

Approved March 13, 1990  
Date

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Senator Ross Doyen at  
Chairperson

8:11 a.m./~~p.m.~~ on February 28, 1990 in room 423-S of the Capitol.

All members were present except: Quorum was present.

Committee staff present:

Raney Gilliland, Legislative Research Department  
Don Hayward, Revisor of Statutes  
Pat Mah, Legislative Research Department  
Lila McClaflin, Committee Secretary

Conferees appearing before the committee:

David Traster, General Counsel, Kansas Department of Health & Environment  
Bob Alderson, Kansas Oil Marketers Association  
Ron Hammerschmidt, Kansas Department of Health and Environment

The Chairman called on David Traster to explain the proposed amendments to SB 554 - amending the Kansas Storage Tank Act. Mr. Traster distributed a copy of their proposed amendments (Attachment I).

Ron Hammerschmidt and Mr. Traster both responded to questions from members of the committee.

Bob Alderson representing the industry stated the amendments offered by the Department are a compromise they helped with, and he believes it is something they can live with.

A motion was made by Senator Sallee to adopt the proposed amendments. Senator Hayden seconded the motion. Motion carried.

A motion was made by Senator Yost to conceptually amend the bill to exempt aviation jet fuel from the environmental assurance fee. The motion was seconded by Senator Langworthy. Motion carried.

A motion was made by Senator Walker to included a new section in the bill. The new section would establish a premium schedule to be eligible for third party liability claims against the fund, and included a sunset clause. The motion was seconded by Senator Martin. The motion was then conceptually amended by Senator Walker to delay the fees one year. The motion was seconded by Senator Martin. The conceptual motion carried, but the original motion failed. (Attachment II).

Senator Sallee moved the bill be passed as amended. The motion was seconded by Senator Hayden. Motion carried.

The meeting adjourned at 8:44 a.m., the next meeting will be 8:00 a.m., on March 1, 1990.

1990 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date February 28, 1990

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NAME	REPRESENTING
Joe Lieber	KS Co-op Council
DAVID M. TRASTER	K DITE.
DAN BAILEY	KS OIL MTRS ASSN.
BOB ANDERSON	" " " "
Charles Nicolay	" " " "
Ron Hammerschmidt	Ks. Dept. Health & Env.
Larry Knoche	-
Rick Bean	-
ART BROWN	KS LUMBER DEALERS Corporation Commission
Beverly Steinmeyer	Kansas Grain & Feed Assn
Tom Junnell	KS Co-op Council
Diane Houser	Governor's Office.
Gary Hulitt	KASB
Cindy Kelly Chuck Stones	KBA
Kathy Taylor	"
TERRY LEATHERMAN	KCCI

SENATE BILL No. 554

By Committee on Energy and Natural Resources

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9 AN ACT amending the Kansas storage tank act; providing for the  
10 administration and disbursement of moneys from the petroleum  
11 storage tank release trust fund; amending K.S.A. 1989 Supp. 65-  
12 34,105, 65-34,114, 65-34,115, 65-34,119 and 65-34,120 and  
13 repealing the existing sections.  
14

15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 1989 Supp. 65-34,105 is hereby amended to  
17 read as follows: 65-34,105. (a) The secretary is authorized and  
18 directed to adopt rules and regulations necessary to administer and  
19 enforce the provisions of this act. Any rules and regulations so  
20 adopted shall be reasonably necessary to preserve, protect and  
21 maintain the waters and other natural resources of this state, and  
22 reasonably necessary to provide for the prompt investigation and  
23 cleanup of sites contaminated by a release from a storage tank. In  
24 addition, any rules and regulations or portions thereof which pertain  
25 to underground storage tanks or the owners and operators thereof  
26 shall be adopted for the purpose of enabling the secretary and the  
27 department to implement the federal act, and such rules and  
28 regulations so adopted shall be consistent with the federal act.  
29 Consistent with these purposes, the secretary shall adopt rules and  
30 regulations:

31 (1) Establishing performance standards for underground storage  
32 tanks first brought into use on or after the effective date of this act.  
33 The performance standards for new underground storage tanks shall  
34 include, but are not limited to, design, construction, installation,  
35 release detection and product compatibility standards;

36 (2) establishing performance standards for above ground storage  
37 tanks brought into use after the effective date of this act. The  
38 performance standards for new above ground storage tanks shall  
39 include, but are not limited to, design, construction, installation,  
40 release detection and product compatibility standards;

41 (3) establishing performance standards for the inground repair of  
42 underground storage tanks. The performance standards shall include,  
43 but are not limited to, specifying under what circumstances an

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Attachment I

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1 underground storage tank may be repaired and specifying design,  
2 construction, installation, release detection, product compatibility  
3 standards and warranty;

4 (4) establishing performance standards for maintaining spill and  
5 overfill equipment, leak detection systems and comparable systems  
6 or methods designed to prevent or identify releases. In addition,  
7 the secretary shall establish standards for maintaining records and  
8 reporting leak detection monitoring, inventory control and tank  
9 testing or comparable systems;

10 (5) establishing requirements for reporting a release and for  
11 reporting and taking corrective action in response to a release;

12 (6) establishing requirements for maintaining evidence of financial  
13 responsibility to be met by owners and operators of underground  
14 storage tanks, ~~including requirements necessary to qualify as a self-~~  
15 ~~insurer for the purpose of demonstrating financial responsibility for~~  
16 ~~the amounts required of owners and operators by subsections (a)~~  
17 ~~and (i) of K.S.A. 1989 Supp. 65-34,119, and amendments thereto;~~

18 (7) establishing requirements for the closure of underground  
19 storage tanks including the removal and disposal of underground  
20 storage tanks and regulated substance residues contained therein to  
21 prevent future releases of regulated substances into the environment;

22 (8) for the approval of tank tightness testing methods, including  
23 determination of the qualifications of persons performing or offering  
24 to perform such testing;

25 (9) establishing site selection and clean-up criteria regarding  
26 corrective actions related to a release and which address the  
27 following: The physical and chemical characteristics of the released  
28 substance, including toxicity, persistence and potential for migration;  
29 the hydrogeologic characteristics of the release site and the  
30 surrounding land; the proximity, quality and current and future uses  
31 of groundwater; an exposure assessment; the proximity, quality and  
32 current and future use of surface water; and the level of the released  
33 substance allowed to remain on the facility following cleanup;

34 (10) prescribing fees for the following with regard to underground  
35 storage tanks: Registration, issuance of permits, approval of plans for  
36 new installations and conducting of inspections. The total amount of  
37 fees shall not exceed the amount of revenue required for the proper  
38 administration of the provisions of this act. All fees shall be deposited  
39 in the state general fund;

40 (11) for determining the qualifications, adequacy of performance  
41 and financial responsibility of persons desiring to be licensed as  
42 underground storage tank installers or contractors. In adopting rules  
43 and regulations, the secretary may specify classes of specialized

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1 activities, such as the installation of corrosion protection devices or  
2 underground relining of underground storage tanks, and may require  
3 persons wishing to engage in such activities to demonstrate additional  
4 qualifications to perform these services;

5 (12) prescribing fees for the issuance of licenses to underground  
6 storage tank installers and contractors. The fees shall not exceed the  
7 amount of revenue determined by the secretary to be required for  
8 administration of the provisions of K.S.A. 1989 Supp. 65-34,110; and

9 (13) adopting schedules requiring the retrofitting of underground  
10 storage tanks in existence on the effective date of this act and for  
11 the retirement from service of underground storage tanks placed in  
12 service prior to the effective date of this act. Such schedules shall  
13 be based on the age and location of the storage tank and the type  
14 of substance stored. Such retrofitting shall include secondary  
15 containment, corrosion protection, linings, leak detection equipment  
16 and spill and overflow equipment.

17 (b) In adopting rules and regulations under this section, the  
18 secretary shall take notice of rules and regulations pertaining to fire  
19 prevention and safety adopted by the state fire marshal pursuant to  
20 subsection (a)(1) of K.S.A. 31-133, and amendments thereto.

21 (c) Nothing in this section shall interfere with the right of a city  
22 or county having authority to adopt a building or fire code from  
23 imposing requirements more stringent than those adopted by the  
24 secretary pursuant to subsections (a)(1), (2), (3), (7) and (13), or affect  
25 the exercise of powers by cities, counties and townships regarding  
26 the location of storage tanks and the visual compatibility of above  
27 ground storage tanks with surrounding property.

28 Sec. 2. K.S.A. 1989 Supp. 65-34,114 is hereby amended to read  
29 as follows: 65-34,114. (a) There is hereby established as a segregated  
30 fund in the state treasury the petroleum storage tank release trust  
31 fund, to be administered by the secretary. Revenue from the  
32 following sources shall be deposited in the state treasury and credited  
33 to the fund:

34 (1) The proceeds of the environmental assurance fee imposed by  
35 this act;

36 (2) any moneys recovered by the state under the provisions of  
37 this act, including administrative expenses, civil penalties and  
38 moneys paid under an agreement, stipulation or settlement;

39 (3) interest attributable to investment of moneys in the fund; and

40 (4) moneys received by the secretary in the form of gifts, grants,  
41 reimbursements or appropriations from any source intended to be  
42 used for the purposes of the fund, but excluding federal grants and  
43 cooperative agreements.

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1 (b) The fund shall be administered so as to assist owners and  
 2 operators of underground petroleum storage tanks in providing  
 3 evidence of financial responsibility for corrective action required by  
 4 a release from any such tank. Moneys deposited in the fund may  
 5 be expended for the purpose of reimbursing owners and operators  
 6 for the costs of corrective action ~~and for indemnifying owners and~~  
 7 ~~operators for the costs of compensating third parties for bodily injury~~ any liability to  
 8 ~~or property damage caused by a release from an underground~~  
 9 ~~storage tank, subject to the conditions and limitations prescribed by~~  
 10 ~~this act; but moneys in the fund shall not be used for~~  
 11 ~~compensating third parties for bodily injury or property damage~~  
 12 ~~caused by a release from an underground petroleum storage~~  
 13 ~~tank, other than property damage included in a corrective action~~  
 14 ~~plan approved by the secretary. In addition, moneys deposited~~  
 15 ~~in the fund may be expended for the following purposes:~~

16 (1) To permit the secretary to take whatever emergency action  
 17 is necessary or appropriate to assure that the public health or safety  
 18 is not threatened whenever there is a release from an underground  
 19 petroleum storage tank;

20 (2) to permit the secretary to take corrective action where the  
 21 release presents an actual or potential threat to human health or the  
 22 environment, if the owner or operator has not been identified or is  
 23 unable or unwilling to perform corrective action, including but not  
 24 limited to, providing for alternative water supplies;

25 (3) payment of the state's share of the federal leaking  
 26 underground storage tank trust fund cleanup costs, as required by  
 27 the resource conservation and recovery act, 42 U.S.C.  
 28 § 6991b(h)(7)(B); and

29 (4) payment of the administrative, technical and legal costs  
 30 incurred by the secretary in carrying out the provisions of sections  
 31 15 through 25, including the cost of any additional employees or  
 32 increased general operating costs of the department attributable  
 33 thereto, which costs shall not be payable from any moneys other  
 34 than those credited to the fund.

35 (c) The petroleum storage tank release trust fund shall be used  
 36 for the purposes set forth in this act and for no other governmental  
 37 purposes. It is the intent of the legislature that the fund shall remain  
 38 intact and inviolate for the purposes set forth in this act, and moneys  
 39 in the fund shall not be subject to the provisions of K.S.A. 75-3722,  
 40 75-3725a and 75-3726a, and amendments thereto.

41 (d) Neither the state of Kansas nor the petroleum storage tank  
 42 release trust fund shall be liable to an owner or operator for the  
 43 loss of business, damages or taking of property associated with any

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1 corrective or enforcement action taken pursuant to this act.

2 (e) The pooled money investment board may invest and reinvest  
3 moneys in the fund established under this section in obligations of  
4 the United States or obligations the principal and interest of which  
5 are guaranteed by the United States or in interest-bearing time  
6 deposits in any commercial bank or trust company located in Kansas  
7 or, if the board determines that it is impossible to deposit such  
8 moneys in such time deposits, in repurchase agreements of less than  
9 30 days' duration with a Kansas bank or with a primary government  
10 securities dealer which reports to the market reports division of the  
11 federal reserve bank of New York for direct obligations of, or  
12 obligations that are insured as to principal and interest by, the United  
13 States government or any agency thereof. Any income or interest  
14 earned by such investments shall be credited to the fund.

15 (f) All expenditures from the fund shall be made in accordance  
16 with appropriation acts upon warrants of the director of accounts and  
17 reports issued pursuant to vouchers approved by the secretary for  
18 the purposes set forth in this section.

19 Sec. 3. K.S.A. 1989 Supp. 65-34,115 is hereby amended to read  
20 as follows: 65-34,115. Except as otherwise provided in this act, an  
21 owner or operator of an underground petroleum storage tank, or  
22 both, shall be liable for: (a) All costs of corrective action taken in  
23 response to a release from such petroleum storage tank; and (b)  
24 ~~compensating~~ *third parties for bodily injury or property damage*  
25 *caused by a release from such petroleum storage tank.* Eligibility to  
26 participate in the petroleum storage tank release trust fund may be  
27 submitted as evidence of financial responsibility required of owners  
28 and operators of underground petroleum storage tanks.

any liability to

29 Sec. 4. K.S.A. 1989 Supp. 65-34,119 is hereby amended to read  
30 as follows: 65-34,119. (a) An owner or operator of an underground  
31 petroleum storage tank, other than the United States government  
32 or any of its agencies, who is in substantial compliance, as provided  
33 in subsections (d) and (e), and who undertakes corrective action,  
34 either through personnel of the owner or operator or through  
35 response action contractors or subcontractors, is entitled to  
36 reimbursement of reasonable corrective action costs from the fund,  
37 subject to the following provisions:

38 (1) An owner or operator who is not a petroleum marketer and  
39 who owns or operates not more than four underground petroleum  
40 storage tanks shall be liable for the first \$5,000 of costs of corrective  
41 action taken in response to a release from any such petroleum storage  
42 tank, provided all petroleum or petroleum products are not stored  
43 for purposes of resale.

1 (2) Except as otherwise provided by subsection (a)(1), the owner  
2 or operator of not more than 12 underground petroleum storage  
3 tanks shall be liable for the first \$10,000 of costs of corrective action  
4 taken in response to a release from any such petroleum storage tank;

5 (3) the owner or operator of at least 13 and not more than 99  
6 underground petroleum storage tanks shall be liable for the first  
7 \$20,000 of costs of corrective action taken in response to a release  
8 from any such petroleum storage tank;

9 (4) the owner or operator of more than 99 underground  
10 petroleum storage tanks shall be liable for the first \$60,000 of costs  
11 of corrective action taken in response to a release from any such  
12 petroleum storage tank;

13 (5) the owner or operator shall be liable for all costs of corrective  
14 action related to a release if the secretary determines that such owner  
15 or operator allowed, failed to report or failed to take corrective action  
16 in response to such release, knowing or having reason to know of  
17 such release;

18 (6) the owner or operator must submit to and receive from the  
19 secretary approval of the proposed corrective action plan, together  
20 with projected costs of the corrective action;

21 (7) the owner or operator or any agents thereof shall keep and  
22 preserve suitable records demonstrating compliance with the  
23 approved corrective action plan and all invoices and financial records  
24 associated with costs for which reimbursement will be requested;

25 (8) within 30 days of receipt of a complete corrective action plan,  
26 the secretary shall make a determination and provide written notice  
27 as to whether the owner or operator responsible for corrective action  
28 is eligible or ineligible for reimbursement of corrective action costs,  
29 and should the secretary determine the owner or operator is  
30 ineligible, the secretary shall include in the written notice an  
31 explanation setting forth in detail the reasons for the determination;

32 (9) the owner or operator shall submit to the secretary a written  
33 notice that corrective action has been completed within 30 days of  
34 completing corrective action;

35 (10) no later than 30 days from the submission of the notice as  
36 required by subsection (a)(9), the owner or operator must submit an  
37 application for reimbursement of corrective action costs in accordance  
38 with criteria established by the secretary, and the application for  
39 reimbursement must include the total amount of the corrective action  
40 costs and the amount of reimbursement sought. In no case shall the  
41 total amount of reimbursement exceed the lesser of the actual costs  
42 of the corrective action or the amount of the lowest bid submitted  
43 pursuant to K.S.A. 1989 Supp. 65-34,118 less the appropriate

or as soon as practicable thereafter,

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1 deductible amount;

2 (11) interim payments shall be made to an owner or operator in  
3 accordance with the plan approved by the secretary pursuant to  
4 K.S.A. 1989 Supp. 65-34,118, except that the secretary, for good  
5 cause shown, may refuse to make interim payments or withhold the  
6 final payment until completion of the corrective action;

7 (12) the owner or operator shall be fully responsible for removal,  
8 replacement or retrofitting of underground petroleum storage tanks  
9 and the cost thereof shall not be reimbursable from the fund;

10 (13) the owner or operator shall provide evidence satisfactory to  
11 the secretary that corrective action costs equal to the appropriate  
12 deductible amount have been paid by the owner or operator, and  
13 such costs shall not be reimbursed to the owner or operator; and

14 ~~(14) the owner or operator submits to the secretary proof,~~  
15 ~~satisfactory to the secretary, that such owner or operator is~~  
16 ~~unable to satisfy the criteria for selfinsurance under the federal~~  
17 ~~act; and~~

18 ~~(15) (14)~~ the owner or operator shall be liable for all costs which  
19 are paid by or for which the owner or operator is entitled to  
20 reimbursement from insurance coverage, warranty coverage or any  
21 other source.

22 (b) For the purpose of determining an owner's or operator's  
23 eligibility for reimbursement pursuant to subsection (a) and the  
24 applicable deductible of such owner or operator, the secretary shall  
25 consider all owners and operators owned or controlled by the same  
26 interests to be a single owner or operator.

27 (c) Notwithstanding the provisions of subsection (c) of K.S.A.  
28 1989 Supp. 65-34,118, should the secretary find that any of the  
29 following situations exist, the owner or operator, or both, may be  
30 liable for 100% of costs associated with corrective action necessary  
31 to protect health or the environment, if:

32 (1) The release was due to willful or wanton actions by the owner  
33 or operator;

34 (2) the owner or operator is in arrears for moneys owed, other  
35 than environmental assurance fees, to the petroleum storage tank  
36 release trust fund;

37 (3) the release was from a tank not registered with the  
38 department;

39 (4) the owner or operator fails to comply with any provision of  
40 the agreement specified in subsection (c) of K.S.A. 1989 Supp. 65-  
41 34,118;

42 (5) the owner or operator moves in any way to obstruct the efforts  
43 of the department or its contractors to investigate the presence or

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1 effects of a release or to effectuate corrective action; or

2 (6) the owner or operator is not in substantial compliance with  
3 any provision of this act or rules and regulations promulgated  
4 hereunder.

5 (d) Except as otherwise provided in subsection ~~(d)~~ (e) an owner or  
6 operator of an underground petroleum storage tank is in substantial  
7 compliance with this act and the rules and regulations adopted  
8 hereunder, if:

9 (1) On and after January 1, 1990, each petroleum storage tank  
10 owned or operated by such owner or operator has been registered  
11 with the secretary, in accordance with the applicable laws of this  
12 state and any rules and regulations adopted thereunder;

13 (2) the owner or operator has entered into an agreement with  
14 the secretary, as provided in subsection (c) of K.S.A. 1989 Supp.  
15 65-34,118;

16 (3) the owner or operator has complied with any applicable  
17 financial responsibility requirements imposed by the Kansas storage  
18 tank act and the rules and regulations adopted thereunder; and

19 (4) the owner or operator has otherwise made a good faith effort  
20 to comply with the federal act, this act, any other law of this state  
21 regulating petroleum storage tanks and all applicable rules and  
22 regulations adopted under any of them.

23 (e) Prior to July 1, 1990, an owner or operator of any of the  
24 following underground petroleum storage tanks shall be deemed to  
25 be in substantial compliance with this act:

26 (1) Any farm or residential tank of 1,100 gallons or less capacity  
27 used for storing motor fuel for noncommercial purposes; and

28 (2) any tank used for storing heating oil for consumptive use on  
29 the single family residential premise where stored.

30 On and after July 1, 1990, an owner or operator of any petroleum  
31 storage tanks specified above shall be deemed to be in substantial  
32 compliance with this act, if each such tank has been registered with  
33 the secretary in accordance with the applicable laws of this state  
34 and any rules and regulations adopted thereunder.

35 ~~(f) Notwithstanding any other provision of the Kansas storage~~  
36 ~~tank act~~ any owner of an underground petroleum storage tank who  
37 at no time has placed petroleum in such tank or withdrawn petroleum  
38 from such tank shall be eligible for reimbursement from the fund  
39 of all costs of any necessary corrective action and shall not be subject  
40 to the provisions of subsections (a)(1), (2), (3) and (4) if such owner  
41 submits a corrective action plan prior to July 1, 1990.

42 ~~(g) Notwithstanding any other provision of the Kansas storage~~  
43 ~~tank act, any owner or operator of an underground petroleum~~

subsection (d)(1)

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1 ~~Storage tank who at no time on or after April 1, 1989, has placed~~  
2 ~~petroleum in such tank or withdrawn petroleum from such tank shall~~  
3 ~~be eligible for reimbursement from the fund of all costs of any~~  
4 ~~necessary corrective action in response to a release from such tank,~~  
5 ~~except that:~~

6 ~~(1) The owner or operator must submit a corrective action plan~~  
7 ~~to the secretary prior to July 1, 1990; and~~

8 ~~(2) the owner or operator shall be subject to the applicable~~  
9 ~~provisions of subsections (a)(1), (2), (3) and (4).~~

10 ~~(h) Notwithstanding any other provision of the Kansas storage~~  
11 ~~tank act, an owner or operator of a petroleum storage tank who~~  
12 ~~has undertaken corrective action prior to April 1, 1990, pursuant~~  
13 ~~to a corrective action plan approved by the secretary on or after~~  
14 ~~January 1, 1989, shall be eligible for reimbursement from the fund~~  
15 ~~for costs incurred in conjunction with such corrective action~~  
16 ~~performed subsequent to plan approval by the secretary.~~

17 ~~(i) An owner or operator of a petroleum storage tank, other than~~  
18 ~~the United States government or any of its agencies or the owner~~  
19 ~~or operator of any above ground storage tank specified in subsection~~  
20 ~~(g) or (j) of K.S.A. 1989 Supp. 65-34,103, and amendments thereto,~~  
21 ~~who is in substantial compliance, as provided in subsections (c) and~~  
22 ~~(d), shall be indemnified by the fund for the costs of compensating~~  
23 ~~third parties for bodily injury or property damage caused by a~~  
24 ~~release from such petroleum storage tank, subject to the following~~  
25 ~~provisions:~~

26 ~~(1) An owner or operator who is not a petroleum marketer and~~  
27 ~~who owns or operates not more than four underground petroleum~~  
28 ~~storage tanks shall be liable for the first \$5,000 of such costs,~~  
29 ~~provided all petroleum or petroleum products are not stored for~~  
30 ~~purposes of resale;~~

31 ~~(2) the owner or operator of not more than 12 underground~~  
32 ~~petroleum storage tanks shall be liable for the first \$10,000 of such~~  
33 ~~costs;~~

34 ~~(3) the owner or operator of at least 13 and not more than 99~~  
35 ~~underground petroleum storage tanks shall be liable for the first~~  
36 ~~\$20,000 of such costs;~~

37 ~~(4) the owner or operator of more than 99 underground~~  
38 ~~petroleum storage tanks shall be liable for the first \$60,000 of such~~  
39 ~~costs;~~

40 ~~(5) the owner or operator otherwise satisfies the criteria~~  
41 ~~established by the Kansas storage tank act for the eligibility of an~~  
42 ~~owner or operator to be reimbursed from the fund for costs of any~~  
43 ~~corrective action in response to a release from an underground~~

~~petroleum storage tank;~~

~~(6) the owner or operator shall submit to the secretary a certified copy of a final judgment of a court of competent jurisdiction establishing the owner's or operator's liability for such costs, or the secretary shall approve of a settlement of a claim against the owner or operator for such costs;~~

~~(7) the costs for which an owner or operator may be indemnified shall not include punitive damages; and~~

~~(9) in any event, the fund's liability for such costs shall not exceed the limits specified in K.S.A. 1989 Supp. 65-34,120, and amendments thereto.~~

Sec. 51 K.S.A. 1989 Supp. 65-34,120 is hereby amended to read as follows: 65-34,120. (a) Nothing in this act shall establish or create any liability or responsibility on the part of the board, the secretary, the department or its agents or employees, or the state of Kansas to pay any corrective action costs or to indemnify any owner or operator for ~~the costs of compensating~~ third parties for bodily injury or property damage from any source other than the fund created by this act. In no event shall the fund be liable for the payment of ~~corrective action costs or the indemnification of an owner or operator for costs of compensating third parties~~ in an amount in excess of the following, less any applicable deductible amounts of the owner or operator:

(1) For costs incurred in response to any one release from an underground petroleum storage tank, \$1,000,000;

(2) for an owner or operator of 100 or fewer underground petroleum storage tanks, an annual aggregate of \$1,000,000; and

(3) for an owner or operator of more than 100 underground petroleum storage tanks, an annual aggregate of \$2,000,000.

(b) This act is intended to assist an owner or operator only to the extent provided for in this act, and it is in no way intended to relieve the owner or operator of any liability that cannot be satisfied by the provisions of this act.

(c) Neither the secretary nor the state of Kansas shall have any liability or responsibility to make any payments for corrective action or to indemnify an owner or operator for the costs of compensating third parties, if the fund created herein is insufficient to do so. In the event the fund is insufficient to make the payments at the time the claim is filed, such claims shall be paid in the order of filing at such time as moneys are paid into the fund.

(d) No common law liability, and no statutory liability which is provided in a statute other than in this act, for damages resulting from a release from an underground petroleum storage tank is

(g) An owner or operator of an underground petroleum storage tank who is in substantial compliance, as provided in subsection (d), shall be entitled to reimbursement from the fund for the costs of corrective action taken in response to a release from such tank discovered on or after January 1, 1989, and for which written approval of any corrective action taken prior to April 1, 1990, has been granted by the secretary.

SEE NEW SECTION 5 ATTACHED.

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any liability to

total payment from the

In no event shall an owner or operator be indemnified by the fund for liability to third parties for bodily injury or property damage until the entire allowable corrective action costs have been determined and the fund has been encumbered for their payment.

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1 affected by this act. The authority, power and remedies provided in  
2 this act are in addition to any authority, power or remedy provided  
3 in any statute other than a section of this act or provided at common  
4 law.

5 (e) If a person conducts a corrective action activity in response  
6 to a release from an underground petroleum storage tank, whether  
7 or not the person files a claim against the fund under this act, the  
8 claim and corrective action activity conducted are not evidence of  
9 liability or an admission of liability for any potential or actual  
10 environmental pollution or third party claim.

11 Sec. ~~6~~ K.S.A. 1989 Supp. 65-34,105, 65-34,114, 65-34,115, 65-  
12 34,119 and 65-34,120 are hereby repealed. 7

13 Sec. ~~7~~ This act shall take effect and be in force from and after  
14 its publication in the Kansas register. 8

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New Sec. 5. (a) As used in this section, "compensable claim" means any liability of an owner or operator to a third party for bodily injury or property damage caused by a release from an underground petroleum storage tank, as provided by the Kansas storage tank act. This section shall be a part of and supplemental to the Kansas storage tank act.

(b) No person shall have any right of action against the fund. Any person alleging a compensable claim must seek recovery from the owner or operator. An owner or operator of an underground petroleum storage tank, other than the United States government or any of its agencies, who is in substantial compliance, as provided in subsection (d) or (e) of K.S.A. 1989 Supp. 65-34,119, and amendments thereto, shall be indemnified by the fund for any compensable claim, subject to the following conditions:

(1) The owner or operator must cause written notice to be mailed to the secretary within 10 days after receipt of a written demand alleging a compensable claim or within 10 days after receipt of service of summons and petition naming the owner or operator as defendant in an action which alleges a compensable claim. The notice shall be sent to the secretary by restricted mail, as defined in K.S.A. 60-103, and amendments thereto, and a copy of the written claim or copies of the summons and petition served on the owner or operator shall be sent to the secretary with the notice.

(2) Upon receipt of a timely notice, as provided in subsection (b)(1), the secretary shall defend against the alleged compensable claim or action to recover damages for an alleged compensable claim, if the amount claimed in either event exceeds the applicable deductible of the owner or operator, as prescribed by subsection (b)(5). The owner or operator shall cooperate fully with the secretary in the defense of the claim or action, and shall attend hearings and trials, as necessary, and give evidence therein. If the secretary is not given timely notice, as provided in subsection (b)(1), the secretary shall have no duty to defend the claim or action, and the owner or operator shall not be eligible for indemnification by the fund for any liability to the third party making the claim or commencing the action.

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(3) The secretary shall have the right to enter into negotiations on behalf of an owner or operator for the settlement of any such claim or action. Where the secretary and the claimant in any such action agree to settle the action, the secretary or claimant shall file a motion with the court for an order approving the settlement. If the secretary and a claimant agree to settle a compensable claim prior to the commencement of an action, the secretary and the claimant shall file a joint petition and stipulation with a court of competent jurisdiction and proper venue, seeking an order of the court approving the proposed settlement.

The court shall set such motion or joint petition for hearing as soon as the court's calendar permits, and notice of the time, date and place of hearing shall be given to the claimant, the owner or operator and the secretary. At the hearing, the court shall approve the proposed settlement, if the court finds it to be valid, just and equitable.

If the court does not approve the settlement of a pending action, the action shall be conducted in all respects as if the secretary and claimant had not agreed to a settlement, but the parties shall not be precluded from submitting subsequent settlement agreements for approval by the court. If the court does not approve a proposed settlement submitted by joint petition and stipulation, such fact by itself shall not prejudice the claimant from commencing an action against the owner or operator to recover damages for the alleged compensable claim.

If an owner or operator objects to a settlement approved by the court, the secretary shall no longer have the duty to defend the claim or action, and the amount by which the owner or operator shall be indemnified by the fund shall not exceed the amount agreed to in the settlement agreement, less the appropriate deductible amount specified in subsection (b)(5).

(4) In any such action against an owner or operator, evidence that a portion of any verdict would be payable from insurance or by the fund shall be inadmissible. Any costs incurred by the secretary in defending against

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any such claim or action shall be paid from the fund. An owner or operator shall not be indemnified for any sum which is paid by or for which the owner or operator is entitled to payment from insurance coverage, warranty coverage or any other source.

(5) An owner or operator may be indemnified for a compensable claim in an amount not to exceed the limits specified in K.S.A. 1989 Supp. 65-34,120, and amendments thereto, less the following deductible amounts:

(A) An owner or operator who is not a petroleum marketer and who owns or operates not more than 4 underground petroleum storage tanks shall be liable for the first \$5,000 of such costs, provided all petroleum or petroleum products are not stored for purposes of resale;

(B) The owner or operator of not more than 12 underground petroleum storage tanks shall be liable for the first \$10,000 of such costs;

(C) The owner or operator of at least 13 and not more than 99 underground petroleum storage tanks shall be liable for the first \$20,000 of such costs; and

(D) The owner or operator of more than 99 underground petroleum storage tanks shall be liable for the first \$60,000 of such costs.

(6) For the purpose of determining an owner's or operator's eligibility for indemnification pursuant to this section, including determination of the applicable deductible of the owner or operator, the secretary shall consider all owners and operators owned or controlled by the same interests to be a single owner or operator.

(7) Notwithstanding the foregoing provisions of this section, an owner or operator, or both, may be liable for 100% of the costs of a compensable claim upon the same basis as provided in subsection (c) of K.S.A. 1989 Supp. 65-34,119, and amendments thereto.

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Amendment 1.

SB 554 Underground petroleum storage tanks

Amendment: New Section

Establish the following premium schedule to be eligible for 3rd party liability claims against the fund.

For calendar year 1990 ----- \$50 per tank

For calendar year 1991-----\$100 per tank

For calendar year 1992-----\$200 per tank

For calendar year 1993-----\$400 per tank

From January 1, 1994 to July 1, 1994,---\$400 per tank

The fund shall not be liable for any compensable claim submitted after July 1, 1994.

EFFECT OF AMENDMENT;

Establishes premiums for third party liability insurance and sunsets state sponsored third party liability insurance July 1, 1994. Logic behind sunseting third party liability insurance is that by 1994 all tank owners should be in substantial compliance with EPA regs. and private insurance should be available at affordable prices. The entire trust fund also sunsets at that time. By increasing premiums each year this should provide an incentive for tank owners to seek private insurance as soon as possible. No premiums or very low premiums discourage owner/operators from seeking private insurance thus increasing and prolonging the funds liability.

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Doug Walker  
attachment II

SB 554 Underground Petroleum Storage Tanks

Amendment; 2

Page 6 Lines 9-12

(4) the owner or operator of more than 99 underground petroleum storage tanks shall be liable for the first ~~\$60,000~~ (insert \$100,000) of costs of corrective action taken in response to a release from any such petroleum storage tank;

NEW SECTION 5, paragraph 5, subsection d;

(d) The owner or operator of more than 99 underground storage tanks shall be liable for the first ~~\$60,000~~ (insert \$100,000) of such costs.

EFFECT OF THE AMENDMENT;

SB 554 eliminates the exemption for participating in the fund for those who qualify for selfinsurance (\$10,000,000 in assets, -Page 7, section 14, lines 14-17)

By eliminating this exemption large companies, who have the financial resources to be selfinsured, now have access to the fund. By increasing the owner/operator financial responsibility on the up front costs (deductible) for both corrective action and third party liability according to the number of tanks, you still allow the small owner/operators to participate, allow the CoOps with assets over \$10 million to participate and greatly reduce the liability of the fund from the large corporations.

**EXAMPLE;** A major oil company has a large petroleum release in 1991 which results in claims filed against the fund. If these amendments are adopted, the Oil company would have to pay a \$100,000 deductible for corrective action and another \$100,000 for third party liability coverage from the fund. If the corrective action costs totaled \$900,000 and third party liability claims totaled \$600,000, the company would be required to pay \$100,000 corrective action deductible with the fund paying \$800,000. For the third party liability claims the company would pay \$100,000 deductible and the fund would pay \$500,000.

Oil company with 100 tanks

Major tank release. (1991)

Premiums paid (\$100 per tank) equal \$10,000

corrective action costs	\$900,000
third party liability claims	\$600,000
	-----
Total costs-----	\$1,500,000

corrective action deductible	\$100,000
Third party liab. deductible	\$100,000
	-----
Total deductible-----	\$200,000

<b>Fund pays</b>	\$800,000 corrective action costs
	\$500,000 third party liability claims
	-----
<b>Total-----</b>	<b>\$1,300,000</b>

<b>Company pays</b>	
<b>Total-----</b>	<b>\$200,000</b>

**CURRENT BILL**

Oil company with 100 tanks

Major tank release

-no premiums required

Corrective action costs	\$900,000
Third party liability claims	\$600,000
	-----
Total costs -----	\$1,500,000

Corrective action deductible	\$60,000
Third party liability deductible	\$60,000
	-----
Total deductible----	\$120,000

<b>Fund pays</b>	\$840,000 corrective action costs
	\$540,000 third party liability costs
	-----
<b>Total-----</b>	<b>\$1,380,000</b> (\$2 million annual aggregate)
<b>Company pays-----</b>	<b>\$120,000</b>

Owners With More Than 100 Tanks

<u>Owner Name</u>	<u>Number of Tanks</u>
Amoco Oil Company	352
Department of Transportation	317
Coastal Derby Refining Company	224
Panhandle Eastern Pipeline Company	210
Quiktrip Corporation	171
Coastal Mart Inc. - Coastal Tower	170
Ft. Riley - U.S. Army	159
Kwik Shop Inc.	147
Casey's General Stores, Inc.	138
Town & Country Markets Inc.	135
McConnell Air Force Base	120

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