

HOUSE BILL NO. 603

INTRODUCED BY RANEY, HARP, STANG, GILBERT, ECK,
COHEN, DRISCOLL, PATTERSON, PAVLOVICH, GUTHRIE,
WALLIN, PINSONEAULT, SQUIRES, SPAETH, HALLIGAN,
B. BROWN, MAZUREK, MEYER, HAGER, MANNING,
BECK, BENGTSON, DARKO, MCDONOUGH, SWYSGOOD, JACOBSON,
O'KEEFE, HARPER, SCHYE, GRADY, DEMARS, GRINDE,
STRIZICH, DAILY, SPRING, THOMAS, MERCER, ADDY, VINCENT

IN THE HOUSE

FEBRUARY 7, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
FEBRUARY 8, 1989	FIRST READING.
FEBRUARY 28, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
MARCH 1, 1989	PRINTING REPORT.
MARCH 2, 1989	ON MOTION, CONSIDERATION PASSED UNTIL 51ST LEGISLATIVE DAY.
MARCH 4, 1989	SECOND READING, DO PASS AS AMENDED.
MARCH 7, 1989	ENGROSSING REPORT.
MARCH 8, 1989	THIRD READING, PASSED. AYES, 90; NOES, 2.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 9, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON FINANCE & CLAIMS.
	FIRST READING.
MARCH 14, 1989	ON MOTION, REREFERRED TO COMMITTEE ON TAXATION.
MARCH 30, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT

ADOPTED.

MARCH 31, 1989

SECOND READING, CONCURRED IN.

APRIL 3, 1989

THIRD READING, CONCURRED IN.
AYES, 42; NOES, 8.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 4, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 5, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR REIMBURSEMENT TO OWNERS AND OPERATORS OF PETROLEUM STORAGE TANKS FOR EXPENSES RELATED TO RELEASES FROM THOSE TANKS; ESTABLISHING A PETROLEUM STORAGE TANK CLEANUP FEE TO BE PAID BY GASOLINE DISTRIBUTORS; CREATING A PETROLEUM TANK RELEASE

CLEANUP FUND AND STATUTORILY APPROPRIATING MONEY IN THE
FUND; CREATING A PETROLEUM TANK RELEASE COMPENSATION BOARD;
PROVIDING CRIMINAL PENALTIES FOR CERTAIN MISREPRESENTATIONS;
AMENDING SECTION 17-7-502, MCA; AND PROVIDING EFFECTIVE
DATES."

STATEMENT OF INTENT

(1) It is the intent of the legislature that the petroleum tank release compensation board enact rules that:

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

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

(c) provide procedures for conducting board meetings, hearings, and other business that are necessary for the implementation of [sections 1 through 7 and 9 through 12];

and

(d) are necessary for the administration of [sections 1 through 7 and 9 through 12], provided that the rules do not alter or conflict with the eligibility requirements and procedures provided in [sections 1 through 7 and 9 through 12] or with the laws, rules, or procedures of the federal government or the department of health and environmental sciences that govern releases from petroleum storage tanks.

(2) The department of health and environmental sciences may adopt rules necessary to administer its responsibilities under [sections 1 through 7 and 9 through 12], including requirements for approval of corrective action plans.

(3) The department of revenue shall adopt rules governing the collection of the petroleum storage tank cleanup fee provided for in [section 7]. The rules may include reporting and recordkeeping requirements, method and timing of payment, examination of records, and other provisions necessary to ensure that fees are properly and efficiently collected. The rules must be generally consistent with procedures governing the collection of the gasoline license tax provided for in Title 15, chapter 70, so that gasoline distributors experience minimum additional requirements or responsibilities.

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

1 NEW SECTION. Section 1. Findings and purposes. (1) The
2 legislature finds that the use of petroleum products stored
3 in tanks contributes significantly to the economic
4 well-being and quality of life of Montana citizens.

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

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

14 (4) The legislature finds that proper funding for the
15 program is through a petroleum storage tank cleanup fee paid
16 by persons who use and receive the benefits of petroleum
17 products. The legislature further finds that this general
18 use fee, provided for in [section 7], is intended solely to
19 support a program to pay for corrective action and damages
20 caused by releases from petroleum storage tanks. The general
21 use fee is collected from distributors for administrative
22 convenience and is not intended as a method for collecting
23 highway revenue pursuant to the provisions of Article VIII,
24 section 6, of the Montana constitution. The fee is intended
25 to implement the legislature's duty to provide for the

1 administration and enforcement of maintaining and improving
2 a clean and healthful environment for present and future
3 generations, as required by Article IX, section 1, of the
4 Montana constitution.

5 (5) The purposes of [sections 1 through 7 and 9 through
6 12] are to:

7 (a) protect public health and safety and the
8 environment by providing prompt detection and cleanup of
9 petroleum tank releases;

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

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

18 NEW SECTION. Section 2. Definitions. The following
19 definitions apply to [sections 1 through 7 and 9 through
20 12]:

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

1 damage.

2 (2) "Board" means the petroleum tank release
3 compensation board established in [section 8].

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

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

12 (5) "Corrective action" means investigation,
13 monitoring, cleanup, restoration, abatement, removal, and
14 other actions necessary to respond to a release.

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

18 (7) "Distributor" means a distributor as defined in
19 15-70-201.

20 (8) "Eligible costs" means expenses reimbursable under
21 [section 3].

22 (9) "Fee" means the petroleum storage tank cleanup fee
23 provided for in [section 7].

24 (10) "Fund" means the petroleum tank release cleanup
25 fund established in [section 6].

1 (11) "Gasoline" means gasoline as defined in 15-70-201.

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

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

11 (14) "Person" means an individual, firm, trust, estate,
12 partnership, company, association, joint stock company,
13 syndicate, consortium, commercial entity, corporation, or
14 agency of state or local government.

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

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

21 (a) an underground storage tank as defined in
22 75-10-403;

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

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

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

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

8 (ii) the Hazardous Liquid Pipeline Safety Act of 1979
9 (49 U.S.C. 2001, et seq.); and

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

13 (17) "Property damage" means:

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

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

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

21 **NEW SECTION. Section 3. Reimbursement for expenses**
22 **caused by a release.** (1) Subject to the availability of
23 funds under subsection (5), an owner or operator who is
24 eligible under [section 4] and complies with [section 5] and
25 any rules adopted to implement those sections must be

1 reimbursed by the board from the fund for the following
2 eligible costs caused by a release from a petroleum storage
3 tank:

4 (a) corrective action costs; and

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

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

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

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

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

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

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

1 (f) expenses incurred before [the date of passage and
2 approval of this act];

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

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

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

9 (a) for releases that are discovered and reported on or
10 after [the date of passage and approval of this act] and
11 before October 1, 1991, the board shall reimburse an owner
12 or operator for all eligible costs up to a maximum
13 reimbursement of \$1 million for a release; or

14 (b) for releases that are discovered on or after
15 October 1, 1991, an owner or operator shall pay the first
16 \$25,000 in eligible costs and the board shall reimburse an
17 owner or operator for all subsequent eligible costs up to a
18 maximum reimbursement of \$975,000 for a release.

19 (5) If the fund does not contain sufficient money, a
20 reimbursement may not be made and the fund and the board are
21 not liable for making any reimbursement. If and when the
22 fund contains sufficient money, eligible costs must be
23 reimbursed subsequently in the order in which they were
24 approved by the board.

25 NEW SECTION. **Section 4. Eligibility.** (1) An owner or

1 operator is eligible for reimbursement for eligible costs
2 caused by a release from a petroleum storage tank only if:

3 (a) the release was discovered on or after [the date of
4 passage and approval of this act];

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

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

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

10 (e) with the exception of the release, the operation
11 and management of the tank complied with applicable state
12 and federal laws and rules when the release occurred and
13 remained in compliance following detection of the release.

14 (2) An owner or operator is not eligible for
15 reimbursement for expenses caused by releases from the
16 following petroleum storage tanks:

17 (a) a tank located at a refinery or a terminal of a
18 refiner;

19 (b) a tank located at an oil and gas production
20 facility;

21 (c) a tank that is or was previously under the
22 ownership or control of a railroad;

23 (d) a tank belonging to the federal government;

24 (e) a farm or residential tank with a capacity of 1,100
25 gallons or less that is used for storing motor fuel for

1 noncommercial purposes or a tank used for storing heating
2 oil for consumptive use on the premises where stored;

3 (f) a tank owned or operated by a person who has been
4 convicted of a substantial violation of state or federal law
5 or rule that relates to the installation, operation, or
6 management of petroleum storage tanks; or

7 (g) a mobile storage tank used to transport petroleum
8 or petroleum products from one location to another.

9 **NEW SECTION. Section 5. Procedures for reimbursement**
10 **of eligible costs.** (1) An owner or operator seeking
11 reimbursement for eligible costs and the department shall
12 comply with the following procedures:

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

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

25 (c) (i) The department shall review the corrective

1 action plan and forward a copy to a local government office
2 with jurisdiction over a corrective action for the release.
3 The local government office shall inform the department if
4 it wants any modification of the proposed plan.

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

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

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

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

25 (f) The owner or operator shall document in the manner

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

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

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

- 23 (a) the expenses for which reimbursement is claimed:
 24 (i) are eligible costs; and
 25 (ii) were actually, necessarily, and reasonably incurred

1 for the preparation or implementation of a corrective action
 2 plan approved by the department or for payments to a third
 3 party for bodily injury or property damage; and

4 (b) the owner or operator:

5 (i) is eligible for reimbursement under [section 4];
 6 and

7 (ii) has complied with this section and any rules
 8 adopted pursuant to this section.

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

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

18 (5) (a) The board may, at the request of an owner or
 19 operator, guarantee in writing the reimbursement of eligible
 20 costs that have been approved by the board but for which
 21 money is not currently available from the fund for
 22 reimbursement.

23 (b) The board may, at the request of an owner or
 24 operator, guarantee in writing reimbursement of eligible
 25 costs not yet approved by the board, including estimated

1 costs not yet incurred. However, the guarantee must include
 2 a proviso stating that the guarantee of reimbursement
 3 applies only to eligible costs subsequently approved by the
 4 board under the procedures and criteria provided in
 5 [sections 1 through 7 and 9 through 12]. A guarantee for
 6 payment under this subsection (5)(b) does not affect the
 7 order in which money in the fund is obligated under
 8 subsection (4).

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

14 NEW SECTION. **Section 6. Petroleum tank release cleanup**
 15 **fund.** (1) There is a petroleum tank release cleanup fund in
 16 the state special revenue fund established in 17-2-102. The
 17 fund is 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 [section 7];

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 [sections 1 through 7 and 9 through
 5 12], including payment of board and department expenses
 6 associated with administration;

7 (b) to reimburse owners and operators for eligible
 8 costs caused by a release from a petroleum storage tank and
 9 approved by the board; and

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

12 (4) (a) The legislature may appropriate to the fund
 13 repayable advances as necessary to carry out the purposes of
 14 [sections 1 through 7 and 9 through 12]. The outstanding
 15 total of repayable advances may not exceed the amount the
 16 board estimates will be received by the fund from the
 17 petroleum storage tank cleanup fee during the next 24
 18 months.

19 (b) Advances to the fund must be repaid and interest
 20 earned on advances must be paid to the general fund when
 21 determined appropriate by the board. However, all advances
 22 to the fund plus the interest earned must be repaid on or
 23 before December 31, 1995.

24 NEW SECTION. **Section 7. Petroleum storage tank cleanup**
 25 **fee.** (1) Except as provided in subsection (4), every

1 distributor shall pay to the department of revenue a
2 petroleum storage tank cleanup fee equal to 0.75 cent for
3 each gallon of gasoline distributed by him within the state
4 and upon which the fee has not been paid by any other
5 distributor.

6 (2) Gasoline exported or sold for export out of the
7 state may not be included in the measure of a distributor's
8 fee.

9 (3) Alcohol that is blended with gasoline to be sold as
10 gasohol is subject to the fee provided in subsection (1).

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

22 NEW SECTION. Section 8. Petroleum tank release
23 compensation board. (1) There is a petroleum tank release
24 compensation board.

25 (2) The board consists of seven members appointed by

1 the governor as follows:

2 (a) the director of the department of health and
3 environmental sciences or his representative;

4 (b) the state fire marshal or his representative;

5 (c) a representative of the petroleum services
6 industry;

7 (d) a representative of independent petroleum marketers
8 and chain retailers;

9 (e) a representative of the general public;

10 (f) a representative of service station dealers; and

11 (g) a representative of the insurance industry.

12 (3) The board shall elect a chairman.

13 (4) The term of membership is 3 years.

14 (5) Members shall serve without pay, but are entitled
15 to reimbursement for travel, meals, and lodging while
16 engaged in board business, as provided in 2-18-501 through
17 2-18-503.

18 NEW SECTION. Section 9. Powers and duties of board.

19 (1) The board shall administer the petroleum tank release
20 cleanup fund in accordance with the provisions of [sections
21 1 through 7 and 9 through 12], including the payment of
22 reimbursement to owners and operators.

23 (2) The board shall determine whether to approve
24 reimbursement of eligible costs under the provisions of
25 [section 5(2)], shall obligate money from the fund for

1 approved costs, and shall act on requests for the guarantee
2 of payments through the procedures and criteria provided in
3 [section 5].

4 (3) The board may conduct meetings, hold hearings,
5 undertake legal action, and conduct other business as may be
6 necessary to administer its responsibilities under [sections
7 1 through 7 and 9 through 12]. The board shall meet at least
8 quarterly for the purpose of reviewing and approving claims
9 for reimbursement from the fund and conducting other
10 business as necessary.

11 (4) The board may hire staff, and the department shall
12 provide staff support to the board as the department
13 determines it is able. The board shall use the fund to pay
14 its staff expenses and to pay for department staff utilized
15 for the review or preparation of corrective action plans and
16 for the oversight of corrective action undertaken by owners
17 and operators for the purposes of [sections 1 through 7 and
18 9 through 12].

19 (5) The board shall adopt rules to administer [sections
20 1 through 7 and 9 through 12], including:

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

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

1 (c) procedures for conducting board meetings, hearings,
2 and other business necessary for the implementation of
3 [sections 1 through 7 and 9 through 12]; and

4 (d) other rules necessary for the administration of
5 [sections 1 through 7 and 9 through 12].

6 NEW SECTION. Section 10. Rulemaking authority --
7 department and department of revenue. (1) The department may
8 adopt rules necessary to administer its responsibilities
9 under [sections 1 through 7 and 9 through 12], including
10 requirements for approval of corrective action plans.

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

19 NEW SECTION. Section 11. Other authorities unaffected.
20 Payment of reimbursement, approval of a corrective action
21 plan, or other action of the department or the board under
22 [sections 1 through 7 and 9 through 12] does not affect the
23 authority of the department or any other state agency to
24 pursue an action authorized by Title 75, chapter 10, parts 4
25 or 7, or any other law or rule that applies to releases from

petroleum storage tanks.

NEW SECTION. Section 12. Criminal penalties. A person who knowingly misrepresents the date of discovery of a release, submits or causes to be submitted a fraudulent claim or document, or makes a false statement or representation in seeking or assisting a person to seek reimbursement under [sections 1 through 7 and 9 through 12] is subject to a fine not to exceed \$10,000 for each violation or imprisonment not to exceed 6 months, or both. A person convicted of a second or subsequent violation of this section is subject to a fine not to exceed \$20,000 for each violation or imprisonment not to exceed 1 year, or both.

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

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

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

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

(b) The law or portion of the law making a statutory

appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101; 75-7-305; [section 6]; 76-12-123; 80-2-103; 80-2-228; 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103; section 13, House Bill No. 861, Laws of 1985; and section 1, Chapter 454, Laws of 1987.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount 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. 15, Ch.
 3 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
 4 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
 5 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.
 6 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
 7 1987, terminates July 1, 1988.)"

8 NEW SECTION. Section 14. Initial appointments to
 9 board. (1) Notwithstanding [section 8], the members of the
 10 petroleum tank release compensation board first appointed by
 11 the governor shall serve for terms to be designated by the
 12 governor and to expire on June 30 of the respective year.
 13 The terms of two members must expire in 1990, two in 1991,
 14 and three in 1992.

15 (2) The governor shall make the initial appointments to
 16 the board no later than June 30, 1989.

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

23 NEW SECTION. Section 16. Effective dates. (1)
 24 [Sections 1, 2, 8, 9, 10, 14, 15,] and this section are
 25 effective on passage and approval.

1 (2) [Sections 6, 7, and 13] are effective July 1, 1989.
 2 (3) [Sections 3, 4, 5, 11, and 12] are effective
 3 October 1, 1989.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB603, as introduced.

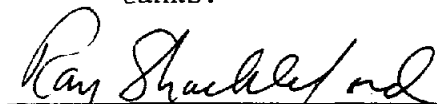
DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for reimbursement to owners and operators of petroleum storage tanks for expenses related to releases from those tanks; establishing a petroleum storage tank cleanup fee to be paid by gasoline distributors; creating a petroleum tank release cleanup fund and statutorily appropriating money in the fund; creating a petroleum tank release compensation board; providing criminal penalties for certain misrepresentations; amending Sections 17-7-502, MCA; and providing effective dates.

ASSUMPTIONS:

Department of Health and Environmental Sciences

1. It is estimated that 418,183,000 and 412,087,000 gallons of gasoline will be consumed in FY90 and FY91, respectively. (REAC)
2. In FY88, 1,541,690 gallons of gasohol were sold. This number is assumed constant through the next biennium. (Motor Fuels Division)
3. Under the proposal, gasoline and gasohol distributors would pay a petroleum storage tank cleanup fee of 0.75¢ for every gallon of gasoline and gasohol distributed.
4. Board responsibilities for rules, procedures, claim payment and rejection defense will require a minimum of 6 FTE; 1 G-15 accountant, 1 G-17 attorney, 1 G-9 clerical, 1 G-15 fund manager, 2 G-14 claim processors/program assistants.
5. Board meets minimum 4 times per year to pay claims.
6. DHES responsibilities for applicant eligibility review, site inspection, corrective action plan review, approval and oversight, and making recommendations to the board will require a minimum of 13 FTE, 3 G-8 clerical, 10 G-15 hydrogeologists/engineers. Caseload per G-15 FTE assumed to be approximately 26 sites or two weeks per site.
7. 18,200 known underground tanks in Montana (DHES UST database). Number of known underground tanks is approximately 60% of actual total in Montana. Only 60% of the tank owners have notified DHES.
8. 15,100 are currently in use - assume bill only covers active tanks. 3,000 out of service tanks will not be covered for removal or cleanup if needed.
9. 40% are not included in this bill (small farm/heating oil tanks).
10. 9,000 known active underground tanks subject to bill.
11. Unknown number of aboveground tanks and lines included in bill.
12. 4,000 active tanks are required by federal law to be leak tested by December 1991.
13. However, it is likely that nearly all 9,000 plus tanks will be leak tested during amnesty period to October 1991.
14. Assume leak rate of 14% (conservative). High leak rate ranges up to 45% leakers based on age of Montana's tanks.



DATE 2/15/89

RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 2/17/89

BOB RANEY, PRIMARY SPONSOR

Fiscal Note for HB603, as introduced

H B 603

Fiscal Note Request HB603 as introduced

Form BD-15

Page 2

15. 560 to 1,260 releases discovered based on only 4,000 to 9,000 tested.
16. Cleanup costs average \$25,000 (low). EPA estimate = \$36,000.
17. Range of cleanup cost during amnesty: \$14,000,000 to \$31,500,000. Unfunded liability to program fund during amnesty program.

ASSUMPTIONS:

Department of Revenue

1. It is estimated that 418,183,000 and 412,087,000 gallons of gasoline will be consumed in FY90 and FY91, respectively. (REAC)
2. In FY88, 1,541,690 gallons of gasohol were sold. This number is assumed constant through the next biennium. (Motor Fuels Division)
3. Under the proposal, gasoline and gasohol distributors would pay a petroleum storage tank cleanup fee of 0.75¢ for every gallon of gasoline and gasohol distributed.
4. Administrative expenses under the proposed law:

Computer Development Cost: Computer generating, compiling, and testing costs @ \$1,155

Programming and testing costs 110 hrs at \$26/hr.

Documentation and administrative costs @ \$429

On-going Computing Costs: Disk space @ \$10 periodic batch program @ \$50

FISCAL IMPACT:

FY90				FY91			
Revenue Impact:	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference	
Petroleum Storage Tank Clean-up Fund	\$ 0	\$ 3,147,935	\$3,147,935	\$ 0	\$ 3,102,215	\$3,102,215	
<u>Department of Health</u>							
<u>Expenditures:</u>							
Personal Services	\$ 0	\$ 479,100	\$ 479,100	\$ 0	\$ 479,100	\$ 479,100	
Operating Expenses	0	158,000	158,000	0	158,000	158,000	
Capital Outlay	0	30,500	30,500	0	10,000	10,000	
Local Assistance, Grants							
Benefits and Claims	0	\$ 2,475,831	\$2,475,831	\$ 0	\$ 2,455,055	\$ 2,455,055	
<u>Department of Revenue</u>							
<u>Expenditures:</u>							
Personal Services	\$ 0	\$ 3,289	\$ 3,289	\$ 0	\$ 0	\$ 0	
Operating Expenses	0	1,215	1,215	0	60	60	
TOTAL	\$ 0	\$ 4,504	\$ 4,504	\$ 0	\$ 60	\$ 60	
<u>TOTAL EXPENDITURES:</u>							
<u>Fund Impact:</u>							
State Special Revenue	\$ 0	\$ 3,147,935	\$3,147,935	\$ 0	\$ 3,102,215	\$3,102,215	

HB 603

EFFECT ON COUNTY OR LOCAL REVENUE OR EXPENDITURE:

Local review, comment and oversight of corrective action plans - unknown impact.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. Greatest demand on fund and government services is during the amnesty program in the first two years and will continue beyond as claims during amnesty will exceed fund revenue and government's ability to process claims.
2. Demand will decrease as amnesty claims backlog is resolved and \$25,000 owner deductible is required.
3. Following amnesty period and initial cleanup as well as full implementation of leak prevention and detection regulations, number of leaks should decrease and size of claim for cleanup should decrease. Owner's \$25,000 deductible payment may cover most costs of most leaks except where groundwater is impacted.

TECHNICAL OR MECHANICAL DEFECT OR CONFLICTS WITH EXISTING LEGISLATION:

1. Some underground tank owners excluded from coverage are required by federal law to provide their own financial responsibility (eg. chemical tanks, railroads, refineries).
2. Other underground tank owners excluded from federal financial responsibility requirements may be included by state law but are excluded from coverage in this bill (eg. heating oil tanks, small farm tanks). In any event state law will require cleanup of releases from these tanks.
3. Other tank owners are not regulated by state or federal financial responsibility requirements, but are included in coverage by this bill (eg. aboveground tanks, aboveground lines, state tanks).

HB 603

APPROVED BY COMMITTEE
ON TAXATION

1 *House* BILL NO. *603*
 2 INTRODUCED BY *Randy Wang Gilbert Ed. Chen*
 3 *Grizell Patrick Carlisle Sullivan*
 4 *Walter Bos Brown Margaret Meyer Hager*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
 6 REIMBURSEMENT TO OWNERS AND OPERATORS OF PETROLEUM STORAGE
 7 TANKS FOR EXPENSES RELATED TO RELEASES FROM THOSE TANKS;
 8 ESTABLISHING A PETROLEUM STORAGE TANK CLEANUP FEE TO BE PAID
 9 BY GASOLINE DISTRIBUTORS; CREATING A PETROLEUM TANK RELEASE
 10 CLEANUP FUND AND STATUTORILY APPROPRIATING MONEY IN THE
 11 FUND; CREATING A PETROLEUM TANK RELEASE COMPENSATION BOARD;
 12 PROVIDING CRIMINAL PENALTIES FOR CERTAIN MISREPRESENTATIONS;
 13 AMENDING SECTION 17-7-502, MCA; AND PROVIDING EFFECTIVE
 14 DATES."

STATEMENT OF INTENT

15 (1) It is the intent of the legislature that the
 16 petroleum tank release compensation board enact rules that:

17 (a) govern submission of claims by owners or operators
 18 to the department and board;

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

22 (c) provide procedures for conducting board meetings,
 23 hearings, and other business that are necessary for the
 24 implementation of [sections 1 through 7 and 9 through 12];
 25

1 and

2 (d) are necessary for the administration of [sections 1
 3 through 7 and 9 through 12], provided that the rules do not
 4 alter or conflict with the eligibility requirements and
 5 procedures provided in [sections 1 through 7 and 9 through
 6 12] or with the laws, rules, or procedures of the federal
 7 government or the department of health and environmental
 8 sciences that govern releases from petroleum storage tanks.

9 (2) The department of health and environmental sciences
 10 may adopt rules necessary to administer its responsibilities
 11 under [sections 1 through 7 and 9 through 12], including
 12 requirements for approval of corrective action plans.

13 (3) The department of revenue shall adopt rules
 14 governing the collection of the petroleum storage tank
 15 cleanup fee provided for in [section 7]. The rules may
 16 include reporting and recordkeeping requirements, method and
 17 timing of payment, examination of records, and other
 18 provisions necessary to ensure that fees are properly and
 19 efficiently collected. The rules must be generally
 20 consistent with procedures governing the collection of the
 21 gasoline license tax provided for in Title 15, chapter 70,
 22 so that gasoline distributors experience minimum additional
 23 requirements or responsibilities.

24
 25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 **NEW SECTION. Section 1. Findings and purposes.** (1) The
2 legislature finds that the use of petroleum products stored
3 in tanks contributes significantly to the economic
4 well-being and quality of life of Montana citizens.

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

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

14 (4) The legislature finds that proper funding for the
15 program is through a petroleum storage tank cleanup fee paid
16 by persons who use and receive the benefits of petroleum
17 products. The legislature further finds that this general
18 use fee, provided for in [section 7], is intended solely to
19 support a program to pay for corrective action and damages
20 caused by releases from petroleum storage tanks. The general
21 use fee is collected from distributors for administrative
22 convenience and is not intended as a method for collecting
23 highway revenue pursuant to the provisions of Article VIII,
24 section 6, of the Montana constitution. The fee is intended
25 to implement the legislature's duty to provide for the

1 administration and enforcement of maintaining and improving
2 a clean and healthful environment for present and future
3 generations, as required by Article IX, section 1, of the
4 Montana constitution.

5 (5) The purposes of [sections 1 through 7 and 9 through
6 12] are to:

7 (a) protect public health and safety and the
8 environment by providing prompt detection and cleanup of
9 petroleum tank releases;

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

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

18 **NEW SECTION. Section 2. Definitions.** The following
19 definitions apply to [sections 1 through 7 and 9 through
20 12]:

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

1 damage.

2 (2) "Board" means the petroleum tank release
3 compensation board established in [section 8].

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

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

12 (5) "Corrective action" means investigation,
13 monitoring, cleanup, restoration, abatement, removal, and
14 other actions necessary to respond to a release.

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

18 (7) "Distributor" means a distributor as defined in
19 15-70-201.

20 (8) "Eligible costs" means expenses reimbursable under
21 [section 3].

22 (9) "Fee" means the petroleum storage tank cleanup fee
23 provided for in [section 7].

24 (10) "Fund" means the petroleum tank release cleanup
25 fund established in [section 6].

1 (11) "Gasoline" means gasoline as defined in 15-70-201.

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

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

11 (14) "Person" means an individual, firm, trust, estate,
12 partnership, company, association, joint stock company,
13 syndicate, consortium, commercial entity, corporation, or
14 agency of state or local government.

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

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

21 (a) an underground storage tank as defined in
22 75-10-403;

23 (b) a storage tank that is situated in an underground
24 area such as a basement, cellar, mine, draft, shaft, or
25 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.

NEW SECTION. Section 3. Reimbursement for expenses caused by a release. (1) Subject to the availability of funds under subsection (5), an owner or operator who is eligible under [section 4] and complies with [section 5] 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;

1 (f) expenses incurred before [the date of passage and
2 approval of this act];

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

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

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

9 (a) for releases that are discovered and reported on or
10 after [the date of passage and approval of this act] and
11 before October 1, 1991, the board shall reimburse an owner
12 or operator for all eligible costs up to a maximum
13 reimbursement of \$1 million for a release; or

14 (b) for releases that are discovered on or after
15 October 1, 1991, an owner or operator shall pay the first
16 \$25,000 in eligible costs and the board shall reimburse an
17 owner or operator for all subsequent eligible costs up to a
18 maximum reimbursement of \$975,000 for a release.

19 (5) If the fund does not contain sufficient money, a
20 reimbursement may not be made and the fund and the board are
21 not liable for making any reimbursement. If and when the
22 fund contains sufficient money, eligible costs must be
23 reimbursed subsequently in the order in which they were
24 approved by the board.

25 NEW SECTION. **Section 4. Eligibility.** (1) An owner or

1 operator is eligible for reimbursement for eligible costs
2 caused by a release from a petroleum storage tank only if:

3 (a) the release was discovered on or after [the date of
4 passage and approval of this act];

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

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

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

10 (e) with the exception of the release, the operation
11 and management of the tank complied with applicable state
12 and federal laws and rules when the release occurred and
13 remained in compliance following detection of the release.

14 (2) An owner or operator is not eligible for
15 reimbursement for expenses caused by releases from the
16 following petroleum storage tanks:

17 (a) a tank located at a refinery or a terminal of a
18 refiner;

19 (b) a tank located at an oil and gas production
20 facility;

21 (c) a tank that is or was previously under the
22 ownership or control of a railroad;

23 (d) a tank belonging to the federal government;

24 (e) a farm or residential tank with a capacity of 1,100
25 gallons or less that is used for storing motor fuel for

1 noncommercial purposes or a tank used for storing heating
2 oil for consumptive use on the premises where stored;

3 (f) a tank owned or operated by a person who has been
4 convicted of a substantial violation of state or federal law
5 or rule that relates to the installation, operation, or
6 management of petroleum storage tanks; or

7 (g) a mobile storage tank used to transport petroleum
8 or petroleum products from one location to another.

9 NEW SECTION. Section 5. Procedures for reimbursement
10 of eligible costs. (1) An owner or operator seeking
11 reimbursement for eligible costs and the department shall
12 comply with the following procedures:

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

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

25 (c) (i) The department shall review the corrective

1 action plan and forward a copy to a local government office
2 with jurisdiction over a corrective action for the release.
3 The local government office shall inform the department if
4 it wants any modification of the proposed plan.

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

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

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

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

25 (f) The owner or operator shall document in the manner

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

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

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

- 23 (a) the expenses for which reimbursement is claimed:
 24 (i) are eligible costs; and
 25 (ii) were actually, necessarily, and reasonably incurred

1 for the preparation or implementation of a corrective action
 2 plan approved by the department or for payments to a third
 3 party for bodily injury or property damage; and

4 (b) the owner or operator:

- 5 (i) is eligible for reimbursement under [section 4];
 6 and
 7 (ii) has complied with this section and any rules
 8 adopted pursuant to this section.

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

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

18 (5) (a) The board may, at the request of an owner or
 19 operator, guarantee in writing the reimbursement of eligible
 20 costs that have been approved by the board but for which
 21 money is not currently available from the fund for
 22 reimbursement.

23 (b) The board may, at the request of an owner or
 24 operator, guarantee in writing reimbursement of eligible
 25 costs not yet approved by the board, including estimated

costs not yet incurred. However, the guarantee must include a proviso stating that the guarantee of reimbursement applies only to eligible costs subsequently approved by the board under the procedures and criteria provided in [sections 1 through 7 and 9 through 12]. A guarantee for payment under this subsection (5)(b) does not affect the order in which money in the fund is obligated under subsection (4).

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

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

(2) There is deposited in the fund:

(a) all revenue from the petroleum storage tank cleanup fee as provided in [section 7];

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

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

legislature; and

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

(3) The fund may be used only:

(a) to administer [sections 1 through 7 and 9 through 12], including payment of board and department expenses associated with administration;

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

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

(4) (a) The legislature may appropriate to the fund repayable advances as necessary to carry out the purposes of [sections 1 through 7 and 9 through 12]. The outstanding total of repayable advances may not exceed the amount the board estimates will be received by the fund from the petroleum storage tank cleanup fee during the next 24 months.

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

NEW SECTION. Section 7. Petroleum storage tank cleanup fee. (1) Except as provided in subsection (4), every

distributor shall pay to the department of revenue a petroleum storage tank cleanup fee equal to 0.75 cent for each gallon of gasoline distributed by him within the state and upon which the fee has not been paid by any other distributor.

(2) Gasoline exported or sold for export out of the state may not be included in the measure of a distributor's fee.

(3) Alcohol that is blended with gasoline to be sold as gasohol is subject to the fee provided in subsection (1).

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

NEW SECTION. Section 8. Petroleum tank release compensation board. (1) There is a petroleum tank release compensation board.

(2) The board consists of seven members appointed by

the governor as follows:

(a) the director of the department of health and environmental sciences or his representative;

(b) the state fire marshal or his representative;

(c) a representative of the petroleum services industry;

(d) a representative of independent petroleum marketers and chain retailers;

(e) a representative of the general public;

(f) a representative of service station dealers; and

(g) a representative of the insurance industry.

(3) The board shall elect a chairman.

(4) The term of membership is 3 years.

(5) Members shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503.

NEW SECTION. Section 9. Powers and duties of board.

(1) The board shall administer the petroleum tank release cleanup fund in accordance with the provisions of [sections 1 through 7 and 9 through 12], 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 [section 5(2)], shall obligate money from the fund for

1 approved costs, and shall act on requests for the guarantee
2 of payments through the procedures and criteria provided in
3 [section 5].

4 (3) The board may conduct meetings, hold hearings,
5 undertake legal action, and conduct other business as may be
6 necessary to administer its responsibilities under [sections
7 1 through 7 and 9 through 12]. The board shall meet at least
8 quarterly for the purpose of reviewing and approving claims
9 for reimbursement from the fund and conducting other
10 business as necessary.

11 (4) The board may hire staff, and the department shall
12 provide staff support to the board as the department
13 determines it is able. The board shall use the fund to pay
14 its staff expenses and to pay for department staff utilized
15 for the review or preparation of corrective action plans and
16 for the oversight of corrective action undertaken by owners
17 and operators for the purposes of [sections 1 through 7 and
18 9 through 12].

19 (5) The board shall adopt rules to administer [sections
20 1 through 7 and 9 through 12], including:

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

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

1 (c) procedures for conducting board meetings, hearings,
2 and other business necessary for the implementation of
3 [sections 1 through 7 and 9 through 12]; and

4 (d) other rules necessary for the administration of
5 [sections 1 through 7 and 9 through 12].

6 NEW SECTION. **Section 10. Rulemaking authority** --
7 **department and department of revenue.** (1) The department may
8 adopt rules necessary to administer its responsibilities
9 under [sections 1 through 7 and 9 through 12], including
10 requirements for approval of corrective action plans.

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

19 NEW SECTION. **Section 11. Other authorities unaffected.**
20 Payment of reimbursement, approval of a corrective action
21 plan, or other action of the department or the board under
22 [sections 1 through 7 and 9 through 12] does not affect the
23 authority of the department or any other state agency to
24 pursue an action authorized by Title 75, chapter 10, parts 4
25 or 7, or any other law or rule that applies to releases from

1 petroleum storage tanks.

2 NEW SECTION. **Section 12.** Criminal penalties. A person
3 who knowingly misrepresents the date of discovery of a
4 release, submits or causes to be submitted a fraudulent
5 claim or document, or makes a false statement or
6 representation in seeking or assisting a person to seek
7 reimbursement under [sections 1 through 7 and 9 through 12]
8 is subject to a fine not to exceed \$10,000 for each
9 violation or imprisonment not to exceed 6 months, or both.
10 A person convicted of a second or subsequent violation of
11 this section is subject to a fine not to exceed \$20,000 for
12 each violation or imprisonment not to exceed 1 year, or
13 both.

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

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

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

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

25 (b) The law or portion of the law making a statutory

1 appropriation must specifically state that a statutory
2 appropriation is made as provided in this section.

3 (3) The following laws are the only laws containing
4 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
5 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;
6 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;
7 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;
8 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;
9 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;
10 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;
11 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501;
12 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101;
13 75-7-305; [section 6]; 76-12-123; 80-2-103; 80-2-228;
14 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306;
15 90-15-103; section 13, House Bill No. 861, Laws of 1985; and
16 section 1, Chapter 454, Laws of 1987.

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. 15, Ch.
 3 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
 4 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
 5 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.
 6 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
 7 1987, terminates July 1, 1988.)"

8 NEW SECTION. Section 14. Initial appointments to
 9 board. (1) Notwithstanding [section 8], the members of the
 10 petroleum tank release compensation board first appointed by
 11 the governor shall serve for terms to be designated by the
 12 governor and to expire on June 30 of the respective year.
 13 The terms of two members must expire in 1990, two in 1991,
 14 and three in 1992.

15 (2) The governor shall make the initial appointments to
 16 the board no later than June 30, 1989.

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

23 NEW SECTION. Section 16. Effective dates. (1)
 24 [Sections 1, 2, 8, 9, 10, 14, 15,] and this section are
 25 effective on passage and approval.

1 (2) [Sections 6, 7, and 13] are effective July 1, 1989.
 2 (3) [Sections 3, 4, 5, 11, and 12] are effective
 3 October 1, 1989.

-End-

HOUSE BILL NO. 603

INTRODUCED BY RANEY, HARP, STANG, GILBERT, ECK,

COHEN, DRISCOLL, PATTERSON, PAVLOVICH, GUTHRIE,

WALLIN, PINSONEAULT, SQUIRES, SPAETH, HALLIGAN,

B. BROWN, MAZUREK, MEYER, HAGER, MANNING,

BECK, BENGTSON, DARKO, MCDONOUGH, SWYSGOOD, JACOBSON,

O'KEEFE, HARPER, SCHYE, GRADY, DEMARS, GRINDE,

STRIZICH, DAILY, SPRING, THOMAS, MERCER, ADDY, VINCENT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR REIMBURSEMENT TO OWNERS AND OPERATORS OF PETROLEUM STORAGE TANKS FOR EXPENSES RELATED TO RELEASES FROM THOSE TANKS; ESTABLISHING A PETROLEUM STORAGE TANK CLEANUP FEE TO BE PAID BY GASOLINE DISTRIBUTORS; CREATING A PETROLEUM TANK RELEASE CLEANUP FUND AND STATUTORILY APPROPRIATING MONEY IN THE FUND; CREATING A PETROLEUM TANK RELEASE COMPENSATION BOARD; PROVIDING CRIMINAL PENALTIES FOR CERTAIN MISREPRESENTATIONS; AMENDING SECTION 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

(1) It is the intent of the legislature that the petroleum tank release compensation board enact rules that:

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

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

(c) provide procedures for conducting board meetings, hearings, and other business that are necessary for the implementation of [sections 1 through 7 and 9 through 12]; and

(d) are necessary for the administration of [sections 1 through 7 and 9 through 12], provided that the rules do not alter or conflict with the eligibility requirements and procedures provided in [sections 1 through 7 and 9 through 12] or with the laws, rules, or procedures of the federal government or the department of health and environmental sciences that govern releases from petroleum storage tanks.

(2) The department of health and environmental sciences may adopt rules necessary to administer its responsibilities under [sections 1 through 7 and 9 through 12], including requirements for approval of corrective action plans.

(3) The department of revenue shall adopt rules governing the collection of the petroleum storage tank cleanup fee provided for in [section 7]. The rules may include reporting and recordkeeping requirements, method and timing of payment, examination of records, and other provisions necessary to ensure that fees are properly and

efficiently collected. The rules must be generally consistent with procedures governing the collection of the gasoline license tax provided for in Title 15, chapter 70, so that gasoline distributors experience minimum additional requirements or responsibilities.

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

NEW SECTION. Section 1. 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 [section 7], 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 [sections 1 through 7 and 9 through 12] 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 tank owners and operators in meeting financial assurance requirements under state and federal law governing releases from petroleum storage tanks.

NEW SECTION. Section 2. Definitions. The following

1 definitions apply to [sections 1 through 7 and 9 through
2 12]:

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) "Board" means the petroleum tank release
10 compensation board established in [section 8].

11 (3) "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 (4) "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 (5) "Corrective action" means investigation,
20 monitoring, cleanup, restoration, abatement, removal, and
21 other actions necessary to respond to a release.

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

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

1 15-70-201.

2 (8) "Eligible costs" means expenses reimbursable under
3 [section 3].

4 (9) "Fee" means the petroleum storage tank cleanup fee
5 provided for in [section 7].

6 (10) "Fund" means the petroleum tank release cleanup
7 fund established in [section 6].

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

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

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

18 (14) "Person" means an individual, firm, trust, estate,
19 partnership, company, association, joint stock company,
20 syndicate, consortium, commercial entity, corporation, or
21 agency of state or local government.

22 (15) "Petroleum" or "petroleum products" means crude
23 oil or any fraction thereof that is liquid at standard
24 conditions of temperature and pressure (60 degrees F and
25 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.

NEW SECTION. Section 3. Reimbursement for expenses

caused by a release. (1) Subject to the availability of funds under subsection (5), an owner or operator who is eligible under [section 4] and complies with [section 5] 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

1 related negotiations;

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

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

8 (f) expenses incurred before [the date of passage and
9 approval of this act];

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

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

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

16 (a) for releases that are discovered and reported on
17 or after [the date of passage and approval of this act] and
18 before October 1, 1991, the board shall reimburse an owner
19 or operator for all eligible costs up to a maximum
20 reimbursement of \$1 million for a release; or

21 (b) for releases that are discovered on or after
22 October 1, 1991, an owner or operator shall pay the first
23 \$25,000 in eligible costs and the board shall reimburse an
24 owner or operator for all subsequent eligible costs up to a
25 maximum reimbursement of \$975,000 for a release.

1 (5) If the fund does not contain sufficient money, a
2 reimbursement may not be made and the fund and the board are
3 not liable for making any reimbursement. If and when the
4 fund contains sufficient money, eligible costs must be
5 reimbursed subsequently in the order in which they were
6 approved by the board.

7 NEW SECTION. Section 4. Eligibility. (1) An owner or
8 operator is eligible for reimbursement for eligible costs
9 caused by a release from a petroleum storage tank only if:

10 (a) the release was discovered on or after [the date
11 of passage and approval of this act];

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

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

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

17 (e) with the exception of the release, the operation
18 and management of the tank complied with applicable state
19 and federal laws and rules when the release occurred and
20 remained in compliance following detection of the release.

21 (2) An owner or operator is not eligible for
22 reimbursement for expenses caused by releases from the
23 following petroleum storage tanks:

24 (a) a tank located at a refinery or a terminal of a
25 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) 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) a mobile storage tank used to transport petroleum or petroleum products from one location to another.

NEW SECTION. Section 5. Procedures for reimbursement of eligible costs. (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from his petroleum storage tank, he shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to

protect public health and safety and the environment.

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

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

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

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

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

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

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

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

(2) The board shall review each claim received under

subsections (1)(f) and (1)(g), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

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

(b) the owner or operator:

(i) is eligible for reimbursement under [section 4];

and

(ii) has complied with this section and any rules adopted pursuant to this section.

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

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

1 the 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 fund for
6 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. However, the guarantee must include
11 a proviso stating that the guarantee of reimbursement
12 applies only to eligible costs subsequently approved by the
13 board under the procedures and criteria provided in
14 [sections 1 through 7 and 9 through 12]. A guarantee for
15 payment under this subsection (5)(b) does not affect the
16 order in which money in the fund is obligated under
17 subsection (4).

18 (c) When considering a request for a guarantee of
19 payment, the board may require pertinent information or
20 documentation from the owner or operator. The board may
21 grant or deny, in whole or in part, any request for a
22 guarantee.

23 **NEW SECTION. Section 6. Petroleum tank release**
24 **cleanup fund.** (1) There is a petroleum tank release cleanup
25 fund in the state special revenue fund established in

1 17-2-102. The fund is administered as a revolving fund by
2 the board and is statutorily appropriated as provided in
3 17-7-502.

4 (2) There is deposited in the fund:

5 (a) all revenue from the petroleum storage tank
6 cleanup fee as provided in [section 7];

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

10 (c) money appropriated or advanced to the fund by the
11 legislature; and

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

13 (3) The fund may be used only:

14 (a) to administer [sections 1 through 7 and 9 through
15 12], including payment of board and department expenses
16 associated with administration;

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

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

22 (4) (a) The legislature may appropriate to the fund
23 repayable advances as necessary to carry out the purposes of
24 [sections 1 through 7 and 9 through 12]. The outstanding
25 total of repayable advances may not exceed the amount the

1 board estimates will be received by the fund from the
2 petroleum storage tank cleanup fee during the next 24
3 months.

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

9 NEW SECTION. Section 7. Petroleum storage tank
10 cleanup fee. (1) Except as provided in subsection (4), every
11 distributor shall pay to the department of revenue a
12 petroleum storage tank cleanup fee equal to 0.75 cent for
13 each gallon of gasoline distributed by him within the state
14 and upon which the fee has not been paid by any other
15 distributor.

16 (2) Gasoline exported or sold for export out of the
17 state may not be included in the measure of a distributor's
18 fee.

19 (3) Alcohol that is blended with gasoline to be sold
20 as gasohol is subject to the fee provided in subsection (1).

21 (4) A fee may not be imposed or collected beginning on
22 the first day of the first month in the first calendar
23 quarter after the unobligated balance in the fund equals or
24 exceeds \$8 million. Whenever the unobligated fund balance is
25 less than \$4 million, the department of revenue shall,

1 within 7 days, notify distributors by mail that the fee is
2 reinstated beginning on the first day of the first month
3 that begins no less than 30 days after the date of the
4 notice. Once reinstated, the fee must be imposed and
5 collected until the unobligated fund balance again equals or
6 exceeds \$8 million.

7 NEW SECTION. Section 8. Petroleum tank release
8 compensation board. (1) There is a petroleum tank release
9 compensation board.

10 (2) The board consists of seven members appointed by
11 the governor as follows:

12 (a) the director of the department of health and
13 environmental sciences or his representative;

14 (b) the state fire marshal or his representative;

15 (c) a representative of the petroleum services
16 industry;

17 (d) a representative of independent petroleum
18 marketers and chain retailers;

19 (e) a representative of the general public;

20 (f) a representative of service station dealers; and

21 (g) a representative of the insurance industry.

22 (3) The board shall elect a chairman.

23 (4) The term of membership is 3 years.

24 (5) Members shall serve without pay, but are entitled
25 to reimbursement for travel, meals, and lodging while

1 engaged in board business, as provided in 2-18-501 through
2 2-18-503.

3 **NEW SECTION. Section 9. Powers and duties of board.**

4 (1) The board shall administer the petroleum tank release
5 cleanup fund in accordance with the provisions of [sections
6 1 through 7 and 9 through 12], including the payment of
7 reimbursement to owners and operators.

8 (2) The board shall determine whether to approve
9 reimbursement of eligible costs under the provisions of
10 [section 5(2)], shall obligate money from the fund for
11 approved costs, and shall act on requests for the guarantee
12 of payments through the procedures and criteria provided in
13 [section 5].

14 (3) The board may conduct meetings, hold hearings,
15 undertake legal action, and conduct other business as may be
16 necessary to administer its responsibilities under [sections
17 1 through 7 and 9 through 12]. The board shall meet at least
18 quarterly for the purpose of reviewing and approving claims
19 for reimbursement from the fund and conducting other
20 business as necessary.

21 (4) The board may hire staff, and the department shall
22 provide staff support to the board as the department
23 determines it is able. The board shall use the fund to pay
24 its staff expenses and to pay for department staff utilized
25 for the review or preparation of corrective action plans and

1 for the oversight of corrective action undertaken by owners
2 and operators for the purposes of [sections 1 through 7 and
3 9 through 12].

4 (5) The board shall adopt rules to administer
5 [sections 1 through 7 and 9 through 12], including:

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

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

11 (c) procedures for conducting board meetings,
12 hearings, and other business necessary for the
13 implementation of [sections 1 through 7 and 9 through 12];
14 and

15 (d) other rules necessary for the administration of
16 [sections 1 through 7 and 9 through 12].

17 **NEW SECTION. Section 10. Rulemaking authority --**
18 **department and department of revenue.** (1) The department may
19 adopt rules necessary to administer its responsibilities
20 under [sections 1 through 7 and 9 through 12], including
21 requirements for approval of corrective action plans.

22 (2) The department of revenue shall adopt rules
23 governing the collection of the petroleum storage tank
24 cleanup fee. The rules may include, at a minimum, reporting
25 and recordkeeping requirements, method and timing of

1 payment, and examination of records. The rules must be
2 generally consistent with procedures governing the
3 collection of the gasoline license tax provided for in Title
4 15, chapter 70.

5 **NEW SECTION. Section 11. Other authorities**
6 **unaffected.** Payment of reimbursement, approval of a
7 corrective action plan, or other action of the department or
8 the board under [sections 1 through 7 and 9 through 12] does
9 not affect the authority of the department or any other
10 state agency to pursue an action authorized by Title 75,
11 chapter 10, parts 4 or 7, or any other law or rule that
12 applies to releases from petroleum storage tanks.

13 **NEW SECTION. Section 12. Criminal penalties.** A person
14 who knowingly misrepresents the date of discovery of a
15 release, submits or causes to be submitted a fraudulent
16 claim or document, or makes a false statement or
17 representation in seeking or assisting a person to seek
18 reimbursement under [sections 1 through 7 and 9 through 12]
19 is subject to a fine not to exceed \$10,000 for each
20 violation or imprisonment not to exceed 6 months, or both.
21 A person convicted of a second or subsequent violation of
22 this section is subject to a fine not to exceed \$20,000 for
23 each violation or imprisonment not to exceed 1 year, or
24 both.

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

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

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

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

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

14 (3) The following laws are the only laws containing
15 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
16 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;
17 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;
18 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;
19 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;
20 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;
21 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;
22 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501;
23 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101;
24 75-7-305; [section 6]; 76-12-123; 80-2-103; 80-2-228;
25 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306;

1 90-15-103; section 13, House Bill No. 861, Laws of 1985; and
2 section 1, Chapter 454, Laws of 1987.

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. 15, Ch.
14 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
15 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
16 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.
17 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
18 1987, terminates July 1, 1988.)"

19 NEW SECTION. Section 14. Initial appointments to
20 board. (1) Notwithstanding [section 8], the members of the
21 petroleum tank release compensation board first appointed by
22 the governor shall serve for terms to be designated by the
23 governor and to expire on June 30 of the respective year.
24 The terms of two members must expire in 1990, two in 1991,
25 and three in 1992.

1 (2) The governor shall make the initial appointments
2 to the board no later than June 30, 1989.

3 NEW SECTION. Section 15. 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 16. Effective dates. (1)
10 [Sections 1, 2, 8, 9, 10, 14, 15,] and this section are
11 effective on passage and approval.

12 (2) [Sections 6, 7, and 13] are effective July 1,
13 1989.

14 (3) [Sections 3, 4, 5, 11, and 12] are effective
15 October 1, 1989.

-End-

SENATE STANDING COMMITTEE REPORT

page 1 of 2
March 29, 1989

SENATE COMMITTEE ON TAXATION, HB 603
page 2 of 2

MR. PRESIDENT:

We, your committee on Taxation, having had under consideration HB 603 (third reading copy -- blue), respectfully report that HB 603 be amended and as so amended be concurred in:

Sponsor: Raney (Harp)

1. Title, line 14.
Following: "DISTRIBUTORS"
Insert: "AND COLLECTED BY THE DEPARTMENT OF REVENUE"
2. Page 2.
Following: line 3
Insert: "(c) provide procedures for the review and approval of corrective action plans;"
Renummer: subsequent subsections
3. Page 9, line 15.
Strike: "i;"
Insert: "i,"
4. Page 9, line 16.
Strike: "(a)"
5. Page 9, lines 17 and 18.
Following: "act]" on line 17
Strike: "and" on line 17 through "1991" on line 18
6. Page 9, lines 19 through 25.
Strike: "all" on line 19 through "release" on line 25
Insert: "50% of the first \$35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of \$982,500"
7. Page 10, line 1.
Following: "money"
Insert: "to pay approved claims for eligible costs"
8. Page 10, line 3.
Following: "reimbursement"
Insert: "for the costs at that time"
Following: "."
Strike: "If and when"
Insert: "When"

9. Page 15, lines 10 through 14.
Strike: "However" on line 10 through "." on line 14
10. Page 17, line 10.
Following: "fee"
Insert: "-- collection -- penalties -- warrant for distraint -- statute of limitations"
11. Page 17, line 12.
Strike: "equal to 0.75 cent"
12. Page 17, line 15.
Following: "distributor."
Insert: "The fee must equal:
(a) 1 cent for each gallon of gasoline distributed from July 1, 1989, through June 30, 1991; and
(b) 0.75 cent for each gallon of gasoline distributed after July 1, 1991."
13. Page 18, line 1.
Strike: "7"
Insert: "30"
14. Page 18.
Following: line 6
Insert: "(5) The department of revenue shall collect the fee in the same manner as the basic gasoline license tax under Title 15, chapter 70, part 2. The provisions of 15-70-103, 15-70-111, 15-70-202, 15-70-205, 15-70-206, 15-70-208 through 15-70-212, 15-70-221(2), and 15-70-232 apply to the fee. The provisions of 15-70-203, 15-70-204, 15-70-207, 15-70-221(1), and 15-70-222 through 15-70-224 do not apply to the fee."
15. Page 20.
Following: line 10
Insert: "(c) procedures for the review and approval of corrective action plans;"
Renummer: subsequent subsections

AND AS AMENDED BE CONCURRED IN

Signed: Bob Brown
Bob Brown, Chairman

continued

scrhb603.329

SENATE
HB 603

HOUSE BILL NO. 603

INTRODUCED BY RANEY, HARP, STANG, GILBERT, ECK,
COHEN, DRISCOLL, PATTERSON, PAVLOVICH, GUTHRIE,
WALLIN, PINSONEAULT, SQUIRES, SPAETH, HALLIGAN,

B. BROWN, MAZUREK, MEYER, HAGER, MANNING,

BECK, BENGTSON, DARKO, MCDONOUGH, SWYSGOOD, JACOBSON,

O'KEEFE, HARPER, SCHYE, GRADY, DEMARS, GRINDE,

STRIZICH, DAILY, SPRING, THOMAS, MERCER, ADDY, VINCENT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
REIMBURSEMENT TO OWNERS AND OPERATORS OF PETROLEUM STORAGE
TANKS FOR EXPENSES RELATED TO RELEASES FROM THOSE TANKS;
ESTABLISHING A PETROLEUM STORAGE TANK CLEANUP FEE TO BE PAID
BY GASOLINE DISTRIBUTORS AND COLLECTED BY THE DEPARTMENT OF
REVENUE; CREATING A PETROLEUM TANK RELEASE CLEANUP FUND AND
STATUTORILY APPROPRIATING MONEY IN THE FUND; CREATING A
PETROLEUM TANK RELEASE COMPENSATION BOARD; PROVIDING
CRIMINAL PENALTIES FOR CERTAIN MISREPRESENTATIONS; AMENDING
SECTION 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

(1) It is the intent of the legislature that the
petroleum tank release compensation board enact rules that:

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

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

(C) PROVIDE PROCEDURES FOR THE REVIEW AND APPROVAL OF
CORRECTIVE ACTION PLANS;

~~(c)~~(D) provide procedures for conducting board
meetings, hearings, and other business that are necessary
for the implementation of [sections 1 through 7 and 9
through 12]; and

~~(d)~~(E) are necessary for the administration of
[sections 1 through 7 and 9 through 12], provided that the
rules do not alter or conflict with the eligibility
requirements and procedures provided in [sections 1 through
7 and 9 through 12] or with the laws, rules, or procedures
of the federal government or the department of health and
environmental sciences that govern releases from petroleum
storage tanks.

(2) The department of health and environmental
sciences may adopt rules necessary to administer its
responsibilities under [sections 1 through 7 and 9 through
12], including requirements for approval of corrective
action plans.

(3) The department of revenue shall adopt rules
governing the collection of the petroleum storage tank
cleanup fee provided for in [section 7]. The rules may

1 include reporting and recordkeeping requirements, method and
 2 timing of payment, examination of records, and other
 3 provisions necessary to ensure that fees are properly and
 4 efficiently collected. The rules must be generally
 5 consistent with procedures governing the collection of the
 6 gasoline license tax provided for in Title 15, chapter 70,
 7 so that gasoline distributors experience minimum additional
 8 requirements or responsibilities.

9

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

11 NEW SECTION. Section 1. Findings and purposes. (1)

12 The legislature finds that the use of petroleum products
 13 stored in tanks contributes significantly to the economic
 14 well-being and quality of life of Montana citizens.

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

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

24 (4) The legislature finds that proper funding for the
 25 program is through a petroleum storage tank cleanup fee paid

1 by persons who use and receive the benefits of petroleum
 2 products. The legislature further finds that this general
 3 use fee, provided for in [section 7], is intended solely to
 4 support a program to pay for corrective action and damages
 5 caused by releases from petroleum storage tanks. The general
 6 use fee is collected from distributors for administrative
 7 convenience and is not intended as a method for collecting
 8 highway revenue pursuant to the provisions of Article VIII,
 9 section 6, of the Montana constitution. The fee is intended
 10 to implement the legislature's duty to provide for the
 11 administration and enforcement of maintaining and improving
 12 a clean and healthful environment for present and future
 13 generations, as required by Article IX, section 1, of the
 14 Montana constitution.

15 (5) The purposes of [sections 1 through 7 and 9
 16 through 12] are to:

17 (a) protect public health and safety and the
 18 environment by providing prompt detection and cleanup of
 19 petroleum tank releases;

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

25 (c) assist tank owners and operators in meeting

1 financial assurance requirements under state and federal law
2 governing releases from petroleum storage tanks.

3 NEW SECTION. Section 2. Definitions. The following
4 definitions apply to [sections 1 through 7 and 9 through
5 12]:

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

12 (2) "Board" means the petroleum tank release
13 compensation board established in [section 8].

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

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

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

25 (6) "Department" means the department of health and

1 environmental sciences provided for in Title 2, chapter 15,
2 part 21.

3 (7) "Distributor" means a distributor as defined in
4 15-70-201.

5 (8) "Eligible costs" means expenses reimbursable under
6 [section 3].

7 (9) "Fee" means the petroleum storage tank cleanup fee
8 provided for in [section 7].

9 (10) "Fund" means the petroleum tank release cleanup
10 fund established in [section 6].

11 (11) "Gasoline" means gasoline as defined in 15-70-201.

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

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

21 (14) "Person" means an individual, firm, trust, estate,
22 partnership, company, association, joint stock company,
23 syndicate, consortium, commercial entity, corporation, or
24 agency of state or local government.

25 (15) "Petroleum" or "petroleum products" means crude

1 oil or any fraction thereof that is liquid at standard
2 conditions of temperature and pressure (60 degrees F and
3 14.7 pounds per square inch absolute).

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

6 (a) an underground storage tank as defined in
7 75-10-403;

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

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

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

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

18 (ii) the Hazardous Liquid Pipeline Safety Act of 1979
19 (49 U.S.C. 2001, et seq.); and

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

23 (17) "Property damage" means:

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

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

3 (18) "Release" means a release, as defined in
4 75-10-701, of petroleum or petroleum products from a
5 petroleum storage tank.

6 NEW SECTION. **Section 3.** Reimbursement for expenses
7 caused by a release. (1) Subject to the availability of
8 funds under subsection (5), an owner or operator who is
9 eligible under [section 4] and complies with [section 5] and
10 any rules adopted to implement those sections must be
11 reimbursed by the board from the fund for the following
12 eligible costs caused by a release from a petroleum storage
13 tank:

14 (a) corrective action costs; and

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

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

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

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

25 (c) penalties or payments for damages incurred under

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

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

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

11 (f) expenses incurred before [the date of passage and
12 approval of this act];

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

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

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

19 (a) for releases that are discovered and reported on
20 or after [the date of passage and approval of this act] and
21 before--October--17--1991, the board shall reimburse an owner
22 or operator for ~~all--eligible--costs--up--to--a--maximum~~
23 ~~reimbursement-of-\$1-million-for-a-release; or~~

24 (b) ~~--for--releases--that--are--discovered--on--or--after~~
25 ~~October-17-1991; an owner or operator shall pay the first~~

1 \$25,000--in--eligible-costs-and-the-board shall-reimburse-an
2 owner-or-operator-for-all-subsequent-eligible-costs-up-to--a
3 maximum--reimbursement--of--\$975,000-for-a-release 50% OF THE
4 FIRST \$35,000 OF ELIGIBLE COSTS AND 100% OF SUBSEQUENT
5 ELIGIBLE COSTS, UP TO A MAXIMUM TOTAL REIMBURSEMENT OF
6 \$982,500.

7 (5) If the fund does not contain sufficient money TO
8 PAY APPROVED CLAIMS FOR ELIGIBLE COSTS, a reimbursement may
9 not be made and the fund and the board are not liable for
10 making any reimbursement FOR THE COSTS AT THAT TIME. ~~if-and~~
11 ~~when~~ WHEN the fund contains sufficient money, eligible costs
12 must be reimbursed subsequently in the order in which they
13 were approved by the board.

14 NEW SECTION. Section 4. Eligibility. (1) An owner or
15 operator is eligible for reimbursement for eligible costs
16 caused by a release from a petroleum storage tank only if:

17 (a) the release was discovered on or after [the date
18 of passage and approval of this act];

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

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

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

24 (e) with the exception of the release, the operation
25 and management of the tank complied with applicable state

1 and federal laws and rules when the release occurred and
2 remained in compliance following detection of the release.

3 (2) An owner or operator is not eligible for
4 reimbursement for expenses caused by releases from the
5 following petroleum storage tanks:

6 (a) a tank located at a refinery or a terminal of a
7 refiner;

8 (b) a tank located at an oil and gas production
9 facility;

10 (c) a tank that is or was previously under the
11 ownership or control of a railroad;

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

13 (e) 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) a tank owned or operated by a person who has been
19 convicted of a substantial violation of state or federal law
20 or rule that relates to the installation, operation, or
21 management of petroleum storage tanks; or

22 (g) a mobile storage tank used to transport petroleum
23 or petroleum products from one location to another.

24 **NEW SECTION. Section 5. Procedures for reimbursement**
25 **of eligible costs. (1) An owner or operator seeking**

1 reimbursement for eligible costs and the department shall
2 comply with the following procedures:

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

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

15 (c) (i) The department shall review the corrective
16 action plan and forward a copy to a local government office
17 with jurisdiction over a corrective action for the release.
18 The local government office shall inform the department if
19 it wants any modification of the proposed plan.

20 (ii) Based on its own review and comments received from
21 a local government or other source, the department may
22 approve the proposed corrective action plan, make or request
23 the owner or operator to modify the proposed plan, or
24 prepare its own plan for compliance by the owner or
25 operator. A plan finally approved by the department through

1 any process provided in this subsection (c) is the approved
2 corrective action plan.

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

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

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

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

1 (g) The owner or operator shall document, in the
2 manner required by the board, any payments to a third party
3 for bodily injury or property damage caused by a release.
4 The owner or operator shall submit claims and substantiating
5 documents to the board in the form and manner required by
6 the board.

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

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

14 (i) are eligible costs; and

15 (ii) were actually, necessarily, and reasonably
16 incurred for the preparation or implementation of a
17 corrective action plan approved by the department or for
18 payments to a third party for bodily injury or property
19 damage; and

20 (b) the owner or operator:

21 (i) is eligible for reimbursement under [section 4];

22 and

23 (ii) has complied with this section and any rules
24 adopted pursuant to this section.

25 (3) If an owner or operator disagrees with a board

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

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

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

14 (b) The board may, at the request of an owner or
15 operator, guarantee in writing reimbursement of eligible
16 costs not yet approved by the board, including estimated
17 costs not yet incurred. ~~However, the guarantee must include~~
18 ~~a proviso stating that the guarantee of reimbursement~~
19 ~~applies only to eligible costs subsequently approved by the~~
20 ~~board under the procedures and criteria provided in~~
21 ~~sections 1 through 7 and 9 through 12~~; A guarantee for
22 payment under this subsection (5)(b) does not affect the
23 order in which money in the fund is obligated under
24 subsection (4).

25 (c) When considering a request for a guarantee of

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

5 NEW SECTION. Section 6. Petroleum tank release
6 cleanup fund. (1) There is a petroleum tank release cleanup
7 fund in the state special revenue fund established in
8 17-2-102. The fund is administered as a revolving fund by
9 the board and is statutorily appropriated as provided in
10 17-7-502.

11 (2) There is deposited in the fund:

12 (a) all revenue from the petroleum storage tank
13 cleanup fee as provided in [section 7];

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

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

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

20 (3) The fund may be used only:

21 (a) to administer [sections 1 through 7 and 9 through
22 12], including payment of board and department expenses
23 associated with administration;

24 (b) to reimburse owners and operators for eligible
25 costs caused by a release from a petroleum storage tank and

1 approved by the board; and

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

4 (4) (a) The legislature may appropriate to the fund
5 repayable advances as necessary to carry out the purposes of
6 [sections 1 through 7 and 9 through 12]. The outstanding
7 total of repayable advances may not exceed the amount the
8 board estimates will be received by the fund from the
9 petroleum storage tank cleanup fee during the next 24
10 months.

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

16 NEW SECTION. Section 7. Petroleum storage tank
17 cleanup fee -- COLLECTION -- PENALTIES -- WARRANT FOR
18 DISTRAINT -- STATUTE OF LIMITATIONS. (1) Except as provided
19 in subsection (4), every distributor shall pay to the
20 department of revenue a petroleum storage tank cleanup fee
21 equal-to-0.75-cent for each gallon of gasoline distributed
22 by him within the state and upon which the fee has not been
23 paid by any other distributor. THE FEE MUST EQUAL:

24 (A) 1 CENT FOR EACH GALLON OF GASOLINE DISTRIBUTED
25 FROM JULY 1, 1989, THROUGH JUNE 30, 1991; AND

1 (B) 0.75 CENT FOR EACH GALLON OF GASOLINE DISTRIBUTED
2 AFTER JULY 1, 1991.

3 (2) Gasoline exported or sold for export out of the
4 state may not be included in the measure of a distributor's
5 fee.

6 (3) Alcohol that is blended with gasoline to be sold
7 as gasohol is subject to the fee provided in subsection (1).

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

19 (5) THE DEPARTMENT OF REVENUE SHALL COLLECT THE FEE IN
20 THE SAME MANNER AS THE BASIC GASOLINE LICENSE TAX UNDER
21 TITLE 15, CHAPTER 70, PART 2. THE PROVISIONS OF 15-70-103,
22 15-70-111, 15-70-202, 15-70-205, 15-70-206, 15-70-208
23 THROUGH 15-70-212, 15-70-221(2), AND 15-70-232 APPLY TO THE
24 FEE. THE PROVISIONS OF 15-70-203, 15-70-204, 15-70-207,
25 15-70-221(1), AND 15-70-222 THROUGH 15-70-224 DO NOT APPLY

1 TO THE FEE.

2 NEW SECTION. Section 8. Petroleum tank release
3 compensation board. (1) There is a petroleum tank release
4 compensation board.

5 (2) The board consists of seven members appointed by
6 the governor as follows:

7 (a) the director of the department of health and
8 environmental sciences or his representative;

9 (b) the state fire marshal or his representative;

10 (c) a representative of the petroleum services
11 industry;

12 (d) a representative of independent petroleum
13 marketers and chain retailers;

14 (e) a representative of the general public;

15 (f) a representative of service station dealers; and

16 (g) a representative of the insurance industry.

17 (3) The board shall elect a chairman.

18 (4) The term of membership is 3 years.

19 (5) Members shall serve without pay, but are entitled
20 to reimbursement for travel, meals, and lodging while
21 engaged in board business, as provided in 2-18-501 through
22 2-18-503.

23 NEW SECTION. Section 9. Powers and duties of board.

24 (1) The board shall administer the petroleum tank release
25 cleanup fund in accordance with the provisions of [sections

1 1 through 7 and 9 through 12], including the payment of
2 reimbursement to owners and operators.

3 (2) The board shall determine whether to approve
4 reimbursement of eligible costs under the provisions of
5 [section 5(2)], shall obligate money from the fund for
6 approved costs, and shall act on requests for the guarantee
7 of payments through the procedures and criteria provided in
8 [section 5].

9 (3) The board may conduct meetings, hold hearings,
10 undertake legal action, and conduct other business as may be
11 necessary to administer its responsibilities under [sections
12 1 through 7 and 9 through 12]. The board shall meet at least
13 quarterly for the purpose of reviewing and approving claims
14 for reimbursement from the fund and conducting other
15 business as necessary.

16 (4) The board may hire staff, and the department shall
17 provide staff support to the board as the department
18 determines it is able. The board shall use the fund to pay
19 its staff expenses and to pay for department staff utilized
20 for the review or preparation of corrective action plans and
21 for the oversight of corrective action undertaken by owners
22 and operators for the purposes of [sections 1 through 7 and
23 9 through 12].

24 (5) The board shall adopt rules to administer
25 [sections 1 through 7 and 9 through 12], 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;

~~(c)~~(D) procedures for conducting board meetings, hearings, and other business necessary for the implementation of [sections 1 through 7 and 9 through 12]; and

~~(d)~~(E) other rules necessary for the administration of [sections 1 through 7 and 9 through 12].

NEW SECTION. Section 10. Rulemaking authority -- department and department of revenue. (1) The department may adopt rules necessary to administer its responsibilities under [sections 1 through 7 and 9 through 12], including requirements for approval of corrective action plans.

(2) The department of revenue shall adopt rules governing the collection of the petroleum storage tank cleanup fee. The rules may include, at a minimum, reporting and recordkeeping requirements, method and timing of payment, and examination of records. The rules must be generally consistent with procedures governing the collection of the gasoline license tax provided for in Title

15, chapter 70.

NEW SECTION. Section 11. Other authorities unaffected. Payment of reimbursement, approval of a corrective action plan, or other action of the department or the board under [sections 1 through 7 and 9 through 12] does not affect the authority of the department or any other state agency to pursue an action authorized by Title 75, chapter 10, parts 4 or 7, or any other law or rule that applies to releases from petroleum storage tanks.

NEW SECTION. Section 12. Criminal penalties. A person who knowingly misrepresents the date of discovery of a release, submits or causes to be submitted a fraudulent claim or document, or makes a false statement or representation in seeking or assisting a person to seek reimbursement under [sections 1 through 7 and 9 through 12] is subject to a fine not to exceed \$10,000 for each violation or imprisonment not to exceed 6 months, or both. A person convicted of a second or subsequent violation of this section is subject to a fine not to exceed \$20,000 for each violation or imprisonment not to exceed 1 year, or both.

Section 13. Section 17-7-502, MCA, is amended to read:
"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending

1 by a state agency without the need for a biennial
2 legislative appropriation or budget amendment.

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

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

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

11 (3) The following laws are the only laws containing
12 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
13 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;
14 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;
15 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;
16 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;
17 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;
18 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;
19 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501;
20 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101;
21 75-7-305; section 6; 76-12-123; 80-2-103; 80-2-228;
22 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306;
23 90-15-103; section 13, House Bill No. 861, Laws of 1985; and
24 section 1, Chapter 454, Laws of 1987.

25 (4) There is a statutory appropriation to pay the

1 principal, interest, premiums, and costs of issuing, paying,
2 and securing all bonds, notes, or other obligations, as due,
3 that have been authorized and issued pursuant to the laws of
4 Montana. Agencies that have entered into agreements
5 authorized by the laws of Montana to pay the state
6 treasurer, for deposit in accordance with 17-2-101 through
7 17-2-107, as determined by the state treasurer, an amount
8 sufficient to pay the principal and interest as due on the
9 bonds or notes have statutory appropriation authority for
10 such payments. (In subsection (3): pursuant to sec. 15, Ch.
11 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
12 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
13 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.
14 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
15 1987, terminates July 1, 1988.)"

16 NEW SECTION. **Section 14.** Initial appointments to
17 board. (1) Notwithstanding [section 8], the members of the
18 petroleum tank release compensation board first appointed by
19 the governor shall serve for terms to be designated by the
20 governor and to expire on June 30 of the respective year.
21 The terms of two members must expire in 1990, two in 1991,
22 and three in 1992.

23 (2) The governor shall make the initial appointments
24 to the board no later than June 30, 1989.

25 NEW SECTION. **Section 15.** Severability. If a part of

HB 0603/03

1 [this act] is invalid, all valid parts that are severable
2 from the invalid part remain in effect. If a part of [this
3 act] is invalid in one or more of its applications, the part
4 remains in effect in all valid applications that are
5 severable from the invalid applications.

6 NEW SECTION. Section 16. Effective dates. (1)
7 [Sections 1, 2, 8, 9, 10, 14, 15,] and this section are
8 effective on passage and approval.

9 (2) [Sections 6, 7, and 13] are effective July 1,
10 1989.

11 (3) [Sections 3, 4, 5, 11, and 12] are effective
12 October 1, 1989.

-End-