b", to implement this subsection for one year after  
15 May 5, 1989.

16     c. Rules necessary for the implementation and collection  
17 of the environmental protection charge shall be adopted on or  
18 before June 1, 1989.

19     d. Rules necessary for the implementation and collection  
20 of insurance account fund premiums shall be adopted prior to  
21 offering insurance to an owner or operator of a petroleum  
22 underground storage tank or other person.

23     e. Rules related to the establishment of the insurance  
24 account fund and the terms and conditions of coverage shall be  
25 adopted as soon as practicable to permit owners and operators  
26 to meet their applicable compliance date with federal  
27 financial responsibility regulations.

28     f. Rules to facilitate and encourage the use of community  
29 remediation whenever possible shall be adopted.

30     g. The board shall adopt rules relating to appeal  
31 procedures which shall require the administrator to deliver  
32 notice of appeal to the affected parties within fifteen days  
33 of receipt of notice, require that the hearing be held within  
34 one hundred eighty days of the filing of the petition unless  
35 good cause is shown for the delay, and require that a final

1 decision be issued no later than one hundred twenty days  
2 following the close of the hearing. The time restrictions in  
3 this paragraph may be waived by mutual agreement of the  
4 parties.

5 Sec. 6. Section 455G.8, subsection 4, Code 1997, is  
6 amended to read as follows:

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

10 Sec. 7. Section 455G.11, subsections 1 through 6, Code  
11 1997, are amended to read as follows:

12 0A. UNDERGROUND STORAGE TANK INSURANCE FUND.

13 a. An Iowa underground storage tank insurance fund is  
14 created as a separate fund in the state treasury on the  
15 effective date of this Act consisting of all moneys held in  
16 the insurance account of the comprehensive petroleum  
17 underground storage tank fund.

18 Notwithstanding section 8.33, moneys remaining in the fund  
19 at the end of each fiscal year shall not revert to the general  
20 fund but shall remain in the underground storage tank  
21 insurance fund. Notwithstanding section 12C.7, interest or  
22 earnings on moneys in the fund shall be credited to the fund  
23 in addition to any other income specifically allocated to the  
24 underground storage tank insurance fund.

25 b. Amounts in the underground storage tank insurance fund  
26 shall not be subject to appropriation for any purpose by the  
27 general assembly, but shall be used only for the purposes set  
28 forth in this section. The treasurer of state shall act as  
29 custodian of the fund and disperse moneys contained in it as  
30 directed by the board. The treasurer of state is authorized  
31 to invest the moneys deposited in the fund at the discretion  
32 of the board. The income from such investments shall be  
33 credited to and deposited in the fund. The fund shall be  
34 administered by the board which shall make expenditures from  
35 the fund consistent with the purposes of the programs provided

1 for in this chapter without further appropriation.

2 c. No later than July 1, 2004, all moneys in the fund  
3 shall be transferred to the insurance board when restructured  
4 as an independent nonprofit entity organized to provide an  
5 allowable mechanism to demonstrate financial responsibility as  
6 required in 40 C.F.R. pts. 280 and 281, owned and operated by  
7 insureds, as determined by the comprehensive petroleum  
8 underground storage tank fund board.

9 OB. UNDERGROUND STORAGE TANK INSURANCE BOARD.

10 a. An underground storage tank insurance board is  
11 established and shall consist of the following members:

12 (1) The treasurer of state or the treasurer of state's  
13 designee serving for a two-year term. The treasurer of state  
14 or the treasurer of state's designee shall serve as a  
15 nonvoting member of the insurance board.

16 (2) The auditor of state or the auditor of state's  
17 designee serving for a three-year term. The auditor of state  
18 or the auditor of state's designee shall serve as a nonvoting  
19 member of the insurance board.

20 (3) A representative of a governmental subdivision which  
21 owns an underground storage tank system which is insured  
22 through the insurance account and was insured through the  
23 insurance account of the comprehensive petroleum underground  
24 storage tank fund beginning on or before October 26, 1990,  
25 appointed by the governor and serving a six-year term.

26 (4) Two owners or operators appointed by the governor who  
27 have been petroleum systems insureds through the insurance  
28 account and were insured through the insurance account of the  
29 comprehensive petroleum underground storage tank fund on or  
30 before October 26, 1990. The insurance board members  
31 appointed under this subparagraph shall serve a term of six  
32 years and shall be eligible to serve subsequent terms pursuant  
33 to paragraph "b".

34 b. After the initial terms served by the insurance board  
35 members designated in paragraph "a", subparagraphs (1), (2),

1 (3), and (4), all subsequent insurance board members shall be  
2 a part of and elected by the population of private insureds  
3 who have been petroleum systems insureds through the  
4 underground storage tank insurance fund and were insured  
5 through the insurance account of the comprehensive petroleum  
6 underground storage tank fund. The subsequent insurance board  
7 members elected pursuant to this paragraph shall serve for  
8 three-year terms and are eligible to serve an unlimited number  
9 of terms.

10 c. Members of the insurance board are entitled to receive  
11 reimbursement of actual expenses incurred in the discharge of  
12 their duties within the limits of the moneys appropriated to  
13 the insurance board or made available to the fund.

14 d. Members of the insurance board shall elect a voting  
15 chairperson from among the members who are privately insured  
16 owners and operators.

17 OC. RECOMMENDATIONS FOR RESTRUCTURING. Prior to the  
18 restructuring of the insurance board as an independent  
19 nonprofit entity, the insurance board shall provide  
20 recommendations to the comprehensive petroleum underground  
21 storage tank fund board relating to all of the following:

22 a. Relating to rules, practices, procedures, underwriting  
23 criteria, premium determinations, organizational structure,  
24 procedures for investigating and settling claims, determining  
25 appropriate deductibles, benefits offered, and otherwise  
26 implementing and administering the underground storage tank  
27 insurance fund.

28 b. Confirming that the insurance board has established a  
29 process to independently provide the following:

30 (1) Long-term insurability based upon competitive rates  
31 for insureds who are in compliance with technical regulatory  
32 requirements.

33 (2) Elimination of any lapse in coverage between state  
34 insurance coverage and private insurance coverage.

35 (3) Ease in transition from state underwriting criteria,

1 application process, claims handling, and premium  
2 determinations.

3 (4) Participation of insureds in establishing  
4 underwriting, application, claims, and premium determinations.

5 (5) Continued approval as an acceptable financial  
6 assurance mechanism as required in 40 C.F.R. pts. 280 and 281.

7 c. Determining a date specific upon which all assets and  
8 liabilities of the insurance fund will be transferred to the  
9 insurance board as an independent nonprofit entity organized  
10 to provide an allowable mechanism to provide financial  
11 responsibility as required by 40 C.F.R. pts. 280 and 281,  
12 owned and operated by insureds, on or before July 1, 2004.

13 OD. TRANSFER OF INSURANCE BOARD MONEYS.

14 a. If the insurance board dissolves or ceases to function  
15 as an acceptable financial assurance mechanism as required in  
16 40 C.F.R. pts. 280 and 281, any unencumbered and unobligated  
17 moneys transferred to the insurance board pursuant to  
18 subsection 0A, paragraph "c", shall be transferred to the  
19 comprehensive petroleum underground storage tank fund, or if  
20 the comprehensive petroleum underground storage tank fund is  
21 no longer in existence, the unencumbered and unobligated  
22 moneys shall be transferred to the general fund of the state.

23 b. If a person or persons purchase the ownership rights of  
24 the assets of the underground storage tank insurance board,  
25 any unencumbered and unobligated moneys transferred to the  
26 insurance board pursuant to subsection 0A, paragraph "c",  
27 shall be transferred to the comprehensive petroleum  
28 underground storage tank fund, or if the comprehensive  
29 petroleum underground storage tank fund is no longer in  
30 existence, the unencumbered and unobligated moneys shall be  
31 transferred to the general fund of the state.

32 1. INSURANCE ACCOUNT FUND AS A FINANCIAL ASSURANCE  
33 MECHANISM. The insurance account fund shall offer financial  
34 assurance for a qualified owner or operator under the terms  
35 and conditions provided for under this section. Coverage may

1 be provided to the owner or the operator, or to each  
2 separately. The board is not required to resolve whether the  
3 owner or operator, or both are responsible for a release under  
4 the terms of any agreement between the owner and operator.

5 The source of funds for the insurance account fund shall be  
6 from the following:

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

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

13 2. LIMITS OF COVERAGE AVAILABLE. An owner or operator  
14 required to maintain proof of financial responsibility may  
15 purchase coverage up to the federally required levels for that  
16 owner or operator subject to the terms and conditions under  
17 this section and those adopted by the board.

18 3. ELIGIBILITY OF OWNERS AND OPERATORS FOR INSURANCE  
19 ACCOUNT COVERAGE. An owner or operator, subject to  
20 underwriting requirements and such terms and conditions deemed  
21 necessary and convenient by the board, may purchase insurance  
22 coverage from the insurance account fund to provide proof of  
23 financial responsibility provided that a tank to be insured  
24 satisfies one of the following conditions:

25 a. Satisfies performance standards for new underground  
26 storage tank systems as specified by the federal environmental  
27 protection agency in 40 C.F.R. § 280.20, as amended through  
28 January 1, 1989.

29 b. Has satisfied on or before the date of the application  
30 standards for upgraded underground storage tank systems as  
31 specified by the federal environmental protection agency in 40  
32 C.F.R. § 280.21, as amended through January 1, 1989.

33 ~~c. The applicant certifies in writing to the board that~~  
34 ~~the tank to be insured will be brought into compliance with~~  
35 ~~either paragraph "a" or "b", on or before December 22, 1998.~~



1 provided that prior to the provision of insurance account  
2 coverage, the tank site tests release free. An owner or  
3 operator who fails to comply as certified to the board on or  
4 before December 22, 1998, shall not insure that tank through  
5 the insurance account unless and until the tank satisfies the  
6 requirements of paragraph "a" or "b". An owner or operator  
7 who fails to comply with either paragraph "a" or "b" by  
8 October 26, 1993, or who fails to enter into a contract on or  
9 before October 26, 1993, which, upon completion, will bring  
10 the owner or operator into compliance with either paragraph  
11 "a" or "b" by December 22, 1998, may be eligible for financial  
12 assurance under this section but shall be subject to an  
13 additional surcharge of eight hundred dollars per tank in  
14 addition to payment of a premium that is equal to two times  
15 the cost of the premium required under subsection 4, paragraph  
16 "g", per insured time period.

17 d. The applicant either:

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

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

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

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

32 4. ACTUARIALLY SOUND PREMIUMS BASED ON RISK FACTOR  
33 ADJUSTMENTS AFTER FIVE YEARS. The annual premium for  
34 insurance coverage shall be:

35 a. For the year July 1, 1989, through June 30, 1990, one

1 hundred-dollars-per-tank.

2 b.---For-the-year-July-17-19907-through-June-307-19917-one  
3 hundred-fifty-dollars-per-tank.

4 c7---For-the-year-July-17-19917-through-June-307-19927-two  
5 hundred-dollars-per-tank.

6 d.---For-the-year-July-17-19927-through-June-307-19937-two  
7 hundred-fifty-dollars-per-tank.

8 e.---For-the-year-July-17-19937-through-June-307-19947-in  
9 accordance-with-the-following:

10 (1)---For-a-tank-satisfying-subsection-37-paragraph-"a"-or  
11 "b"7-three-hundred-dollars-per-tank.

12 (2)---For-a-tank-qualifying-under-subsection-37-paragraph  
13 "c"7-six-hundred-dollars-per-tank.

14 f.---For-the-period-from-July-17-19947-through-December-317  
15 19947-in-accordance-with-the-following:

16 (1)---For-a-tank-satisfying-subsection-37-paragraph-"a"-or  
17 "b"7-three-hundred-fifty-dollars-per-tank.

18 (2)---For-a-tank-qualifying-under-subsection-37-paragraph  
19 "c"7-seven-hundred-dollars-per-tank.

20 c. Is in compliance with all technical requirements of the  
21 department.

22 4. INSURANCE ACCOUNT PREMIUMS.

23 g.---For-subsequent-time-periods7-an An owner or operator  
24 applying for coverage shall pay an annually adjusted insurance  
25 premium for coverage by the insurance account fund. The board  
26 may only approve fund coverage through the payment of a  
27 premium established on an actuarially sound basis. Risk  
28 factors shall be taken into account in establishing premiums.  
29 It is the intent of the general assembly that an actuarially  
30 sound premium reflect the risk to the insurance account fund  
31 presented by the insured. Risk factor adjustments should  
32 reflect the range of risk presented by the variety of tank  
33 systems, monitoring systems, and risk management practices in  
34 the general insurable tank population. Premium adjustments  
35 for risk factors should at minimum take into account lifetime

1 costs of a tank and monitoring system and insurance account  
2 fund premiums for that tank system so as to provide a positive  
3 economic incentive to the owner or operator to install the  
4 more environmentally safe option so as to reduce the exposure  
5 of the insurance account fund to loss. Actuarially sound is  
6 not limited in its meaning to fund premium revenue equaling or  
7 exceeding fund expenditures for the general tank population.

8 ~~Tanks-receiving-financial-assurance-pursuant-to-subsection~~  
9 ~~37-paragraph-"c",-shall-not-be-included-in-the-general-tank~~  
10 ~~population-for-purposes-of-determining-actuarially-sound~~  
11 ~~premiums-under-this-paragraph.~~

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

14 h. The insurance account fund may offer, at the buyer's  
15 option, a range of deductibles. A ten thousand dollar  
16 deductible policy shall be offered.

17 5. FUTURE REPEAL. The future repeal of this section shall  
18 not terminate the following obligations or authorities  
19 necessary to administer the obligations until these  
20 obligations are satisfied:

21 a. The payment of claims filed prior to the effective date  
22 of any future repeal, against the insurance account fund until  
23 moneys in the account fund are exhausted. Upon exhaustion of  
24 the moneys in the account fund, any remaining claims shall be  
25 invalid.

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

28 6. INSTALLER'S AND INSPECTOR'S INSURANCE COVERAGE.

29 a. COVERAGE. The board ~~shall~~ may offer insurance coverage  
30 under the ~~fund's~~ insurance account fund to installers and  
31 inspectors of certified underground storage tank installations  
32 within the state for an environmental hazard arising in  
33 connection with a certified installation as provided in this  
34 subsection. Coverage shall be limited to environmental hazard  
35 coverage for both corrective action and third-party liability

1 for a certified tank installation within the state in  
2 connection with a release from that tank.

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

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

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

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

10 (4) For the period from July 1, 1994, through December 31,  
11 1994, three hundred fifty dollars per insured tank.

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

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

27 c. LIMITS OF COVERAGE AVAILABLE. Installers and  
28 inspectors may purchase coverage up to one million dollars per  
29 occurrence and two million dollars aggregate, subject to the  
30 terms and conditions under this section and those adopted by  
31 the board.

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

35 e. EXCESS COVERAGE. Installers and inspectors may

1 purchase excess coverage of up to five million dollars upon  
2 such terms and conditions as determined by the board.

3 f. CERTIFICATION OF TANK INSTALLATIONS. The board shall  
4 adopt certification rules requiring certification of a new  
5 tank installation as a precondition to offering insurance to  
6 an owner or operator or an installer or inspector. The board  
7 shall set in the rule the effective date for the certification  
8 requirement. Certification rules shall at minimum require  
9 that an installation be personally inspected by an independent  
10 licensed engineer, local fire marshal, state fire marshal's  
11 designee, or other person who is unaffiliated with the tank  
12 owner, operator, installer or inspector, who is qualified and  
13 authorized by the board to perform the required inspection and  
14 that the tank and installation of the tank comply with  
15 applicable technical standards and manufacturer's instructions  
16 and warranty conditions. An inspector may be an owner or  
17 operator of a tank, or an employee of an owner, operator, or  
18 installer.

19 g. The board may cease offering insurance coverage under  
20 this subsection if the board determines that competitive  
21 private market alternatives exist.

22 Sec. 8. Section 455G.11, subsection 8, Code 1997, is  
23 amended to read as follows:

24 8. ACCOUNT EXPENDITURES. Moneys in the insurance account  
25 fund may be expended to take corrective action for and to  
26 compensate a third party for damages, including but not  
27 limited to payment of a judgment for bodily injury or property  
28 damage caused by a release from a tank, where coverage has  
29 been provided to the owner or operator from the insurance  
30 account fund, up to the limits of coverage extended. A  
31 personal injury is not a compensable third-party liability  
32 damage.

33 Sec. 9. Section 455G.11, subsection 10, Code 1997, is  
34 amended by striking the subsection.

35 Sec. 10. Section 455G.11, subsection 11, Code 1997, is

1 amended to read as follows:

2 ~~11~~ 10. LIMITATIONS ON THIRD-PARTY LIABILITY. To the  
3 extent that coverage under this section includes third-party  
4 liability, third-party liability specifically excludes any  
5 claim, cause of action, or suit, for personal injury  
6 including, but not limited to, loss of use or of private  
7 enjoyment, mental anguish, false imprisonment, wrongful entry  
8 or eviction, humiliation, discrimination, or malicious  
9 prosecution.

10 Sec. 11. Section 455G.11, Code 1997, is amended by adding  
11 the following new subsection:

12 NEW SUBSECTION. 11. The board may cease offering  
13 insurance coverage under this subsection if the board  
14 determines that competitive private market alternatives exist  
15 and if the board determines that all of the following  
16 conditions are met:

17 a. Long-term insurability based upon competitive rates for  
18 insureds who are in compliance with technical regulatory  
19 requirements.

20 b. Elimination of any lapse in coverage between state  
21 insurance coverage and private insurance coverage.

22 c. Ease in transition from state underwriting criteria,  
23 application process, claims handling, and premium  
24 determinations.

25 d. Participation of insureds in establishing underwriting,  
26 application, claims, and premium determinations.

27 e. Continued approval as an acceptable financial assurance  
28 mechanism as required in 40 C.F.R. pts. 280 and 281.

29 Sec. 12. Section 455G.13, subsection 2, paragraph b, Code  
30 1997, is amended to read as follows:

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

34 Sec. 13. Section 455G.13, subsection 12, Code 1997, is  
35 amended to read as follows:

1 12. RECOVERY OR SUBROGATION -- INSTALLERS AND INSPECTORS.  
2 Notwithstanding any other provision contained in this chapter,  
3 the board or a person insured under the insurance account fund  
4 has no right of recovery or right of subrogation against an  
5 installer or an inspector insured by the fund for the tank  
6 giving rise to the liability other than for recovery of any  
7 deductibles paid.

8 Sec. 14. Section 455G.14, Code 1997, is amended to read as  
9 follows:

10 455G.14 FUND NOT SUBJECT TO REGULATION.

11 The fund, including but not limited to insurance coverage  
12 offered by the insurance account fund, is not subject to  
13 regulation under chapter 502 or title XIII, subtitle 1.

14 EXPLANATION

15 This bill creates an underground storage tank insurance  
16 fund consisting of all moneys held in the insurance account of  
17 the comprehensive petroleum underground storage tank fund.  
18 The treasurer of state shall act as the custodian of the fund  
19 and the fund shall be administered by the comprehensive  
20 petroleum underground storage tank fund board. By July 1,  
21 2004, the underground storage tank insurance board shall  
22 receive all the assets and liabilities of the insurance fund  
23 when the insurance board is restructured as an independent  
24 nonprofit entity.

25 The insurance board shall consist of five members. The  
26 insurance board shall provide information to the comprehensive  
27 petroleum underground storage tank fund board relating to all  
28 of the following:

29 1. Rules, practices, and procedures for implementing and  
30 administering the insurance fund.

31 2. Confirming the insurance board has established a  
32 process to independently provide long-term insurability based  
33 upon competitive rates; eliminate any lapse in coverage;  
34 provide ease in transition; allow participation of insureds in  
35 establishing the rules, practices, and procedures; and

1 continue approval as an acceptable financial assurance  
2 mechanism as required by federal law.

3 3. The determination of a date certain upon which all  
4 assets and liabilities of the insurance account shall be  
5 transferred to the insurance board once the insurance board is  
6 an independent nonprofit entity.

7 The bill provides that if the insurance board dissolves or  
8 ceases to function as an acceptable financial assurance  
9 mechanism or if a person or persons purchase the ownership  
10 rights of the assets of the insurance board then any  
11 unencumbered and unobligated moneys transferred to the  
12 insurance board from the insurance fund shall be transferred  
13 to the comprehensive petroleum underground storage tank fund  
14 if the fund is still in existence or else to the general fund  
15 of the state.

16 The bill updates one of the alternative conditions for  
17 owners and operators to receive insurance account coverage to  
18 require compliance with all technical requirements of the  
19 department. The bill also updates a provision relating to  
20 actuarially sound premiums.

21 The bill amends provisions relating to installer's and  
22 inspector's insurance coverage. Currently, the board is  
23 required to provide such coverage. The bill amends this  
24 requirement to make it optional. The bill also allows the  
25 board to choose to cease offering installer's and inspector's  
26 insurance coverage if the board determines that competitive  
27 private market alternatives exist.

28 The bill provides that the comprehensive petroleum  
29 underground storage tank fund board may cease offering  
30 insurance coverage if the board determines that competitive  
31 private market alternatives exist and if the board determines  
32 that certain criteria are met.

33 The bill removes the availability of property transfer  
34 insurance under Code section 455G.11(10).

35 The bill makes conforming amendments.



1 Pursuant to 1989 Iowa Acts, chapter 131, section 61, Code  
2 section 455G.11 shall be repealed effective July 1, 2004.

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**HOUSE FILE 2490  
FISCAL NOTE**

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A fiscal note for House File 2490-Revised 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 2490 alters the State's Underground Storage Tank (UST) Insurance Program by creating a separate UST Insurance Board and UST Insurance Fund. By July 1, 2004, the UST Insurance Board shall restructure itself as an independent nonprofit entity organized as a mutual insurance company. On or before July 1, 2004, the assets and liabilities of the State UST Insurance Program shall be transferred to the mutual insurance company.

The UST Insurance Board would be composed of three owners or operators of underground storage tanks insured by the State on or before October 26, 1990. One of these shall be a representative of a governmental subdivision. The State Treasurer and State Auditor, or their designees, shall serve as nonvoting members of the Board for the Board's first two and three years, respectively.

**BACKGROUND**

The State's UST Insurance Program was created in HF 447 (Underground Storage Tank Act of 1989) as a response to impending federal regulations requiring owners of petroleum underground storage tanks to show financial responsibility for environmental contamination. At that time, private insurance exceeded \$1,000 per tank per year, if it could be purchased at all. The Insurance Program created in HF 447 was designed to be a subsidized Program for the first five years, with initial annual per-tank premiums of \$100. The premiums were raised annually until the rates were required to be actuarially sound, starting January 1, 1995. The current average per-tank premium is approximately \$400, and the premiums are adjusted annually based on actuarial analysis.

Since Program inception, the UST Fund has paid \$500,000 in Insurance Program claims, while collecting \$22.0 million in premiums. The premiums have earned approximately \$5.2 million in interest, while the Program has cost \$2.5 million to administer.

**ASSUMPTIONS**

All future revenue and expenditure assumptions are for the February 1, 1998, through June 30, 2004, time period.

1. The Insurance Program balance through January 1998 is \$24.2 million.
2. Future premiums will raise \$14.4 million.
3. Future interest will raise \$7.4 million.
4. Future administration will cost \$2.0 million.
5. Future claims and claims that have occurred but have yet to be reported will cost \$17.0 million.
6. The Legislature will sunset the use tax revenue allocation (\$17.0 million

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annually in FY 2004 and beyond) to the UST Program when sufficient money is available from all revenue sources to cover future liabilities of the UST Program.

#### FISCAL IMPACT

The fiscal impact of HF 2490 is \$27.0 million, the projected Insurance Program ending balance (net of liabilities) at the end of FY 2004. The impact will occur on July 1, 2004, or when the proposed UST Insurance Board is converted to a mutual insurance company, whichever is earlier. The impact is due to provisions in the Bill that transfers all assets of the Insurance Fund to the mutual insurance company. Current Code of Iowa language requires the State to retain any Insurance Program balance not used for administration or claims.

Because the funding source for the UST Remedial Program is an annual (without sunset) allocation of use tax receipts (Section 423.24, Code of Iowa), and Section 455G.9(2), Code of Iowa allows the UST Board to fund the Remedial Program from use tax receipts and "other moneys and revenues budgeted to the remedial account by the Board," the UST Board would use the excess Insurance Program money to provide supplemental funding for the Remedial Program.

#### SOURCES

Underground Storage Tank Board  
Legislative Fiscal Bureau

(LSB 3671HV.2, JWR)

FILED MARCH 17, 1998

BY DENNIS PROUTY, FISCAL DIRECTOR

**HOUSE FILE 2490  
FISCAL NOTE**

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A fiscal note for House File 2490 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 2490 alters the State's Underground Storage Tank (UST) Insurance Program by creating a separate UST Insurance Board and UST Insurance Fund. By July 1, 2004, the UST Insurance Board shall restructure itself as an independent nonprofit entity organized as a mutual insurance company. On or before July 1, 2004, the assets and liabilities of the State UST Insurance Program shall be transferred to the mutual insurance company.

The UST Insurance Board would be composed of three owners or operators of underground storage tanks insured by the State on or before October 26, 1990. One of these shall be a representative of a governmental subdivision. The State Treasurer and State Auditor, or their designees, shall serve as nonvoting members of the Board for the Board's first two and three years, respectively.

**BACKGROUND**

The State's UST Insurance Program was created in HF 447 (Underground Storage Tank Act of 1989) as a response to impending federal regulations requiring owners of petroleum underground storage tanks to show financial responsibility for environmental contamination. At that time, private insurance exceeded \$1,000 per tank per year, if it could be purchased at all. The Insurance Program created in HF 447 was designed to be a subsidized Program for the first five years, with initial annual per-tank premiums of \$100. The premiums were raised annually until the rates were required to be actuarially sound, starting January 1, 1995. The current average per-tank premium is approximately \$400, and the premiums are adjusted annually based on actuarial analysis.

Since Program inception, the UST Fund has paid \$500,000 in Insurance Program claims, while collecting \$22.0 million in premiums. The premiums have earned approximately \$5.2 million in interest, while the Program has cost \$2.5 million to administer.

**ASSUMPTIONS**

All revenue and expenditure assumptions are for the February 1, 1998, through June 30, 2004, time period.

1. Future premiums will raise \$16.4 million.
2. Future interest will raise \$7.4 million.
3. Future administration will cost \$2.0 million.
4. Future claims and claims that have occurred but have yet to be reported will cost \$17.0 million.

**FISCAL IMPACT**

The fiscal impact of HF 2490 is \$27.0 million (the projected Insurance Program ending balance at the end of FY 2004). The impact will occur on July 1, 2004, or when the UST Insurance Board is converted to a mutual insurance company, whichever is earlier. The impact is due to provisions in the Bill that would turn over all assets of the Insurance Fund to the mutual insurance company. Current Code of Iowa language requires the State to retain any Insurance Program balance not used for administration or claims. Because the funding source for the UST Program is an annual (without a sunset) allocation of Road Use Tax Fund motor vehicle use tax receipts (Section 423.24, Code of Iowa), that Fund would absorb the fiscal impact of the Bill.

SOURCES

Underground Storage Tank Board  
Legislative Fiscal Bureau

(LSB 3671hv, JWR)

FILED MARCH 11, 1998

BY DENNIS PROUTY, FISCAL DIRECTOR

Rep. Chipp, Chron.  
Rep. Van Fossen  
Rep. Witt

HSB 638

ENVIRONMENTAL PROTECTION

HOUSE FILE SF 2498 Submitted by  
BY (PROPOSED COMMITTEE ON  
ENVIRONMENTAL PROTECTION  
BILL BY CHAIRPERSON HAHN)

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

**A BILL FOR**

1 An Act relating to the administration of the insurance account of  
2 the comprehensive petroleum underground storage tank fund,  
3 creating an underground storage tank insurance board, an  
4 underground storage tank insurance fund, and transferring  
5 assets and liabilities of the insurance account of the  
6 comprehensive petroleum underground storage tank fund.  
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 455G.2, Code 1997, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 12A. "Insurance board" means the Iowa  
4 underground storage tank insurance board created under section  
5 455G.11.

6 Sec. 2. Section 455G.4, Code 1997, is amended by adding  
7 the following new subsection:

8 NEW SUBSECTION. 6. INSURANCE ACCOUNT. By July 1, 2004,  
9 the board shall transfer all assets and liabilities of the  
10 insurance account created in section 455G.11 to the insurance  
11 board when restructured as an independent nonprofit entity  
12 organized to provide an allowable mechanism to demonstrate  
13 financial responsibility as required by 40 C.F.R. pts. 280 and  
14 281, owned and operated by insureds, through a transition  
15 process as recommended by the insurance board.

16 Sec. 3. Section 455G.11, subsections 3 through 6, Code  
17 1997, are amended to read as follows:

18 3. ELIGIBILITY OF OWNERS AND OPERATORS FOR INSURANCE  
19 ACCOUNT COVERAGE. An owner or operator, subject to under-  
20 writing requirements and such terms and conditions deemed  
21 necessary and convenient by the board, may purchase insurance  
22 coverage from the insurance account to provide proof of  
23 financial responsibility provided that a tank to be insured  
24 satisfies one of the following conditions:

25 a. Satisfies performance standards for new underground  
26 storage tank systems as specified by the federal environmental  
27 protection agency in 40 C.F.R. § 280.20, as amended through  
28 January 1, 1989.

29 b. Has satisfied on or before the date of the application  
30 standards for upgraded underground storage tank systems as  
31 specified by the federal environmental protection agency in 40  
32 C.F.R. § 280.21, as amended through January 1, 1989.

33 ~~c. The applicant certifies in writing to the board that~~  
34 ~~the tank to be insured will be brought into compliance with~~  
35 ~~either paragraph "a" or "b", on or before December 22, 1998.~~

1 provided-that-prior-to-the-provision-of-insurance-account  
 2 coverage, the tank site tests release free. -- An owner or  
 3 operator who fails to comply as certified to the board on or  
 4 before December 22, 1998, shall not insure that tank through  
 5 the insurance account unless and until the tank satisfies the  
 6 requirements of paragraph "a" or "b". -- An owner or operator  
 7 who fails to comply with either paragraph "a" or "b" by  
 8 October 26, 1993, or who fails to enter into a contract on or  
 9 before October 26, 1993, which, upon completion, will bring  
 10 the owner or operator into compliance with either paragraph  
 11 "a" or "b" by December 22, 1998, may be eligible for financial  
 12 assurance under this section but shall be subject to an  
 13 additional surcharge of eight hundred dollars per tank in  
 14 addition to payment of a premium that is equal to two times  
 15 the cost of the premium required under subsection 4, paragraph  
 16 "g", per insured time period.

- 17 d. -- The applicant either:
- 18 (1) -- Is maintaining financial responsibility pursuant to
  - 19 current or previously applicable federal or state financial
  - 20 responsibility requirements on petroleum underground storage
  - 21 tanks within the state.
  - 22 (2) -- Complies with the applicable following date for
  - 23 financial responsibility:
    - 24 (a) -- On or before April 26, 1990, for a petroleum marketing
    - 25 firm owning at least thirteen, but no more than ninety-nine
    - 26 petroleum underground storage tanks.
    - 27 (b) -- On or before October 26, 1990, for an owner or
    - 28 operator not described in subparagraph subdivision (a), and
    - 29 not currently or previously required to maintain financial
    - 30 responsibility by federal or state law on tanks within the
    - 31 state.

32 4. -- ACTUARIALLY SOUND PREMIUMS BASED ON RISK FACTOR  
 33 ADJUSTMENTS AFTER FIVE YEARS. -- The annual premium for  
 34 insurance coverage shall be:

- 35 a. -- For the year July 1, 1989, through June 30, 1990, one



1 hundred-dollars-per-tank.

2 b.---For-the-year-July-17-19907-through-June-307-19917-one  
3 hundred-fifty-dollars-per-tank.

4 c.---For-the-year-July-17-19917-through-June-307-19927-two  
5 hundred-dollars-per-tank.

6 d.---For-the-year-July-17-19927-through-June-307-19937-two  
7 hundred-fifty-dollars-per-tank.

8 e.---For-the-year-July-17-19937-through-June-307-19947-in  
9 accordance-with-the-following:

10 (1)---For-a-tank-satisfying-subsection-37-paragraph-"a"-or  
11 "b"7-three-hundred-dollars-per-tank.

12 (2)---For-a-tank-qualifying-under-subsection-37-paragraph  
13 "c"7-six-hundred-dollars-per-tank.

14 f.---For-the-period-from-July-17-19947-through-December-317  
15 19947-in-accordance-with-the-following:

16 (1)---For-a-tank-satisfying-subsection-37-paragraph-"a"-or  
17 "b"7-three-hundred-fifty-dollars-per-tank.

18 (2)---For-a-tank-qualifying-under-subsection-37-paragraph  
19 "c"7-seven-hundred-dollars-per-tank.

20 c. Is in compliance with all technical requirements of the  
21 department.

22 4. INSURANCE ACCOUNT PREMIUMS.

23 g.---For-subsequent-time-periods7-an An owner or operator  
24 applying for coverage shall pay an annually adjusted insurance  
25 premium for coverage by the insurance account. The board may  
26 only approve fund coverage through the payment of a premium  
27 established on an actuarially sound basis. Risk factors shall  
28 be taken into account in establishing premiums. It is the  
29 intent of the general assembly that an actuarially sound  
30 premium reflect the risk to the insurance account presented by  
31 the insured. Risk factor adjustments should reflect the range  
32 of risk presented by the variety of tank systems, monitoring  
33 systems, and risk management practices in the general  
34 insurable tank population. Premium adjustments for risk  
35 factors should at minimum take into account lifetime costs of

1 a tank and monitoring system and insurance account premiums  
2 for that tank system so as to provide a positive economic  
3 incentive to the owner or operator to install the more  
4 environmentally safe option so as to reduce the exposure of  
5 the insurance account to loss. Actuarially sound is not  
6 limited in its meaning to fund premium revenue equaling or  
7 exceeding fund expenditures for the general tank population.

8 ~~Tanks-receiving-financial-assurance-pursuant-to-subsection~~  
9 ~~37-paragraph-"c", shall not be included in the general-tank~~  
10 ~~population-for-purposes-of-determining-actuarially-sound~~  
11 ~~premiums-under-this-paragraph.~~

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

14 h. The insurance account may offer, at the buyer's option,  
15 a range of deductibles. A ten thousand dollar deductible  
16 policy shall be offered.

17 5. FUTURE REPEAL. The future repeal of this section shall  
18 not terminate the following obligations or authorities  
19 necessary to administer the obligations until these  
20 obligations are satisfied:

21 a. The payment of claims filed prior to the effective date  
22 of any future repeal, against the insurance account until  
23 moneys in the account are exhausted. Upon exhaustion of the  
24 moneys in the account, any remaining claims shall be invalid.

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

27 6. INSTALLER'S AND INSPECTOR'S INSURANCE COVERAGE.

28 a. COVERAGE. The board shall may offer insurance coverage  
29 under the fund's insurance account to installers and  
30 inspectors of certified underground storage tank installations  
31 within the state for an environmental hazard arising in  
32 connection with a certified installation as provided in this  
33 subsection. Coverage shall be limited to environmental hazard  
34 coverage for both corrective action and third-party liability  
35 for a certified tank installation within the state in

1 connection with a release from that tank.

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 (5) For subsequent time periods, installers and inspectors  
12 shall pay an annually adjusted insurance premium to maintain  
13 coverage on each tank previously installed or newly insured by  
14 the insurance account. The board may only approve fund  
15 coverage through the payment of a premium established on an  
16 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 (6) The board may offer coverage at rates based on sales  
21 if the qualifying installer or inspector cannot be rated on a  
22 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), (3), and (4).

26 c. LIMITS OF COVERAGE AVAILABLE. Installers and  
27 inspectors may purchase coverage up to one million dollars per  
28 occurrence and two million dollars aggregate, subject to the  
29 terms and conditions under this section and those adopted by  
30 the board.

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

34 e. EXCESS COVERAGE. Installers and inspectors may  
35 purchase excess coverage of up to five million dollars upon

1 such terms and conditions as determined by the board.

2 f. CERTIFICATION OF TANK INSTALLATIONS. The board shall  
3 adopt certification rules requiring certification of a new  
4 tank installation as a precondition to offering insurance to  
5 an owner or operator or an installer or inspector. The board  
6 shall set in the rule the effective date for the certification  
7 requirement. Certification rules shall at minimum require  
8 that an installation be personally inspected by an independent  
9 licensed engineer, local fire marshal, state fire marshal's  
10 designee, or other person who is unaffiliated with the tank  
11 owner, operator, installer or inspector, who is qualified and  
12 authorized by the board to perform the required inspection and  
13 that the tank and installation of the tank comply with  
14 applicable technical standards and manufacturer's instructions  
15 and warranty conditions. An inspector may be an owner or  
16 operator of a tank, or an employee of an owner, operator, or  
17 installer.

18 g. The board may cease offering insurance coverage under  
19 this subsection if the board determines that competitive  
20 private market alternatives exist.

21 Sec. 4. Section 455G.11, subsection 10, Code 1997, is  
22 amended by striking the subsection.

23 Sec. 5. Section 455G.11, subsection 11, Code 1997, is  
24 amended to read as follows:

25 ~~10.~~ 10. LIMITATIONS ON THIRD-PARTY LIABILITY. To the  
26 extent that coverage under this section includes third-party  
27 liability, third-party liability specifically excludes any  
28 claim, cause of action, or suit, for personal injury  
29 including, but not limited to, loss of use or of private  
30 enjoyment, mental anguish, false imprisonment, wrongful entry  
31 or eviction, humiliation, discrimination, or malicious  
32 prosecution.

33 Sec. 6. NEW SECTION. 455G.11A UNDERGROUND STORAGE TANK  
34 INSURANCE FUND -- BOARD.

35 1. UNDERGROUND STORAGE TANK INSURANCE FUND.

1 a. The Iowa underground storage tank insurance fund is  
2 created as a separate fund in the state treasury.

3 Notwithstanding section 8.33, moneys remaining in the fund  
4 at the end of each fiscal year shall not revert to the general  
5 fund but shall remain in the underground storage tank  
6 insurance fund. Notwithstanding section 12C.7, interest or  
7 earnings on moneys in the fund shall be credited to the fund  
8 in addition to any other income specifically allocated to the  
9 underground storage tank insurance fund. The underground  
10 storage tank insurance fund shall include the following:

11 (1) Moneys credited to the fund under this section.

12 (2) Moneys credited to the fund from the Iowa  
13 comprehensive petroleum underground storage tank fund.

14 (3) Moneys appropriated to the fund for the purposes  
15 provided in this section.

16 b. Amounts in the underground storage tank insurance fund  
17 shall not be subject to appropriation for any purpose by the  
18 general assembly, but shall be used only for the purposes set  
19 forth in this section. The treasurer of state shall act as  
20 custodian of the fund and disperse moneys contained in it as  
21 directed by the insurance board. The treasurer of state is  
22 authorized to invest the moneys deposited in the fund at the  
23 discretion of the board. The income from such investments  
24 shall be credited to and deposited in the fund. The fund  
25 shall be administered by the insurance board which shall make  
26 expenditures from the fund consistent with the purposes of the  
27 programs provided for in this chapter without further  
28 appropriation.

29 c. No later than July 1, 2004, all moneys in the fund  
30 shall be transferred to the insurance board when restructured  
31 as an independent nonprofit entity organized to provide an  
32 allowable mechanism to demonstrate financial responsibility as  
33 required in 40 C.F.R. pts. 280 and 281, owned and operated by  
34 insureds, as determined by the comprehensive petroleum  
35 underground storage tank fund board.

1 2. UNDERGROUND STORAGE TANK INSURANCE BOARD.

2 a. The underground storage tank insurance board is  
3 established and shall consist of the following members:

4 (1) The treasurer of state or the treasurer of state's  
5 designee serving for a two-year term.

6 (2) The auditor of state or the auditor's designee serving  
7 for a three-year term.

8 (3) A representative of a governmental subdivision which  
9 owns an underground storage tank system which is insured  
10 through the insurance account and was insured through the  
11 insurance account of the comprehensive petroleum underground  
12 storage tank fund beginning on or before October 26, 1990,  
13 appointed by the governor and serving a six-year term.

14 (4) Two owners or operators appointed by the governor who  
15 have been petroleum systems insureds through the insurance  
16 account and were insured through the insurance account of the  
17 comprehensive petroleum underground storage tank fund on or  
18 before October 26, 1990. The insurance board members  
19 appointed under this subparagraph shall serve a term of six  
20 years and shall be eligible to serve subsequent terms pursuant  
21 to paragraph "b".

22 b. After the initial terms served by the insurance board  
23 members designated in paragraph "a", subparagraphs (1), (2),  
24 and (4), all subsequent insurance board members shall be a  
25 part of and elected by the population of private insureds who  
26 have been petroleum systems insureds through the underground  
27 storage tank insurance fund and were insured through the  
28 insurance account of the comprehensive petroleum underground  
29 storage tank fund on or before October 26, 1990. The  
30 subsequent insurance board members elected pursuant to this  
31 paragraph shall serve for three-year terms and are eligible to  
32 serve an unlimited number of terms.

33 c. Members of the insurance board are entitled to receive  
34 reimbursement of actual expenses incurred in the discharge of  
35 their duties within the limits of the moneys appropriated to

1 the insurance board or made available to the fund.

2 d. Members of the insurance board shall elect a voting  
3 chairperson from among the members who are privately insured  
4 owners and operators.

5 3. Prior to the restructuring of the insurance board as an  
6 independent nonprofit entity, the insurance board shall  
7 provide information to the comprehensive petroleum underground  
8 storage tank fund board as follows:

9 a. Relating to rules, practices, procedures, underwriting  
10 criteria, premium determinations, procedures for investigating  
11 and settling claims, determining appropriate deductibles,  
12 benefits offered, and otherwise implementing and administering  
13 the underground storage tank insurance fund.

14 b. Confirming that the insurance board has established a  
15 process to independently provide the following:

16 (1) Long-term insurability based upon competitive rates  
17 for insureds who are in compliance with technical regulatory  
18 requirements.

19 (2) Elimination of any lapse in coverage between state  
20 insurance coverage and private insurance coverage.

21 (3) Ease in transition from state underwriting criteria,  
22 application process, claims handling, and premium  
23 determinations.

24 (4) Participation of insureds in establishing  
25 underwriting, application, claims, and premium determinations.

26 (5) Continued approval as an acceptable financial  
27 assurance mechanism as required in 40 C.F.R. pts. 280 and 281.

28 c. Determining a date specific upon which all assets and  
29 liabilities of the insurance account of the comprehensive  
30 petroleum underground storage tank fund will be transferred to  
31 the insurance board as an independent nonprofit entity  
32 organized to provide an allowable mechanism to provide  
33 financial responsibility as required by 40 C.F.R. pts. 280 and  
34 281, owned and operated by insureds, on or before July 1,  
35 2004.

## EXPLANATION

1  
2 This bill creates an underground storage tank insurance  
3 fund. The treasurer of state shall act as the custodian of  
4 the fund and the fund shall be administered by the underground  
5 storage tank insurance board. By July 1, 2004, the insurance  
6 board shall receive all the assets and liabilities of the  
7 insurance account of the comprehensive petroleum underground  
8 storage tank fund when the insurance board is restructured as  
9 an independent nonprofit entity. By July 1, 2004, the  
10 insurance board shall also receive moneys in the underground  
11 storage tank insurance fund when the insurance board is  
12 restructured as an independent nonprofit entity.

13 The insurance board shall consist of five members. The  
14 insurance board shall provide information to the comprehensive  
15 petroleum underground storage tank fund board relating to all  
16 of the following:

17 1. Rules, practices, and procedures for implementing and  
18 administering the insurance fund.

19 2. Confirming the insurance board has established a  
20 process to independently provide long-term insurability based  
21 upon competitive rates; eliminate any lapse in coverage;  
22 provide ease in transition; allow participation of insureds in  
23 establishing the rules, practices, and procedures; and  
24 continue approval as an acceptable financial assurance  
25 mechanism as required by federal law.

26 3. The determination of a date certain upon which all  
27 assets and liabilities of the insurance account to the  
28 insurance board once the insurance board is an independent  
29 nonprofit entity.

30 The bill updates one of the alternative conditions for  
31 owners and operators to receive insurance account coverage to  
32 require compliance with all technical requirements of the  
33 department. The bill also updates a provision relating to  
34 actuarially sound premiums.

35 The bill amends provisions relating to installer's and



1 inspector's insurance coverage. Currently, the board is  
2 required to provide such coverage. The bill amends this  
3 requirement to make it optional. The bill also allows the  
4 board to choose to cease offering installer's and inspector's  
5 insurance coverage if the board determines that competitive  
6 private market alternatives exist.

7 The bill removes the availability of property transfer  
8 insurance under Code section 455G.11(10).

9 Pursuant to 1989 Iowa Acts, chapter 131, section 61, Code  
10 section 455G.11 shall be repealed effective July 1, 2004.

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HOUSE FILE 2490

AN ACT

RELATING TO THE ADMINISTRATION OF THE INSURANCE ACCOUNT OF THE COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND, CREATING AN UNDERGROUND STORAGE TANK INSURANCE BOARD, AN UNDERGROUND STORAGE TANK INSURANCE FUND, AND TRANSFERRING ASSETS AND LIABILITIES OF THE INSURANCE ACCOUNT OF THE COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND.

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

Section 1. Section 455G.2, subsection 4, Code 1997, is amended to read as follows:

4. "Claimant" means an owner or operator who has received assistance under the remedial account or who has coverage under the insurance account fund with respect to a release, or an installer or inspector who has coverage under the insurance account fund.

Sec. 2. Section 455G.2, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 12A. "Insurance board" means the Iowa underground storage tank insurance board created under section 455G.11.

Sec. 3. Section 455G.3, subsection 3, paragraph c, Code 1997, is amended to read as follows:

c. To establish an insurance account fund for insurable underground storage tank risks within the state as provided by section 455G.11.

Sec. 4. Section 455G.3, subsection 4, Code 1997, is amended to read as follows:

4. 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 or fund 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. 5. Section 455G.4, subsection 3, Code 1997, is amended to read as follows:

3. RULES AND EMERGENCY RULES.

a. The board shall adopt rules regarding its practice and procedures, develop underwriting standards, establish premiums for insurance account fund 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 May 5, 1989.

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 fund 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 fund 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.

f. Rules to facilitate and encourage the use of community remediation whenever possible shall be adopted.

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. 6. Section 455G.8, subsection 4, Code 1997, is amended to read as follows:

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

Sec. 7. Section 455G.11, subsections 1 through 6, Code 1997, are amended to read as follows:

0A. UNDERGROUND STORAGE TANK INSURANCE FUND.

a. An Iowa underground storage tank insurance fund is created as a separate fund in the state treasury on the effective date of this Act consisting of all moneys held in the insurance account of the comprehensive petroleum underground storage tank fund.

Notwithstanding section 8.33, moneys remaining in the fund at the end of each fiscal year shall not revert to the general fund but shall remain in the underground storage tank

insurance fund. Notwithstanding section 12C.7, interest or earnings on moneys in the fund shall be credited to the fund in addition to any other income specifically allocated to the underground storage tank insurance fund.

b. Amounts in the underground storage tank insurance fund shall not be subject to appropriation for any purpose by the general assembly, but shall be used only for the purposes set forth in this section. The treasurer of state shall act as custodian of the fund and disperse moneys contained in it as directed by the board. The treasurer of state is authorized to invest the moneys deposited in the fund at the discretion of the board. The income from such investments 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 provided for in this chapter without further appropriation.

c. No later than July 1, 2004, all moneys in the fund shall be transferred to the insurance board when restructured as an independent nonprofit entity organized to provide an allowable mechanism to demonstrate financial responsibility as required in 40 C.F.R. pts. 280 and 281, owned and operated by insureds, as determined by the comprehensive petroleum underground storage tank fund board.

0B. UNDERGROUND STORAGE TANK INSURANCE BOARD.

a. An underground storage tank insurance board is established and shall consist of the following members:

(1) The treasurer of state or the treasurer of state's designee serving for a two-year term. The treasurer of state or the treasurer of state's designee shall serve as a nonvoting member of the insurance board.

(2) The auditor of state or the auditor of state's designee serving for a three-year term. The auditor of state or the auditor of state's designee shall serve as a nonvoting member of the insurance board.

(3) A representative of a governmental subdivision which owns an underground storage tank system which is insured through the insurance account and was insured through the

insurance account of the comprehensive petroleum underground storage tank fund beginning on or before October 26, 1990, appointed by the governor and serving a six-year term.

(4) Two owners or operators appointed by the governor who have been petroleum systems insureds through the insurance account and were insured through the insurance account of the comprehensive petroleum underground storage tank fund on or before October 26, 1990. The insurance board members appointed under this subparagraph shall serve a term of six years and shall be eligible to serve subsequent terms pursuant to paragraph "b".

b. After the initial terms served by the insurance board members designated in paragraph "a", subparagraphs (1), (2), (3), and (4), all subsequent insurance board members shall be a part of and elected by the population of private insureds who have been petroleum systems insureds through the underground storage tank insurance fund and were insured through the insurance account of the comprehensive petroleum underground storage tank fund. The subsequent insurance board members elected pursuant to this paragraph shall serve for three-year terms and are eligible to serve an unlimited number of terms.

c. Members of the insurance board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties within the limits of the moneys appropriated to the insurance board or made available to the fund.

d. Members of the insurance board shall elect a voting chairperson from among the members who are privately insured owners and operators.

0C. RECOMMENDATIONS FOR RESTRUCTURING. Prior to the restructuring of the insurance board as an independent nonprofit entity, the insurance board shall provide recommendations to the comprehensive petroleum underground storage tank fund board relating to all of the following:

a. Relating to rules, practices, procedures, underwriting criteria, premium determinations, organizational structure, procedures for investigating and settling claims, determining

appropriate deductibles, benefits offered, and otherwise implementing and administering the underground storage tank insurance fund.

b. Confirming that the insurance board has established a process to independently provide the following:

(1) Long-term insurability based upon competitive rates for insureds who are in compliance with technical regulatory requirements.

(2) Elimination of any lapse in coverage between state insurance coverage and private insurance coverage.

(3) Ease in transition from state underwriting criteria, application process, claims handling, and premium determinations.

(4) Participation of insureds in establishing underwriting, application, claims, and premium determinations.

(5) Continued approval as an acceptable financial assurance mechanism as required in 40 C.F.R. pts. 280 and 281.

c. Determining a date specific upon which all assets and liabilities of the insurance fund will be transferred to the insurance board as an independent nonprofit entity organized to provide an allowable mechanism to provide financial responsibility as required by 40 C.F.R. pts. 280 and 281, owned and operated by insureds, on or before July 1, 2004.

0D. TRANSFER OF INSURANCE BOARD MONEYS.

a. If the insurance board dissolves or ceases to function as an acceptable financial assurance mechanism as required in 40 C.F.R. pts. 280 and 281, any unencumbered and unobligated moneys transferred to the insurance board pursuant to subsection 0A, paragraph "c", shall be transferred to the comprehensive petroleum underground storage tank fund, or if the comprehensive petroleum underground storage tank fund is no longer in existence, the unencumbered and unobligated moneys shall be transferred to the general fund of the state.

b. If a person or persons purchase the ownership rights of the assets of the underground storage tank insurance board, any unencumbered and unobligated moneys transferred to the insurance board pursuant to subsection 0A, paragraph "c",

shall be transferred to the comprehensive petroleum underground storage tank fund, or if the comprehensive petroleum underground storage tank fund is no longer in existence, the unencumbered and unobligated moneys shall be transferred to the general fund of the state.

1. INSURANCE ACCOUNT FUND AS A FINANCIAL ASSURANCE MECHANISM. The insurance account fund 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.

The source of funds for the insurance account fund shall be from the following:

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

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

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 fund 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 December 22, 1990, provided that prior to the provision of insurance account coverage, the tank site tests release free. An owner or operator who fails to comply as certified to the board on or before December 22, 1990, 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 December 22, 1990, may be eligible for financial assurance under this section but shall be subject to an additional surcharge of eight hundred dollars per tank in addition to payment of a premium that is equal to two times the cost of the premium required under subsection 4, paragraph "g", per insured time period.~~

~~d. The applicant either:~~

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

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

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

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

~~4. ACTUARIALY SOUND PREMIUMS BASED ON RISK FACTOR ADJUSTMENTS AFTER FIVE YEARS. The annual premium for insurance coverage shall be:~~

~~a. For the year July 17, 1989, through June 30, 1990, one hundred dollars per tank.~~

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

~~c. For the year July 17, 1991, through June 30, 1992, two hundred dollars per tank.~~

~~d. For the year July 17, 1992, through June 30, 1993, two hundred fifty dollars per tank.~~

~~e. For the year July 17, 1993, through June 30, 1994, in accordance with the following:~~

~~(1) For a tank satisfying subsection 37 paragraph "a" or "b", three hundred dollars per tank.~~

~~(2) For a tank qualifying under subsection 37 paragraph "c", six hundred dollars per tank.~~

~~f. For the period from July 17, 1994, through December 31, 1994, in accordance with the following:~~

~~(1) For a tank satisfying subsection 37 paragraph "a" or "b", three hundred fifty dollars per tank.~~

~~(2) For a tank qualifying under subsection 37 paragraph "c", seven hundred dollars per tank.~~

~~c. Is in compliance with all technical requirements of the department.~~

#### 4. INSURANCE ACCOUNT PREMIUMS.

~~g. For subsequent time periods, an owner or operator applying for coverage shall pay an annually adjusted insurance premium for coverage by the insurance account fund. 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 fund 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 fund 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 fund to loss. Actuarially sound is not limited in its meaning to fund premium revenue equaling or exceeding fund expenditures for the general tank population.

~~Tanks receiving financial assurance pursuant to subsection 37 paragraph "c" shall not be included in the general tank population for purposes of determining actuarially sound premiums under this paragraph.~~

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

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

5. FUTURE REPEAL. 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 fund until moneys in the account fund are exhausted. Upon exhaustion of the moneys in the account fund, any remaining claims shall be invalid.

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

#### 6. INSTALLER'S AND INSPECTOR'S INSURANCE COVERAGE.

a. COVERAGE. The board shall may offer insurance coverage under the fund's insurance account fund to installers and inspectors of certified underground storage tank installations within the state for an environmental hazard arising in connection with a certified installation as provided in this subsection. Coverage shall be limited to environmental hazard coverage for both corrective action and third-party liability

for a certified tank installation within the state in connection with a release from that tank.

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.

(5) For subsequent 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 fund. 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.

(6) 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), (3), and (4).

c. LIMITS OF COVERAGE AVAILABLE. Installers and inspectors may purchase coverage up to one million dollars per occurrence and two million dollars aggregate, subject to the terms and conditions under this section and those adopted by the board.

d. DEDUCTIBLE. The insurance account fund may offer, at the buyer's option, a range of deductibles. A ten thousand dollar deductible policy shall be offered.

e. EXCESS COVERAGE. Installers and inspectors may purchase excess coverage of up to five million dollars upon such terms and conditions as determined by the board.

f. CERTIFICATION OF TANK INSTALLATIONS. The board shall adopt certification rules requiring certification of a new tank installation as a precondition to offering insurance to an owner or operator or an installer or inspector. The board shall set in the rule the effective date for the certification requirement. Certification rules shall at minimum require that an installation be personally inspected by an independent licensed engineer, local fire marshal, state fire marshal's designee, or other person who is unaffiliated with the tank owner, operator, installer or inspector, who is qualified and authorized by the board to perform the required inspection and that the tank and installation of the tank comply with applicable technical standards and manufacturer's instructions and warranty conditions. An inspector may be an owner or operator of a tank, or an employee of an owner, operator, or installer.

g. The board may cease offering insurance coverage under this subsection if the board determines that competitive private market alternatives exist.

Sec. 8. Section 455G.11, subsection 8, Code 1997, is amended to read as follows:

8. ACCOUNT EXPENDITURES. Moneys in the insurance account fund may be expended 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 fund, up to the limits of coverage extended. A personal injury is not a compensable third-party liability damage.

Sec. 9. Section 455G.11, subsection 10, Code 1997, is amended by striking the subsection.

Sec. 10. Section 455G.11, subsection 11, Code 1997, is amended to read as follows:

~~11~~ 10. LIMITATIONS ON THIRD-PARTY LIABILITY. To the extent that coverage under this section includes third-party liability, third-party liability specifically excludes any

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

Sec. 11. Section 455G.11, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 11. The board may cease offering insurance coverage under this subsection if the board determines that competitive private market alternatives exist and if the board determines that all of the following conditions are met:

a. Long-term insurability based upon competitive rates for insureds who are in compliance with technical regulatory requirements.

b. Elimination of any lapse in coverage between state insurance coverage and private insurance coverage.

c. Ease in transition from state underwriting criteria, application process, claims handling, and premium determinations.

d. Participation of insureds in establishing underwriting, application, claims, and premium determinations.

e. Continued approval as an acceptable financial assurance mechanism as required in 40 C.F.R. pts. 280 and 281.

Sec. 12. Section 455G.13, subsection 2, paragraph b, Code 1997, is amended to read as follows:

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

Sec. 13. Section 455G.13, subsection 12, Code 1997, is amended to read as follows:

12. RECOVERY OR SUBROGATION -- INSTALLERS AND INSPECTORS. Notwithstanding any other provision contained in this chapter, the board or a person insured under the insurance account fund has no right of recovery or right of subrogation against an installer or an inspector insured by the fund for the tank giving rise to the liability other than for recovery of any deductibles paid.

Sec. 14. Section 455G.14, Code 1997, is amended to read as follows:

455G.14 FUND NOT SUBJECT TO REGULATION.

The fund, including but not limited to insurance coverage offered by the insurance account fund, is not subject to regulation under chapter 502 or title XIII, subtitle 1.

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RON J. CORBETT  
Speaker of the House

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MARY E. KRAMER  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2490, Seventy-seventh General Assembly.

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ELIZABETH ISAACSON  
Chief Clerk of the House

Approved April 9, 1998

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TERRY E. BRANSTAD  
Governor