

H-8283

1 Amend House File 2646 as follows:

2 1. By striking everything after the enacting clause and
3 inserting:

4 <DIVISION I

5 STORAGE TANK MANAGEMENT ACCOUNT

6 Section 1. Section 455B.471, subsections 1 and 3, Code 2024,
7 are amended by striking the subsections.

8 Sec. 2. Section 455B.471, Code 2024, is amended by adding
9 the following new subsections:

10 NEW SUBSECTION. 1A. "*Account*" means the storage tank
11 management account created in the groundwater protection fund
12 created in section 455E.11.

13 NEW SUBSECTION. 1B. "*Claimant*" means an owner or operator
14 who has filed a claim for assistance under the account, and
15 that claim has been approved by the department, or the Iowa
16 comprehensive petroleum underground storage tank fund created
17 in section 455G.3, Code 2024.

18 NEW SUBSECTION. 1C. "*Community remediation*" means a
19 curriculum of coordinated testing, planning, or remediation
20 involving two or more tank sites potentially connected with a
21 continuous contaminated area, pursuant to rules adopted by the
22 commission under section 455B.474. A community remediation
23 does not expand the scope of coverage otherwise available or
24 relieve liability otherwise imposed under state or federal law.

25 NEW SUBSECTION. 2A. "*Costs*" means all costs, charges,
26 expenses, or other indebtedness incurred by a claimant that
27 are determined by the department to be reasonable for carrying
28 out all works and undertakings necessary or incidental to the
29 accomplishment of any project. "*Costs*" includes reasonable
30 attorney fees and costs of litigation for which moneys are
31 expended from the account in connection with a release.

32 NEW SUBSECTION. 3A. "*Insurance*" means any form of financial
33 assistance or showing of financial responsibility sufficient
34 to comply with the federal Resource Conservation and Recovery
35 Act, 42 U.S.C. §6901 et seq., or the department's underground

1 storage tank financial responsibility rules.

2 NEW SUBSECTION. 7A. "*Potentially responsible party*" means a
3 person who may be responsible or liable for a release for which
4 payments from the account were made for corrective action or
5 third-party liability.

6 NEW SUBSECTION. 7B. "*Program*" means the storage tank
7 management account financing program created pursuant to
8 section 455B.472A.

9 NEW SUBSECTION. 10A. "*Third-party liability*" means any of
10 the following:

11 a. Property damage including physical injury to tangible
12 property, but not including loss of use. Property damage does
13 not include costs to remediate.

14 b. Bodily injury including sickness, physical injury, or
15 death.

16 Sec. 3. NEW SECTION. 455B.472A Storage tank management
17 account financing program.

18 1. The department shall establish and administer a storage
19 tank management account financing program for the purpose of
20 reimbursing eligible claimants for all or part of the costs of
21 corrective action for petroleum releases previously eligible
22 for payment from the Iowa comprehensive petroleum underground
23 storage tank fund pursuant to chapter 455G, Code 2024.

24 2. The department may enter into any agreements and provide
25 any documents, instruments, certificates, data, or information
26 necessary in connection with the operation, administration,
27 and financing of the program consistent with this part 8 of
28 subchapter IV, the federal Resource Conservation and Recovery
29 Act, 42 U.S.C. §6901 et seq., the rules of the commission, and
30 other applicable federal and state law.

31 3. The department may act to conform the program to the
32 applicable guidance and regulations adopted by the United
33 States environmental protection agency.

34 4. The department shall administer the moneys in the account
35 transferred pursuant to this Act to carry out the purposes

1 of the program and shall manage the revenue, administration,
2 restrictions, and disposition of the moneys in the account
3 transferred pursuant to this Act.

4 5. Moneys in the account transferred pursuant to this Act
5 are appropriated to the department for the purposes set forth
6 in section 455E.11, subsection 2, paragraph "d", subparagraph
7 (1A).

8 6. Payments for reimbursement or other costs relating to any
9 claim or cause of action in connection with a tank not owned or
10 operated by the state or an agency of the state shall be made
11 solely from the moneys in the account transferred pursuant to
12 this Act and no liability is otherwise imposed upon the state.
13 Moneys from the account transferred pursuant to this Act are
14 limited to the extent of coverage provided by the provisions
15 set forth in section 455E.11, subsection 2, paragraph "d",
16 subparagraph (1A). A court, an administrative law judge, the
17 department, or the commission shall not order or approve a
18 remedy that would require the account to exceed the account's
19 then current funding limitations to satisfy an award or that
20 would restrict the availability of moneys for higher priority
21 purposes described in section 455E.11, subsection 2, paragraph
22 "d", subparagraph (1A), subparagraph division (c). The state
23 is not otherwise liable for a claim related to the account
24 and moneys from the general fund shall not be used to pay for
25 reimbursement or other costs relating to any claim or cause of
26 action in connection with a tank not owned or operated by the
27 state or an agency of the state.

28 **Sec. 4. NEW SECTION. 455B.472B Cost recovery enforcement.**

29 1. *Full recovery sought by department.* The department
30 may seek full recovery from an owner, operator, or other
31 potentially responsible party liable for a release that is
32 the subject of a corrective action for which moneys from
33 the account are expended, or for which moneys from the Iowa
34 comprehensive petroleum underground storage tank fund created
35 in section 455G.3, Code 2024, were expended, including for

1 third-party liability and for all other costs. If federal
2 cleanup moneys are recovered, the federal cleanup moneys shall
3 be used solely for the purpose of future cleanup activities.

4 2. *Limitation of liability of owner or operator.* Except
5 as provided in subsection 3, the department shall not seek
6 recovery for expenses in connection with corrective action for
7 a release from an owner or operator eligible for assistance
8 under the program, except for any unpaid portion of the
9 deductible or copayment. This subsection does not affect any
10 authorization of the department to impose or collect civil or
11 administrative fines, penalties, or fees. Moneys from the
12 account shall not be used to pay for any third-party liability.

13 3. *Owner or operator not in compliance.* Notwithstanding
14 subsection 2, the liability of an owner or operator shall be
15 the full and total costs of corrective action and bodily injury
16 or property damage to third parties, as specified in subsection
17 1, if the owner or operator has not complied with the financial
18 responsibility or other underground storage tank rules of
19 the department or with this part 8 of subchapter IV or rules
20 adopted under this part.

21 4. *Lien on tank site.* Any amount for which an owner or
22 operator is required to pay to the account by statute, rule,
23 contract, or determination of liability by the department after
24 hearing, if not paid when due, shall constitute a lien upon the
25 real property where the tank that was the subject of corrective
26 action is located, and the payment shall be collected in the
27 same manner as the environmental protection charge pursuant to
28 section 424.11, Code 2016.

29 5. *Joinder of parties.* The department has standing in
30 any case or contested action related to the account or a tank
31 to assert any claim that the department may have regarding
32 the tank at issue in the case or contested action. Upon
33 motion and sufficient showing by a party to a cost recovery or
34 subrogation action provided for under this section, the court
35 or the administrative law judge shall join to the action any

1 potentially responsible party who may be liable for costs and
2 expenditures of the type recoverable pursuant to this section.

3 6. *Third-party contracts.* An insurance, indemnification,
4 hold-harmless, conveyance, or similar risk-sharing or
5 risk-shifting agreement shall not be effective to transfer
6 any liability for costs recoverable under this section. The
7 department may proceed directly against the owner, operator,
8 or other potentially responsible party. This subsection does
9 not bar any agreement to insure, hold harmless, or indemnify
10 a party to the agreement for any costs or expenditures under
11 this part 8 of subchapter IV, and does not modify rights
12 between the parties to an agreement, except to the extent the
13 agreement shifts liability to an owner or operator eligible
14 for assistance under the program for any damages or other
15 costs in connection with a corrective action for which another
16 potentially responsible party is or may be liable. Any such
17 provision is void and of no further force and effect.

18 7. *Later proceedings permitted against other parties.* The
19 entry of judgment against a party to the action does not bar
20 a future action by the department against another person who
21 is later alleged to be or discovered to be liable for costs
22 and expenditures paid from the account. Notwithstanding
23 section 668.5, a potentially responsible party shall not seek
24 contribution or any other recovery from an owner or operator
25 eligible for assistance under the program for damages or other
26 costs in connection with corrective action for a release for
27 which the potentially responsible party is or may be liable.
28 Subsequent successful proceedings against another party shall
29 not modify or reduce the liability of a party against whom
30 judgment has been previously entered.

31 8. *Claims against potentially responsible parties.*

32 a. Upon payment from the account for corrective action or
33 third-party liability pursuant to this part 8 of subchapter
34 IV, the rights of the claimant to recover payment from any
35 potentially responsible party are assumed by the department to

1 the extent paid from the account. A claimant shall not receive
2 double compensation for the same injury.

3 *b.* In an action brought pursuant to this part 8 of
4 subchapter IV seeking damages for corrective action or
5 third-party liability, the court shall allow evidence and
6 argument as to the replacement or indemnification of actual
7 economic losses incurred or to be incurred in the future by the
8 claimant by reason of insurance benefits, governmental benefits
9 or programs, or other sources.

10 *c.* A claimant may elect to authorize the department
11 to pursue the claimant's cause of action for any injury
12 not compensated from the fund against any potentially
13 responsible party, provided the attorney general determines
14 such representation would not be a conflict of interest. If
15 a claimant so elects, the department's litigation expenses
16 shall be shared on a pro rata basis with the claimant, but the
17 claimant's share of litigation expenses is payable exclusively
18 from any share of the settlement or judgment payable to the
19 claimant.

20 9. *Exclusion of punitive damages.* Moneys from the account
21 shall not be used to pay punitive damages.

22 Sec. 5. NEW SECTION. **455B.472C Discretionary rulemaking.**

23 1. The commission may adopt rules pursuant to chapter 17A
24 conditioning receipt of moneys from the account transferred
25 pursuant to this Act to those petroleum-contaminated properties
26 that present a higher degree of risk to the public health and
27 safety or the environment and providing for denial of moneys
28 from the account transferred pursuant to this Act to a person
29 who did not make a good-faith attempt to comply with this part
30 8 of subchapter IV. This subsection does not confer a legal
31 right to an owner of a petroleum-contaminated property, or an
32 owner or operator of an underground storage tank located on the
33 property, for receipt of moneys under this part 8 of subchapter
34 IV.

35 2. The commission may adopt rules pursuant to chapter

1 17A providing for the transfer of all or a portion of the
2 liabilities relating to the account. Notwithstanding any other
3 provision to the contrary, the department, upon such transfer,
4 shall not maintain any duty to reimburse claimants for those
5 liabilities transferred.

6 Sec. 6. Section 455B.474, subsection 1, paragraph a,
7 subparagraph (6), subparagraph divisions (g), (i), and (j),
8 Code 2024, are amended to read as follows:

9 (g) An owner or operator may elect to proceed with
10 additional corrective action on the site. However, any
11 action taken in addition to that required pursuant to this
12 subparagraph (6), shall be solely at the expense of the owner
13 or operator and shall not be considered corrective action
14 for purposes of [section 455G.9 455B.472A](#), unless otherwise
15 previously agreed to by the ~~board~~ department and the owner or
16 operator pursuant to ~~section 455G.9, subsection 7~~ [455B.472A](#).
17 Corrective action taken by an owner or operator due to the
18 department's failure to meet the time requirements provided in
19 subparagraph division (e) shall be considered corrective action
20 for purposes of [section 455G.9 455B.472A](#).

21 (i) Replacement or upgrade of a tank on a site classified
22 as a high or low risk site shall be equipped with a secondary
23 containment system with monitoring of the space between the
24 primary and secondary containment structures or other ~~board~~
25 approved tank system or methodology approved by the department.

26 (j) The commission and the ~~board~~ department shall cooperate
27 to ensure that remedial measures required by the corrective
28 action rules adopted pursuant to this subparagraph (6) are
29 reasonably cost-effective and shall, to the fullest extent
30 possible, avoid duplicating and conflicting requirements.

31 Sec. 7. Section 455B.474, subsection 9, paragraph d, Code
32 2024, is amended to read as follows:

33 d. The certification of groundwater professionals shall
34 not impose liability on ~~the board~~, the department, or the
35 ~~fund~~ account for any claim or cause of action of any nature,

1 based on the action or inaction of a groundwater professional
2 certified pursuant to [this subsection](#).

3 Sec. 8. Section 455B.474, Code 2024, is amended by adding
4 the following new subsection:

5 NEW SUBSECTION. 11. Department practices and procedures
6 for implementing and administering the storage tank management
7 account financing program. The rules shall include but
8 are not limited to requirements for program eligibility,
9 investigating and settling claims made against the account,
10 appeal procedures, community remediation, prioritization of
11 account moneys, funding for tank operator training, additional
12 assessment and corrective action arising out of releases at
13 sites for which a certificate of no further action has been
14 issued, and reimbursement for the permanent closure of an
15 underground storage tank system.

16 Sec. 9. Section 455B.477, subsection 7, Code 2024, is
17 amended to read as follows:

18 ~~7. The civil penalties or other damages or moneys recovered~~
19 ~~by the state or the petroleum underground storage tank fund in~~
20 ~~connection with a petroleum underground storage tank under this~~
21 ~~part 8 of subchapter IV or [chapter 455G](#) shall be credited to~~
22 ~~the fund created in [section 455G.3](#) and allocated between fund~~
23 ~~accounts according to the fund budget. Any federal moneys,~~
24 ~~including but not limited to federal underground storage tank~~
25 ~~trust fund moneys, received by the state or the department of~~
26 ~~natural resources in connection with a release occurring on~~
27 ~~or after May 5, 1989, or received generally for underground~~
28 ~~storage tank programs on or after May 5, 1989, shall be~~
29 ~~credited to the fund account created in [section 455G.3](#) and~~
30 ~~allocated between fund accounts according to the fund budget~~
31 ~~[455E.11, subsection 2, paragraph "d"](#), unless such use would~~
32 ~~be contrary to federal law. The department shall cooperate~~
33 ~~with the board of the Iowa comprehensive petroleum underground~~
34 ~~storage tank fund to maximize the state's eligibility for and~~
35 receipt of federal funds for underground storage tank related

1 purposes.

2 Sec. 10. Section 455E.11, subsection 2, paragraph d,
3 unnumbered paragraph 1, Code 2024, is amended to read as
4 follows:

5 A storage tank management account. ~~All~~ The account shall
6 consist of moneys appropriated to, transferred to, or deposited
7 in the account, including fees collected pursuant to section
8 455B.473, subsection 5, section 455B.477, subsection 7, and
9 section 455B.479, shall be deposited in the storage tank
10 management account. Moneys deposited in the account shall be
11 expended for all of the following purposes:

12 Sec. 11. Section 455E.11, subsection 2, paragraph d, Code
13 2024, is amended by adding the following new subparagraph:

14 NEW SUBPARAGRAPH. (1A) Moneys transferred under this Act to
15 the account are appropriated for the following purposes until
16 such moneys are fully expended:

17 (a) For reimbursement to tank owners or operators for all
18 or part of the costs of a corrective action for a petroleum
19 release.

20 (b) For the annual appropriation to the department
21 of agriculture and land stewardship in the amount of two
22 hundred fifty thousand dollars for the purpose of inspecting
23 fuel quality at pipeline terminals and renewable fuel
24 production facilities, including associated salaries, support,
25 maintenance, and miscellaneous purposes.

26 (c) For permanent closure of an underground storage tank
27 system under a remedial program pursuant to chapter 455B,
28 subchapter IV, part 8, for additional assessment and corrective
29 action arising out of releases at sites for which a certificate
30 of no further action has been issued, and for tank operator
31 training. At least three million dollars of the total moneys
32 expended pursuant to this subparagraph shall be expended for
33 the purposes described in this subparagraph division, but not
34 more than fifty thousand dollars shall be utilized for operator
35 training each fiscal year.

1 Sec. 12. Section 455E.11, subsection 2, paragraph d,
2 subparagraph (2), Code 2024, is amended to read as follows:

3 (2) The moneys remaining in the account after the
4 ~~appropriation~~ appropriations in ~~subparagraph~~ subparagraphs (1)
5 and (1A) are appropriated ~~from the storage tank management~~
6 ~~account~~ to the department of natural resources for the
7 administration of a state storage tank program pursuant to
8 chapter 455B, subchapter IV, part 8, and for programs ~~which~~
9 that reduce the potential for harm to the environment and the
10 public health from storage tanks.

11 Sec. 13. REPEAL. Sections 455G.1, 455G.2, 455G.2A, 455G.3,
12 455G.4, 455G.5, 455G.6, 455G.7, 455G.8, 455G.9, 455G.12,
13 455G.12A, 455G.13, 455G.14, 455G.15, 455G.16, 455G.20, and
14 455G.21, Code 2024, are repealed.

15 DIVISION II

16 CONFORMING CHANGES

17 Sec. 14. Section 68B.35, subsection 2, paragraph e, Code
18 2024, is amended to read as follows:

19 e. Members of the state banking council, the Iowa ethics and
20 campaign disclosure board, the credit union review board, the
21 economic development authority, the employment appeal board,
22 the environmental protection commission, the health facilities
23 council, the Iowa finance authority, the Iowa public employees'
24 retirement system investment board, the Iowa lottery board
25 created in [section 99G.8](#), the natural resource commission,
26 the board of parole, ~~the petroleum underground storage tank~~
27 ~~fund board~~, the public employment relations board, the state
28 racing and gaming commission, the state board of regents, the
29 transportation commission, the office of consumer advocate, the
30 utilities board, the Iowa telecommunications and technology
31 commission, and any full-time members of other boards and
32 commissions as defined under [section 7E.4](#) who receive an annual
33 salary for their service on the board or commission. The Iowa
34 ethics and campaign disclosure board shall conduct an annual
35 review to determine if members of any other board, commission,

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1 or authority should file a statement and shall require the
2 filing of a statement pursuant to rules adopted pursuant to
3 chapter 17A.

4 Sec. 15. Section 323.1, subsection 16, Code 2024, is amended
5 to read as follows:

6 16. *“Storage tank”* means a motor fuel storage tank as
7 defined in [section 214.1](#), including an underground storage
8 tank subject to regulation under chapter ~~455G~~ 455B, subchapter
9 IV, part 8, section 455E.11, subsection 2, paragraph *“d”*,
10 subparagraph (1A), or section 455G.31.

11 Sec. 16. Section 422.7, subsection 2, paragraph u, Code
12 2024, is amended by striking the paragraph.

13 Sec. 17. Section 455B.174, subsection 4, paragraph d, Code
14 2024, is amended to read as follows:

15 *d.* If a public water supply has a groundwater source
16 that contains petroleum, a fraction of crude oil, or their
17 degradation products, or is located in an area deemed by the
18 department as likely to be contaminated by such materials, and
19 after consultation with the public water supply system and
20 consideration of all applicable rules relating to remediation,
21 the department may require the public water supply system to
22 replace that groundwater source in order to receive a permit
23 to operate. The requirement to replace the source shall only
24 be made by the department if the public water supply system
25 is fully compensated for any additional design, construction,
26 operation, and monitoring costs ~~from the Iowa comprehensive~~
27 ~~petroleum underground storage tank fund created by chapter~~
28 ~~455G~~ or from any other funds that do not impose a financial
29 obligation on the part of the public water supply system.
30 Funds available to or provided by the public water supply
31 system may be used for system improvements made in conjunction
32 with replacement of the source. The department cannot require
33 a public water supply system to replace its water source with a
34 less reliable water source or with a source that does not meet
35 federal primary, secondary, or other health-based standards

1 unless treatment is provided to ensure that the drinking water
2 meets these standards. Nothing in this paragraph shall affect
3 the public water supply system's right to pursue recovery from
4 a responsible party.

5 Sec. 18. Section 455E.11, subsection 2, paragraph d,
6 subparagraph (3), Code 2024, is amended by striking the
7 subparagraph.

8 Sec. 19. Section 455I.2, subsection 5, paragraph a, Code
9 2024, is amended to read as follows:

10 a. A federal or state program that is subject to the
11 jurisdiction of an agency, including but not limited to
12 programs established by chapters 455B and ~~455G~~ 455E, corrective
13 or response actions pursuant to 42 U.S.C. §6901 et seq., and
14 remedial actions under 42 U.S.C. §9601 et seq.

15 Sec. 20. REPEAL. Sections 427B.20, 427B.21, and 427B.22,
16 Code 2024, are repealed.

17 DIVISION III

18 TRANSITION PROVISIONS

19 Sec. 21. TRANSITION PROVISIONS.

20 1. Upon repeal of sections 455G.1, 455G.2, 455G.2A, 455G.3,
21 455G.4, 455G.5, 455G.6 455G.7, 455G.8, 455G.9, 455G.12,
22 455G.12A, 455G.13, 455G.14, 455G.15, 455G.16, 455G.20,
23 and 455G.21, pursuant to this Act, all moneys in all funds
24 administered by the Iowa comprehensive petroleum underground
25 storage tank fund board are transferred to the treasurer of
26 state for deposit in the storage tank management account
27 created in the groundwater protection fund created in section
28 455E.11. Any moneys credited to any fund administered by the
29 Iowa comprehensive petroleum underground storage tank fund
30 board on and after the effective date of divisions I and II
31 of this Act are transferred to the treasurer of state for
32 deposit in the storage tank management account created in the
33 groundwater protection fund created in section 455E.11.

34 2. Any rule, regulation, form, order, or directive
35 promulgated by the Iowa comprehensive petroleum underground

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1 storage tank fund board as required to administer and enforce
2 the provisions relating to the Iowa comprehensive petroleum
3 underground storage tank fund shall continue in full force
4 and effect under the jurisdiction of the department of
5 natural resources until amended, repealed, or supplemented by
6 affirmative action of the department.

7 3. Any remaining liabilities, contracts, outstanding
8 claims, payments, or other obligations for open claims from
9 the comprehensive petroleum underground storage tank fund
10 existing on or before the effective date of divisions I and II
11 of this Act shall continue in full force and effect under the
12 jurisdiction of the department of natural resources. A claim
13 for a release filed on or after the effective date of divisions
14 I and II of this Act shall not be eligible for payment from the
15 Iowa comprehensive petroleum underground storage tank fund.

16 4. The department of natural resources may begin
17 implementation of subsections 2 and 3 prior to the effective
18 date of divisions I and II of this Act, to the extent necessary
19 to transition to full implementation of the provisions
20 relating to the storage tank management account created in the
21 groundwater protection fund created in section 455E.11 and
22 repeal of the Iowa comprehensive petroleum underground storage
23 tank fund created in section 455G.3, Code 2024.

24 5. All property tax credits provided under chapter 427B,
25 subchapter IV, existing upon the repeal of sections 427B.20,
26 427B.21, and 427B.22 shall continue until their expiration.

27 Sec. 22. EFFECTIVE DATE. This division of this Act, being
28 deemed of immediate importance, takes effect upon enactment.>

29 2. Title page, by striking lines 1 through 3 and inserting
30 <An Act relating to underground storage tanks, including
31 repealing the Iowa comprehensive petroleum underground storage
32 tank fund and eliminating the Iowa comprehensive petroleum
33 underground storage tank fund board, making appropriations, and
34 including effective date and transition provisions.>

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