

HOUSE BILL NO. 973

INTRODUCED BY STANG, SVRCEK, O'KEEFE, TUNBY,
BRUSKI, NATHE, DOHERTY, MCCULLOCH

IN THE HOUSE

FEBRUARY 26, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

 FIRST READING.

MARCH 5, 1991 ON MOTION, REREFERRED TO COMMITTEE
ON TAXATION.

MARCH 23, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

MARCH 25, 1991 PRINTING REPORT.

APRIL 1, 1991 SECOND READING, DO PASS.

APRIL 2, 1991 ENGROSSING REPORT.

APRIL 3, 1991 THIRD READING, PASSED.
AYES, 74; NOES, 26.

 TRANSMITTED TO SENATE.

IN THE SENATE

APRIL 3, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

APRIL 4, 1991 FIRST READING.

APRIL 5, 1991 ON MOTION, REREFERRED TO COMMITTEE
ON TAXATION.

APRIL 12, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

APRIL 15, 1991 ON MOTION, CONSIDERATION PASSED
UNTIL THE 81ST LEGISLATIVE DAY.

APRIL 16, 1991 SECOND READING, CONCURRED IN AS
AMENDED.

APRIL 17, 1991 THIRD READING, CONCURRED IN.
AYES, 37; NOES, 12.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 18, 1991

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

APRIL 19, 1991

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 20, 1991

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

APRIL 22, 1991

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 22, 1991

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

APRIL 23, 1991

FREE CONFERENCE COMMITTEE REPORTED.

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

APRIL 24, 1991

ON MOTION, TAKEN FROM THIRD READING
AND PLACED ON SECOND READING.

FREE CONFERENCE COMMITTEE REPORTED.

IN THE SENATE

APRIL 25, 1991

FREE CONFERENCE COMMITTEE
REPORT NO. 2 ADOPTED.

IN THE HOUSE

APRIL 25, 1991

SECOND READING, FREE CONFERENCE COMMITTEE
REPORT NO. 2 ADOPTED.

THIRD READING, FREE CONFERENCE COMMITTEE

REPORT NO. 2 ADOPTED.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *HOUSE BILL NO. 973*
 2 INTRODUCED BY *Steve Sirois* *John Rife*
 3 *Timothy Sirois* *NATHAN D. DREW* *McLellan*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A SMALL
 5 PETROLEUM TANK RELEASE CLEANUP FUND TO PROVIDE EXPENSE
 6 REIMBURSEMENT TO CERTAIN TANK OWNERS AND OPERATORS;
 7 ESTABLISHING A SMALL PETROLEUM STORAGE TANK CLEANUP FEE TO
 8 BE PAID BY DISTRIBUTORS OF SPECIAL FUELS; CREATING A
 9 STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502,
 10 75-11-301, 75-11-302, 75-11-307, 75-11-308, 75-11-309,
 11 75-11-313, 75-11-318, AND 75-11-319, MCA; AND PROVIDING
 12 EFFECTIVE DATES."
 13

14 STATEMENT OF INTENT

15 A statement of intent is required for this bill in order
 16 to provide guidance to the petroleum tank release
 17 compensation board, the department of health and
 18 environmental sciences, and the department of revenue for
 19 the adoption of rules authorized by the bill. The petroleum
 20 tank release compensation board shall adopt rules that: (1)
 21 govern submission of claims from owners and operators to the
 22 board and to the department of health and environmental
 23 sciences for reimbursement from the small petroleum tank
 24 release cleanup fund; (2) establish procedures for
 25 determining eligibility of tank owners and operators for

1 reimbursement from the small petroleum tank release cleanup
 2 fund and the validity of claims; and (3) are necessary for
 3 administration of the small petroleum tank release cleanup
 4 fund and other provisions of this bill, provided that the
 5 rules may not conflict with the eligibility requirements and
 6 procedures provided for in this bill and Title 75, chapter
 7 11, part 3; rules previously adopted under that part; and
 8 laws, rules, and procedures of the federal government or the
 9 department of health and environmental sciences pertaining
 10 to petroleum storage tank releases eligible for
 11 reimbursement from the small petroleum tank release cleanup
 12 fund.

13 The department of health and environmental sciences may
 14 adopt rules or revise existing rules as necessary to
 15 implement and incorporate the provisions of this bill into
 16 the department's existing procedures and its requirements
 17 pertaining to releases from underground storage tanks.

18 The department of revenue shall adopt rules governing
 19 the collection of the small petroleum storage tank cleanup
 20 fee, including reporting and recordkeeping requirements, the
 21 method and timing of payments from distributors, examination
 22 of records, and other provisions necessary to ensure that
 23 the small petroleum storage tank cleanup fee is properly and
 24 efficiently collected.
 25



1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

2 **Section 1.** Section 75-11-301, MCA, is amended to read:

3 **"75-11-301. Findings and purposes.** (1) The legislature
4 finds that the use of petroleum products stored in tanks
5 contributes significantly to the economic well-being and
6 quality of life of Montana citizens.

7 (2) The legislature finds that leaks, spills, and other
8 releases of petroleum products from storage tanks endanger
9 public health and safety, ground water quality, and other
10 state resources.

11 (3) The legislature finds that current administrative
12 and financial resources of the public and private sectors
13 are inadequate to address problems caused by releases from
14 petroleum storage tanks and need to be supplemented by a
15 major program of release detection and corrective action.

16 (4) The legislature finds that proper funding for the
17 program is through a petroleum storage tank cleanup fee fees
18 paid by persons who use and receive the benefits of
19 petroleum products. The legislature further finds that this
20 these general use fee fees, provided for in 75-11-314 and
21 [section 8], is are intended solely to support a program to
22 pay for corrective action and damages caused by releases
23 from petroleum storage tanks. The general gasoline and
24 special fuels use fee--is fees are collected from
25 distributors for administrative convenience and is are not

1 intended as a method for collecting highway revenue pursuant
2 to the provisions of Article VIII, section 6, of the Montana
3 constitution. The fee-is fees are intended to implement the
4 legislature's duty to provide for the administration and
5 enforcement of maintaining and improving a clean and
6 healthful environment for present and future generations, as
7 required by Article IX, section 1, of the Montana
8 constitution.

9 (5) The purposes of this part are to:

10 (a) protect public health and safety and the
11 environment by providing prompt detection and cleanup of
12 petroleum tank releases;

13 (b) provide adequate financial resources and effective
14 procedures through which tank owners and operators may
15 undertake and be reimbursed for corrective action and
16 payment to third parties for damages caused by releases from
17 petroleum storage tanks; and

18 (c) assist certain tank owners and operators in meeting
19 financial assurance requirements under state and federal law
20 governing releases from petroleum storage tanks."

21 **Section 2.** Section 75-11-302, MCA, is amended to read:

22 **"75-11-302. Definitions.** The following definitions
23 apply to this part:

24 (1) "Accidental release" means a sudden or nonsudden
25 release, neither expected nor intended by the tank owner or

1 operator, of petroleum or petroleum products from a storage
2 tank that results in a need for corrective action or
3 compensation for third party bodily injury or property
4 damage.

5 (2) "Applicable fund" means either the petroleum tank
6 release cleanup fund established in 75-11-313 or the small
7 petroleum tank release cleanup fund established in [section
8 7].

9 (3) "Board" means the petroleum tank release
10 compensation board established in 2-15-2108.

11 (4) "Bodily injury" means physical injury, sickness,
12 or disease sustained by an individual, including death that
13 results from the physical injury, sickness, or disease at
14 any time.

15 (5) "Claim" means a written request prepared and
16 submitted by an owner or operator or an agent of the owner
17 or operator for reimbursement of expenses caused by an
18 accidental release from a petroleum storage tank.

19 (6) "Corrective action" means investigation,
20 monitoring, cleanup, restoration, abatement, removal, and
21 other actions necessary to respond to a release.

22 (7) "Department" means the department of health and
23 environmental sciences provided for in Title 2, chapter 15,
24 part 21.

25 (8) "Distributor" means a distributor as defined in

1 15-70-201 a person who is licensed to sell gasoline as
2 provided by 15-70-202 or licensed to sell special fuels as
3 provided by 15-70-302 and who:

4 (a) engages in the business in this state of producing,
5 refining, manufacturing, or compounding gasoline or special
6 fuels for sale, use, or distribution;

7 (b) imports gasoline or special fuels for sale, use, or
8 distribution in this state;

9 (c) engages in the wholesale distribution of gasoline
10 or special fuels in this state;

11 (d) is an exporter as defined in subsection (11);

12 (e) is a dealer licensed as of January 1, 1969, except
13 a dealer at an established airport; or

14 (f) either blends gasoline with alcohol or blends
15 special fuels with waste oil.

16 (9) "Eligible costs" means expenses reimbursable
17 under 75-11-307.

18 (10) "Export" means to transport out of Montana, by
19 any means other than in the fuel supply tank of a motor
20 vehicle, gasoline or special fuels received from a refinery
21 or pipeline terminal within Montana.

22 (11) "Exporter" means a person who transports, other
23 than in the fuel supply tank of a motor vehicle, gasoline or
24 special fuels received from a refinery or pipeline terminal
25 in Montana to a destination outside Montana for sale, use,

1 or consumption beyond the boundaries of this state.

2 (12) "Fee" "Fees" means the petroleum storage tank
 3 cleanup fee provided for in 75-11-314 and the small
 4 petroleum storage tank cleanup fee provided for in [section
 5 8].

6 ~~{10} "Fund" means the petroleum tank release cleanup~~
 7 ~~fund established in 75-11-313.~~

8 {11}(13) "Gasoline" means gasoline as defined in
 9 15-70-201.

10 (14) "Import" means to receive into a person's
 11 possession or custody first after its arrival and coming to
 12 rest at a destination within the state, any gasoline or
 13 special fuels shipped or transported into this state from a
 14 point of origin outside of this state, other than in the
 15 fuel supply tank of a motor vehicle.

16 {12}(15) "Operator" means a person in control of or
 17 having responsibility for the daily operation of a petroleum
 18 storage tank.

19 {13}(16) "Owner" means a person who holds title to,
 20 controls, or possesses an interest in a petroleum storage
 21 tank. The term does not include a person who holds an
 22 interest in a tank solely for financial security, unless
 23 through foreclosure or other related actions the holder of a
 24 security interest has taken possession of the tank.

25 {14}(17) "Person" means an individual, firm, trust,

1 estate, partnership, company, association, joint stock
 2 company, syndicate, consortium, commercial entity,
 3 corporation, or agency of state or local government.

4 {15}(18) "Petroleum" or "petroleum products" means crude
 5 oil or any fraction thereof that is liquid at standard
 6 conditions of temperature and pressure (60 degrees F and
 7 14.7 pounds per square inch absolute).

8 {16}(19) "Petroleum storage tank" means a tank that
 9 contains petroleum or petroleum products and that is:

10 (a) an underground storage tank as defined in
 11 75-10-403;

12 (b) a storage tank that is situated in an underground
 13 area such as a basement, cellar, mine, draft, shaft, or
 14 tunnel;

15 (c) an above ground storage tank with a capacity less
 16 than 30,000 gallons; or

17 (d) above ground or underground pipes associated with
 18 tanks under subsections {16}(b) (19)(b) and {16}(c) (19)(c),
 19 except that pipelines regulated under the following laws are
 20 excluded:

21 (i) the Natural Gas Pipeline Safety Act of 1968 (49
 22 U.S.C. 1671, et seq.);

23 (ii) the Hazardous Liquid Pipeline Safety Act of 1979
 24 (49 U.S.C. 2001, et seq.); and

25 (iii) state law comparable to the provisions of law

1 referred to in subsections ~~(16)(d)(i)~~ (19)(d)(i) and
 2 ~~(16)(d)(ii)~~ (19)(d)(ii), if the facility is intrastate.

3 ~~(17)~~ (20) "Property damage" means:

- 4 (a) physical injury to tangible property, including
 5 loss of use of that property caused by the injury; or
 6 (b) loss of use of tangible property that is not
 7 physically injured.

8 ~~(18)~~ (21) "Release" means a release, as defined in
 9 75-10-701, of petroleum or petroleum products from a
 10 petroleum storage tank.

11 (22) "Special fuel" means those combustible gases and
 12 liquids commonly referred to as diesel fuel or any other
 13 volatile liquid of less than 46 degrees A.P.I. (American
 14 petroleum institute) gravity test, except liquid petroleum
 15 gas."

16 **Section 3.** Section 75-11-307, MCA, is amended to read:

17 "75-11-307. Reimbursement for expenses caused by a
 18 release. (1) Subject to the availability of funds money from
 19 the applicable fund under subsection (5), an owner or
 20 operator who is eligible under 75-11-308 and complies with
 21 75-11-309 and any rules adopted to implement those sections
 22 must be reimbursed by the board from the applicable fund for
 23 the following eligible costs caused by a release from a
 24 petroleum storage tank:

25 (A) corrective action costs; and

1 (b) compensation paid to third parties for bodily
 2 injury or property damage.

3 (2) An owner or operator may not be reimbursed from the
 4 applicable fund for the following expenses:

5 (a) corrective action costs or the costs of bodily
 6 injury or property damage paid to third parties that are
 7 determined by the board to be ineligible for reimbursement;

8 (b) costs for bodily injury and property damage, other
 9 than corrective action costs, incurred by the owner or
 10 operator;

11 (c) penalties or payments for damages incurred under
 12 actions by the department, board, or federal, state, local,
 13 or tribal agencies or other government entities involving
 14 judicial or administrative enforcement activities and
 15 related negotiations;

16 (d) attorney fees and legal costs of the owner,
 17 operator, or a third party;

18 (e) costs for the repair or replacement of a tank or
 19 piping or costs of other materials, equipment, or labor
 20 related to the operation, repair, or replacement of a tank
 21 or piping;

22 (f) expenses incurred before April 13, 1989, for owners
 23 or operators seeking reimbursement from the petroleum tank
 24 release cleanup fund and expenses incurred before July 1,
 25 1991, for owners or operators seeking reimbursement from the

1 small petroleum tank release cleanup fund;
 2 (g) expenses exceeding the maximum reimbursements
 3 provided for in subsection (4).
 4 (3) An owner or operator may designate a person as his
 5 agent to receive the reimbursement.
 6 (4) Subject to the availability of funds under
 7 subsection (5);
 8 (a) for releases eligible for reimbursement from the
 9 petroleum tank release cleanup fund that are discovered and
 10 reported on or after April 13, 1989, the board shall
 11 reimburse an owner or operator for 50% of the first \$35,000
 12 of eligible costs and 100% of subsequent eligible costs, up
 13 to a maximum total reimbursement of \$982,500; and
 14 (b) for releases eligible for reimbursement from the
 15 small petroleum tank release cleanup fund that are
 16 discovered and reported on or after July 1, 1991, the board
 17 shall reimburse an owner or operator for 50% of the first
 18 \$10,000 of eligible costs and 100% of subsequent eligible
 19 costs, up to a maximum total reimbursement of \$495,000.
 20 (5) If the applicable fund does not contain sufficient
 21 money to pay approved claims for eligible costs, a
 22 reimbursement may not be made and the fund and the board are
 23 not liable for making any reimbursement for the costs at
 24 that time. When the applicable fund contains sufficient
 25 money, eligible costs must be reimbursed subsequently in the

1 order in which they were approved by the board."

2 **Section 4.** Section 75-11-308, MCA, is amended to read:
 3 **"75-11-308. Eligibility.** (1) An owner or operator is
 4 eligible for reimbursement for eligible costs caused by a
 5 release from a petroleum storage tank only if:
 6 (a) the release was discovered on or after:
 7 (i) April 13, 1989, for a tank that is eligible for
 8 reimbursement from the petroleum tank release cleanup fund;
 9 and
 10 (ii) July 1, 1991, for a tank that is eligible for
 11 reimbursement from the small petroleum tank release cleanup
 12 fund;
 13 (b) the department is notified of the release in the
 14 manner and within the time provided by law or rule;
 15 (c) the department has been notified of the existence
 16 of the tank in the manner required by department rule;
 17 (d) the release was an accidental release; and
 18 (e) with the exception of the release, the operation
 19 and management of the tank complied with applicable state
 20 and federal laws and rules when the release occurred and
 21 remained in compliance following detection of the release.
 22 (2) An owner or operator is not eligible for
 23 reimbursement;
 24 (a) from the petroleum tank release cleanup fund for
 25 expenses caused by releases from the following petroleum

1 storage tanks with the following exceptions:

2 (a)(i) a tank located at a refinery or a terminal of a
3 refiner;

4 (b)(ii) a tank located at an oil and gas production
5 facility;

6 (c)(iii) a tank that is or was previously under the
7 ownership or control of a railroad;

8 (d)(iv) a tank belonging to the federal government;

9 (e)(v) a farm or residential tank with a capacity of
10 1,100 gallons or less that is used for storing motor fuel
11 for noncommercial purposes or a tank used for storing
12 heating oil for consumptive use on the premises where
13 stored;

14 (f)(vi) a tank owned or operated by a person who has
15 been convicted of a substantial violation of state or
16 federal law or rule that relates to the installation,
17 operation, or management of petroleum storage tanks; or

18 (g)(vii) a mobile storage tank used to transport
19 petroleum or petroleum products from one location to
20 another; or

21 (b) from the small petroleum tank release cleanup fund
22 for expenses caused by releases from the following petroleum
23 storage tanks only:

24 (i) a tank used for storing heating oil for consumptive
25 use on the premises where it is stored; and

1 (ii) a farm or residential tank with a capacity of 1,100
2 gallons or less that is used for storing motor fuel for
3 noncommercial purposes."

4 **Section 5.** Section 75-11-309, MCA, is amended to read:

5 "75-11-309. Procedures for reimbursement of eligible
6 costs. (1) An owner or operator seeking reimbursement for
7 eligible costs and the department shall comply with the
8 following procedures:

9 (a) If an owner or operator discovers or is provided
10 evidence that a release may have occurred from his petroleum
11 storage tank, he shall immediately notify the department of
12 the release and conduct an initial response to the release
13 in accordance with state and federal laws and rules to
14 protect public health and safety and the environment.

15 (b) The owner or operator shall conduct a thorough
16 investigation of the release, report the findings to the
17 department, and, as determined necessary by the department,
18 prepare and submit for approval by the department a
19 corrective action plan that conforms with state and federal
20 corrective action requirements.

21 (c) (i) The department shall review the corrective
22 action plan and forward a copy to a local government office
23 with jurisdiction over a corrective action for the release.
24 The local government office shall inform the department if
25 it wants any modification of the proposed plan.

1 (ii) Based on its own review and comments received from
 2 a local government or other source, the department may
 3 approve the proposed corrective action plan, make or request
 4 the owner or operator to modify the proposed plan, or
 5 prepare its own plan for compliance by the owner or
 6 operator. A plan finally approved by the department through
 7 any process provided in this subsection (c) is the approved
 8 corrective action plan.

9 (iii) After the department approves a corrective action
 10 plan, a local government may not impose different corrective
 11 action requirements on the owner or operator.

12 (d) The department shall notify the owner or operator
 13 and the board of its approval of a corrective action plan.

14 (e) The owner or operator shall implement the approved
 15 plan. The department may oversee the implementation of the
 16 plan, require reports and monitoring from the owner or
 17 operator, undertake inspections, and otherwise exercise its
 18 authority concerning corrective action under Title 75,
 19 chapter 10, parts 4 and 7, and other applicable law and
 20 rules.

21 (f) The owner or operator shall document in the manner
 22 required by the board all expenses incurred in preparing and
 23 implementing the corrective action plan. The owner or
 24 operator shall submit claims and substantiating documents to
 25 the department in the form and manner required by the board.

1 The department shall forward each claim and appropriate
 2 documentation to the board and notify the board of any costs
 3 that the department considers not reimbursable because of
 4 any failure to meet the requirements of subsection (2). The
 5 department shall inform the owner or operator of any
 6 notification given to the board.

7 (g) The owner or operator shall document, in the manner
 8 required by the board, any payments to a third party for
 9 bodily injury or property damage caused by a release. The
 10 owner or operator shall submit claims and substantiating
 11 documents to the board in the form and manner required by
 12 the board.

13 (2) The board shall review each claim received under
 14 subsections (1)(f) and (1)(g), make the determination
 15 required by this subsection, inform the owner or operator of
 16 its determination, and, as appropriate, reimburse the owner
 17 or operator from the applicable fund. Before approving a
 18 reimbursement, the board shall affirmatively determine that:

19 (a) the expenses for which reimbursement is claimed:

20 (i) are eligible costs; and

21 (ii) were actually, necessarily, and reasonably incurred
 22 for the preparation or implementation of a corrective action
 23 plan approved by the department or for payments to a third
 24 party for bodily injury or property damage; and

25 (b) the owner or operator:

1 (i) is eligible for reimbursement under 75-11-308; and
 2 (ii) has complied with this section and any rules
 3 adopted pursuant to this section.

4 (3) If an owner or operator disagrees with a board
 5 determination under subsection (2), he may submit a written
 6 request for a hearing before the board. The hearing must be
 7 held at a meeting of the board no later than 120 days
 8 following receipt of the request or at a time mutually
 9 agreed to by the board and the owner or operator.

10 (4) The board shall obligate money for reimbursement of
 11 eligible costs of owners and operators in the order that the
 12 costs are finally approved by the board.

13 (5) (a) The board may, at the request of an owner or
 14 operator, guarantee in writing the reimbursement of eligible
 15 costs that have been approved by the board but for which
 16 money is not currently available from the applicable fund
 17 for reimbursement.

18 (b) The board may, at the request of an owner or
 19 operator, guarantee in writing reimbursement of eligible
 20 costs not yet approved by the board, including estimated
 21 costs not yet incurred. A guarantee for payment under this
 22 subsection (5)(b) does not affect the order in which money
 23 in the applicable fund is obligated under subsection (4).

24 (c) When considering a request for a guarantee of
 25 payment, the board may require pertinent information or

1 documentation from the owner or operator. The board may
 2 grant or deny, in whole or in part, any request for a
 3 guarantee."

4 **Section 6.** Section 75-11-313, MCA, is amended to read:

5 "75-11-313. **Petroleum tank release cleanup fund.** (1)
 6 There is a petroleum tank release cleanup fund in the state
 7 special revenue fund established in 17-2-102. The fund is
 8 administered as a revolving fund by the board and is
 9 statutorily appropriated as provided in 17-7-502.

10 (2) There is deposited in the fund:

11 (a) all revenue from the petroleum storage tank cleanup
 12 fee as provided in 75-11-314;

13 (b) money received by the board in the form of gifts,
 14 grants, reimbursements, or appropriations, from any source,
 15 intended to be used for the purposes of this fund;

16 (c) money appropriated or advanced to the fund by the
 17 legislature; and

18 (d) all interest earned on money in the fund.

19 (3) The fund may be used only:

20 (a) to administer this part, including payment of board
 21 and department expenses associated with administration,
 22 except that the board shall limit expenditures for
 23 administration to an amount that is commensurate with the
 24 number of tanks eligible for reimbursement from the
 25 petroleum tank release cleanup fund when compared to the

1 total number of tanks eligible for reimbursement from both
2 of the funds administered under this part;

3 (b) to reimburse owners and operators for eligible
4 costs caused by a release from a petroleum storage tank and
5 approved by the board; and

6 (c) for repayment of any advance made under subsection
7 (4), plus interest earned on the advance.

8 (4) (a) The legislature may appropriate to the fund
9 repayable advances as necessary to carry out the purposes of
10 this part. The outstanding total of repayable advances may
11 not exceed the amount the board estimates will be received
12 by the fund from the petroleum storage tank cleanup fee
13 during the next 24 months.

14 (b) Advances to the fund must be repaid and interest
15 earned on advances must be paid to the general fund when
16 determined appropriate by the board. However, all advances
17 to the fund plus the interest earned must be repaid on or
18 before December 31, 1995."

19 NEW SECTION. Section 7. Small petroleum tank release
20 cleanup fund. (1) There is a small petroleum tank release
21 cleanup fund in the state special revenue fund established
22 in 17-2-102. The fund is administered as a revolving fund by
23 the board and is statutorily appropriated as provided in
24 17-2-502.

25 (2) There is deposited in the fund:

1 (a) all revenue from the small petroleum storage tank
2 cleanup fee as provided in [section 8];

3 (b) money received by the board in the form of gifts,
4 grants, reimbursements, or appropriations, from any source,
5 intended to be used for the purposes of this fund;

6 (c) money appropriated or advanced to the fund by the
7 legislature; and

8 (d) all interest earned on money in the fund.

9 (3) The small petroleum tank release cleanup fund may
10 be used only:

11 (a) to administer this part, including payment of board
12 and department expenses associated with administration,
13 except that the board shall limit expenditures for
14 administration to an amount that is commensurate with the
15 number of tanks eligible for reimbursement from the small
16 petroleum tank release cleanup fund when compared to the
17 total number of tanks eligible for reimbursement from both
18 of the funds administered under this part;

19 (b) to reimburse owners and operators for eligible
20 costs caused by a release from petroleum storage tanks as
21 specified in 75-11-308(2)(b) and approved by the board; and

22 (c) for repayment of any advance made under subsection
23 (4) plus interest earned on the advance.

24 (4) (a) The legislature may appropriate to the small
25 petroleum tank release cleanup fund repayable advances as

1 necessary to carry out the purposes of this part. The
 2 outstanding total of repayable advances may not exceed the
 3 amount the board estimates will be received by the fund from
 4 the small petroleum storage tank cleanup fee during the next
 5 24 months.

6 (b) Advances to the fund must be repaid and interest
 7 earned on advances must be paid to the general fund when
 8 determined appropriate by the board. However, all advances
 9 to the fund plus the interest earned must be repaid on or
 10 before December 31, 1997.

11 **NEW SECTION. Section 8. Small petroleum storage tank**
 12 **cleanup fee -- collection -- penalties -- warrant for**
 13 **distrainment -- statute of limitations.** (1) Except as provided
 14 in subsection (4), every distributor shall pay to the
 15 department of revenue a small petroleum storage tank cleanup
 16 fee for each gallon of special fuels distributed by him
 17 within the state and upon which the fee has not been paid by
 18 any other distributor. The fee must equal:

19 (a) 1 cent for each gallon of special fuels distributed
 20 from July 1, 1991, through June 30, 1993; and

21 (b) 0.75 cent for each gallon of special fuels
 22 distributed on or after July 1, 1993.

23 (2) The following may not be included in the measure of
 24 a distributor's fee:

25 (a) special fuels exported or sold for export out of

1 the state; and

2 (b) special fuels sold to a railroad.

3 (3) Waste oil that is blended with special fuels to be
 4 sold as heating oil is subject to the fee provided in
 5 subsection (1).

6 (4) A fee may not be imposed or collected beginning on
 7 the first day of the first month in the first calendar
 8 quarter after the unobligated balance in the fund equals or
 9 exceeds \$6 million. Whenever the unobligated fund balance is
 10 less than \$3 million, the department of revenue shall,
 11 within 30 days, notify distributors by mail that the fee is
 12 reinstated beginning on the first day of the first month
 13 that begins no less than 30 days after the date of the
 14 notice. Once reinstated, the fee must be imposed and
 15 collected until the unobligated fund balance again equals or
 16 exceeds \$6 million.

17 (5) The department of revenue shall collect the fee in
 18 the same manner as the basic gasoline license tax under
 19 Title 15, chapter 70, part 2. The provisions of 15-70-103,
 20 15-70-111, 15-70-202, 15-70-205, 15-70-206, 15-70-208
 21 through 15-70-212, 15-70-221(2), and 15-70-232 apply to the
 22 fee. The provisions of 15-70-203, 15-70-204, 15-70-207,
 23 15-70-221(1), and 15-70-222 through 15-70-224 do not apply
 24 to the fee.

25 **Section 9.** Section 75-11-318, MCA, is amended to read:

1 "75-11-318. Powers and duties of board. (1) The board
2 shall administer the petroleum tank release cleanup fund and
3 the small petroleum tank release cleanup fund in accordance
4 with the provisions of this part, including the payment of
5 reimbursement reimbursements to owners and operators.

6 (2) The board shall determine whether to approve
7 reimbursement of eligible costs under the provisions of
8 75-11-309(2), shall obligate money from the applicable fund
9 for approved costs, and shall act on requests for the
10 guarantee of payments through the procedures and criteria
11 provided in 75-11-309.

12 (3) The board may conduct meetings, hold hearings,
13 undertake legal action, and conduct other business as may be
14 necessary to administer its responsibilities under this
15 part. The board shall meet at least quarterly for the
16 purpose of reviewing and approving claims for reimbursement
17 from the applicable fund established by 75-11-313 or
18 [section 7] and conducting other business as necessary.

19 (4) The board may hire staff, and the department shall
20 provide staff support to the board as the department
21 determines it is able. ~~The Pursuant to the provisions of~~
22 75-11-313(3)(a) and [section 7(3)(a)], the board shall use
23 the applicable fund to pay its staff expenses and to pay for
24 department staff utilized for the review or preparation of
25 corrective action plans and for the oversight of corrective

1 action undertaken by owners and operators for the purposes
2 of this part.

3 (5) The board shall adopt rules to administer this
4 part, including:

5 (a) rules governing submission of claims by owners or
6 operators to the department and board;

7 (b) procedures for determining owners or operators who
8 are eligible for reimbursement and determining the validity
9 of claims;

10 (c) procedures for the review and approval of
11 corrective action plans;

12 (d) procedures for conducting board meetings, hearings,
13 and other business necessary for the implementation of this
14 part; and

15 (e) other rules necessary for the administration of
16 this part."

17 **Section 10.** Section 75-11-319, MCA, is amended to read:

18 "75-11-319. Rulemaking authority -- department and
19 department of revenue. (1) The department may adopt rules
20 necessary to administer its responsibilities under this
21 part, including requirements for approval of corrective
22 action plans.

23 (2) The department of revenue shall adopt rules
24 governing the collection of the petroleum storage tank
25 cleanup fee and the small petroleum storage tank cleanup

1 fee. The rules may include, at a minimum, reporting and
 2 recordkeeping requirements, method and timing of payment,
 3 and examination of records. The rules must be generally
 4 consistent with procedures governing the collection of the
 5 gasoline license tax provided for in Title 15, chapter 70."

6 **Section 11.** Section 17-7-502, MCA, is amended to read:

7 "17-7-502. **Statutory appropriations -- definition --**
 8 **requisites for validity.** (1) A statutory appropriation is an
 9 appropriation made by permanent law that authorizes spending
 10 by a state agency without the need for a biennial
 11 legislative appropriation or budget amendment.

12 (2) Except as provided in subsection (4), to be
 13 effective, a statutory appropriation must comply with both
 14 of the following provisions:

15 (a) The law containing the statutory authority must be
 16 listed in subsection (3).

17 (b) The law or portion of the law making a statutory
 18 appropriation must specifically state that a statutory
 19 appropriation is made as provided in this section.

20 (3) The following laws are the only laws containing
 21 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
 22 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
 23 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121;
 24 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404;
 25 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007;

1 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;
 2 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111;
 3 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016;
 4 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150;
 5 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101;
 6 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136;
 7 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306;
 8 **and section 13, House Bill No. 861, Laws of 1985, and**
 9 **[section 7].**

10 (4) There is a statutory appropriation to pay the
 11 principal, interest, premiums, and costs of issuing, paying,
 12 and securing all bonds, notes, or other obligations, as due,
 13 that have been authorized and issued pursuant to the laws of
 14 Montana. Agencies that have entered into agreements
 15 authorized by the laws of Montana to pay the state
 16 treasurer, for deposit in accordance with 17-2-101 through
 17 17-2-107, as determined by the state treasurer, an amount
 18 sufficient to pay the principal and interest as due on the
 19 bonds or notes have statutory appropriation authority for
 20 such payments. (In subsection (3), pursuant to sec. 10, Ch.
 21 664, L. 1987, the inclusion of 39-71-2504 terminates June
 22 30, 1991.)"

23 **NEW SECTION. Section 12. Codification instruction.**
 24 [Sections 7 and 8] are intended to be codified as an
 25 integral part of Title 75, chapter 11, part 3, and the

1 provisions of Title 75, chapter 11, part 3, apply to
2 [sections 7 and 8].

3 NEW SECTION. **Section 13. Severability.** If a part of
4 [this act] is invalid, all valid parts that are severable
5 from the invalid part remain in effect. If a part of [this
6 act] is invalid in one or more of its applications, the part
7 remains in effect in all valid applications that are
8 severable from the invalid applications.

9 NEW SECTION. **Section 14. Effective dates.** (1)
10 [Sections 1, 2, 9, 10, 12, and this section] are effective
11 on passage and approval.

12 (2) [Sections 3 through 8 and 11] are effective July 1,
13 1991.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0973, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


A bill creating a small petroleum tank release fund to provide reimbursement to certain tank owners and operators; establishing a small petroleum storage tank fee to be paid by distributors of special fuels; and creating a statutory appropriation.

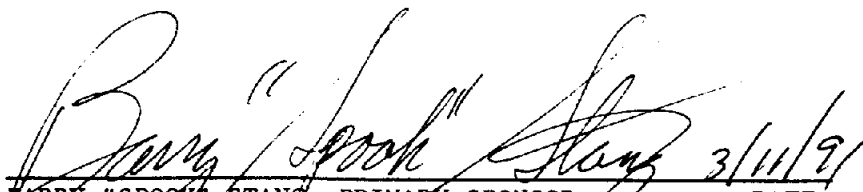
ASSUMPTIONS:

1. The Petroleum Tank Release Compensation Board would require 2.00 FTE environmental specialists (grade 14) and 1.00 FTE administrative aide (grade 8) to administer the financial compensation provisions of the bill. DHES would require 2.00 FTE environmental specialists (grade 14) to administer the remediation requirements.
2. The Department of Revenue would require 1.00 FTE audit technician to collect the fund (grade 9) and 0.25 FTE systems analyst in FY92 to develop computer systems.
3. Claims processing would begin by October 1. Collections would be lagged by one month, resulting in 11 months of collections in FY92.
4. A loan would be made from the petroleum tank release cleanup fund to allow immediate hiring of staff for promulgation of rules and preparations for claims processing by October 1, 1991.
5. Approximately 8,000 underground tanks would be covered by this bill. An unknown number of farm and residential aboveground tanks with aboveground lines, 1,100 gallons capacity or less, would be covered by this bill. An unknown number of aboveground heating oil tanks with aboveground lines would be covered by this bill.
6. The average remediation costs per claim from the "small tank fund" would be approximately 50% less than average claims under the present "big tank fund" (75-11-3, MCA). Due to the unpredictability of claims, 100% of available revenues would be statutorily appropriated although claims expenditures would likely be approximately 25% less. The unexpended balances in the 1993 biennium would build a reserve to maintain actuarial soundness of the fund.
7. Non-marketers of petroleum would be required to have \$500,000 of financial assurance, consistent with EPA requirements.
8. Approximately 280 million gallons of special use fuel is distributed in the state per year. Special fuel usage will remain stable over the biennium. The tax rate in the 1993 biennium would be \$0.01 per gallon and would decrease to \$0.0075 per gallon thereafter.

FISCAL IMPACT

see next page

 3-7-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 3/11/91
BARRY "SPOON" STANG, PRIMARY SPONSOR DATE
Fiscal Note for HB0973, as introduced. **HB 973-1**

Fiscal Note Request, HB0973, as introduced.

Form BD-15

Page 2

FISCAL IMPACT:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
<u>Petro Tank Comp. Board:</u>						
FTE	12.00	17.00	5.00	12.00	17.00	5.00
Personal Services	332,231	462,780	130,549	331,971	464,983	133,012
Operating Expenses	179,755	273,293	93,538	179,703	275,405	95,702
Equipment	10,000	36,650	26,650	10,000	10,000	0
Benefits & Claims	<u>3,922,802</u>	<u>6,195,502</u>	<u>2,272,700</u>	<u>3,922,802</u>	<u>6,468,954</u>	<u>2,546,152</u>
Total	4,444,788	6,968,225	2,523,437	4,444,476	7,219,342	2,774,866
<u>Funding:</u>						
"Small" Tank Fund (02)	4,444,788	6,968,225	2,523,437	4,444,476	7,219,342	2,774,866
<u>Dept. of Revenue</u>						
FTE	0.00	1.25	1.25	0.00	1.00	1.00
Personal Services	0	29,679	29,679	0	20,377	20,377
Operating Expenses	0	10,751	10,751	0	4,757	4,757
Equipment	<u>0</u>	<u>2,800</u>	<u>2,800</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	0	43,230	43,230	0	25,134	25,134
<u>Funding:</u>						
"Small" Tank Fund (02)	0	43,230	43,230	0	25,134	25,134
<u>Revenues:</u>						
"Small" Tank Fund (02)	0	2,566,667	2,566,667	0	2,800,000	2,800,000

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Local governments would become eligible for reimbursement of claims associated with petroleum tank releases.

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:

Effective July 1, 1993, tax rates would decrease from \$0.01 per gallon to \$0.0075 per gallon, reducing total revenues from \$2.8 million to \$2.1 million per year.

HB 973-1

HOUSE BILL NO. 973

INTRODUCED BY STANG, SVRCEK, O'KEEFE, TUNBY,
BRUSKI, NATHE, DOHERTY, MCCULLOCH

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A SMALL
PETROLEUM TANK RELEASE CLEANUP FUND TO PROVIDE EXPENSE
REIMBURSEMENT TO CERTAIN TANK OWNERS AND OPERATORS;
ESTABLISHING A SMALL PETROLEUM STORAGE TANK CLEANUP FEE TO
BE PAID BY DISTRIBUTORS OF SPECIAL FUELS; CREATING A
STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502,
75-11-301, 75-11-302, 75-11-307, 75-11-308, 75-11-309,
75-11-313, 75-11-318, AND 75-11-319, MCA; AND PROVIDING
EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill in order
to provide guidance to the petroleum tank release
compensation board, the department of health and
environmental sciences, and the department of revenue for
the adoption of rules authorized by the bill. The petroleum
tank release compensation board shall adopt rules that: (1)
govern submission of claims from owners and operators to the
board and to the department of health and environmental
sciences for reimbursement from the small petroleum tank
release cleanup fund; (2) establish procedures for

determining eligibility of tank owners and operators for
reimbursement from the small petroleum tank release cleanup
fund and the validity of claims; and (3) are necessary for
administration of the small petroleum tank release cleanup
fund and other provisions of this bill, provided that the
rules may not conflict with the eligibility requirements and
procedures provided for in this bill and Title 75, chapter
11, part 3; rules previously adopted under that part; and
laws, rules, and procedures of the federal government or the
department of health and environmental sciences pertaining
to petroleum storage tank releases eligible for
reimbursement from the small petroleum tank release cleanup
fund.

The department of health and environmental sciences may
adopt rules or revise existing rules as necessary to
implement and incorporate the provisions of this bill into
the department's existing procedures and its requirements
pertaining to releases from underground storage tanks.

The department of revenue shall adopt rules governing
the collection of the small petroleum storage tank cleanup
fee, including reporting and recordkeeping requirements, the
method and timing of payments from distributors, examination
of records, and other provisions necessary to ensure that
the small petroleum storage tank cleanup fee is properly and
efficiently collected.

1
2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

3 **Section 1.** Section 75-11-301, MCA, is amended to read:

4 *75-11-301. Findings and purposes. (1) The legislature
5 finds that the use of petroleum products stored in tanks
6 contributes significantly to the economic well-being and
7 quality of life of Montana citizens.

8 (2) The legislature finds that leaks, spills, and other
9 releases of petroleum products from storage tanks endanger
10 public health and safety, ground water quality, and other
11 state resources.

12 (3) The legislature finds that current administrative
13 and financial resources of the public and private sectors
14 are inadequate to address problems caused by releases from
15 petroleum storage tanks and need to be supplemented by a
16 major program of release detection and corrective action.

17 (4) The legislature finds that proper funding for the
18 program is through a petroleum storage tank cleanup fee fees
19 paid by persons who use and receive the benefits of
20 petroleum products. The legislature further finds that this
21 these general use fee fees, provided for in 75-11-314 and
22 [section 8], is are intended solely to support a program to
23 pay for corrective action and damages caused by releases
24 from petroleum storage tanks. The general gasoline and
25 special fuels use fee--is fees are collected from

1 distributors for administrative convenience and is are not
2 intended as a method for collecting highway revenue pursuant
3 to the provisions of Article VIII, section 6, of the Montana
4 constitution. The fee-is fees are intended to implement the
5 legislature's duty to provide for the administration and
6 enforcement of maintaining and improving a clean and
7 healthful environment for present and future generations, as
8 required by Article IX, section 1, of the Montana
9 constitution.

10 (5) The purposes of this part are to:

11 (a) protect public health and safety and the
12 environment by providing prompt detection and cleanup of
13 petroleum tank releases;

14 (b) provide adequate financial resources and effective
15 procedures through which tank owners and operators may
16 undertake and be reimbursed for corrective action and
17 payment to third parties for damages caused by releases from
18 petroleum storage tanks; and

19 (c) assist certain tank owners and operators in meeting
20 financial assurance requirements under state and federal law
21 governing releases from petroleum storage tanks."

22 **Section 2.** Section 75-11-302, MCA, is amended to read:

23 *75-11-302. Definitions. The following definitions
24 apply to this part:

25 (1) "Accidental release" means a sudden or nonsudden

1 release, neither expected nor intended by the tank owner or
2 operator, of petroleum or petroleum products from a storage
3 tank that results in a need for corrective action or
4 compensation for third party bodily injury or property
5 damage.

6 (2) "Applicable fund" means either the petroleum tank
7 release cleanup fund established in 75-11-313 or the small
8 petroleum tank release cleanup fund established in [section
9 7].

10 (2)(3) "Board" means the petroleum tank release
11 compensation board established in 2-15-2108.

12 (3)(4) "Bodily injury" means physical injury, sickness,
13 or disease sustained by an individual, including death that
14 results from the physical injury, sickness, or disease at
15 any time.

16 (4)(5) "Claim" means a written request prepared and
17 submitted by an owner or operator or an agent of the owner
18 or operator for reimbursement of expenses caused by an
19 accidental release from a petroleum storage tank.

20 (5)(6) "Corrective action" means investigation,
21 monitoring, cleanup, restoration, abatement, removal, and
22 other actions necessary to respond to a release.

23 (6)(7) "Department" means the department of health and
24 environmental sciences provided for in Title 2, chapter 15,
25 part 21.

1 (7)(8) "Distributor" means a distributor as defined in
2 15-70-201 a person who is licensed to sell gasoline as
3 provided by 15-70-202 or licensed to sell special fuels as
4 provided by 15-70-302 and who:

5 (a) engages in the business in this state of producing,
6 refining, manufacturing, or compounding gasoline or special
7 fuels for sale, use, or distribution;

8 (b) imports gasoline or special fuels for sale, use, or
9 distribution in this state;

10 (c) engages in the wholesale distribution of gasoline
11 or special fuels in this state;

12 (d) is an exporter as defined in subsection (11);

13 (e) is a dealer licensed as of January 1, 1969, except
14 a dealer at an established airport; or

15 (f) either blends gasoline with alcohol or blends
16 special fuels with waste oil.

17 (8)(9) "Eligible costs" means expenses reimbursable
18 under 75-11-307.

19 (9)(10) "Export" means to transport out of Montana, by
20 any means other than in the fuel supply tank of a motor
21 vehicle, gasoline or special fuels received from a refinery
22 or pipeline terminal within Montana.

23 (11) "Exporter" means a person who transports, other
24 than in the fuel supply tank of a motor vehicle, gasoline or
25 special fuels received from a refinery or pipeline terminal

1 in Montana to a destination outside Montana for sale, use,
2 or consumption beyond the boundaries of this state.

3 (12) "Fee" "Fees" means the petroleum storage tank
4 cleanup fee provided for in 75-11-314 and the small
5 petroleum storage tank cleanup fee provided for in [section
6 8].

7 ~~{10}"Fund"--means--the--petroleum--tank--release--cleanup~~
8 ~~fund-established-in-75-11-313-~~

9 {11}(13) "Gasoline" means gasoline as defined in
10 15-70-201.

11 (14) "Import" means to receive into a person's
12 possession or custody first after its arrival and coming to
13 rest at a destination within the state, any gasoline or
14 special fuels shipped or transported into this state from a
15 point of origin outside of this state, other than in the
16 fuel supply tank of a motor vehicle.

17 {12}(15) "Operator" means a person in control of or
18 having responsibility for the daily operation of a petroleum
19 storage tank.

20 {13}(16) "Owner" means a person who holds title to,
21 controls, or possesses an interest in a petroleum storage
22 tank. The term does not include a person who holds an
23 interest in a tank solely for financial security, unless
24 through foreclosure or other related actions the holder of a
25 security interest has taken possession of the tank.

1 {14}(17) "Person" means an individual, firm, trust,
2 estate, partnership, company, association, joint stock
3 company, syndicate, consortium, commercial entity,
4 corporation, or agency of state or local government.

5 {15}(18) "Petroleum" or "petroleum products" means crude
6 oil or any fraction thereof that is liquid at standard
7 conditions of temperature and pressure (60 degrees F and
8 14.7 pounds per square inch absolute).

9 {16}(19) "Petroleum storage tank" means a tank that
10 contains petroleum or petroleum products and that is:

11 (a) an underground storage tank as defined in
12 75-10-403;

13 (b) a storage tank that is situated in an underground
14 area such as a basement, cellar, mine, draft, shaft, or
15 tunnel;

16 (c) an above ground storage tank with a capacity less
17 than 30,000 gallons; or

18 (d) above ground or underground pipes associated with
19 tanks under subsections {16}{b} (19){b} and {16}{c} (19){c},
20 except that pipelines regulated under the following laws are
21 excluded:

22 (i) the Natural Gas Pipeline Safety Act of 1968 (49
23 U.S.C. 1671, et seq.);

24 (ii) the Hazardous Liquid Pipeline Safety Act of 1979
25 (49 U.S.C. 2001, et seq.); and

1 (iii) state law comparable to the provisions of law
 2 referred to in subsections ~~(16)(d)(i)~~ (19)(d)(i) and
 3 ~~(16)(d)(ii)~~ (19)(d)(ii), if the facility is intrastate.

4 ~~(17)(20)~~ "Property damage" means:

5 (a) physical injury to tangible property, including
 6 loss of use of that property caused by the injury; or

7 (b) loss of use of tangible property that is not
 8 physically injured.

9 ~~(18)(21)~~ "Release" means a release, as defined in
 10 75-10-701, of petroleum or petroleum products from a
 11 petroleum storage tank.

12 (22) "Special fuel" means those combustible gases and
 13 liquids commonly referred to as diesel fuel or any other
 14 volatile liquid of less than 46 degrees A.P.I. (American
 15 petroleum institute) gravity test, except liquid petroleum
 16 gas."

17 **Section 3.** Section 75-11-307, MCA, is amended to read:

18 **"75-11-307. Reimbursement for expenses caused by a**
 19 **release.** (1) Subject to the availability of funds money from
 20 the applicable fund under subsection (5), an owner or
 21 operator who is eligible under 75-11-308 and complies with
 22 75-11-309 and any rules adopted to implement those sections
 23 must be reimbursed by the board from the applicable fund for
 24 the following eligible costs caused by a release from a
 25 petroleum storage tank:

1 (a) corrective action costs; and

2 (b) compensation paid to third parties for bodily
 3 injury or property damage.

4 (2) An owner or operator may not be reimbursed from the
 5 applicable fund for the following expenses:

6 (a) corrective action costs or the costs of bodily
 7 injury or property damage paid to third parties that are
 8 determined by the board to be ineligible for reimbursement;

9 (b) costs for bodily injury and property damage, other
 10 than corrective action costs, incurred by the owner or
 11 operator;

12 (c) penalties or payments for damages incurred under
 13 actions by the department, board, or federal, state, local,
 14 or tribal agencies or other government entities involving
 15 judicial or administrative enforcement activities and
 16 related negotiations;

17 (d) attorney fees and legal costs of the owner,
 18 operator, or a third party;

19 (e) costs for the repair or replacement of a tank or
 20 piping or costs of other materials, equipment, or labor
 21 related to the operation, repair, or replacement of a tank
 22 or piping;

23 (f) expenses incurred before April 13, 1989, for owners
 24 or operators seeking reimbursement from the petroleum tank
 25 release cleanup fund and expenses incurred before July--17

1 ~~1991~~ [THE EFFECTIVE DATE OF THIS SECTION] for owners or
 2 operators seeking reimbursement from the small petroleum
 3 tank release cleanup fund;

4 (g) expenses exceeding the maximum reimbursements
 5 provided for in subsection (4).

6 (3) An owner or operator may designate a person as his
 7 agent to receive the reimbursement.

8 (4) Subject to the availability of funds under
 9 subsection (5):

10 (a) for releases eligible for reimbursement from the
 11 petroleum tank release cleanup fund that are discovered and
 12 reported on or after April 13, 1989, the board shall
 13 reimburse an owner or operator for 50% of the first \$35,000
 14 of eligible costs and 100% of subsequent eligible costs, up
 15 to a maximum total reimbursement of \$982,500; and

16 (b) for releases eligible for reimbursement from the
 17 small petroleum tank release cleanup fund that are
 18 discovered and reported on or after ~~July 1, 1991~~ APRIL 13,
 19 1989, the board shall reimburse an owner or operator for 50%
 20 of the first \$10,000 of eligible costs and 100% of
 21 subsequent eligible costs, up to a maximum total
 22 reimbursement of \$495,000.

23 (5) If the applicable fund does not contain sufficient
 24 money to pay approved claims for eligible costs, a
 25 reimbursement may not be made and the fund and the board are

1 not liable for making any reimbursement for the costs at
 2 that time. When the applicable fund contains sufficient
 3 money, eligible costs must be reimbursed subsequently in the
 4 order in which they were approved by the board."

5 **Section 4.** Section 75-11-308, MCA, is amended to read:

6 "75-11-308. Eligibility. (1) An owner or operator is
 7 eligible for reimbursement for eligible costs caused by a
 8 release from a petroleum storage tank only if:

9 (a) the release was discovered on or after:

10 ~~(i) April 13, 1989--for-a-tank--that--is--eligible--for~~
 11 ~~reimbursement--from-the-petroleum-tank-release-cleanup-fund;~~
 12 ~~and~~

13 ~~(ii) July 1, 1991--for--a--tank--that--is--eligible--for~~
 14 ~~reimbursement--from-the-small-petroleum-tank-release-cleanup~~
 15 ~~fund;~~

16 (b) the department is notified of the release in the
 17 manner and within the time provided by law or rule;

18 (c) the department has been notified of the existence
 19 of the tank in the manner required by department rule;

20 (d) the release was an accidental release; and

21 (e) with the exception of the release, the operation
 22 and management of the tank complied with applicable state
 23 and federal laws and rules when the release occurred and
 24 remained in compliance following detection of the release.

25 (2) (A) An owner or operator is ~~not~~ NOT eligible for

1 reimbursement;

2 ~~(a)~~ from the petroleum tank release cleanup fund OR THE

3 SMALL PETROLEUM TANK RELEASE CLEANUP FUND for expenses

4 caused by releases from the--following THE FOLLOWING

5 petroleum storage tanks with-the-following-exceptions:

6 ~~(a)~~(i) a tank located at a refinery or a terminal of a

7 refiner;

8 ~~(b)~~(ii) a tank located at an oil and gas production

9 facility;

10 ~~(c)~~(iii) a tank that is or was previously under the

11 ownership or control of a railroad;

12 ~~(d)~~(iv) a tank belonging to the federal government;

13 ~~(e)~~(v)--a--farm--or--residential--tank--with--a--capacity--of

14 ~~1,100-gallons-or-less-that-is-used-for--storing--motor--fuel~~

15 ~~for--noncommercial--purposes--or--a--tank--used--for--storing~~

16 ~~heating-oil--for--consumptive--use--on--the--premises--where~~

17 ~~stored;~~

18 ~~(f)~~(vi)(V) a tank owned or operated by a person who has

19 been convicted of a substantial violation of state or

20 federal law or rule that relates to the installation,

21 operation, or management of petroleum storage tanks; or

22 ~~(g)~~(vii)(VI) a mobile storage tank used to transport

23 petroleum or petroleum products from one location to

24 another;--or.

25 (b) AN OWNER OR OPERATOR IS NOT ELIGIBLE FOR

1 REIMBURSEMENT from the ~~small~~ petroleum tank release cleanup

2 fund for expenses caused by releases from the following

3 petroleum storage tanks only:

4 (i) a tank used for storing heating oil for consumptive

5 use on the premises where it is stored; and

6 (ii) a farm or residential tank with a capacity of 1,100

7 gallons or less that is used for storing motor fuel for

8 noncommercial purposes.

9 (C) AN OWNER OR OPERATOR IS ELIGIBLE FOR REIMBURSEMENT

10 FROM THE SMALL PETROLEUM TANK RELEASE CLEANUP FUND FOR

11 EXPENSES CAUSED BY RELEASES FROM PETROLEUM STORAGE TANKS

12 LISTED IN SUBSECTION (2)(B) ONLY."

13 **Section 5.** Section 75-11-309, MCA, is amended to read:

14 "75-11-309. Procedures for reimbursement of eligible

15 costs. (1) An owner or operator seeking reimbursement for

16 eligible costs and the department shall comply with the

17 following procedures:

18 (a) If an owner or operator discovers or is provided

19 evidence that a release may have occurred from his petroleum

20 storage tank, he shall immediately notify the department of

21 the release and conduct an initial response to the release

22 in accordance with state and federal laws and rules to

23 protect public health and safety and the environment.

24 (b) The owner or operator shall conduct a thorough

25 investigation of the release, report the findings to the

1 department, and, as determined necessary by the department,
2 prepare and submit for approval by the department a
3 corrective action plan that conforms with state and federal
4 corrective action requirements.

5 (c) (i) The department shall review the corrective
6 action plan and forward a copy to a local government office
7 with jurisdiction over a corrective action for the release.
8 The local government office shall inform the department if
9 it wants any modification of the proposed plan.

10 (ii) Based on its own review and comments received from
11 a local government or other source, the department may
12 approve the proposed corrective action plan, make or request
13 the owner or operator to modify the proposed plan, or
14 prepare its own plan for compliance by the owner or
15 operator. A plan finally approved by the department through
16 any process provided in this subsection (c) is the approved
17 corrective action plan.

18 (iii) After the department approves a corrective action
19 plan, a local government may not impose different corrective
20 action requirements on the owner or operator.

21 (d) The department shall notify the owner or operator
22 and the board of its approval of a corrective action plan.

23 (e) The owner or operator shall implement the approved
24 plan. The department may oversee the implementation of the
25 plan, require reports and monitoring from the owner or

1 operator, undertake inspections, and otherwise exercise its
2 authority concerning corrective action under Title 75,
3 chapter 10, parts 4 and 7, and other applicable law and
4 rules.

5 (f) The owner or operator shall document in the manner
6 required by the board all expenses incurred in preparing and
7 implementing the corrective action plan. The owner or
8 operator shall submit claims and substantiating documents to
9 the department in the form and manner required by the board.
10 The department shall forward each claim and appropriate
11 documentation to the board and notify the board of any costs
12 that the department considers not reimbursable because of
13 any failure to meet the requirements of subsection (2). The
14 department shall inform the owner or operator of any
15 notification given to the board.

16 (g) The owner or operator shall document, in the manner
17 required by the board, any payments to a third party for
18 bodily injury or property damage caused by a release. The
19 owner or operator shall submit claims and substantiating
20 documents to the board in the form and manner required by
21 the board.

22 (2) The board shall review each claim received under
23 subsections (1)(f) and (1)(g), make the determination
24 required by this subsection, inform the owner or operator of
25 its determination, and, as appropriate, reimburse the owner

1 or operator from the applicable fund. Before approving a
2 reimbursement, the board shall affirmatively determine that:

- 3 (a) the expenses for which reimbursement is claimed:
4 (i) are eligible costs; and
5 (ii) were actually, necessarily, and reasonably incurred
6 for the preparation or implementation of a corrective action
7 plan approved by the department or for payments to a third
8 party for bodily injury or property damage; and
9 (b) the owner or operator:
10 (i) is eligible for reimbursement under 75-11-308; and
11 (ii) has complied with this section and any rules
12 adopted pursuant to this section.
13 (3) If an owner or operator disagrees with a board
14 determination under subsection (2), he may submit a written
15 request for a hearing before the board. The hearing must be
16 held at a meeting of the board no later than 120 days
17 following receipt of the request or at a time mutually
18 agreed to by the board and the owner or operator.
19 (4) The board shall obligate money for reimbursement of
20 eligible costs of owners and operators in the order that the
21 costs are finally approved by the board.
22 (5) (a) The board may, at the request of an owner or
23 operator, guarantee in writing the reimbursement of eligible
24 costs that have been approved by the board but for which
25 money is not currently available from the applicable fund

1 for reimbursement.

2 (b) The board may, at the request of an owner or
3 operator, guarantee in writing reimbursement of eligible
4 costs not yet approved by the board, including estimated
5 costs not yet incurred. A guarantee for payment under this
6 subsection (5)(b) does not affect the order in which money
7 in the applicable fund is obligated under subsection (4).

8 (c) When considering a request for a guarantee of
9 payment, the board may require pertinent information or
10 documentation from the owner or operator. The board may
11 grant or deny, in whole or in part, any request for a
12 guarantee."

13 **Section 6.** Section 75-11-313, MCA, is amended to read:

14 **"75-11-313. Petroleum tank release cleanup fund.** (1)
15 There is a petroleum tank release cleanup fund in the state
16 special revenue fund established in 17-2-102. The fund is
17 administered as a revolving fund by the board and is
18 statutorily appropriated as provided in 17-7-502.

19 (2) There is deposited in the fund:

20 (a) all revenue from the petroleum storage tank cleanup
21 fee as provided in 75-11-314;

22 (b) money received by the board in the form of gifts,
23 grants, reimbursements, or appropriations, from any source,
24 intended to be used for the purposes of this fund;

25 (c) money appropriated or advanced to the fund by the

1 legislature; and

2 (d) all interest earned on money in the fund.

3 (3) The fund may be used only:

4 (a) to administer this part, including payment of board
 5 and department expenses associated with administration,
 6 except that the board shall limit expenditures for
 7 administration to an amount that is commensurate with the
 8 number of tanks CLAIMS AND COMPLEXITY OF CLAIMS eligible for
 9 reimbursement from the petroleum tank release cleanup fund
 10 when compared to the total number of tanks CLAIMS AND
 11 COMPLEXITY OF CLAIMS eligible for reimbursement from both of
 12 the funds administered under this part;

13 (b) to reimburse owners and operators for eligible
 14 costs caused by a release from a petroleum storage tank and
 15 approved by the board; and

16 (c) for repayment of any advance made under subsection
 17 (4), plus interest earned on the advance.

18 (4) (a) The legislature may appropriate to the fund
 19 repayable advances as necessary to carry out the purposes of
 20 this part. The outstanding total of repayable advances may
 21 not exceed the amount the board estimates will be received
 22 by the fund from the petroleum storage tank cleanup fee
 23 during the next 24 months.

24 (b) Advances to the fund must be repaid and interest
 25 earned on advances must be paid to the general fund when

1 determined appropriate by the board. However, all advances
 2 to the fund plus the interest earned must be repaid on or
 3 before December 31, 1995."

4 NEW SECTION. Section 7. Small petroleum tank release
 5 cleanup fund. (1) There is a small petroleum tank release
 6 cleanup fund in the state special revenue fund established
 7 in 17-2-102. The fund is administered as a revolving fund by
 8 the board and is statutorily appropriated as provided in
 9 17-7-502.

10 (2) There is deposited in the fund:

11 (a) all revenue from the small petroleum storage tank
 12 cleanup fee as provided in [section 8];

13 (b) money received by the board in the form of gifts,
 14 grants, reimbursements, or appropriations, from any source,
 15 intended to be used for the purposes of this fund;

16 (c) money appropriated or advanced to the fund by the
 17 legislature; and

18 (d) all interest earned on money in the fund.

19 (3) The small petroleum tank release cleanup fund may
 20 be used only:

21 (a) to administer this part, including payment of board
 22 and department expenses associated with administration,
 23 except that the board shall limit expenditures for
 24 administration to an amount that is commensurate with the
 25 number of tanks CLAIMS AND COMPLEXITY OF CLAIMS eligible for

1 reimbursement from the small petroleum tank release cleanup
 2 fund when compared to the total number of tanks CLAIMS AND
 3 COMPLEXITY OF CLAIMS eligible for reimbursement from both of
 4 the funds administered under this part;

5 (b) to reimburse owners and operators for eligible
 6 costs caused by a release from petroleum storage tanks as
 7 specified in 75-11-308(2)(b) and approved by the board; and

8 (c) for repayment of any advance made under subsection
 9 (4) plus interest earned on the advance.

10 (4) (a) The legislature may appropriate to the small
 11 petroleum tank release cleanup fund repayable advances as
 12 necessary to carry out the purposes of this part. The
 13 outstanding total of repayable advances may not exceed the
 14 amount the board estimates will be received by the fund from
 15 the small petroleum storage tank cleanup fee during the next
 16 24 months.

17 (b) Advances to the fund must be repaid and interest
 18 earned on advances must be paid to the general fund when
 19 determined appropriate by the board. However, all advances
 20 to the fund plus the interest earned must be repaid on or
 21 before December 31, 1997.

22 (5) (A) THE LEGISLATURE MAY APPROPRIATE TO THE SMALL
 23 PETROLEUM TANK RELEASE CLEANUP FUND REPAYABLE ADVANCES FROM
 24 THE PETROLEUM TANK RELEASE CLEANUP FUND AS NECESSARY TO
 25 CARRY OUT THE ADMINISTRATIVE NEEDS OF THIS PART. THE

1 OUTSTANDING TOTAL REPAYABLE ADVANCES MAY NOT EXCEED THE
 2 AMOUNT THE BOARD ESTIMATES WILL BE RECEIVED BY THE FUND FROM
 3 THE SMALL PETROLEUM STORAGE TANK CLEANUP FEE DURING THE NEXT
 4 4 MONTHS.

5 (B) WHENEVER DETERMINED APPROPRIATE BY THE BOARD,
 6 ADVANCES TO THE SMALL PETROLEUM TANK RELEASE CLEANUP FUND
 7 MUST BE REPAYED WITH INTEREST AT A RATE EQUAL TO THE AVERAGE
 8 SHORT-TERM INVESTMENT POOL PORTFOLIO 7-DAY AVERAGE YIELD FOR
 9 THE MONTHS IN WHICH THE LOAN IS OUTSTANDING. ALL ADVANCES TO
 10 THE FUND, PLUS INTEREST, MUST BE REPAYED BEFORE JANUARY 1,
 11 1994.

12 NEW SECTION. Section 8. Small petroleum storage tank
 13 cleanup fee -- collection -- penalties -- warrant for
 14 distrain -- statute of limitations. (1) Except as provided
 15 in subsection (4), every distributor shall pay to the
 16 department of revenue a small petroleum storage tank cleanup
 17 fee for each gallon of special fuels distributed by him
 18 within the state and upon which the fee has not been paid by
 19 any other distributor. The fee must equal:

20 (a) 1 cent for each gallon of special fuels distributed
 21 from July 1, 1991, through June 30, 1993; and

22 (b) 0.75 cent for each gallon of special fuels
 23 distributed on or after July 1, 1993.

24 (2) The following may not be included in the measure of
 25 a distributor's fee:

1 (a) special fuels exported or sold for export out of
2 the state; and

3 (B) SPECIAL FUELS SOLD TO THE FEDERAL GOVERNMENT;

4 (C) SPECIAL FUELS SOLD TO ANOTHER GASOLINE DISTRIBUTOR
5 LICENSED UNDER 15-70-201; AND

6 (b)(D) special fuels sold to a railroad.

7 (3) Waste oil OR WASTE OIL that is blended with special
8 fuels to be sold as heating oil is subject to the fee
9 provided in subsection (1).

10 (4) A fee may not be imposed or collected beginning on
11 the first day of the first month in the first calendar
12 quarter after the unobligated balance in the fund equals or
13 exceeds \$6 million. Whenever the unobligated fund balance is
14 less than \$3 million, the department of revenue shall,
15 within 30 days, notify distributors by mail that the fee is
16 reinstated beginning on the first day of the first month
17 that begins no less than 30 days after the date of the
18 notice. Once reinstated, the fee must be imposed and
19 collected until the unobligated fund balance again equals or
20 exceeds \$6 million.

21 (5) The department of revenue shall collect the fee in
22 the same manner as the basic gasoline license tax under
23 Title 15, chapter 70, part 2. The provisions of 15-70-103,
24 15-70-111, 15-70-202, 15-70-205, 15-70-206, 15-70-208
25 through 15-70-212, 15-70-221(2), and 15-70-232 apply to the

1 fee. The provisions of 15-70-203, 15-70-204, 15-70-207,
2 15-70-221(1), and 15-70-222 through 15-70-224 do not apply
3 to the fee.

4 **Section 9.** Section 75-11-318, MCA, is amended to read:

5 "75-11-318. Powers and duties of board. (1) The board
6 shall administer the petroleum tank release cleanup fund and
7 the small petroleum tank release cleanup fund in accordance
8 with the provisions of this part, including the payment of
9 reimbursement reimbursements to owners and operators.

10 (2) The board shall determine whether to approve
11 reimbursement of eligible costs under the provisions of
12 75-11-309(2), shall obligate money from the applicable fund
13 for approved costs, and shall act on requests for the
14 guarantee of payments through the procedures and criteria
15 provided in 75-11-309.

16 (3) The board may conduct meetings, hold hearings,
17 undertake legal action, and conduct other business as may be
18 necessary to administer its responsibilities under this
19 part. The board shall meet at least quarterly for the
20 purpose of reviewing and approving claims for reimbursement
21 from the applicable fund established by 75-11-313 or
22 [section 7] and conducting other business as necessary.

23 (4) The board may hire staff, and the department shall
24 provide staff support to the board as the department
25 determines it is able. The Pursuant to the provisions of

1 75-11-313(3)(a) and [section 7(3)(a)], the board shall use
 2 the applicable fund to pay its staff expenses and, to pay
 3 for department staff utilized for the review or preparation
 4 of corrective action plans and for the oversight of
 5 corrective action undertaken by owners and operators for the
 6 purposes of this part, AND TO PAY FOR DEPARTMENT OF REVENUE
 7 STAFF UTILIZED FOR THE COLLECTION OF THE PETROLEUM STORAGE
 8 TANK CLEANUP FEE AND THE SMALL PETROLEUM STORAGE TANK
 9 CLEANUP FEE.

10 (5) The board shall adopt rules to administer this
 11 part, including:

12 (a) rules governing submission of claims by owners or
 13 operators to the department and board;

14 (b) procedures for determining owners or operators who
 15 are eligible for reimbursement and determining the validity
 16 of claims;

17 (c) procedures for the review and approval of
 18 corrective action plans;

19 (d) procedures for conducting board meetings, hearings,
 20 and other business necessary for the implementation of this
 21 part; and

22 (e) other rules necessary for the administration of
 23 this part."

24 **Section 10.** Section 75-11-319, MCA, is amended to read:

25 "75-11-319. Rulemaking authority -- department and

1 department of revenue. (1) The department may adopt rules
 2 necessary to administer its responsibilities under this
 3 part, including requirements for approval of corrective
 4 action plans.

5 (2) The department of revenue shall adopt rules
 6 governing the collection of the petroleum storage tank
 7 cleanup fee and the small petroleum storage tank cleanup
 8 fee. The rules may include, at a minimum, reporting and
 9 recordkeeping requirements, method and timing of payment,
 10 and examination of records. The rules must be generally
 11 consistent with procedures governing the collection of the
 12 gasoline license tax provided for in Title 15, chapter 70."

13 **Section 11.** Section 17-7-502, MCA, is amended to read:

14 "17-7-502. Statutory appropriations -- definition --
 15 **requisites for validity.** (1) A statutory appropriation is an
 16 appropriation made by permanent law that authorizes spending
 17 by a state agency without the need for a biennial
 18 legislative appropriation or budget amendment.

19 (2) Except as provided in subsection (4), to be
 20 effective, a statutory appropriation must comply with both
 21 of the following provisions:

22 (a) The law containing the statutory authority must be
 23 listed in subsection (3).

24 (b) The law or portion of the law making a statutory
 25 appropriation must specifically state that a statutory

1 appropriation is made as provided in this section.

2 (3) The following laws are the only laws containing
 3 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
 4 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
 5 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121;
 6 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404;
 7 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007;
 8 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;
 9 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111;
 10 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016;
 11 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150;
 12 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101;
 13 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136;
 14 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306;
 15 and section 13, House Bill No. 861, Laws of 1985, and
 16 [section 7].

17 (4) There is a statutory appropriation to pay the
 18 principal, interest, premiums, and costs of issuing, paying,
 19 and securing all bonds, notes, or other obligations, as due,
 20 that have been authorized and issued pursuant to the laws of
 21 Montana. Agencies that have entered into agreements
 22 authorized by the laws of Montana to pay the state
 23 treasurer, for deposit in accordance with 17-2-101 through
 24 17-2-107, as determined by the state treasurer, an amount
 25 sufficient to pay the principal and interest as due on the

1 bonds or notes have statutory appropriation authority for
 2 such payments. (In subsection (3), pursuant to sec. 10, Ch.
 3 664, L. 1987, the inclusion of 39-71-2504 terminates June
 4 30, 1991.)"

5 NEW SECTION. SECTION 12. REPORT TO LEGISLATURE. THE
 6 PETROLEUM TANK RELEASE COMPENSATION BOARD SHALL REPORT TO
 7 THE 53RD LEGISLATURE A PROPOSAL FOR CONSOLIDATION OF THE
 8 PETROLEUM TANK RELEASE CLEANUP FUND AND THE SMALL PETROLEUM
 9 TANK RELEASE CLEANUP FUND AND FOR CONSOLIDATING THE
 10 ADMINISTRATION OF THE PROGRAMS.

11 NEW SECTION. Section 13. Codification instruction.
 12 [Sections 7 and 8] are intended to be codified as an
 13 integral part of Title 75, chapter 11, part 3, and the
 14 provisions of Title 75, chapter 11, part 3, apply to
 15 [sections 7 and 8].

16 NEW SECTION. Section 14. Severability. If a part of
 17 [this act] is invalid, all valid parts that are severable
 18 from the invalid part remain in effect. If a part of [this
 19 act] is invalid in one or more of its applications, the part
 20 remains in effect in all valid applications that are
 21 severable from the invalid applications.

22 NEW SECTION. Section 15. Effective dates. (1)
 23 [Sections 1, 2, 9, 10, ~~12~~ 13, 14, and this section] are
 24 effective on passage and approval.

25 (2) [Sections 3 through 8, and 11, AND 12] are

HB 0973/02

1 effective July 1, 1991.

-End-

1 HOUSE BILL NO. 973

2 INTRODUCED BY STANG, SVRCEK, O'KEEFE, TUNBY,

3 BRUSKI, NATHE, DOHERTY, MCCULLOCH

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A SMALL
6 PETROLEUM TANK RELEASE CLEANUP FUND TO PROVIDE EXPENSE
7 REIMBURSEMENT TO CERTAIN TANK OWNERS AND OPERATORS;
8 ESTABLISHING A SMALL PETROLEUM STORAGE TANK CLEANUP FEE TO
9 BE PAID BY DISTRIBUTORS OF SPECIAL FUELS; CREATING A
10 STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502,
11 75-11-301, 75-11-302, 75-11-307, 75-11-308, 75-11-309,
12 75-11-313, 75-11-318, AND 75-11-319, MCA; AND PROVIDING
13 EFFECTIVE DATES."

14
15 STATEMENT OF INTENT

16 A statement of intent is required for this bill in order
17 to provide guidance to the petroleum tank release
18 compensation board, the department of health and
19 environmental sciences, and the department of revenue for
20 the adoption of rules authorized by the bill. The petroleum
21 tank release compensation board shall adopt rules that: (1)
22 govern submission of claims from owners and operators to the
23 board and to the department of health and environmental
24 sciences for reimbursement from the small petroleum tank
25 release cleanup fund; (2) establish procedures for

There are no changes in this bill,
and will not be reprinted. Please
refer to yellow copy for complete
text.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 12, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 973 (third reading copy -- blue), respectfully report that House Bill No. 973 be amended and as so amended be concurred in:

1. Page 7, line 10.

Following: "15-70-201."

Insert: "For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to the federal defense fuel supply center."

Signed: _____


Mike Halligan, Chairman

MA 4-12-91
Amd. Coord.

SB 4-12 3:55
Sec. of Senate

SENATE

HB973

781546SC.Sji

SENATE COMMITTEE OF THE WHOLE AMENDMENT

April 16, 1991
Page 2 of 2

April 16, 1991 4:47 pm
Mr. Chairman: I move to amend House Bill No. 973 (third reading copy -- blue) as follows:

1. Title, line 9.
Following: "FUELS;"
Insert: "DEPOSITING THE FEE IN THE HIGHWAY RECONSTRUCTION TRUST FUND WHEN THE BALANCE IN THE SMALL PETROLEUM TANK RELEASE CLEANUP FUND EXCEEDS \$4 MILLION;"
2. Title, line 10.
Following: "17-7-502,"
Insert: "60-3-216,"
3. Page 3, line 22.
Following: "are"
Insert: ", except as otherwise provided in [section 8(4)],"
4. Page 20, line 11.
Following: "(a)"
Insert: "except as provided in [section 8(4)]"
5. Page 22, lines 14 and 15.
Strike: "Except" on line 14 through "every" on line 15
Insert: "Every"
6. Page 23, line 10.
Following: "(4)"
Strike: the remainder of line 10
Insert: "On"
7. Page 23, line 13.
Strike: "\$6"
Insert: "\$4"
Following: "million"
Insert: ", the fee collected under this section must be deposited in the highway reconstruction trust fund account in the state special revenue fund"
8. Page 23, lines 14 through 18.
Strike: "\$3"
Insert: "\$2"
Following: "million," on line 14
Strike: remainder of line 14 through "reinstated," on line 18
9. Page 23, lines 18 and 19.
Strike: "imposed" on line 18 through "collected"
Insert: "deposited in the small petroleum tank release cleanup fund in the state special revenue fund"

10. Page 23, line 20.
Strike: "\$6"
Insert: "\$4"

11. Page 28, line 5.
Following: line 4
Insert: "Section 12. Section 60-3-216, MCA, is amended to read:
"60-3-216. (Temporary) Highway reconstruction trust account. (1) There is a highway reconstruction trust account created in the state special revenue fund.
(2) The highway reconstruction trust fund account consists of allocations:
(a) from the taxes collected pursuant to 15-35-103 for each fiscal year beginning on or after July 1, 1986, and ending on or before June 30, 1993, the amounts allocated to the account pursuant to 15-35-108; and
(b) from the fees collected pursuant to [section 8] for each fiscal year beginning on or after July 1, 1991; and
~~(b)~~(c) from the taxes collected pursuant to 15-70-204 and 15-70-321, for each fiscal year beginning on or after July 1, 1983, and ending on or before June 30, 1993, in an amount that will equal appropriated expenditures.
(Terminates July 1, 1993--sec. 7, Ch. 541, L. 1983.)"

Renumber: subsequent sections

12. Page 28, line 23.
Strike: "13."
Following: "14."
Insert: "15,"

13. Page 28, line 25.
Following: "8"
Strike: "4"
Following: "and"
Insert: "and"
Following: "11"
Strike: ", AND 12"
Insert: "through 13"

ADOPT

REJECT

4-16-91
S.B. Coord.

S.B. 4-16
Sec. of Senate

Signed: Bill Farrell
Senator Farrell

1 HOUSE BILL NO. 973
 2 INTRODUCED BY STANG, SVRCEK, O'KEEFE, TUNBY,
 3 BRUSKI, NATHE, DOHERTY, MCCULLOCH
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A SMALL
 6 PETROLEUM TANK RELEASE CLEANUP FUND TO PROVIDE EXPENSE
 7 REIMBURSEMENT TO CERTAIN TANK OWNERS AND OPERATORS;
 8 ESTABLISHING A SMALL PETROLEUM STORAGE TANK CLEANUP FEE TO
 9 BE PAID BY DISTRIBUTORS OF SPECIAL FUELS; DEPOSITING THE FEE
 10 IN THE HIGHWAY RECONSTRUCTION TRUST FUND WHEN THE BALANCE IN
 11 THE SMALL PETROLEUM TANK RELEASE CLEANUP FUND EXCEEDS \$4
 12 MILLION; CREATING A STATUTORY APPROPRIATION; AMENDING
 13 SECTIONS 17-7-502, 60-3-216, 75-11-301, 75-11-302,
 14 75-11-307, 75-11-308, 75-11-309, 75-11-313, 75-11-318, AND
 15 75-11-319, MCA; AND PROVIDING EFFECTIVE DATES."

16
 17 STATEMENT OF INTENT
 18 A statement of intent is required for this bill in order
 19 to provide guidance to the petroleum tank release
 20 compensation board, the department of health and
 21 environmental sciences, and the department of revenue for
 22 the adoption of rules authorized by the bill. The petroleum
 23 tank release compensation board shall adopt rules that: (1)
 24 govern submission of claims from owners and operators to the
 25 board and to the department of health and environmental

1 sciences for reimbursement from the small petroleum tank
 2 release cleanup fund; (2) establish procedures for
 3 determining eligibility of tank owners and operators for
 4 reimbursement from the small petroleum tank release cleanup
 5 fund and the validity of claims; and (3) are necessary for
 6 administration of the small petroleum tank release cleanup
 7 fund and other provisions of this bill, provided that the
 8 rules may not conflict with the eligibility requirements and
 9 procedures provided for in this bill and Title 75, chapter
 10 11, part 3; rules previously adopted under that part; and
 11 laws, rules, and procedures of the federal government or the
 12 department of health and environmental sciences pertaining
 13 to petroleum storage tank releases eligible for
 14 reimbursement from the small petroleum tank release cleanup
 15 fund.

16 The department of health and environmental sciences may
 17 adopt rules or revise existing rules as necessary to
 18 implement and incorporate the provisions of this bill into
 19 the department's existing procedures and its requirements
 20 pertaining to releases from underground storage tanks.

21 The department of revenue shall adopt rules governing
 22 the collection of the small petroleum storage tank cleanup
 23 fee, including reporting and recordkeeping requirements, the
 24 method and timing of payments from distributors, examination
 25 of records, and other provisions necessary to ensure that



1 the small petroleum storage tank cleanup fee is properly and
2 efficiently collected.

3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5 **Section 1.** Section 75-11-301, MCA, is amended to read:

6 **"75-11-301. Findings and purposes.** (1) The legislature
7 finds that the use of petroleum products stored in tanks
8 contributes significantly to the economic well-being and
9 quality of life of Montana citizens.

10 (2) The legislature finds that leaks, spills, and other
11 releases of petroleum products from storage tanks endanger
12 public health and safety, ground water quality, and other
13 state resources.

14 (3) The legislature finds that current administrative
15 and financial resources of the public and private sectors
16 are inadequate to address problems caused by releases from
17 petroleum storage tanks and need to be supplemented by a
18 major program of release detection and corrective action.

19 (4) The legislature finds that proper funding for the
20 program is through a petroleum storage tank cleanup fee fees
21 paid by persons who use and receive the benefits of
22 petroleum products. The legislature further finds that ~~this~~
23 these general use fee fees, provided for in 75-11-314 and
24 [section 8], is are, EXCEPT AS OTHERWISE PROVIDED IN
25 [SECTION 8(4)], intended solely to support a program to pay

1 for corrective action and damages caused by releases from
2 petroleum storage tanks. The general gasoline and special
3 fuels use fee-is fees are collected from distributors for
4 administrative convenience and is are not intended as a
5 method for collecting highway revenue pursuant to the
6 provisions of Article VIII, section 6, of the Montana
7 constitution. The fee-is fees are intended to implement the
8 legislature's duty to provide for the administration and
9 enforcement of maintaining and improving a clean and
10 healthful environment for present and future generations, as
11 required by Article IX, section 1, of the Montana
12 constitution.

13 (5) The purposes of this part are to:

14 (a) protect public health and safety and the
15 environment by providing prompt detection and cleanup of
16 petroleum tank releases;

17 (b) provide adequate financial resources and effective
18 procedures through which tank owners and operators may
19 undertake and be reimbursed for corrective action and
20 payment to third parties for damages caused by releases from
21 petroleum storage tanks; and

22 (c) assist certain tank owners and operators in meeting
23 financial assurance requirements under state and federal law
24 governing releases from petroleum storage tanks."

25 **Section 2.** Section 75-11-302, MCA, is amended to read:

1 "75-11-302. Definitions. The following definitions
2 apply to this part:

3 (1) "Accidental release" means a sudden or nonsudden
4 release, neither expected nor intended by the tank owner or
5 operator, of petroleum or petroleum products from a storage
6 tank that results in a need for corrective action or
7 compensation for third party bodily injury or property
8 damage.

9 (2) "Applicable fund" means either the petroleum tank
10 release cleanup fund established in 75-11-313 or the small
11 petroleum tank release cleanup fund established in [section
12 7].

13 {2}(3) "Board" means the petroleum tank release
14 compensation board established in 2-15-2108.

15 {3}(4) "Bodily injury" means physical injury, sickness,
16 or disease sustained by an individual, including death that
17 results from the physical injury, sickness, or disease at
18 any time.

19 {4}(5) "Claim" means a written request prepared and
20 submitted by an owner or operator or an agent of the owner
21 or operator for reimbursement of expenses caused by an
22 accidental release from a petroleum storage tank.

23 {5}(6) "Corrective action" means investigation,
24 monitoring, cleanup, restoration, abatement, removal, and
25 other actions necessary to respond to a release.

1 {6}(7) "Department" means the department of health and
2 environmental sciences provided for in Title 2, chapter 15,
3 part 21.

4 {7}(8) "Distributor" means ~~a distributor as defined in~~
5 ~~15-70-201 a person who is licensed to sell gasoline as~~
6 ~~provided by 15-70-202 or licensed to sell special fuels as~~
7 ~~provided by 15-70-302~~ and who:

8 (a) engages in the business in this state of producing,
9 refining, manufacturing, or compounding gasoline or special
10 fuels for sale, use, or distribution;

11 (b) imports gasoline or special fuels for sale, use, or
12 distribution in this state;

13 (c) engages in the wholesale distribution of gasoline
14 or special fuels in this state;

15 (d) is an exporter as defined in subsection (11);

16 (e) is a dealer licensed as of January 1, 1969, except
17 a dealer at an established airport; or

18 (f) either blends gasoline with alcohol or blends
19 special fuels with waste oil.

20 {8}(9) "Eligible costs" means expenses reimbursable
21 under 75-11-307.

22 {9}(10) "Export" means to transport out of Montana, by
23 any means other than in the fuel supply tank of a motor
24 vehicle, gasoline or special fuels received from a refinery
25 or pipeline terminal within Montana.

1 (11) "Exporter" means a person who transports, other
 2 than in the fuel supply tank of a motor vehicle, gasoline or
 3 special fuels received from a refinery or pipeline terminal
 4 in Montana to a destination outside Montana for sale, use,
 5 or consumption beyond the boundaries of this state.

6 (12) "Fee" "Fees" means the petroleum storage tank
 7 cleanup fee provided for in 75-11-314 and the small
 8 petroleum storage tank cleanup fee provided for in [section
 9 8].

10 ~~(10) "Fund" means the petroleum tank release cleanup~~
 11 ~~fund established in 75-11-313.~~

12 (13) "Gasoline" means gasoline as defined in
 13 15-70-201. FOR THE PURPOSES OF THIS CHAPTER, GASOLINE DOES
 14 NOT INCLUDE JP-4 JET FUEL SOLD TO THE FEDERAL DEFENSE FUEL
 15 SUPPLY CENTER.

16 (14) "Import" means to receive into a person's
 17 possession or custody first after its arrival and coming to
 18 rest at a destination within the state, any gasoline or
 19 special fuels shipped or transported into this state from a
 20 point of origin outside of this state, other than in the
 21 fuel supply tank of a motor vehicle.

22 (15) "Operator" means a person in control of or
 23 having responsibility for the daily operation of a petroleum
 24 storage tank.

25 (16) "Owner" means a person who holds title to,

1 controls, or possesses an interest in a petroleum storage
 2 tank. The term does not include a person who holds an
 3 interest in a tank solely for financial security, unless
 4 through foreclosure or other related actions the holder of a
 5 security interest has taken possession of the tank.

6 ~~(14)~~ (17) "Person" means an individual, firm, trust,
 7 estate, partnership, company, association, joint stock
 8 company, syndicate, consortium, commercial entity,
 9 corporation, or agency of state or local government.

10 ~~(15)~~ (18) "Petroleum" or "petroleum products" means crude
 11 oil or any fraction thereof that is liquid at standard
 12 conditions of temperature and pressure (60 degrees F and
 13 14.7 pounds per square inch absolute).

14 ~~(16)~~ (19) "Petroleum storage tank" means a tank that
 15 contains petroleum or petroleum products and that is:

16 (a) an underground storage tank as defined in
 17 75-10-403;

18 (b) a storage tank that is situated in an underground
 19 area such as a basement, cellar, mine, draft, shaft, or
 20 tunnel;

21 (c) an above ground storage tank with a capacity less
 22 than 30,000 gallons; or

23 (d) above ground or underground pipes associated with
 24 tanks under subsections ~~(16)(b)~~ (19)(b) and ~~(16)(c)~~ (19)(c),
 25 except that pipelines regulated under the following laws are

1 excluded:

2 (i) the Natural Gas Pipeline Safety Act of 1968 (49
3 U.S.C. 1671, et seq.);

4 (ii) the Hazardous Liquid Pipeline Safety Act of 1979
5 (49 U.S.C. 2001, et seq.); and

6 (iii) state law comparable to the provisions of law
7 referred to in subsections ~~(16)(d)(i)~~ (19)(d)(i) and
8 ~~(16)(d)(ii)~~ (19)(d)(ii), if the facility is intrastate.

9 ~~(17)(20)~~ "Property damage" means:

10 (a) physical injury to tangible property, including
11 loss of use of that property caused by the injury; or

12 (b) loss of use of tangible property that is not
13 physically injured.

14 ~~(18)(21)~~ "Release" means a release, as defined in
15 75-10-701, of petroleum or petroleum products from a
16 petroleum storage tank.

17 (22) "Special fuel" means those combustible gases and
18 liquids commonly referred to as diesel fuel or any other
19 volatile liquid of less than 46 degrees A.P.I. (American
20 petroleum institute) gravity test, except liquid petroleum
21 gas."

22 **Section 3.** Section 75-11-307, MCA, is amended to read:

23 "75-11-307. Reimbursement for expenses caused by a
24 release. (1) Subject to the availability of funds money from
25 the applicable fund under subsection (5), an owner or

1 operator who is eligible under 75-11-308 and complies with
2 75-11-309 and any rules adopted to implement those sections
3 must be reimbursed by the board from the applicable fund for
4 the following eligible costs caused by a release from a
5 petroleum storage tank:

6 (a) corrective action costs; and

7 (b) compensation paid to third parties for bodily
8 injury or property damage.

9 (2) An owner or operator may not be reimbursed from the
10 applicable fund for the following expenses:

11 (a) corrective action costs or the costs of bodily
12 injury or property damage paid to third parties that are
13 determined by the board to be ineligible for reimbursement;

14 (b) costs for bodily injury and property damage, other
15 than corrective action costs, incurred by the owner or
16 operator;

17 (c) penalties or payments for damages incurred under
18 actions by the department, board, or federal, state, local,
19 or tribal agencies or other government entities involving
20 judicial or administrative enforcement activities and
21 related negotiations;

22 (d) attorney fees and legal costs of the owner,
23 operator, or a third party;

24 (e) costs for the repair or replacement of a tank or
25 piping or costs of other materials, equipment, or labor

1 related to the operation, repair, or replacement of a tank
2 or piping;

3 (f) expenses incurred before April 13, 1989, for owners
4 or operators seeking reimbursement from the petroleum tank
5 release cleanup fund and expenses incurred before ~~July 17~~
6 ~~1991~~ [THE EFFECTIVE DATE OF THIS SECTION] for owners or
7 operators seeking reimbursement from the small petroleum
8 tank release cleanup fund;

9 (g) expenses exceeding the maximum reimbursements
10 provided for in subsection (4).

11 (3) An owner or operator may designate a person as his
12 agent to receive the reimbursement.

13 (4) Subject to the availability of funds under
14 subsection (5):

15 (a) for releases eligible for reimbursement from the
16 petroleum tank release cleanup fund that are discovered and
17 reported on or after April 13, 1989, the board shall
18 reimburse an owner or operator for 50% of the first \$35,000
19 of eligible costs and 100% of subsequent eligible costs, up
20 to a maximum total reimbursement of \$982,500; and

21 (b) for releases eligible for reimbursement from the
22 small petroleum tank release cleanup fund that are
23 discovered and reported on or after ~~July 17, 1991~~ APRIL 13,
24 1989, the board shall reimburse an owner or operator for 50%
25 of the first \$10,000 of eligible costs and 100% of

1 subsequent eligible costs, up to a maximum total
2 reimbursement of \$495,000.

3 (5) If the applicable fund does not contain sufficient
4 money to pay approved claims for eligible costs, a
5 reimbursement may not be made and the fund and the board are
6 not liable for making any reimbursement for the costs at
7 that time. When the applicable fund contains sufficient
8 money, eligible costs must be reimbursed subsequently in the
9 order in which they were approved by the board."

10 **Section 4.** Section 75-11-308, MCA, is amended to read:

11 **"75-11-308. Eligibility.** (1) An owner or operator is
12 eligible for reimbursement for eligible costs caused by a
13 release from a petroleum storage tank only if:

14 (a) the release was discovered on or after:
15 (i) ~~April 13, 1989~~ ~~for a tank that is eligible for~~
16 ~~reimbursement from the petroleum tank release cleanup fund;~~
17 and

18 (ii) ~~July 17, 1991~~ ~~for a tank that is eligible for~~
19 ~~reimbursement from the small petroleum tank release cleanup~~
20 ~~fund;~~

21 (b) the department is notified of the release in the
22 manner and within the time provided by law or rule;

23 (c) the department has been notified of the existence
24 of the tank in the manner required by department rule;

25 (d) the release was an accidental release; and

1 (e) with the exception of the release, the operation
 2 and management of the tank complied with applicable state
 3 and federal laws and rules when the release occurred and
 4 remained in compliance following detection of the release.

5 (2) (A) An owner or operator is not NOT eligible for
 6 reimbursement;

7 ~~(a)~~ from the petroleum tank release cleanup fund OR THE
 8 SMALL PETROLEUM TANK RELEASE CLEANUP FUND for expenses
 9 caused by releases from the--following THE FOLLOWING
 10 petroleum storage tanks with-the-following-exceptions:

11 ~~(a)(i)~~ a tank located at a refinery or a terminal of a
 12 refiner;

13 ~~(b)(ii)~~ a tank located at an oil and gas production
 14 facility;

15 ~~(c)(iii)~~ a tank that is or was previously under the
 16 ownership or control of a railroad;

17 ~~(d)(iv)~~ a tank belonging to the federal government;

18 ~~(e)(v)--a-farm-or-residential-tank-with--a--capacity--of~~
 19 ~~1,100--gallons--or--less--that--is--used--for--storing--motor--fuel~~
 20 ~~for-noncommercial--purposes--or--a--tank--used--for--storing~~
 21 ~~heating--oil--for--consumptive--use--on--the--premises--where~~
 22 ~~stored;~~

23 ~~(f)(vi)(V)~~ a tank owned or operated by a person who has
 24 been convicted of a substantial violation of state or
 25 federal law or rule that relates to the installation,

1 operation, or management of petroleum storage tanks; or
 2 ~~(g)(vii)(VI)~~ a mobile storage tank used to transport
 3 petroleum or petroleum products from one location to
 4 another; ~~or.~~

5 (b) AN OWNER OR OPERATOR IS NOT ELIGIBLE FOR
 6 REIMBURSEMENT from the ~~small~~ petroleum tank release cleanup
 7 fund for expenses caused by releases from the following
 8 petroleum storage tanks only:

9 (i) a tank used for storing heating oil for consumptive
 10 use on the premises where it is stored; and

11 (ii) a farm or residential tank with a capacity of 1,100
 12 gallons or less that is used for storing motor fuel for
 13 noncommercial purposes.

14 (C) AN OWNER OR OPERATOR IS ELIGIBLE FOR REIMBURSEMENT
 15 FROM THE SMALL PETROLEUM TANK RELEASE CLEANUP FUND FOR
 16 EXPENSES CAUSED BY RELEASES FROM PETROLEUM STORAGE TANKS
 17 LISTED IN SUBSECTION (2)(B) ONLY."

18 **Section 5.** Section 75-11-309, MCA, is amended to read:

19 "75-11-309. Procedures for reimbursement of eligible
 20 costs. (1) An owner or operator seeking reimbursement for
 21 eligible costs and the department shall comply with the
 22 following procedures:

23 (a) If an owner or operator discovers or is provided
 24 evidence that a release may have occurred from his petroleum
 25 storage tank, he shall immediately notify the department of

1 the release and conduct an initial response to the release
2 in accordance with state and federal laws and rules to
3 protect public health and safety and the environment.

4 (b) The owner or operator shall conduct a thorough
5 investigation of the release, report the findings to the
6 department, and, as determined necessary by the department,
7 prepare and submit for approval by the department a
8 corrective action plan that conforms with state and federal
9 corrective action requirements.

10 (c) (i) The department shall review the corrective
11 action plan and forward a copy to a local government office
12 with jurisdiction over a corrective action for the release.
13 The local government office shall inform the department if
14 it wants any modification of the proposed plan.

15 (ii) Based on its own review and comments received from
16 a local government or other source, the department may
17 approve the proposed corrective action plan, make or request
18 the owner or operator to modify the proposed plan, or
19 prepare its own plan for compliance by the owner or
20 operator. A plan finally approved by the department through
21 any process provided in this subsection (c) is the approved
22 corrective action plan.

23 (iii) After the department approves a corrective action
24 plan, a local government may not impose different corrective
25 action requirements on the owner or operator.

1 (d) The department shall notify the owner or operator
2 and the board of its approval of a corrective action plan.

3 (e) The owner or operator shall implement the approved
4 plan. The department may oversee the implementation of the
5 plan, require reports and monitoring from the owner or
6 operator, undertake inspections, and otherwise exercise its
7 authority concerning corrective action under Title 75,
8 chapter 10, parts 4 and 7, and other applicable law and
9 rules.

10 (f) The owner or operator shall document in the manner
11 required by the board all expenses incurred in preparing and
12 implementing the corrective action plan. The owner or
13 operator shall submit claims and substantiating documents to
14 the department in the form and manner required by the board.
15 The department shall forward each claim and appropriate
16 documentation to the board and notify the board of any costs
17 that the department considers not reimbursable because of
18 any failure to meet the requirements of subsection (2). The
19 department shall inform the owner or operator of any
20 notification given to the board.

21 (g) The owner or operator shall document, in the manner
22 required by the board, any payments to a third party for
23 bodily injury or property damage caused by a release. The
24 owner or operator shall submit claims and substantiating
25 documents to the board in the form and manner required by

1 the board.

2 (2) The board shall review each claim received under
3 subsections (1)(f) and (1)(g), make the determination
4 required by this subsection, inform the owner or operator of
5 its determination, and, as appropriate, reimburse the owner
6 or operator from the applicable fund. Before approving a
7 reimbursement, the board shall affirmatively determine that:

- 8 (a) the expenses for which reimbursement is claimed:
9 (i) are eligible costs; and
10 (ii) were actually, necessarily, and reasonably incurred
11 for the preparation or implementation of a corrective action
12 plan approved by the department or for payments to a third
13 party for bodily injury or property damage; and
14 (b) the owner or operator:
15 (i) is eligible for reimbursement under 75-11-308; and
16 (ii) has complied with this section and any rules
17 adopted pursuant to this section.

18 (3) If an owner or operator disagrees with a board
19 determination under subsection (2), he may submit a written
20 request for a hearing before the board. The hearing must be
21 held at a meeting of the board no later than 120 days
22 following receipt of the request or at a time mutually
23 agreed to by the board and the owner or operator.

24 (4) The board shall obligate money for reimbursement of
25 eligible costs of owners and operators in the order that the

1 costs are finally approved by the board.

2 (5) (a) The board may, at the request of an owner or
3 operator, guarantee in writing the reimbursement of eligible
4 costs that have been approved by the board but for which
5 money is not currently available from the applicable fund
6 for reimbursement.

7 (b) The board may, at the request of an owner or
8 operator, guarantee in writing reimbursement of eligible
9 costs not yet approved by the board, including estimated
10 costs not yet incurred. A guarantee for payment under this
11 subsection (5)(b) does not affect the order in which money
12 in the applicable fund is obligated under subsection (4).

13 (c) When considering a request for a guarantee of
14 payment, the board may require pertinent information or
15 documentation from the owner or operator. The board may
16 grant or deny, in whole or in part, any request for a
17 guarantee."

18 **Section 6.** Section 75-11-313, MCA, is amended to read:

19 "75-11-313. Petroleum tank release cleanup fund. (1)
20 There is a petroleum tank release cleanup fund in the state
21 special revenue fund established in 17-2-102. The fund is
22 administered as a revolving fund by the board and is
23 statutorily appropriated as provided in 17-7-502.

24 (2) There is deposited in the fund:

25 (a) EXCEPT AS PROVIDED IN [SECTION 8(4)], all revenue

1 from the petroleum storage tank cleanup fee as provided in
2 75-11-314;

3 (b) money received by the board in the form of gifts,
4 grants, reimbursements, or appropriations, from any source,
5 intended to be used for the purposes of this fund;

6 (c) money appropriated or advanced to the fund by the
7 legislature; and

8 (d) all interest earned on money in the fund.

9 (3) The fund may be used only:

10 (a) to administer this part, including payment of board
11 and department expenses associated with administration,
12 except that the board shall limit expenditures for
13 administration to an amount that is commensurate with the
14 number of tanks CLAIMS AND COMPLEXITY OF CLAIMS eligible for
15 reimbursement from the petroleum tank release cleanup fund
16 when compared to the total number of tanks CLAIMS AND
17 COMPLEXITY OF CLAIMS eligible for reimbursement from both of
18 the funds administered under this part;

19 (b) to reimburse owners and operators for eligible
20 costs caused by a release from a petroleum storage tank and
21 approved by the board; and

22 (c) for repayment of any advance made under subsection
23 (4), plus interest earned on the advance.

24 (4) (a) The legislature may appropriate to the fund
25 repayable advances as necessary to carry out the purposes of

1 this part. The outstanding total of repayable advances may
2 not exceed the amount the board estimates will be received
3 by the fund from the petroleum storage tank cleanup fee
4 during the next 24 months.

5 (b) Advances to the fund must be repaid and interest
6 earned on advances must be paid to the general fund when
7 determined appropriate by the board. However, all advances
8 to the fund plus the interest earned must be repaid on or
9 before December 31, 1995."

10 NEW SECTION. Section 7. Small petroleum tank release
11 cleanup fund. (1) There is a small petroleum tank release
12 cleanup fund in the state special revenue fund established
13 in 17-2-102. The fund is administered as a revolving fund by
14 the board and is statutorily appropriated as provided in
15 17-7-502.

16 (2) There is deposited in the fund:

17 (a) EXCEPT AS PROVIDED IN [SECTION 8(4)], all revenue
18 from the small petroleum storage tank cleanup fee as
19 provided in [section 8];

20 (b) money received by the board in the form of gifts,
21 grants, reimbursements, or appropriations, from any source,
22 intended to be used for the purposes of this fund;

23 (c) money appropriated or advanced to the fund by the
24 legislature; and

25 (d) all interest earned on money in the fund.

1 (3) The small petroleum tank release cleanup fund may
2 be used only:

3 (a) to administer this part, including payment of board
4 and department expenses associated with administration,
5 except that the board shall limit expenditures for
6 administration to an amount that is commensurate with the
7 number of tanks CLAIMS AND COMPLEXITY OF CLAIMS eligible for
8 reimbursement from the small petroleum tank release cleanup
9 fund when compared to the total number of tanks CLAIMS AND
10 COMPLEXITY OF CLAIMS eligible for reimbursement from both of
11 the funds administered under this part;

12 (b) to reimburse owners and operators for eligible
13 costs caused by a release from petroleum storage tanks as
14 specified in 75-11-308(2)(b) and approved by the board; and

15 (c) for repayment of any advance made under subsection
16 (4) plus interest earned on the advance.

17 (4) (a) The legislature may appropriate to the small
18 petroleum tank release cleanup fund repayable advances as
19 necessary to carry out the purposes of this part. The
20 outstanding total of repayable advances may not exceed the
21 amount the board estimates will be received by the fund from
22 the small petroleum storage tank cleanup fee during the next
23 24 months.

24 (b) Advances to the fund must be repaid and interest
25 earned on advances must be paid to the general fund when

1 determined appropriate by the board. However, all advances
2 to the fund plus the interest earned must be repaid on or
3 before December 31, 1997.

4 (5) (A) THE LEGISLATURE MAY APPROPRIATE TO THE SMALL
5 PETROLEUM TANK RELEASE CLEANUP FUND REPAYABLE ADVANCES FROM
6 THE PETROLEUM TANK RELEASE CLEANUP FUND AS NECESSARY TO
7 CARRY OUT THE ADMINISTRATIVE NEEDS OF THIS PART. THE
8 OUTSTANDING TOTAL REPAYABLE ADVANCES MAY NOT EXCEED THE
9 AMOUNT THE BOARD ESTIMATES WILL BE RECEIVED BY THE FUND FROM
10 THE SMALL PETROLEUM STORAGE TANK CLEANUP FEE DURING THE NEXT
11 4 MONTHS.

12 (B) WHENEVER DETERMINED APPROPRIATE BY THE BOARD,
13 ADVANCES TO THE SMALL PETROLEUM TANK RELEASE CLEANUP FUND
14 MUST BE REPAYED WITH INTEREST AT A RATE EQUAL TO THE AVERAGE
15 SHORT-TERM INVESTMENT POOL PORTFOLIO 7-DAY AVERAGE YIELD FOR
16 THE MONTHS IN WHICH THE LOAN IS OUTSTANDING. ALL ADVANCES TO
17 THE FUND, PLUS INTEREST, MUST BE REPAYED BEFORE JANUARY 1,
18 1994.

19 NEW SECTION. Section 8. Small petroleum storage tank
20 cleanup fee -- collection -- penalties -- warrant for
21 distrain -- statute of limitations. (1) Except-as--provided
22 in--subsection-(4), every EVERY distributor shall pay to the
23 department of revenue a small petroleum storage tank cleanup
24 fee for each gallon of special fuels distributed by him
25 within the state and upon which the fee has not been paid by

1 any other distributor. The fee must equal:

2 (a) 1 cent for each gallon of special fuels distributed

3 from July 1, 1991, through June 30, 1993; and

4 (b) 0.75 cent for each gallon of special fuels

5 distributed on or after July 1, 1993.

6 (2) The following may not be included in the measure of

7 a distributor's fee:

8 (a) special fuels exported or sold for export out of

9 the state; and

10 (B) SPECIAL FUELS SOLD TO THE FEDERAL GOVERNMENT;

11 (C) SPECIAL FUELS SOLD TO ANOTHER GASOLINE DISTRIBUTOR

12 LICENSED UNDER 15-70-201; AND

13 ~~(b)~~(D) special fuels sold to a railroad.

14 (3) Waste oil OR WASTE OIL that is blended with special

15 fuels to be sold as heating oil is subject to the fee

16 provided in subsection (1).

17 (4) ~~A--fee-may-not-be-imposed-or-collected-beginning-on~~

18 ON the first day of the first month in the first calendar

19 quarter after the unobligated balance in the fund equals or

20 exceeds \$6 \$4 million, THE FEE COLLECTED UNDER THIS SECTION

21 MUST BE DEPOSITED IN THE HIGHWAY RECONSTRUCTION TRUST FUND

22 ACCOUNT IN THE STATE SPECIAL REVENUE FUND. Whenever the

23 unobligated fund balance is less than \$3 \$2 million, the

24 ~~department--of--revenue--shall--within--30--days,--notify~~

25 ~~distributors-by-mail-that-the-fee-is-reinstated-beginning-on~~

1 ~~the-first-day-of-the-first-month-that-begins-no-less-than-30~~

2 ~~days--after-the-date-of-the-notice--Once-reinstated,~~ the fee

3 ~~must be imposed--and--collected~~ DEPOSITED IN THE SMALL

4 PETROLEUM TANK RELEASE CLEANUP FUND IN THE STATE SPECIAL

5 REVENUE FUND until the unobligated fund balance again equals

6 or exceeds \$6 \$4 million.

7 (5) The department of revenue shall collect the fee in

8 the same manner as the basic gasoline license tax under

9 Title 15, chapter 70, part 2. The provisions of 15-70-103,

10 15-70-111, 15-70-202, 15-70-205, 15-70-206, 15-70-208

11 through 15-70-212, 15-70-221(2), and 15-70-232 apply to the

12 fee. The provisions of 15-70-203, 15-70-204, 15-70-207,

13 15-70-221(1), and 15-70-222 through 15-70-224 do not apply

14 to the fee.

15 **Section 9.** Section 75-11-318, MCA, is amended to read:

16 "75-11-318. Powers and duties of board. (1) The board

17 shall administer the petroleum tank release cleanup fund and

18 the small petroleum tank release cleanup fund in accordance

19 with the provisions of this part, including the payment of

20 reimbursement reimbursements to owners and operators.

21 (2) The board shall determine whether to approve

22 reimbursement of eligible costs under the provisions of

23 75-11-309(2), shall obligate money from the applicable fund

24 for approved costs, and shall act on requests for the

25 guarantee of payments through the procedures and criteria

1 provided in 75-11-309.

2 (3) The board may conduct meetings, hold hearings,
 3 undertake legal action, and conduct other business as may be
 4 necessary to administer its responsibilities under this
 5 part. The board shall meet at least quarterly for the
 6 purpose of reviewing and approving claims for reimbursement
 7 from the applicable fund established by 75-11-313 or
 8 [section 7] and conducting other business as necessary.

9 (4) The board may hire staff, and the department shall
 10 provide staff support to the board as the department
 11 determines it is able. ~~The Pursuant to the provisions of~~
 12 75-11-313(3)(a) and [section 7(3)(a)], the board shall use
 13 the applicable fund to pay its staff expenses and, to pay
 14 for department staff utilized for the review or preparation
 15 of corrective action plans and for the oversight of
 16 corrective action undertaken by owners and operators for the
 17 purposes of this part, AND TO PAY FOR DEPARTMENT OF REVENUE
 18 STAFF UTILIZED FOR THE COLLECTION OF THE PETROLEUM STORAGE
 19 TANK CLEANUP FEE AND THE SMALL PETROLEUM STORAGE TANK
 20 CLEANUP FEE.

21 (5) The board shall adopt rules to administer this
 22 part, including:

23 (a) rules governing submission of claims by owners or
 24 operators to the department and board;

25 (b) procedures for determining owners or operators who

1 are eligible for reimbursement and determining the validity
 2 of claims;

3 (c) procedures for the review and approval of
 4 corrective action plans;

5 (d) procedures for conducting board meetings, hearings,
 6 and other business necessary for the implementation of this
 7 part; and

8 (e) other rules necessary for the administration of
 9 this part."

10 **Section 10.** Section 75-11-319, MCA, is amended to read:
 11 "75-11-319. Rulemaking authority -- department and
 12 department of revenue. (1) The department may adopt rules
 13 necessary to administer its responsibilities under this
 14 part, including requirements for approval of corrective
 15 action plans.

16 (2) The department of revenue shall adopt rules
 17 governing the collection of the petroleum storage tank
 18 cleanup fee and the small petroleum storage tank cleanup
 19 fee. The rules may include, at a minimum, reporting and
 20 recordkeeping requirements, method and timing of payment,
 21 and examination of records. The rules must be generally
 22 consistent with procedures governing the collection of the
 23 gasoline license tax provided for in Title 15, chapter 70."

24 **Section 11.** Section 17-7-502, MCA, is amended to read:
 25 "17-7-502. Statutory appropriations -- definition --

1 **requisites for validity.** (1) A statutory appropriation is an
 2 appropriation made by permanent law that authorizes spending
 3 by a state agency without the need for a biennial
 4 legislative appropriation or budget amendment.

5 (2) Except as provided in subsection (4), to be
 6 effective, a statutory appropriation must comply with both
 7 of the following provisions:

8 (a) The law containing the statutory authority must be
 9 listed in subsection (3).

10 (b) The law or portion of the law making a statutory
 11 appropriation must specifically state that a statutory
 12 appropriation is made as provided in this section.

13 (3) The following laws are the only laws containing
 14 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
 15 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
 16 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121;
 17 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404;
 18 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007;
 19 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;
 20 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111;
 21 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016;
 22 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150;
 23 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101;
 24 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136;
 25 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306;

1 **and section 13, House Bill No. 861, Laws of 1985, and**
 2 **[section 7].**

3 (4) There is a statutory appropriation to pay the
 4 principal, interest, premiums, and costs of issuing, paying,
 5 and securing all bonds, notes, or other obligations, as due,
 6 that have been authorized and issued pursuant to the laws of
 7 Montana. Agencies that have entered into agreements
 8 authorized by the laws of Montana to pay the state
 9 treasurer, for deposit in accordance with 17-2-101 through
 10 17-2-107, as determined by the state treasurer, an amount
 11 sufficient to pay the principal and interest as due on the
 12 bonds or notes have statutory appropriation authority for
 13 such payments. (In subsection (3), pursuant to sec. 10, Ch.
 14 664, L. 1987, the inclusion of 39-71-2504 terminates June
 15 30, 1991.)"

16 **SECTION 12. SECTION 60-3-216, MCA, IS AMENDED TO READ:**

17 **"60-3-216. (Temporary) Highway reconstruction trust**
 18 **account. (1) There is a highway reconstruction trust account**
 19 **created in the state special revenue fund.**

20 (2) The highway reconstruction trust fund account
 21 consists of allocations:

22 (a) from the taxes collected pursuant to 15-35-103 for
 23 each fiscal year beginning on or after July 1, 1986, and
 24 ending on or before June 30, 1993, the amounts allocated to
 25 the account pursuant to 15-35-108; and

1 (b) from the fees collected pursuant to [section 8] for
 2 each fiscal year beginning on or after July 1, 1991; and
 3 (c) from the taxes collected pursuant to 15-70-204
 4 and 15-70-321, for each fiscal year beginning on or after
 5 July 1, 1983, and ending on or before June 30, 1993, in an
 6 amount that will equal appropriated expenditures.
 7 (Terminates July 1, 1993--sec. 7, Ch. 541, L. 1983.)"

8 **NEW SECTION. SECTION 13. REPORT TO LEGISLATURE. THE**
 9 **PETROLEUM TANK RELEASE COMPENSATION BOARD SHALL REPORT TO**
 10 **THE 53RD LEGISLATURE A PROPOSAL FOR CONSOLIDATION OF THE**
 11 **PETROLEUM TANK RELEASE CLEANUP FUND AND THE SMALL PETROLEUM**
 12 **TANK RELEASE CLEANUP FUND AND FOR CONSOLIDATING THE**
 13 **ADMINISTRATION OF THE PROGRAMS.**

14 **NEW SECTION. Section 14. Codification instruction.**
 15 [Sections 7 and 8] are intended to be codified as an
 16 integral part of Title 75, chapter 11, part 3, and the
 17 provisions of Title 75, chapter 11, part 3, apply to
 18 [sections 7 and 8].

19 **NEW SECTION. Section 15. Severability.** If a part of
 20 [this act] is invalid, all valid parts that are severable
 21 from the invalid part remain in effect. If a part of [this
 22 act] is invalid in one or more of its applications, the part
 23 remains in effect in all valid applications that are
 24 severable from the invalid applications.

25 **NEW SECTION. Section 16. Effective dates. (1)**

1 [Sections 1, 2, 9, 10, ~~12 13~~ 14, 15, and this section] are
 2 effective on passage and approval.
 3 (2) [Sections 3 through 8~~7~~ and AND 11~~7~~-AND-12 THROUGH
 4 13] are effective July 1, 1991.

-End-

Free Conference Committee
on House Bill 973
Report No. 1, April 23, 1991

4-23-91
10:50 am
fok

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered House Bill 973 and recommend that House Bill 973 (reference copy -- salmon) be amended as follows:

1. Title, line 11.

Strike: "\$4"

Insert: "\$5"

2. Title, line 15.

Following: "DATES"

Insert: "AND A TERMINATION DATE"

3. Page 23, line 20.

Page 24, line 6.

Strike: "\$4"

Insert: "\$5"

4. Page 30, line 5.

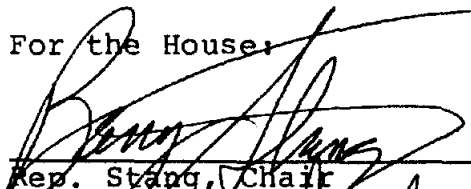
Following: line 4

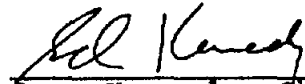
Insert: "NEW SECTION Section 17. Termination. [Sections 7(2)(a), 8, and 12] and the amendments to 75-11-301 and 75-11-313(2)(a) terminate July 1, 1993."

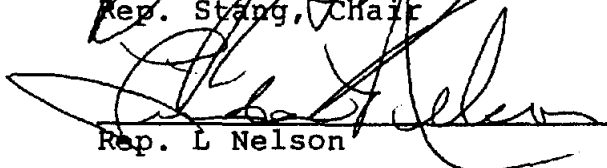
And this Free Conference Committee report be adopted.

For the House:


For the Senate:



Rep. Stang, Chair


Sen. Kennedy, Chair


Rep. L Nelson


Sen. Bruski


Rep. Tunby


Sen. Tveit

ADOPT

REJECT

FCCR 41
HB 973
871014CC.HSF

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered House Bill 973 and recommend as follows:

1. Title, lines 5 and 6.

Strike: "CREATING A SMALL PETROLEUM TANK RELEASE CLEANUP FUND"

2. Title, lines 8 through 12.

Strike: "ESTABLISHING" on line 8 through "APPROPRIATION," on line 12

3. Title, lines 13 and 14.

Strike: "17-7-502, 60-3-216," on line 13

Strike: "75-11-309, 75-11-313," on line 14

Insert: "AND"

Following: "75-11-318,"

Strike: "AND"

4. Title, line 15.

Strike: "75-11-319,"

Following: "PROVIDING"

Insert: "AN IMMEDIATE"

Strike: "DATES"

Insert: "DATE"

5. Page 2, line 1.

Strike: "small"

6. Page 2, line 4.

Strike: "small"

7. Page 2, line 6.

Strike: "small"

8. Page 2, line 14.

Strike: "small"

9. Page 2, line 22.

Strike: "small"

10. Page 3, line 1.

Strike: "small"

11. Page 3, line 20.

Strike: "fees"

ADOPT

REJECT

Insert: "fee"

12. Page 3, line 23.

Strike: "these"

Insert: "this"

Strike: "fees"

Insert: "fee"

Strike: "and"

13. Page 3, lines 24 and 25.

Strike: "[section 8]" on line 24 through "[SECTION 8(4)]" on line 25

14. Page 4, line 2.

Strike: "gasoline and special"

15. Page 4, line 3.

Strike: "fuels"

Strike: "fees are"

Insert: "fee is"

16. Page 4, line 4.

Strike: "are"

Insert: "is"

17. Page 4, line 7.

Strike: "fees are"

Insert: "fee is"

18. Page 5, lines 9 through 12.

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

19. Page 6, lines 5 through 19.

Following: "15-70-201"

Insert: "a distributor as defined in 15-70-201"

Strike: "a person" on line 5 through "oil" on line 19

20. Page 6, line 22 through page 7, line 5.

Strike: subsections (10) and (11) in their entirety

Renumber: subsequent subsections

21. Page 7, line 6.

Strike: "Fees"

Insert: "Fee"

22. Page 7, lines 7 through 9.

Strike: "and the small petroleum storage tank cleanup fee provided for in [section 8]"

23. Page 7.

Following: line 11

Insert: "(10) "Fund" means the petroleum tank release cleanup fund established in 75-11-313."

Renumber: subsequent subsections

24. Page 7, lines 16 through 21.

Strike: subsection (14) in its entirety

Renumber: subsequent subsections

25. Page 8, line 24.

Strike: "(19) (b)"

Insert: "(16) (b)"

Strike: "(19) (c)"

Insert: "(16) (c)"

26. Page 9, line 7.

Strike: "(19) (d) (i)"

Insert: "(16) (d) (i)"

27. Page 9, line 8.

Strike: "(19) (d) (ii)"

Insert: "(16) (d) (ii)"

28. Page 9, lines 17 through 21.

Strike: subsection (22) in its entirety

29. Page 9, line 25.

Strike: "applicable"

30. Page 10, line 3.

Strike: "applicable"

31. Page 10, line 10.

Strike: "applicable"

32. Page 11, line 7.

Strike: "small"

33. Page 11, line 8.

Following: "fund"

Insert: "for a tank storing heating oil for consumptive use on the premises where it is stored or a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes"

34. Page 11, line 20.

Following: "\$982,500"

Insert: ", for a tank storing heating oil for consumptive use on

the premises where it is stored or a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes"

35. Page 11, line 22.

Strike: "small"

36. Page 12, line 2.

Following: "\$495,000"

Insert: ", for a tank storing heating oil for consumptive use on the premises where it is stored or a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes"

37. Page 12, line 3.

Strike: "applicable"

38. Page 12, line 7.

Strike: "applicable"

39. Page 13, line 5.

Strike: "(A)"

40. Page 13, lines 7 and 8.

Strike: "OR THE SMALL PETROLEUM TANK RELEASE CLEANUP FUND"

41. Page 14, lines 5 through 17.

Strike: subsections (b) and (c) in their entirety

42. Page 14, line 18 through page 24, line 14.

Strike: sections 5 through 8 in their entirety

Renumber: subsequent sections

43. Page 24, lines 17 and 18.

Strike: "and the small petroleum tank release cleanup fund"

44. Page 24, line 20.

Strike: "reimbursements"

Insert: "reimbursement"

45. Page 24, line 23.

Strike: "applicable"

46. Page 25, lines 7 and 8.

Strike: "applicable" on line 7

Strike: "established by 75-11-313 or [section 7]"

47. Page 25, lines 11 and 12.

Strike: "Pursuant to the provisions of 75-11-313(3) (a) and

[section 7(3)(a)], the
Insert: "The"

48. Page 25, line 13.
Strike: "applicable"

49. Page 25, line 17.
Strike: "REVENUE"
Insert: "transportation"

50. Page 25, lines 19 and 20.
Strike: "AND" on line 19 through "FEE" on line 20

51. Page 26, line 10 through page 29 line 18.
Strike: sections 10 through 14 in their entirety
Re-number: subsequent sections


52. Page 29, line 25.
Strike: "dates"
Insert: "date"
Strike: "(1)"

53. Page 30, line 1.
Strike: line 1 in its entirety
Insert: "[This act] is"

54. Page 30, lines 3 and 4.
Strike: subsection (2) in its entirety

And this Free Conference Committee report be adopted.

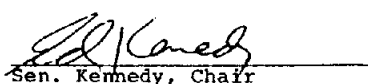
For the House:


Rep. Stang, Chair

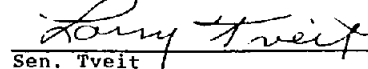

Rep. L. Nelson


Rep. Tunby

For the Senate:


Sen. Kennedy, Chair


Sen. Braski


Sen. Tveit



AN ACT TO PROVIDE EXPENSE REIMBURSEMENT TO CERTAIN TANK OWNERS AND OPERATORS; AMENDING SECTIONS 75-11-301, 75-11-302, 75-11-307, 75-11-308, AND 75-11-318, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the petroleum tank release compensation board, the department of health and environmental sciences, and the department of revenue for the adoption of rules authorized by the bill. The petroleum tank release compensation board shall adopt rules that:

(1) govern submission of claims from owners and operators to the board and to the department of health and environmental sciences for reimbursement from the petroleum tank release cleanup fund;

(2) establish procedures for determining eligibility of tank owners and operators for reimbursement from the petroleum tank release cleanup fund and the validity of claims; and

(3) are necessary for administration of the petroleum tank release cleanup fund and other provisions of this bill, provided that the rules may not conflict with the eligibility requirements and procedures provided for in this bill and Title 75, chapter 11, part 3; rules previously adopted under that part; and laws, rules, and procedures of the federal government or the department of

health and environmental sciences pertaining to petroleum storage tank releases eligible for reimbursement from the petroleum tank release cleanup fund.

The department of health and environmental sciences may adopt rules or revise existing rules as necessary to implement and incorporate the provisions of this bill into the department's existing procedures and its requirements pertaining to releases from underground storage tanks.

The department of revenue shall adopt rules governing the collection of the petroleum storage tank cleanup fee, including reporting and recordkeeping requirements, the method and timing of payments from distributors, examination of records, and other provisions necessary to ensure that the petroleum storage tank cleanup fee is properly and efficiently collected.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-11-301, MCA, is amended to read:

"75-11-301. Findings and purposes. (1) The legislature finds that the use of petroleum products stored in tanks contributes significantly to the economic well-being and quality of life of Montana citizens.

(2) The legislature finds that leaks, spills, and other releases of petroleum products from storage tanks endanger public health and safety, ground water quality, and other state resources.

(3) The legislature finds that current administrative and financial resources of the public and private sectors are inadequate to address problems caused by releases from petroleum storage tanks and need to be supplemented by a major program of release detection and corrective action.

(4) The legislature finds that proper funding for the program is through a petroleum storage tank cleanup fee paid by persons who use and receive the benefits of petroleum products. The legislature further finds that this general use fee, provided for in 75-11-314, is intended solely to support a program to pay for corrective action and damages caused by releases from petroleum storage tanks. The general use fee is collected from distributors for administrative convenience and is not intended as a method for collecting highway revenue pursuant to the provisions of Article VIII, section 6, of the Montana constitution. The fee is intended to implement the legislature's duty to provide for the administration and enforcement of maintaining and improving a clean and healthful environment for present and future generations, as required by Article IX, section 1, of the Montana constitution.

(5) The purposes of this part are to:

- (a) protect public health and safety and the environment by providing prompt detection and cleanup of petroleum tank releases;
- (b) provide adequate financial resources and effective procedures through which tank owners and operators may undertake

and be reimbursed for corrective action and payment to third parties for damages caused by releases from petroleum storage tanks; and

(c) assist certain tank owners and operators in meeting financial assurance requirements under state and federal law governing releases from petroleum storage tanks."

Section 2. Section 75-11-302, MCA, is amended to read:

"75-11-302. **Definitions.** The following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third party bodily injury or property damage.

(2) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(3) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(4) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(5) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions

necessary to respond to a release.

(6) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(7) "Distributor" means a distributor as defined in 15-70-201.

(8) "Eligible costs" means expenses reimbursable under 75-11-307.

(9) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

(10) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

(11) "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to the federal defense fuel supply center.

(12) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

(13) "Owner" means a person who holds title to, controls, or possesses an interest in a petroleum storage tank. The term does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(14) "Person" means an individual, firm, trust, estate,

partnership, company, association, joint stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(15) "Petroleum" or "petroleum products" means crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(16) "Petroleum storage tank" means a tank that contains petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-10-403;

(b) a storage tank that is situated in an underground area such as a basement, cellar, mine, draft, shaft, or tunnel;

(c) an above ground storage tank with a capacity less than 30,000 gallons; or

(d) above ground or underground pipes associated with tanks under subsections (16)(b) and (16)(c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in subsections (16)(d)(i) and (16)(d)(ii), if the facility is intrastate.

(17) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(18) "Release" means a release, as defined in 75-10-701, of petroleum or petroleum products from a petroleum storage tank."

Section 3. Section 75-11-307, MCA, is amended to read:

"75-11-307. Reimbursement for expenses caused by a release.

(1) Subject to the availability of funds money from the fund under subsection (5), an owner or operator who is eligible under 75-11-308 and complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs; and

(b) compensation paid to third parties for bodily injury or property damage.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions

by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund and expenses incurred before [the effective date of this section] for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4).

(3) An owner or operator may designate a person as his agent to receive the reimbursement.

(4) Subject to the availability of funds under subsection (5):

(a) for releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an

owner or operator for 50% of the first \$35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of \$982,500, except for a tank storing heating oil for consumptive use on the premises where it is stored or a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes; and

(b) for releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for 50% of the first \$10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of \$495,000, for a tank storing heating oil for consumptive use on the premises where it is stored or a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes.

(5) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board."

Section 4. Section 75-11-308, MCA, is amended to read:

"75-11-308. Eligibility. (1) An owner or operator is eligible for reimbursement for eligible costs caused by a release from a petroleum storage tank only if:

- (a) the release was discovered on or after April 13, 1989;
- (b) the department is notified of the release in the manner and within the time provided by law or rule;
- (c) the department has been notified of the existence of the tank in the manner required by department rule;
- (d) the release was an accidental release; and
- (e) with the exception of the release, the operation and management of the tank complied with applicable state and federal laws and rules when the release occurred and remained in compliance following detection of the release.

(2) An owner or operator is not eligible for reimbursement from the petroleum tank release cleanup fund for expenses caused by releases from the following petroleum storage tanks:

- (a) a tank located at a refinery or a terminal of a refiner;
- (b) a tank located at an oil and gas production facility;
- (c) a tank that is or was previously under the ownership or control of a railroad;
- (d) a tank belonging to the federal government;
- ~~(e) a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes or a tank used for storing heating oil for consumptive use on the premises where stored;~~

~~(f)~~(e) a tank owned or operated by a person who has been convicted of a substantial violation of state or federal law or rule that relates to the installation, operation, or management of

petroleum storage tanks; or

~~(g)~~(f) a mobile storage tank used to transport petroleum or petroleum products from one location to another."

Section 5. Section 75-11-318, MCA, is amended to read:

"75-11-318. Powers and duties of board. (1) The board shall administer the petroleum tank release cleanup fund in accordance with the provisions of this part, including the payment of reimbursement to owners and operators.

(2) The board shall determine whether to approve reimbursement of eligible costs under the provisions of 75-11-309(2), shall obligate money from the fund for approved costs, and shall act on requests for the guarantee of payments through the procedures and criteria provided in 75-11-309.

(3) The board may conduct meetings, hold hearings, undertake legal action, and conduct other business as may be necessary to administer its responsibilities under this part. The board shall meet at least quarterly for the purpose of reviewing and approving claims for reimbursement from the fund and conducting other business as necessary.

(4) The board may hire staff, and the department shall provide staff support to the board as the department determines it is able. The board shall use the fund to pay its staff expenses and, to pay for department staff utilized for the review or preparation of corrective action plans and for the oversight of corrective action undertaken by owners and operators for the

purposes of this part, and to pay for department of transportation staff utilized for the collection of the petroleum storage tank cleanup fee.

(5) The board shall adopt rules to administer this part, including:

(a) rules governing submission of claims by owners or operators to the department and board;

(b) procedures for determining owners or operators who are eligible for reimbursement and determining the validity of claims;

(c) procedures for the review and approval of corrective action plans;

(d) procedures for conducting board meetings, hearings, and other business necessary for the implementation of this part; and

(e) other rules necessary for the administration of this part."

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective date. [This act] is effective on passage and approval.