

1 AMENDMENT TO HOUSE BILL 2575

2 AMENDMENT NO. _____. Amend House Bill 2575, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Environmental Protection Act is amended
6 by changing Section 57.8 as follows:

7 (415 ILCS 5/57.8)

8 Sec. 57.8. Underground Storage Tank Fund; payment;
9 options for State payment; deferred correction election to
10 commence corrective action upon availability of funds. If an
11 owner or operator is eligible to access the Underground
12 Storage Tank Fund pursuant to an Office of State Fire Marshal
13 eligibility/deductible final determination letter issued in
14 accordance with Section 57.9, the owner or operator may
15 submit a complete application for final or partial payment to
16 the Agency for activities taken in response to a confirmed
17 release. An owner or operator may submit a request for
18 partial or final payment regarding a site no more frequently
19 than once every 90 days.

20 (a) Payment after completion of corrective action
21 measures. The owner or operator may submit an application for
22 payment for activities performed at a site after completion

1 of the requirements of Sections 57.6 and 57.7, or after
2 completion of any other required activities at the
3 underground storage tank site.

4 (1) In the case of any approved plan and budget for
5 which payment is being sought, the Agency shall make a
6 payment determination within 120 days of receipt of the
7 application. Such determination shall be considered a
8 final decision. The Agency's review shall be limited to
9 generally accepted auditing and accounting practices. In
10 no case shall the Agency conduct additional review of any
11 plan which was completed within the budget, beyond
12 auditing for adherence to the corrective action measures
13 in the proposal. If the Agency fails to approve the
14 payment application within 120 days, such application
15 shall be deemed approved by operation of law and the
16 Agency shall proceed to reimburse the owner or operator
17 the amount requested in the payment application.
18 However, in no event shall the Agency reimburse the owner
19 or operator an amount greater than the amount approved in
20 the plan.

21 (2) If sufficient funds are available in the
22 Underground Storage Tank Fund, the Agency shall, within
23 60 days, forward to the Office of the State Comptroller a
24 voucher in the amount approved under the payment
25 application.

26 (3) In the case of insufficient funds, the Agency
27 shall form a priority list for payment and shall notify
28 persons in such priority list monthly of the availability
29 of funds and when payment shall be made. Payment shall
30 be made to the owner or operator at such time as
31 sufficient funds become available for the costs
32 associated with corrective action and costs expended for
33 activities performed where no proposal is required, if
34 applicable. Such priority list shall be available to any

1 owner or operator upon request. Priority for payment
2 shall be determined by the date the Agency receives a
3 complete request for partial or final payment. Upon
4 receipt of notification from the Agency that the
5 requirements of this Title have been met, the Comptroller
6 shall make payment to the owner or operator of the amount
7 approved by the Agency, if sufficient money exists in the
8 Fund. If there is insufficient money in the Fund, then
9 payment shall not be made. If the owner or operator
10 appeals a final Agency payment determination and it is
11 determined that the owner or operator is eligible for
12 payment or additional payment, the priority date for the
13 payment or additional payment shall be the same as the
14 priority date assigned to the original request for
15 partial or final payment.

16 (4) Any deductible, as determined pursuant to the
17 Office of the State Fire Marshal's eligibility and
18 deductibility final determination in accordance with
19 Section 57.9, shall be subtracted from any payment
20 invoice paid to an eligible owner or operator. Only one
21 deductible shall apply per underground storage tank site.

22 (5) In the event that costs are or will be incurred
23 in addition to those approved by the Agency, or after
24 payment, the owner or operator may submit successive
25 plans containing amended budgets. The requirements of
26 Section 57.7 shall apply to any amended plans.

27 (6) For purposes of this Section, a complete
28 application shall consist of:

29 (A) A certification from a Licensed
30 Professional Engineer as required under this Title
31 and acknowledged by the owner or operator.

32 (B) A statement of the amount approved in the
33 plan and the amount actually sought for payment
34 along with a certified statement that the amount so

1 sought shall be expended in conformance with the
2 approved budget.

3 (C) A copy of the Office of the State Fire
4 Marshal's eligibility and deductibility
5 determination.

6 (D) Proof that approval of the payment
7 requested will not result in the limitations set
8 forth in subsection (g) of this Section being
9 exceeded.

10 (E) A federal taxpayer identification number
11 and legal status disclosure certification on a form
12 prescribed and provided by the Agency.

13 (b) Commencement of corrective action upon availability
14 of funds. The Board shall adopt regulations setting forth
15 procedures based on risk to human health or the environment
16 under which the owner or operator who has received approval
17 for any budget plan submitted pursuant to Section 57.7, and
18 who is eligible for payment from the Underground Storage Tank
19 Fund pursuant to an Office of the State Fire Marshal
20 eligibility and deductibility determination, may elect to
21 defer site classification, low priority groundwater
22 monitoring, or remediation activities until funds are
23 available in an amount equal to the amount approved in the
24 budget plan. The regulations shall establish criteria based
25 on risk to human health or the environment to be used for
26 determining on a site-by-site basis whether deferral is
27 appropriate. The regulations also shall establish the
28 minimum investigatory requirements for determining whether
29 the risk based criteria are present at a site considering
30 deferral and procedures for the notification of owners or
31 operators of insufficient funds, Agency review of request for
32 deferral, notification of Agency final decisions, returning
33 deferred sites to active status, and earmarking of funds for
34 payment.

1 (c) When the owner or operator requests indemnification
 2 for payment of costs incurred as a result of a release of
 3 petroleum from an underground storage tank, if the owner or
 4 operator has satisfied the requirements of subsection (a) of
 5 this Section, the Agency shall forward a copy of the request
 6 to the Attorney General. The Attorney General shall review
 7 and approve the request for indemnification if:

8 (1) there is a legally enforceable judgment entered
 9 against the owner or operator and such judgment was
 10 entered due to harm caused by a release of petroleum from
 11 an underground storage tank and such judgment was not
 12 entered as a result of fraud; or

13 (2) a settlement with a third party due to a
 14 release of petroleum from an underground storage tank is
 15 reasonable.

16 (d) Notwithstanding any other provision of this Title,
 17 the Agency shall not approve payment to an owner or operator
 18 from the Fund for costs of corrective action or
 19 indemnification incurred during a calendar year in excess of
 20 the following aggregate amounts based on the number of
 21 petroleum underground storage tanks owned or operated by such
 22 owner or operator in Illinois.

Amount	Number of Tanks
\$1,000,000.....	fewer than 101
<u>\$3,000,000</u> \$2,000,000.....	101 or more

26 (1) Costs incurred in excess of the aggregate
 27 amounts set forth in paragraph (1) of this subsection
 28 shall not be eligible for payment in subsequent years.

29 (2) For purposes of this subsection, requests
 30 submitted by any of the agencies, departments, boards,
 31 committees or commissions of the State of Illinois shall
 32 be acted upon as claims from a single owner or operator.

33 (3) For purposes of this subsection, owner or
 34 operator includes (i) any subsidiary, parent, or joint

1 stock company of the owner or operator and (ii) any
2 company owned by any parent, subsidiary, or joint stock
3 company of the owner or operator.

4 (e) Costs of corrective action or indemnification
5 incurred by an owner or operator which have been paid to an
6 owner or operator under a policy of insurance, another
7 written agreement, or a court order are not eligible for
8 payment under this Section. An owner or operator who
9 receives payment under a policy of insurance, another written
10 agreement, or a court order shall reimburse the State to the
11 extent such payment covers costs for which payment was
12 received from the Fund. Any monies received by the State
13 under this subsection (e) shall be deposited into the Fund.

14 (f) Until the Board adopts regulations pursuant to
15 Section 57.14, handling charges are eligible for payment only
16 if they are equal to or less than the amount determined by
17 the following table:

Subcontract or field	Eligible Handling Charges
Purchase Cost	as a Percentage of Cost
\$0 - \$5,000.....	12%
\$5,001 - \$15,000.....	\$600+10% of amt. over \$5,000
\$15,001 - \$50,000.....	\$1600+8% of amt. over \$15,000
\$50,001 - \$100,000.....	\$4400+5% of amt. over \$50,000
\$100,001 - \$1,000,000.....	\$6900+2% of amt. over \$100,000

25 (g) The Agency shall not approve any payment from the
26 Fund to pay an owner or operator:

27 (1) for costs of corrective action incurred by such
28 owner or operator in an amount in excess of \$1,000,000
29 per occurrence; and

30 (2) for costs of indemnification of such owner or
31 operator in an amount in excess of \$1,000,000 per
32 occurrence.

33 (h) Payment of any amount from the Fund for corrective
34 action or indemnification shall be subject to the State

1 acquiring by subrogation the rights of any owner, operator,
2 or other person to recover the costs of corrective action or
3 indemnification for which the Fund has compensated such
4 owner, operator, or person from the person responsible or
5 liable for the release.

6 (i) If the Agency refuses to pay or authorizes only a
7 partial payment, the affected owner or operator may petition
8 the Board for a hearing in the manner provided for the review
9 of permit decisions in Section 40 of this Act.

10 (j) Costs of corrective action or indemnification
11 incurred by an owner or operator prior to July 28, 1989,
12 shall not be eligible for payment or reimbursement under this
13 Section.

14 (k) The Agency shall not pay costs of corrective action
15 or indemnification incurred before providing notification of
16 the release of petroleum in accordance with the provisions of
17 this Title.

18 (l) Corrective action does not include legal defense
19 costs. Legal defense costs include legal costs for seeking
20 payment under this Title unless the owner or operator
21 prevails before the Board in which case the Board may
22 authorize payment of legal fees.

23 (m) The Agency may apportion payment of costs for plans
24 submitted under Section 57.7(c)(4)(E)(iii) if:

25 (1) the owner or operator was deemed eligible to
26 access the Fund for payment of corrective action costs
27 for some, but not all, of the underground storage tanks
28 at the site; and

29 (2) the owner or operator failed to justify all
30 costs attributable to each underground storage tank at
31 the site.

32 (Source: P.A. 91-357, eff. 7-29-99.)

33 Section 10. The Environmental Impact Fee Law is amended

1 by changing Section 390 as follows:

2 (415 ILCS 125/390)

3 (Section scheduled to be repealed on January 1, 2003)

4 Sec. 390. Repeal. This Article is repealed on January
5 1, 2013 2003.

6 (Source: P.A. 89-428, eff. 1-1-96; 89-457, eff. 5-22-96.)

7 Section 99. Effective date. This Act takes effect upon
8 becoming law."